Gibraltar Public Services

Ombudsman

Annual Report 2014

Gibraltar

The Gibraltar Public Services

Ombudsman

‘Start by doing what's necessary; then do what's possible; and suddenly you are doing the impossible’

Francis of Assisi

The Gibraltar Public Services

Ombudsman

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

The Gibraltar Public Services Ombudsman

March 2015

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

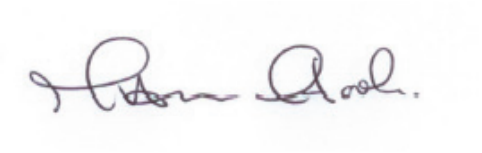
Dear Mr. Picardo,

Annual Report 2014

It is an honour for me to present the Public Services Ombudsman's fifteenth Annual Report. This report covers the period 1st January to 31st December 2014.

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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The Ombudsman’s fifteenth Annual Report

INTRODUCTION

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

It is a pleasure for me to prepare this annual report for the year ending 31 December 2014 where I can write about two very important developments in the life of the Office of the Ombudsman in Gibraltar. These two developments refer to a substantial reduction of complaints against the Housing Authority and to the extended jurisdiction of the Ombudsman to include complaints against the Gibraltar Health Authority

Housing Authority

Ever since the Ombudsman first opened its doors to the public back in 1999 the subject topping the list of complaints has always been related to housing issues.

The list of complaints is hugely varied and the broad spectrum includes failure to reply to letters, failure to provide timely appointments, failure to carry out repairs within a reasonable timeframe or at all, but above all the complaints have been in relation to the allocation of Government rental housing stock. The lack of Government housing to meet the demand is a historical fact in the life of Gibraltar giving rise to the development of various waiting lists in order to accommodate and allocate in the fairest manner the little available housing stock. It is the position of applicants in the waiting lists and the time that they have spent in these lists waiting for the allocation of accommodation that has given rise to most complaints.

At the time of writing this report it gives me an immense pleasure to state that since approximately December 2014 continuing into January and February 2015 there has been a considerable reduction in housing complaints.. Without doubt the (about) 1000 affordable flats to be completed later this year (2015) have had a dramatic effect in the waiting lists by the de facto removal of a large amount of applicants who have bought flats in these Government affordable housing schemes. Without doubt this development has done away with the huge pressures that the Housing Authority has historically been subjected to given that there have always been demands far in excess of availability. Judging by present trends, we could for the first time see housing issues being removed from the top of the complaints league.

Gibraltar Health Authority

Throughout this year and especially the latter half of it, we have been busy developing a complaint handling system and procedure to deal with complaints against the Gibraltar Health Authority (GHA).

It is envisaged that as from 1 April 2015 the Ombudsman will take over the handling of complaints against the GHA. In order to comply with Government policy and at the same time maintain the high standard of independence enjoyed by the Gibraltar Ombudsman, it has been necessary to develop a scheme that will be the entry portal for all complaints against the GHA.

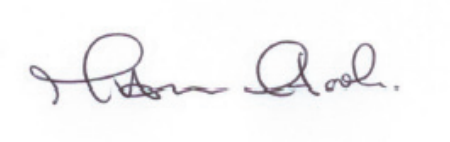
We have therefore developed a GHA complaints portal to be known as the Complaints Handling Scheme (CHS). All complaints relating to the GHA will be lodged with the CHS whose aim will be for an early and speedy resolution thus providing the complainant with the best possible service. However, in cases where the CHS is not able to resolve a complaint, they will advise the complainant that the best option is to lodge a complaint with the Ombudsman for a formal investigation of that complaint.

Although the CHS will operate under the auspices of the Ombudsman, the relationship will be at arm's length. CHS will not be able to transfer or provide the Ombudsman with any information relating to a complaint without the express written consent of the complainant. This will ensure that the CHS/Ombudsman relationship is kept at arm's length, thus safeguarding the independence of the Ombudsman and the CHS at the time of accepting a complaint against the GHA.

Our Annual Reports

Followers of our annual reports will have noted that throughout the years this office has always tried its utmost to deliver the best possible service to those who seek our assistance. To this effect members of my staff and I have travelled to many ombudsman meetings conferences and seminars on a very 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.

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



Mario M Hook
Ombudsman

2
Ombudsman’s Review 2014

The Gibraltar Public Services Ombudsman together with the UK Parliamentary and Health Services Ombudsman, Ombudsman for Ireland and other UK Public Sector Ombudsmen

The 'O' Team in London
From left to right: Nicholas Caetano, Senior Investigating Officer; Mario Hook, Ombudsman & Karen Calamaro, Investigating Officer

2.1 The Value of Peer Knowledge

It is the policy of the Gibraltar Ombudsman to encourage his staff to attend and form part of ombudsman-related events away from Gibraltar. This is a sound programme for the development of the Office's knowledge and experience base.

The Gibraltar Ombudsman Office forms part of the Ombudsman Association ('Association') (previously the British and Irish Ombudsman Association). Members include ombudsmen and other complaint-handling bodies in the UK, Ireland and British Overseas Territories and Crown Dependencies. The Association is a professional association for ombudsmen and complaint handlers and others interested in the work of independent complaint resolution.

The Association's purpose is to promote the general concept of Ombudsmen, as well as to organise networking opportunities for Ombudsmen and staff through conferences, seminars and meetings. We form part of a number of Interest Groups which regularly meet under the auspices of the Association. The UK Public Sector Ombudsmen (including the United Kingdom's Parliamentary & Health Ombudsman) together with the Gibraltar Ombudsman and other Overseas Territories also meet twice a year on an informal forum and share learnings and best practice. This group is known as the Public Services Ombudsman Group.

There is no doubt that peer-based learning is both cost-effective and versatile because it is customized to the group involved; the members (normally no more than 20) agree on the date and the venue, with each representative hosting the group on a rota basis.

Interest groups are valuable because they utilize everyone's own experience and help share knowledge and best practice, as well as challenges. Exchanging feedback with someone who has been through similar experiences is invaluable for a progressive ombudsman office such as the one we have in Gibraltar. Importantly, group settings are also socially enjoyable and help consolidate a network of working partnerships.

In 2014 we attended events abroad on nine occasions. There are numerous issues raised at these events some of which are highlighted below:

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Public Service Ombudsman Group

The Gibraltar Public Services Ombudsman hosted a Public Sector Ombudsman meeting in London on 30th and 31st October 2014. The meeting offered an opportunity for Ombudsmen to become acquainted with the latest developments in other schemes and working practices. These regular meetings also provide the forum for exchange of ideas and advice from fellow Ombudsmen.

On this occasion the United Kingdom's (UK) Parliamentary and Health Services Ombudsman and all other UK Public Sector Ombudsmen, together with the Ombudsmen for Ireland and Malta attended the meeting.

Amongst the items raised at the meeting were:

(i) A document from the Scottish Public Services Ombudsman on their progress in developing a new customer service standard with the object of agreeing a common framework for the Ombudsman Association to endorse;

(ii) Office updates from the numerous Ombudsman Associations represented at the meeting;

(iii) A flow chart produced by the Irish Ombudsman's Office which clearly illustrates the procedures to follow in respect of complaints at first instance and which it is hoped will be adopted by all Associations again with the aim of establishing a common framework. It was agreed that each scheme should nominate an officer to join a virtual project group to progress this work and to start to map data (volumes/ throughputs/ timescales/ performance indicators) against each of the agreed stages.

There was also a presentation given by Professor Maurice Sunkin who is leading the UK Administrative Justice Institute in an initiative designed to kick start the expansion of empirical research into administrative justice issues.

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First Contact Interest Group

This group was hosted by the Gibraltar Ombudsman Office at our Gibraltar London House in May 2014. Soft Skills Training was discussed, as well as other very worthy topics. The group discussed recent beneficial training that schemes have commissioned; some organisations mentioned 'Conflict Resolution Training'; our Office in Gibraltar highlighted the 'Samaritans Workshop' which provided training to our Office as well as other Gibraltar public services. 'Mind', a Mental Health Charity, whose objectives are to provide advice and support to anyone experiencing mental health problems, and also to campaign to improve services, raise awareness and promote understanding, have also delivered mental health awareness and handling difficult complainants training at the Local Government Ombudsman in UK.

In the second group meeting in November 2014 we had the benefit of listening to an insightful and thought-provoking presentation on Unconscious Bias – *presentation by Alaba Okuyiga, Employers Network for Equality and Inclusion.* Alaba presented the group with an insight into Unconscious Bias and how it affects our day to day decision-making in the work place. We are now making enquiries into the possibility of bringing Mr Okuyiga to Gibraltar to share his knowledge with us and other public service providers in Gibraltar.

Equality, Diversity & Human Rights Interest Group

We have recently joined this Group as the Gibraltar Ombudsman is very keen to incorporate the language of Human Rights into our reports. In the recent past we invited to Gibraltar Virginia McVae from the Northern Ireland's Human Rights Commissioner's Office and Marie Anderson, Deputy Ombudsman at the Northern Ireland Ombudsman Office to give us an insight into Human Rights issues and especially how these rights integrate into the ombudsman's world.

At this (our first) meeting, Marie Anderson provided details and discussed a current human rights project between her Office and the Human Rights Commission in Northern Ireland. She told us that a manual has been developed between both organisations to deal with complaints that raise issues relating to human rights.

Our Public relations Officer together with the Equality and Diversity Manager from the Legal Ombudsman and other participants

Where human rights are involved, Northern Ireland investigators will reference the FREDA values which stand for Fairness, Respect, Equality, Dignity, and Autonomy. The human rights based approach is the process by which human rights can be protected by adherence to underlying core values of FREDA. The manual will be published shortly along with a possible e-learning tool. It is the aim of the Gibraltar Ombudsman to make use of the manual together with a repeat visit from Northern Ireland to further our knowledge in identifying human rights issues and accordingly incorporate these issues into our investigations and reports.

Legal Interest Group

There was discussion about the UK Government's approach to implementing the Alternative Dispute Resolution ('ADR') EU Directive. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party.

The ADR Directive requires that there be ADR available for every dispute. The current provision of ADR does not cover this requirement. While there are relatively simple routes to achieve redress through the small claims courts, this may be thought to be too formal a process and not meet the needs of consumers.

The group discussed their concern about the UK Government imposing a one-size fits all approach due to a misunderstanding of how different ombudsman schemes operate. The general view was that there should be EU guidance on the ADR Directive which has yet to be published.

The Ombudsman has extended an invitation to the Group to hold their next meeting at the Gibraltar London House.

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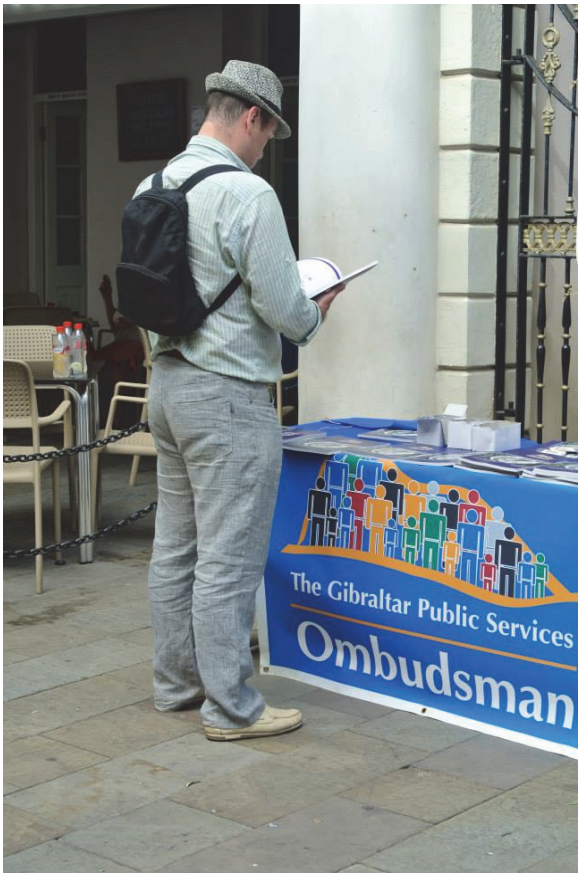
Ombudsman Association Annual Meeting 2014

Our Senior Investigating Officer (SIO) attended the Ombudsman's Association Workshops and Annual Meeting, held at the University of Manchester in May 2014. The meeting was held over two days. The first day consisted of optional Workshops. These comprised of "the role of social media in complaint handling" and "the ADR Directive and its implications for the Association members". Delegates were encouraged to debate on the above issues and accordingly different views were expressed. On the second and final day, the Association's Annual Meeting was conducted. The Chair delivered his report and a discussion on the strategic review of the Association and proposed resolutions for future action were tabled and aired. The meeting was followed by a very interesting update delivered by Marie Anderson on the Human Rights Project at the Northern Ireland Ombudsman, followed by speeches by Dame Julie Mellor DBE (UK Parliamentary and Health Services Ombudsman for England and Wales), Emily O'Reilly (European Ombudsman) and Peter Tyndall (Ombudsman and Information Commissioner, Ireland and President of the European Region of the International Ombudsman Institute). All speakers addressed delegates on their experiences within their areas of competence over the preceding 12 months, and future developments and expectations.

2.2 Distribution of Ombudsman's Annual Report 2013

The Ombudsman team distributed copies of the Ombudsman's 14th Annual Report in Main Street, pertaining to the year 2013, on the 16th July 2014. This year the Ombudsman invited Carol Neill, Advice Team Manager of the Scottish Public Services Ombudsman. Also paying us a visit were the Minister for Equality, Social Services and the Elderly, the Hon Samantha Sacramento, member of the GSD Opposition, Mr Damon Bossino and members of the Gibraltar Regulatory Authority and the Citizens Advice Bureau.



Ombudsman's Awareness Day: Distributing copies of our 14th Annual Report

From left to right: Sarah de Jesus, Graduate Research & Development Initiate; Steffan Sanchez, IT Administrator; Carol Neill, Advice Team Manager of the Scottish Public Services Ombudsman; Samantha Sacramento, Minister for Equality, Social Services and the Elderly; Mario Hook, Ombudsman, Nicholas Caetano, Senior Investigating Officer, Nadine Pardo-Zammit, Public Relations Officer and Karen Calamaro, Investigating Officer

2.3 Alternative Dispute Resolution

In July 2014 our Investigating Officer, Karen Calamaro attended a four day mediation course delivered locally by UK Mediation Limited and partly financed, by the Kusuma Trust who we take the opportunity of thanking for their support.

Mediation is one of a number of methods known as 'Alternative Dispute Resolution' ("ADR"); i.e. an alternative to resolving disputes in Court.

In Mediation, the affected parties enter the process voluntarily, agreeing to the mediation process, rules and mediator. The mediator's basic role is to be impartial, to facilitate discussions and provide a neutral setting for the negotiation. If and when the parties reach an agreement, the mediator is the person who drafts the agreement, based on what the parties decide, always maintaining impartiality and ensuring that the interests of both parties are balanced and represented in said agreement which would be confidential and non-binding.

Another ADR method is 'Negotiation' which is possibly the most basic form of ADR. Under this process, the affected parties put their arguments to each other, discuss and listen to the issues and attempt to find a solution to their problems. In negotiation there are no third parties involved and it is therefore solely up to the disputants to reach a resolution. If the disputants do reach an agreement, they will in most cases sign some form of agreement which is non-binding and the matter will be closed. A third ADR option is 'Arbitration' where the disputants put their case to an arbitrator chosen by them. The arbitrator listens to the parties, weighs up the case and makes a decision. In arbitration, the decision made is final and the disputants are legally bound to it. In most cases the decision cannot be appealed.

The rising cost of legal fees and delays in bringing cases to Court are two of the main reasons why persons are choosing to resolve their issues through one of the ADR methods. As such, it is no surprise that to ensure ADR is available for all disputes concerning contractual obligations between a consumer and a business, the European Union will be implementing legislation via the EU Alternative Dispute Resolution Directive ("Directive").

At first instance, it does not appear that the Gibraltar Public Services Ombudsman falls within the scope of the ADR Directive as it is a public body providing a service under statutory obligation vested on him under the Gibraltar Public Services Ombudsman Act 1998, but it is still early days and discussions are ongoing in the European Ombudsman community as to the effects of the Directive. Notwithstanding, the purpose of undertaking the mediation course was not to provide mediation services within our Ombudsman scheme but to acquire skills to bring into my present role as Investigating Officer.

Amongst these skills were:

- respecting and establishing the feelings of a complainant whilst remaining impartial regarding the issues being presented;
- reframing issues;
- Assisting in evaluating options;
- helping complainants to collate documentation in respect of their complaint if relevant avenues with the public body they are complaining about have not been exhausted, thereby assisting them in putting across their grievance.

On occasions, the Office of the Ombudsman serves as a signpost to complainants whose grievance does not come under the Ombudsman's remit. Having undertaken the mediation course has familiarised us with ADR methods which the Ombudsman can add to its list of possible resolution options for those complainants.

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2.4 Human Rights and the Ombudsman

The typical duties of an Ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations. Ombudsmen sometimes also aim to identify systematic issues leading to poor service or breaches of people's rights, including Human Rights.

Human rights are the basic rights and freedoms that all humans should be guaranteed. They are universal, apply equally to all, and are founded on the principle of dignity for every human being.

Human rights are not the product of legalistic instruments but much more like the sort of broad principles that have been set out in the Parliamentary Health Service Ombudsman's Principles of Good Administration. Human rights are not about policing but about the provision of basic human needs in areas like education, health, social care and housing. Human rights do not have to be 'enforced' in the courts; in fact on the contrary, they can be highlighted by processes/institutes such as the ombudsman's office.

Human rights is natural ombudsman territory. In fact in many parts of the world ombudsmen are routinely seen as part of the human rights set-up and often have the status of the National Human Rights Institute for UN accreditation purposes.

There is every reason therefore for ombudsmen to be increasingly self-conscious about their human rights role within their community and the Gibraltar Public Services Ombudsman Office is committed to developing a human rights based approach to investigations of maladministration and malpractice and incidents of injustice.

Gibraltar is governed by the Gibraltar Constitution Order 2006, which sets out the fundamental principles of the rule of law. Among changes introduced to our Constitution at the time, was that it introduced a bill of "fundamental rights and freedoms". Based on the principle of respect, individuals deserve to be treated with dignity and this is where the role of the Ombudsman can come into play.

It is not enough that rights are recognized in domestic law or in policy rhetoric, there must actually be effective measures put in place so that the government can be held accountable if those rights standards are not met. The Ombudsman can highlight those areas of concern.

Although most complaints received by the Ombudsman Office do not specifically refer to human rights (or use human rights “language”) when they are first presented to our office, there are many cases which inherently demonstrate human rights issues. The challenge for the Ombudsman team then becomes that of identifying and highlighting those issues and, if appropriate, make recommendations which incorporate human rights principles.

Public bodies themselves need to be mindful of human rights when they implement their policies and procedures. We believe that the role of the Ombudsman office has now developed and grown to include the promotion of respect for human dignity, particularly where vulnerable people are concerned, and the Ombudsman should promote this within the public services that come under his jurisdiction.

Administrative justice is the sphere of justice that seeks to ensure that the rights of individuals are protected when powerful public bodies make decisions. The Ombudsman must highlight issues of administrative injustice whilst also taking into account balancing the rights of the broader community. Yes there must be procedures and policies in place that structure the workings of public services but within this, public bodies need to be mindful of the basic human rights of each individual that they come in contact with so that their human rights are not contravened when delivering their service to the community.

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2.5 Citizens' Charter for a Responsive Government

In January 2012, to mark the Government's first month in office, it announced its commitment to the electorate to make its machinery more responsive to the concerns of the ordinary people of Gibraltar in the form of a new policy entitled the '**Citizens' Charter for Responsive Government'**.

This commitment states that anyone who has brought up a concern with one of the Government Ministers will receive within 14 days, a receipt of confirmation that the Minister has received their letter; a response will follow within 21 days thereafter. If the person is dissatisfied with the response, and writes back on the same issue, the same criteria will apply again.

The Public Services Ombudsman Office becomes involved with this Charter if, following this process, the citizen remains dissatisfied or if the letters are not replied to in a timely manner.

The Citizens Charter thus brings about new parameters for the Ombudsman which now encompasses an area that was not previously within the established jurisdiction of the Ombudsman in that this Office has always responded to complaints of maladministration or malpractice of public services but complaints against Ministers were viewed as issues within the political arena and not looked into by the Public Services Ombudsman.

The Citizens' Charter does not amend the Gibraltar Public Services Ombudsman Act 1998 and as such when considering complaints brought to our attention pursuant to the Charter the Ombudsman must act in a manner which is consistent with that Charter and not the Act. The Citizens' Charter is a positive step, which brings up all the principles of good administration consistently promoted by the Gibraltar Public Services Ombudsman.

Since this pledge came into effect in 2012 we have had few complaints brought to our attention by concerned citizens. On receipt of such complaints the Ombudsman Office has written to the Ministers concerned and has highlighted that the Complainant is writing to us under the provisions of HM Government of Gibraltar Citizens' Charter for a Responsive Government. Like all other complaints received within our office we then ask for information as to whether the reply has already been issued and if not when it will be issued and the reasons for the delay. Furthermore if a reply is not going to be issued we ask for information as to the reasons for this decision.

As stated previously we have had few complaints under this Charter, this could be due to an absence of general awareness of this right to complain or simply because Ministers themselves are reacting to this initiative to be a responsive Government.

The Ombudsman wishes to highlight that this is another important avenue of redress in the democratic process available to the citizens of Gibraltar and should be evoked whenever a citizen is not provided with a prompt reply as per the pledge given by HM Government of Gibraltar.

From left to right: Sarah de Jesus, Assistant Complaints Health Scheme Coordinator; Daniel Romero, Complaints Health Scheme Coordinator; Karen Calamaro, Investigating Officer; Nicholas Caetano, Senior Investigating Officer; Mario M Hook, Ombudsman; Steffan Sanchez, IT Administrator & Nadine Pardo-Zammit, Public Relations Officer

2.6 The Changing Face of Housing Complaints

"An Englishman's home is his castle" is a well-known British phrase which most definitely applies to the Gibraltarian psyche. As such, the generic umbrella of "Housing" has always attracted a proportionately large percentage of complaints received by the Office of the Gibraltar Public Services Ombudsman in comparison to grievances lodged against other local public services providers.

Housing has always been and will remain an emotive issue. Complaints received in this area range from entitlement (or lack thereof) to Government rental accommodation; alleged disproportionate delays in the allocation of said accommodation; non reply to correspondence; the placement of prospective tenants to one of the three main waiting lists (standard, social and medical) and the allocation of points by the Housing Authority ("HA") which enable prospective tenants to progress within either of the lists (thus accelerating waiting time for allocation). Further issues giving rise to complaints are the physical state of properties and the need for or delay in necessary repairs.

It must be noted however that we in Gibraltar are "blessed" with the current entitlements to Government rental accommodation (with the sole requirement that the local applicant does not/ has never owned private property –(subject to certain exceptions)). The fact that there is no means testing criteria is perceived by some to be controversial and unfair (since, for instance, two applicants with incomes of say, £10,000 and £100,000 respectively are equally entitled to Government flats paying equally low rents). This policy on the other hand, has a non - discriminatory effect for any prospective Government tenant, irrespective of background or income.

For the reader's understanding and ease of reference, "Housing" can be subdivided into two categories. The first is the Housing Authority ("HA"), responsible for the most part in the allocation of flats to prospective tenants from the Government housing stock, the other being the Housing Works Agency ("HWA"). This is the entity currently responsible for the carrying out of remedial building and other works (of an internal nature) to Government rental properties.

Prior to March 2011, the then Department of Buildings and Works ("B&W") (the Housing Works Agency's predecessor), was responsible for repairs to Government properties and for the handling of monetary claims received from claimants, made as a result of damage to personal property caused within a dwelling as a consequence for instance, of fire or water seepage for which the tenant had not been responsible.

In March 2011, B&W was restructured and replaced by HWA. Until that time, claims had been handled by B&W through an internal procedure. The Ombudsman had found from previous investigations into complaint related claims that the procedure had created a cumbersome and perilous system which claimants had relied upon, often to their detriment. A number of Ombudsman investigations highlighted potentially serious disadvantages insofar as claimants were concerned and also found that claimants developed expectations that claims would be settled in their favour when in most cases, that did not materialise. Apart from the inexplicable and unreasonable delays on the part of B&W in processing claim forms, these were in the main denied. This constituted a rise of complaints received by the Ombudsman.

Given the above, the Ombudsman made separate 'stopgap' recommendations that the then claims approach and the high and often unmet expectations that it created, be scrapped and that instead, claimants would be invited to claim judicially via the small claims court; the recommendation was adopted; it is now time to consider a new and better approach to claims.

A further recommendation made by the Ombudsman in another case was that the HA should consider implementing a clause in tenancy agreements which would make it compulsory for tenants to insure their homes against loss from fire, flooding and also against third-party claims (neighbours) resulting from damages their property. This recommendation has not been implemented but the Ombudsman has been assured that, at least, all new tenants are being advised that they should obtain such insurance.

About two years ago the Government embarked on a significant repair and refurbishment programme of their housing stock. Prior to this programme, such repairs and refurbishment had progressed at a painfully slow pace which resulted in a huge backlog with the resulting complaints to the Ombudsman. The present works programme is bearing its fruits with the consequence that there are now hardly any complaints relating to water ingress, waiting time for repairs, dampness, etc. The collective statistical figures (complaints against HA and HWA) are as follows:

Year	Percentage of Total Complaints received
2012	56%
2013	51%
2014	44%

Although difficult to predict, the Ombudsman is of the view that complaints will continue to fall throughout 2015 and beyond.

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.

CIVIL STATUS AND REGISTRATION OFFICE

CASE SUSTAINED

CS/1037

COMPLAINT AGAINST THE CIVIL STATUS AND REGISTRATION OFFICE ("CSRO") BECAUSE IT HAD TAKEN THREE MONTHS FOR GIBRALTARIAN STATUS TO BE CONSIDERED IN RESPECT OF THE COMPLAINANT'S ADOPTED SON

COMPLAINT

The Complainant was aggrieved because at the time of filing his complaint with the Ombudsman, it had taken three months for an application for Gibraltarian status to be considered by CSRO in respect of his adopted son. Conversely, the Complainant's wife's and natural children's applications had been processed in a matter of weeks. The Complainant was unhappy with the state of affairs and considered that there should be no distinction in the application procedure applied in respect of adopted and natural children.

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 Gibraltarian national. He explained that he was born and raised in Gibraltar. He was married with three children, two of which were naturally his and one was adopted. His adopted son was born in the UK and held the pertinent passport and adoption certificate.

The Complainant complained that in August 2013, he applied for Gibraltarian citizenship for his entire family (who had British nationality). Within a few weeks, his wife and natural children were granted Gibraltarian nationality (with the "red" Gibraltarian identity card issued), but his adopted son's application had still not been processed. The family had been allegedly told by CSRO that as a result of the child being adopted, he would have to undergo a different application process and that there would be a delay. No further explanation was given. The Complainant was aggrieved by this as he understood that that when formally adopted, his adopted son would have been subject to the same rights and benefits as his other children, without distinction. Three months elapsed and the Complainant had received inadequate feedback on how matters were progressing. The Complainant and his wife regularly telephoned CSRO for updates, but were provided with the repeated response that the application was being processed and that they would have to wait. No further details or information was made available.

The Complainant had reviewed the Gibraltar Status Act 1962 ("the Act") and acknowledged that there was ministerial discretion under it to grant Gibraltarian nationality to adopted children. The Complainant was of the view that the Act was discriminatory and violated his son's human rights. The Complainant also highlighted that the Act also conflicted with the locally enacted Adoption Act 1951.

The Complainant further explained how at the adoption ceremony, the presiding magistrate had stated that the Complainant's son would hold equal legal rights to those enjoyed by his natural children.

The Complainant questioned how there could exist conflicting pieces of legislation and requested clarity on the law in force and the process applied for the registration of adopted children. He did not understand how the alleged discrimination could be allowed to continue. The complainant was also seeking an update on the application and an estimated date for the finalisation of the entire process.

INVESTIGATION

The Ombudsman presented the Complaint to CSRO setting out the Complainant's concerns and requested their comments. The Ombudsman additionally requested a time frame as to when the Complainant could expect his son to be registered. A reply was received shortly thereafter.

In their reply, CSRO stated that applications for Gibraltarian status are governed by the Act. Section 2 states that "child" does not include an adopted child. Therefore according to CSRO, the Complainant's child could only be considered under section 8 of the Act which exclusively addresses the registration of adopted children and which required ministerial discretion. Section 8(1) provides that "*the Minister may, in his absolute discretion, order the registrar to register any person who satisfies the Minister that- (a) he is a British national, and (b) that he has been legally adopted by (i) a married couple, one of whom is a Gibraltarian; or (ii) an unmarried person who is a Gibraltarian*"…

For this reason, and due to the relevant Minister's involvement in all section 8 applications, CSRO stated that applications for adopted children "are a little more cumbersome and it takes slightly longer to get the registrations approved." All applications for registration of "natural" children were governed by Section 5 of the Act.

Notwithstanding the above, CSRO went on to state that a three month delay was "totally unacceptable". CSRO apologised for the delay and thanked the Ombudsman for bringing the complaint to their attention. A further admission was made that the reason for the delay was that the file had been mislaid. In consequence, it was confirmed that the application had been sent for ministerial approval by CSRO on the same day of CSRO's reply to the Ombudsman.

An email followed from the Ombudsman to CSRO, thanking them for their reply but requesting confirmation of the likely time frame for ministerial approval. In reply to this request, CSRO stated that they were unable to advise on this, since No 6 Convent place carried their own agenda and as a result, CSRO had copied the Chief Secretary for him to directly advise on the potential time frame.

In an attempt to expedite matters, the Ombudsman also wrote to the Government Chief Secretary setting out the case and requesting his intervention to ensure that the matter was brought to the Minister's attention for urgent approval. A few days elapsed and the Ombudsman sent the Chief Secretary an additional letter requesting that the matter be concluded. The Chief Secretary responded promptly. He informed the Ombudsman that the delay had not arisen with the relevant Minister and confirmed that, at the first available opportunity- two weeks before a formal immigration meeting had been scheduled to take place- the application had been approved by the Minister. The file had then been returned to CSRO for processing.

This information was communicated by the Ombudsman to the Complainant after which the application was granted.

CONCLUSION

The Ombudsman was grateful to CSRO for the frankness in their explanation of the position and for the admission that the delay had been exacerbated due to an oversight. He was also grateful to the Chief Secretary for his prompt intervention after he had been made aware of the complaint.

As previously stated, applications for registration of children as Gibraltarian nationals are made under section 5 of the Act in relation to natural children, and under section 8 (with Ministerial discretion) in respect of adopted children.

The Ombudsman also reviewed the locally enacted Adoption Act 1951 (as referred to by the Complainant). Section 14(1) states as follows:

"*Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted person in relation to the future custody, maintenance and education of the adopted person including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished,* ***and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted person were a child born to the adopter in lawful wedlock,*** *and in respect of the same matters and in respect of the liability of a child to maintain his parents the adopted person shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock"….*

The Ombudsman does not opine that this provision is incompatible with the Gibraltarian Status Act as alleged by the Complainant since these provisions do not in the Ombudsman's mind, relate to issues of registration or citizenship.

In relation to the issue of discrimination raised by the Complainant, Section 14 of the Gibraltar Constitution Order 2006, does afford individuals protection from discrimination.

The section provides that no law shall make any discriminatory provision and that no person shall be treated in a discriminatory manner by any person acting in performance of any public function, on the grounds of, amongst other things, birth or other status, or such other ground as the European Court of Human Rights may from time to time determine to be discriminatory.

However, under the exceptions defined therein, the Ministerial discretion applied to the application which was subject to this complaint was in the Ombudsman's mind, proper and not akin to maladministration or injustice.

What the Ombudsman found however, given the legal position in relation to the registration of adopted persons which appeared to have been appropriately followed, was the existence of a lack in communication between the CSRO and No 6 Convent Place (namely in the delay of CSRO submitting the application for approval), and a total absence of an explanation and information which should have been provided to the Complainant in respect of the procedures and processes to which the application would be subject.

On the issue of the time frame for approval, the Ombudsman was grateful to the Chief Secretary for having expeditiously brought the matter for Ministerial approval prior to the scheduled Immigration meeting, where the application would have been tabled.

It was the Ombudsman's view that the Complainant should have been made aware of the process by CSRO from the outset. It should have been explained to him that CSRO would have to process the application, that it would then be submitted to Government and that the latter subsequently met on a scheduled basis to consider and approve said applications.

If when the Complainant and his wife made enquiries as to progress, CSRO staff would have checked the applicants file instead of stating that "they would have to wait", it would have then become apparent that the file had been misplaced (as later admitted) and, that in consequence, the application had not been submitted for approval. This simple check would have accelerated matters considerably.

On this basis, which the Ombudsman considered was tantamount to maladministration by CSRO, the complaint was sustained.

CLASSIFICATION

Sustained

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DRIVER AND VEHICLE LICENSING DEPARTMENT

CASE NOT SUSTAINED

CS/1039

COMPLAINT AGAINST THE DRIVER & VEHICLE LICENSING DEPARTMENT ("DEPARTMENT"): COMPLAINANT UNHAPPY TO HAVE BEEN TOLD BY THE DEPARTMENT THAT ALL THAT COULD BE DONE REGARDING HER ALLEGATION THAT HER EX-HUSBAND HAD FRAUDULENTLY REGISTERED HIS CAR AT HER ADDRESS ("ADDRESS") AND WAS MAKING USE OF SAID ADDRESS FOR MATTERS RELATED TO THE CAR, WAS TO MAKE A NOTE ON THE PERTINENT FILE

COMPLAINT

The Complainant was aggrieved because the Department had advised her that all that could be done regarding her allegation that her ex-husband had fraudulently registered his car at her Address and was making use of said Address for matters related to the car, was to make a note on the pertinent file.

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 (a Spanish national) had separated, and in June 2010 he had moved out of the matrimonial home (she remained in the property and for ease of reference it has been defined in this report as "Address"). In September 2013, over three years later, a fixed penalty notice ("Fine") addressed to the Complainant's ex-husband was received at the Address. Considering that he had not resided there for the past three years, the Complainant was very disconcerted and contacted Car Parks Limited ("CPL"), the entity tasked with the processing of fines, and furnished them with what she believed were her ex-husband's current address details, an address in Spain, so that they could update their records Furthermore, the Complainant informed CPL that in September 2010, the date on which her ex -husband registered the car with the Department, he no longer resided at the Address. CPL responded that they could only send the Fine to the registered owner of the vehicle and to the registered address held in the Department's database, and as such suggested that the Complainant contact the Department. Notwithstanding, the Complainant was informed that the Fine had been paid. When the Complainant approached the Department with her allegation she was informed that the Data Protection Act did not allow for disclosure of any driver or vehicle information but advised that her concern had been noted on the pertinent file.

In October 2013, a second Fine addressed to the ex-husband was received at the Address. Prior to contacting the Department, the Complainant made a number of enquiries and obtained the ex-husband's current address (this time a Gibraltar address) which she subsequently passed on to the Department, requesting that they amend their records. The Department reiterated their former response.

Frustrated, the Complainant put her Complaint to the Ombudsman.

INVESTIGATION

The Ombudsman addressed the allegation by the Complainant of the ex-husband having fraudulently used the Address for the purpose of registering the vehicle at the Department and the latter's action being that they would note the pertinent information on file.

The Complainant claimed the ex-husband had left the property in June 2010 and the vehicle was registered at the Department three months later.

In relation to the Complaints made, the Department explained that when the Complainant's ex-husband registered the vehicle he presented his Identity Card ("ID Card") as documentary evidence of proof of address, in keeping with the Department's standard practice.

When a few years later the Complainant (as a result of the Fine sent to the Address) contacted the Department, the latter stated that due to Data Protection issues they were unable to provide her with any details of the registered address of the vehicle. The Department stated that the Complainant did not produce any proof to substantiate her allegation that her ex-husband had fraudulently registered the vehicle and as such all they could do was place a note on the pertinent file. Notwithstanding, the Department explained that they had verbally advised the Complainant that if she felt the ex-husband had committed fraud this should be reported to the RGP. The Department added that they did not put this information to the Complainant in writing because at the time of registration of the vehicle all the relevant paperwork was in order.

The first issue that the Ombudsman had to consider was whether the ex-husband was, as at the date of registration of the vehicle, a registered tenant at the Address. Given that the matrimonial home was a rented Government property, the Ombudsman contacted the Housing Authority who advised the date on which the husband was removed from the tenancy was the 11th March 2011. According to the Complainant the vehicle was registered in September 2010. As such, even though the ex-husband no longer lived at the Address he was still officially listed as being a tenant at the time of registration of the vehicle. Had that not been the case, the law clearly pronounces itself in Section 15 of the Traffic Act as follows:

> *(4) A person who is required by virtue of this Act to furnish particulars in connection with a change of the registration of any motor vehicle and who furnishes any particulars which to his knowledge are false or in any material respect misleading, is guilty of an offence and is liable on summary conviction to imprisonment for three months or to a fine at level 1 on the standard scale.*

Having established that at the time of registering the vehicle at the Department, the ex-husband had still not been officially removed from the tenancy, the issue identified by the Ombudsman was that the ex-husband failed to update the records at the Department when he was removed from the tenancy.

The Ombudsman had undertaken an investigation into a similar complaint, CS 934, in which the complainant received at his home, numerous fines and summonses addressed to the previous owners of the property; the previous owners had failed to notify the Department of their change of address. The investigation found that only the registered owner of the vehicle could amend the details held by the Department and suggested in his report that there should be a legal requirement in the Traffic (Licensing and Registration) Regulations for vehicle owners to inform the Department of any changes to their address details.

As a result of the Ombudsman's report, the Department informed the Ombudsman that Section 15(3) of the Traffic Act 2005 made provision for this as follows:

> *"The registered owner of a motor vehicle shall forthwith notify the Licensing Authority of any circumstance or event which affects the accuracy of any entry in the register relating to the vehicle",*

and further advised that Section 98(1) provided for a general penalty considering that there were no provisions for an enforceable requirement in Section 15.

On the basis of the above information, the Ombudsman wrote to the Royal Gibraltar Police ("RGP") enquiring whether it would be incumbent upon the RGP to issue summonses for breaches of Section 15(3) when said breaches were reported by affected individuals. The RGP sought legal advice and reverted that there was no offence in not notifying authorities of a change of address, but stated there was an offence in relation to failure to notify change of ownership of a vehicle. RGP advised in January 2013 that they would approach the Minister for Justice regarding redressing the lacuna in the law.

The Ombudsman communicated the above to the Minister for Traffic who responded that the Department was actively working on setting up a system which he was satisfied would address the issue. In November 2013, the Ombudsman enquired on whether the new system was in operation. It was not, but the Ombudsman requested information on what the proposed system involved. There was a long delay in obtaining the information and after a number of chasers and attempts to set up a meeting, one was finally held in May 2014. The Ombudsman was given an outline on the proposed scheme which due to being at an embryonic stage he is unable to divulge but was satisfied that the Department was moving in the right direction in trying to progress and keep up with developing technologies.

As a result of the present Complaint, the Ombudsman revisited the findings of the previous complaint and contacted the RGP. A meeting was held between the Ombudsman and the RGP Traffic Section at which the latter disagreed with the legal advice provided in relation to Section 15 (3). RGP Traffic Section considered that breach of Section 15 (3) would result in the RGP issuing summonses.

As an aside, the Ombudsman pointed out that a problem would again arise as the summons would (as in the case of the Fine) have to be sent to the address held in the Department's records, the RGP's response was that their aim was to resolve and conclude all cases. When similar situations arose which involved foreign nationals, the RGP would try and identify their place of work and send the summons there. In the case of locals, RGP would try and identify their new address or at worst, notify traffic officers of the individual's vehicle number plate and request that the person be stopped for the summons to be served. Worst case scenario would be that the person would fail to receive the summons, not appear in Court and as a result, a warrant of arrest would be issued for failure to respond to the summons.

Noting that the legal advice provided to the RGP diverged with that of the RGP Traffic Section, the Ombudsman wrote to the RGP Commissioner with a view to establishing what action would be taken by the RGP against vehicle owners who:

Registered a vehicle at an address in which they did not reside;

Fail to update the records held at the Department in relation to the vehicle, e.g. change of address details.

The RGP responded that the Ombudsman's letter had provided a great degree of additional information on the Ombudsman's investigation which both the Attorney General's Chambers and the RGP had found extremely useful. Further to discussions with the Attorney General's Chambers, RGP now confirmed that they would take action upon receipt of a complaint of this nature but the person reporting the matter would be required to adduce evidence that the alleged offender did not reside at the stated address and that said offender had provided fraudulent details.

CONCLUSION

Unhappy to have been told by the Department that all that could be done regarding her allegation that her ex-husband:

(a) Had fraudulently registered his car at the Address was to make a note on the pertinent file

Based on the findings of his investigation, the Ombudsman does not sustain the Complaint against the Department. When the Complainant put her allegation to the Department she was verbally advised that due to the nature of said allegation which could constitute an offence, the matter should be referred to the RGP. In the absence of documentary evidence from the Complainant to substantiate her claim that at the time of registering the vehicle the ex-husband did not reside at the Address, all the Department could do at their end was to make a note on the pertinent file. Notwithstanding the Department verbally advised the Complainant to report the matter to the RGP.

In so far as the alleged fraudulent use of the address, this did not prove to be sustainable given that at the time of registration of the vehicle, the ex-husband was still a registered tenant at the matrimonial home.

(b) **Was making use of said Address for matters related to the car, was to make a note on the pertinent file**

From the findings of this investigation it is quite clear that it was only as a result of the Complaints brought to the Ombudsman that the Attorney General's Chambers and the RGP revisited their decision and ultimately concurred that action could be taken by the RGP against persons who failed to update the vehicle records held at the Department, albeit in cases where evidence was produced to substantiate the allegation. Front line staff at the Department should now be duly instructed on the procedure to follow when issues of this nature are reported to them, i.e. persons should be advised to contact the RGP.

On the matter of the Department amending/updating their records on the basis of information provided by third parties, the fact that the address provided by the Complainant in the first instance was incorrect, substantiates their reasoning for this course of action. The Department cannot amend records held in their system on the basis of informal data provided by third parties.

The Ombudsman welcomes the Department's initiative to implement a new system which will serve to update in a more accurate manner the vehicle records held at the Department. .

CLASSIFICATION

(a) Unhappy to have been told by the Department that all that could be done regarding her allegation that her ex-husband had fraudulently registered his car at the Address was to make a note on the pertinent file **– Not Sustained**

(b) Unhappy to have been told by the Department that all that could be done regarding her allegation that her ex-husband was making use of the Address for matters related to the car, was to make a note on the pertinent file **– Not Sustained**

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EMPLOYMENT SERVICES

CASE SUSTAINED

CS/1041

COMPLAINT AGAINST THE MINISTRY OF EMPLOYMENT ("MINISTRY"), FOR THE DELAY IN EVALUATING HER CLAIM FROM THE INSOLVENCY FUND ("FUND"), LACK OF INFORMATION & FOR THE UNPROFESSIONAL SERVICE RECEIVED

COMPLAINT

The Complainant was aggrieved because of the delay on the part of the Ministry in evaluating her claim from the Insolvency Fund, the lack of information and for the unprofessional service she had received.

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 the company she worked for went into liquidation and her employment terminated on the 30th June 2013. Approximately two weeks later, the Complainant submitted at the Ministry, a claim from the Fund for annual leave and redundancy pay owed to her by her employer. [Ombudsman Note: The Insolvency Fund was established in 1991 to assist employees (eligible to claim from the Fund) who were owed monies at the time when their employer became insolvent, or in the case of a company registered in Gibraltar, when a winding up order was made in respect of said company]. The Complainant claimed that when she enquired about the procedure and the timeframe involved in settlement of claims she was told by labour inspector 1 ("LI1") that she could contact the Ministry for updates as much as she wanted but that the claim would probably not even be looked at until September 2013. On that basis, the Complainant waited until September (during which time she received no information from the Ministry) before contacting the Ministry and when she did so was told that LI1 no longer worked there. The Complainant became very concerned that no one was dealing with her claim and when she managed to speak to labour inspector 2 ("LI2") a meeting was convened to discuss her case. The Complainant claimed that a total of three meetings were cancelled and she never met with LI2. According to the Complainant, the Ministry did not contact her beforehand to cancel the meetings despite holding all her contact details, and she was only informed of the cancellations once she arrived at the Ministry's offices. The Complainant was very distressed as she had on those three occasions taken leave from her current job to attend those meetings. Furthermore, the Complainant had by that point still not received any updates in relation to the progress of her claim and stated that the lack of information frustrated her tremendously. She claimed to have subsequently telephoned the Ministry on numerous occasions but stated that when she called the labour inspectors no one answered the telephone, including LI2's mobile.

The Complainant stated that all she wanted was to establish that her claim was being addressed by the Ministry and a date by which said claim would be settled.

In November 2013 the Complainant brought her Complaint to the Ombudsman.

INVESTIGATION

The Ombudsman put the Complaint to the Ministry and was initially informed by the Director of Employment ("Director") that the labour inspectorate section had gone through a few months of change which had resulted in several applications for claims having been backlogged, amongst which was that of the Complainant's, submitted on the 16th July 2013. The Director apologised for the delay and advised that those applications were now being addressed.

At a later stage in the investigation, the Director further informed the Ombudsman that the inefficiency of the previous inspectors (LI1 and LI2) had caused the backlog, as not one claim had been laid before him since his appointment as Administrator in July 2013. The Director pointed out that had the previous labour inspectors dealt with and processed the claims in a timely manner, the recently appointed labour inspector would not have inherited the backlog of claims. The Director stated that no claim had been laid before him until December 2013 when the new labour inspector joined the section.

In the Complainant's specific case, the Director explained that the labour inspectorate had made initial contact with the company liquidator (dealing with the winding up of the company the Complainant used to work for) and had requested information to enable them to process the application. The Director provided a copy of the letter the labour inspectorate had now sent to the Complainant which apologised for the delay and informed her that her application was being dealt with.

The Director had not addressed all the issues raised by the Complainant and so the Ombudsman once again put the matters to the Director. A substantive response provided on the 16th December 2013.

<u>Complainant's claim that LI1 had told her that the claim would not be looked at until September</u>

The Director responded that he did not know on what basis LI1 had made that statement which he considered to be unilateral and one that LI1 was not authorised to make. The Director stated that it would have been possible for LI1 to have processed the claim in a timely manner and explained that it had subsequently come to light that in order to hide their efficiency, LI1 and LI2 would continually stall claimants informing them that their claims would be looked at some time in the future. The Director informed the Ombudsman that LI1 had been transferred out of the Ministry.

The Director explained that he had introduced a new system to process claims. In the first instance, an initial meeting would be held between the labour inspector and the claimant where eligibility to claim from the Fund would be considered. Once eligibility was established, the claimant would proceed to complete and submit the claim form. This would be processed by the labour inspector and would entail contacting the liquidator of the pertinent company/employer to establish relevant information on the person submitting the claim, e.g. rate of salary, unpaid wages/salary, unpaid annual leave, period of employment with company, etc. Upon receipt of the information the claim would be processed, payments calculated to be approved by the administrator and finally payment made. The Director stated that the entire process in a non-contentious case would take no more than three weeks.

Cancellation of three meetings with LI2 without prior notice

The Director stated that it was wholly unacceptable that the Complainant had not been given prior notice of cancellation of the meetings and that it was a serious failing on the part of LI2 for which he apologised. The Director informed the Ombudsman that LI2 had also been transferred out of the Ministry.

Regarding the Ombudsman's enquiries as to the procedure in place for cancellation of meetings, the Director stated he had introduced a system whereby officers needed to hand over their work to another officer when taking leave to enable continuity, thus avoiding cancellation of meetings.

According to the Director, the Complainant's claim had now been processed and the funds would be transferred to her bank account during the course of the week (week ending 20th December 2013); the Complainant had been duly informed. Under the circumstances, the Director decided that there was no need for a meeting.

Telephones not being answered

Regarding the telephones not being answered, the Director asked the Ombudsman to provide the telephone numbers which were not being answered so that he could take the necessary action.

Shortly after receiving the Director's letter, the Ombudsman contacted the two numbers listed in the directory for the labour inspectorate, mobile number and landline, and found that there was no reply on either of the numbers. On the 20th February 2014 the Ombudsman once again carried out the same exercise with a similar outcome; no response from the landline and the mobile phone switched off.

At a subsequent meeting ("Meeting") between the Ombudsman, the Director, the labour inspector and an executive officer from the Ministry's accounts section (who had been assisting the inspectorate with insolvency claims) the Ombudsman was informed that the labour inspectorate was under staffed and that was having an adverse effect on the service provided to users.

Apart from the backlog of claims, the answering of telephone calls was also inevitably being affected. It was also highlighted that the telephone system at the Ministry was such that when there was a call in progress, anyone else calling in at the same time would not get an engaged line tone but rather the normal ringing tone, naturally making the new caller think that the phones were not being answered.

Final Settlement of Claim

On the matter of settlement of the claim, the information from the Director that the Complainant would receive the funds in her account by the 20th December 2013 should have concluded the Ombudsman's investigation, but by January 2014 the Complainant had not received the funds and made enquiries at the Ministry. She furnished the Ombudsman with copies of email correspondence between herself and the Ministry (the person dealing with this communication at the Ministry was an administrative assistant – the most junior post within the civil service) in which the Complainant was informed that a cheque had been issued, despite an email from the Ministry to the Complainant on the 17th December 2013 informing her that payment "...had been effected and should be in her account very soon". The Complainant lived in Spain and had a Spanish bank account (currency Euros). She stated that she would not have requested payment by cheque as she was aware that would be costly due to the cheque being in a different currency (GBP) to that of her bank account. Nevertheless, on the basis that the cheque was ready for collection the Complainant asked the Ministry if there was a public office where she could cash the cheque free of charges. The Ministry ignored the Complainant's query regarding cashing the cheque. They informed her there had been some confusion as she had at first requested the payment via cheque and then decided on a bank transfer but asked her not to worry as they would cancel the cheque and issue instructions for payment via bank transfer. The Complainant was very upset at the Ministry blaming her for the confusion and as further evidence that she had never requested payment by cheque referred to a phone call from the Ministry on the 12th December 2013 asking her if she had a bank account in Gibraltar to which she replied that she did not. The Ministry responded that they recalled the telephone conversation and that she had suggested payment via cheque.

At the Meeting, the Ombudsman in order to substantiate the Complainant's version of events pointed the Director to:

1. The claim form submitted by the Complainant in which the details of her Spanish bank account had been provided;

2. The Ministry's email to the Complainant on the 17th December 2013 informing her that the payment had been effected and should be in her bank account very soon;

3. The Director's letter to the Ombudsman of the 17th December 2013 in which he stated that the claim had been processed and the funds would be credited to the Complainant's bank account in the course of that week;

4. The email thread between the Ministry's administrative assistant and the Complainant;

and to the fact that there was no written request by the Complainant for payment by cheque, an issue which had only been raised by the Ministry in their email to the Complainant.

The Ombudsman referred the Director and the two executive officers to the email thread and the fact that no response had been provided to the Complainant regarding her enquiry on whether she could cash the cheque free of charge in a public office. The accounts executive officer stated that she had no knowledge of the email thread between the administrative assistant and the Complainant; neither did the Director or the labour inspectorate executive officer. Furthermore, the accounts executive officer advised that had the administrative assistant passed on the Complainant's enquiry she would have informed her that the cheque could be cashed at the Treasury Department. Based on the written evidence, the Ombudsman pointed out to the Director that the Ministry had made a mistake when effecting payment (cheque instead of bank transfer) and instead of apologising to the Complainant pinned the further delay on her.

The Ombudsman made enquiries regarding the labour inspectorate's present complement as he was aware that the labour inspectorate had historically been comprised of one Higher Executive Officer and three Executive officers. The Director responded that at present this was comprised of one Executive officer and one administrative assistant. The Ombudsman enquired whether the complement would be restored to four and the Director replied that he was making representations to the Minister for Employment ("Minister") in that respect. As referred to above, the Director pointed out that the low staffing levels at the labour inspectorate were inevitably having an impact on the service offered to the public. Six graduate trainees had been appointed as labour inspectors but they were undertaking a research exercise for the Ministry for which the powers of labour inspectors were required.

On the 21st February 2014, the Complainant informed the Ombudsman that she had finally received the funds by bank transfer.

CONCLUSION

The Complainant's case which was non-contentious and should therefore have taken a maximum of three weeks to process (according to the timescale given by the Director) instead took seven months (July 2013 to February 2014). Four months during which nothing was done, one month to process the claim and two months as a result of the Ministry having erroneously issued instructions for payment to be made by cheque instead of bank transfer as requested by the Complainant on the claim form and accepted by the Ministry.

In cases like that of the Complainant's and on the basis that there is a Fund to assist persons left in that predicament, the Ministry should have done their utmost to expedite claims to the Fund. From the findings of this investigation it is clear that at the time when the Complainant submitted her claim, this was not the case. From the information provided by the Director, the delay experienced by the Complainant was due to the inefficiency of the previous inspectors (LI1 and LI2) which resulted in the backlog, as not one claim was laid before the Director since his appointment as Administrator in July 2013.

It was not until December 2013 when a new labour inspector joined the inspectorate by which time the Ombudsman had already presented the Complaint that the claim was processed. The Director asserted that LI1 and LI2 would continually stall claimants informing them that their claims would be looked at some time in the future. This was experienced first-hand by the Complainant when she handed in her claim and was told by LI2 that the claim would not be looked at until September 2013.

The investigation revealed, at least in the case which relates to the Complainant, that the transfer of LI1 and LI2 and the appointment of a new labour inspector is what finally resolved her claim, not forgetting that it was as a result of the Complaint made to the Ombudsman that the Complainant's case was brought to the Director's attention. Notwithstanding, the Ombudsman is concerned at the statement made by the Director that no claims were laid before him until the new inspector was appointed.

On the basis of the information provided by the Director in respect of the new system which he has introduced to deal with claims, the Ombudsman does not envisage a recurrence of the situation experienced by the Complainant. Furthermore, should a situation arise where the inspectorate encounters delays when waiting for information from third parties in relation to claims, the Ministry should inform claimants accordingly to keep them abreast of developments in keeping with principles of good administration The Ministry must keep in mind that in most cases, claimants have been left in a precarious situation due to being unexpectedly out of a job and owed wages/salaries, and the Ministry are the entity that those persons are relying on for assistance.

The Ombudsman notes the new system implemented by the Director regarding cancellation of meetings but is critical that the Director felt there was no need to offer the Complainant a meeting because settlement was imminent. Considering the delay and total lack of information the Complainant had experienced, plus the cancellation of three meetings, at the very least, a meeting should have been offered at which the Complainant would have had her concerns addressed and queries responded to.

The telephone calls not being answered due to understaffing at the labour inspectorate was news to the Ombudsman. The labour inspectorate had historically been made up of four labour inspectors and was presently running at 25% of its capacity with only one labour inspector carrying out those duties, inexplicable considering that there has been no proportional reduction in the employment sector in Gibraltar. The Ombudsman would urge the Director to ensure that the labour inspectorate's complement is kept at a level where it can undertake its functions and provide the service expected by the public.

Regarding the confusion on a cheque having been issued for settlement of the claim as opposed to what had been requested in writing by the Complainant in the claim form, the Ombudsman has no doubt that the Ministry made an error when requesting payment; cheque instead of bank transfer. Of concern is the fact that the administrative assistant dealt solo with this issue and did not feel compelled to inform the executive officer of the problem arisen as a result of the error. The Director should institute procedures to ensure that there is no recurrence of this situation and make the staff more aware of the need to consult with senior members of staff when problems arise.

The Ombudsman sustains this Complaint on the basis of the manner in which the Ministry grossly mishandled the Complainant's case.

CLASSIFICATION

Sustained

RECOMMENDATION

The Ombudsman would have in the normal course of events have made recommendations in this case, however he was confident that the Director was dealing with all the issues that have been brought to light in this investigation. Of course, if the same issues arise from a similar complaint, the Ombudsman would find it necessary to make recommendations and ensure their implementation.

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GIBRALTAR HEALTH AUTHORITY

CASE SUSTAINED

CS/1031

COMPLAINT AGAINST THE GIBRALTAR HEALTH AUTHORITY FOR THE DELAY IN RELATION TO THE ACKNOWLEDGEMENT, PROCESSING AND REGISTRATION OF FORM E121

COMPLAINT

The Complainant was aggrieved because of the delay experienced in relation to the acknowledgement, processing and registration of Form E121 on the part of the Gibraltar Health Authority's Registration Office ("GHA"). [Ombudsman Note: The Form E121 is an application for medical cover for persons who are retired and in receipt of a state pension or long term incapacity benefit and have relocated from within the EU/EEA].

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 an Irish national in receipt of a military state pension. He had resided in Gibraltar since 2006 and had been in full time employment until April 2012 at which time he was made redundant from his job and became unemployed. His Gibraltar Health Authority card ("Card") which had been issued for a year, expired in November 2012 at which time he applied for a renewal. As he was unemployed and had no income in Gibraltar, the Complainant had to provide proof of income from Ireland of his military state pension. On the basis of that information, the Complainant claimed that his application for renewal of the Card was put to a GHA board and the Card was subsequently renewed for a period of six months, expiring in July 2013. In April 2013 the Complainant was once again in employment and shortly before the Card expired, applied and received a new Card under "Employed" status due to expire in March 2014.

The Complainant needed peace of mind that he would have state medical cover at all times, even during periods of unemployment, and researched European legislation. He identified that because he was in receipt of a military state pension and no longer resided in Ireland, the Irish Government was required to issue him with a European Health Insurance Card ("EHIC") which he felt would provide him with comprehensive medical insurance when he was in a European Economic Area [Ombudsman Note: In effect, the EHIC entitled him to healthcare through the public system in countries of the European Union (EU), European Economic Area (EEA) or Switzerland if he became ill or injured while on a temporary stay there].

The Complainant applied for the EHIC on the 22nd March 2013 and it was issued by the Irish Health Authorities and received by the Complainant on the 8th April 2013. Notwithstanding, because the Complainant resided in Gibraltar he still had to register under the Gibraltar Group Practice Medical Scheme ("GPMS") for medical cover. During his research, the Complainant found information that led him to believe that because he was in receipt of a state military pension he would be eligible to be included in the GPMS if he and the Irish Health Authorities completed Form E121and then submitted it to the GHA for approval. The Complainant completed the relevant section in the Form E121 and submitted it along with pertinent supporting documentation to the Irish Health Authorities and received it back on the 30th April 2013, with the relevant section duly completed by them. In turn, the Form E121 was handed in to the GHA for registration on the 3rd May 2013. Over two weeks later and not having received any communication from the GHA in respect of his application, the Complainant wrote to the GHA but did not receive a reply. On the 5th July 2013 he once again wrote and again did not receive a response and finally on the 17th July 2013 submitted a complaint to the GHA on the basis that his letters had not been acknowledged and there was undue delay in the processing and registration of the Form E121. The Complainant explained he had mailed the three letters.

On the 30th July 2013, the Complainant lodged a Complaint with the Ombudsman.

INVESTIGATION

The Ombudsman wrote to the GHA on the 6th August 2013 and explained that there were two complaints. One related to non-reply to the Complainant's three letters and the second was in relation to the delay and no information in respect of his application for registration to the GPMS through the E121 form.

Complaint 1

Non-Reply to Letters

The GHA's initial response to the Ombudsman's enquiries was by way of a telephone conversation on the 7th August 2013, in which the GHA gave their reasons for not having provided a written reply to the Complainant and advised that only the 20th May 2013 letter had been received to date. A week later (15th August 2013), the GHA informed the Ombudsman that they had just received the Complainant's letter of the 17th July 2013 but no indication was given to the Ombudsman on whether a written reply would be issued.

The Ombudsman enquired as to the reasons for the delay in receipt of the letter and was informed by the GHA that they had been unable to ascertain when the letter was received and added that the GHA Manager had recently been away from the office.

In late August 2013, the Ombudsman met with the GHA to discuss the Complaint and was informed that the application had been declined, however, a written reply had still not been issued.

It was only as a result of the Ombudsman pressing the GHA for a written reply detailing the reasons for declining the application Form E121 that one was finally issued on the 8th November 2013. The letter stated the reasons for the refusal (as explained by the GHA at the meeting with the Ombudsman and detailed under Complaint 2) of the Complainant's application for medical cover via Form E121. This information was required by the Complainant in writing in order to redirect his enquiries to the Irish Health Authorities who had completed the Form E121.

Complaint 2

Delay and No Information in Respect of Complainant's Application for E121 Registration

As stated above, the Ombudsman met with the GHA to discuss the substantive issue in the Complaint which was the Complainant's eligibility for healthcare under the GPMS on the basis that he was in receipt of a military state pension and as such had applied for pensioner status through the E121 form. The GHA explained that as the Complainant was registered as 'Employed' he could not be registered on a 'double basis', i.e. as a 'Pensioner' and as 'Employed'.

The GHA further explained that despite being in receipt of a military state pension, he was not a state old age pensioner (not attained the age of retirement of his country of origin (Ireland) which is presently 65 years of age) and therefore the provisions of Regulation 883/04 under which Form E121 falls under, did not apply to him.

Notwithstanding the above information, the GHA sought confirmation from the Department of Health in the United Kingdom and was informed that if a person was employed and contributed to Gibraltar, then the United Kingdom would be the competent institution. If the person was working, there would not be a requirement for an E121 and it was not a customer choice to secure entitlement via one route or the other (i.e. pensioner or employed status) and as such, the E121 should be rejected by Gibraltar.

The Ombudsman met the Complainant to discuss the information provided by the GHA (as above) but the Complainant wished to pursue the 'Pensioner' status in order to retain medical cover in Gibraltar even in periods of unemployment, on the basis that he was in receipt of a military state pension. He would be pursuing the matter further with the Irish Authorities but first required that the Form E121 which was in possession of the GHA be returned to him and that the reasons for the rejection be provided to him in writing by the GHA. This was done via email dated 8th November 2013. In this email, the GHA confirmed that the Complainant's status was " registered with the GPMS as employed" and his EHIC and Card were valid until March 2014 and as such, they were 'puzzled' about his complaint. as GHA's records showed that he had not been denied access to the health service.

CONCLUSIONS

Complaint 1

Non-Reply to Letters

The Ombudsman sustains the Complaint of non-reply to the Complainant's letters. Two of the three letters were eventually confirmed as received by the GHA but no reply was issued until November 2013 and only at the Ombudsman's insistence.

On submission of the E121 form, the GHA should have identified at an early stage the reasons why they believed the Complainant was not eligible to apply for pensioner status, i.e.:

He had not attained pensionable age of Ireland, his country of origin;

He was in employment and it was not a customer choice to secure entitlement via one route or the other (i.e. pensioner or employed status) and as such, the E121 should be rejected by Gibraltar.

The GHA should have issued a written response to the Complainant stating the reasons for the rejection and returned the E121 form to him. This would have enabled the Complainant to pursue the matter further with the Irish Health Authorities and provided him with an opportunity of finding a solution.

Instead, the GHA did not respond to the letter sent by the Complainant dated 20th May 2013 on the basis that they had checked their records and found that he was registered with the GPMS as employed.

Regarding the Complainant's letter of the 17th July 2013 having been received by the GHA on the 15th August 2013, the Ombudsman found that approximately one month's delay for the receipt of a letter was excessive.

The GHA's response to the Ombudsman regarding the delay was unapologetic and as such would appear to be a normal occurrence at the GHA. Although the GHA staff member dealing with the case had been on leave during part of the period between the letter being sent by the Complainant and received by the GHA, it is not a valid excuse to the Ombudsman. The position was being covered and as such that person should have at least acknowledged receipt of the letters.

Although the Complainant's letter does not include the reason why he had applied for pensioner status via the E121 form (he wanted to have medical cover even in periods of unemployment) the contents of the letter were sufficient to have warranted the responses noted above (1 & 2).

The Ombudsman would be making a request to meet with the GHA in order to be appraised of the incoming mail system records in place. Upon receipt of the first letter and certainly upon receipt of the Complainant's letter of complaint, the GHA should have immediately and automatically responded to the Complainant.

Complaint 2

Delay and No Information in Respect of Complainant's Application for E121 Registration

From the Ombudsman's independent research, the GHA appear to be correct in their interpretation of the laws.

Nevertheless, on the basis of the refusal to accept his application for 'Pensioner' status, the Complainant would continue to pursue the matter with the Irish Health Authorities.

CLASSIFICATION

Sustained

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HOUSING AUTHORITY

CASE SUSTAINED

CS/1004

COMPLAINT AGAINST THE HOUSING AUTHORITY FOR THE DELAY IN UNDERTAKING REPAIRS TO THE GOVERNMENT RENTED FLAT ("FLAT") THE COMPLAINANT HAD BEEN ALLOCATED IN FEBRUARY 2013

COMPLAINT

The Complainant was aggrieved because of the delay on the part of the Housing Authority in undertaking repairs to the Flat she had been allocated in February 2013.

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 lived in a privately rented flat) explained that both she and her husband suffered from medical conditions and as a result of which her application for Government housing was put to the Housing Allocation Committee ("HAC") for consideration of medical categorisation. HAC considered and accepted the request and in February 2013 the Complainant was allocated the Flat via the Medical List. The Complainant's private accommodation was in a precarious condition and the Complainant was desperate to move into the Flat.

Ten months after the allocation, the Complainant claimed that the necessary works to enable her and her family to move in were far from completed, despite having been verbally informed by the Housing Authority that works to render the Flat habitable would be carried out within six months (to be completed by August 2013). The Complainant claimed that she had approached members of staff at the Housing Authority and at the Gibraltar General Construction Company Limited ("GGCCL") (a wholly owned Government company tasked to tender out to private contractors repairs to Government residential properties) to enquire about completion dates for repairs but this was not forthcoming. The Complainant explained that on one occasion when she enquired about the repairs at GGCCL she was told that the private contractor appointed to carry out repairs had been unable to locate the Flat. The Complainant offered to accompany the contractor but stated that her offer was not taken up. Then again in December 2013 when the Complainant approached GGCCL with a further enquiry about the lack of progress in the Flat she was told that the key to the Flat could not be found and at a later stage told that the key was held by the Housing Authority.

Frustrated and desperate about the urgency of her situation and the treatment she was being subjected to, the Complainant lodged her Complaint with the Ombudsman.

INVESTIGATION

First Investigation

By way of background to this investigation, in early 2013 the Complainant had brought a previous complaint to the Ombudsman because of the delay on the part of the Housing Authority in allocating the Flat. At that time, the Ombudsman's investigation found that the Flat had been vacated in October 2011 and the keys passed to the Housing Works Agency ("HWA") for refurbishment, but by early 2013 no works had been carried out in the Flat. The Housing Authority explained to the Ombudsman that in February 2012, because of an extensive backlog and in order to accelerate internal repairs to Government flats, the Ministry for Housing Technical Department ("MfHTD") was tasked by Government with tendering out repairs to private contractors; a role which at a later stage was passed on to a wholly owned Government company, GGCCL, albeit MfHTD continued to produce the scope of works. According to HWA the measure would be put into effect whenever HWA was fully committed, so as not to create an unacceptable delay due to the urgency that normally accompanied repairs of that nature; a category which the Complainant due to her medical and living conditions undoubtedly fell into.

Notwithstanding, HWA stated that in February 2013, instructions had been issued for the MfHTD to inspect the Flat and produce a scope of works prior to allocation to the Complainant but stated that a commencement date could not be provided because the scope of works would be passed to GGCCL for the repairs to be undertaken by a private contractor [Ombudsman Note: The GGCCL is presently outside the Ombudsman's jurisdiction and complaints against this entity can therefore only be investigated via the Housing Authority].

In that first complaint, the Ombudsman expressed his concern that the Flat had been vacant for a year and a half and no works undertaken, i.e. the Flat had been vacant from October 2011 to April 2013 (date of completion of the investigation). HWA explained that this was due to a large number of empty flats which required refurbishment and the Flat not being a top priority.

New Investigation

The new investigation commenced in December 2013.

The Ombudsman put the initial Complaint to the Housing Authority and the response (from the member of staff at the MfHTD responsible for liaising with GGCCL) was that the key to the Flat had been lost and that he had instructed GGCCL to replace the lock so as not to delay the matter further. MfHTD also recalled informing the Complainant of this. In relation to the contractor having been unable to locate the Flat, he explained that there seemed to be some confusion as to the exact address but advised that would be sorted.

As to the underlying issue for the delay in the commencement of works, the Housing Authority advised that the keys and scope of works had been passed to GGCCL on the 31st May 2013 and the keys handed over to the Complainant on the 4th February 2014, i.e. nine months later.

The Ombudsman requested further information from the Housing Authority in their capacity as landlord as follows:

1. When did GGCCL appoint a contractor to carry out the works in the Flat?
2. When did works in the Flat commence?
3. Considering the Complainant's circumstances and the fact that the Flat was earmarked for her over a year ago, why was the refurbishment of the Flat not prioritised?
4. What caused the delay in the refurbishment of the Flat?
5. Which entity takes the decision on prioritising refurbishment of properties?
6. What is the average time for completion of refurbishment of a property, from the time when it is vacated until it is returned to housing stock for allocation?
7. How many vacant flats are presently awaiting refurbishment?

In their reply, the Housing Authority informed the Ombudsman that the above information was not available to them but advised that the MfHTD had passed the keys and the scope of works for the Flat to GGCCL on the 31st May 2013 (three months delay on what was formerly advised by the HWA in February 2013 and no explanation given for the delay).

Further to the above, upon receipt of the keys, the Complainant visited the Flat but found that one of the sliding windows in one of the rooms was missing. The Complainant on advice from the Ombudsman immediately put the matter to the Housing Authority who requested that she return the keys for an inspection to be carried out by MfHTD. The Ombudsman delved into this issue and was informed by MfHTD that a week before handing the keys to the Complainant they had inspected the Flat and no windows were missing. The only explanation that MfHTD could offer was that the window had been stolen and that it had happened before. The Ombudsman was under the impression that windows were made to measure dependent on the opening but was advised by MfHTD that the windows were standard. MfHTD informed the Ombudsman in early March that the window had been replaced.

CONCLUSION

The Flat was vacated in October 2011 and refurbishment was not completed until February 2014, two years and four months later and after two complaints lodged at the Office of the Ombudsman. An excessive period of time considering:

(i) the Complainant's circumstances;

(ii) the new structure whereby because of an extensive backlog and in order to accelerate internal repairs to Government flats, GGCCL would tender out works to private contractors when HWA were fully committed, so as not to create an unacceptable delay for repairs and refurbishment of Government flats, due to the urgency that normally accompanied repairs of that nature.

Despite the above procedure and the Complainant's case being an urgent one, the repairs to the Flat were not prioritised. When the Ombudsman put the question to the Housing Authority on which entity took the decision to prioritise refurbishments, they were unable to provide the information. The Ombudsman's view is that the reply should have stated that decisions of that nature were taken by the Housing Authority (as landlord and as the body with responsibility for the allocation of Government residential properties).

Further to HWA's information that instructions had been given to MfHTD in February 2013 to scope the works required in the Flat, no explanation was provided by the Housing Authority as to why this was not carried out until May 2013.

As the Ombudsman does not have jurisdiction over GGCCL he referred his queries to the Housing Authority but the information received from them was scant. This may potentially be interpreted as to the fact that GGCCL are not answerable to the Housing Authority. The ideal scenario in the interest of promoting good administrative practice would be that GGCCL a body appointed to tender out works to private contractors paid via the public purse should be accountable to the Housing Authority, the client, and should form part of the Ombudsman's investigation remit.

As to the issues experienced by the Complainant, i.e. the loss of the key, the contractor not locating the Flat and the matter of the missing window, the Ombudsman was of the opinion that this was a shameful sequence of actions worsened by the fact that the Complainant's situation warranted urgent action; she had a medical condition and the flat in which she presently resided was in a precarious state. The Ombudsman was critical of what appears to be GGCCL's lack of assistance to the appointed private contractor with regards locating the Flat and delay in changing the lock to the Flat as requested by MfHTD. As to the MfHTD's assertion that the window had been stolen, the Ombudsman viewed this as a very serious statement which the MfHTD appeared to take lightly as it was not the first time this had happened. When these situations arise the MfHTD should report the matter to the Royal Gibraltar Police especially as there was no apparent forced entry into the Flat.

CLASSIFICATION

Sustained

[OMBUDSMAN NOTE: The Complainant's efforts to secure acceptable accommodation for herself and her husband, both of whom suffered medical conditions went on for a lengthy period of time as described in the above report. It is tragic to note that she sadly passed away before she was able to move into the Flat]

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CASE NOT CLASSIFIED

CS/1027

COMPLAINT AGAINST THE HOUSING AUTHORITY ("HA") BECAUSE THEY HAD INFORMED THE COMPLAINANT THAT THEY DID NOT HOLD RESPONSIBILITY FOR A STORE ("THE STORE") LOCATED DIRECTLY BEHIND THE PARKING SPACE ALLOCATED TO HIM

COMPLAINT

The Complainant complained that he had been informed by HA that they did not hold responsibility for the Store. The Complainant had approached HA to enquire over the possibility of having the Store allocated to him, given that it was located directly behind his parking space, beneath his Government rented flat.

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 to the Ombudsman that he had made various attempts over the past few years to obtain the Store located directly behind his parking space *(although no documentary evidence was provided to the Ombudsman to substantiate this).* He had approached HA and Land Property Services Limited ("LPS") in order to determine responsibility/ ownership but both entities confirmed to him that they did not hold responsibility over it.

Given that the Complainant found himself in a position where he did not know where to turn and where to direct his application, he approached the Office of the Ombudsman and lodged his complaint in June 2013.

INVESTIGATION

The Ombudsman made enquiries to HA setting out the issue causing the Complainant concern. It was indeed confirmed to the Ombudsman by HA that they did not hold responsibility over the Store. A subsequent query directed at LPS was also met with the same response.

The Ombudsman proceeded to write to the Minister for Housing directly for his assistance in determining the entity with responsibility over the Store. Pursuant to a period of approximately three months, the Office of the Minister for Housing ("the Ministry") replied substantively to the Ombudsman, stating that further to a full investigation, it had been established that the Store (and others located within the same area), did in fact fall under the remit of the Ministry. The conclusion to the letter stated that the Ministry would take the necessary steps to regularise the position in relation to all the stores in the area.

As a direct consequence, the Ombudsman replied requesting information as to the date from which the Ministry had held responsibility, and why it had been necessary to conduct an investigation to determine said responsibility. The reply that followed from HA clarified that an investigation had been necessary because after having checked their records, HA was unable to find any historical reference to the stores and therefore assumed that they fell under the responsibility of LPS. However, upon HA making enquires, LPS had no record of the stores either. The Ministry then launched an investigation in order to regularise the stores and assumed responsibility for them.

In conclusion, the letter stated that the Complainant could indeed request a store from HA after which, the application would be considered.

The Ombudsman contacted the Complainant to communicate the position and to offer his assistance if necessary for the purposes of the application. The offer was accepted via telephone but attempts to arrange a meeting with the Complainant for this purpose, failed. To the Ombudsman's knowledge, the application has not been made to date. As a result of lack of interest from the Complainant, the file was closed.

CONCLUSIONS

The Ombudsman was grateful to both the Ministry and HA for their assistance and for the investigation conducted by them in response to the queries raised by this complaint. The regularisation of the stores was positive in that they are now administratively identifiable and will allow the HA to consider any applications from Government tenants in respect of them, if they arise. Of equal importance is the fact that the Ministry will now be able to derive rental income from the stores as a result of the regularisation.

CLASSIFICATION

The Ombudsman was unable to classify this complaint due to lack of interest from the Complainant.

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PARTLY SUSTAINED

CS/1032

COMPLAINT AGAINST THE HOUSING AUTHORITY IN RELATION TO THE FACT THAT THE COMPLAINANT HAD BEEN REQUESTING REALLOCATION FROM HER GOVERNMENT RENTED FLAT SINCE 2011 AND BECAUSE SHE ALLEGED SHE HAD BEEN LIVING IN SUBSTANDARD CONDITIONS DUE TO BUILDING WORKS TO THE BUILDING OF WHICH HER GOVERNMENT RENTED FLAT FORMED PART.

COMPLAINT

The Complainant was aggrieved because she claimed she had been requesting reallocation from her rented Government flat ("the Flat") since November 2011. The Complainant explained that she had been living in substandard conditions as a result of renovation works ("the Works") to the building ("the Building") in which the Flat was located. The Works had been ongoing for 3 years, during which time the Building had become what the Complainant described as a "building site". The Complainant explained that the state of affairs had led to the deterioration of her mental health.

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 Works commenced in 2010. The Building was composed of 9 flats, of which 4 were occupied by permanent residents – including the Complainant and her daughter – and 3 were occupied but had been vacated for the duration of the Works. The Building consisted of 3 floors, all of which had been concealed by scaffolding pipes and green netting, due to which the Complainant claimed to be unable to receive any mail. The Flat was located on the **first** floor of the Building.

The Complainant was concerned about how the Works had inhibited the use and enjoyment of the Flat and her private life. In particular, she explained that the Works commenced daily at 7:30am and that they would continue until late in the day. The Complainant was required to use stairs to reach her Flat and complained that said stairs were damaged and appeared ready to collapse. Further, the Complainant noted that the Works included renovations to walls inside the Building where asbestos appeared to be present, particularly along common corridor wall panels. In January 2011 the Complainant wrote to the Housing Authority ("HA") complaining that she was unable to open her windows for fear that rats may enter the Flat, given that she had already encountered some on one occasion a few weeks prior.

On 12 September 2011, the Complainant wrote to request an appointment with HA regarding the possibility of being transferred temporarily to furnished accommodation. The Complainant claimed that she had sought relief in this respect from HA, the Housing Allocation Committee ("HAC") and the Housing Works Agency ("HWA"). An appointment was made with HA for 22 November 2011.

The Complainant was placed on the 'Normal Waiting List' for Post War Accommodation in February 2012, and subsequently was placed on the 'Approved Pensioner Exchange List' in March 2012. Between March and May 2012 her request for reallocation was considered and the Complainant was required to submit further medical documents in support of her application. HAC approved an offer of allocation to a Government studio flat on 27 September 2012. However, the Complainant rejected the offer given that she had requested a 2KRB with a patio for her Alsatian dog.

The Complainant wrote again to HA on 8 July 2012. In her letter, she noted various issues which had troubled her in the preceding weeks. In particular, the Complainant mentioned that a hole had been knocked through her bathroom wall on 12 June 2012 (which had been boarded up), that the exterior of the windows in the Flat had been left covered in cement, and that on 3 July 2012 she had been temporarily impeded from entering the Flat given that her front door frame had been damaged by the Works. Moreover, the Complainant drew attention to the presence of asbestos in the corridor wall panels which, she felt, would be disturbed by the Works. The Complainant did not receive any feedback on any of the issues mentioned within the letter and was instead informed that an appointment would be set up for her to see the Minister, but that "some waiting time would be unavoidable". Although, initially the Complaint was filed at the office of the Ombudsman on 24 July 2012, after careful consideration the investigation was closed on 1 October 2012. It was the Ombudsman's opinion that all relevant avenues had not been exhausted at that stage. Given the lapse of time and the fact that the Complainant continued to suffer grievances, the Complainant returned and made a fresh Complaint on 11 June 2013, which the Ombudsman saw fit, in the exercise of his discretion, to formalise and investigate fully.

INVESTIGATION

In July 2013, communications were established between the Complainant; the Environmental Safety Group; and the Ministry for Traffic, Health and Safety and Technical Services ("MTHST"). These communications concerned the Complainant's worries about the renovation works on the asbestos panels which were imminent, as well as her anxiety in that she had still not been transferred to a temporary, alternative residence. MTHST clarified that all parties involved – including the department for the Environment, HA, HWA and the contractor - were in agreement that the measures being taken, regarding the asbestos, were fully compliant with the necessary safety requirements. Further, it was communicated that the Works were envisaged to take "no more than a couple of days" and that it was unnecessary for the Complainant to be given temporary accommodation. When the Ombudsman presented the Complaint to HA and requested their comments on whether any subsequent offers of temporary accommodation had been made to the Complainant, he also sought confirmation of when another suitable alternative would be offered. The reply received indicated that the Complainant had been invited, along with other pensioners, to view a Government studio flat which she had rejected. The reason for the Complainant's rejection was that she had expressed an interest in being allocated a 2KRB flat. A studio flat was not fit for purpose. The Ombudsman had been informed by the Complainant that her specific interest in a 2KRB flat was wholly due to the fact that she owned an Alsatian dog which was too big for a studio. It was further communicated by HA that they were unable to provide a date as to when another offer of accommodation would be made as this depended wholly on the availability of flats.

The Ombudsman also emailed HWA regarding the state and progress of the Works. He specifically requested a copy of a risk assessment which had been completed in relation to the presence of asbestos in the Building. He further requested a schedule of the Works, with a view to bringing the Complainant's outstanding grievances to a satisfactory conclusion. HWA responded by letter stating that they were making attempts to obtain a copy of the risk assessment which the Ombudsman had requested. The delay in supplying it was attributed to the fact that the entirety of the Works, including the processing of health and safety issues, had been organised by the contractor.

In regard to the presence of asbestos, the Ombudsman was informed that asbestos had been located within the common corridor paneling below the corridor windows, as the Complainant had stated. The asbestos panels were in good condition and had been painted over, as a means of encapsulation. HWA stated that due to the encapsulation, there was no legal obligation to remove the panels, unless they were worked on or tampered with. Accordingly, although the external timber weatherboards and supports to the common corridors had been damaged, the panels were not subject to the Works. The Ombudsman was also notified that the asbestos fibres present in the panels formed approximately 15% of the material used in the manufacture of these type of panels and, as a result of the abovementioned steps taken, did not pose a health and safety threat or hazard to the tenants of the Building.

Finally, the letter stated that measures had been taken to segregate the area around the panels from the tenants and that the panels had been safely removed and disposed of by the contractor two months prior to the letter having been written. It was noted that the contractor was believed to have informed all tenants prior to said removal, and that the remainder of the defects present in the Building were planned to be completed around the end of September 2013.

On 17 September 2013, the Ombudsman and his Senior Investigating Officer inspected the Building. Despite the evidence of ongoing works and an apparent lack of warning signs, the Ombudsman was not qualified to provide a professional assessment on the grievances giving rise to the nature of the Complaint. For this reason, the Ombudsman sought the opinion of a professional Health and Safety surveyor ("the Surveyor") to inspect the Building's public areas. The Surveyor emailed the Ombudsman on 18 September 2013 stating that, from a Health and Safety perspective, the Works appeared to be "reasonably alright", noting that the works area had been segregated as much as possible from the tenants of the Building, and that the Works in respect of the corridors were progressing reasonably.

Although the Ombudsman was aware that the nature and scale of the Works would take time to complete and, that suitable alternative accommodation could only be offered when it became available, despite the Complainant having been placed on approved waiting lists, the Ombudsman was concerned for the Complainant's wellbeing. This concern arose as a result of the living conditions she had to endure and the subsequent delays particularly in reallocating her. This was aggravated by the fact that she had been recently widowed. In consequence the Complainant's eagerness to be transferred to suitable furnished accommodation was a matter of great importance throughout the duration of the Ombudsman's investigation.

CONCLUSION

The Ombudsman was aware that a lengthy process was endured by the Complainant, between September 2011 and September 2012, during which the submission of various medical and personal documents took place, and where the Complainant was made to wait on at least 2 occasions for a month in each case, until the subsequent HAC meeting would take place.

The Ombudsman was also aware that waiting while on a designated list, such as those on which the Complainant had been placed in early 2012, was a matter of patience for all while accommodation became available. When enquiries had been made regarding this matter, the response received by the Ombudsman was that the Complainant had been amongst other pensioners who were waiting to accept accommodation, and that any future offer of accommodation depended on availability. The Ombudsman was not of the view that there had been any evidence of maladministration by HA in respect of making attempts to address the issues, given the fact that various exchanges took place between the Complainant and HAC, and the latter made a sustained effort to deal with the matter.

It is clear from their email correspondence, dated 19 September 2013, that the 'asbestos' matter was given the required level of attention which it deserved. In spite of this, it appears that this action was only exercised after the Complainant had written to HA on 8 July 2012, where she made her concerns about the asbestos clear to them. A copy of the risk assessment which was requested from HWA had still not been provided at the time of drafting this report. In the absence of this, the Ombudsman was unable to form a view as to whether the asbestos concerns arose as a result of an assessment in response to the Complainant's letter, dated 8 July 2012. Moreover, the independent professional assessment which the Ombudsman received proved helpful in assessing the speed with which the Works relevant to the asbestos were taking place, as well as identifying the contractor's observance of the relevant Health and Safety considerations.

Classification: In relation to the Complainant's grievance that she had been requesting reallocation from the Flat since November 2011: **Not Sustained**

Ombudsman Note: The Ombudsman acknowledged that HAC fully complied with their obligations, in so far as the extent of their authority and their powers to transfer Government tenants to alternative accommodation is concerned. It was positively noted that attempts to secure such accommodation for the Complainant were still ongoing at the time of drafting this report. However, the Ombudsman considered HAC to have initially delayed the process of reallocation. Requests for documentation were made on more than one occasion and, once received, meetings were deferred when it may have been practical to have dealt with the Complainant's concerns at an earlier stage. In spite of this, the Ombudsman is aware that the Complainant's Complaint is not unique and that there will have been various other complaints arising in or around the same time. It may have been helpful had all the tenants who had been living in the Building, at the time, to have made a collective complaint. For the sake of expediency, HAC may consider it practical to maintain a policy of providing complainants with further information from the onset; such information should include the entirety of all documents required to process a complaint or request, and the reasons for delays in dealing with a complaint or request.

In relation to the Complainant's grievance that she had been living in substandard conditions as a result of the Works to the Building: Sustained In Part

Ombudsman Note: Having received feedback from an independent professional surveyor, and given the update which was provided by HWA, it was evident that the peril presented by the asbestos has been quelled. However, the Ombudsman noted that the Works had been ongoing for 3 years and it was difficult to assess when they would be completed. There have been indications from various bodies that the Works would soon be finalised, however this has not yet taken place – the latest indication being that the Works were to have been completed by the end of September 2013. In an effort to relieve tensions for all involved, the Ombudsman recommended that the contractor and HWA prepare an official update as to how far the Works have progressed since their commencement, what is left to be completed, why delays have taken place and what, if anything, can be done to ameliorate the conditions for the tenants in the meantime. Although Health and Safety has been properly complied with, and the Ombudsman understands that matters do not always run as planned, it appears unreasonable for the Works to be taking this long without a proper explanation as to why this is so.

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CASE SUSTAINED

CS/1038

COMPLAINT AGAINST THE HOUSING AUTHORITY DUE TO THE DELAY IN UNDERTAKING WORKS IN THE COMPLAINANT'S FLAT, NAMELY, REPLACING THE EXISTING BATH WITH A SHOWER UNIT AND THE DLEAY IN TACKLING DAMPNESS PROBLEMS IN THE FLAT

COMPLAINT

The Complainant was aggrieved due to the delay on the part of the Housing Authority in undertaking works in the Government rented flat ("Flat") she resided in, namely, replacing the existing bath with a shower unit, and for the delay in tackling dampness problems.

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, an elderly 84 year old lady who lived alone, explained to the Ombudsman that due to her advanced age she found it extremely difficult to get in and out of the bath and had suffered a number of falls. The last time she fell, the Complainant explained that it had taken her about half an hour to get out of the bath. In August 2012, very anxious about the situation, the Complainant wrote to the Principal Housing Officer ("PHO") at the Housing Authority stating her grievance and requesting that the bath be replaced with a shower unit adequate for her needs.

The Complainant also requested repairs to dampness problems in the bathroom. The letter was passed on to the Housing Works Agency ("HWA") and the prompt response stated that instructions had been issued for the bathroom works although no start date could be provided. Notwithstanding, HWA assured the Complainant that the works would be carried out as soon as possible.

In July 2013, approximately one year later and no works having been carried out, the Complainant brought her Complaint to the Ombudsman.

INVESTIGATION

The Ombudsman wrote to the HWA in July 2013 but due to an oversight, no response was received until October 2013.

HWA advised that they had checked the reports at the Housing Authority's Reporting Office, and noted that no report had been lodged by the Complainant for the bath to shower conversion. To highlight that the Complainant was familiar with the reporting process, HWA pointed out that the day before she wrote the letter to the PHO, the Complainant had made a report at the Reporting Office for the replacement of the Flat's letter box. The Ombudsman found the point made by HWA quite extraordinary; the Complainant having made a report at the Reporting Office and yet the following day taking the trouble to write to the PHO, substantiates that in the Complainant's mind there was a difference between making a report to correct a fault, i.e. the broken letterbox, to requesting works for a bath to shower conversion which she needed due to her advanced age and physical constraints.

HWA explained that upon receipt of the Complainant's August 2012 letter, they had assumed that the Complainant had followed standard procedure and lodged the report via the official channel; the Reporting Office. Based on that assumption, HWA had responded accordingly. HWA advised that when the Complainant's letter was received, no one had checked whether a report had been lodged. When similar cases had arisen in the past, HWA on having identified that no report had been made would have raised one with the Reporting Office on behalf of the tenant. HWA would therefore now raise the report on behalf of the Complainant and do their utmost to solve the issue, notwithstanding the existing backlog. HWA highlighted that although their role was to provide assistance to all Government tenants, it was still the latter's responsibility to ensure that a report was raised via the Reporting Office in order to commence the process.

The report was therefore lodged with the Reporting Office on the 2nd October 2013 and the shower conversion and dampness problems in the Flat completed by February 2014.

In April 2012, when undertaking an investigation related to delays in carrying out bath to shower conversions, the Ombudsman was informed by the Housing Authority that as a result of a policy decision to eliminate the waiting lists (pensioners and occupational therapy bath to shower conversions) all outstanding conversions related to the pensioners waiting list would be completed by May 2012 by private contractors. They further advised that all reports in the list of outstanding occupational therapy conversions would in all probability be dealt with in the following five to six months.

Considering the above, the Ombudsman sought a meeting with the Housing Authority to determine how much the Complainant's waiting time had been affected because her report had not been included in the Reporting Office's list. The Housing Authority's opinion was that she would have had to wait over a year for the works. By way of information, the Housing Authority advised that as a result of the exercise undertaken the backlog had been cleared and all current reports were being dealt with within a month of the report having been made.

CONCLUSIONS

Despite the Complainant being aware of the reporting process for repairs in the Flat, she was uncertain because of the nature of her enquiry on how to go about requesting the works in the bathroom, and so the Complainant wrote to the PHO. On the assumption that a report was in place at the Reporting Office, HWA/Housing Authority assured the Complainant that instructions had been issued for the refurbishment, albeit no time frame could be given for the commencement of the works; a reply which satisfied the Complainant to the effect that her request was being addressed. In reality, HWA/Housing Authority routinely replied to the Complainant but failed to make the necessary checks to establish that a report had been lodged via the official channel. As a result there was no record in place for the works required by the Complainant. It was only because of a complaint to the Ombudsman that HWA/Housing Authority identified that no report was in place.

The Ombudsman notes the actions of HWA/Housing Authority in order to provide redress to the Complainant but is critical that a finger of blame is being pointed at an 84 year old, who, apart from being elderly, had written to the Principal Housing Officer explaining her plight and seeking his assistance. The Ombudsman had no doubt that it was the Principal Housing Officer's role to have informed the Complainant of what procedure to follow in relation to the bath to shower conversion, i.e. that she needed to report the matter via the Reporting Office.

From the information provided by the Housing Authority regarding timescales, had the Complainant's report been made at the Reporting Office in August 2012, the time taken to undertake the works would have been about the same, over a year. Therefore the Complainant was put back in the position that she would have been in had no maladministration taken place.

The Ombudsman sustains this Complaint of maladministration because HWA/Housing Authority should have given the Complainant's letter the attention it required by raising a report themselves or advising the Complainant to do so herself.

CLASSIFICATION

Sustained

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CASE SUSTAINED

CS/1049

COMPLAINT AGAINST THE HOUSING AUTHORITY FOR THE DELAY IN REPLACING WINDOWS IN THE COMPLAINANT'S GOVERNMENT RENTED FLAT ("FLAT")

COMPLAINT

The Complainant was aggrieved because he had been waiting for years for the windows in the Flat to be replaced.

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]

INVESTIGATION

The Complainant informed the Ombudsman that the windows in the Flat had for many years now been in a bad state and needed to be replaced. The Complainant stated that throughout those years he had reported the matter at the Housing Authority's Reporting Office ("Reporting Office") but to date the windows had not been replaced. According to the Complainant, despite a number of inspections, the only works carried out to date by the Housing Authority had been to board one of the windows up permanently after the wooden frame had expanded and cracked the glass.

The Complainant stated that due to the expansion of the wooden frames, the windows did not close properly and as a result, rainwater and cold air came through. Furthermore, the Complainant stated that some rotting wooden frames were becoming detached from the walls and they did not dare open those windows for fear that they would collapse (rainwater and cold air also came in through the cracks on the wall where the frame was coming apart from the wall).

On another matter, the Complainant highlighted that one of the shutters in the Flat was hanging from one hinge and in danger of falling onto the street below but advised that nothing had been done by the Housing Authority about it. The Complainant also explained that in one of the rooms there were louvre windows fitted but that those also needed to be replaced, again because they did not close properly and allowed for rainwater ingress and cold air into the Flat during the winter.

The Complainant explained that because the problems had not been addressed, these had now exacerbated as water penetration had now also caused damage to the wooden floorboards.

The Complainant put his grievances to the Housing Manager on 11th October 2013. On the 21st November 2013 the Housing Manager informed him that his letter had been forwarded to the Housing Authority's Technical Section ("Technical Section") who dealt with those issues.

By December 2013 and no works having been carried out, the Complainant brought his Complaint to the Ombudsman.

INVESTIGATION

The Housing Authority's initial response to the Ombudsman's enquiry was to advise that the Complainant had received a verbal update from the Reporting Office under instructions from the Technical Section. Regarding the replacement of the windows in the Flat, the Housing Authority stated that they were unable to provide a time frame as to when those works would be carried out and stated that the windows had been inspected and included in the Window & Shutter Replacement List in January 2013.

Regarding the shutter, the Housing Authority advised that when an inspection was carried out and a health and safety issue identified, this would be immediately addressed. Based on this information, the Ombudsman assumed the shutter was deemed to be safe.

From past investigations into similar complaints, the Ombudsman was in possession of copies of various 'Window & Shutter Replacement Lists' ("Lists") through the years. On perusal of the List as at February 2011, the Ombudsman identified an entry for the replacement of windows at the Flat dated September 2006.

The Ombudsman met with the Housing Authority and the Technical Section to discuss several issues.

Regarding the Complainant's claim of the various inspections at the Flat, the Technical Section explained that those would only be carried out on the basis of a new report being made at the Reporting Office.

Regarding the 2006 entry in the List for the replacement of windows, the Technical Section advised that they would check and revert to us. Despite various chasers from the Ombudsman this never happened due to various issues arising in the Technical Section amongst which were a premature physical move of offices with the consequence that telecommunications links to the Housing Authority's Reporting Office database had not been established prior to the move. According to the Technical Section, this had prevented them from accessing the database and providing the pertinent information to the Ombudsman.

At the meeting, the Ombudsman requested an up to date List but again this was never provided due to the above mentioned issues. The Technical Section had initially asked the Ombudsman for some time in which to update the List as they were aware that Gibraltar General Construction Company Limited ("GGCCL") had undertaken a number of window replacements and not provided the relevant information to the Housing Authority.

On the issue of one of the windows in the Flat having been boarded up, the Technical Section was shown photos taken by the Ombudsman on a site visit to the Flat. On perusal of the picture the Technical Section doubted that the work had been carried out by the Housing Authority as they would ordinarily only have boarded the window up temporarily until its replacement and the works carried out were of a permanent nature. Notwithstanding, the Technical Section again failed to provide information on the matter.

[**Ombudsman Note:** In 2011 a change in Government policy led to the abolishment of the Buildings & Works Department ("B&W") (the Government department tasked with maintaining public housing stock) and the creation of the Housing Works Agency ("HWA") who in order to clear an extensive backlog, would initially undertake internal repairs to the housing stock whilst external repairs would be tendered out to private contractors. The new administration delegated the GGCCL with awarding the tenders for those works to private contractors. The Ombudsman does not have jurisdiction over GGCCL].

The Technical Section highlighted that repairs to windows were carried out relatively promptly and that the waiting time was only for windows which needed to be replaced. From further photos provided by the Ombudsman, the Technical Section noted that the facade of the building was in need of attention and advised that they would make enquiries to establish if the building was listed for external repairs. The Technical Section confirmed the aforementioned information and was of the opinion that the windows and shutters would be replaced in conjunction with the external repairs to the facade.

Further to the meeting, the Ombudsman was concerned about the lack of communication between GGCCL and the Housing Authority and the fact that the main reports database was no longer accurate because GGCCL were not providing the relevant updates in relation to works that they were undertaking.

The Ombudsman wrote to the Principal Housing Officer ("PHO") on the matter and after a two month delay received a response. The PHO advised that after much discussion, all parties had come to an agreement on the way forward. At present, Government instructions were for all works to be passed on to GGCCL. Once works were completed GGCCL would notify the Reporting Office Manager who would then duly update the Housing Authority's database. The PHO pointed out that the Ombudsman's enquiry had triggered discussions on the issue of the lack of communication between GGCCL and the Housing Authority.

CONCLUSIONS

The Ombudsman sustained this Complaint on the basis that the Complainant had (at the time of writing this report – August 2014) been on the List for eight years; an unreasonable period of time during which problems had multiplied in the Flat.

The Ombudsman is satisfied that his enquiries brought the lack of communication between GGCCL and the Housing Authority to the forefront which resulted in an agreement being reached between the two parties for the flow of information. The Ombudsman was very pleased at this result because matters relating to the repairs and refurbishment of public housing stock is an issue which is very often brought to the attention of the Ombudsman In effect the GGCCL is the middle man between the private contractor and the Housing Authority, the landlord, and it is their duty and responsibility to keep the Housing Authority duly informed of works being carried out in those properties, so that they in turn can provide service users with information, if and when required. That this situation should have ever developed is beyond comprehension.

Principles of Good Administration advocate for proper and appropriate records.

In relation to the updated Window & Shutter Replacement List not having been provided by the Technical Section, the Ombudsman understands that this has also been affected by the GGCCL not having been providing the Housing Authority with information. Notwithstanding, the PHO has informed the Ombudsman that the reports database is presently being updated by the Reporting Office Manager. Once this exercise has been completed, the Ombudsman expects to be provided with the List.

The lack of procedure in place on the part of the Technical Section is apparent in that the inspection carried out in 2013 was treated as a new report when in fact the report had already been made in 2006 and was in 2014 still waiting to be actioned. This resulted in a duplicate entry in all probability being made in the List (the Ombudsman is awaiting an updated List) and in the Reporting Office database. In the same way that the Ombudsman had kept records of past Lists and identified the duplicate entry, so too should the Technical Section.

Regarding the Technical Section not having provided the information required by the Ombudsman, i.e. on whether the Housing Authority had undertaken the works to board up one of the windows in the Flat and confirming that the 2006 entry in the List referred to the Complainant, the Ombudsman finds the excuse of having moved offices and not being connected to the database, weak to say the least. Considering that distances in Gibraltar are small, the Technical Section should have physically gone to the Reporting Office and obtained the information. On the basis that the Ombudsman had no reason to doubt the Complainant's version that the Housing Authority had carried out the boarding up of the window and that confirmation from the Technical Section reference the entry in the List being that of the Complainant's was merely a formality, the Ombudsman did not insist any further on the matter. Notwithstanding, the Ombudsman wishes to take this opportunity to remind all Government departments and public services that under Part V of the Public Services Ombudsman Act 1998, any person who obstructs the Ombudsman in the performance of his duties could be found guilty of an offence. The Ombudsman will make the issues contained in this case known to the Chief Secretary.

CLASSIFICATION

Sustained

CASE NOT SUSTAINED

CS/1050

COMPLAINT AGAINST THE HOUSING AUTHORITY FOR THE COMPLAINANT BEING NINETEEN YEARS ON THE APPROVED EXCHANGE LIST WAITING TO BE REALLOCATED FROM HER GOVERNMENT RENTED FLAT ("FLAT"); AND FOR WAITING TWO YEARS IN FIRST POSITION ON THE APPROVED EXCHANGE LIST BUT NO OFFERS OF REALLOCATION

COMPLAINT

The Complainant was aggrieved because for nineteen years she had been in the Housing Authority's Approved Exchange List ("List") waiting to be reallocated from the Flat. She was further aggrieved because for the past two years she had been in first position on the List and still no offers of reallocation had been made.

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 about nineteen years ago, due to personal reasons, she had asked the Housing Authority to reallocate her from the Flat, a 3RKB (RKB=Room, Kitchen & Bathroom) she had shared with her parents until they passed away. The Housing Authority agreed to her request by including her in the List but the Complainant claimed that during those years no offer of reallocation was made, not even in the last two years during which she held first position on the List. The Complainant explained that for the first seven years she had no choice but to go and live with her older sister after which time she returned to the Flat where she resides at present with her partner and two children.

In 2012, the Complainant identified a suitable vacant flat (in Alameda Estate) and wrote to the Housing Authority requesting that it be allocated to them (by that time the Complainant's entitlement was for a 4RKB due to the family increment). The Housing Authority put the request to the Housing Allocation Committee ("HAC") but the request was refused because HAC did not entertain requests for specific addresses and the policy was for flats returned to housing stock to be allocated to qualifying persons on the waiting lists. On a positive note, HAC informed the Complainant that she was first on the List and that they had noted the area she had requested (South district for reallocation). Two years later, and no offers of reallocation having been made despite being first on the List, the Complainant wrote to the Housing Authority setting out her case and asking for an explanation on how a vacant flat (the one she had identified as suitable for her family in 2012) for which the keys had just been handed in to the Housing Authority could already be earmarked for an applicant and enquired on why it could not be earmarked for her and her family.

The response from the Housing Authority explained that when flats were returned to housing stock it did not mean that they were offered to the first person who requested it. There was an established procedure for the allocation of flats via a number of waiting lists which were: the standard waiting list, the medical list, social list and pensioner list. The Housing Authority explained that when flats with lift access (as was the case with this particular property) became available, an element of priority was given to persons on the medical list.

Dissatisfied with the manner in which the Housing Authority had handled her case, the Complainant lodged her complaint with the Ombudsman

INVESTIGATION

The Ombudsman presented the Complaint to the Housing Authority highlighting the following issues:

- The Complainant felt that during the nineteen years she should have been considered for a reallocation;

- Being in first position for the past two years had created a degree of expectation that the reallocation would be imminent;

- Considering that other lists took priority at the time of allocations being made, the Complainant felt that the List would always be overlooked and as such served no purpose;

The Housing Authority explained that the Complainant was placed on the List in June 1995 for a 2RKB [Ombudsman Note: Although the Complainant lived in a 3RKB, her entitlement as a single person was for a 2RKB] and two offers of accommodation were made in April 1996, both of which were refused by the Complainant. When the Ombudsman put this information to the Complainant she explained that the properties offered were in an atrocious state. According to the Complainant, one property was the caretaker's room in one of the estates which was not conditioned as a flat and the second was a big room partitioned into two, again in a bad condition.

The Housing Authority stated that in 2008 the Complainant became entitled to a 4RKB; her family circumstances had changed with the birth of her son in 2006 and a daughter, years earlier, (although it was not until 2008 that the Complainant notified the Housing Authority). The Housing Authority explained that the clerk who entered the changes at that time should have identified from the Complainant's record that she was in the List for a 2RKB and cancelled the entry as the Complainant's situation now warranted an allocation for a larger property and not an exchange. Instead, the Complainant was left in the List for an exchange for a 2RKB and placed in the Government Housing Waiting List for a 4RKB.

As to the lack of offers of exchange since 1996, the Housing Authority could not provide an explanation, other than the fact that the Complainant had requested a specific area (Alameda Estate) which had recently been expanded to cover the South District area.

Regarding the flat identified and requested by the Complainant in 2012 which was two years later allocated to another applicant, the Housing Authority explained that the Complainant had requested the flat by way of letter on the 23rd May 2012 but withdrew the letter two days later. According to the Housing Authority the flat did not become vacant at the time when the Complainant made her request and was only returned to housing stock on the 3rd February 2014. When the Housing Authority became aware that the flat was going to be available it was earmarked for a medical case. According to the Housing Authority both the Housing Manager and the Office of the Chief Minister verbally informed the Complainant that the flat had been earmarked for an applicant and the Housing Authority also wrote to her on the 4th February 2014 stating the same. By way of clarification, the Housing Authority confirmed that the List was divided into various lists dependent on tenant's entitlement i.e. 2RKB, 3RKB, 4RKB, etc. and was not a priority list.

According to the Housing Authority, as at February 2014 the Complainant was 66th on the 4RKB Government Housing Waiting List.

CONCLUSIONS

Due to personal reasons, the Complainant felt unable to continue to live in the Flat. In June 1995 the Housing Authority included her in the List to facilitate an exchange from the 3RKB in which she resided to a 2RKB, her entitlement as a single person. According to the Complainant, no offers of exchange were made to her during the nineteen years whereas the Ombudsman established in the investigation that two offers had been made in April 1996, albeit properties which the Complainant (when the information was put to her by the Ombudsman) claimed were in a very bad condition and had no choice but to refuse.

As a result of the investigation, the Ombudsman also found that in the Housing Authority's records the Complainant had been listed down as having requested a very specific area (Alameda Estate is a very sought after area) which would explain why no offers of exchange arose. Again, the Complainant had not provided this information to the Ombudsman when she lodged her Complaint.

Regarding the flat identified by the Complainant in 2012 as having been suitable for her and her family's needs, the Housing Authority's response was that when flats were returned to housing stock if did not mean that they were offered to the first person who requested it. There was an established procedure for the allocation of flats via a number of waiting lists which were: the standard waiting list, the medical list, social list and pensioner list and that when flats with lift access became available an element of priority was given to persons on the medical list. Furthermore, the List was not a priority list so realistically the Complainant did not have a chance of being allocated a property if said property could be allocated to an applicant on a priority list.

It is clear from the Ombudsman's findings that the List is the system the Housing Authority have in place to assist Government tenants with an exchange but they must ensure that a clear message is given to those tenants; that the List is not a priority list and is just a tool to assist. In putting this information to Government tenants, they will not raise their expectations or rely solely on this solution.

In the Ombudsman's view, the Complainant should not have had a problem in obtaining an exchange. She had a 3RKB and was entitled to a 2RKB so was in an advantageous position because she was downsizing. The problem arises when the Complainant narrows the options to only one estate in Gibraltar and especially one that is very sought after. The Complainant is therefore putting the Housing Authority in a situation where she is setting out very specific conditions which are virtually impossible to meet. On the other hand, considering the Complainant's favourable circumstances she could have independently pursued an exchange herself other than through the Housing Authority but no information has been provided to the Ombudsman to that effect.

So what should have happened? The Complainant's name should have been removed from the List in a timely manner in 2008 when she notified the Housing Authority of her change of circumstances. The negative effect of not having removed her from the List has been the raised expectation that the Housing Authority would provide an exchange, for a 4RKB, especially in the last two years when she was in first position. Other than that, the Complainant has in parallel been included in the 4RKB Waiting List and was in February 2014 in 66th position so not having removed her from the List has not caused her hardship.

Although the non-removal of the List is an administrative error, the Ombudsman is of the opinion that this was an unintentional oversight on the clerk's part and as such will not sustain the Complaints, especially taking into account all the findings in this investigation.

RECOMMENDATIONS

The Complainant was included in the Housing Authority's Approved Exchange List in June 1995 after a request made by the Complainant for reallocation from the Government rented flat she resided in. The Housing Authority made two offers of accommodation in April 1996 which the Complainant refused stating that both were in a bad condition. No further offers have been made.

The Ombudsman's investigation found that the Complainant was included in the 2RKB Approved exchange List from which she should have been removed at the time when she became entitled to a 4RKB in 2008. This entitlement arose as a result of an increase in her family's composition. However, the move between lists did not occur due to an oversight on the part of the clerk who updated her application.

Given that the Approved Exchange List is not a priority list, the Ombudsman recommended that the Housing Authority adequately inform Government tenants seeking an exchange via the Approved Exchange List that the list is not a priority list and is just a tool put in place to try and assist those seeking exchanges. This information should be provided via an adequately printed leaflet.

HOUSING WORKS AGENCY

CASE SUSTAINED

CS/1002

COMPLAINT AGAINST THE HOUSING WORKS AGENCY ("HWA") AS A RESULT OF (1) NON-REPLY TO NUMEROUS EMAILS SENT TO HWA AND (2) DELAY IN TACKLING OUTSTANDING JOBS TO STOP WATER INGRESS AND DAMPNESS TO THE COMPLAINANTS GOVERNMENT RENTED FLAT ("THE FLAT")

COMPLAINT

The Complainant complained that she had written several emails to HWA asking for information on her request for works to be undertaken to the Flat and that she had not received replies. The Complainant was also aggrieved because she had been waiting for exterior remedial works to the Flat since 2010 and to the date of filing her complaint with the Ombudsman, almost two years later, no works had been carried out.

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 the tenant of the Flat. On Saturday 6th March 2010, the ceiling in the Flat's kitchen/diner collapsed. This was followed by significant water ingress. The Complainant immediately notified Building's and Works ("B&W"). The Complainant informed the Ombudsman that upon B&W's initial inspection, she was told that nothing could be done by way of emergency remedial works since it was a long weekend. She was advised to report the incident the following week. The Complainant proceeded as advised.

Two weeks elapsed before the damage to the Flat was inspected. At the inspection, the Complainant was informed that there were cracks on the building's façade and that the damage would be classed as "high priority". At that stage, she was given the indication that B&W's project manager would also have to inspect before any works took place and that scaffolding would have to be erected so as to enable the works to be properly carried out.

In view of matters not progressing, the Complainant wrote to B&W on 11th June 2010, stressing the sense of urgency and enclosing numerous photographs of the damage caused. An inspection of the Flat subsequently followed. It was agreed that scaffolding would have to be erected to correct the significant cracks on the façade. As an interim measure, the dining room ceiling would be taken down, a dry wall would be erected and paint applied. These works were carried out in September 2010.

By February 2012 (almost two years since the initial damage occurred), the scaffolding had still not been erected (the Complainant had been told that none was available), and substantive works had not been undertaken. Given the lapse of time, the dry wall had become damp and the rest of the walls to the Flat were in the same condition as they had been in March 2010. The Flat had also been subjected to further deterioration. As a result, the Complainant sent various emails to HWA (*created in April 2011 pursuant to the abolition of B&W),* in February and March 2012. No replies were received.

Towards the end of March 2012, Ministry for Housing's Contracts and Resources Officer sent the Complainant a short email stating that "*unfortunately these works form part of a large number of pending works which require scaffolding and other resources which the relevant officer is trying to organise and program.*"

A further four months elapsed and the Complainant again sent HWA a chaser email, politely seeking information as to when the inspection was going to take place. Although a reply was received stating that as soon as any information was forthcoming the Complainant would be updated, no substantive communication ensued. In October 2012, the Complainant wrote to the Principal Housing Officer (who had initially inspected the premises in the winter of 2010), seeking his direct intervention. She stated that since 2010, the condition of the Flat had deteriorated further and her emails were being ignored. The Complainant did not receive a reply to that email either.

Frustrated with the state of affairs and the numerous unacceptable delays, the Complainant filed her complaint with the Ombudsman.

INVESTIGATION

The Ombudsman presented the Complaint to HWA on the 26th November 2012 setting out the Complainants grievances and asking for their comments. The Ombudsman stated that the Complainant was aggrieved because she had not received replies to her requests and because she had been waiting almost two years for scaffolding to be erected and works carried out. While she waited, the Complainant and her family had to endure living in damp and wet conditions.

Additionally, the Ombudsman explained how in September 2012, the downpipe to the building which the Flat formed part of fell off, resulting in the rain water that would have normally been collected by the pipe, seeping into the Flat through the exterior wall.

The Ombudsman sought HWA's comments in respect of the necessary exterior works and the delay which was being encountered by the Complainant. Information was also requested as to the steps taken by HWA since the receipt of the Complainants report of the collapsed downpipe.

A reply was received shortly thereafter.

The letter referred to the chronology of events surrounding the complaint. Of significance to note, the reply stated that *"it is totally correct that the tenant has been waiting now for a long time for works to be carried out"*….It was explained how the Complainant had been informed that once the external refurbishment works of a property within close proximity to the Flat had been completed, the scaffolding used for that refurbishment would be moved to the Complainants building in order to effect the repairs. This was not in dispute by the Complainant. The issues being complained of were lack of replies to her correspondence and delay in erecting the scaffolding.

Importantly, the reply also stated that, *"unfortunately at the time the HWA came into effect…..they only dealt with the internals of Government flats."* The position, as explained to the Ombudsman, was that "Buildings and Works"; the department which up to April 2011 had been responsible for **external works** to properties, was abolished and as a result responsibility for "externals" was taken over by 6 Convent Place. The creation of HWA in April 2011 and its reason for being was for it to conduct works of an **internal nature only** to Government buildings**.** The current position was that the Ministry for Housing/HWA "now prepares estimated scopes for works and pass[es] these on to the Ministry for Enterprise, Training and Employment ("METE") who are responsible for the procurement of the works." In conclusion to this point, HWA stated that instructions had **now** been issued for the preparation of the necessary documents for action on the Complainants Flat "as per the current procedure". Despite this explanation, HWA's letter to the Ombudsman made no attempts to justify the lack of replies to the Complainant's correspondence nor did it state why it was at this late stage that "the necessary documents were being prepared for action". Additionally, the issue of the downpipe referred to in the Ombudsman's letter setting out the complaint was not addressed either.

The Ombudsman thought it appropriate to respond to HWA to enquire why such a long period of time had elapsed before HWA had prepared the necessary documents for the works and, for an estimate as to when the works would be initiated and concluded given that the Complainant had been suffering from significant water ingress and severe dampness for a period close to three years.

The HWA was in the Ombudsman's view, sincere in its reply in that it stated that unfortunately, this was "*one of thousands of cases inherited from B&W"* and although HWA were unable to provide a tentative start date, they would keep all parties informed as matters progressed.

CONCLUSION

The Ombudsman accepted the explanations given by HWA in relation to the changes in the composition of the departments currently responsible for both internal and external building works to Government properties. However, the non-replies or at best, tardiness with which the HWA dealt with the Complainants requests for information and the time it took HWA to prepare and pass on the scope of works to METE, was unacceptable, even taking the circumstances of the Government restructuring exercise into account. To the date of drafting this report, the erection of scaffolding to the Complainants Flat and the consequent remedial works required, have still not been undertaken.

The HWA owed the Complainant a duty of care in law to (a) keep her updated on the nature of her complaint and (b) to the best of its ability and applying the principles of "reasonableness", to progress or facilitate the required works in order to minimise the damage caused. To the Ombudsman's mind, the HWA clearly failed the Complainant in both respects.

The Ombudsman found HWA's handling of the entire situation to be wholly unacceptable. The Complainant was in the Ombudsman's view, shown a complete disregard by HWA in that they failed to acknowledge or reply her numerous emails and when they did, only did so after an inordinate amount of time. The lack of instruction for the erection of the scaffolding and the consequent repairs, also served to aggravate the damage which had been caused to the Flat, and contributed to unnecessary stress and anxiety suffered by the Complainant and her family.

Given the sense of injustice and maladministration surrounding this complaint (since to date, the issue of the repairs has still not been resolved), the Ombudsman was minded to issue a special report to the Government of Gibraltar. However, he did not do so given that HWA no longer has responsibility for external repairs to Government properties and because the Ombudsman does not enjoy jurisdiction over the contracting company (Gibraltar General Construction Company Limited), a wholly owned Government Company managed by a civil servant.

CLASSIFICATION

Sustained in relation to (1) the lack of replies issued to the Complainant and (2) the delay in HWA issuing instructions for the requisite action to be taken in relation to GGCCL addressing the outstanding jobs to the Flat.

RECOMMENDATION

That in instances where Government tenants are awaiting remedial works to properties which have been subject to delay, HWA where reasonable, provide tenants with estimated commencement and completion dates for building works.

UPDATE

In May 2013, although some minor repairs had been carried out on the Flat, HWA did not reply to the Ombudsman's request for confirmation that the outstanding reports for necessary works to the Flat had been made available to the Government contractor currently responsible for performance of such works- Gibraltar General Construction Company Limited ("GGCCL"), a wholly Government owned company.

It should be noted that the Ombudsman does not currently enjoy jurisdiction to investigate any complaints made against GGCCL. He will therefore be unable to conduct complaints made over "external" works to Government properties unless the jurisdiction of his office is extended to cover this.

INCOME TAX OFFICE

PARTLY SUSTAINED

CS/1068

COMPLAINT AGAINST THE INCOME TAX OFFICE ("ITO") OVER LACK OF INFORMATION AND COMMUNICATION FROM THE ITO IN RELATION TO HOW THE COMPLAINANT'S UNITED KINGDOM ("UK") PENSION WOULD BE TAXED IN GIBRALTAR AND DISSATISFIED WITH A LETTER RECEIVED FROM THE ITO IN RESPONSE TO HER ENQUIRIES WHICH THE COMPLAINANT FOUND CONFUSING AND DIFFICULT TO UNDERSTAND

COMPLAINT

The Complainant was aggrieved because of the lack of information and communication from the ITO in relation to how her UK teacher's pension ("Pension") would be taxed in Gibraltar. She was further aggrieved because a letter she had received from the ITO in response to her enquiries was confusing and difficult to understand.

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 December 2004, at the age of 60, she claimed her Pension. At that time, she resided in Gibraltar and was in employment. According to the Complainant, until April 2010 when she completely retired she had declared her Pension in the Gibraltar annual tax returns which she submitted to the ITO and believed that she was being adequately taxed on her full income.

In August 2013 the Complainant received a tax bill from the ITO for the period 2007/08 and 2008/09 amounting to £4,968.19. The Complainant was extremely disconcerted as she believed that she had been correctly taxed for those periods through her Gibraltar tax code. [Ombudsman Note: The Complainant stated that she had previously received a similar bill for 2006/07 as a result of which she had met with a tax inspector and agreed to pay the tax demand in monthly £40- instalments]. Furthermore, by that time the Complainant was no longer in employment as a result of which her income had been substantially reduced and she was unable to settle the tax demand in full. Under the circumstances, the Complainant requested that the ITO propose a sensible payment plan. The ITO complied with the request and agreed to payment of the bill in monthly instalments of £60.

The ITO asked the Complainant to sign an agreement to that effect but the Complainant took issue with the wording in said agreement which stated that the reason for the shortfall in income tax payment was '...wholly or in part of her default'. In the Complainant's opinion it was the fault of the ITO for not having calculated the right amount of tax payable at the time and for not having explained their assessment methods to her before she retired (in regard to the tax payable on her Pension).

In April 2014 the Complainant wrote to the ITO setting out her grievances and requesting an appointment with them to discuss matters.

In May 2014, the ITO's response to the Complainant attempted to explain the reasons why she had received a tax bill but the Complainant was unable to comprehend the explanation which she found confusing and frustrating (below is an excerpt of the said letter):

> *'I would like to explain the reason behind the payables that you have received. When a tax payer works and receives an income, the tax is calculated by issuing two tax codes. The tax code with the allowances is issued against the highest income, and for the other one a percentage tax code is issued. This is the case if you are under 60 years old. If you are over 60 then the pension is taxed zero percent and the employment income is also given a percentage tax code.*
>
> *In your case as the pension was already being taxed in the UK, this was not possible. You were issued with a normal tax code. I have checked and your employer has deducted tax in accordance with the code issued.*
>
> *When we assessed you for those years (2006 to 2009) the pension you received from the UK was added as part of your assessable income for that tax year. This means that instead of being taxed on your employment income, your pension was also added to this. As you were over 60, the pension was taxed at zero percent, so if you look at the assessment calculations, you were given a pension allowance to accommodate this.*
>
> *I understand that you are upset that it was not explained to you at the time and I can only apologise for that. Please feel free to contact me again if there is anything else I can help you with.'*

The Complainant claimed the letter was extremely difficult to understand. Although the ITO stated that her Pension was taxed at zero percent it had been added to her income before tax was calculated, and although a pension adjustment had been made, she could not understand how the figure had been arrived at. Notwithstanding, the Complainant stated that the calculation still meant that she owed circa £5,000- in unpaid tax. The Complainant explained that she had requested an appointment with the ITO but had to return to the UK before she received a reply. Feeling frustrated about the situation, the Complainant lodged her complaint with the Office of the Ombudsman.

INVESTIGATION

The Ombudsman put the Complaint to the ITO. They explained that the Complainant had written to them in January 2006 to inform them that she was in receipt of a Pension and to enquire on whether the Pension was liable to tax in Gibraltar, over and above the tax applied in the UK. The ITO responded that the Pension was liable to tax in Gibraltar but the tax paid in the UK would be taken into account at the time of assessment.

The ITO explained that a local tax code could not have been issued for the Pension as it was not being derived from Gibraltar but recognised that the Complainant should have been offered a meeting when she made her enquiry in order that the system could have been explained to her. Had that been the case, with the Complainant's authorisation, the tax code being applied to her employment income could have been adjusted in order that she would have paid a higher rate of tax on that income which would have covered the amount due on her Pension (although the Pension was taxed at zero percent and this issue will be explained at a later stage in this report).

The ITO highlighted that notwithstanding, a very favourable agreement had been put in place for the Complainant to repay the amount of tax owed and advised that if the Complainant required further explanation a meeting could be arranged with a senior member of the PAYE (Pay As You Earn) Section. The ITO pointed out that they endeavoured to be efficient and provide comprehensive explanations and guidance to all taxpayers but that they dealt with a very heavy workload and as such, there was always a margin for human error.

Pension taxed at zero per cent yet part of assessable income

The Ombudsman sought a meeting with the ITO in order to clarify the issues of:

(i) the Pension having been taxed at zero percent;
(ii) a subsequent tax bill having been received by the Complainant when the ITO assessed her tax returns for the years in which she was in employment and in receipt of the Pension.

The ITO explained that since July 2006 occupational pensions were not taxed if persons were not in employment but stated that if persons were both in receipt of a pension and in employment, the total income would be amalgamated and assessed, albeit, the tax applied to the pension credited at the end of the assessment exercise to adhere to the zero rate of tax on the pension. [Ombudsman Note: As from 2012 the pension is no longer assessed as part of the total income when the person in receipt of the pension is also in employment]. In keeping with the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992 for the purpose of the aforementioned exercise, the employment income in this particular case was pushed into a higher tax bracket and is the reason why the Complainant's tax bill rose after the assessment. (Below is an excerpt of the aforementioned rules as applied to the pension income).

<u>Income Tax (Allowances, Deductions and Exemptions) Rules, 1992</u>

<u>Regime on specified pension income and other pension income</u>

3A. (1) This rule applies where an individual receives a pension from any statutory pension scheme or provident or other fund approved by the Commissioner and the said individual is-

(a) Aged 60 or over; or
(b) compulsorily retired at age fifty five or over by operation of Section 8 (2) of the Pensions Act.

(4) Allowances and deductions shall be set-off first against the individual's pension income.

(5) When allocating taxable pension income and other taxable income to the appropriate banding or bandings under the provisions of the Rates of Tax Rules any taxable pension income shall be treated as the first such income received by the individual for the given year, and any other such income shall be treated as received subsequently.

The lower rate of tax (20% under the Gross Income Based System ("GIBS") for the first £25,000-) is applied first to the pension amount and the remainder to the employment income amount. Any other taxable income would have been taxed at 30% (the relevant percentage applicable to the tax returns pertaining to this complaint) which explains the increase in the Complainant's tax bill.

For ease of reference in respect of the working out of the tax payable by the Complainant for one of the tax years please see the examples below:

1. Before Pension Included in Assessment

Employment Income:	£26,881.00

Tax Payable under the Gross Income Based System (GIBS)

First £25,000 @ 20%:	£ 5,000.00
Remainder @ 30%:	£ 564.30
Total PAYE	£ 5,564.30

2. After Pension Included in Assessment

Employment Income:	£26,881.00
Pension Income:	£ 7,255.00
Total Assessable Income:	£34,136.00

Tax Payable under the Gross Income Based System (GIBS)

First £25,000 @ 20%:	
Pension £7,255.00	£ 1,451.00
Remaining £17,745.00	£ 3,549.00
Remainder £9,136.00 @ 30%:	£ 2,740.80
Total	£ 7,740.80
Pension Adjustment:	-£ 1,451.00
Double Taxation Relief:	-£ 202.60
(Tax paid in UK for pension)	_____
Total PAYE	£ 6,087.20

It is clear from the above exercise that including the pension amount as part of the total assessable income increased the amount of tax payable by £522.90 even though the tax applied to the pension is adjusted at the end of the assessment. To make matters worse, the Complainant had been paying tax under the Allowance Based System ("ABS") which was the better option if only the employment income had been taken into account but fell short when the pension was taken into account as part of the assessable income. Section 3A.(4) of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992 refers.

3. Before Pension Included in Assessment

Employment Income:	£26,881.00
Less Tax Allowances:	- £12,827.00
Taxable Income:	£14,054.00

Tax Payable under the Allowance Based System (ABS)

First £4,000.00 @ 17%:	£ 680.00
Remainder - £10,054 @ 30%:	£ 3,016.20
Total PAYE	£ 3,696.20

4.After Pension Included in Assessment

Allowances	£12,827.00
Deduct Pension Income:	£ 7,255.00
Total Allowances after pension deduction	£ 5,572.00

Employment Income:	£26,881.00
Less Allowances:	- £ 5,572.00
Taxable Income:	£21,309.00

Tax Payable under the Allowance Based System (ABS)

First £4,000.00 @ 17%:	£ 680.00
Next £12,000.00 @ 30%	£ 3,600.00
Remaining £5,309.00 @ 40%	£ 2,123.60
Total PAYE	£ 6,403.60
Double Taxation Relief	-£ 202.60
Total PAYE	£ 6,201.00

As can be seen by examples 3 and 4 above, when the pension income is included as part of the assessable income, the PAYE due rises by £2,504.80 because the employment income is pushed to a higher tax bracket.

CONCLUSIONS

Lack of information and communication from the ITO in relation to how her United Kingdom ("UK") pension would be taxed in Gibraltar

By the ITO's own admission, at the time when the Complainant made her enquiry (2006), a meeting should have been set up in order to discuss the circumstances of her case and measures put in place to prevent a hefty tax bill when the assessments were finally raised. For that purpose, at that meeting, the Complainant could have provided an estimated amount for her UK pension to the end of the tax year which would have enabled the ITO to work out how much PAYE would be due when the pension was included as part of the assessable income for the year. The ITO would have then been in a position to deduct higher monthly PAYE contributions from the Complainant to cover the final tax bill for the year. Not having met with the Complainant resulted in her having been presented with a tax bill of approximately £5,000- at a time when she was no longer in receipt of her employment income.

The Ombudsman therefore sustained this Complaint.

Dissatisfied with a letter received from the ITO in response to her enquiries which the Complainant found confusing and difficult to understand

The content of the ITO's letter, as can be identified by reading through the excerpt above, is indeed confusing and difficult to understand for a layperson, especially when the statement by the ITO that the pension is taxed at zero percent is repeated throughout the letter contrary to what the Complainant perceives when she receives a tax bill as a result of the pension income having been taken into account. There is also mention in the letter, of tax having been deducted in accordance with the tax code which again appears to point to the correct tax having been paid by the Complainant whilst in employment. This coupled with a zero rate of tax on the pension does again not tally with a tax bill due at the end of the assessment; neither does the comment that the pension was taxed at zero percent and that she was given a pension allowance to accommodate this. The Ombudsman found the issue of the zero rate of tax on the pension quite complicated and the only way to understand it was via the examples illustrated above. As such, in similar cases the ITO should in the first instance opt for a meeting with the person concerned which would facilitate the explanation. Once the person was satisfied with the explanation the ITO could for the purpose of good administration provide a summary of the information provided at said meeting.

Notwithstanding, as from 2012 the pension is no longer part of the assessable income if persons are also in receipt of employment income so the above examples are now redundant. Regarding the 'pension allowance to accommodate this' referred to in the letter, this means that the tax that would have been paid for the pension amount, taxed at the lower rate of tax, is credited at the end of the assessment exercise thereby making the rate of tax for the pension zero. As explained in the course of this report, taking the pension in as part of the assessable income increases the income and pushes it into a higher rate of tax which results in a tax bill at the end of the assessment.

On analysis of the above, the Ombudsman was minded to sustain the Complaint but noted that the ITO had not closed the door on the Complainant's enquiry as they offered in their letter that she contact them for any further assistance that could be provided. The Ombudsman did not sustain this Complaint.

ITO Delay in Issuing Assessments

When in 2006 the Complainant enquired at the ITO if she was liable to tax in Gibraltar on a pension she received from the UK and from which UK tax was deducted, she was informed that it was liable to tax in Gibraltar but that the tax paid in the UK would be taken into account and Double Taxation Relief ("DTR") applied at the time of assessment. From the documentation held on the ITO's file and that provided by the Complainant it appears that on the back of this response the Complainant submitted her Gibraltar tax returns on an annual basis and believed that these were being assessed by the ITO at the time of submission.

Historically, the ITO have been in arrears in respect of issuing of tax assessments and at the time of writing this report, tax assessments were three years in arrears. Notwithstanding, the ITO are within the parameters of Section 34 (1) of the Income Tax Act 2010 which empowers the Commissioner as follows:

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

The law allows for assessments to be raised by the Commissioner within six years of returns being made by individuals.

CLASSIFICATION

Sustained - Lack of information and communication from the ITO in relation to how her United Kingdom ("UK") pension would be taxed in Gibraltar;

Not Sustained - Dissatisfied with a letter received from the ITO in response to her enquiries which the Complainant found confusing and difficult to understand

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ROYAL GIBRALTAR POLICE

CASE NOT SUSTAINED

CS/1031

COMPLAINT AGAINST THE ROYAL GIBRALTAR POLICE ("RGP") AS A RESULT OF THE FACT THAT HE WAS INFORMED THAT HE WAS NOT ALLOWED TO DRIVE HIS "LIGHT QUADRICYCLE" VEHICLE IN GIBRALTAR IN THE ABSENCE OF A VALID MOTORCAR DRIVING LICENCE

COMPLAINT

The Complainant complained that upon entry into Gibraltar through the land frontier in his light quadricycle vehicle, he was stopped and informed that the vehicle could not be operated in Gibraltar without a valid motorcar driving licence

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 Spanish national and the proprietor of an "Aixam Crossover Quadricycle". On 9th June 2014 upon driving into Gibraltar, the Complainant was pulled aside by an RGP officer and informed that it was necessary for his vehicle to display number plates in the front as well as the back of the vehicle. The Complainant stated that this was not so, given the nature of the vehicle (classed as a moped) and only the back number plate was required. The Complainant's details were noted by the officer and allegedly, he was not allowed to drive into Gibraltar. The Complainant subsequently affixed a number plate to the front of the vehicle in order to be able to drive it in Gibraltar.

On a subsequent occasion some days later, the Complainant drove through the border without a problem. Once within Gibraltar, he was stopped by a police officer and allegedly informed that if he was caught driving said vehicle again without the necessary documentation (car licence), he would be arrested. The Complainant returned the vehicle to Spain that day after work and has not driven the vehicle in Gibraltar since then.

As a result of the above, the Complainant, who was the holder of a Category AM (Moped) driving licence, made enquiries at the Gibraltar Licensing Authority. The information he was allegedly provided with, was that the vehicle in question was in fact a "motor cycle" but that in Gibraltar, it was classed as a "car" due to its appearance. As a result of the information provided, the Complainant filed his complaint with the Office of the Ombudsman.

INVESTIGATION

The Ombudsman conducted the relevant legal research on domestic and EU legislation after which, he wrote to the RGP on 13th August 2014, presenting the Complaint and requesting their comments.

In his letter to the RGP, the Ombudsman made reference to Section 31(1) Traffic Act 2005 where *"a light quadricycle as defined in Article 1(3)(a) of Directive 2002/24/EC falls within the description of a Moped/category AM."* The Ombudsman set out the fact that the Directive *"applies to quadricycles, i.e., motor vehicles with four wheels having the following characteristics: (a) light quadricycles whose unlaiden mass is not more than 350kg (category L6e), not including the mass of the batteries in the case of electric vehicles, whose maximum design speed is not more than 45km/h…."*

The Ombudsman further stated that his office had reviewed the Complainant's vehicle's specifications and that they fell within the European Directive to classify the vehicle as a light quadricycle. He added that given the European Directives' applicability and incorporation into the (Gibraltar) Traffic Act 2005, the Complainant's vehicle appeared to satisfy local legislative requirements for its use on our roads.

At the conclusion to his letter, the Ombudsman also suggested a meeting with the RGP if they considered it appropriate in order to discuss matters further. The offer of a meeting was promptly accepted by RGP. At the meeting, the Ombudsman discussed the Complainant's vehicle's specifications and legislative provisions that applied to it. Upon consideration of the same, the RGP accepted the Ombudsman's interpretation of the law relating to the use of light quadricycles in Gibraltar.

It was suggested by the RGP that the Inspector of the Traffic Department would issue instructions to his department and officers within it, setting out the legal position and confirming the permitted use of light quadricycles in Gibraltar.

The Ombudsman was subsequently copied in on an internal RGP email confirming that light quadricycles (with an unlaiden weight not exceeding 350kg) could be utilised in Gibraltar by holders of a valid "AM"(Moped) category licence and that larger quadricycles (with an unlaiden weight not exceeding 400kg) could be operated by holders of a B1 category licence. Since both categories of vehicle fell within the "cycle" category, the instruction also made clear that there was no requirement for a front number plate to be displayed on either class of vehicle although rear plates must be fitted as standard.

CONCLUSION & CLASSIFICATION

The Ombudsman was pleased with the prompt and positive response by the RGP throughout this entire matter. He was also satisfied that the RGP had issued clear instructions on how to address any future issues which may arise in relation to this type of vehicle, which is not commonly encountered on Gibraltar's roads.

On the basis that this complaint related to the Complainant being erroneously informed by the RGP that he could not operate his light quadricycle in Gibraltar with an AM (Moped) licence and that number plates had to be displayed, the Ombudsman would have normally sustained the complaint. However, he had to take into account that this type of vehicle is not commonly used in Gibraltar nor is it ordinarily found on our roads driven by non-Gibraltar residents. The Ombudsman also took into account the prompt and decisive action by the RGP. On the basis of the foregoing, the Ombudsman decided not to sustain the complaint.

ROYAL GIBRALTAR POST OFFICE

CASE NOT SUSTAINED

CS/1051

COMPLAINT AGAINST THE ROYAL GIBRALTAR POST OFFICE ("RGPO") BECAUSE THE COMPLAINANT ALLEGED SHE HAD NOT HAD ANY MAIL DELIVERED TO HER FROM THE UK IN THE PAST YEAR EVEN THOUGH SHE HAD LETTERS MAILED TO HER ADDRESS AND BECAUSE SHE WAS UNHAPPY WITH THE BASKETS PROVIDED BY THE RGPO AS A TEMPORARY MEASURE UNTIL WORKS TO HER BUILDING WERE COMPLETED.

COMPLAINT

The Complainant was aggrieved because she alleged that the RGPO had failed to deliver mail that she claimed had been sent to her from the UK for the past year. She further complained that she was very unhappy with the level of service provided by the RGPO while the building she lived in was undergoing major works. The Complainant further complained that she did not think that the baskets that were provided by the RGPO to temporarily replace the letter boxes a year prior to her Complaint being lodged with the Ombudsman, were suitable as this meant that correspondence was not secure. She explained that she had contacted the RGPO via email and telephone on numerous occasions but no effective solutions had been provided by the RGPO to appease her grievance.

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 major works ("the Building Works") being carried out to the building where she lived ("the Building") since 2010, the RGPO had failed to deliver mail to her address as postal workers were not entering the Building due to health and safety concerns.

The Complainant first complained to the RGPO in September 2012 and October 2012 via telephone calls. By late November 2012 the Complainant once again called the RGPO and informed them that she had not received any mail from the UK since October. The RGPO Operations Director wrote to the Complainant apologizing for any inconvenience but further explained that as far as the RGPO was concerned, they had experienced no difficulties in receiving mail from the UK or in delivering post to the Building at that time under the current arrangements. The Complainant was also informed that RGPO had been advised by the Housing Authority ("HA") that new letterboxes would be placed within the Building to ensure mail was delivered to all the residents therein.

In March 2013, due to the fact that the new letter boxes had not been provided, the Complainant directed herself to the RGPO via email.

Six months later, the Complainant felt obliged to complain to the RGPO once more. Instead of providing new letterboxes as had been stated by the RGPO in their November 2012 letter, mail baskets had been placed on every floor where the mail would be deposited by the postal workers. The Complainant noted that since the Building Works had commenced, the postal workers were failing to go up to the different floors and they were simply depositing all mail in the ground floor basket. The RGPO confirmed that that was indeed the case while building works were being carried out in order to ensure the safety of its workers. It was further stated by RGPO that their Operations Director had attended upon residents of the Building with a Housing Officer on two occasions, to explain that new letter boxes would be affixed but only at the conclusion of the Building Works to ensure that these were not damaged.

By January 2014 the Complainant became highly frustrated as her family in the UK had been posting mail to her and she was not receiving it at her address. She was further aggravated when she requested a copy of her birth certificate in October 2013 from the Newcastle registry in order to renew her identity card and this had not reached her either. In a final attempt to voice her concerns, the Complainant wrote to the RGPO urging them to action her grievance. The Complainant explained she was in desperate need of her birth certificate in order to renew her ID card and subsequently obtain a replacement Health Card. According to her, the mail baskets had allegedly become a dumping ground for letters. After the installation of new mailboxes at the entrance to the Building, the Complainant further informed the RGPO that these new mail boxes contained no addresses and the residents had not been given any keys for their use. The RGPO in turn, advised the Complainant that the mail boxes had been erected by the HA and once this task had been finalized, the HA informed the RGPO of this. RGPO subsequently advised the tenants to the Building that these had been installed.

The RGPO explained that the mail boxes were not their responsibility but the HA's. They advised the Complainant that following customer observations two years previously they had already taken measures to address the problems encountered as a result of the Building Works by placing boxes in the different floors to expedite deliveries. The RGPO also informed the Complainant that since her communication, management had visited the Building and they had noted that the new mail boxes had been numbered. The HA (with whom responsibility for the mailboxes rested), had also informed RGPO that keys had been distributed to individual residents.

The Complainant however was not satisfied with the response provided by the RGPO as she was still missing her birth certificate. She replied to the RGPO asking them to provide her with an explanation as to why she had not received any mail from the UK including Christmas mail sent to her by her family. The RGPO replied, stating that they could not comment on any specific item of mail unless it had been sent via some form of "track/trace" mechanism i.e., with a postal services trackable barcode. Dissatisfied with the RGPO's explanation and service, the Complainant brought her complaint to the Ombudsman on the 13th January 2014.

INVESTIGATION

The Ombudsman's initial view was that the Complainant should formally set out her grievances to the RGPO in a final letter before accepting the complaint. However, as the Complainant had another ongoing case against the HA, the Ombudsman and his Senior Investigating Officer visited the Building to inspect the Complainant's flat. They observed that the tenants' mail was accumulated in an unsecured basket at the entrance to the Building, covered in cement and dust. The Ombudsman in this instance saw fit, in the exercise of his discretion, to formalize the Complaint and investigate accordingly, without any further action from the Complainant.

The Ombudsman began his investigation by presenting the Complaint to the RGPO on the 19th February 2014 requesting their comments. The RGPO Operations Director subsequently attended upon the Ombudsman and presented him with an outline of the Complainant's communications with the RGPO together with their replies. During the course of his investigation, the Ombudsman was able to determine that the Building had suffered a state of disrepair before the start of the Building Works. Doors and letterboxes were often not numbered and/or were damaged, and occupants changed frequently. The RGPO had experienced difficulties delivering there in the past. On occasion, varying address formats for the Building had also been used.

The RGPO who were most helpful and proactive during the investigation, provided the Ombudsman with a report setting out the problems faced by the Postal Workers who delivered to the Building. This included instances where postal workers could not safely access the Building due to the Building Works. The report also highlighted the fact that the responsibility for providing and maintaining the mail boxes rested with HA and not the RGPO, who served only as an "unofficial technical advisory entity" for this purpose.

The Ombudsman was able to confirm that it was indeed HA whom as landlord of Government properties was responsible for the authorization/positioning of letter boxes. RGPO Operations Director also explained to the Ombudsman that further to various onsite meetings between himself and HA at the Building, he had, based upon the information which had been provided to him by HA and pursuant to the Complainant's letter of complaint dated March 2013, advised the Complainant that HA had informed him that they would affix new post boxes at the entrance to the Building but only after the Building works had been finalized. This would ensure that the new boxes would not be damaged by workers during the course of carrying out the Building Works. However, the Ombudsman was able to determine that as an interim measure, the RGPO Operations Director had exceeded RGPO's responsibilities and together with a Housing Officer, had personally attended upon residents' flats to explain the situation to them. According to RGPO, HA were adamant that the new letterboxes would not be installed until the completion of the Building Works. The Ombudsman was further informed that the tenants present were, nonetheless, far from keen to enter into an arrangement by which they would collect their mail from the Sorting Office at 45 North Mole Road. An interim solution agreed by all parties present was for the RGPO to provide some form of communal delivery box at each of the Buildings' floors, pending completion of the Building Works.

It should be noted that the Ombudsman was also informed that not all tenants were advised of this since not all of them were found to be within their properties at the time.

The RGPO Operations Director also showed the Ombudsman evidence of the fact that RGPO had been monitoring the Complainant's mail since the complaint had been raised. It was, by conducting this exercise that RGPO could determine that mail sent to the Complainant from the UK had not been received in Gibraltar for onward delivery by RGPO and therefore, there was no mail "held up" at RGPO Gibraltar.

With regard to the major works causing a disruption of mail delivery services, the RGPO advised that on many occasions Postal Workers were not able to access "parts or all of the building and therefore post was retained (and could be collected from) the Sorting Office [as referred to above] until advice was received from Housing/ Environment to the effect that deliveries could be recommenced"

The Ombudsman was informed that the HA did in fact seek advice from the RGPO regarding the size and type of letterboxes to be installed after the completion of the works (although RGPO possessed no legal mandate to provide such advice). Once the letterboxes had been installed by HA and the RGPO had been instructed to remove the baskets and deposit any remaining mail in the new letterboxes, tenants were informed of this. The Complainant was specifically informed of the new position by RGPO, in reply to an email she had sent RGPO on 13th January 2014.

Finally, the RGPO further stated that it was their opinion that they had taken all reasonable steps in order to assist the Complainant and address her grievances. This included offering her alternatives in order to collect her mail and, as an added measure (in response to the complaint received), they were continuing to monitor all of the Complainant's mail in order to avoid a repetition of the problems she had experienced in the past.

CONCLUSION

The Ombudsman was aware of the fact that the Building Works being carried out were substantial and although he was not satisfied with the interim measure (which persisted for a considerable amount of time) of placing open baskets to replace the previously existing letterboxes (regardless of how insecure said letterboxes may have been in the past), the Ombudsman was unable to attribute any culpability to RGPO for this since ultimately, responsibility for the repair and provision of adequate mailboxes rested with the HA as landlord.

However, it did appear to the Ombudsman that while ensuring RGPO postal workers' safety in delivering mail was a paramount consideration and he recognized that joint attempts were made by both HA and RGPO to offer the Complainant and other residents of the Building alternatives for the collection of their mail while Building Works continued, general issues of safe accessibility to points of delivery by postal workers and in equal measure, the collection of tenants' mail, were not fully satisfactory.

The Ombudsman was concerned that the matters raised and the difficulties experienced by all parties to this Complaint could become widespread within other local areas, particularly the old/upper town where there are often buildings in states of disrepair thereby hampering access.

In consequence, aware of practical limitations and in the spirit of reasonableness, the Ombudsman recommended that the HA, RGPO and the Gibraltar Regulatory Authority ("GRA") (the latter being the Post Office Regulator since July 2013) work together wherever possible to ensure that the rights, responsibilities and obligations of the HA as landlord, the RGPO as service provider and tenants as service users, are followed to the fullest extent possible.

CLASSIFICATION

In relation to the Complainant's grievance that she had not received mail from the UK for a year: Not Sustained

Ombudsman's Note: The Ombudsman understands that the RGPO can only track post which is dispatched via a trackable service; e.g., mail which is Registered or Signed for. This fact was fully explained to the Complainant by RGPO and she was also advised on the steps she should take in order to address the issue causing her concern. It is as a result of this that the Ombudsman found himself unable to sustain this part of the Complaint. However, the method of mail delivery (i.e., that the mail was being insecurely deposited at the entrance of the building in an open basket whilst Building Works were being carried out), may have in the Ombudsman's mind, at the very least, contributed to the loss (if any) of the Complainant's mail. Nonetheless, RGPO was not ultimately responsible for providing letter/post boxes and for this reason, could not be held accountable for this.

In relation to the Complainant's grievance that the baskets provided by the RGPO as a temporary measure until works to her building were completed were not fit for purpose: Not Sustained

As explained, the specific matter being complained against did not fall within the competence of RGPO although the Ombudsman did question the extent of RGPO as "technical advisory entity".

The Ombudsman will be making representations to the HA to make them aware of this complaint and to ask them to address situations of this nature, if any arise within any other Government owned building in Gibraltar.

OMBUDSMAN'S SUGGESTIONS

The Ombudsman suggested that HA, RGPO and GRA work together to ensure that wherever possible, all reasonable steps are taken to guarantee that mail which is available for distribution is safely delivered by postal workers and easily accessed by tenants. The Ombudsman will make copies of this report available to HA, RGPO and GRA, with a view to allowing the respective bodies to consider any future action.

SOCIAL SECURITY (DEPT OF)

CASE PARTLY SUSTAINED

CS/1035

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY ("DSS") IN RELATION TO A CESSATION OF SOCIAL SECURITY (WELFARE) PAYMENTS PAID TO THE COMPLAINANT FOR HERSELF AND HER CHILDREN

COMPLAINT

The Complainant who was profoundly deaf and categorised as "disabled", complained that on or around the beginning of October 2013 she was verbally informed at the DSS counter that she would no longer be receiving social security payments in the amount of £225 a fortnight, for the benefit of herself and her three young children. The Complainant was aggrieved because this was communicated to her verbally and without prior notice. She was anxious about the decision itself and at the lack of arrangements made by the DSS in order to accommodate her to ensure that she had been able to understand the decision and the reasons for it. The Complainant strongly disagreed with the cessation of payments and although she had been informed by DSS that there was no appeals process, she was of the view she should have been given a written explanation of why payments were going to be discontinued. Finally, the Complainant wanted to know how the DSS defined a "relationship".

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 and her parents explained to the Ombudsman that she attended the DSS counter service on the first week of October 2013 and was given a questionnaire which she was asked to complete in order to update her personal circumstances. She explained that she ticked the "relationships" section and qualified her position by adding the word "dating" since according to the Complainant, she was not in a consolidated relationship. There was no information on the form as to the reason why this information was been requested or what the repercussions would be in ticking that box.

Subsequently, on the 9th October 2013 the Complainant was verbally informed that as a result of the information which had been provided, her welfare payments would be stopped. The Complainant explained to the Ombudsman that at an interview with DSS, she was able to explain that her boyfriend had his own house, that they did not cohabit and that he did not contribute towards the Complainant, her children or their home expenses. She also stated that he was not the father of her children.

The Complainant informed the Ombudsman that she had been advised that the decision to withhold payments had been made because according to the DSS's interpretation of the information provided, the Complainant was in a relationship. She was however, asked to obtain a medical report from her GP stating whether she was "unfit for work". DSS informed her that if this was the case, the payments would be restored. The Complainant subsequently made her way to her doctors' to obtain the letter, only to be allegedly informed by DSS afterwards, that the decision to withhold her benefit payments would stand due to the fact that she was in a relationship.

The Complainant informed the office of the Ombudsman that she was extremely upset with the decision reached by DSS and with the way in which she had been informed. She alleged that this caused her great anxiety because she is profoundly deaf and lip reads. No arrangements had been made by DSS to accommodate her disability or to ensure that she understood the decision.

The Complainant also stated that she explained to the clerk at the DSS counter that without the payments she would not be able to provide for her children. The clerk then allegedly replied that if this was the case, she should try and find a job. The Complainant further explained that she left the DSS upset and shaking as these comments were made without any acknowledgment of her disability or the fact that she was being given two weeks' notice to supplement the income which up to that time, she had heavily relied upon.

The Complainant then asked her parents to check the position with the DSS in the event that she had not understood correctly due to her disability. Her parents phoned the DSS and it was confirmed to them that their daughter would not be receiving any further social assistance payments as from 23rd October 2013. The Complainant's father then requested a meeting at DSS to complain about the issue and to seek further clarification on the matter.

Both the Complainant and her parents attended the DSS on the 15th October 2013 where they were attended to by senior staff. At the meeting, they were informed that payments were made on a discretionary basis and that the DSS had reached the decision that their daughter was no longer entitled to receive them on the basis of the information provided by her, that she was in a relationship. The Complainant's parents enquired whether the decision had to be approved by a board and whether there was a procedure to appeal the decision. The alleged response made was that DSS followed internal policy since there was no legislation in place covering the matter *(the Ombudsman can confirm that this is the position*). They were also informed that such decisions were made by the DSS Head based upon facts provided by applicants, and that there was no appeal mechanism in place. When they allegedly asked for clarification on how DSS defined a relationship, they were informed that the decision taken stood.

The Complainant felt that staff at counter services were not sensitive to the fact that she could not hear what they were saying and that she supposedly required extra assistance in order to fully understand what was occurring. She was also of the view that being profoundly deaf, there are a limited number of jobs which she could undertake particularly in Gibraltar's reduced job market. The Complainant expressed to the Ombudsman how she felt intimidated, bullied and harassed by DSS counter staff who according to her were insensitive to her special needs. She also expressed her discontent with the fact that at the 15th October meeting, no effort had been made by DSS to ensure that there was a sign language interpreter present, even though they were fully aware of her disability. As a result, the Complainant stated that she could not put into words the feelings of humiliation she felt whilst at that meeting and how no attempts were made to include her in the discussions. The Complainant felt degraded and demoralized.

The Complainant wanted the DSS to appreciate that there are people with disabilities that require special assistance, particularly in counter services. Extra effort should be made in meetings and help should be provided for completing forms. It is her aim for special measures to be implemented to assist her and others like her in future, so that they do not have to rely on their parents or other persons as a result of the DSS's inadequacies. The Complainant also seeks an apology from the DSS for the treatment she had received and a requirement that any future decisions of such importance be made in writing, with notice if necessary, and with reasons accompanying said decisions.

The Complainant lodged her complaint with the Office of the Ombudsman on 17th October 2013.

INVESTIGATION

The Ombudsman presented the complaint to DSS on 24th October, requesting their comments. The Complaint was fourfold and set out as follows:

Unhappy that she was verbally informed on 10th October that DSS would not be paying her any more welfare payments of £225 a fortnight;

She was informed of this verbally at the counter and allegedly without any prior written notice. The Complainant was anxious about this decision especially as she was profoundly deaf and no arrangements had been made to accommodate her disability to make sure she understood what was occurring and the reasons for it;

The Complainant did not understand why she was encouraged to obtain a doctors letter when this did not alter DSS's decision;

That the Complainant strongly disagreed with the decision reached and even though she was informed that there was no appeals process in place to challenge the outcome, she believed that she was entitled to a written explanation as to why her social assistance payments had been stopped. The Complainant also wanted to know how according to DSS, her relationship had a bearing on the benefits she received.

A substantive reply was received shortly afterwards.

For ease of reference, the replies are set out chronologically as follows:

1. The DSS stated that the Complainant was interviewed on 10th October 2013 before the relevant social assistance payment was made, as a result of her declaration that she was in a relationship. It appeared that the Complainant had been in a relationship for approximately five years. DSS pointed the Ombudsman to section 12(3) of the Social Assistance Arrangements which stated that "the income and capital of an applicant's spouse or partner is to be treated as an income and capital of the applicant notwithstanding that the couple or partners are not living in the same household." In view of this, the DSS head of department considered that "a relationship of five years is a serious relationship and certainly more than a dating relationship". As a consequence, future payments to the Complainant were cancelled because her partner's income was "taken into account."

2. DSS explained that it is not standard practice to issue prior written notice in instances where it is known that the person is attending the department to receive his/her benefit payment. It was stated that the interview with the Complainant was held in a private cubicle on a one-to-one basis as is always the case. It was also stated that the Complainant had been receiving benefit since 2003 and during that period, DSS staff had met her on numerous occasions without there being any communications issues arising. DSS further alleged that in fact, the Complainant had in the past mentioned that she had no problem in being able to lip read the person addressing her.

3. The Complainant was asked to obtain a report from her doctor as the previous medical report from the doctor was based upon the Complainant's condition during a six month period. According to the DSS, the doctor's report (which the Ombudsman had not seen), highlighted the Complainant's medical condition in relation to the possibility of her gaining suitable employment. DSS explained to the Ombudsman that the Complainant was advised, under no pressure whatsoever, that she could perhaps seek some sort of sheltered employment under the Government of Gibraltar's "sheltered employment scheme". The DSS manager was explicit in stating that his staff were sensitive in their dealings with persons suffering disabilities and the suggestion to consider seeking employment is made with a view of trying to integrate disabled people into society. Reference was made to the fact that the Complainant had been in employment at a local bank between 1991-1995.

4. In their letter to the Ombudsman, DSS stated that they had fully explained to the Complainant and her parents why her social assistance payments had been stopped. By her own admission, the Complainant declared that she was in a relationship with her boyfriend and in situations such as these, DSS explained that they have to apply the provisions of the Social Assistance Arrangements. They emphasised however that the Complainant had not been targeted or treated differently to any other person in circumstances similar to hers. They stated that there had been parallel cases to that of the Complainant and that those applicants had been treated in exactly the same manner.

Further to receipt of the DSS letter, the Ombudsman attended a meeting with the DSS Head for further clarification of the above issues. Although no view was formed by the Ombudsman at that stage of the procedures adopted by DSS or the actions taken by them in relation to this complaint, he was satisfied with the explanations provided.

Ombudsman note

Towards the end of October 2013, the Ombudsman was invited to attend the first ever British sign language course held in Gibraltar. It was particularly relevant to this complaint.

In summary, it was established that employers have a duty to ensure that "reasonable adjustments" are in place to facilitate the service provided to deaf people. The deaf (disabled) person does not want to be patronised; only to be treated as an individual with equal rights to access basic services.

Front line staff in all services therefore need to be aware of the need for different communication skills and customer care, to enable the disabled service user to access the service provided independently (with no help from family or friends).

With this in mind, did the DSS act reasonably towards the complainant?

CONCLUSIONS

The Ombudsman carefully considered both the Complainant's grievances and the measures adopted by the DSS in relation to the fourfold complaint under investigation. His views were as follows:

1. **In relation to the complaint of the cessation of payments being communicated verbally**-When applications for Government funded benefits are made by applicants, it is a basic requirement that forms be filled out. Once consideration is given to a specific application, the outcome (i.e., whether the applicant is entitled to benefit or otherwise), is communicated to the person in writing. Additionally, any change in an applicant's circumstances (as was the case here- this led to the DSS's receiving the information that the Complainant was in a "relationship") must also be submitted in writing to the DSS. It logically follows therefore, despite DSS's statement that decisions are communicated verbally in instances where a person attends DSS offices to receive payments, that any changes or termination of social assistance payments should be made formally in writing in accordance with good administrative practice. This method would not only facilitate understanding for the individual concerned (irrespective of whether he or she suffers from a disability), it would also improve the accuracy of DSS's files and records on specific cases.

2. **The lack of arrangements made by DSS to accommodate the Complainant's specific needs arising from her disability**- Although there is a statutory duty on Government bodies to make "reasonable adjustments" to cater for disabled persons, in this instance, the Complainant was well known to the department. The objective view would be that given the fact that the Complainant had been receiving benefit for ten years, that she had previously confirmed that she was able to lip read and that she had met and communicated with counter staff on numerous occasions over such an extended period without having ever complained of communication problems, it was not unreasonable for the DSS to assume that in this particular instance, the Complainant required special assistance. The Ombudsman is of the view that matters would have been altogether different if the Complainant would have requested such assistance for whatever reason, and that the request was denied or dismissed by the DSS.

3. **The Complainant not understanding why she was encouraged to obtain a doctor's letter when this would not alter the decision-** The Ombudsman finds himself unable to make a determination over this aspect of the complaint. The Complainant explained how she was allegedly informed that if she obtained said letter on her unfitness to work, the payments would be restored. Conversely, based upon the explanation provided by DSS, the purpose of the letter was, if circumstances allowed it, to assist the Complainant in seeking sheltered employment under the relevant Government scheme, since the decision to stop payments had already been made and would stand.

4. **The Complainant's disagreement with the decision reached; the lack of appeals process to challenge said decision and the DSS's definition or interpretation of a "relationship"-** It is obvious to state that the Complainant was aggrieved with decision reached to stop her social assistance payments and with the lack of an appeals process to challenge this. However, the Ombudsman has determined that the DSS was simply following their established internal policy and criteria (Social Assistance Arrangements). The operation of this policy and criteria was triggered by the information provided by the Complainant that she was in a relationship/dating. According to the DSS Head, a relationship of five years was serious enough to be classed as one beyond "dating" and, as matters stood, he was perfectly entitled to reach this view. Although the Ombudsman would agree with this assumption from an objective standpoint, it can also in the Ombudsman's mind, only be described as unfair at the very least, for the DSS to expect the partner of any applicant to financially support his/her partner and their family, without closely examining the nature of their relationship. In the Complainants case, she did not live with her boyfriend, he was not the father of her three children and according to her, he did not support her or her family financially. However, in pursuance of their internal policy, the DSS saw fit to decide that the Complainant was being provided for financially.

CLASSIFICATION

Sustained in part in relation to the complaint of the cessation of social assistance payments being communicated verbally, and in relation to the objective criteria applied to the interpretation of the complainants "relationship" in reaching the decision to stop payments, without the DSS having closely examined or scrutinised the nature of the Complainant's relationship, irrespective of its longevity.

RECOMMENDATIONS

That the DSS provide applicants/those in receipt of benefit with written confirmation when social assistance payments will be terminated together with concise but clear reasons for the decisions.

That the internal policy on eligibility of social assistance payments for those applicants who embark on a relationship, be reviewed and assessed on the individual merits of each case.

UPDATE

As a result of this investigation and at the time of drafting this report, DSS confirmed to the Ombudsman that the issues raised by the complaint had been brought to the relevant Government Minister's attention for consideration. The decision had been reached to continue making social assistance payments to the Complainant until such time as the Government made a declaration on the DSS's internal eligibility policies for those recipients of benefits in relationships.

CASE SUSTAINED

CS/1059

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY ("DSS") AS A RESULT OF THE DELAY EXPERIENCED IN CONVENING A MEDICAL BOARD ("THE MEDICAL BOARD") FOR A FINAL ASSESSMENT OF THE COMPLAINANT'S ALLEGED MEDICAL CONDITION.

COMPLAINT

The Complainant was aggrieved due to the fact that over two years had elapsed since the Medical Board had provided the Complainant with a provisional medical assessment on his case. However, despite the lapse of time, the Medical Board had not reconvened to examine the Complainant and subsequently provide a final assessment.

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 he suffered an injury at work in November 2000. In February 2012, he applied to DSS for disability benefit as a consequence of the injuries he had sustained in the year 2000.

The Medical Board was convened on 22nd March 2012. After consideration of the Complainant's case, the Complainant received The Medical Board's interim decision by way of letter, some days later. The letter highlighted the medical findings and further stated that the loss of faculty that had resulted from the accident had been provisionally assessed at nil percent for twenty months. Essentially, this meant that at the time of the assessment, the Medical Board had concluded that for a period of twenty months from said date, no loss would be attributable. The letter finalised by stating that the Complainant would have to attend a re-assessment at a later date and that he would be informed in due course of the date and time when he should attend the next Medical Board.

Dissatisfied with the outcome, the Complainant made enquiries as to the possibility of appealing the decision. However, he was informed that since the decision was not final, there was no right of appeal.

In January 2014, the Complainant obtained a medical report from the Gibraltar Health Authority which stated that he suffered from degenerative spinal disease. The letter stated that the condition was chronic and that it caused the Complainant lower back pain. This prevented him from sustaining employment. Reference was also made to the fact that as a result, the Complainant could not financially support his numerous family.

On the 20th January 2014, the Complainant wrote to DSS enclosing the medical report and enquiring as to his eligibility for disablement benefit, since twenty two months had elapsed from the date upon which the provisional assessment had been made. Given that no reply was received to his letter and that a medical board for a final assessment had not been convened, the Complainant filed his complaint with the Ombudsman.

INVESTIGATION

The Ombudsman attended a meeting at the DSS offices in which he presented the complaint and made enquiries as to the procedure involved in the Complainant's case. Pursuant to some discussion, it was agreed at the meeting that the DSS would provide the Ombudsman with the factual background to the Complainant's case in writing.

A prompt and substantive email to the Ombudsman followed. The email set out the chronological background held on DSS's file. It was explained how the Complainant had sustained an injury at work on the 3rd November 2000 and that he had been in receipt of injury benefit during the period 4th November 2000 to 20 April 2001.

On the 8th February 2012, the Complainant applied for disablement benefit as a consequence of the injuries sustained. As a result, the Medical Board was convened to which the Complainant attended on 22nd March 2012. After being examined, DSS explained how the Complainant was assessed at nil percent. This meant that the Medical Board had determined that the injury sustained at work had not resulted in a loss of physical faculty. Nevertheless, the assessment was deemed to be provisional and was to be re-assessed after a period of twenty months with effect from the date upon which the Complainant had applied for the disablement benefit i.e., 8th February 2012. Ultimately, the effect of this timeline meant that the Complainant had been due for re-assessment by the Medical Board, as from 7th October 2013.

The Ombudsman deemed DSS's response helpful and frank, in that it went on to state that the DSS had been experiencing difficulty in setting up medical boards. It was explained that medical practitioners within the state medical system (Primary Care Centre), no longer wanted to form part of the Board, as they felt that doctors undertaking such a role should be trained in occupational health.

According to DSS, doctors were concerned that they did not possess the requisite skills, training or qualifications to undertake the necessary functions and consequently, felt uncomfortable as primary care practitioners, to provide advice in the required area of expertise. It was explained how attempts were now being made in trying to appoint private medical practitioners to form part of the Medical Board. As a final point, it was expressed that when appointed, the Board would re-assess the Complainant and if they determined that he was entitled to benefit, the allowance would be paid retrospectively from the date from which he was due to be re-assessed, that being the 7th October 2013.

The Ombudsman, replied to DSS, thanking them for their prompt and timely reply. However, in order to assist the conduct of the investigation, he requested further information on various aspects. He sought elaboration on DSS's statement that "the department was trying to appoint private medical practitioners to form part of the [Medical] Board."

In addition, he requested a more detailed explanation of the steps taken to achieve that aim, given, as the Ombudsman put it…"the serious need to have a properly constituted board to serve the interests of citizens requiring [that] service." The Ombudsman also enquired on the last date that the Board had convened.

In keeping with current practice insofar as their dealings with the Ombudsman are concerned, a prompt email reply was received from DSS.

It was explained that given the reluctance of doctors from the Gibraltar Health Authority to form part of the Medical Board, DSS had held high level meetings with GHA executives in an attempt to find a workable solution to the problem. It was decided that the best option to pursue was to engage private medical practitioners to undertake the role. In consequence, DSS had contacted two private doctors who had expressed an interest and meetings to discuss their appointments were imminent. If the practitioners re-asserted their commitment, the necessary steps would be taken to formalise their appointments to the Board.

In answer to the Ombudsman's query relating to the last time that the Medical Board had convened, it was confirmed that the last meeting had taken place on 13th November 2012.

Three months elapsed from the date of the last exchange in correspondence between DSS and the Ombudsman before the Ombudsman wrote to them again requesting an update on the Complainant's case.

In their reply, DSS confirmed that there had been some developments although progress had been relatively slow logistically due to reasons beyond their control.

It was explained that the drafting of a service level agreement to be entered into between the participating doctors and the Government of Gibraltar, had taken longer than anticipated. There had also been difficulties with identifying a suitable venue to hold meetings and with data protection issues.

The current position was that once written agreement was received by the doctors and the Medical Board was ready to be formalised and constituted, a timetable would be set up for the review of the backlog of cases in date order. DSS informed the Ombudsman that the Complainant's case was in the third batch of cases awaiting review. DSS was not, despite their efforts, in a position to provide the Ombudsman with a tentative review date on the Complainant's case.

CONCLUSIONS

The Ombudsman was grateful to the DSS for their cooperation and for the timely provision of information in relation to this complaint.

Despite DSS's explanations and its *bona fide* intentions regarding its efforts in making; what to the Ombudsman appeared to be genuine attempts to "restore" the Medical Board, the inevitable conclusion to this case was that the DSS failed the Complainant. Irrespective of the merits of the Complainant's case, the Ombudsman was of the view that the DSS failed him in two respects:

1. The Complainant was not issued with a reply to his January 2014 letter where he enclosed the GHA medical report and in which he alleged that he was unfit to work as a result of his injury and therefore in need of income and,

2. In being unable to offer him an appointment for the Medical Boards' final assessment on his condition, to which the Complainant had been rightfully entitled as from 7th October 2013.

Section 35 of the Social Security (Employment Injuries Insurance) Act provides at subsection 1, that… *"there shall be constituted a Medical Board, which shall consist of two or more medical practitioners appointed by the Minister, one of whom shall be chairman."*

Although the Ombudsman appreciated the attempts made by DSS in constituting the Medical Board and the difficulties encountered in doing so, there remains an inescapable statutory obligation for the Board's continued existence.

By virtue of this and as a result of the fact that to the Ombudsman's knowledge, no Board has been convened since November 2012, the Ombudsman had no option but to sustain the complaint.

CLASSIFICATION

Sustained

OMBUDSMAN NOTE

Upon the drafting of this report, the Ombudsman met with DSS to discuss progress. Upon review of the Complainant's file, it appeared that the Complainant's January 2014 letter to the DSS had never been received by them. The Ombudsman therefore made a copy available to DSS. A reply was issued to the Complainant soon afterwards. At the meeting, the Ombudsman also received information that DSS had successfully reconstituted the Board in May 2014. The first Board meeting was held thereafter, on 26th June 2014. Given the amount of matters listed for the Board to consider, a further sitting was convened for 21st August 2014 where other cases were considered. DSS assured the Ombudsman that the Complainant's matter would be reviewed by the Board in the September/October sitting (date to be confirmed).

4
Statistical Information

4.1 VOLUME

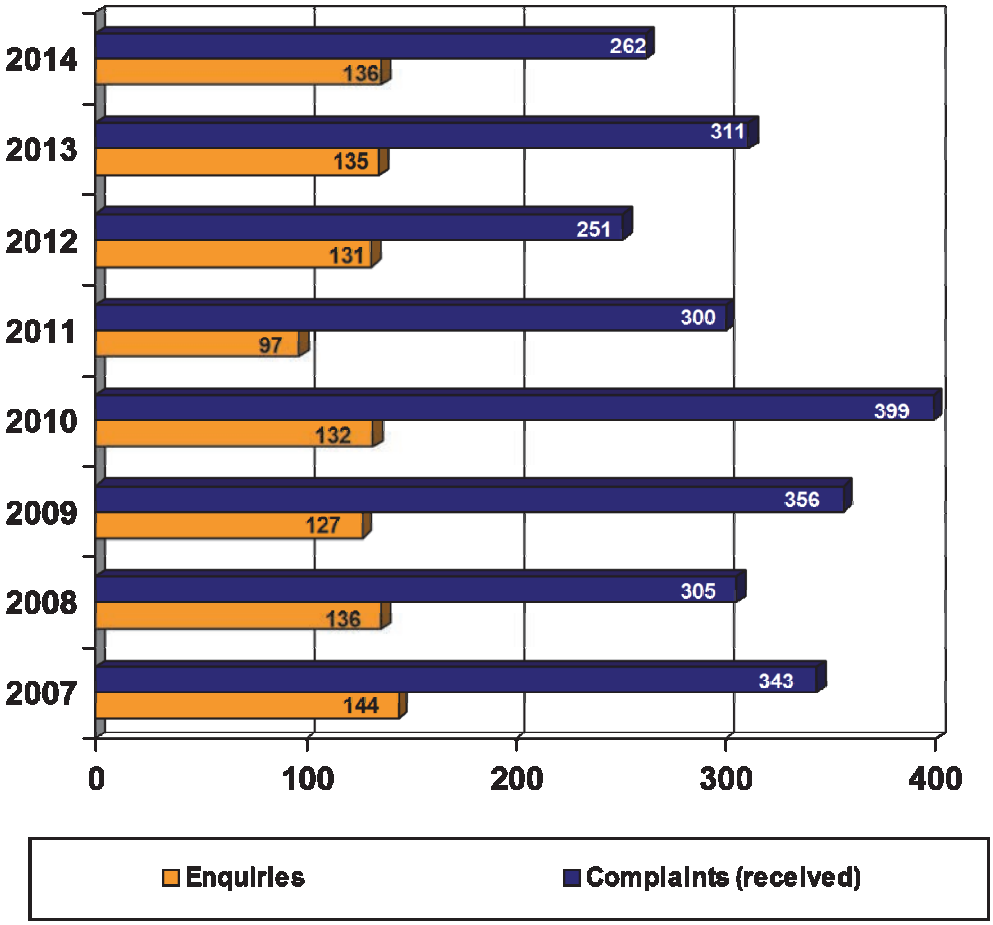
Complaints received, completed and current by month – 2013 & 2014

Table 1	2013			2014		
	Received	Completed	Current	Received	Completed	Current
			72			76
January	39	29	82	19	15	80
February	39	41	80	31	28	83
March	14	17	77	30	29	84
April	19	25	71	26	28	82
May	15	15	71	17	16	83
June	21	22	70	20	18	85
July	16	15	71	19	27	77
August	22	21	72	30	28	79
September	30	38	64	19	19	79
October	60	44	80	26	32	73
November	25	22	83	15	20	68
December	11	18	76	10	18	60
TOTAL	311	307		262	278	
Enquiries		135			136	

This year, we received 262 Complaints in our office, a decrease of 49 Complaints compared to 2013, where we received 311 Complaints. Taking into account the active complaints brought over from the previous year, a total of 278 Complaints were completed by the end of this year which left 60 Complaints open by the end of 2014. This year we recorded 136 Enquiries, an increase of 1 compared to 2014, when we received 135.

4.1 (CONT)….

Chart 1 - Breakdown of Complaints and Enquiries received from 2007 to 2014



This year we have received 262 Complaints and 136 Enquiries.

From the 262 Complaints we received, 57 were against private organisations that fell outside the Ombudsman's jurisdiction. This left a total of ***205*** Complaints received against government departments, agencies and other entities which were within our jurisdiction. (*See Table 2 Page 104*- ***Complaints/Enquiries received by departments/entities in 2014***).

4.2 GOVERNMENT DEPARTMENTS AND OTHER ENTITIES

The trend of Complaints has continued similar to previous years. The Housing Authority (81), the Civil Status and Registration Office (22) the Employment Service (20), the Department of Social Security (16) the Income Tax Office (9) the Gibraltar Health Authority (9) and the Housing Works Agency (9) again top the list attracting the highest number of Complaints but in different ranking order to last year.

Table 2 - Complaints/Enquiries received against departments/entities in 2014

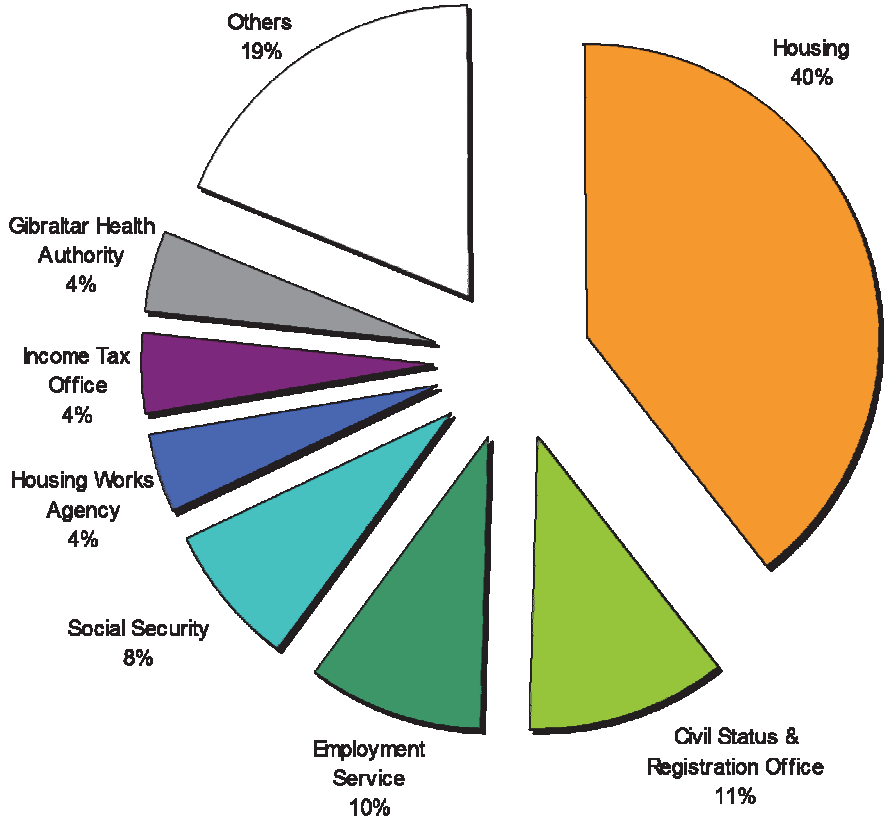
Dept/Agency	Enquiry	Complaint	Dept/Agency	Enquiry	Complaint
Attorney General's	-	2	**Housing Works Agency**	1	9
Border & Costguard Agency	-	1	**Income Tax Office**	6	9
Care Agency	3	5	**Land Property Services**	-	2
City Fire Brigaade	1	-	**Magistrate's Court**	-	4
Civil Status & Registration	18	22	**Prison Service**	1	1
Customs	-	1	**Procurement Office**	-	1
Development & Planning Com	-	1	**Reporting Office**	-	1
Education & Training	3	2	**Royal Gibraltar Police**	2	7
Employment Service	5	20	**Social Security**	7	16
Environment	1	1	**Technical Services**	2	-
Environmental Agency	1	1	**Traffic Commission**	-	1
Gibraltar Electricity Authority	-	2	**Town Planning & Building**	-	2
Gibraltar Health Authority	5	9	**Transport & Licensing**	1	1
Gibraltar Post Office	-	3	**Treasury**	1	-
Housing Authority	55	81	**TOTAL :**	**113**	**205**

As in previous years complaints relating to housing matters (Housing 40%) continue to be the most prevalent form of complaint lodged in our office, since they amount to nearly half of the load of complaints that the Ombudsman investigates. The Ombudsman believes that once the new Government Housing Schemes are completed they will significantly reduce the volume of housing complaints that are lodged in our office as Housing applicants on the government housing list will be offered flats through the Housing Scheme and also some successful applicants of those Schemes will as well vacate their government owned flats and allow the Housing Authority to allocate them to other applicants further down the housing waiting list. The Ombudsman feels that there will be a sort of domino effect. This will undoubtedly reduce both the housing waiting lists and complaints of delay on allocations, whilst the Housing Authority will enjoy a breath of fresh air which the Ombudsman points out could be the pivotal point for them to ascend to a new level in providing a better quality of service to its users. The future looks rather optimistic.

4.2 (CONT)….

This year there has been 22 complaints against the Civil Status and Registration Office, 4 complaints less than in 2013 but yet they are second in the order of the most complaints we have received. Delay in having applications for naturalisation processed is one of the most common complaints that we receive against this government department.

Chart 2
Complaints received by departments/entities in 2014 (%)



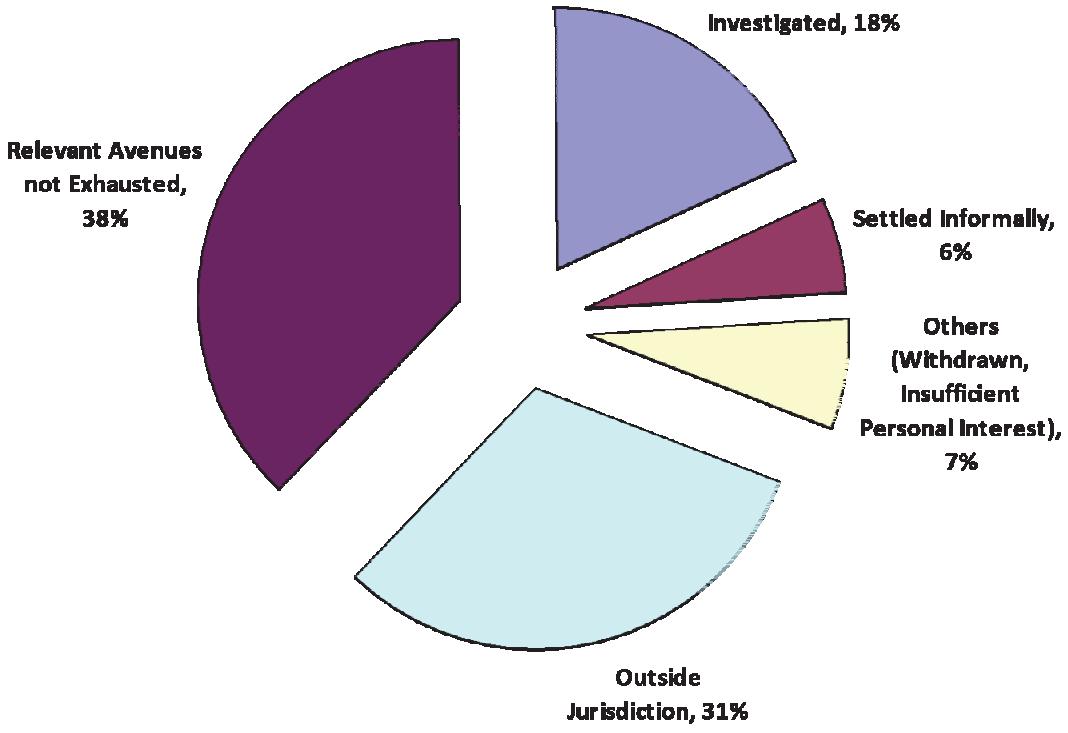
We also have to highlight complaints against the Employment Service which even though there have been 3 less than the previous year the volume of complaints has remained consistent throughout 2014 making it the third's most government department complained against. The most common complaint that members of the public usually lodge at the Office of the Ombudsman regarding employment matters is usually the lack of information provided by the Employment Service and the non-reply to letters or emails. The Ombudsman continues to encourage all government services to be more proactive when dealing with the public and hopes for improvement particularly within the Ministry of Employment considering that since 2013 the volume of complaints have increased substantially compared to previous years. Adding the volume of complaints for the last two years (***43****; 23 in 2013 & 20 in 2014 respectively*) will show that it adds up to more than the accumulative total of the previous six years prior to 2013. (***41****- 4 in 2012; 8 in 2011; 5 in 2010; 7 in 2019; 5 in 2008; 12 in 2007*)

4.3 PROCESSING DATA

There were 278 Complaints classified this year out of which, 85 (31%) were classified as outside jurisdiction, hence they could not be investigated by the Ombudsman. 106 (38%) were closed as 'Relevant Avenues Not Exhausted' (RANE).

Seventeen (6%) of the Complaints were settled informally as they were resolved by assisting the Complainant without the need to initiate an investigation. A further 19 (7%) were classified as 'Others', they were either withdrawn or after our initial inquiries into the complaint there was insufficient personal interest shown by the Complainant.

Chart 3
Classification of Concluded Complaints
(%)



Fifty one Investigations (18%) were concluded by the end of the year. Out of the 51 (27 sustained, 23 not sustained and 1 not classified), 13 of the Complaints were resolved through informal action, whilst the other 38 warranted an extensive report. (23 brought forward from 2013 and 15 from 2014) Out of these 38, 24 were sustained, 13 were not sustained, and 1 was not classified.

4.4 RECOMMENDATIONS

Over the last twelve months we have made a total of 11 recommendations on 9 cases that we have investigated and completed in 2014. Six out of the 11 recommendations drawn up this year have been of cases investigated against the Ministry for Housing. Some of them involved specific recommendations to the investigations but there were also general recommendations made. There was an instance where the Complainant alleged that she had been waiting nineteen years on the Approved Exchange List to be reallocated from her Government rented flat and had been in first position on the Approved Exchange List for two years, but no offers of reallocation had been made. Given that the Approved Exchange List is not a priority list, the Ombudsman recommended that the Housing Authority adequately inform Government tenants seeking an exchange via the Approved Exchange List that the list is not a priority list and is just a tool put in place to try and assist those seeking exchanges. This information should be provided via an adequately printed leaflet. (see CS/1050, Page 67)

We also made a recommendation on an investigation against the Housing Works Agency (HWA). The investigation involved a complaint as a result of non-reply to numerous emails and delay in tackling outstanding jobs to stop water ingress and dampness to the Complainants Government rented flat. The Ombudsman recommended that the HWA should in instances where Government tenants are awaiting remedial works to properties which have been subject to delay, provide tenants with estimated commencement and completion dates for building works when reasonable. (see CS/1002, Page 71)

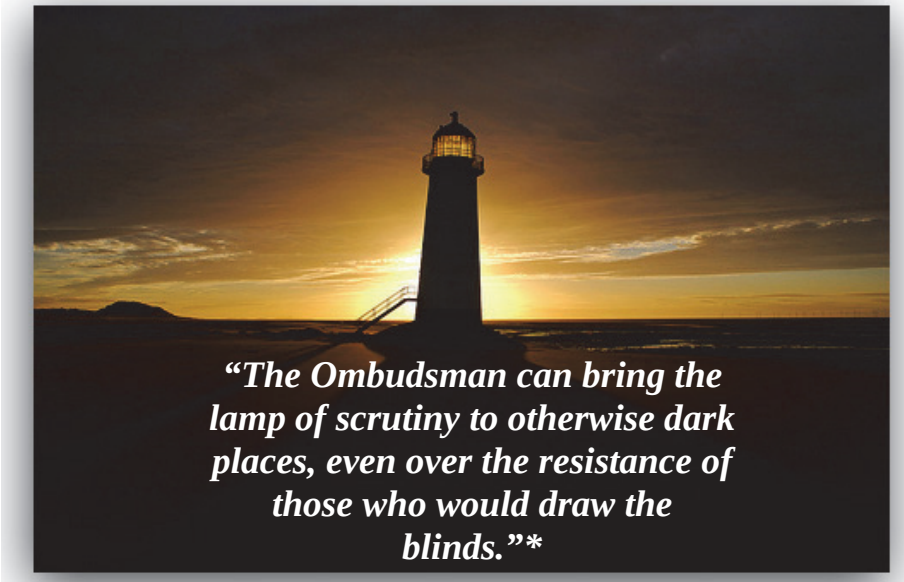
We also investigated two separate complaints against the Department of Social Security (DSS) and made four recommendations, two for each investigation. One of the investigations was in relation to a cessation of social security (welfare) payments paid to the Complainant for herself and her children. Our recommendations in this case were that the DSS provide applicants/those in receipt of benefit with written confirmation when social assistance payments will be terminated together with concise but clear reasons for the decisions and that the internal policy on eligibility of social assistance payments for those applicants who embark on a relationship, be reviewed and assessed on the individual merits of each case. (see CS/1035, Page 89).

Table 4 - Breakdown of classification of complaints received by departments / entities in 2014

Dept/Agency	Avenues not exhausted	Out of Jurisdiction	Withdrawn/IPI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
Attorney Generals	1	1	-	-	-	-	-	-	-	**2**
Border & Coastguard Ag	-	-	-	-	-	-	-	-	1	**1**
Care Agency	2	2	-	-	-	-	-	-	1	**5**
Civil Status & Registration	13	-	2	-	-	1	-	4	2	**22**
Customs	1	-	-	-	-	-	-	-	-	**1**
Development & Planning	-	1	-	-	-	-	-	-	-	**1**
Education & Training	1	1	-	-	-	-	-	-	-	**2**
Employment Service	4	2	-	-	-	-	1	1	12	**20**
Environment	1	-	-	-	-	-	-	-	-	**1**
Environmental Agency	-	-	1	-	-	-	-	-	-	**1**
Gibraltar Electricity Auth	2	-	-	-	-	-	-	-	-	**2**
Gibraltar Health Authority	7	1	-	-	-	-	-	1	-	**9**
Gibraltar Post Office	2	-	-	-	1	-	-	-	-	**3**
Housing Authority	49	1	7	3	3	-	5	6	7	**81**

Table 5 - Breakdown of classification of complaints received by departments / entities in 2014

Dept/Agency	Avenues not exhausted	Out of Juris-diction	With-drawn/IPI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
Housing Works Agency	6	-	2	1	-	-	-	-	-	**9**
Income Tax Office	2	-	1	1	1	1	2	-	1	**9**
Land Property Services	-	1	1	-	-	-	-	-	-	**2**
Magistrate's Court	4	-	-	-	-	-	-	-	-	**4**
Prison Service	-	1	-	-	-	-	-	-	-	**1**
Procurement Office	-	-	-	-	-	-	1	-	-	**1**
Reporting Office	-	-	-	-	-	-	-	1	-	**1**
Royal Gibraltar Police	1	1	2	-	1	-	-	1	1	**7**
Social Security	9	-	-	4	-	-	1	1	1	**16**
Traffic Commission	-	-	-	-	-	-	-	1	-	**1**
Town Planning & Building	-	-	-	-	-	1	-	1	-	**2**
Transport & Licensing	1	-	-	-	-	-	-	-	-	**1**
TOTAL:	**106**	**12**	**16**	**9**	**6**	**3**	**10**	**17**	**26**	**205**



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

Title: Public Services Ombudsman Annual Report 2014

Published by: Office of the Ombudsman, Gibraltar

Compiled by: Information Controller, Mr. S. Sanchez

Printed by: **Easi-Print Ltd**

Print run: 200 copies

March 2015

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