



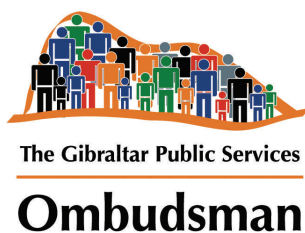
The Gibraltar Public Services

Ombudsman

"We cannot direct the wind, but we can adjust the sails."

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

Front cover quote by *Bertha Calloway*.



March 2008

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

Dear Mr. Caruana,

It is an honour for me to present the Public Services Ombudsman's eighth Annual Report. This report covers the period 1st January to 31st December 2007.

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.

The Report includes a separate Annex, in mini CD format, which contains all the investigations which we have completed during the year 2007.

Yours sincerely

Mario M Hook
Ombudsman

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1

Introduction

The Ombudsman's eighth Annual Report...

INTRODUCTION

I was appointed Ombudsman as from the 1st January 2003 for a period of five years; the five years came to an end in December 2007.

I have thoroughly enjoyed my tenure as Ombudsman and more than work I have considered it an exceptional honour to serve my fellow citizens always applying the best Ombudsman principles. I decided to seek an extension to my tenure and so, pursuant to the provisions of Section 5(2) of the Public Services Ombudsman Act 1998, I requested to be reappointed Ombudsman for a period of three years as from 1st January 2008. This was approved by Government and I would like to publicly thank them for depositing such trust in me once again.

In the previous four Annual Reports, we have included our Mission Statement in the form of phrases attributed to Mahatma Ghandi. We feel that our Statement is now sufficiently publicised and have included in this Report a Statement of Purpose that we already included for the first time in last year's Annual Report. This Statement is our pledge of excellence to those whom we serve. We shall always ensure that we are available to listen to any party in a dispute and we shall conduct our business in a most objective manner.

As from January 2007 Gibraltar enjoys a new Constitution which makes the Ombudsman a Parliamentary Officer (Section 25(3)(b) of the Gibraltar Constitution Order 2006). Consequently, the former House of Assembly has now become the Gibraltar Parliament. With regard to the Ombudsman, the most noticeable effect of this development is that the Chief Minister is no longer required to lay the Ombudsman's Annual Report in Parliament. Instead the Ombudsman may now request the speaker to lay his Annual Report in Parliament. This positive empowering development can be found in the Gibraltar Parliament's Standing Rules and Orders at Part IV - Papers, standing orders 12(3) and (4).

This year the Gibraltar Parliament enacted the much awaited Housing Act, however to date the commencement date has not been published. Two aspects of the provisions of this Act are of special importance to the Ombudsman, the establishment of an Anti Social Behaviour Tribunal and a Complaints Appeals Tribunal to consider appeals against any decision taken by the Housing Department.

It is yet to be seen how these two tribunals will operate, especially the complaints appeals. Once it comes into force, the Ombudsman will not be able to investigate complaints against the Housing Department, which is the Department that has consistently attracted the highest amount of complaints ever since the Ombudsman first opened its doors to the public. To this effect, before the enactment of the Housing Act I wrote to the Minister for Housing bringing to his attention the statutory provisions that govern the authority of the Public Services Ombudsman to conduct an investigation where there is in existence an appeals procedure that has been constituted under any enactment.

Specifically, section 14(1)(a) of the Public Services Ombudsman Act 1998 states that the Ombudsman shall not conduct an investigation in respect of any action consisting of a decision or ruling by an Authority in respect of which the person aggrieved has or had a right



INTRODUCTION

of appeal, reference or review to or before any tribunal howsoever constituted by or under any enactment;

Whilst the Act also provides (especially at section 14(2)(a)) for the intervention of the Ombudsman in certain circumstances, the statutory provisions for the creation of a tribunal to consider appeals will effectively bar the Ombudsman from accepting complaints against the Housing Department.

It is the Government of the day that sets the parameters of the jurisdiction of the Ombudsman and obviously I accept the extent of the jurisdiction conferred on the Ombudsman without any reservations. However, given that it is not the Housing Act but, indeed, the Public Services Ombudsman Act that will bar the Ombudsman from investigating complaints vis-à-vis the Housing Department I felt that it was my duty to point this out to the Minister at a stage when the new legislation was still in its Bill form as the exclusion of the Ombudsman might not have been the desired result.

The Minister replied by stating that the provision for a Housing Tribunal would be a huge enhancement of people's right of redress. This could only be a positive move in line with Government's policy of transparency and accountability. He assured me that my comments would not be overlooked.

Dr Bernard Linares retired from politics at the time of the last General Elections in October 2007. Dr Linares was the Minister with responsibility for the Ombudsman for about two years prior to his retirement.

Dr Linares was considered a friend by all in this office and we would like to publicly express our sincere gratitude for the encouragement and firm support that we always received from him. His positive references to the Ombudsman in the Gibraltar Parliament have also served to enhance the standing of the Ombudsman in our community.

On a personal note, I have to state that whenever I met with him I always left our meetings refreshed and reassured by the depth of his understanding of the work and difficult issues that the Ombudsman often encounters.

All of us at the Office of the Ombudsman wish him a long and happy retirement.

I would like to thank the people of Gibraltar for their support, especially those who when confronted with a grievance have decided to seek our assistance. I also wish to thank those persons who have responded to our Customer Satisfaction of Service Survey; their comments are most welcome and assist in our continuous assessment and efforts to improve our service.

Finally, I have to give my most sincere thanks to my staff, without whom this report would not have been possible.

Mario M Hook
Ombudsman



2

Statement of Purpose

'We believe our purpose is to be at the service of the People of Gibraltar.'

STATEMENT OF PURPOSE



THE OMBUDSMAN TEAM, PICTURED FROM LEFT TO RIGHT; STEFFAN SANCHEZ, SYSTEM ADMINISTRATOR; NADINE PARDO, PUBLIC RELATIONS OFFICER; JAMES ROSADO, SENIOR INVESTIGATING OFFICER; MARIO M HOOK, OMBUDSMAN; ELOISE RUIZ, TRAINEE; KANE SIVERS, TRAINEE AND TONIA JOHNSON, INVESTIGATING OFFICER.



THE OMBUDSMAN TEAM PICTURED TOGETHER WITH DR. BERNARD LINARES ON THE OCCASION OF HIS RETIREMENT.

STATEMENT OF PURPOSE

We believe our purpose is:

1. **To be at the service of the People of Gibraltar**
2. **To assist those who seek our assistance**
3. **To communicate the complaint to those under our jurisdiction**
4. **To be unbiased in the course of our investigations**
5. **To be unbiased when deciding the outcome of complaints**

To fulfil our purpose we will:

1. Always endeavour to provide advice and point people in the right direction to the best of our ability. We may not always be able to find a solution to the many problems that come our way every day, but certainly we shall provide assistance.
2. Make ourselves available with the minimum of delay and ensure we understand the problem as presented to us.
3. Make sure that the entity being complained about is presented with a clear statement of the complaint and take careful account of their versions of events.
4. Listen to the Complainant and the entity being complained about.
5. Treat everyone in a reasonable and equitable manner.
6. Carefully consider all the information available to us and only reach a decision when we are satisfied that the parties have been able to make representations to the full.
7. Be true to our motto '**Integrity and Service**' through our practice of transparency, honesty and ethical practices.

STATEMENT OF PURPOSE



JAMES ROSADO, SENIOR INVESTIGATING OFFICER, DISCUSSING A REPORT WITH STEFFAN SANCHEZ, SYSTEM ADMINISTRATOR



NADINE ZAMMIT, PUBLIC RELATIONS OFFICER, PREPARING A REPORT FOR THE OMBUDSMAN AFTER HAVING RECEIVED A COMPLAINT



3

British & Irish Ombudsman Association



JAMES ROSADO, LIAISON OFFICER FOR BIOA, WRITING A REPORT ON AN INVESTIGATION



ELOISE RUIZ (TRAINEE WITH THE GIBRALTAR TRAINING SCHEME) WORKING AT THE OFFICE OF THE OMBUDSMAN

BRITISH & IRISH OMBUDSMAN ASSOCIATION (BIOA)

The Gibraltar Public Services Ombudsman's policy has always been to foster international relations with similar bodies in the United Kingdom and indeed worldwide. Apart from keeping the Office abreast of international developments in the Ombudsman field, the resulting cross transfer of experience and knowledge gained by these interchanges can only but enhance the local service that is provided to those persons who come to our Office with their administrative complaints seeking our assistance and advice.

A very important way in which the Office's international relations are being developed is through membership of the British and Irish Ombudsman Association ("BIOA") and participation in its activities.

The Gibraltar Public Services Ombudsman is a voting (full) member of BIOA having satisfied the prescribed criteria for full membership, namely independence of the Ombudsman from those whom the Ombudsman has the power to investigate; effectiveness; fairness and public accountability.

The British and Irish Ombudsman Association came into being in the following manner. The office of Parliamentary Commissioner for Administration (Parliamentary Ombudsman) was created in the United Kingdom in 1967. During the next ten years other public sector ombudsmen were appointed, so that by the end of the 1970s there were parliamentary, health and local government ombudsmen services in each country of the British Isles. In 1981 the Insurance Ombudsman Bureau, the first private sector ombudsman scheme, was established and since then further private sector schemes have been set up.

In 1991 a conference of ombudsmen from both the public and private sectors was held, at which it was agreed to set up an association for ombudsmen, their staff, and other organisations and individuals, such as voluntary bodies and academics interested in the work of ombudsmen. The Association came into being in 1993 as the United Kingdom Ombudsman Association and became the British and Irish Ombudsman Association when membership was extended to include ombudsmen from the Republic of Ireland in 1994. The term "ombudsman" embraces not only public sector ombudsmen who examine complaints that injustice has been caused by maladministration and may make recommendations as to a remedy, but also private sector ombudsmen who may make a decision on the merits and can make binding awards.

The Objectives of BIOA are to:

- (a) encourage, develop and safeguard the role and title of ombudsmen in both the public and private sectors.
- (b) define, publish and keep under review criteria for the recognition of ombudsman offices by the Association.
- (c) accord recognition publicly to those persons or offices who satisfy the defined criteria for recognition in the United Kingdom, the Republic of Ireland, the Channel Islands, the Isle of Man and Britain's overseas territories.

- (d) formulate and promote standards of best practice to be met by ombudsmen in the performance of their duties.
- (e) hold meetings, conferences and seminars, publish information and engage in all such other activities as may improve public awareness of recognised ombudsman schemes and encourage their efficiency and effectiveness.

There are currently a total of 67 public and private sector schemes holding membership with BIOA of which 28 are voting (full) members. The 28 voting (full) members include the Gibraltar Public Services Ombudsman as well as the United Kingdom Parliamentary Ombudsman, the 3 local Government Ombudsmen for England, the United Kingdom Health Service Ombudsman, the United Kingdom Housing Ombudsman Service, the Northern Ireland Ombudsman and the Bermuda Ombudsman. In addition to the 28 full voting members there are 39 associate members drawn from consumer organisations and complaint handling bodies.

BIOA is involved in many different activities arising from its Objectives including organising conferences and regular meetings for those involved in the general management of ombudsman and complaint handling schemes as well as for other staff members concerned with public relations, communications and development.

As part of its ongoing commitment to BIOA its Objectives and Activities, the Gibraltar Ombudsman's senior investigating officer accompanied by the public relations officer will in April 2008 be attending an Operational Management Seminar on 'Knowledge Management in an organisation' to be held at the Offices of the Financial Ombudsman Service in London.

Additionally the senior investigating officer will in May 2008 be attending the BIOA Annual Meeting to be held in Edinburgh whose theme is 'Ombudsmen and the Changing World in which we operate'.

The Gibraltar Public Services Ombudsman is fully committed to participating in and contributing to BIOA as a full voting member which can but only be of mutual benefit to both parties and to the services they provide.



4

Public Sector Ombudsman Meeting

PUBLIC SECTOR OMBUDSMAN MEETING



THE OMBUDSMAN HOSTING THE PUBLIC SECTOR OMBUDSMAN MEETING AT THE GIBRALTAR GOVERNMENT LONDON OFFICE.



DR. BERNARD LINARES (MINISTER RESPONSIBLE FOR THE OMBUDSMAN) TALKING TO MRS EMILY O'REILLY (THE IRISH OMBUDSMAN) AT THE PUBLIC SECTOR OMBUDSMAN MEETING.

PUBLIC SECTOR OMBUDSMAN MEETING

As reported over the last few years, we form part of a group of public sector ombudsmen that meet three times a year. We continue to attend these meetings. The group is composed of the United Kingdom Parliamentary and Health Service Ombudsman, the Irish and Maltese Ombudsmen, the three Public Sector Ombudsmen for England, the Ombudsmen for Wales, Scotland, Northern Ireland, the (UK) Housing Ombudsman and the Gibraltar Ombudsman. Of late, the Ombudsman for Bermuda had indicated that she might wish to join the group.

The aim of the group is to discuss matters of common interest. A popular item in our agenda is the office update that each Ombudsman provides. This has proved to be a very well received item in our meetings and useful information is always obtained from the experiences of others.

The meetings rotate between the different offices and are hosted by the Ombudsman of the jurisdiction. Gibraltar hosted the meeting in October 2004 and again in January 2007.

Whereas in October 2004 we hosted the meeting in Gibraltar, in January we hosted the event in London, specifically at the Gibraltar Government London Office. Dr Bernard Linares, the Minister with responsibility for the Ombudsman, kindly accepted an invitation to attend the event. At the end of the dinner he addressed the guests and this was followed by a lively question and answer session. I have to state that it was an enjoyable event thoroughly enjoyed by all present.

I must record my thanks to Dr Bernard Linares for having accepted the invitation and for his active participation in the event. I must also record my thanks to the manager and staff of the London Office for their assistance in organising the event.

We also attended the two other scheduled meetings for the year 2007. In June I attended the meeting which was held in Edinburgh at the invitation of the Scottish Public Services Ombudsman. The guest of honour was Alex Fergusson MSP; He was elected Presiding Officer of the Scottish Parliament on Monday, 14th May 2007. All those present enjoyed the very thorough account that he gave of his work as the Presiding Officer of the Scottish Parliament.

The other meeting was hosted by the Welsh Ombudsman. Unfortunately, due to a very heavy workload, I could not attend. The Gibraltar Ombudsman is committed to participating and sharing in this forum of public sector ombudsmen and in order to be represented our Senior Investigating Officer attended the meeting.



5

Personal Perspective

PERSONAL PERSPECTIVE



My name is Eloise Ruiz and I am a trainee with the Gibraltar Training Scheme working at the Office of the Ombudsman. I am 21 years old. I have been fortunate enough to have been given the opportunity to work here for almost two years. Throughout this time I feel I have matured as a person and have learned a lot about what it is like to work in an office environment. Working with the Public Services Ombudsman has made me change the way I think about Gibraltar. For example I thought that Gibraltar being a very small, prosperous community had no homeless cases, this I have found is far from reality.

My first impression of the Ombudsman team was how friendly everyone was and how welcome everyone made me feel. I remember that the first thing that impressed me the most was my name and title on the reception table. This made me feel very much part of the team from the outset.

This job has helped me improve my skills in every aspect. For example at first I was quite shy to even pick up the phone; I did not think I had the necessary skills or experience to speak to members of the public on the telephone. Now, as a result of my training and general advice from my supervisor I feel confident enough to deal with any calls or clients who come into the office. I am sure that with time and more character building exercises I will only but improve. My administrative responsibilities include updating and managing the Office's Complaints Management System which is a data base with all of our complainants' details and information on their query or complaint, as well as other general office duties, all of which I take very seriously and I believe carry out in a professional manner.

I have experienced a lot of changes since I have been here. A colleague left and then a new Senior Investigating Officer was employed. The Public Relations Officer went on maternity leave and I had to deal with some aspects of her job. As well as my reception duties I had morning meetings with the Ombudsman on a daily basis to handover any letters that we had received and run him by all the appointments and cases pending. There were days when I found myself extremely busy, but I consider this part of character building, and it helped me learn to use my initiative, prioritise and organise my work load.

I could never have imagined that I would enjoy my job as much as I do. Everyday I wake up ready and eager to go into work. Working at the Office of the Ombudsman can be a wonderful eye opener and is certainly not your average office job. I would describe it as challenging, interesting, enjoyable, and satisfying. I feel good to know that we are helping people solve their problems.



6

Review

REVIEW

AQUAGIB

Aquagib has attracted a total of four complaints this year. One was settled informally, another was resolved through informal action and the third was classified as relevant avenues not exhausted. We conducted an investigation in respect of the fourth and subsequently wrote a report; the complaint was classified as 'Not Sustained'.

Aquagib continues to provide an excellent response whenever a complaint arises. The administrative procedures that they have in place to address complaints are very efficient and worthy of comment.

CASE 768

COMPLAINT AGAINST AQUAGIB LIMITED ("AQUAGIB") ARISING FROM THE COMPLAINANT HAVING RECEIVED HIGH WATER BILLS IN EXCESS OF £100 PER MONTH WHILST RESIDING AT A RESIDENTIAL COMPLEX

Complaint

The Complainant and her husband had been living in an apartment in Gibraltar since their arrival in January 2007. They had been in communication with AquaGib since April 2007 in relation to what they considered were extraordinarily high water bills in excess of £100 per month from January 2007 onwards.

The Complainant first spoke to AquaGib around April 2007 and AquaGib sent one of their employees to check the water meter when the Complainant was advised that there was no leak and the meter was not faulty.

The Complainant complained again to AquaGib and a Superintendent visited the apartment and suggested that all the taps in the apartment needed replacing as they were very slightly leaking.

The Complainant replaced all the taps around the middle of July 2007 but thought that this had made no difference whatsoever. She had had a bath on the 23 July 2007 and on checking the meter and calculating the units with the costs AquaGib had provided her with, her bath had cost £1.04. This meant that both her and her husband having one bath each day would cost over £60 per month.

Following on from the above, the Complainant not being happy with what she considered to be extremely high water bills came to see the Ombudsman at the beginning of August 2007 with her complaint.

Investigation

(a) Visit to the Department

A visit to the Department was arranged for the 7 September 2007 where the complaint was discussed and documents in AquaGib's records systems were viewed. Copies of these documents were requested and provided by AquaGib.

In particular the Ombudsman was very interested in the reports of tests for leaks carried out by AquaGib on 21 March 2007 and 17 April 2007 which resulted in no leaks being detected.

(b) Ombudsman's Correspondence with the Department

Subsequently the Ombudsman wrote to AquaGib on the 5 October 2007 confirming the complaint and requesting their comments.

Additionally, he referred to the above mentioned reports of tests for leaks carried out by AquaGib and went on to request the following information for consideration:

- "1. A detailed explanation of all the steps and procedures involved in carrying out the two above mentioned tests.*
- 2. Whether these tests were carried out at the request of the Complainant or by AquaGib of its own initiative.*
- 3. Whether any other tests were carried out and if so, confirm if done at the request of the Complainant or otherwise. If there were other tests, again provide a detailed explanation of all the steps and procedures involved in carrying out these tests.*
- 4. Confirm all the tests that are available to check water meters where there are queries that water bills are too high, as well as the cost to the consumer if any.*
- 5. If there are tests, other than the two above mentioned tests which were carried out, please explain if, when and by whom the availability of these additional tests were explained to the Complainant."*

AquaGib replied within 2 weeks by way of a letter dated 17 October 2007, received 19 October 2007 (An appropriate time scale for this type of Complaint. The Ombudsman expects substantive replies no later than 2 to 3 weeks from the date of his letter).

AquaGib in their letter to the Ombudsman included a table produced from their records appertaining to the account in question, covering the months January to September 2007 (which is reproduced below).

| Month (2007) | Number of Primary Units | Number of Secondary Units | Value of Bill (including standing charge of £3.00) |
|--------------|-------------------------|---------------------------|--|
| January | 45 | 75 | £51.45 |
| February | 45 | 169* | £100.33 |
| March | 45 | 169* | £100.33 |
| April | 45 | 209 | £121.13 |
| May | 45 | 142 | £86.29 |
| June | 45 | 146 | £88.37 |
| July | 45 | 104 | £66.53 |
| August | 45 | 196 | £114.37 |
| September | 45 | 53 | £40.01 |

*(Readings taken 16.01.07 = 263

Readings taken 12.02.07 = 477 Consumption = 214

Readings taken 13.03.07 = 691 Consumption = 214)

AquaGib in their letter went on to explain that on the 13 March the meter reader recorded a high consumption that was checked by the Metering Superintendent on the 16 March. At AquaGib's initiative a "Test for Leakage" was undertaken on site, which resulted in no leaks being detected. The test consisted of checking that there was no movement on the meter dials (This would mean there is no water passing through the meter). The Complainant was not present.

Their letter further explained that on the 16 April the Complainant called in at AquaGib and a meeting at the premises took place on the 17th at which a "Test for Leakage" took place in the presence of the Complainant who agreed that there was no leak indicated and signed off the form. This test required that all water supplies, i.e. taps, appliances etc, were turned off. The meter was read at the start of the test and a second reading was taken 15 minutes later. In this particular case the meter readings were identical indicating no loss of water.

AquaGib then explained that an e-mail was received from the Complainant on the 23 April and another site visit was arranged. This visit confirmed that there were two taps leaking in the Complainant's premises. There was no test carried out but it was determined that there was leak on the taps.

AquaGib continued their letter by stating that it was their experience that water meters rather than over read when faulty tended to under read as it was usually some foreign matter that interfered with the mechanism slowing it down or in the worst case seizing it up. Their view, having investigated the matter on site three times, was that the existing meter was reading correctly and that there had been a high consumption of water in the premises. In support of their view they referred to the reduced consumption for September 2007.

Their letter to the Ombudsman went on to explain the facility available to consumers to have their meter removed and tested on AquaGib's test rig or sent to the manufacturer. This would cost the consumer £20.00, which if the meter proved to be faulty would be refunded.

AquaGib's letter ended with an open invitation to contact their Customer Service and Finance Manager should further information be required.

Conclusion

From the above investigation the Ombudsman concluded that there had been no maladministration and that it appeared that AquaGib had taken the proper and necessary administrative steps within an appropriate time-frame.

The Ombudsman was pleased to note that the Department operated a system which resulted in a "Test for Leakage" at AquaGib's initiative being undertaken on site as a result of the Complainant's meter recording a high consumption.

Recommendation

The Ombudsman recommended that the proactive approach demonstrated above by AquaGib's Own Initiative Test for Leakage, should be extended and persons querying high water bills be informed in writing of the various tests available in this regard, including the facility available to consumers to have their meter removed and tested on AquaGib's test rig or sent to the manufacturer at a cost of £20 refundable should the meter prove faulty.

BUILDINGS AND WORKS DEPARTMENT

The Buildings and Works Department attracted just 9% of the complaints and enquiries received by the Ombudsman for 2007. This was a decrease of 17% on 2006, a pattern maintained since 2005. They attracted 6 enquiries and 28 complaints; on two of the complaints we conducted investigations warranting a report.

As noted in last year's Annual Report this Department continues to deal with complaints with a positive attitude, ensuring enquiries made by the public are answered promptly and accurately. The Ombudsman is aware of plans to extend the service given to tenants by dedicating a skilled team to answer queries of outstanding work, at the time of going to press these measures were at an advanced stage. The Ombudsman applauded these measures as they would improve the front line service, a trend he would like to see implemented throughout the other entities under his jurisdiction.

Responding to tenant's enquiries regarding outstanding work is one aspect of the Department's work, the other is the productivity in dealing with repairs. Through several meetings held during the year the Chief Executive of the Department has kept the Ombudsman informed of his task to measure productivity. This task has been thwarted with problems, from identifying duplication of jobs outstanding to the effect of industrial action. The scope of the real issues in this Department can be seen from the figures obtained relating to new jobs received against

those completed on a monthly basis.

On average from December 2006 to November 2007 (12 months) the Department received 490 jobs monthly, however, they only managed to complete 304 jobs per month, effectively a completion rate of just 62% of the work assigned to them, this has created an ever increasing backlog.

The Ombudsman warned of productivity issues for this Department in the 2006 Annual Report and the need to increase output with the consequent reduction in pending jobs. An average 62% completion rate for 2007 does not meet the service that tenants have a right to expect.

CASE 750

COMPLAINT AGAINST THE BUILDING AND WORKS DEPARTMENT FOR THE DELAY IN REPAIRING AN ACCESS BRIDGE AND THE DELAY IN RECEIVING UPDATES ON PLANNED START DATES

Complaint

The complainant was aggrieved that an access bridge she shared with her neighbour was in an unsafe condition, yet Buildings and Works (B&W) had not made the necessary repairs.

The complainant explained that she had reported the matter to B&W in mid 2005 and an assessment was carried out by them soon after, however no work had commenced.

Investigation

In November 2005 the complainant wrote to B&W expressing her concern that work had still not started on the bridge despite the health and safety risks to those that used it for access to their home (including her young 3 year old son). The complainant also questioned their decision to begin works on her neighbour's roof before addressing the access bridge. She explained in the letter that she had been informed by staff from B&W that temporary scaffolding would be placed to support the bridge whilst issues surrounding the method of repair were addressed. The complainant did not understand why, if the scaffolding was placed around the bridge, permanent repairs could not be made.

The complainant explained that B&W staff had informed her that her neighbour was objecting to repairs that would put the bridge back to its original state i.e. wooden structure and finish. The neighbour had apparently cemented the wooden bridge and fixed tiles to its wooden surface, this had exacerbated the rotting timbers as rainwater was now being retained between the cement and the original wooden surface. The complainant clearly expressed in her letter to B&W her objection that her neighbour was the main cause of the delay to the repair of the bridge because she was protecting her interests in the tiles that she had laid, when it was probably those very tiles that had caused the bridge to give way under the weight. This objection was further compounded by the fact that B&W had decided to repair her neighbour's roof before repairing the bridge.

The B&W reply to the complainant's letter explained that her request for works would be investigated and they would contact her when they had further information available. They also offered for her to contact them if she required any further information.

The complainant explained that over the following 3 months she had attempted to contact B&W by telephone to get information as to when works would start. She had phoned 9 different phone numbers for B&W yet no one had been able to update her. On the advice of the Ombudsman the complainant wrote again in February 2006 to B&W. This was subsequent to an inspection of the bridge by B&W staff, who had advised her that the bridge could not be repaired but would need replacing, a report was made, but still no start date.

B&W replied to the complainant's letter stating work was expected to begin no later than April 2006 and that they had encountered problems with the proposed replacement design and the impact it would have to the neighbour. However, they also pointed out that although they would do everything possible to meet this target date, it was in fact competing with other priority work which may cause the start date to slip if other more urgent unforeseen work arose.

The work was not started in April 2006 and in October 2006 the Ombudsman wrote to B&W for an update. They replied explaining that the delay had been initially caused by the neighbour objecting to the Ministry for Housing of the repair technique that had been proposed. The neighbour had continued to complain and had been adamant that they would not allow B&W to undertake the work. This said, B&W also explained that the industrial action over the previous 6 months had prevented them from starting the work anyway. All programmed work needed to be re scheduled.

In December 2006 the Ombudsman wrote again to B&W requesting an update. Their reply explained that they had been in touch with the complainant to inform her work would be commencing early in the following year.

In January 2007 the Ombudsman wrote again to B&W as work had still not commenced and no further communications had been received by the complainant. The reply explained that the work had been assigned to the depot, implying the work would start imminently.

In February 2007 B&W contacted the Ombudsman by telephone explaining that due to the considerable backlog created by the industrial action, works were expected to commence much later that year and that they still envisaged problems with the neighbour. The Ombudsman asked that this information be communicated to the complainant in writing. However, by March 2007 the complainant had not received such a letter. The Ombudsman communicated this to B&W in a letter, who subsequently wrote to the complainant and explained that they had been forced to put the work on the bridge in abeyance due to other priorities.

At the time of writing the report June 2007 work had still not commenced, effectively there had been a delay of two years, so far.

Conclusion(s)

The Ombudsman fully sympathised with this complainant in that for two years she had been given two start dates that had come and gone, for works that seemed of a high priority. Despite being invited by B&W to contact them to obtain information they had experienced difficulties so much so that they had resorted to the Ombudsman for assistance.

The Ombudsman was not in a position to comment on the prioritisation of work, he left that to the professionals within B&W, they were aware of the resources available to them and the various obligations to maintain government housing stock. Nor was the Ombudsman's purpose to apply pressure to government departments in favour of a particular complainant.

The Ombudsman's concern was of keeping complainants updated, supplying them with reliable information, having access to someone who knew what was happening.

This complaint had clearly highlighted how difficult it could be for a tenant to obtain information regarding outstanding works, how promises were made, possibly with good intentions, yet not followed up. How un-cooperative neighbours can influence essential works. This put into question the management of the backlog by B&W.

The Ombudsman had noted that the experience of this complainant was not uncommon based on the complaints received in his office. In fact it had concerned the Ombudsman that complainants were increasingly relying on the Ombudsman to secure some information from B&W on outstanding work because they had not been able to do so themselves. Mindful of his desire not to attempt to influence the decisions regarding prioritisation of works, the Ombudsman shared his concerns with B&W and sought details on how outstanding works were being managed and how available this information was to others within the Department that would receive enquiries from tenants with outstanding work.

Analysis of management of outstanding work

B&W explained to the Ombudsman that the recent industrial action had caused a considerable backlog. In April 2007 there were roughly 3600 reports waiting to be estimated (this figure is double the normal amount) and 2200 waiting to be completed. Given that there were jobs waiting to be completed, the backlog of reports waiting to be estimated did not affect the productivity of the Department. The figures could also be distorted because the work had been outstanding for some time and the tenant could have taken action to remedy the problem themselves, but not notified B&W. Some reports might also be duplicated because the system of reporting out of hours is manual, unlike the reporting office that is computerised, if the tenant reports it on both systems it would be counted twice as the systems were not linked. Furthermore, recent analysis by B&W had highlighted errors in the statistics where some 144 open jobs had in fact been identified as closed but not recorded as such on the data base for analysis purposes.

That said, B&W also explained that there had also been significant improvements to the resources available. There had been an increase of staffing levels which would continue until the new agreed level is reached, along with 11 more vehicles. Although B&W were aware that to be able to manage the vast backlog effectively they needed greater detail of analysis of the outstanding work, they had not achieved this to any significant level e.g. duplication of figures.

The Ombudsman noted that this was reflected in the poor service tenants were receiving when seeking information regarding outstanding work and the extensive delays being experienced by tenants waiting for work to be completed, which subsequently necessitated the tenants seeking the assistance of the Ombudsman.

As mentioned above B&W are tasked with the job of maintaining government housing stock, they are skilled at being able to best decide what work is needed and in what priority, it is not for the Ombudsman to comment on technical decisions such as this, he would support the ethos that tenants must wait their turn. However, it appears to the Ombudsman that B&W do not have the required detail or analysis of the backlog to be able to state with confidence whose turn it is. There is no apparent effective system in place that can manage the reduction of the backlog with any significant confidence. The Ombudsman was of the opinion that a firm grasp of all the outstanding jobs was needed, supported by a clear objective policy in relation to prioritisations, productivity and accountability, with the necessary manageable targets, until this was achieved B&W would be falling far short of good administrative practices and fall foul to being pulled in various directions by “those that shout the loudest”.

For these reasons the Ombudsman sustained this complaint.

CITY FIRE BRIGADE

Over the years we have received very few complaints against the City Fire Brigade. In all probability this is because they ensure that all correspondence received is replied to promptly and they address concerns and complaints brought to their attention in a timely manner. This year we received one complaint and I formed the opinion that given the nature of the complaint, an investigation was warranted.

Right from the initial stages of the investigation, the Chief Fire Officer and his management team provided all the information requested as well as explanations where necessary. There were some very sensitive issues involved in the complaint and we decided to hold a meeting with the Chief Fire Officer; he also made available his top managers. The meeting was held in a spirit of cooperation and we received answers and explanations to our complete satisfaction.

The Investigating Officer assigned to this case was able to complete the investigation without any delays with the full cooperation of the Chief Fire Officer.

The investigation was eventually concluded with the ‘Not Sustained’ classification.

CASE 784**COMPLAINT AGAINST THE CITY FIRE BRIGADE FOR NOT ANSWERING THE COMPLAINANT'S LETTER****Complaint**

The complainant wrote to the City Fire Brigade (CFB) on 1 June 2007 requesting confirmation from the Chief Fire Officer that he had in fact been banned from entering the Fire Station and the reasons why.

As the complainant had not received a reply to his letter after 3 weeks he sought the assistance of the Ombudsman.

The complainant explained that he had retired from the CFB in November 2006 and had been returning to the station to visit his ex colleagues in the control room on a regular basis. Being fully aware that the station is not a public place and that permission must be sought before entering, he would ring the intercom at the entrance gate, give his name and request permission to enter. The gate would be released by the control room and he would walk directly to the duty officer requesting permission to enter the control room. The control room is a restricted area, where only essential personnel are permitted; it is for this reason that the complainant would seek further permission from the duty officer to enter.

The complainant further explained that in April 2007 he had followed the above procedure and like on many other occasions sat in the back of the control room talking to his ex colleagues that had become friends over the years. A senior officer ("senior officer") outside the control room noticed that the complainant was in there and demanded that he leave.

The Ombudsman had been informed that an altercation between the complainant and the senior officer transpired, resulting in the senior officer threatening to call the police if the complainant did not leave the station. The complainant explained to the Ombudsman that it was the senior officer's aggressive attitude that had made him react in an uncooperative manner. Eventually the complainant left the station.

Investigation

The CFB explained to the Ombudsman that non essential personnel were not permitted in the control room and the complainant should have left when he was asked to. They had conducted an internal investigation at the station into the incident and it had been decided that the complainant should not be allowed to enter the station until he had apologised for the incident in writing to the Chief Fire Officer and verbally to the senior officer.

The CFB further explained that the decision to request an apology from the complainant before allowing him to return to the station had been taken in order to maintain the integrity and rank structure of the CFB.

They were also concerned that this incident and subsequent decision should not disrupt the smooth running of the station and the friendships between ex colleagues. They therefore decided to communicate their decision verbally to the complainant through his ex senior officer, who was known to be close to the complainant.

The complainant explained that although he had been told verbally that he would not be permitted to enter the station until he had apologised, he believed he was entitled to this decision to be confirmed in writing by the Chief Fire Officer, along with an explanation as to why they had taken this decision. It was for this reason that he wrote the letter on the 1 June 2007, for which he had not had a reply. In explanation of this opinion the complainant recalled an “instruction” to ban him from the station by the same senior officer had been made in January 2007 when the Chief and Deputy Fire Officers were away, on their return the Chief Fire Officer rescinded this “instruction”, the complainant wanted to ensure this was not the case again.

The CFB were confident that the complainant had been fully informed of their decision not to allow him into the station without first apologising and they were of the opinion that to reply to the complainant’s letter would only perpetuate the situation, which they believed would be best left to rest for all concerned. They sought legal advice from the Attorney General’s Chambers which confirmed they were not legally obliged to reply, especially given that an explanation had been given to the complainant by his ex senior officer verbally.

Conclusion

This investigation had uncovered events that were of a historical nature during a more unsettled period of the CFB, they were relevant in that they helped the Ombudsman understand the perception of those involved of what would normally be an uncomplicated event.

The Ombudsman was keenly aware that the issue under investigation was of non reply to a letter and not the management of the CFB premises or the management of staff, however, it had become necessary to consider the surrounding circumstances leading up to the letter in order to appreciate the CFB decision not to reply.

The CFB were understandably concerned that the progress made over the last few years in settled relations within their workforce was maintained. The complainant had entered an area that was restricted, albeit with permission, the request for him to leave could not be questioned. However, it was the manner in which this request was made that had been the real concern for the complainant; he had been uncooperative because the request had been made in a disrespectful way. He wished to challenge the reasons why a decision had been taken to ban him until he apologised; he believed his actions were justified on the grounds that he had been provoked. He had explained to the Ombudsman that he did not feel able to apologise because he did not believe it was warranted, on the contrary, if any apology were to be made he was of the opinion that he was the one that should be apologised to, for the disrespectful manner in which he was asked to leave, this being the real cause of the incident.

The CFB did not believe it in any-one's best interest to address the issue further by providing a written reply, given that the control room is a restricted area and the complainant should have left when told to. He was also mindful that the complainant had been made aware of the ban against him and the circumstances under which it would be lifted.

As a rule non reply to a letter would be maladministration. However, when overriding circumstances come into play on a bona fide basis, as was the case in this situation, nothing further could be achieved by writing what was already clearly known.

The Ombudsman therefore did not sustain the complaint of non reply in these circumstances.

THE CIVIL STATUS AND REGISTRATION OFFICE

There was an increase in complaints received against this Department from 17 in 2006 to 28 in 2007, representing 9% of all complaints received by the Office of the Ombudsman in 2007.

As in previous years, the majority of these complaints were lodged by Moroccan nationals and related to applications for exemption from immigration control and other miscellaneous immigration matters.

We would like to comment on three specific issues concerning the department:

1. Complaint against the Civil Status and Registration Office for refusing to accept the Complainant's application form and supporting documents.

A particular case which was investigated and which raised concerns was Case 753 the full text of which can be read in the disc attached to this report.

This case involved a complaint against the Civil Status and Registration Office (CSRO) for refusing to accept the Complainant's application form and supporting documents for the registration of his daughter, a child under 18 as a British Dependent Territories Citizen.

At the end of the investigation the Ombudsman concluded that there had been maladministration in this case since it appeared that the CSRO had not accepted the Application Documents contrary to what they were assuring him, i.e. *"... that the decision to approve or refuse rests with the Governor and that therefore all applications received must be referred to him even those which, clearly, do not fulfil statutory requirements and stand to be refused."*

Consequently the CSRO was advised that it had to ensure that they had appropriate administrative procedures in place to make certain that this type of incident did not re-occur in the future. Additionally the Ombudsman was pleased to note that they would, if it was considered necessary after routine acceptance and more thorough examination of the Application Documents, write to applicants and seek additional or more substantial evidence of presence in Gibraltar.

2. The Civil Status and Registration Office's replies to the Ombudsman's correspondence.

We would also like to mention that although chaser letters are sometimes still required to elicit replies, the answers and explanations received are generally thorough and well considered, facilitating the investigation.

3. Improved processing times for applications for exemption from immigration restrictions made pursuant to section 12(2) of the Immigration Control Act.

We note that there has been improvement in this area as compared with the position in 2006 as commented on in the Ombudsman's Annual Report 2006 when it was stated:

"We were recently informed that there have been improvements made to fast track those considered to be certain approvals. Regrettably, we were also informed that consideration of applications beyond the year 2002 still remained static. However during the course of more recent correspondence we were subsequently informed that the process had been restarted and they were hopeful to complete the exercise by the end of 2007.

The long delays that those applicants for exemption from immigration controls (mainly Moroccans), are being subjected to is indeed untenable and a sad indictment of whoever is responsible for this state of affairs. As a community, Gibraltarians well know what it is to fight and demand our rights, yet whilst so doing, we have in our midst a small community of families whom our authorities are subjecting to administrative delays that we would all certainly find unacceptable."

We have some seen improvement in this area in relation to both long outstanding and new applicants. In relation to long outstanding applicants, we have a case where an application for exemption was lodged in November 2005 and the Department has recently confirmed that the application will be included in a further batch of applications for exemption which they are currently processing and that the applicant has been asked to attend an interview at the Department in February 2008.

With regard to new applicants, we investigated a case where an applicant was interviewed and his knowledge of English was assessed in May 2007 on the date he submitted his application, where the Department has confirmed that the application for exemption was referred for consideration and final determination by the Governor in January 2008.

Both the above cases represent improvements in time scales, but still fall short of an effective delivery of service commensurate to modern standards and expectations.

DEPARTMENT OF SOCIAL SECURITY (DSS)

This department has dropped from third position, of the most complained about department in 2006 to the fourth most complained about in 2007. However, they have maintained a consistent 7% or 8% proportion of all complaints each year since 2004. The reason for the drop in position is the poorer performance of the Civil Status and Registration Office and not an improved performance of DSS.

The department's consistent share of complaints since 2004 and drop from 3rd to 4th position over the last couple of years hides the very real strains this department has administratively endured in 2007. The changes made to the Old Age Pension ("OAP") meant a re-calculation of every single pension currently paid out, approximately 7,470. This was reflected in the significant proportion of complaints and enquiries (42%) received by the Ombudsman for this department being attributable to the Pension Section.

The issues raised by complainants at the early part of the year were of the qualification and shortfalls of OAPs, in particular for married women. This issue had been investigated by the Ombudsman in 2000; a total of four reports had been written over the subsequent years in respect of the non-contributory aspect, for pension purposes, of the lower married woman social insurance contributions.

In 2007 we saw new legislation introduced by Government that addressed the issue of shortfalls for married women. The new legislation enabled those that had paid the lower married women's contribution during their working life to make extra (supplementary) contributions. By doing so they could improve the eventual pension received upon retirement. There was also an increase in the value of OAP payments by 65.2% that affected all persons in receipt of an OAP. Subsequent to these two changes, many new administrative tasks have drastically increased the workload for this department in 2007.

The volume of work had caused significant delays in calculating pensions. In one investigation a complainant had waited a year before receiving his Gibraltar OAP, this was despite applying months before his retirement date and visiting the department on a monthly basis to chase its progress, this was not the only example of delay that had been brought to the Ombudsman's attention.

The department explained that pensions had remained frozen since 1988, and this year saw the first in potential annual increases, that will happen every April. This new administrative process would be done with the same resources as in 1988 when the total of pensions were approximately 3,654 instead of the current 7,652. There has also been an increase of pension forecast requests and EC pensions that place a greater administrative burden on this section. As an immediate response to the increase in workload the department divided the pension section into two, reflecting the diverse aspects of pensions in today's society. It is not an exaggeration to say that this department is close to breaking point and it is only the dedication and professionalism of staff that has held things relatively together. This is a department in desperate need of modernization, to calculate pensions manually is extremely time consuming, a method that may have been adequate in 1988 but is certainly not so for the demands of today.

If changes are not made in the coming year to meet the new demands for this department we will likely see an increase in complaints next year and in particular pensioners not receiving their pensions in time.

CASE 783

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY FOR THE DELAY IN PAYING HIS OLD AGE PENSION

Complaint

The complainant and his wife applied to the Department of Social Security (DSS) for their Old Age Pension on 25 October 2006, they retired on 16 January 2007, but did not receive their pension until 26 October 2007. This was a delay of ten months.

The complainant explained that he had worked both in Gibraltar and the United Kingdom (UK) before reaching retirement age and therefore applied for his Old Age Pension to both countries.

In March 2007 he received his first payment from his UK Old Age Pension. He was concerned of the delay in receiving his Gibraltar pension so from February 2007 to October 2007 he returned to the Gibraltar DSS on at least monthly visits to try to establish what was happening to his pension claim. In August 2007 the complainant started to keep a record of his visits to the DSS and the advice he was given.

| | |
|---------------------------------|--|
| 20 th August 2007 | letters were being prepared to advise the complainant of the amount of pension he would be paid; the letters would arrive in one to two weeks. |
| 5 th September 2007 | the person preparing the letters was on holiday; they will be dispatched in one to two weeks. |
| 19 th September 2007 | the matter was being investigated; expect an answer in one to two weeks. |
| 8 th October 2007 | the Office Manager was personally investigating the matter and would telephone the complainant with the results of the investigation. |

Frustrated in the lack of progress in obtaining his Gibraltar pension the complainant sought the assistance of the Ombudsman.

On the advice of the Ombudsman the complainant put his complaint in writing to the DSS on 10th October 2007.

The DSS apologised for the delay in their letter of reply dated 17th October 2007. The letter explained:

“This year has been a very hectic one in this department, especially in the pensions section, where some major changes have taken place. Unfortunately we have subjected some of our clients to unacceptable delays.”

The complainant's Gibraltar Old Age Pension was paid on 26th October 2007 including payment of his outstanding arrears from January 2007.

The Ombudsman noted the DSS apology and that the complainant's pension issue had now been resolved. However, given the fact that the complainant had been without a pension for ten months and that he had brought this matter to the attention of the DSS on a monthly basis, without apparent substantive response, the Ombudsman requested a more detailed explanation on the administrative process of the complainant's pension.

The DSS explained that subsequent to the complainant's application in October 2006 for his Gibraltar Old Age Pension they despatched the relevant forms to their counterparts in the Department for Work and Pensions in Newcastle, UK. The relevant information was received by the Gibraltar DSS in April 2007. They confirmed that the complainant's pension should have been paid within a couple of weeks from that date.

The DSS also explained that although they do their utmost to settle all EU related pension claims in a timely manner, the complainant had experienced an unacceptable delay. This had been caused by an oversight, which could only be attributed to human error.

In taking a serious view of this isolated case, the DSS explained that, not only had they apologised in writing to the complainant but, in order to prevent a repeat occurrence and provide a more efficient service, they had created a new pensions section which would deal solely with pension claims from abroad. This they believed would enable them to follow up and process more speedily those claims that require liaison with other social security institutions.

Conclusion

The Ombudsman had every sympathy for this complainant, he had done all that he could to compel the DSS to pay him what he was owed, even so, he was forced to go without his Gibraltar pension for ten months, without substantive explanations. The cause had been finally established to be "human error" and the Ombudsman was able to ascertain that there had been no maladministration. Furthermore the DSS had already taken steps to ensure this type of error did not repeat itself by re organising its administration so that claims could be monitored more closely. For these reasons the Ombudsman did not sustain this case.

ELDERLY CARE AGENCY

The Elderly Care Agency is also one of those entities under our jurisdiction in respect of which we receive very few complaints. This year we have received only one enquiry which was in respect of admittance into the Mount Alvernia nursing home.

Shortly after, we were informed by the person making the enquiry that the problem had been solved to her family's satisfaction.

The most common form of enquiry that we get is in respect of the mechanism used by the Agency to allocate admission into their nursing homes. In order to apprise myself of this mechanism, I requested a meeting with the Agency's Manager. The Minister with responsibility for the Agency also attended the meeting.

We were given a thorough presentation of the evaluation method for admission; the waiting lists were also made available for our perusal. All my questions were answered satisfactorily and additional information provided where required.

I am completely at ease and have no doubt that the administrative procedures in place at the Agency in respect of admissions operate in a just and equitable manner for the benefit of all that require their assistance.

EDUCATION DEPARTMENT

This year we have received a total of 12 'Complaints' and 4 'Enquiries' against the Department of Education & Training. Of these 12 complaints, we conducted three investigations warranting a report; at the time of preparing this report, two investigations still had to be completed.

As with other entities, we always get full cooperation whenever we carry out an investigation. Despite the very good assistance that we receive from this department, I have to report that at the present moment it is probably the worst offender in respect of delays in providing timely replies to the Ombudsman. Almost in every instance when we have written a letter to them, we have had to chase them repeatedly for a written reply. This is a matter for concern and the department should examine its ability to reply to letters in a timely manner.

CASE 777

COMPLAINT AGAINST THE DEPARTMENT OF EDUCATION AND TRAINING ("THE DEPARTMENT") CONSEQUENT ON THE COMPLAINANT'S APPLICATION FOR A DISCRETIONARY SCHOLARSHIP FOR THE ACADEMIC YEAR 2007/2008 TO STUDY AT AN ACADEMY LOCATED IN SPAIN BEING UNSUCCESSFUL.

Circumstances Giving Rise to the Complaint

The Complainant had applied to the Department for a discretionary scholarship for the academic year 2006/2007 to study at an Academy ("the Academy") then located in Gibraltar and had been unsuccessful.

The Complainant subsequently applied to the Department for a discretionary scholarship for the academic year 2007/2008 to study at the Academy which had then moved to Spain but had been unsuccessful in her application.

It was at this point in time that the Complainant came to see the Ombudsman.

Investigation

The Ombudsman's Correspondence with the Department

The Ombudsman wrote to the Department on the 20 September 2007 presenting the complaint, namely that the Complainant was aggrieved that her application for a discretionary scholarship for the academic year 2007/2008 to study at the Academy in Spain had been unsuccessful.

The Ombudsman's letter explained that the Complainant thought this was completely unfair since she had previously applied for a discretionary scholarship for the academic year 2006/2007 to study at the Academy then located in Gibraltar and had been unsuccessful. The reason given to her by the Department at the time was that she was not yet 18 and for her to apply the following year for the scholarship.

The Ombudsman's letter to the Department then explained that she believed her not being 18 years old at the time her first application was considered was not a valid and proper reason for her not being given a scholarship then. The result of her having been refused a scholarship for the academic year 2007/2008, was that in addition to having lost a year, she now had to fund the tuition herself and additionally had to travel to and from Spain on a daily basis with all the attendant travel costs and road traffic risks involved.

The Ombudsman's letter then stated, that additionally, the Complainant alleged that during the academic year 2006/2007 when she had not been given the discretionary scholarship to study at the Academy in Gibraltar, another young lady was helped/managed through the Vocational Training Scheme to study at the Academy for the same or a similar course to the one which she had not been given a scholarship for.

The Ombudsman requested the Department's comments in this regard and concluded his letter by asking if there was any way the Department could help the Complainant with her course tuition fees even at this late stage.

The Department verbally acknowledged receipt of the complaint and made various requests for extensions of time to investigate the complaint and reply to the Ombudsman. The Ombudsman agreed to these extensions. (If no explanations for delay in replying are received or no requests for extensions of time to investigate the Complaint and reply are received by the Ombudsman, the Ombudsman expects substantive replies no later than 2 to 3 weeks from the date of his letter).

[Ombudsman's General Note for Departmental Guidance]

The Ombudsman expects an acknowledgment of receipt of the complaint to be sent within 4 days of receipt of the complaint at the very latest.

With regard to an Initial Reply letter, the Ombudsman expects this, if required, to issue within 7 days of receipt of the complaint at the very latest.

A substantive reply to the Ombudsman's letter informing the Department of the Complaint, is expected from the Department by no later than 2 to 3 weeks from the date of his letter.

Should the Department for any reason be unable to provide a substantive reply within 3 weeks, a suitable holding letter should issue from the Department to the Office of the Ombudsman explaining why the 3 week time frame cannot be adhered to and confirming when the Department will be in a position to forward a substantive reply.

The Department sent a substantive reply to the Ombudsman on the 6 November 2007. In their letter the Department apologised for the delay in replying and explained that they needed time to consult various sources and officers, some of whom were no longer working in the Department.

The Department explained that the fact that the Complainant's application for a discretionary scholarship was unsuccessful in the academic year 2007/2008 bore absolutely no relation to the outcome of her application the previous year. Being unsuccessful one year and applying the following year, even on the advice of the Department, in no way guaranteed an applicant any measure of success nor did it in any way influence the outcome of the latest application. The Scholarship Board met every year to consider all applications received for that year on their merit and each application was considered irrespective of the outcome of former applications. Indeed, in a letter sent to the Complainant by the Department's Education Adviser on 10 July 2006, it was made perfectly clear why her application could not be successful then and how she was entitled to apply the following year. Entitlement to apply for a discretionary award could never be construed as implying any form of guarantee of success.

The Department then refuted the point about the Complainant not having reached the age of 18 at the time of application not constituting a valid reason for failing to obtain a scholarship in the academic year 2006/2007 on the grounds stated clearly in the above mentioned letter from the Department's Education Adviser which were in accordance with the scholarship regulations. They added that reference to this requirement appeared in the advert for applications and the Department had no evidence that the Complainant had complained about this at the time.

The Department then stated that moreover, it appeared that the intended course provider (on both occasions, the Academy) had now moved its operations to Spain. This was not indicated on the 2007/2008 scholarship application form submitted by the Complainant, so that the Scholarship Board only learned of this circumstance at the interview with the Complainant.

It was an unfortunate situation that the Board was unable to consider requests for study outside the United Kingdom. Awarding a discretionary scholarship for study in Spain was at this point in time beyond the established parameters of the Board. The Complainant's father had been verbally informed of this by another of the Department's Education Advisers, at a meeting arranged at the Department. In fact, the Complainant's father had also been afforded an additional meeting with the Minister for Education and Training. All this despite the fact that the father had intimated he had already contacted the Office of the Ombudsman.

The Department's letter then went on to explain that in respect of the Vocational Training Scheme ("VTS"), it was quite correct that an applicant was placed with the Academy during the academic year 2006/2007. The VTS, however, was a totally separate scheme from the Discretionary Scholarship Awards. It was aimed at offering applicants work experience and the opportunity to develop on-the-job skills. Although it carries an allowance, it was not a scholarship or grant.

The Department then stated that help with the Complainant's current tuition fees with a course provider in Spain would at that stage be impossible to be offered by the Department.

On 16 November 2007 a meeting was held at the Department when this case was discussed. Additionally during the course of the discussion the Office of the Ombudsman was informed that at the suggestion of the Minister for Education and Training, the Complainant had applied to a private educational trust and had been awarded a grant which helped her pay a part of her tuition fees for the academic year 2007/2008 for her studies with the Academy in Spain.

Conclusion

From the above investigation the Ombudsman concluded that there had been no maladministration, since:

- (1) The awarding of discretionary scholarships was vested in the Department's Scholarship Board who made a discretionary decision after carefully considering all the circumstances appertaining to each particular application.
- (2) The Complainant had been too young to have been awarded a discretionary scholarship for the academic year 2006/2007 since it was a prerequisite that she have attained the age of 18 by 1 September 2006, which requirement she could not satisfy since she was not yet 18 on that date.
- (3) The Department's Scholarship Board was unable to consider the Complainant's application for a discretionary scholarship for the academic year 2007/2008 for studies in Spain since this was beyond the established parameters of the Scholarship Board who could only make awards for studies in the United Kingdom.

Recommendation

- (1) That in all cases where applications for discretionary scholarships are unsuccessful, the Department's letter informing the applicant of the same should include information about all educational trusts which the applicant could apply to for consideration of financial assistance for their intended course of study.

EMPLOYMENT SERVICE

Over the last year, we recorded a total of 4 'Complaints' and 4 'Enquiries' in respect of the Employment Service. This compares with 6 'Complaints' and 6 'Enquiries' for the previous year.

This is a department that always strives to provide a good and efficient service to their users. Certainly, they are always ready to provide explanations whenever the need arises and are not shy to implement better procedures whenever a deficient administrative mechanism is identified.

Out of the 4 complaints recorded this year, 2 were complaints brought to us at a stage when it had not been presented to the Employment Service. We therefore advised the different complainants to put their grievance to the Department and classified the complaints as 'Relevant Avenues Not Exhausted'. The remaining 2 complaints were investigated and classified as not sustained.

Though classified as 'Not Sustained', I feel that I need to comment on one of the complaints where a work permit was refused. Under the provisions of the Employment Act, the Gibraltar Development Corporation Act 1990 and the Employment Regulations 1994, by virtue of regulation 7(5), the Director of Employment may, in his discretion refuse to grant a work permit for the employment of a worker where in his opinion such exercise of his discretion is warranted by the situation of the labour market.

In a situation where the Director decides to exercise his discretion and not grant a work permit, the reasonable course of action to expect would be a reasoned answer from the Director as to why the requested permit was not granted. However, the Director is protected from having to give such an explanation by legislation in the form of Regulation 8(1)(c)(ii) of the Employment Regulations 1994 which provides that where the Director has exercised his discretion the requirement to give reasons for the decision shall be satisfied by a reference to the paragraph of that regulation by virtue of which discretion has been exercised, i.e. regulation 7(5).

Already in a report (case 346) in the year 2002, the Ombudsman, on exactly the same issue, made comment as follows:

“The Ombudsman noted that there had been no act of maladministration. He said that although he understood the Director had acted lawfully at first instance when refusing to give reasons for not granting a work permit, this kind of refusal was becoming increasingly anachronistic. However, the Ombudsman was happy to note that the Director had re-considered the application and approved the granting of a work permit. The Ombudsman expressed the view that the Public Administration must endeavour at all times and under all possible circumstances to be as transparent and as explicit as possible. The Public Administration must give explanations for its actions, and must make itself fully accountable at all times. This unfortunately had not happened in this case and hence the complaint which the Ombudsman felt was fully justified.”

I concur with these words and make a call for the Director to be made fully accountable for his decisions by way of having to provide reasoned explanations when refusing a work permit.

The Employment Service was the subject of an investigation in a peripheral manner in respect of a complaint lodged against the Civil Status and Registration Office.

CASE 749

COMPLAINT AGAINST

CIVIL STATUS AND REGISTRATION OFFICE FOR NOT BEING ABLE TO RENEW HIS CIVILIAN REGISTRATION CARD

DEPARTMENT OF SOCIAL SECURITY FOR NOT BEING ABLE TO CLAIM UNEMPLOYMENT BENEFIT BECAUSE HE CANNOT REGISTER AT THE MINISTRY OF EMPLOYMENT

MINISTRY OF EMPLOYMENT FOR NOT BEING ABLE TO REGISTER FOR EMPLOYMENT AND SEEKING WORK WITHOUT A VALID CIVILIAN REGISTRATION CARD

Complaint

The complainant was aggrieved because he had been prevented from claiming his unemployment benefit that he was entitled to. He explained to the Ombudsman that he had been caught up in a circular problem that he could not resolve

The complainant, an EU National, became unemployed on the 9 February 2007 after working in Gibraltar for 9 years. He attempted to claim unemployment benefit at the Department of Social Security (DSS) on 20 February 2007 and was told that in order to qualify for unemployment benefit he had to prove that he was looking for work. In order to prove this he must register for employment at the Ministry for Employment (Ministry).

The complainant explained that he had been prevented from registering for employment and looking for work because the Ministry had insisted on a valid Gibraltar Civilian Registration Card (CR Card); his had just expired on the 14 February 2007. The Ministry advised him to return when he had renewed his CR Card at the Civil Status and Registration Office (CSRO). However, the CSRO would not accept his application for renewal of his Gibraltar CR Card because he had left his previous employment voluntarily. Furthermore, CSRO explained that EU Nationals were not required by law to obtain a Gibraltar CR Card as their own country identity cards and passport were sufficient documentation to remain in Gibraltar.

Resolving the circular problem

The Ombudsman was able to assist the complainant by referring him back to the Ministry. The Ministry explained that they had been attempting to contact the complainant subsequent to the DSS notifying them of the circular problem. On returning to the Ministry a few days later the complainant was able to register for employment and therefore claim his unemployment benefit.

Change in procedure

The Ombudsman highlighted to the Ministry that by imposing a requirement of a valid Gibraltar CR Card or ID Card to those wishing to register for their services they were potentially denying EU Nationals from exercising their rights under EU law in regard to the 'free movement of workers': Given that EU Nationals are not required to obtain a Gibraltar CR Card in order to work or remain in a host member state, as their country of origin's identity card or passport are sufficient documentation for these purposes. In effect, the Ministry's requirement for a valid CR Card was imposing immigration requirements on EU Nationals that were not legally supported.

The Ministry explained to the Ombudsman that they had been aware that the requirement they imposed on people wishing to register for their services i.e. valid Gibraltar ID Card or CR Card as proof of address, was in breach of EU law and could not be substantiated as a requirement under Gibraltar law. They had therefore been in the process of removing that requirement and this case had prompted them to finalise those arrangements. Subsequent to this investigation the Ministry had confirmed to the Ombudsman that other forms of proof of address were now also acceptable for registering for employment.

They also confirmed to the Ombudsman that their services were available not only to Gibraltarians but also to EU Nationals that had been working and were still residing in Gibraltar.

Conclusion

The Ombudsman did not sustain the complaint against the CSRO for not issuing the complainant with a CR Card as they were not legally required to do so. The Ombudsman also did not sustain the complaint against the DSS for insisting that the complainant register for employment and seeking work before unemployment benefit was paid, as they were entitled to insist on this requirement as per Gibraltar legislation.

In regard to the Ministry insisting that either an ID Card or CR Card be used as proof of address when registering for employment, the Ombudsman accepted the Ministry's explanation that they had already identified that the practice was in breach of EU law and although they had not totally eliminated the practice, shown by the initial response to the complainant's attempt to register, they were in the process of a complete change. The Ombudsman did not therefore sustain the complaint against the Ministry. However, he did note that it had taken an investigation from the Ombudsman to prompt the Ministry into finalising that change.

ENVIRONMENTAL AGENCY

An example of good administrative behaviour was set by the Environmental Agency in a case where a member of the public complained to them about feral pigeons in the area of the Varyl Begg Housing Estate.

The Agency had failed to reply to a letter sent by a member of the public in respect of his complaint about the pigeons. The Ombudsman wrote to the Agency setting out the complaint and the Agency promptly responded; they explained that the complainant's letter had been filed without a reminder date. They then wrote to the complainant and explained that they had been alerted to the non-reply by the Ombudsman; the lateness of the reply was regretted.

After advising the complainant that the Ministry for the Environment was aware of the problem caused by feral pigeons, he was invited to contact the Agency if he wished to discuss the matter further with them.

This is a good example of good administrative action because once the problem had been identified the Agency reacted promptly and in a very positive manner. A good end ensued out of a bad start.

GIBRALTAR ELECTRICITY AUTHORITY

The Gibraltar Electricity Authority last year attracted a total of 14 'Complaints' and 6 'Enquiries'. In the main the complaints were in relation to the collection of arrears exercise that the Authority embarked upon last year.

This year we recorded a total of 10 'Complaints' and 2 'Enquiries' for this Authority; a decrease of 4 Complaints and 4 Enquiries.

An interesting and unfortunate matter was brought to our attention. It concerned a lady, of limited financial means, who had suffered damage to her belongings when a fire broke out in her flat due to an electrical power surge. The Fire Brigade was called to the incident and after the fire was extinguished the Gibraltar Electricity Authority were called as a cable was found to be faulty. The duty electrician attended the scene and repairs were made to supply electricity to the block of flats affected.

Allegedly, the lady's washing machine, television, microwave, fish tank and a play station console were damaged as a result of the power surge. She made a claim for damages to the Authority.

The Authority promptly replied that ' *"The Gibraltar Electricity Authority does not accept liability for any damage, loss, injury or inconvenience caused by or arising directly or indirectly from any interruption, defect, variation or discontinuance of the supply of electricity."*

The lady was referred to Article 27 of the General Conditions for the Supply of Electricity which states that

27. LIABILITY OF THE AUTHORITY

The Authority shall bear no liability for any damage, loss, injury or inconvenience caused by or arising directly or indirectly from any interruption, defect, variation or discontinuance of the supply of electricity or from any breakdown of or accident to or defect in the Authority's machinery or other works but it will use all reasonable diligence in restoring the supply.

Despite a letter of appeal explaining her severe financial circumstances, the Authority refused to pay any compensation.

There is no doubt that the Authority acted in a proper manner and that no maladministration arose out of their actions, however one can only but feel sorry for this lady who suffered loss through no fault of hers. She was left distraught and unable to understand why her claim could not be met especially because of the hardship that it had caused. It would take a long time for her to be able to replace the damaged items.

By way of comment, I have to add that public service suppliers need to be protected from claims of this nature as otherwise untold consequences could ensue in the event of major breakdowns. However, should there not be some form of compensation scheme set up to consider claims where hardship has been caused? I would urge the pertinent authorities to consider this proposal.

HOUSING DEPARTMENT

The Housing Department saw an overall decrease in enquiries and complaints compared to last year from 163 in 2006 to 136 in 2007. However, they still claim the top most complained about Department at 29% for 2007, an increase on 2006 (26%).

There was a significant increase in the delay in the Department's response to the Ombudsman's requests for information, very often necessitating a reminder letter being sent after three weeks. In June 2007 the Office of the Chief Secretary issued a circular to all Heads of Department highlighting the effect of not responding in a timely manner to the person making a complaint, in that the Ombudsman would sustain a complaint for delay of this sort.

He requested in his circular that Heads of Department should ensure that such replies are made within a 2 to 3 weeks timescale and in principle this timescale should be extended to all correspondence.

A group investigation was conducted during 2007 as a result of several different complainants complaining of “queue jumping” in respect of housing allocations. In the report, CS742 (included in the annexe to this Report) we used the opportunity to explain to the reader the process by which allocations are made, including descriptions of the various lists and committees. The investigation looked at a sample period of eighteen months with regard to the allocations made for 2RKB and 3RKB to examine whether the complainants’ perception of queue jumping was founded. All of the complainants had been told by the Department that allocations are made in strict date order, those that were on the list the longest get allocated first. The investigation showed that in the 18 month period only 20% of the 2 & 3 RKB allocations had been made by the date order criteria, the majority, 80%, had been made for some other reason substantiating the complainants’ perception of queue jumping. However, it is important to note that none of the allocations made during the 18 months had been put under question by the Ombudsman, they were all valid allocations.

The perception of fair and transparent allocations would go a long way in reassuring the public’s faith in this Department, who always advice applicants that they must wait their turn in date order when the majority of allocations are clearly not made under this criterion. This misleads people and undermines the difficult work of the volunteers on the various committees.

INCOME TAX

The Income Tax Department attracted a total of 8 ‘Complaints’ and 1 ‘Enquiry’ this year. This compares with 12 Complaints for the previous year (2006).

This is yet another department who always provides us with prompt replies and comprehensive information.

We investigated and completed a complaint in respect of delays in replying to the complainant’s correspondence. The complaint was sustained because there was a delay of four months, which was considered as excessive and had caused the complainant anxiety especially since, before seeking the assistance of the Ombudsman, there had been a 10% further charge imposed on the complainant, on his tax bill, as a result of not paying on time.

CASE 756**COMPLAINT AGAINST THE INCOME TAX OFFICE FOR THE DELAY IN REPLYING TO LETTERS AND FOR A DEBT OF INCOME TAX CAUSED BECAUSE AN INCORRECT CODE WAS ISSUED****Complaint**

The complainant complained that:

He had incurred a debt of income tax for the tax years commencing 2003 and 2004 (“relevant tax years”) because he had been allowed by the Tax Office (“Department”) to claim an allowance that in fact he did not qualify for.

He should not be liable for payment of the debt as the Ombudsman had stated in a similar case that once the Department had issued a tax code they could not claim additional income tax over and above the issued tax code.

The Department had not replied to his letter of November 2006 (3 months) challenging his income tax liability for the relevant tax years.

The complainant explained that he had two children with his estranged partner; they had lived together for several years before separating but had never married.

In 2003 he had claimed an allowance as a one parent family for his youngest child whilst his partner continued to claim an allowance as a one parent family for their eldest child. During the two relevant tax years deductions were made from his salary based on the codes issued by the Department until in 2005 when the Department advised the complainant that the code was incorrect and he could not claim for one parent family on the second child. His code was changed accordingly.

On 17 November 2006 the complainant received a notice of assessment for the two relevant tax years which stated that he owed £1,635.75. The complainant wrote to the Department on 30 November 2006 explaining that he assumed the debt had arisen because he had been given the wrong tax code and believed that as this was their mistake he should not have to pay the shortfall. The complainant also referred to a similar complaint dealt with by the Ombudsman, who stated that this could not now be claimed back after the tax code had been issued.

As the complainant had not received a reply from the Department he sent a further letter on 11 December 2006 requesting a reply and enclosing a copy of the original letter of 30 November 2006.

The complainant sought the assistance of the Ombudsman in February 2007 when he received a Demand Notice for the outstanding amount and a penalty of 10% for non payment.

Investigation

The Ombudsman accepted the complaint on the basis that the complainant had not received a reply to his letters of 30 November 2006 and 11 December 2006.

The Ombudsman wrote to the Department on 9 February 2007 explaining the complaint of non reply, it was necessary to send a further letter on 5 March 2006 as the Department had not replied.

The complainant was sent a holding letter from the Department on 7 March 2007 that explained that his query had not been dealt with sooner due to his file not being in its correct place and that now his file was at hand they would look into his case and a reply would be sent shortly. A substantive reply was sent on 20 March 2007. This was a 4 month delay from the original letter of 30 November 2006.

In their reply the Department explained that they regretted that the member of staff who attended the complainant at the PAYE counter had allowed his claim for one parent family in respect of his second child. They could only assume this was possibly because the member of staff had failed to notice that both children were from the same parents and could not be separated for tax allowance purposes.

They further explained that the tax payable for the relevant years was legally due. However, they would be prepared to give the complainant time to pay and were willing to enter into a repayment agreement to settle the amount due over a reasonable period of time. Furthermore, the penalties raised in relation to the non payment of the assessment (10%) had been withdrawn.

Conclusion

In relation to the complaint of non reply the Ombudsman sustained the complaint. The delay of four months was excessive and had caused the complainant anxiety, especially since the only response he had received from the Department, before seeking the Ombudsman's assistance, was that of a Demand Notice incurring a further 10% charge. In the opinion of the Ombudsman the delay was unreasonable, the file not being in its correct place did not sufficiently explain why a reply had not been sent to him.

In regard to the main complaint that he should not have to pay a shortfall on his income tax caused by the Tax Office issuing an incorrect code, the Ombudsman advised the complainant that the Department were legally bound to collect all income tax due; this duty was not cancelled by any errors the Department may make. However, it was good administrative practice to allow repayment in such circumstances over a reasonable period of time, which in this case the Department had offered. For the sake of clarity the Ombudsman also stated that at no time had he asserted to the contrary in any previous investigations or reports.

SPORTS AND LEISURE AUTHORITY

As with some other entities under our jurisdiction, the Sports and Leisure Authority is one of those entities that is hardly ever the subject of a complaint. This is irrespective of the fact that thousands of persons use their different facilities every month.

This year we had quite an interesting complaint lodged by a group of youngsters who claimed that they were aggrieved in respect of the booking and use of facilities at the Victoria Stadium.

CASE 757

COMPLAINT AGAINST THE GIBRALTAR SPORTS AND LEISURE AUTHORITY FOR THE RESTRICTIONS TO THEIR USE OF VICTORIA STADIUM BECAUSE THEY ARE NOT A REGISTERED ORGANISATION AND BEING TREATED DISRESPECTFULLY.

Complaint

The complainant represented a group of 22 young men who were aggrieved that they were discouraged from using the facilities at the Victoria Stadium because of priority being given to “registered teams” and the disrespectful attitude of some of the staff. They gave the Ombudsman details of a recent incident as an example of their complaint.

The complainant explained that on Friday the 13th April 2007 they booked an allocation for Sunday 22nd April 2007, 2pm to 3pm and 3pm to 4pm to play on football pitch no. 2. On arriving at the stadium they were told that they did not have a booking, a member of staff allegedly phoned the administration office and confirmed there was no booking for their group and they were therefore not allowed to use the facilities.

The complainant explained that subsequent to a lengthy discussion the member of staff allowed them to use their booking from 2pm to 3pm, the delay had caused a loss of approximately 15 minutes of their permitted one hour allotted time. They were not permitted to use the remaining one hour from 3pm to 4pm as that constituted a double booking which is against the Authority’s policy.

Further discussions continued with the member of staff, which became heated and insulting, especially to one of the members of the group in particular.

This type of incident is described by the complainant as a common occurrence and symptomatic of an underlying disrespectful attitude towards them because they are young and have not registered as a team.

The complainant took their grievance to a senior manager the following day who promised to look into the matter. Subsequent to that meeting and their belief that their complaint would not be taken seriously, they also met with the Ombudsman to register a complaint against the Authority.

A week later the Ombudsman confirmed with the complainant that the Authority had not responded to their complaint and so he wrote to the Authority explaining their grievance

Policy governing bookings

The Authority explained to the Ombudsman through letters and a meeting that the policy for bookings at the stadium was indeed different for registered sporting organisation than for individual users. Organisations book their session on an annual block basis. However, some sessions are deliberately left for individuals to use in order to share the facilities and encourage those that are interested in sport but not yet part of an organisation.

Due to the high demand for bookings the Authority explained that they need to restrict individual bookings to only one hour. A common abuse of the system is for two separate bookings to be made by two different parties and the two parties to join together on the day for a two hour session, i.e. sharing each others booking, as was the case with the complainant.

The Authority further explained that they were aware of this problem and had been working towards a solution for some time, just recently they had announced the new facility of “come and play”, this did not require the same formality of bookings and was directed at the type of usage more suitable to the complainants needs, in that users could stay for the whole session over several hours if they so wished, without having to book in advance.

Disrespectful attitude of staff

A further meeting with the complainant established that the disrespectful attitude of staff described by the complainant on the day in question had been one particular member of staff.

The Authority explained that the member of staff’s use of inappropriate language and seemingly aggressive stance was not intended to cause any offence. Notwithstanding the member of staff’s intentions, this behaviour was not acceptable by the Authority and the matter had been dealt with by his senior manager through normal personnel procedure.

Handling of the complaint

The senior manager that received the complainants’ grievance explained that he was confused as to why the complainant had taken their complaint directly to the Ombudsman the same day they had raised the issue with him. They had not given him an opportunity to address the issues and had made unfounded assumptions regarding his integrity in objectively dealing with the matter.

The Authority explained that they were in the process of compiling a “User and Provider Charter” which will include a complaints procedure and form. They further explained that the timescale for such a Charter was outside their direct control, as it would require the backing of the Gibraltar Sport and Leisure Authority Board, which is chaired by the Minister for Sport.

Conclusion

It was plain to the Ombudsman that both the complainant and the Authority were passionate about sport. However, they both seemed to have been at odds on how the facilities should be used.

The Ombudsman is of the opinion that it is very likely that the complainant had attempted, knowingly, to use the facilities at the Stadium in a manner that is not permitted i.e. double bookings. However, the handling of the incident by the Authority was, in the complainants' words, disrespectful and insulting. Furthermore, the following day only went to highlight the need for clear guidelines regarding complaint handling, in order to realistically manage user expectations and protect the employees.

The Ombudsman explained to the Authority that if they had had a complaints policy giving timescales (or a User & Provider Charter), the Ombudsman would not have become involved until that process had been exhausted, if at all. As no timescales were given to the complainants in regard to feedback from their complaint they were left to make their own assumptions of what to expect from registering their complaint. This coupled with the complainants' already believing that they were not being taken seriously only fuelled their grievance and likely prompted them to seek the assistance of the Ombudsman.

This ambiguous approach to complaint handling was further evidenced in communications to the Ombudsman by the Authority. The Ombudsman had been told by the Authority two different versions of what was expected in regard to the complainants' grievance; one was that the senior manager was waiting for the complainants to get back in touch with the Authority and the other was that the Authority had not had the opportunity to report back to the complainants.

In contrast the Ombudsman also noted that in the eight years his office had been open only 3 complaints had been received against the Authority (previously the Sports Department), this coupled with the knowledge that currently over 10,000 user units are booked each week was an impressive record of user satisfaction.

The Ombudsman did not sustain the complaint in respect of unacceptable behaviour of the Authority's employee on the day of the incident as this matter had been addressed by the Authority through its own personnel procedures. In regard to the Authority's complaint process the Ombudsman supported the initiative of the Chief Executive in introducing a User and Provider Charter that included a complaints procedure, he did not sustain this aspect of the complaint either but made strong recommendations that the Board address the issue of a Charter at their earliest opportunity, for the sake of not only the thousands of users but also in protection of the employees who are providing an ever expanding facility within Gibraltar.

Recommendation

The Sports and Leisure Authority Board address the issue of a User and Provider Charter at their earliest opportunity.

Update

The Authority informed the Ombudsman that the User and Provider Charter was now in draft format, which included a complaints and suggestion procedure and a copy was provided to the Ombudsman. The Authority explained that they were still unable to provide a time frame for publication as the document was subject to the approval by the Gibraltar Sports & Leisure Authority Board.

DEPARTMENT OF TRANSPORT

We received a total 6 complaints and 2 enquiries in respect of this department. On four of the complaints we conducted investigations warranting a report. One of the investigations concerned an application for a driving licence where the person did not have a valid Gibraltar Identification Card.

CASE 763

COMPLAINT AGAINST THE DEPARTMENT OF TRANSPORT (“THE DEPARTMENT”) CONSEQUENT ON THE COMPLAINANT HAVING ATTENDED AT THE DEPARTMENT IN ORDER TO REGISTER FOR A DRIVING TEST AND BEING INFORMED THAT HE WAS REQUIRED TO BE IN POSSESSION OF A LOCAL IDENTITY CARD IN ORDER TO BE ABLE TO APPLY

Complaint

Complaint against the Department of Transport (“the Department”) consequent on the Complainant having attended at the Department in order to register for a driving test and being informed that he was required to be in possession of a local Identity Card in order to be able to apply.

The Complainant had lived and worked in Gibraltar for more than 2½ years during which time he had been paying taxes and contributing towards social insurance.

He sent a fax on 4 September 2007 to the Department explaining the above and went on to inform them that he wished to begin driving lessons and attain a driving licence but that he had been advised by the Department that it was required by statute that he must first have a residence I.D. card to obtain this.

The Complainant then stated that since he was currently and would be for the foreseeable future residing at a Government address, the Civil Status and Registration Office would not issue him an I.D. card as he was not the registered tenant. The Complainant added that he was however able to provide proof of address by way of his notice of terms of engagement lodged with the Ministry of Employment, bank statements and a letter from the tenancy holder of the flat where he lived which stated that the Complainant was residing at an address in Gibraltar.

The Complainant concluded his letter by stating that he would be grateful if the Department could confirm via letter or e-mail that he was unable to obtain a driving licence without an I.D. card or provide him with information as to how he could go about obtaining a driving licence without first procuring an I.D. card.

The Department replied on 5 September 2007. In their letter the Department explained that in order to obtain a Gibraltar issued driving licence the Complainant needed to provide documentary evidence of his residency in Gibraltar. The letter went on to explain that residency period was defined by the provisions of section 27 of the Traffic (Licensing and Registration) Act, which stated inter alia:

"(1c) his normal residence (within the meaning of section 59) is in Gibraltar or he has been attending a school or other educational institution throughout a period of six months immediately preceding the date on which he passes his driving test."

The Department's letter concluded by stating that the documentary evidence required was either a Gibraltar issued Identity Card or Permit of Residence.

It was at this point in time that the Complainant not being happy with the answer he had been given in relation to the requirement of having a Gibraltar Identity Card in order to be able to apply for a driving test sought the assistance of the Ombudsman.

Investigation

The Ombudsman met with the Department on 27 September 2007 and wrote to the Department that same day presenting the Complaint, namely that when the Complainant had attended at the Department in order to register for a driving test he had been informed that he was required to be in possession of a local Identity Card in order to be able to apply

The letter went on to explain that the Complainant believed this requirement was inconsistent with the provisions of the Traffic Act.

The Ombudsman in his letter referred to following provisions of the Traffic Act:

Section 27(1)(c):

(c) his normal residence (within the meaning of section 59) is in Gibraltar or he has been attending a school or other educational institution throughout a period of six months immediately preceding the date on which he passes his driving test.

And the relevant sub-section (8) of Section 59:

(8) Subject to sub-sections (9) to (11) a person's normal residence is, for the purpose of this section, the place he lives at for not less than 185 days in any calendar year because of—

(a) in the case of a person who has an occupation, occupational and personal ties; or

(b) in the case of a person who does not have an occupation, personal ties.

The letter then explained that the Complainant was a UK national who had lived in Gibraltar in excess of two and a half years and that in fact he did have an I. D. Card (actually a Civilian Registration Card) at the time that he lived at a private address in Irish Town. That upon its expiry, the Civil Status and Registration Office would not renew the Card as the Complainant had now moved into his fiancé's family home which was government owned and he was not able to register as a tenant.

The Ombudsman then referred to the following documents which he enclosed with his letter:

1. A copy of the Complainant's Notice of Terms of Engagement showing his address as a Gibraltar address.
2. A copy of a letter from the lawful tenant of the flat the Complainant was living at, attesting to the fact that the Complainant lived at that address.
3. A copy of a Housing Department duly completed Application to Include Persons on a Tenancy.
4. A copy of the Complainant's expired Civilian registration Card.
5. A copy of the Complainant's passport.

The letter then stated that the Complainant was also registered for local health services and E111 with the Gibraltar address.

The Ombudsman went on to state that given the legal provisions in force and the Complainant's ability to prove that he did indeed reside in Gibraltar, it would appear that the request for an ID card could well be *ultra vires*. The Ombudsman ended his letter by asking the Department for their comments.

It however took a chaser letter to elicit an initial reply from the Department which was received by way of letter dated 24 October 2007, over 3 weeks from the date of the Ombudsman's letter informing the Department of the Complaint. (This is over the time scale considered appropriate by the Ombudsman for an Acknowledgment/Initial Reply letter. The Ombudsman expects an acknowledgment of receipt of the complaint to be sent within 4 days of receipt of the complaint at the very latest. With regard to an Initial Reply letter, as was sent by the Department in the present case, the Ombudsman expects an Initial Reply letter within 7 days of receipt of the complaint at the very latest).

In their letter dated 24 October 2007 the Department explained that they had sought the advice of the Attorney General in order to clarify this issue, which advice they had recently received. They added that this advice was now being considered and further consultations at intra-departmental level would have to take place given that the Department was considering a matter of policy. A definitive reply would issue immediately a final decision had been taken.

The Department sent their substantive reply on 30 October 2007. In their letter the Department confirmed that they had now had the opportunity to discuss the matter with the Chief Secretary. The Department explained that they had a duty to ensure that all driving licences issued did so in accordance with the requirements of Gibraltar legislation and the corresponding EEC Directives on this matter. In this regard it would not change its departmental policy of requiring a Gibraltar Identity Card in order to apply for a Gibraltar Driving Licence.

The Department however added that notwithstanding this policy and in particular cases where after exhaustive inquiries an applicant proved to the satisfaction of the Licensing Authority that although he was not in possession of a Gibraltar Identity Card he still had the right to reside in Gibraltar, the Department would apply an administrative waiver for that particular applicant.

The letter concluded by stating that in the case of the Complainant the Department was satisfied that there was abundant evidence that he resided in Gibraltar and was therefore a genuine case and that the Department would entertain his application for a driving test forthwith.

The Ombudsman replied to the letters from the Department dated 24 and 30 October 2007 by way of letter dated 7 November 2007, referring to the Department's statement that departmental policy required a Gibraltar Identity Card in order to apply for a Gibraltar Driving Licence in accordance with the requirements of our legislation and corresponding EEC Directives on this matter. The Ombudsman went on to request that the Department direct him to where in Gibraltar legislation and in corresponding EEC Directives there was a requirement for a Gibraltar Identity Card as the only means of proof of a person's normal residence in Gibraltar, in order to apply for a Gibraltar Driving Licence.

The Ombudsman's letter concluded by stating that whilst for the present not requesting a copy of the advice the Department received from the Attorney-General's Chambers, the Ombudsman required confirmation as to whether the above stated departmental policy was in consonance or alternatively at variance with the said advice.

On the 8 November 2007 the Department replied to the Ombudsman's letter dated 7 November 2007.

The Department explained that Section 27 (c) of the Traffic Act required an applicant to have his normal residence in Gibraltar and that Article 7 of EU directive 91/439 required an applicant to have normal residence in the Member State issuing the licence. That it was therefore quite clear that applicants needed to provide evidence of their place of residence to the competent authorities by presenting either their Gibraltar Identity Card or in particular cases where the applicant was not in possession of a Gibraltar Identity Card evidence that an applicant had a right to reside in Gibraltar. That the position was not that they would only entertain an application if the applicant was in possession of a Gibraltar Identity Card. However Departmental policy would continue in the first instance to require a Gibraltar Identity Card to any applicant applying for a Gibraltar Driving Licence.

The Department went on to confirm that the advice received from the Attorney General's Chambers was that in addition to the Gibraltar Identity Card any other valid document that proved his place of residence was in Gibraltar.

The Department then requested the Ombudsman's advice as to what valid documents the Department should accept as proof of permanent residence in Gibraltar bearing in mind the following:

1. A Health Card would only be issued to a person who at the time of application had a valid Gibraltar Identity Card.
2. A Bank Account could even be obtained using a UK address.
3. That even though a Contract of Employment may specify a residential address in Gibraltar, the employment services did not require proof of residence to issue the contract.
4. A sworn affidavit from a partner that a person resided in Gibraltar opened the floodgates for "Licence Tourism".
5. A leasing contract could easily be obtained even if the person did not reside there at all.
6. With (5) above a person could obtain a utilities bill.

Therefore the above documents could not be used as proof of normal residence without a valid Gibraltar Identity Card.

The Department concluded their letter by informing the Ombudsman that they were available to meet with him should he wish to discuss these issues.

The Ombudsman's Meeting with the Department

Consequent on the Department's statement that they were available to meet with him should he wish to discuss the issues, a meeting was held at the Office of the Ombudsman on 20 November 2007 when the Department met with the Ombudsman and matters were discussed.

The Ombudsman followed this meeting up with a letter dated 27 November 2007 which referred to the meeting and went on to record the fact that the Department's policy was governed by section 27(1)(c) of the Traffic Act which required an applicant to have his normal residence in Gibraltar, as well as Article 7 of EU directive 91/439 which required an applicant to have normal residence in the Member State issuing the licence. Additionally the Ombudsman noted that Departmental Policy was that applicants would in the first instance be required to present their Gibraltar Identity Card as evidence of their place of residence but that this requirement was not totally exclusive and that in the absence of a Gibraltar Identity Card, other appropriate evidence of the right to reside in Gibraltar would be accepted.

The Ombudsman went on to inform the Department that he could not advise the Department as to acceptable documents proving residence in Gibraltar, since as an investigative body this matter fell completely outside the remit of the Office of the Ombudsman. In this regard the Ombudsman however noted and referred the Department to the advice they had received from their legal advisers, the Attorney-General's Chambers who had advised the Department that in addition to the Gibraltar Identity Card any other valid document that proved an applicant's place of residence was in Gibraltar was acceptable.

The Ombudsman concluded his letter by stating that he remained strongly of the view that appropriate information should be made available by the Department to applicants orally on enquiry and also by way of a notice, to the effect that in the absence of the preferred Gibraltar Identity Card due consideration would be given by the Department to any other appropriate evidence an applicant can produce.

Conclusion

From the above investigation the Ombudsman concluded that there had been no maladministration, since the Department's Policy that applicants would in the first instance be required to present their Gibraltar Identity Card as evidence of their place of residence, was supported by applicable legislation namely section 27(1)(c) of the Traffic Act as well as Article 7 of EU directive 91/439.

Additionally, the Ombudsman noted that the above stated Policy was not totally exclusive and that in the absence of a Gibraltar Identity Card, other appropriate evidence of residence in Gibraltar would be accepted. This was good administrative practice.

Recommendation

That the Department make available to applicants wanting to take a driving test, information by way of an appropriate notice and also orally on enquiry to the effect that in the absence of the preferred Gibraltar Identity Card due consideration would be given by the Department to any other appropriate evidence of residence in Gibraltar an applicant could produce.

ALL THE CASES REPORTED HERE CAN BE FOUND IN THE ANNEXE TO THIS REPORT (MINI CD) TOGETHER WITH ALL OTHER FORMAL INVESTIGATIONS CARRIED OUT DURING THE YEAR 2007.

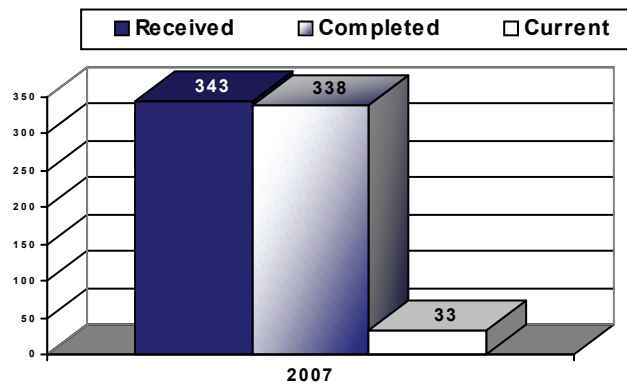


7

Statistical Information

7.1 VOLUME

1 Complaints received, completed and current 2007



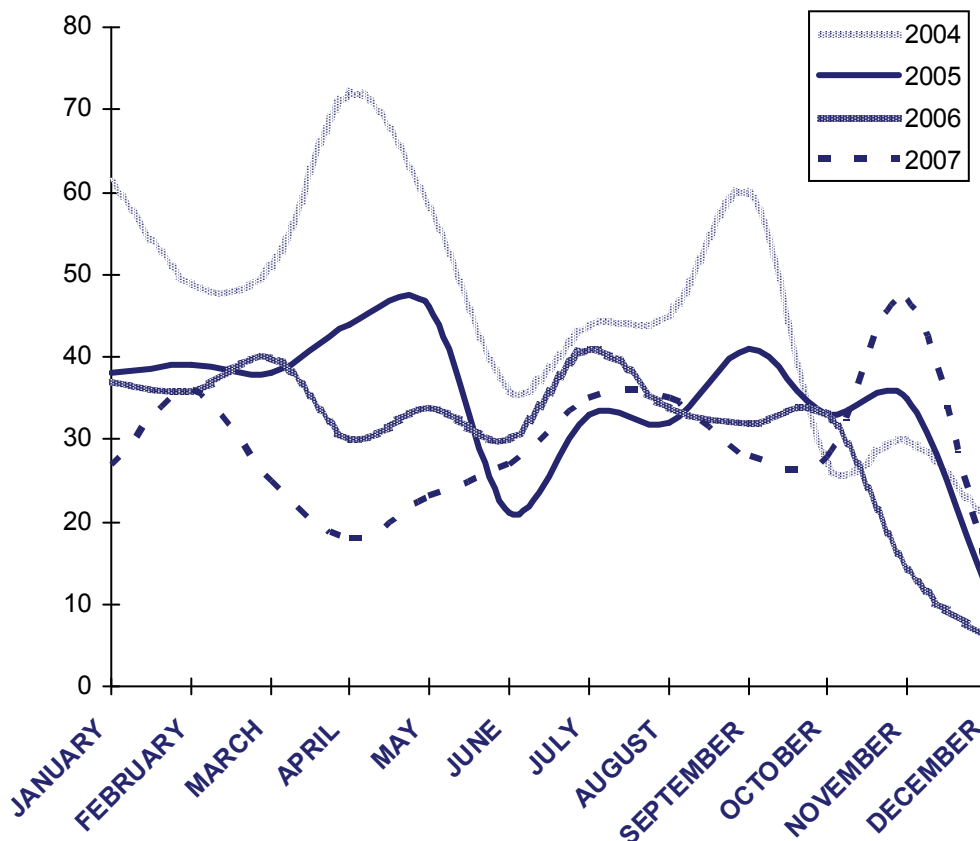
This year, we received 343 complaints in our office, a reduction of 24 complaints compared to 2006, where we received 367 complaints. 338 complaints were completed by the end of the year and this only left 33 complaints open by the end of 2007.

Complaints received, completed and current by month – 2006 & 2007

| Table 1 | 2006 | | | 2007 | | |
|-----------|----------|-----------|---------|----------|-----------|---------|
| | Received | Completed | Current | Received | Completed | Current |
| | | | 41 | | | 28 |
| January | 37 | 29 | 49 | 27 | 13 | 42 |
| February | 36 | 39 | 46 | 36 | 17 | 61 |
| March | 40 | 24 | 62 | 25 | 21 | 65 |
| April | 30 | 25 | 67 | 18 | 25 | 58 |
| May | 34 | 33 | 68 | 23 | 26 | 55 |
| June | 30 | 34 | 64 | 27 | 25 | 57 |
| July | 41 | 39 | 66 | 35 | 22 | 70 |
| August | 34 | 38 | 62 | 35 | 29 | 76 |
| September | 32 | 29 | 65 | 28 | 43 | 61 |
| October | 33 | 44 | 54 | 28 | 29 | 60 |
| November | 14 | 17 | 51 | 47 | 49 | 58 |
| December | 6 | 29 | 28 | 14 | 39 | 33 |
| TOTAL | 367 | 380 | | 343 | 338 | |
| Enquiries | 186 | | | 144 | | |

7.1 (CONT)....

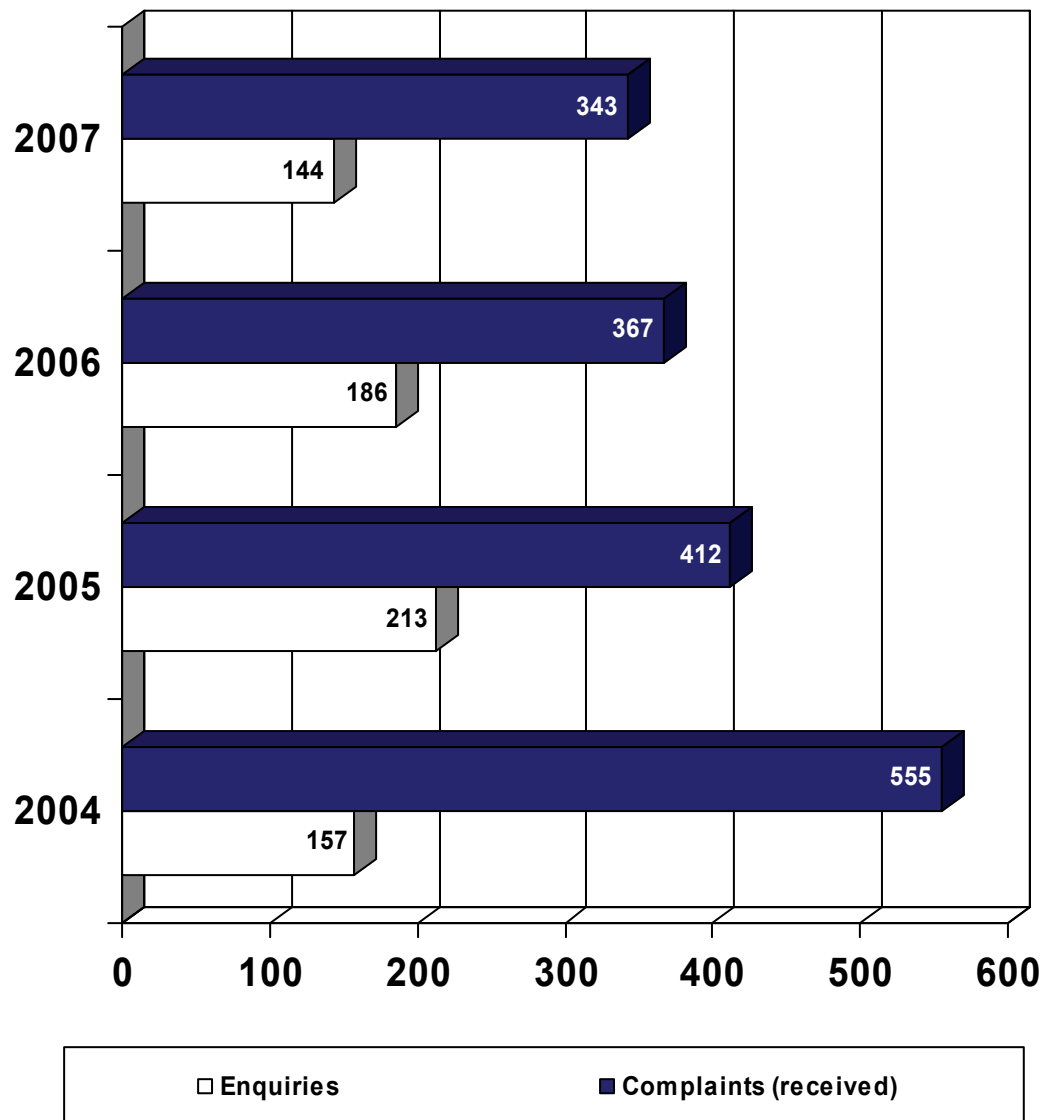
2 Progression of monthly complaints received from 2004 to 2007



The first quarter of 2007 was relatively slow in respect to the flow of complaints we received at the office; there were 88 complaints received in the first three months, an average of 29 complaints per month. April was a record low for that month with only 18 complaints being lodged in our office. This year although the summer months (June, 27; July, 35; August, 35) have been more busy than in 2005 they have fallen a bit short of last year's summer month's figures (30, 41 & 34 respectively in 2006). This year there have been 28 complaints received both in September and October which is low compared to past years. November has been a very busy month this year with 47 complaints received. (There has not been such a high figure for any month since the year 2004). There is no reasonable explanation to this sudden rise of complaints during November but it is interesting to note that the Gibraltar General Elections were held during October. During the running of the election campaign, the different political parties were advocating their manifestos and staging their advertising campaigns, and all the media coverage that was going on must have possibly made members of the public more aware of their rights and what they are entitled to as regards to government services and made their way to our office with their grievances. Complaints decreased substantially in December and although it was the lowest figure of the month it was more than double to last year's figure of just 6. It appears that members of the public continue to be in a good mood during the festive season.

7.1 (CONT)....

3 Breakdown of Complaints and Enquiries received from 2004 to 2007



This year we have received 343 complaints, 46 were against private organisations that fall outside the Ombudsman's jurisdiction. This left a total of 297 complaints received against government departments, agencies and other entities which fall under our jurisdiction. There were also 144 enquiries, but only 138 involved a government department, agency or entity listed in our schedule.

7.2 DEPARTMENTS/ENTITIES

The trend of complaints has continued along the same lines as in previous years. The Housing Department, Civil Status and Registration Office, Buildings and Works Department, Department of Social Security, Gibraltar Health Authority and the Royal Gibraltar Police, again top the list attracting the highest number of complaints but in different ranking order to last year.

Table 2 - Complaints/Enquiries received by Government Departments/Agencies/Others in 2007

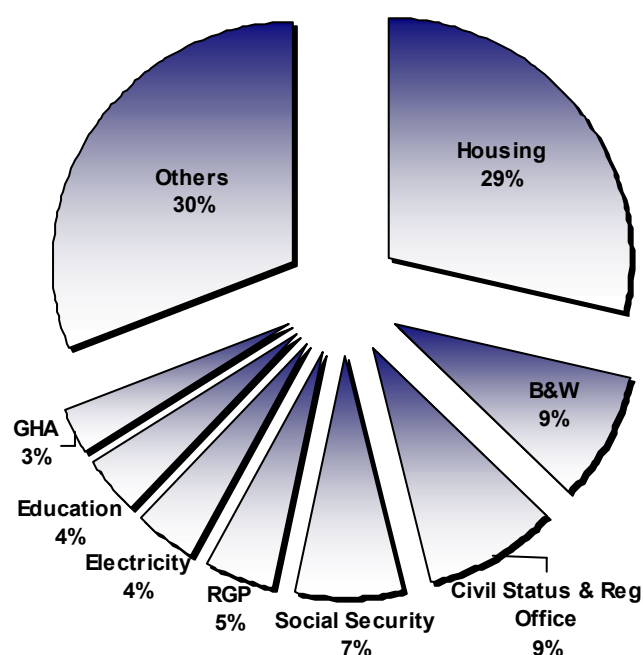
| Dept/Agency | Enquiry | Complaint | Dept/Agency | Enquiry | Complaint |
|-----------------------------|---------|-----------|------------------------------|------------|------------|
| Aqua Gib | - | 4 | Housing Department | 43 | 93 |
| Attorney Generals | 1 | - | Human Resources | 4 | 2 |
| Bruce's Farm | - | 1 | Income Tax Office | 1 | 8 |
| Buildings and Works | 6 | 28 | Land Property Services Ltd | 1 | 4 |
| City Fire Brigade | - | 1 | Magistrates Court | 1 | 5 |
| Civil Status & Registration | 19 | 28 | Ministry of Finance | - | 1 |
| Customs | - | - | Office of the Chief Minister | 1 | 3 |
| Development & Planning | 2 | - | Port Authority | 1 | 3 |
| Education & Training | 4 | 12 | Prison Service | 1 | - |
| Elderly Care Agency | 1 | - | Reporting Office | - | 2 |
| Employment Service | 4 | 4 | Royal Gibraltar Police | 5 | 15 |
| Environment | - | - | Social Security | 14 | 24 |
| Environmental Agency | 2 | 4 | Social Services Agency | 2 | 7 |
| Financial & Develop Sec | - | - | Sports and Leisure | - | 1 |
| Gibraltar Broadcasting Corp | - | - | Supreme Court | 1 | 1 |
| Gibraltar Electricity Auth | 2 | 10 | Technical Services | 2 | - |
| Gibraltar Health Authority | 13 | 20 | Transport & Licensing | 2 | 6 |
| Gibraltar Post Office | - | 2 | Trade, Industry & Telcom | 2 | - |
| Gibtelecom | - | 1 | Transport Commission | - | 2 |
| GRP Investments | 1 | 2 | Treasury | 2 | 3 |
| TOTAL : | | | | 138 | 297 |

This year the trend of complaints against the Housing Department continue along the same lines as last year but the highlight of this year has been the increase of complaints against the Civil Status and Registration Office from 17 to 28, a noticeable increase considering that last year this office was ranked as the sixth most complained department of all, whereas this year it has climbed to joint-second place with the Buildings and Works Department which since we opened office in 1999 has always been by far the second most complained department of all.

7.2 (CONT)....

This year the two departments composing the Ministry for Housing, i.e. the Housing Department and the Buildings and Works Department have again attracted the most complaints with 38% of the complaints received. There was also a significant increase in the number of complaints against the Civil Status and Registration Office with 9% (5% last year).

4 Complaints received by Government Departments/Agencies/Others in 2007



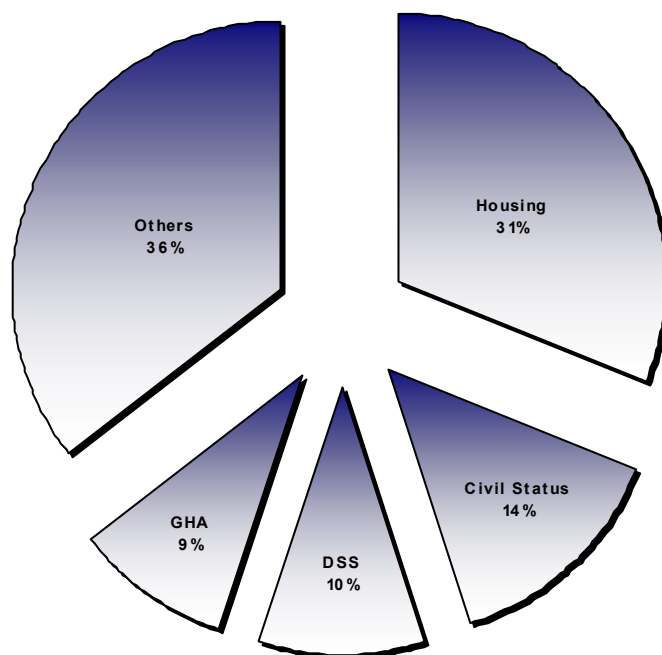
Other departments followed closely in numbers of complaints received. These were the Department of Social Security with 7%, the Royal Gibraltar Police with 5%, the Gibraltar Electricity Authority and the Department of Education and Training with 4% and the Gibraltar Health Authority with 3%. One has to highlight the fact that the Department of Education has appeared regularly during the years as one of the departments with most complaints. Last year this was not the case (only 3 complaints). This year though, we received 12 complaints against this department and as a result it has again appeared as one of the departments with most complaints. There has been a significant decrease of complaints against the Gibraltar Health Authority from 5% last year to 3% this year. All the other departments listed in the table above have surprisingly the same percentages as last year except the Ministry for Housing that have increased slightly from 36% to 38% this year (though 3% increase on Housing and 1% decrease in BWS).

7.2 (CONT)....

This year there were 40 less enquires than the previous year, 138 in total.

After analysing all the enquiries received it is interesting to note that the same departments as previous years are involved yet again in relation to members of the public making the most enquiries about. These include the Housing Department, the Civil Status & Registration Office, the Department of Social Security and the Gibraltar Health Authority amongst others although one must highlight the fact that the number of enquiries (percentage wise) over the Housing Department are decreasing and in the case of the Civil Status and Registration Office, Department of Social Security and the Gibraltar Health Authority it has to the contrary increased.

5 - Top 4 Departments with most enquiries received



| Table 3: DEPARTMENT | 2005 | 2006 | 2007 |
|--|----------|----------|----------|
| HOUSING DEPARTMENT | 81 (38%) | 69 (39%) | 43 (31%) |
| CIVIL STATUS & REG OFFICE | 18 (8%) | 22 (12%) | 19 (14%) |
| SOCIAL SECURITY | 18 (8%) | 13 (7%) | 14 (10%) |
| GIBRALTAR HEALTH AUTHORITY | 17 (8%) | 10 (6%) | 13 (9%) |
| OTHERS (All other Depts listed in Table 2) | 38% | 36% | 36% |

7.3 NATURE OF COMPLAINTS

Table 4 - Nature of complaints received in 2007

| NATURE OF COMPLAINT | 2007 |
|--|------------|
| ¹ DELAY | 57 |
| ² FAILURE TO ACCEPT/GRANT REQUEST (application, letter, refund, permit) | 50 |
| ³ UNFAIR TREATMENT (Disparity, unreasonable, discriminatory) | 33 |
| ⁴ INEFFECTIVE CONTROL /NO ACTION TAKEN | 29 |
| ⁵ NEGLIGENCE, OMISSION (Lack of proper care & attention) | 26 |
| ⁶ LACK OF RESPONSE TO COMPLAINANT (no reply to letter, etc) | 20 |
| ⁷ UNSATISFACTORY REPLY/OUTCOME | 20 |
| ⁸ ADMINISTRATIVE ERROR, WRONG ADVICE/DECISION | 6 |
| ⁹ FAULTY PROCEDURES (Failure to follow procedure, wrong info) | 5 |
| ¹⁰ LACK OF INFORMATION | 4 |
| OTHERS | 47 |
| TOTAL | 297 |

This year we have carried out a more comprehensive analysis of the complaints we received in our office in relation to their nature. Last year we provided an account of all the complaints that warranted an investigation, but this year we have added ‘**all the complaints**’ received in the office, including those that have been settled informally or have been classified as relevant avenues not exhausted. As can be seen from the table above, the two most common complaints that the office receives are over the general ¹*delay* experienced by members of the public over different matters such as having works carried out, having applications or allowances considered or processed, having visas and identity cards issued, etc. and also the departments’ ²*failure to accept/grant requests* made to them. These involve matters such as failure to accept applications, failure to refund monies, failure to make payments, failure to give allowances, failure to issue licenses, failure to accept proposals etc. the list goes on. There are also a good number of complaints involving alleged ³*unfair treatment* where Complainants have alleged to have been treated in an unreasonable and unprofessional manner by the departments involved such as receiving unexpected low amounts of social assistance without knowing the reasons, etc.

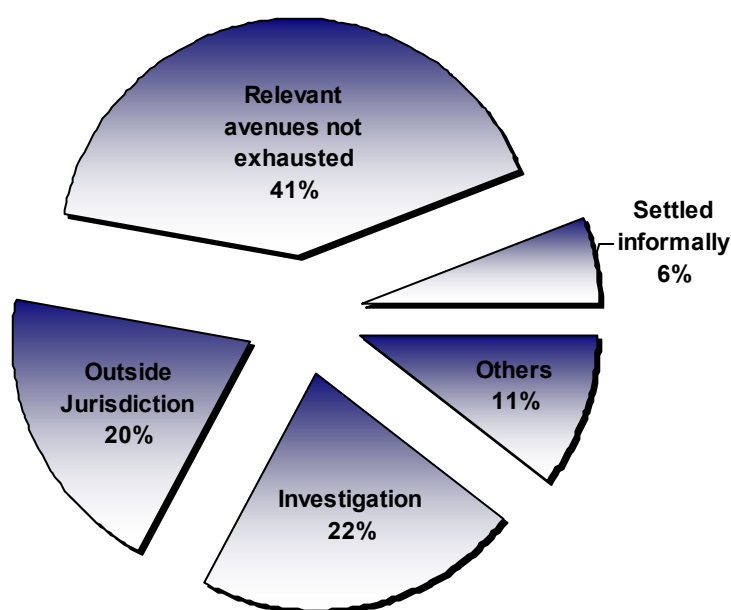
Members of the public also complain about the ⁴*ineffective control* or the ⁵*lack of proper attention* of some departments such as the Housing Department over matters such as anti-social behaviour, homeless cases or even applicants’ positions moving unexpectedly up and down the housing lists. This year one must highlight the fact that there have been 7 complaints involving homeless cases and 9 of anti-social behaviour. In most of these anti-social behaviour cases, the tenants want to be re-allocated but this may not be an easy matter. ⁶*Non-reply* to letters and ⁷*unsatisfactory replies* are also quite common complaints. The less frequent ones that we receive are ones of ⁸*administrative errors*, ⁹*faulty procedures* and ¹⁰*lack of information*.

7.4 PROCESSING DATA

There were 338 complaints classified this year out of which, 67 (20%) were classified as outside jurisdiction, hence they could not be investigated by the Ombudsman. 140 (41%) were closed as 'Relevant Avenues Not Exhausted'. In such cases we give advice to the Complainant as to how to proceed with his complaint and request that they keep us informed of progress so that we may further assist if the need arises.

| TABLE 5-CLASSIFICATION OF COMPLETED COMPLAINTS | | 2007 |
|--|--|------|
| OUTSIDE JURISDICTION | | 67 |
| OTHERS (Withdrawn, insufficient personal interest (IPI) re-classified) | | 36 |
| RELEVANT AVENUES NOT EXHAUSTED | | 140 |
| SETTLED INFORMALLY | | 20 |
| INVESTIGATION | | 75 |
| TOTAL: | | 338 |

6 - Classification of Completed Complaints (%)



6% of the complaints were settled informally as they were resolved without the need to investigate further and 22% resulted in investigations. Percentages have increased slightly all through the various classifications (see pie-chart above) except the 'Investigations' which has decreased substantially from 123 last year to 75.

There has also been a notable amount of complaints where there has been insufficient personal interest (16 complaints classified as 'Insufficient Personal Interest') shown by the Complainants and as a result of this there has been an increase this year in the number of complaints under the classification heading of 'Others' (11%).

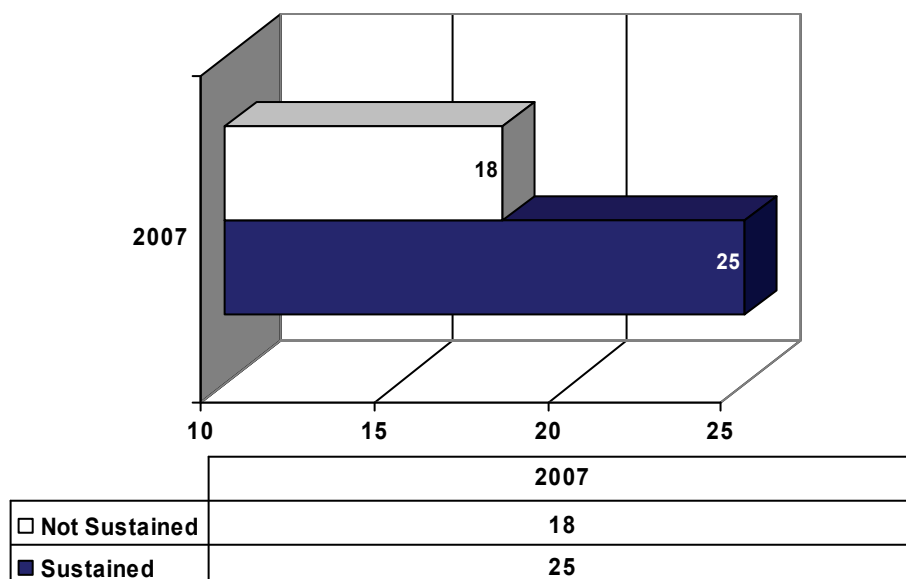
7.4 (CONT)...

This year there have been 75 complaints which have been investigated. 19 of them have been closed by way of verbal communication whilst 13 of them have been closed by way of letter to the complainant. 43 of them have warranted an extensive report. Out of these 75 complaints, 44 have been classified as not sustained whilst 31 have been classified as sustained.

Table 6 - Classification of Investigations 2007

| | SUSTAINED | NOT SUSTAINED | OTHERS | TOTAL |
|--------|-----------|---------------|--------|-------|
| VERBAL | 3 | 16 | - | 19 |
| LETTER | 3 | 10 | - | 13 |
| REPORT | 25 | 18 | - | 43 |
| TOTAL | 31 | 44 | - | 75 |

7 Classification of 'Investigations with Reports' 2007



By the end of 2007, 51 new cases had been earmarked for investigation with a full report. Out of the 51 cases earmarked for investigation, 33 (65%) have been concluded this year. There were also 10 more cases completed from the previous year. In total, 43 cases containing an extensive report of the investigation were completed by the end of the year 2007. (cases included in the annex to the report). 25 cases (58%) were sustained, 18 (42%) were not sustained. This year there have been 10 recommendations made (see table 7 & 8 on page 76 & 77)

7.5 RECOMMENDATIONS

TABLE 7 - DETAILS OF RECOMMENDATIONS (I) 2007

| No | Nature of complaint | Recommendation | Dept |
|-----|---|--|-------------------|
| 741 | Failure to process Complainant's request for re-assessment to the Medical Appeals Tribunal as per section 37(3) of the Social Security (Employment Injuries Insurance) Act. | The complainant should be compensated for being denied the use of his Gratuity over the 3 year period. The Ombudsman recommended that the standard percentage applied in Civil Court cases would seem an appropriate rate to use. | Social Security |
| 744 | For issuing 2 warrants for his arrest for non attendance at Court when in fact he had not been aware that he needed to attend Court | Introduction of a change of address form for compliance under section 16 (3) of the Maintenance Act, which would be filed in the relevant matrimonial file. | Magistrates Court |
| 751 | Failure to reply to the Complainant's letter appealing against the recommendations of the sub-committee of the Police Complaints Board ("PCB") that his complaint against the Royal Gibraltar Police ("RGP") was unsubstantiated. | That there be put in place an effective administrative system to ensure that appeals are acknowledged and that dates of meetings, cancellations and any other developments regarding the appeal are communicated to the appellant as soon as possible. | RGP |
| 758 | Lengthy delay in effecting repairs to their home caused by seepage of sewage into their back patio and wall. | Repairs be carried out as soon as possible and in any event by no later than a month from the date of this report. | Buildings & Works |
| 763 | The Complainant being informed that he was required to be in possession of a local Identity Card in order to be able to apply to register for a driving test | The Department make available to applicants wanting to take a driving test, information by way of an appropriate notice and also orally on enquiry to the effect that in the absence of the preferred Gibraltar Identity Card due consideration would be given by the Department to any other appropriate evidence of residence in Gibraltar an applicant could produce. | Transport Dept |

7.5 (CONT)...

TABLE 8 - DETAILS OF RECOMMENDATIONS(II) 2007

| No | Nature of complaint | Recommendation | Dept |
|-----|---|---|--------------------|
| 766 | The Department deciding to evict the complainant and his family after they had been living at the address for six years | Prior to placing a 'stop order' the Department should write explaining that the order is being placed and the reasons why the Department are considering an eviction, giving the 'tenant' an opportunity to address the Department's concerns. | Housing Dept |
| 767 | For sending a misleading letter requesting payment of a fine that had already been paid. | The RGP and the Department ensure a permanent solution to the enforcement of unpaid Fixed Penalty Notices is implemented before a backlog builds up again. | RGP/Transport Dept |
| 768 | Complainant receiving high water bills in excess of £100 per month whilst residing at Eurotowers. | The Ombudsman recommended that the proactive approach demonstrated by AquaGib's Own Initiative Test for Leakage, should be extended and persons querying high water bills be informed in writing of the various tests available in this regard, including the facility available to consumers to have their meter removed and tested on AquaGib's test rig or sent to the manufacturer at a cost of £20 refundable should the meter prove faulty. | Aqua Gib Ltd |
| 769 | Failure to receive a reply with a decision in relation to their application for disability allowance for their child. | The Department put in place an effective administrative system to ensure that decisions in relation to the outcome of applications for Disability Allowance are communicated to applicants in writing as soon as possible. | Social Security |
| 777 | Complainant's application for a discretionary scholarship for the academic year 2007/2008 to study at an Academy located in Spain was unsuccessful. | In all cases where applications for discretionary scholarships are unsuccessful, the Department's letter informing the applicant of the same should include information about all educational trusts which the applicant could apply to for consideration of financial assistance for their intended course of study. | Education |

7.6 QUALITY OF SERVICE

226 Complainant Satisfaction Surveys were sent by post (which is about 46% of the total 487) to members of the public who had visited our offices during the year. Out of these 226, 54 were returned. (24%)

The following is a summary of the questions contained in the survey and a sample of the comments received.

1. What did you expect from us before you came to our office?

| | |
|----------------------------|-----|
| Advice | 27% |
| Help in solving my problem | 65% |
| Solve my problem for me | 8% |

2. Overall, are you satisfied with our service?

| | | |
|----------------|----|------|
| Excellent | 34 | 65% |
| Good | 11 | 21% |
| Satisfactory | 5 | 10 % |
| Unsatisfactory | 2 | 4% |

(*2 of the surveys received did not provide an answer to this question)

This question also provided space for comment. The following are some of the comments:

- Both advice and help was sought and provided to a high degree of professionalism.
- Apart from being kind and professional, they were fast.
- Very friendly and to the point. Gives you encouragement.

3. My inquiry was responded to promptly.

| | | |
|----------------|----|-----|
| Excellent | 36 | 70% |
| Good | 11 | 21% |
| Satisfactory | 4 | 7% |
| Unsatisfactory | 1 | 2% |

(*2 of the surveys received did not provide an answer to this question)

4. I was treated courteously.

| | | |
|-----|----|------|
| Yes | 54 | 100% |
| No | 0 | 0% |

This question also provided space for comment. The following are some of such comments:

7.6 (CONT)...

- All members of staff I had contact with at all times were courteous and respectful .
- The ombudsman office is the best thing that has been given to the people of Gibraltar, thank you for a very good work you are doing..
- Helpful advice in plain English, well explained.

5. Were updates provided?

| | | |
|-----|----|-----|
| Yes | 31 | 72% |
| No | 12 | 28% |

(*11 of the surveys received did not provide an answer to this question)

6. Any other comments

- Your office provides a public service vital to our community in a very professional and approachable way.
- Many thanks for the advice and help received I need any help in the future about anything else, I know I will receive a satisfactory service. Again many thanks.
- If the problem had fallen within your competence then I am confident I would have had a reply either negative or positive but a reply.



HIS EXCELLENCY THE GOVERNOR, LT. GEN. SIR ROBERT FULTON KBE VISITED OUR OFFICES AT THE INVITATION OF THE OMBUDSMAN, MARIO HOOK



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