PUBLIC SERVICES OMBUDSMAN

ANNUAL REPORT 2021

Presented to the Gibraltar Parliament

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1.0 INTRODUCTION

This is the 22nd Annual Public Services Ombudsman's Report and my second public declaration as Ombudsman, having been appointed back in May 2021. Firstly, this year has carried huge challenges in dealing with the unprecedented impact of Covid-19. Similarly to last year, public Departments have had to review and adjust their operations and services in line with the needs of the public, taking into account the very serious impact of the pandemic, which incidentally has evolved in different though equally challenging ways. Departments have had to maintain continuity of service delivery, thus balancing health and safety of their staff, in addition to that of the general public.

The Gibraltar Government has had the foresight in recognising this by encouraging the use and application of e-Business wherever practically possible in an effort to reduce direct physical contact and improve efficiency. That is, gradually investing in digitisation thus allowing people to utilise these through the internet.

So, public services are now being digitised (*re-engineered*) whereby physically, customer interaction is ultimately being replaced by ICT tools. The supplier/customer relationship is, therefore, undergoing a fundamental shift. This transformational approach is happening within public services- some may welcome it, others won't. The question for me as Ombudsman is, whether this has impacted on the delivery of public services or otherwise. This is not for discussion here, but could this result in any potential maladministration?

The introduction of the e-Business central office on Main Street has greatly assisted and given much needed support to members of the public that were unfamiliar with the use of IT application. This was personally witnessed whereby on one occasion, I as Ombudsman appeared unannounced at the aforementioned and directly observed how e-Business front-line

support staff were engaging with members of the public. These employees were generally unaware of my *praesentia en vivo* and indeed, I was impressed in seeing the motivation and enthusiasm shown by staff when engaging with service users. As for the content of this report, the following will be considered.

Firstly, an executive summary is provided that includes the main points and issues raised in this Annual Report. A brief general discussion is later offered on Training and Development undertaken, which this year proved to be rather limited due to restrictions resulting from the Covid Pandemic. Later, and similarly to the previous 2020 Report, the 'Venice Principles' are highlighted though this time, we explore how they compare in relation to our own related legislation. Subsequently, we enter the main theme of the Annual Report whereby the overall breakdown of complaints received by the Office of the Ombudsman, is introduced, together with some general discussion and analysis. Later, and because of the exceptional and unique impact caused by the Covid 19 Pandemic, it is felt appropriate to write about the services provided by the Gibraltar Health Authority during the said period and, therefore, specific observations are included. The Annual Report ends with overall conclusions, recommendations and what is proposed for the following year. An Annex is subsequently provided listing a selection of case studies, giving further in-depth details of complaints.

I, therefore, have the honour of presenting this 2021 Annual Report which is my second, and invite you all to read its contents.

Dr. William Ronald Coram
BSc, MSc, PhD, Hon. DUniv, C. Eng, MIET, MCIBSE
Gibraltar Public Services Ombudsman

2.0 SUMMARY OF MAIN OBSERVATIONS

These are the main highlights of the Report though it is suggested that in order to seek further details and information that the reader refers to the relevant section.

2.1 Main Points

- Training and development has been limited due to few relevant programmes and conferences being widely available. This has been exacerbated by travel restrictions imposed by numerous established sources in response to the Covid 19 pandemic.

- Many of the Venice Principles promoted by the General Assembly of the United Nations have been adopted and included in our legislation under the Public Services Ombudsman's Act 1998. These Principles effectively provide jurisdictions with a recognised transparent framework for the business and role of the Ombudsman. That said, some have not been introduced locally and these are discussed and highlighted.

- Generally, complaints have tended to decline over the last 4 years though such has changed in 2021 where this trend has dramatically shifted upwards. When analysing the types of complaints received, it has been noticed that close to 30% overall are geared directly to (a) delays in communications, (b) non-replies, and (c) inaction by Departments. The question is 'why does this continue to be the case, year in, year out'? It is concluded that much more focus should be concentrated in eliminating this particularly when considering response times and attention to enquiries, i.e., upon engaging service users.

- It is suggested that an independent report be considered to assess and monitor numbers of enquiries generated and whether sufficient resources are in place to engage in a timely manner. In addition, it is suggested that organisational hierarchies become flatter similarly to that normally found in the private sector. In other words, there should be less people undertaking managerial and organisational tasks and more actually doing the work at the point of enquiry.

- The breakdown of complaints against public sector entities has reached a total of 323 in 2021. This comprises Housing at 112 (35% overall), the Gibraltar Health Authority at 46 (14% overall), Social Security with 38 (12% overall), Civil Status & Registration Office with 31 (10% overall), Income Tax with 17 (5% overall), Royal Gibraltar Police with 11 (3% overall) and other sources generating 68 (21% overall).

- The Housing Department has followed the same pattern as previous years whereby it continues to attract the greatest number of complaints by members of the public. However, the Gibraltar Health Authority has triggered a major increase in complaints when compared to 2020, namely a corresponding increase of 59%. This can mainly be viewed as the result of formerly, the impact of Covid 19 and many other operational changes introduced thereafter.

- A Special Report on the Gibraltar Health Authority is enclosed providing the reader with an in-depth assessment of areas generating the most complaints and the failure of the Patients Advocacy Liaison Service. It is noted that the application of digitisation at the point of service user contact created major problems and this is explored together with other categories of complaints.

- The Annual Report generally ends with some overall discussions, conclusions and recommendations.

The following, therefore, comprises observations, details and conclusions reference complaints received at the Office of the Ombudsman in 2021.

3.0 TRAINING & DEVELOPMENT

Similarly to last year, staff from the Office of the Ombudsman, have regrettably not accessed many training opportunities throughout this period with the exception of the following.

Firstly, Ms Nadine Pardo-Zammit successfully completed her Law Degree through the Open University and no doubt, this will help her in her current role within the office. Secondly, both the Public Services Ombudsman and his Deputy attended a Manchester Memorandum Seminar on the 9th and 10th November 2021. The event entitled the 'Art of the Ombudsman', was organised by the UK Parliamentary & Health Services Ombudsman, backed and supported by the International Ombudsman Institute (IOI), which is a global organisation involving up to 200 independent ombudsman institutions from over 100 countries worldwide. The IOI is structured into 6 Regions (i.e., Africa, Asia, Australasia & Pacific, Europe, the Caribbean & Latin America, and North America). Its mission is to promote good governance and capacity building, and supplies support to its members by training, research and regional project subsidy. The above November event drew representatives from an extensive international field and included disciplines relating to Police, Housing, and Health. Further, the agenda raised themes including: Reaching Vulnerable and Marginalised Citizens; Developing Competency Frameworks; Peer Reviews connected to Ombudsman Practice; Highlighting the Status of the Venice Principles (supported by the United Nations); Ombudsman Branding; and Initial Steps towards considering the Regularisation of the Profession. Typically, these issues were delivered via in-person and/or zoom presentations together with follow up intensive discussion workshops.

Manchester Memorandum Seminar held on 9-10 November 2021.

The event entitled the 'Art of the Ombudsman', was organised by the UK Parliamentary & Health Services Ombudsman, backed and supported by the International Ombudsman Institute (IOI.) The Deputy Ombudsman, Nicolas Caetano, and the Ombudsman, Dr Ron Coram can be seen on the right hand side of the photograph.

Though Gibraltar is a small jurisdiction when compared to other countries, there are, nevertheless, unsurprisingly many similarities across the board, whereby the main essential concern is representing marginalised persons (not merely citizens). Our Ombudsman legislation in Gibraltar is currently related to dealing with maladministration in the Public Services, whilst in many other international jurisdictions, these classically are related to 'Human Rights'. In addition, it was interesting to learn that in a recent IOI survey, most Ombudsman (i.e., 60%) emanate from a legal professional background whilst 33% are from other professional disciplines such as that pertaining to Political Sciences, Medicine, Public Administration, Environmental Science and Economics. Very few Ombudsman are from non-professional backgrounds and though these tend to be limited in number, they, nonetheless, have decades-long experience in public administration.

On a concluding note, in attending the event, the Ombudsman proposes to strengthen ties and capacity to learn further, very much in line with his predecessors, who initially established original membership with the IOI.

One of the main promotions driving the IOI is the encouragement and endorsement of the Venice Principles and it is worth assessing how these are reflected within our own legislation, namely the Public Services Ombudsman's Act 1998.

4.0 THE VENICE PRINCIPLES - CONSIDERING UNITED NATIONS ENDORSED PRINCIPLES - HOW DO THESE COMPARE IN GIBRALTAR?

In last year's Annual Report, a list of what is known as *The Venice Principles* was included. Such is the emphasis on recognising and introducing a fair accepted benchmark globally, that this became adopted back in 2019 by the EU Committee of Ministers at the 1345th Meeting of the Ministers' Deputies (Strasbourg, 2 May 2019) and subsequently endorsed by the General Assembly of the United Nations at the end of 2020. This gives an effective strategic and organisational focus on a globally accepted structure on the overall role of Ombudsmen and their relationship with National Government. This is a welcome precedent as it promotes and encourages continuity and an equal playing field by the Ombudsman fraternity towards applying a coherent approach that is respected and similarly recognised by professionals, seeking to secure human rights for citizens generally. Here is a reminder of these 25 Principles.

1. Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms. While there is no standardised model across Council of Europe Member States, the State shall support and protect the Ombudsman Institution and refrain from any action undermining its independence.

2. The Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level.

3. The Ombudsman Institution shall be given an appropriately high rank, also reflected in the remuneration of the Ombudsman and in the retirement compensation.

4. The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. The Ombudsman Institution may be organised at different levels and with different competences.

5. States shall adopt models that fully comply with these Principles, strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country.

6. The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution. The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority. Ombudsmen now have a unique international reference text listing the legal principles essential to their establishment and functioning in a democratic society. Drawn partly from a diversity of existing models in the world, the 25 principles are the most comprehensive checklist ever compiled…... “They are meant to consolidate and empower Ombudsmen institutions, which play a crucial role in

strengthening democracy, the rule of law, good governance and the protection and promotion of human rights and fundamental freedoms."

7. The procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law.

8. The criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates. The essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms.

9. The Ombudsman shall not, during his or her term of office, engage in political, administrative or professional activities incompatible with his or her independence or impartiality. The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics.

10. The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman's mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.

11. The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of “incapacity” or “inability to perform the functions of office”, “misbehaviour” or “misconduct”, which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law.

12. The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms.

13. The institutional competence of the Ombudsman shall cover public administration at all levels. The mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities. The competence of the Ombudsman relating to the judiciary shall be confined to ensuring procedural efficiency and administrative functioning of that system.

14. The Ombudsman shall not be given nor follow any instruction from any authorities.

15. Any individual or legal person, including NGOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint.

16. The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies. The Ombudsman shall be entitled to request the cooperation of any individuals or organisations who may be able to assist in his or her investigations. The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. This includes the right to unhindered access to buildings, institutions and persons, including those deprived of their liberty. The Ombudsman shall have the power to interview or demand written explanations of officials and authorities and shall, furthermore, give particular attention and protection to whistle-blowers within the public sector.

17. The Ombudsman shall have the power to address individual recommendations to any bodies or institutions within the competence of the Institution. The Ombudsman shall have the legally enforceable right to demand that officials and authorities respond within a reasonable time set by the Ombudsman.

18. In the framework of the monitoring of the implementation at the national level of ratified international instruments relating to human rights and fundamental freedoms and of the harmonization of national legislation with these

instruments, the Ombudsman shall have the power to present, in public, recommendations to Parliament or the Executive, including to amend legislation or to adopt new legislation.

19. Following an investigation, the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts. The Ombudsman shall preferably be entitled to intervene before relevant adjudicatory bodies and courts. The official filing of a request to the Ombudsman may have suspensive effect on time-limits to apply to the court, according to the law.

20. The Ombudsman shall report to Parliament on the activities of the Institution at least once a year. In this report, the Ombudsman may inform Parliament on lack of compliance by the public administration. The Ombudsman shall also report on specific issues, as the Ombudsman sees appropriate. The Ombudsman's reports shall be made public. They shall be duly taken into account by the authorities. This applies also to reports to be given by the Ombudsman appointed by the Executive.

21. Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The

independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate.

22. The Ombudsman Institution shall have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, appointed by the Ombudsman. The Ombudsman shall be able to recruit his or her staff.

23. The Ombudsman, the deputies and the decision-making staff shall be immune from legal process in respect of activities and words, spoken or written, carried out in their official capacity for the Institution (functional immunity). Such functional immunity shall apply also after the Ombudsman, the deputies or the decision-making staff-member leave the Institution.

24. States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning, and shall effectively protect it from any such threats.

25. These principles shall be read, interpreted and used in order to consolidate and strengthen the Institution of the Ombudsman. Taking into consideration the various types, systems and legal status of Ombudsman Institutions and their staff members, States are encouraged to undertake all necessary actions including constitutional and legislative

adjustments so as to provide proper conditions that strengthen and develop the Ombudsman Institutions and their capacity, independence and impartiality in the spirit and in line with the Venice Principles and thus ensure their proper, timely and effective implementation.

The full text of the Venice Principles can be downloaded from the Gibraltar Public Services Ombudsman's website at ***www.ombudsman.org.gi***

In democratically elected jurisdictions, the 25 Venice Principles (VP) have in most cases been adopted, in some partial way through Government legislation though each nation promoting a model suited to [their] own constitution. For example, in our legislation under the 'Public Services Ombudsman Act 1998', this includes most of the VPs with the exception of the following.

Principle 10- Terms of Ombudsman's appointment is preferably set not less than a minimum 7 years though our legislation stipulates 3 years;

Principle 14- The Chief Minister in the public interest has the discretion to exclude material from an Annual Report before [this] being laid in Parliament though any omission must include a reference to the investigation. The question is why should this be the case when considering the interests of transparency?

Principle 16- Ombudsman currently does not have 'full discretionary powers' to investigate without a complaint being filed.

NB- Please note that on the 20th December 2019, the Gibraltar Parliament passed a Resolution providing for the Public Services Ombudsman Act 1998 to be reviewed in order to allow the Ombudsman to launch investigations of its own motion though this has yet to be implemented.

Principle 19- Ombudsman may not challenge constitutionally any laws or regulations relating to policy in Gibraltar, but only that relating to public maladministration.

Principle 20- Under Gibraltar legislation, Annual Reports cannot be placed in Parliament directly and independently by the Ombudsman, but rather this must be presented through the Chief Minister. The Ombudsman being independent should have the authority to do this directly through the Speaker of Parliament.

Principle 24- Though the Ombudsman enjoys protection against defamation, it does not have full protection from any potential political threat and may be removed from post by a majority Parliamentary Motion. This, therefore, does not constitute full protection as referenced in the terms of this Principle.

The above, therefore, are merely some of the observations strictly from a layman, rather than any expert legal perspective, nevertheless, it is hoped that this provides an alternative view for consideration.

There are some different perspectives on how the Ombudsman's role should be practiced when considering the 25 Venice Principles. However, it is felt that this discretion should (in the public interest) be left to the 'Gibraltar Parliament' that is ultimately elected by its people. That said, isn't this nevertheless, subject to debate?

Let us now look at the main crux of the Annual Report and overall, assess the complaints received in 2021.

5.0 BREAKDOWN OF COMPLAINTS

The following gives a breakdown of complaints received together with comments and illustrations for ease of reference.

5.1 Performance Review 2021

A total of 369 complaints were received by the Office of the Public Services Ombudsman during 2021. Of these, a total of 371 complaints were finalised during the year, as shown below:

Complaints not yet finalized – brought forward from 2020	40
Complaints received during 2021	369
Complaints finalized during the year 2021	371
Complaints not yet finalized – carried forward to 2022	38

Figure 1: Summary of Performance Review for 2021

Of the 369 Complaints received this year, 46 related to private entities, including issues regarding private housing rent and repairs, legal issues and financial matters. The remaining 323 Complaints related to Government Departments, agencies and other public service entities.

Over the last 5 years, readers will note that there has generally been a downward trend though regrettably, as a result of the Covid 19 pandemic, this has risen, as historical grievances held back in 2020 are pushed forward into 2021.

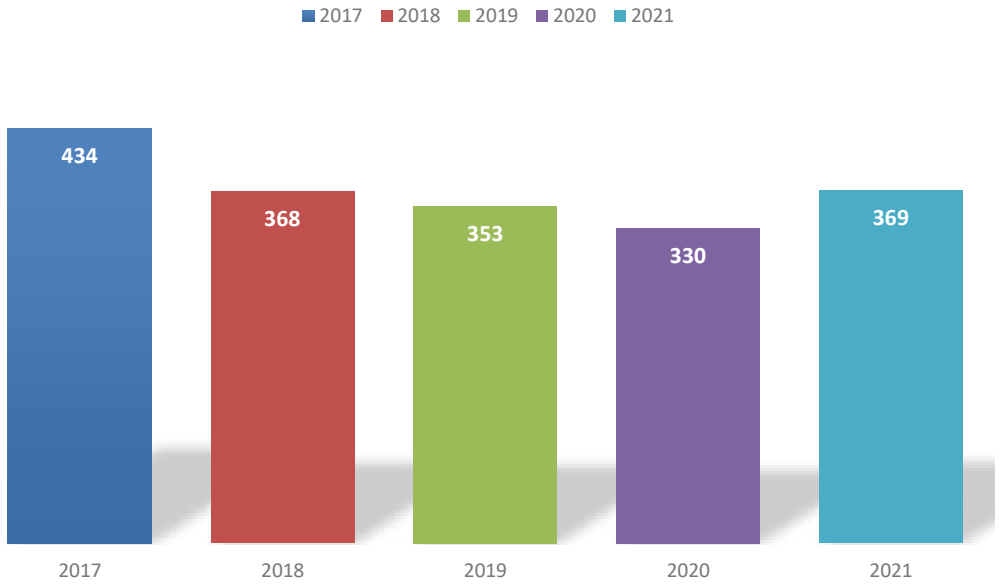

Figure 2: Complaints Received by the Office of the Ombudsman in the Last 5 Years

5.2 General Synopsis

The year 2021 witnessed a dramatic shift in respect of complaints whereby in the last Annual Report it was mentioned that citizens appeared to pursue a voluntary moratorium. This posture was because of various factors though predominantly due to the impact and consequences of the Covid 19 pandemic.

During 2021, the steer led by HM Government of Gibraltar towards introducing a national vaccine programme, resulted in many citizens having the confidence to trigger historical grievances that were held back the previous year. The protection provided by the 1st, 2nd and booster vaccination programme led to much greater confidence in the general public towards shifting back to some level of normality.

In last year's Annual Report, it was highlighted that an increase generally would be forecast subsequently in 2021 and our records show that this was indeed a correct projection. For example, 369 overall complaints were received when compared to the previous year where the figure stood out at 330; that said, this was not the avalanche expected. Furthermore, complaints relating to Government Departments, Agencies and public entities, amounted to 323 in total. Therefore, excluding 46 complaints related to private entities (we do not have any legal jurisdiction over these entities) the actual number of complaints in 2021 relating solely to Government Departments, Agencies and public sector entities, amounted to 323 as opposed to 257 last year. In real terms, this equates to a 26% overall increase. Again, the greatest number of complaints relate to delays in communications (15%), non-replies (10%), and inaction by Departments (4%). So, accumulating these alone, readers will realise that this represents a total of 29%, which comprises a very large proportion of complaints.

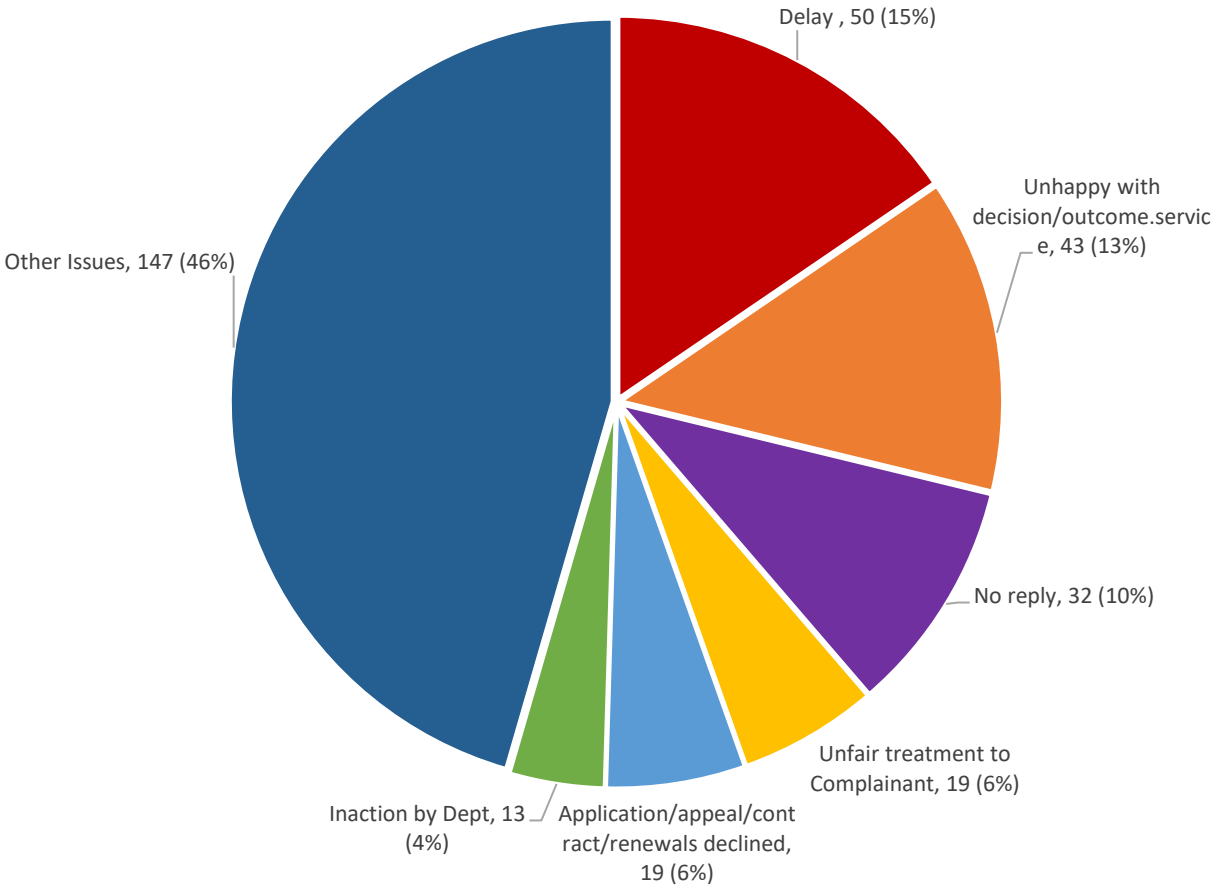

Figure 3: Overall Nature of Complaints Received Totalling 323

The concern here is why do these reasons continually spring up? As an illustration, there appears to be a recurring theme year upon year whereby complaints revolve around the same issues of maladministration that can be tackled firmly and nipped in the bud. Why are there delays in communications? Why are there non-replies? Why are there cases of Departmental in-action? Does this relate to supply and demand issues, i.e., too many enquiries being generated with insufficient resources to engage, administer and revert? Or does this relate to maladministration or even the result of laissez faire practice (often driven by complacency because of job security in the public sector and a perception of trade union protection).

In the private sector, delays in communications result in loss of business or trade. In the public sector, no such phenomenon exists, but merely the matter is simply accepted, put to rest, because there are no repercussions- no real accountability- unless it relates to public funds. It would be interesting to commission an independent organisation to strictly monitor how many enquiries are indeed generated towards public sector entities and similarly, determine whether sufficient resources are in place to properly tackle the said enquiries. Indeed, should the problem lie with insufficient resources at 'enquiry stage', then, organisational adjustments should be considered to shape it to the needs of the public. This is often termed changing hierarchical spans of control whereby more administrators are utilised at points of engagement at expense of higher managers. In other words, too many people trying to manage or organise something and not enough people willing to actually do the work. In this context, the following old proverb springs to mind: *Too many generals and not enough soldiers.* Let us now briefly consider those sectors that were most affected.

5.3 SPECIFIC DEPARTMENTS AFFECTED

5.3.1 Housing

The Housing Department has attracted 112 complaints during 2021 which is an increase of 19% compared to 2020. Historically, this Department tends to generate the highest proportion of complaints generally, year upon year. Overall when compared to other Departments in 2021, Housing generated up to 35% of all complaints received by the Office of the Ombudsman.

I should express, however, that I do not consider 'Housing' to be an administrative 'under achiever' in comparison to other Government Departments. The elevated number of complaints, in my view, stems from the fact that Housing is an area which affects the lives of a high proportion of our complainant demographic, whereas, by way of example, Civil Status, Tax and Gibraltar Police, ordinarily do not.

5.3.2 Gibraltar Health Authority (GHA)

The Gibraltar Health Authority attracted 46 complaints representing a jump of 59% when compared to 2020. This has generated the greatest Departmental increase in complaints across corresponding years and for further details, the reader is invited to study the Special Report enclosed on the Gibraltar Health Authority.

5.3.3 Social Security

The Department of Social Security received 38 complaints overall which again is shown as an increase of 41% compared to 2020.

5.3.4 Civil Status & Registration

The Civil Status & Registration service received 31 complaints in 2021 which represents an increase of 35% when compared to last year.

5.3.5 Income Tax Office and Royal Gibraltar Police (RGP)

The Income Tax Office has witnessed a 5% increase in complaints whilst similarly, 3% was generated against the Royal Gibraltar Police. These two Departments have been singled out, because of what appears to be a sudden growing trend when compared to 2020, where such were limited when compared to complaints generated overall.

5.3.6 Others

This comprises various smaller public entities showing a small increase of 3% from last year.

This is best illustrated in Figure 4 below, where readers will be able to see the various trends at a glance and as mentioned earlier, Housing again triggered the greatest proportion of complaints overall closely followed by the Gibraltar Health Authority though the latter has witnessed an avalanche over the last corresponding years.

It should be highlighted that the Department of Employment has demonstrated major improvement. For example, in 2020, this Department represented 7% overall of complaints whilst in 2021, this has similarly witnessed only limited concerns. They should, therefore, be congratulated.

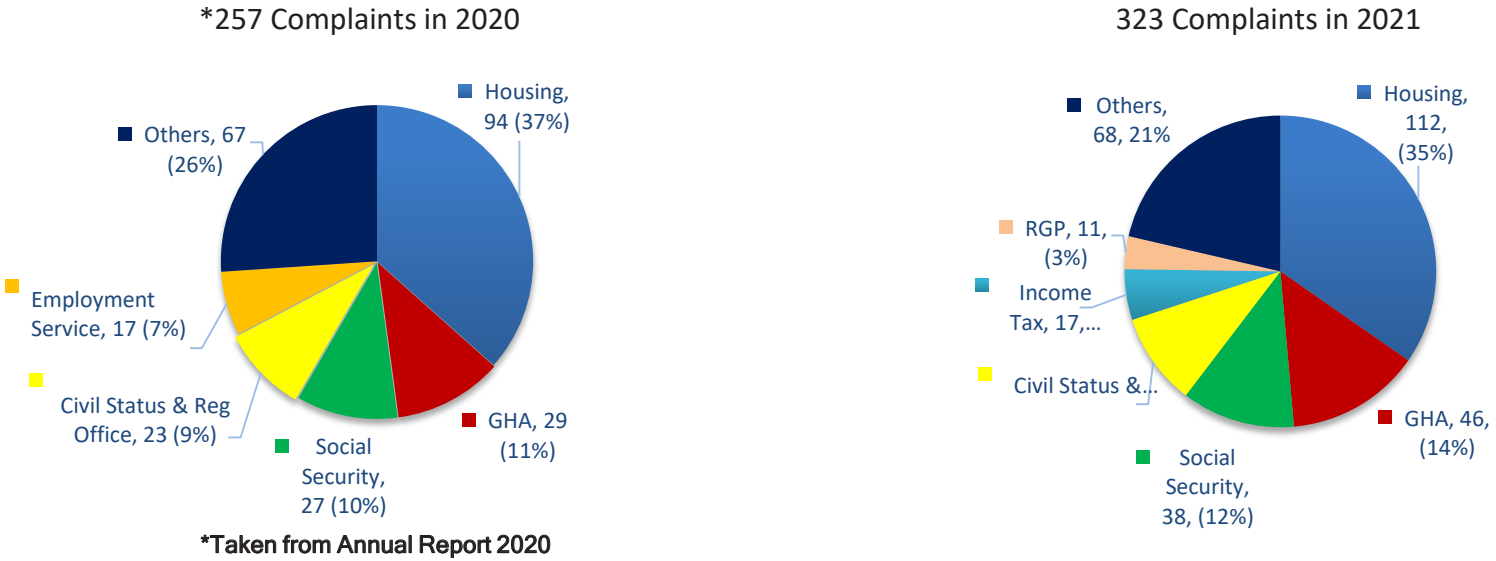

Figure 4: Representation of Complaints in 2020 & 2021

In addition to public sectors historically attracting most complaints, as mentioned earlier, 2021 saw new entities entering the fray. For example, 17 complaints were received against the Income Tax Office. In addition, the Royal Gibraltar Police (RGP) had 11 complaints whilst finally, 'Others' generally received an overall increase of 3% reference the 69 complaints in 2021 when compared to last year which was 67. To summarise, the following is a breakdown of the 371 complaints that were finalised in the year 2021.

- 57 complaints were classified as being 'Outside the Ombudsman's Jurisdiction'.
- 151 complaints were closed as it was considered that the Complainant(s) had not exhausted all their avenues of redress with the public service provider concerned- these were lodged at the Ombudsman's Office without having formally submitted their complaint to the relevant public entity in the first instance.

NB: Please note that before a complaint is made to the Ombudsman, the complainant is required to try and resolve any issues directly with the public service provider concerned under the latter's own internal complaints procedure.

- 125 complaints were classified as dealt with by 'Immediate Resolution'.
- 24 complaints were settled informally.

- 14 complaints were followed up by the Ombudsman with 'Formal Investigations', which were concluded by the end of the year. A detailed report has been written for each of these investigations: - 9 (64%) of these complaints were upheld or partly upheld whilst 3 (22%) of them were not upheld and 2 (14%) were unable to be classified.

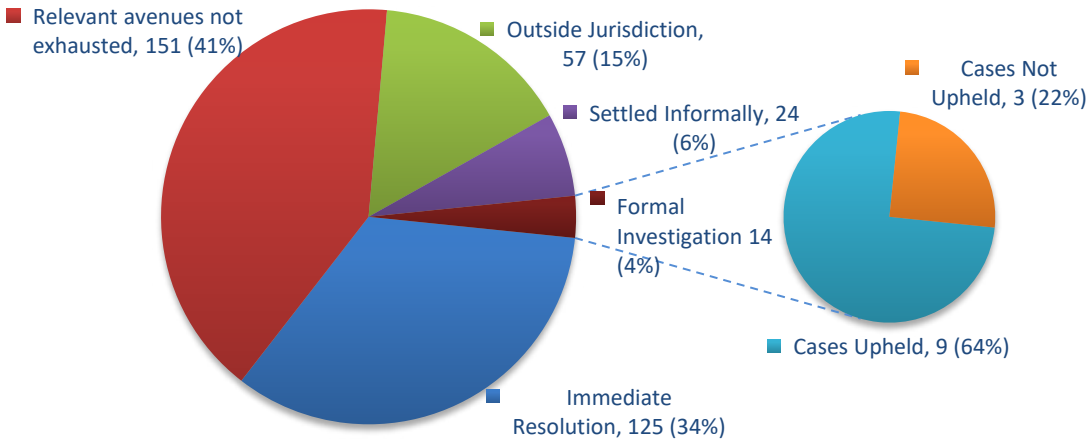

Figure 5: Classification of Complaints in 2021

The Housing Authority generated the greatest number of complaints overall though it should be highlighted that the Gibraltar Health Authority has attracted the most corresponding complaints in subsequent years, i.e. 2021 compared to 2020.

Let us now investigate this further and consider the main reasons why this has occurred, in the following Special Report.

6.0 SPECIAL REPORT ON THE GIBRALTAR HEALTH AUTHORITY (GHA)

6.1 Introduction

I am privileged to have the opportunity of drafting this Special Report on the workings of the GHA, which I understand is the first undertaken by a Public Services Ombudsman in relation to the general workings of a Department (not in relation to a specific case). The effects of the Covid 19 pandemic merits such, based on the fact that (a) we entered a period of huge historical significance, (b) overcome challenges unprecedented since World War 2, and (c) been witness to seeing how well an organisation (namely the Gibraltar Health Authority), collectively embraced all forthcoming challenges without hesitation, in a diligent and professional manner, despite the enormous risks involved.

May I stress that this Report does not in any way represent targeted criticism rather instead, it is a platform for discussion on typical areas of complaints that have been generated by members of the public during this unprecedented time. As with all nations, priorities have had to shift quickly and dramatically to directly tackle a vicious and cruel disease that has swept rapidly throughout the globe.

I wish to firstly thank all those people within the GHA and our HM Government of Gibraltar who have tirelessly acted in keeping our community safe together with our Government Opposition who have all shown support towards the collective mission. I also wish to thank all those volunteers and public servants that were redistributed and who came forward to help and aid essential secondary services for the elderly and vulnerable sections of our community- "…you all do us proud."

We have recently seen massive tragedy where loved ones have been lost, but equally, we have witnessed seeing the very best of human kindness and support. Let us not forget this moment which continues to make an impact on our everyday lives.

This Report will initially discuss the impact of the Covid 19 pandemic on services delivered by the GHA and what appears to be a collective drive to use Information Computerised Technology (ICT) tools and applications. This serves as a springboard leading to further insight on areas generally attracting most complaints. For instance, it was found that the Patients Advocacy Liaison Service (PALS) had not been fully complemented with staff. In so doing, this unit became ineffective for those seeking clarification, advice, support, or even persons wishing to trigger a complaint. This is an instrumental first point of contact and regrettably has for some time and continues to provide a poor and intermittent service.

We later take a look at the different types of complaints received at the Office of the Ombudsman during 2021 and these are generally split into different categories for ease of reference. It appears that these comprise the following: Systematic delays in communications when dealing with members of the public (here named as service users) and non replies; Lengthy administration when applying for the Medical (Group Practice) Scheme and related perceived bureaucratic procedures; Complaints against GHA staff; Problems in arranging appointments; Aggrieved patients on treatment received; Covid 19 related issues and lastly; Complaints classified as more general in nature. These are all then illustrated showing a breakdown of received complaints. Finally, the special Report concludes with some general discussion and recommendations.

6.2 Matters Arising

The general public will be aware that 2021 has been a challenging and daunting year felt in all aspects of personal life, including welfare, mental state, health and job security. The impact of the Covid 19 pandemic is unprecedented and when considering how best to make a comparison, this has resulted in Governments all around the globe introducing appropriate strategies akin to that of a wartime scenario, thereby concentrating and prioritising on health and socio-economic factors.

Locally, the Gibraltar Health Authority (GHA) has been most affected within the public sector and essentially, it strategically focused its main priority towards tackling the Covid 19 virus by investing heavily in areas such as (1) infrastructure- e.g. as Laboratory testing facilities, Nightingale Facility at Europa Point, independent standalone oxygen generating plant, etc- (2) promoting wider public awareness, (3) stretching front-line resources and identifying contact contamination, (4) introducing controls to reduce contamination spread, and (5) organising and implementing massive vaccination campaigns. These are just some considerations and there are many more that make the list long and complex. We owe much to the staff of the GHA who have given up an enormous amount of their time, cancelled annual leave, undertaken extra working shifts, embraced new techniques and technology and it is indeed right and fitting to see the GHA and Elderly Residential Services being honoured with the 'Freedom of the City' as collective recognition of their total dedication and commitment to our small though precious community. Under these extenuating circumstances, it is, therefore, in my opinion, appropriate to draft this Special Report focusing mainly on areas of complaints received during this unprecedented period by the Office of the Ombudsman.

In triggering this Report, we should begin with the greatest change within our public services which has been the introduction of artificial platforms towards replacing traditional face-to-face human interaction. With this in mind, let us explore this further.

6.2.1 Application of ICT and Digitisation- Re-engineering

The concept of re-engineering is not new as we have already seen within the financial services sector. Perhaps one of the pioneers which embraced this when developing 'on-line' facilities and promoting wider accessibility for customers, empowering better control and, therefore, service interaction. For example, Banking institutions introduced the ATM to replace the need to having multiple face-to-face counters in an effort to make savings on resources though they would argue that this development was geared mainly towards facilitating customers in the retail sector, giving much greater control and flexibility over financial transactions. Similarly, day-to-day access to General Practitioners (GP) in the UK is now done by telephoning district or regional centres to book general appointments. In this instance, appointments are decided by generic centres following a routine diagnostic approach to verify systematically whether the caller genuinely requires an appointment or rather, whether the caller may simply be given instructions towards treatment over the telephone. Such a system has attracted its fair share of criticism, but it, nevertheless, shows where such re-engineering development is taking place, ie, introducing alternative artificial platforms to do away with face-to-face engagement.

The technology is today easily available though often, digital electronic infrastructure is costly in the first instance, not forgetting recurrent costs to maintain these systems and/or later introducing software and hardware where possible to

continuously make improvements. In this respect, we shall later revisit this in this Report and discuss further ICT within the GHA resulting from the Covid19 pandemic.

There appears to have been numerous complaints and queries about the Patients Advocacy Liaison Service (PALS) based at the GHA that was originally set fairly recently. So, let us now discuss this further.

6.2.2 Patients Advocacy Liaison Service (PALS)

In December 2016, the GHA introduced an internal mechanism to deal with health related complaints. This front line platform named the Patients Advocacy Liaison Service (PALS) was originally setup with 3 members of staff, i.e., 2 from the GHA complement and 1 seconded from the Office of the Ombudsman. It's an objective intermediary for the general public wishing to raise any concerns, obtain support and advice on how to make an official complaint against the GHA.

When a member of the public is considering a complaint, it is advisable that they firstly try to exhaust all avenues through the relevant Section and/or Department before approaching PALS. Regrettably, the complement of 2 posts within the PALS continues to remain unfilled since November 2020. This has resulted in the existing 'sole member of staff' (who incidentally is the secondee) having to deal with all related matters. It is, therefore, no surprise that the public often complain about lack of replies/delays from the PALS Office. Not only has this massive unprecedented workload, initially shared with two other members of staff fallen on the incumbent, there is absentia during episodes of annual leave and sick leave- an entitlement for employees. This was increasingly apparent during the summer of 2021 when the said member of staff went on annual leave for 3 weeks. During this time, no cover was provided by the GHA and this resulted in numerous members of the public approaching the Office of the Ombudsman to trigger an official complaint. The absence of staff whether by

design or otherwise, has made the PALS for all intents and purposes, a poorly manned interface and during staff leave, effectively non-existent.

On the 15th September 2021, a meeting was held between the Ombudsman and the GHA Medical Director (Ag) to highlight the above deficiencies and seek a solution to remedy PALS. During this meeting, he mentioned that the internal recruitment process seeking to fill the two existing vacancies had been completed, but that this was being held up for approval at a higher level. The Ombudsman in conclusion took the view that it was best to allow a further two weeks for the necessary paperwork to be completed. The two weeks lapsed and no feedback was provided by the Medical Director (Ag) despite numerous written chasers and communications. The situation continues to remain as such on writing this report with no clarification forthcoming and/or substantive explanation given to the Office of the Ombudsman.

As the status quo continues, queries about the GHA PALS have increased exponentially. In my view, the Medical Director (Ag) felt no obligation to answer or reply officially to the Ombudsman on any follow-up. In the same vein, because of the non-reply, the Ombudsman further approached the Principal Secretary, Ministry for Health (PSMfH) directly by email on the 28th October 2021 and despite offering a week's honeymoon period, no acknowledgment or substantive reply was received. The Ombudsman, therefore, wrote to the Chief Secretary (CS) on the 5th November 2021 seeking a point of intervention to approach the aforementioned. A reminder was issued again to the CS on the 17th November 2021 as no reply had been received by the Ombudsman. It then transpires from the CS that he too had not received any acknowledgement and/or reply from the GHA. The matter continues to remain outstanding upon the drafting of this report with no clarification, nor substantive reply forthcoming. This is totally unacceptable and goes against the principles of good public administrative practice and frankly common courtesy. If this is what is acceptable practice exercised by the top of the organisation when dealing with the Office of the Ombudsman, then is this discourtesy also afforded generally to members of the public

throughout the echelons of the organisation? Is this partly a cultural phenomenon within our Health Service? For example, the Office of the Ombudsman sought access to medical files when following up on complaints made by patients (and/or their family members) and regrettably, various obstacles were put in the way preventing proper authorised access, either by non replies, absence of official 'named' officers on the internal GHA 'Standard Operating Procedure' Form SOP No: 9/2018 and/or other reasons. Such open demonstrable discourtesy is reminiscent of past structural colonial practices, and inherent norms, values and beliefs. Something Government administrations have strenuously sought to eradicate.

On the 30th November 2021, the Hon. Minister for Health announced landmark reforms to the GHA (under No: 892/2021). Later on the 9th December 2021, under Second Supplement to the Gibraltar Gazette No: 4923, Legal Notice No: 482 of 2021, amendments were 'introduced' in legal terms towards structural changes within the GHA. These reforms will constitute major change "…Plans include a radical reform of the Gibraltar Health Authority to ensure that the leadership of the health service in Gibraltar is able to continue to respond to the challenges of the Covid-19 Pandemic whilst reinstating all pre-Covid healthcare activity and addressing the waiting lists that have grown during the Covid response period…"

This is indeed a massive challenge and the Hon. Minister for Health should be congratulated in showing the courage and vision for structural organisational change within the GHA, which it desperately requires, as todays health care service needs are totally different from the needs of the Pre-Covid era. Times have changed, prioritisations have shifted dramatically as a result of the unprecedented impact of Covid. That said, the GHA in parallel has to also deliver a health service in line with Gibraltar's needs.

In all campaigns of this magnitude, the reorganisation must be given sufficient time for change to be implemented, cemented and systematically delivered in services, within acceptable time, without negatively impacting on the quality of

health service. Service users need to be patient and allow the necessary transition to take place. In addition, structural reorganisation is not enough as this needs to be accomplished together with a shift in organisational culture. In other words, the GHA's values, norms and beliefs must also change.

6.3 Analysing GHA Complaints Received by the Ombudsman

In 2021, there were 46 complaints received by the Office of the Ombudsman relating to the GHA and these were grouped into the following main categories.

a. Delays and non-reply by the GHA in answering communications by service users.
b. Lengthy administrative issues encountered when applying for Medical (Group Practice) Scheme.
c. Complaints against GHA staff.
d. Problems in arranging appointments.
e. Patients aggrieved with the way they have been medically treated.
f. Covid 19 vaccination issues.
g. General matters.
h. Null and void.

This is best represented in the form of an illustration which is shown as follows.

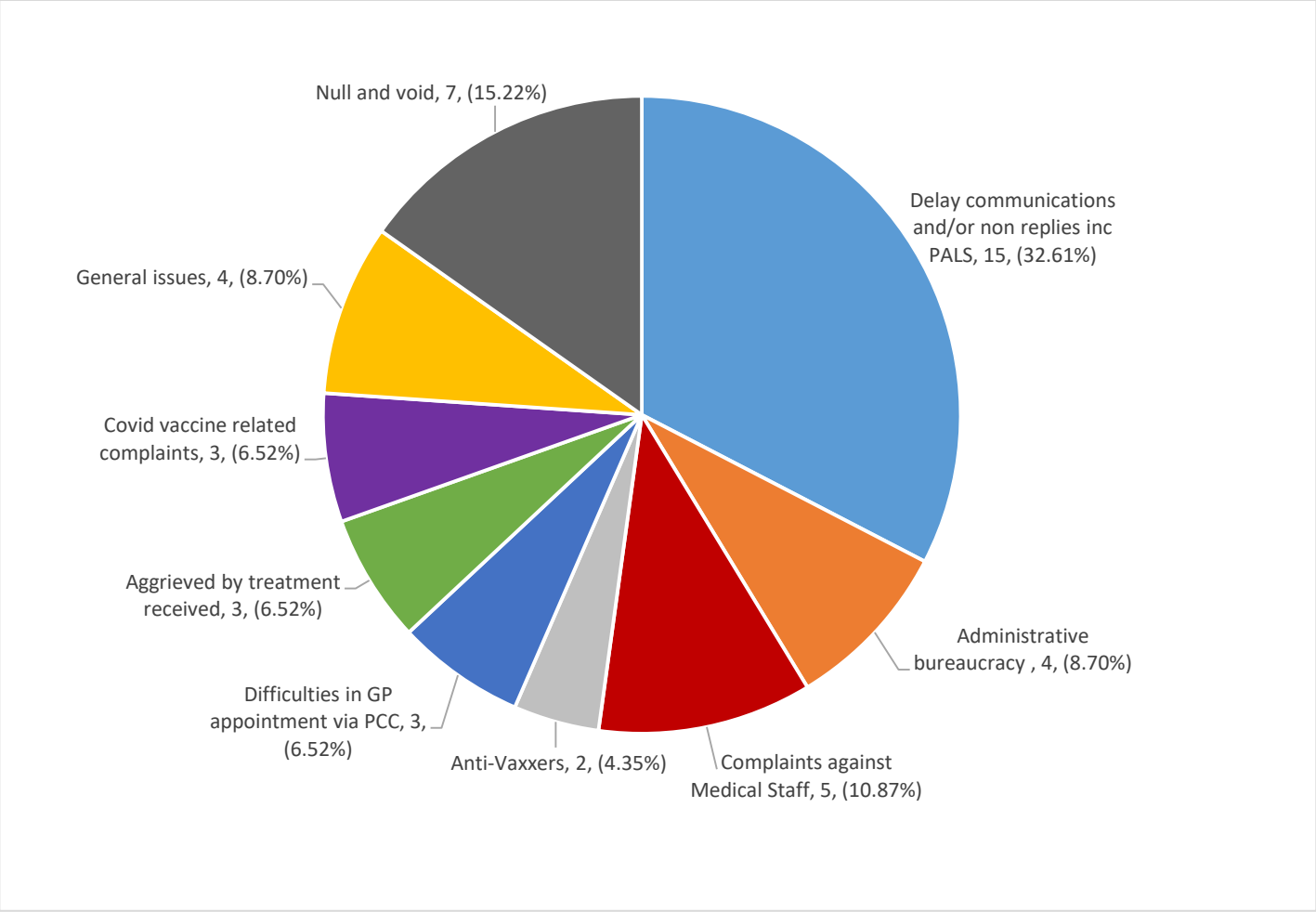

Figure 6: Statistical Representation of GHA Complaints for 2021

6.3.1 Delays & Non-Replies

The main area of concern by service users is generally centred on **delays** by the GHA in responding to communications. It is regrettable for anybody having to put up with delay, particularly when this concerns a health matter. The obvious GHA prioritisation of resources rightly focused on the Covid pandemic, but this will have impacted on [their] ability to generally respond to service users. Nevertheless, an organisation publicly funded with expert personnel, skilled practitioners and an enormous resource to deliver a service, must ensure that good and clear communication is carried out irrespective of any other priorities having evolved during the said period of time. Much greater emphasis should be placed by Senior Management towards determining ways of reducing systematic delays in answering queries and providing prompt feedback when sought by service users. In addition, non replies are totally unacceptable and as such, some format should be considered whereby all communications are logged and proper tracking introduced so that service users may update themselves on [their] query as it progresses in real time. This may be facilitated easily through the application of ICT systems. In addition, it should be emphasised that the 'Patients Advocacy Liaison Service (PALS)' must be properly staffed to internally tackle and investigate complaints within the GHA, many of which may often be resolved quickly and satisfactorily for service users.

Upon the latter stages of drafting this report, I had the opportunity of meeting the new GHA Director General. During this meeting held on the 31st January 2022, he was made directly and bluntly very aware of the above unsatisfactory situation and I am grateful to learn that a recruitment exercise is currently underway to fill the PALS complement with properly qualified staff.

6.3.2 Administration of Medical (Group Practice) Scheme

The following text is taken from the GHA's 'Guidance Notes on Applying for the Medical (Group Practice) Scheme':

"The Medical (Group Practice) Scheme is a contributing scheme, whereby persons are entitled, through contributions made to the Social Insurance Fund and/or if residing in Gibraltar under a permit of residence or a residence permit granted under the provisions of the Immigration Control Act. If however, you are not contributing to the scheme through contributions made to the Social Insurance Fund you may be required to pay the voluntary contribution annual fee. "

The application process is thorough as it is necessary to ensure that only eligible persons obtain their GHA Medical (Group Practice) Scheme Card. However, as highlighted earlier, the system was subjected to lengthy delays. For example, earlier in the year, the normal application process was taking a number of weeks to complete, most likely because of administrative resources being directed elsewhere, and it was not uncommon for applications to take month(s) to conclude. Thankfully, this has reduced greatly to around 2 to 3 weeks on average; so there is obvious improvement. The problem, nevertheless, occurs when an applicant is unemployed, is a dependent, etc. As an illustration, unless they are up-to-date with their registration protocol (ie, Employment Training Board, Department for Social Security, Civil Status Registration Office), they'll not be able to obtain routine appointments. Whilst a person visiting Gibraltar from overseas over the short term, will be at a disadvantage as they in practice would need to provide a trail of evidence often not easily accessible. In the absence of medical insurance, the person would not be entitled to any treatment unless of course such necessary 'initial treatment' amounted to an emergency. Though being conscious of not opening the flood gates, perhaps further consideration should be given to looking at ways of making the application process shorter and much more user friendly, as medical treatment is essentially a human right. In this context, the Ombudsman has received complaints pertaining to lengthy delays when

applying for Medical (Group Practice) Scheme cards and persons encountering challenges when they had recently become resident in Gibraltar from overseas. This is the result of 'GHA registration' requesting Civil Registration Cards (Identity Card) and their own delays in processing.

The GHA Medical (Group Practice) Scheme should, therefore, be fair though properly controlled in order to provide an essential service which for all intents and purposes constitutes a human right.

6.3.3 Complaints Against GHA staff

Interaction between GHA medical staff and respective service users and/or patients will in some occasions create misunderstanding. The dynamics of human behaviour will always be subject to episodes of differences of opinion, misunderstanding, confusion, poor communication, anxiety, or in more serious instances, lead to a perception of personal victimisation. As an example, there have been complaints about how some staff address and deal with members of the public. In some instances, this includes the GHA front line administration and indeed, even medical practitioners. In this context, and as discussed earlier in this report, staff must be reminded about their role, which is strictly to provide a service to the general public, delivered with common courtesy and respect at all times. In the event of serious alleged accusations, the GHA has an internal disciplinary system in place to deal fairly with any, or indeed, serial related incident. Equally, there must be procedures to deal with members of the public that become abusive and quite rightly, a 'zero tolerance' policy is in place to support GHA staff. Either way, abuse in any form is totally unacceptable.

The best way towards recognising and dealing with these complex behavioural issues is through the provision of accredited bespoke training that identifies the main reasons why people react the way they do. Such training should be considered as 'core induction' in personal development of all GHA employees. Though this would not eliminate the problem entirely, it,

nevertheless, will promote greater awareness and help in understanding the issues involved. It should facilitate staff to quickly identify ways of maintaining control, guarding and recognising personal emotions, and exercise methods to deescalate potentially challenging person-to-person situations.

6.3.4 Problems in Arranging Appointments

The most important interaction with the GHA is arguably and generally making the first step, ie, arranging an appointment to see a General Practitioner (GP). In this context, an increasing number of people are finding it challenging when utilising the current PCC computerised telephone system. The situation becomes exacerbated for many callers when they discover that no appointment slots are available at specific times. This adds to individual frustration and in many circumstances may create unnecessary anxiety. That said, it should be pointed out that our PCC arrangements to engage a GP is designed to be centralised due to economies of scale, ie, because of our limited geographical size, this approach is more efficient. As such, this may give the impression of being rather arm's length. In addition, inevitably, centralised systematic approaches will result in some queuing though it appears to be fairly well controlled once an appointment is set and introduced into the system. The question is whether (a) having to queue is an acceptable normal day-to-day matter, or (b) potentially, accept the possibility of not securing an appointment when strictly desirable and instead having to call the next day? These are questions that should be left to the caller.

I mention the problems being encountered with the introduction of a computerised telephone booking system. Further, alternative ways should be considered on how to improve the current system.

To reiterate, due to the nature of the Covid 19 virus and its propensity to easily spread, mutate and contaminate the population, the Government (upon scientific advice by qualified Pubic Health officials) acted to remove where possible, face-

to-face interaction to reduce contact and, therefore, contamination. Insofar as the GHA was concerned, this resulted in temporarily removing actual counters. Communications with the GHA were, therefore, subjected to telecom and electronic messaging services such as emailing and accessing tools through the internet. This mode has transformed the whole manner in the way people interact. This is a huge step forward and though not posing problems for those familiar with ICT, in particular the younger generation, on the contrary, those more mature in age have found this very challenging with many complaining that it's almost like engaging in a different new language. This artificial form of interaction (sometimes referred to as Re-engineering) created further obstacles rather than facilitate support to the most vulnerable people of our society. Gone are the days when the elderly could pop down to the Primary Care Centre to simply ask for an appointment with a General Practitioner (GP). To boot, any medical consultation then had to be done over the phone.

It is widely understood that this was mainly introduced to restrict contamination to the elderly, but these steps simply created further distance between patients and their GPs. This is effectively introducing an arm's length approach to the patient-doctor relationship, the very opposite of what such a relationship should be, which is to promote trust, personal understanding and empathy when undertaking a diagnosis. Often from accounts made by members of the public, making an appointment via the telephone was simply impossible due to telecom queues, long periods of waiting time concluding with a voiced robotic acknowledgement. Sometimes, callers (service users) were unable to make appointments because GP slots were completely filled up to capacity. In many cases, service users telephoned specific Departments, eg, Dentistry, Urology, Dermatology, with often messages left on the answering machine though sadly, these stations were invariably unmanned and, therefore, calls unanswered.

In addition, when the GHA did return telephone calls subsequent to receiving a recorded message- in the event that this were to be unanswered and/or missed by the recipient- the registered number on the telephone device would invariably

show the GHA General Reception Desk. So, in the event of a missed call, service users were unable to check the source, or Department, thus they were none the wiser as to the identity of the caller.

It should, however, be underlined that the shift towards the application of Information Communication Technology (ICT) (also referred to as Digitisation) has impacted across all Government public services and not just the GHA.

6.3.5 Patients Aggrieved by Medical Treatment Received

Complaints have been received by some patients aggrieved with the way they have been medically treated. Indeed, this is an area which should be addressed internally by PALS and as a last resort include the involvement of the Ombudsman. Though strictly a medical predominant, which should be left in the hands of experts, there will be occasions whereby patients will disagree with the treatment being administered. Such instances are limited, nevertheless, they need to be carefully considered together with accessibility to authorised secondary opinions upon request. That said, we have excellent access to medical facilities that increasingly try to directly facilitate matters locally- where expertise is available. Whilst in the absence of such local expertise, patients are supported to attend elsewhere such as the UK, Spain when specialist attention is necessary. We are indeed, very fortunate to access such services.

6.3.6 Covid 19 Vaccination Issues

The Covid 19 vaccination campaign in Gibraltar has been highly successful in delivery with only few complaints namely from those wishing to have this vaccine falling in between transition and distribution periods linked to the 1st, 2nd, and/or 3rd (booster) stages. For example, some people requested the 2nd vaccine prior to its batch arrival from UK sources. That said, it should be noted that this incidentally relates to procurement accessibility from overseas which lies beyond GHA control. In addition, there have been a few complaints from members of the public who were not prepared to be vaccinated prior

to visiting facilities to see members of their family, or friends, under the responsibility of the Elderly Residential Services (ERS). It is felt that this topic of conversation is not the forum for such discussion as this relates to matters of policy.

6.3.7 General Matters

The final category of complaints is linked to matters of a general nature, including health and safety of a patient, delay in litigation procedures and specific advice for a resident registering a birth outside of Gibraltar. Though equally important to the Ombudsman, it, nevertheless, overall represents a very small category.

6.3.8 Null and Void

This simply refers to a minor number of issues that were more akin to enquiry rather than an actual complaint. The system still raises these as an approach to the Office of the Ombudsman and, therefore, they continue to remain listed and highlighted.

6.4 Recommendations & Conclusions

To summarise, during the start of the Covid 19 pandemic, the GHA took the decision to replace physical face-to-face interaction with ICT artificial platforms. This was introduced because of concerns determined by qualified Public Health officials, fearing the spread of contamination. This expanded to all forms of communications. Appointments to see a GP had to be pursued via an automated telephone system with often callers having to wait in long queues. Those unlucky enough, in some cases, were cut-off, which then added to frustration. In addition, the inefficiency of PALS - which in practice has become defunct – requires immediate and urgent attention. It is simply unacceptable for the GHA - Gibraltar's single largest employer, sole public health provider and core essential service - to fail in this all important procedural step. Upon the latter

stages of drafting this report, the Ombudsman had the opportunity of meeting the new GHA Director General. During this meeting held on the 31st January 2022, he was made aware of the above unsatisfactory situation and in conclusion, it is understood that a recruitment exercise is currently underway to fill the PALS complement with properly qualified staff.

The total number of GHA complaints received by the Office of the Ombudsman was 46 during 2021. These have been split into various categories for ease of reference with the largest number of complaints (i.e., 33%) centred on delays and non replies to communications. Therefore, much further effort should be considered on targeting ways towards tackling this issue. It is suggested that perhaps, because of the recent big move with the application of ICT tools, that GHA consider introducing a mechanism whereby people may check their communication online, in real time. A central station could keep track of this and chase matters as and when a delay is detected, thus providing the service user greater confidence in due status and estimated date of any projected reply. This could perhaps come under the responsibility of PALS.

The next major category relates to complaints against GHA staff (i.e., 11%) and it is here that tailored training be considered to remind employees about their role and purpose. Public servants are employed to provide a service to the general public. This relationship should be revisited and employees reminded about the importance of properly engaging and dealing with service users. In addition, the zero tolerance policy is welcome as this will support employees against abusers.

Furthermore, up to 9% of complaints relate to the administration of the Medical (Group Practice) Scheme and reports of excessive delays in reaching completion of applications- this inevitably subject service users to unnecessary anxiety. However, such delays have now been reduced to 2 to 3 weeks, so we are glad of this improvement.

Also similarly we have received up to 9% of complaints which are more general in nature.

There has been much praise with the wider Covid 19 vaccination programme. Not only was this executed once, but it was necessary to undertake 3 thorough and rigorous campaigns. Incidentally, we must wait to see whether further programmes will be necessary in the future, as new variants are encountered.

This was very well organised and just shows that operationally, the GHA is able to deliver to a high standard. There is no doubt in my mind that the above was carried out with total enthusiasm, commitment and determination and essentially, is an example of an organisation driving forward towards a collective mission. Only very few complaints were received by persons being over eager to receive the subsequent vaccination when in reality, such had still not been procured and neither transported to Gibraltar. Whilst on the other hand, similarly, only a few members of the public complained about having to be vaccinated beforehand when visiting family and friends at the Elderly Residential Services.

We also received complaints from many callers about difficulties in trying to arrange appointments with up to 7% of overall complaints reported at our office. I should add that the expanded use and application of ICT to facilitate this arrangement does carry its advantages once registered and logged in the current centralised system. However, the opposite is true for those unable to perfect or familiarise themselves on how to arrange an appointment. This is particularly poignant for the elderly. **The arrangement of appointments must be kept as simple as possible, and it is strongly suggested that perhaps an alternative systematic approach should be considered specifically for the elderly in order to ease their accessibility**

Numerous issues have been highlighted that require attention by GHA Senior Management. Some may sound trivial in context, but, nevertheless, these are important for service users. Health is unlike any other factor of life. It can be life changing if not treated properly and may impact enormously on people, their families and indeed the nation- it is too serious to leave to one side without seeking ways to improve service delivery. Therefore, it takes enormous political will, enthusiasm

and commitment to directly introduce mechanisms that may be uncomfortable at first to tackle, such as the predominance of inefficiency. It is simply not enough to supply greater funding to an organisation whose recurrent costs is growing and reaching a point of unsustainability.

The Minister for Health should be congratulated on her approach to ascertain what and how improvements can be made and I concur with the view that major structural change is needed. I should add that separating the Ministry from the GHA will make a huge difference on the operations of the GHA whereby management (properly experienced and trained) will be held directly accountable. That said, they should also be afforded total autonomy, and a reasonable period of time to introduce the changes necessary towards improving efficiency, revisiting the concept of patient care and addressing the importance of good patient interaction, follow-up and feedback. When dealing with individual cases, it should be stressed that any medical strategy being considered must be clearly communicated, with the patient regarded as being the most important in the process of interaction. In other words, concentrating on 'how' the message is communicated rather than 'what' it is. They should not simply be regarded as just another number.

It is, therefore, essential that there is a paradigm shift in the culture within the GHA. Service users must not be perceived on a 'master/servant' basis, but rather the other way around. The GHA is funded to give an instrumental crucial service. It cannot simply maintain the current sanitised arm's length approach, which it has been accustomed. Laissez-faire and complacent practices akin to the past must be transformed to one of genuine respect. This will not happen overnight. It will take time to materialise and, therefore, it is recommended that tailored and/or bespoke training be considered for GHA staff in addition to a collective re-education process. One does not often change unless principle values, norms and beliefs are revisited and explained particularly when concentrating on issues such as purpose, and role. Also, senior staff not only should in my view, conduct a traditional and classical top down approach, due to the serious nature of the service

(particularly when considering accountability), it should in addition, allow a bottom up strategy to flow whereby staff at the front line are listened to, appreciated and not simply regarded as a faceless number- they are the 'face of the organisation' and, therefore, should be empowered. This emergent approach encourages greater ownership. Great ideas not only emanate from the top, but they are also generated from the bottom.

In recent times, the GHA has not properly respected the Office of the Ombudsman whereby replies to written and verbal communications have been ignored and left to one side. As mentioned earlier, this is totally unacceptable. The Ombudsman is statutorily empowered to question and investigate matters when necessary and similarly, the said provider is obligated, in law, to provide timely replies. In addition, neither has there been any priority placed on properly resourcing PALS so that it may help and support members of the public though only recently, during a meeting with the GHA Director General, has there, at last been some movement towards recruiting skilled staff to undertake this important role- this is good news.

I ask the general public to consider allowing the effects of the GHA reorganizational structure to take place, cement, and realise that any necessary transformational shift will take time over the medium term to gain fruition in service delivery.

May I finally invite you to read the following section, which represents this year's Annual Report, overall conclusions and recommendations.

7.0 OVERALL ANNUAL REPORT CONCLUSIONS & RECOMMENDATIONS

The year 2021 has seen major issues affecting our public services though it must be stressed that this has been the pattern globally whereby other jurisdictions have had to seek ways to tackle head on the challenges resulting from the Covid 19 pandemic. We, in Gibraltar, like other nations have had to (a) break down traditional working approaches, (b) close counters, (c) digitise the interface between service users and public entities, (d) put aside other strict priorities to reduce the risk of contamination and (e) maintain methodologies to keep our people safe. The Gibraltar Health Authority has, therefore, taken a huge hit in the operation of their services and this is no surprise; triggering the biggest corresponding increase over subsequent years in complaints. That said, it should be stressed that as historically the case, the Housing Department continues to attract the most number of complaints overall when compared to other public entities.

There appears to be a recurring theme year upon year whereby complaints revolve around the same areas of maladministration that can be tackled firmly and nipped in the bud. The following questions arise. Why are there delays in communications? Why are there non-replies? Why are there cases of Departmental in-action? Does this relate to supply and demand issues, i.e., too many enquiries being generated with insufficient resources to engage, administer and revert? Or does this relate to maladministration and/or laissez faire practice?

A great proportion of complaints, that is, close to a third of all received at the Office of the Ombudsman, relate to delays in communications, non-replies and in-action by public departments. It appears that similarly, this was a concern raised by our first Ombudsman, Mr. Henry Pinna back in the early 2000s. It follows that in January 2012, the Government of Gibraltar issued its positive 'Citizens' Charter for Responsive Government' – discussed by our former Ombudsman Mr. Mario Hook in his Annual Report of 2014. This highlights 'specific' commitments introduced for Ministers to respond to citizens' letters within a 21 day period, upon receipt of a letter. Clearly, this was a policy towards setting up a reasonable benchmark though not set in stone for public administrators to follow. However, as mentioned earlier, many public administrators are not following this protocol and some still demonstrate contempt when dealing with citizens' enquiries. This is because of the absence of accountability and until this is addressed directly by the Heads of Departments, such will continue to be a problem in the future. There is, therefore, an absence of real accountability when concerning communication delays, etc.

In the private sector, delays in communications result in loss of business or trade for the company. In the public sector, no such phenomenon exists, but merely the matter is simply accepted, put to rest, because there are no repercussions- no real accountability- unless it relates to public funds. It would be interesting to commission an independent organisation to strictly monitor how many enquiries are indeed generated by various public sector entities and similarly, determine whether sufficient resources are in place. Indeed, should the problem lie with insufficient resources at **enquiry stage**, then, organisational adjustments should be considered to shape it to the needs of the public. This, often termed changing hierarchical spans of control, is where more administrators are introduced at points of engagement at expense of higher managers. In other words, could there be too many people involving themselves in managing and organising operational matters rather than actually performing engagement tasks, i.e., are there t*oo many generals and not enough soldiers?* Are

our public sector organisations too static? Do working practices meet current service user needs? The public sector must evolve and keep in tune with a modern thriving community whereby flexibility should inherently be built in. As an illustration, a permanent pool of first-line administrators could supply such a flexible source, on tap.

It is interesting to note that this pooled service was indeed once supplied in the past by private sector agencies. However, this contingency eventually merged within the public catchment due to external pressures. So, such 'flexibility' has now ceased. In the same token, establishment figures should not be set in stone just because they are predominantly listed in the 'Approved Government of Gibraltar Estimates of Revenue and Expenditure'. Hierarchical structures should be consistently measured and weighed in line with current trends, patterns and public demands. It must be geared and if necessary adjusted to service users and not the other way around.

In addition, this document includes a Special Report on the Gibraltar Health Authority because they have had the greatest impact over corresponding years in numbers of complaints generated by the general public and, therefore, deserves further investigation. Many observations have been made and the reader is advised to refer to the extensive conclusions listed therein.

The year 2021 has been uniquely different and challenging in contrast to others and it is hoped that the enclosed has given the reader an insight of our observations though ultimately this is not an exhaustive list. Lessons must be learnt and improvements introduced wherever practically possible, always considering impact to service users, public cost and value for money, particularly when weighing this against efficiencies.

Sadly, we in Gibraltar like other places have lost many loved ones during a horrible pandemic resulting from Covid 19. Let us never forget them, every single one of them. Let us also learn from the experiences gained and always remember as Mahatma Gandhi so eloquently reminds us: "…. a customer is not an interruption to our work, he is the very purpose of it…."

In conclusion, this Annual Report is dedicated to all those people that in anyway were involved, supported and introduced strategies to combat and tackle the challenges caused by the Covid 19 pandemic such as Contact Tracing Bureau (CTB), Test Laboratories, Professionals that set up the Europa Covid Contingency Facility (known as Nightingale), Public Health officials, Gibraltar Health Authority and ultimately, HM Government of Gibraltar for demonstrating firm leadership during an unprecedented period in our history. Thank you.

8.0 PRESENTATION OF FUTURE ANNUAL REPORTS

Please note that the Ombudsman is considering a change in the overall format of Annual Reports as of next year. For example, reports will be displayed in 'summary form with proposed recommendations'. This should allow the reader to digest the main theme of complaints fairly quickly, rather than having to read through each case entirely. For those more interested in detail, an overall Ombudsman's Casebook will be listed in an Annex, as similarly shown as follows.

9.0 OMBUDSMAN'S CASEBOOK

The following, therefore, includes a selection of complaints received by the Office of the Ombudsman. Generally, each case will entail assessing the complaint itself, undertaking the investigation (should this be deemed necessary), providing conclusions and thereafter, generating a classification, and in some cases, supplying recommendations to the relevant Department.

ANNEX A: Ombudsman's Casebook

Case 1

Complaint against the Civil Status and Registration Office ("CSRO") in relation to a refusal by CSRO to grant the Complainant's wife with a permit of residence

The Complaint

The Complainant complained that his wife was refused a Gibraltar permit of residence on the ground that the Complainant's landlord ("the Landlord") did not allow his wife to reside in his rental property ("the Flat").

Background

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

The Complainant explained that had been a tenant in the Flat for over 30 years.

Following the lodging of the residence application on behalf of his wife, CSRO wrote to the Complainant at the beginning of 2019 stating that the "*application had not been approved on [the ground] that your accommodation is not adequate for these purposes."*

The Complainant subsequently replied to CSRO seeking clarification as to why his current accommodation had been deemed unsuitable. The Complainant stated in his letter that he would be "*grateful for a full response."*

The reply that followed amended the content of CSRO's initial letter of refusal, stating that the reasons for the refusal should have read as follows: "*I regret to inform you that the application has not been approved, as your spouse* ***does not have permission to reside at [the Flat]."***
Apologies for the error were provided.

A further exchange followed. The Complainant reverted to CSRO stating that he was unhappy with the reason provided for the refusal. The Complainant set out in clear terms, how the basis of the decision made absolutely no sense… "*we are husband and wife and I have a [rental] contract. Why should I need permission to live with my wife*?" He concluded his letter by stating that the Flat provided suitable accommodation, that he could financially support his wife, and that, essentially, he felt the decision was "*unjust*".

A final letter was issued by CSRO where it was reiterated that the Landlord had sent CSRO an email confirming that the tenancy had been granted to the Complainant, but that they *"do not wish to have any new tenants added on."* Consequently, CSRO had concluded that his spouse did **not** have permission to reside in the Flat. They also stated that in the event that the

Complainant did find suitable alternative accommodation for his wife to reside in legally; CSRO would be pleased to accept a fresh application.

Not surprisingly, the Complainant proceeded to lodge his complaint with the Office of the Ombudsman.

Investigation

The Ombudsman had made previous representations to Government on the issues of insufficiency of income and on CSRO's reliance on landlords consent for the grant of residence permits.

As a result of that, instead of launching a formal written investigation on the merits of this complaint, the Ombudsman, in the interest of expediency, reviewed the individual files on these matters and subsequently sought an urgent appointment with the Head of CSRO to discuss the issues collectively. The meeting took place very shortly afterwards. All issues were substantively discussed.

The Ombudsman then wrote to HM Government of Gibraltar's Chief Secretary setting out his views on this complaint. The Ombudsman expressed concern by the prevalence of similar type cases which he described as "*a problem requiring serious attention.*"

Conclusions

Essentially, the stance adopted by the Ombudsman in his letter to the Chief Secretary was that the procedure being adopted by CSRO and landlords, in not approving residence permits or allowing spouses and children of registered tenants to reside with them was concerning, and a contravention of Article 8 of the European Convention on Human Rights "ECHR" ("the right to private and family life") mirrored in the Gibraltar Constitution Order ("the Constitution") Chapter 1, section 7 ("protection for privacy of home and other property") 7(1) "every person has the right to respect for his private and family life his home and his correspondence."(subject to certain restrictions in accordance with the law as set out therein, and necessary in a democratic society).

The Ombudsman reminded the Chief Secretary how there had always been a reluctance by many private sector landlords to confirm, acknowledge or extend tenancies, even in the cases of spouses and children of the legal tenants. He pointed out how the problem appeared to have been solved by the Housing Authority in respect of solely owned Government properties by them issuing licences to confirm the residence requirement demanded by the CSRO.

However, he also expressed how there were apparent problems in the case of Government properties owned through Government-owned companies where the company/ies in question were refusing to confirm (or even refusing issuing licences to confirm), the residence of spouses and children of legal tenants.

The Ombudsman paid particular note to how the current procedure appeared to be verging on unconstitutional behaviour, contrary to the aforementioned ECHR Article and the mirroring section of the Gibraltar Constitution.

According to the Ombudsman, citizens have rights to enjoy family life without interference from Government.

Classification

That the refusal by CSRO to grant the Complainant's wife with a Gibraltar permit of residence (on the basis that the Landlord has not consented to her residing with the Complainant in the Flat) was unreasonable- **Sustained**

Recommendations

In his letter to the Chief Secretary, the previous Ombudsman made recommendations in relation to the issue of the grant of consent relating to applicants residing in properties on the Government housing stock, to those residing in partly owned Government properties and to applicants living under private tenancies.

The Current Ombudsman adopts those previous recommendations made.

In relation to the specific complaint under consideration, the Ombudsman reasserted the recommendation that:

The CSRO should cease to involve private sector landlords, especially in the case of long- term Gibraltarian and non- British tenants (who have provided CSRO with an Affidavit confirming their long term residence in Gibraltar). The alternative would be to allow private sector landlords to use CSRO (instead of utilising available legal remedies), as a route for the eviction of tenants. This would be administratively unacceptable.
Ref: CS1203

Case 2

Complaint against the Civil Status & Registration Office ("CSRO")

The Complaint

The Complainants had the following complaints against the CSRO:

1. The CSRO's delay in processing Complainant 2's application for British Nationality.
2. Complainant 1 was advised that he was not able to apply on behalf of Complainant 2 before she was 18 years of age.

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

[Ombudsman Note: Complainant 1 and 2 were a father and daughter who had moved to Gibraltar 10 years prior to applying for British Nationality. At the time of application, Complainant 2 was a minor].

Complainant 1 applied for British Nationality for himself and on behalf of Complainant 2 in October 2016. At the time, he was informed by CSRO that Complainant 2's application would not be able to apply given that his own application was still

under consideration. Complainant 1 was unhappy with CSRO's decision but he was allegedly assured that once his application was successful, Complainant 2's application would be accelerated.

In February 2018, Complainant 2 turned 18 years of age and as previously advised by CSRO, she applied for British Nationality. To her dismay, Complainant 1 had still not had a reply from Government at this point and it was not until June 2018, following a waiting time of two and a half years post application, that Complainant 1's application was successful.

In August 2018, six months post application, Complainant 2 was invited to take her English Language assessment arranged by CSRO which she passed. According to Complainants 1 & 2, despite numerous telephone calls and chaser letters to CSRO from the period of February 2018 to February 2020, (two years post application), CSRO's only update was that Complainant 2's application for British Nationality was still under consideration.

Aggrieved by the lapse of time that had transpired without any tangible evidence that Complainant 2's application was progressing, Complainants 1 & 2 lodged a twofold complaint with the Ombudsman given that Complainant 1 believed that CSRO had denied him the right as a father to apply for British Nationality in respect of his daughter when she was a minor at the time when he submitted his own application in September 2016 and furthermore Complainant 2 was now aggrieved at the two year delay she had experienced since submitting her own application as an adult in February 2018.

Investigation

The Ombudsman examined a series of letters/emails between the CSRO and Complainant 1 and also exchanged correspondence with the head of CSRO from March to December 2020 for the purpose of this complaint. The following matters were discussed and have been summarised for the purpose of this report;

Right to apply on behalf of minor

Since Complainant 1 expressed his dissatisfaction at CSRO's refusal to accept Complainant 2's application as a minor, the Ombudsman reviewed the correspondence made available to him by Complainant 1 and the British Nationality Act 1981.

The Ombudsman noted that as a result of Complainant 1's email to CSRO in February 2019, the department had briefly appraised Complainant 1 on the legislation in regard to applications for British Nationality in their reply dated 13th February 2019. In their correspondence, CSRO made reference to the British Nationality Act 1981 and stated that in regard to applications for naturalisation under Section 18 (1) of the British Nationality Act 1981(on grounds of residence), applicants needed to attain the age of 18 in order to apply. Nonetheless, and in an effort to collate information of which he considered to be of public interest, the Ombudsman asked CSRO about the different routes available for obtaining British Nationality in Gibraltar and whether applications for minors were ever considered. The Head of CSRO wrote to the Ombudsman and confirmed that the only route to obtain British Nationality in Gibraltar was through application for exemption from immigration control ("Exemption") as the first step in order to obtain naturalisation and subsequent British Nationality. He clarified, "*Complainant 2 would not have been eligible to apply for exemption as a minor on grounds of residency. The procedure is, a) that the applicant applies on his/her own right on attainment of 18 years of age or b) should one of the*

parents attain British Overseas Territories Citizenship, the minor can then in turn register under the discretionary section, Section 17(1) of the British Nationality Act". In the case of Complainant 2, although Complainant 1 had hoped to attain British Nationality before Complainant 2 attained 18 years of age, this took longer than he expected and, therefore, Complainant 2 had to go through the whole process in her own right given that she was no longer a minor when Complainant 1 became a British Overseas Territories Citizen.

Delay in processing Complainant 2's application

In relation to the delay experienced by Complainant 2 since submitting her application, the Head of CSRO replied to the Ombudsman's inquiries and explained that Complainant 2's application had been contained in *Book 14* and had been submitted to the Minister for Personal Status for consideration on 11th September 2019 and re-submitted on 27th November 2019. The head of CSRO informed the Ombudsman that the applications contained in *Book 14* remained undetermined in March 2020 and assured him that he had been informed that applicants contained in *Book 14* would be receiving letters updating them on the progress of their applications "*very shortly*".

Although the Ombudsman was grateful for the prompt reply provided by the head of CSRO, he noted with great concern the fact that it took a period of eighteen months from February 2018 when Complainant 2 first submitted her application at CSRO counters, to September 2019 when her application was forwarded for consideration by the Minister for Personal Status. The Ombudsman, therefore, wrote to the head of CSRO once again to enquire as to the lapse of time which at face value appeared to be disproportionate.

The head of CSRO replied to the Ombudsman and explained that the process that applications had to undergo upon receipt was lengthy and highlighted that apart from Complainant 2's application, *Book 14* contained 43 other applications each requiring the following;

1. Inputting of application data in database
2. Checking of Documentation presented to CSRO
3. Checking of Documentation against CSRO records
4. Organising of Interviews with Language Assessors
5. Request of Information from RGP, Income Tax & Social Security.
6. Preparation of resumes on each application
7. Preparation of Summaries
8. Checking of Employment History
9. Submission of Book for checking
10. Submission of Book for Consideration

The Head of CSRO also informed the Ombudsman that the workload experienced by the Nationality and Passport section during that particular period, impacted on the process that each application for British Nationality required. He stated that *Book 14* was "*negatively impacted by the fact that the processing of passport applications took precedence for a period of over six months (from Oct/Nov 2018 to April 2019) given that the validity of our passports was compromised as a result of changes arising from our departure from the EU in March 2019*". The head of CSRO informed the Ombudsman that the surge in passport applications resulted in the re-deployment of additional staff from other departments to CSRO during that period.

When asked about the number of applications contained in the individual books, he explained that there was no set amount given that the process depended on the number of applications received and the time taken to collate the information they required to complete every individual application. The Head of CSRO provided the Ombudsman with the example of *Book 14* which contained 44 applications for naturalisation and contrasted this to the current book the department was compiling which contained 82 applications.

Furthermore, he explained to the Ombudsman that although the CSRO aimed to submit four Books to the Minister for Personal Status annually, they often found it "*quite difficult to adhere to this"* due to the *"internal and external factors*" that influenced the whole process as explained above.

The Head of CSRO concluded his letter to the Ombudsman by inviting him to view Complainant 2's application file as requested.

Conclusions

While the Ombudsman has often investigated the CSRO for delay in providing service users with an outcome regarding their applications for naturalisation, this was the first time where the delay was attributed to the department rather than the delay/lack of consideration at a higher level.

Although the Ombudsman was grateful for the explanations provided by the Head of CSRO, he noted with great concern the fact that other applications contained in the Books, can and often have a negative impact on an individual's application. The

Ombudsman, therefore, wished to highlight this practice as not conducive to good administration and urged the CSRO to review its systematic procedure for compiling the books.

Furthermore, from the explanations provided by the Head of CSRO, the Ombudsman came to the conclusion that since it took eighteen months for Complainant 2's application to be passed on for consideration by the Minister for Personal Status, the CSRO must not have been able to complete any other Books during that period and, therefore, the department must have been unable to meet its four yearly Books target.

The Ombudsman's final stance was that notwithstanding the pressures on the CSRO as explained by the Head, a straightforward application such as Complainant 2's, should not have been delayed for eighteen months before it was passed on for consideration. The fact that this occurred even though the CSRO was previously prepared to give special consideration to Complainant 2's case had Complainant 1 attained British Nationality when she was still a minor, was not proportionate, appropriate, or fair in the Ombudsman's mind.

By March 2020, two years since submitting her application as an adult, Complainant 2 was still awaiting an outcome, yet for most of this time, her file had been waiting to be processed and then passed to the Minister for Personal Status for his consideration. The Ombudsman, therefore, sustained this case against the CSRO given that the lapse of time which transpired before Complainant 2's application was sent for consideration was unreasonable and insensitive to the service user's needs.

In relation to the second limb of this complaint that Complainant 1 was unhappy with CSRO's decision not to consider his daughter's application in conjunction with his back in 2016 when she was still a minor, the Ombudsman did not sustain this

complaint and agreed with the CSRO in that this would not have been possible under the British Nationality act 1981. The Ombudsman however noted with great regret that due to the two and a half-year delay encountered during his own application, Complainant 1 missed out on having Complainant 2 registered as a British National under Section 17(1) of the British Nationality Act.

Classification

1. The CSRO's delay in processing Complainant 2's application for British Nationality. – Sustained

2. Complainant 1 was advised that he was not able to apply on behalf of Complainant 2 before she was 18 years of age. – Not sustained

Recommendations

The Ombudsman recommended that the CSRO consider the findings of this case in order to make changes to their procedure for compiling Books where individual applications for naturalisation are not influenced/delayed by other existing applications.

Ref: CS1223

Case 3

Complaint against the Gibraltar Health Authority (GHA) because they had allegedly, "unjustly and unlawfully" terminated the Complainant's healthcare cover in December 2020.

The Complaint

The Complainant was aggrieved because the Gibraltar Health Authority ("GHA") had allegedly, "unjustly and unlawfully" terminated his healthcare cover in December 2020.

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

The Complainant, a man in his early 80's, stated that he was an American Citizen, now retired from his previous career, who resided in the United States of America ("USA"). He explained that he had a company registered in Gibraltar since 2005 and that he has since been registered as a contributor for healthcare cover under the Gibraltar Group Practice Medical Scheme ("GPMS"). According to the Complainant, whenever he travelled to undertake work in Gibraltar, he stayed with his son ("Son") in Spain (the Son is a Spanish resident who works in Gibraltar) and, therefore, crossed the border into Gibraltar for work purposes which he claimed gave him 'frontier worker' status.

The Complainant stated that in March 2020 he travelled from the USA to Spain and stayed with his Son but claimed that he was unable to return to the USA because of the travel restrictions imposed due to the Covid-19 pandemic.

In the course of 2020, the Complainant submitted his GHA health card for renewal and was asked to provide an S1 certificate. [Note: S1 entitles persons who are **resident** in an EU member state and work in another member state, to full, free healthcare and emergency healthcare in other EU member states].

The Complainant stated that the S1 form was stamped by the Gibraltar Income Tax Office ("ITO") on the 16th September 2020 and as far as he was concerned gave him full healthcare cover for the period 6th January 2020 to the 5th January 2021.

In November 2020, the Complainant was admitted to the GHA's hospital and received treatment for a pulmonary embolism. Upon discharge he was given prescriptions which he presented at a local pharmacy and obtained the medication. According to the Complainant, in December 2020, when he was due to collect his repeat prescription he was telephoned by the pharmacist and informed that the GHA had cancelled his healthcare cover and he could not collect the prescription. The Complainant stated that he emailed the GHA and was informed that his healthcare cover had been cancelled because he had not paid the 'contributions'. The Complainant advised that he immediately submitted proof that the contributions (social insurance contributions) had been paid and then received an email from the GHA's Primary Care Centre Manager ("Manager") acknowledging payment but stating that the healthcare cover had been cancelled because he had not returned the S1 signed by Spanish Authorities. The Complainant stated that at a later stage, the Manager informed him that he did not require the S1 form because he was a US resident.

The Complainant engaged the services of a legal counsel to pursue the matter of healthcare cover with the Manager and stated that the latter, at the insistence of the legal counsel, agreed that the GHA would continue to fill the prescriptions until a final decision was reached. The Complainant stated that subsequently, the Manager, without providing the legal notice required, unlawfully and abruptly denied him from receiving further prescriptions and cancelled GHA appointments which could prove detrimental to his health. The Complainant further stated that despite being a self-employed professional in gainful employment in Gibraltar with a valid employment contract the GHA had arbitrarily terminated his GPMS healthcare cover.

The Complainant provided the Ombudsman with copies of correspondence between the legal counsel and the Manager where reasons for the cancellation of the Complainant's health cover were stated but with which the Complainant disagreed. The legal advice referred to sections contained in the following Acts as to the basis for the cancellation of the healthcare.

- *Section 4(1) of the Medical (Group Practice Scheme) Act which stipulates that every person who is insured under the Security (Employment Injuries Insurance) Act or the Social Security (Insurance) Act shall be registered as a member of the Scheme.*
- *To be insured under the Social Security (Insurance) Act, Section 3(1) of that Act (description of insured persons) requires a person to be (a) under pensionable age and (b) either self-employed or in insurable employment under the Social Security (Employment Injuries Insurance) Act.*

The Manager stated that the above were cumulative criteria and that the Complainant had begun to make social insurance contributions in 2005 by which time he was already of pensionable age (state pensionable age for men in Gibraltar is 65). It, therefore, followed that he was not an insured person for the purposes of the Social Security (Insurance) Act and had and

has no right to be registered under the Medical (Group Practice Scheme) Act even though he had clearly been insured as a matter of fact. The Manager further stated that not having had or having the right to be insured under the Scheme, the relationship between the GHA and him had effectively been discretionary or at its highest contractual (though unwritten) requiring the GHA only to give reasonable notice of termination of his membership in the Scheme.

Regarding the issue of the S1, the Manager explained that in the EU context, a frontier worker is a worker who is employed in the frontier zone of an EU Member State but who returns each day, or at least once a week, to the frontier zone of a neighbouring country in which they reside and of which they are nationals. The Manager stated that, through his own account, the Complainant had always been resident in the US and should not have been issued an S1.

The Manager noted that the Complainant could appeal the decision via the Social Insurance (Questions and Appeals) Regulations but advised that she was unable to assist him any further.

The Complainant lodged his complaint with the Ombudsman in April 2021.

Notwithstanding the above, in March 2021, the Complainant stated that due to Brexit and travel restrictions because of the Covid-19 pandemic, he and his Son decided to move to Gibraltar and on the basis of residency and employment in Gibraltar, submitted the application form for renewal of the GHA health card [Ombudsman Note: For the purpose of application of a GHA health card, one of the documents required to be submitted by the Complainant was the Civilian Registration Card ("CRC") which is issued by the Gibraltar Civil Status & Registration Office ("CSRO"). At the time of writing this report, November 2021, the Complainant's CRC had just been issued. The Ombudsman investigated the Complainant's complaint

of non-reply to three emails sent by the Complainant's legal counsel to CSRO as well as the reasons for the delay in the issue of the CRC and a separate report has been compiled].

Investigation

Further to initial enquiries, the Ombudsman met with the Manager in June 2021 to expand on the information she had provided to the Complainant as to the reasons for the cancellation of the healthcare cover.

The Manager explained that when the Complainant applied for the health card he was already of state pensionable age. The Ombudsman, therefore, enquired as to how a US resident who occasionally came to Gibraltar to undertake work contracts had been able to obtain a health card for healthcare cover in Gibraltar.

The Manager stated that until the end of 2019 early 2020, persons who resided in Spain and worked in Gibraltar, deemed to be frontier workers, were able to obtain health cards by completing and submitting an S1 form to the ITO who would stamp and endorse the said form and provide an S1 certificate. This would then be submitted by individuals to the GHA Registration Section as part of the documentation required to apply for a GHA health card. According to the Manager, prior to that time, no proof of residency in Spain was requested for the purpose of that exercise. That changed in 2019/2020 when Spain established with the United Kingdom that apart from the ITO stamp, the S1 also had to be endorsed by Spain so that they could verify that those individuals were registered as Spanish residents. The GHA, therefore, undertook an exercise whereby all those persons holding S1s who required the Spanish endorsement would be given a four month extension upon expiry of their GHA card, to allow them a reasonable period of time in which to make arrangements to obtain the endorsement.

The Manager stated that the Complainant had first applied for a health card on the 13th March 2015 under 'frontier worker' status, submitting an S1 and providing his residential address in Spain (his Son's address in Spain). The health card was issued on the strength of the S1 with a validity of one year. On the 1st July 2020, the Complainant submitted via email, a renewal application in which he attached copies of the following:

GHA Card, USA Medical Card, proof of social insurance payments to the ITO, employment and company documents, proof of residency from an American Bank. In the email he stated that he lived in the USA and that **when he visited Gibraltar on assignments** he stayed with his Son (legally resident in Spain) at his home in Spain.

The GHA's response to the Complainant was that he needed to provide proof of recent social insurance contributions to ITO and had to have the S1 endorsed by the Spanish Authority. The Complainant responded that he did not live in Spain but in the USA, and provided details of his address there. The GHA reverted, reiterating the need to have the S1 endorsed. The Complainant once again informed them that he was a resident of the USA who worked in Gibraltar and was not a resident in Spain, only a visitor, and Spain would not stamp the S1. He stated that from when he first registered in 2005, he had never had a problem renewing his health card and nothing had changed. He had always been a USA citizen that lived in the USA, not Spain, and had a business and worked in Gibraltar.

The Manager provided copies of the above email exchanges to the Ombudsman.

In December 2020, having established that the Complainant resided in the USA and did not meet the criteria for healthcare cover in Gibraltar, the Manager took the decision that the Complainant's health card would be cancelled. On the 21st December 2020 the PCC Deputy Manager emailed the Complainant and informed him that the reason for the cancellation was because he was not contributing to the GPMS and was not eligible to register. The Complainant responded immediately to refute that statement and on the 30th December 2020, the Manager emailed the Complainant to provide clarification. In her email she explained how the health service works in Gibraltar and who is entitled to avail themselves of the system. In summary, under the GPMS there are two classes of persons entitled and these are as follows:

(i) Insured persons (by virtue of Section 4(1) of the GPMS Act) and their dependants (by virtue of Section 3 of the GPMS Act) – also known as 'entitled persons' under the GPMS Regulations; and

(ii) Persons who are 'ordinarily resident' in Gibraltar (by virtue of Section 4(2) GPMS Act, regulation 4 and Schedule 1 of the GPMS Regulations).

The Manager stated that when the Complainant first registered with the GPMS in 2015 (not 2005 as stated by the Complainant) he did so as a 'frontier worker' and on submission of an S1 form, an S1 certificate was issued to him by the ITO's Social Insurance Contributions Unit, based on the information he had supplied to them (that he was a resident in Spain). The Manager highlighted that at that time, persons submitting S1s were not required to have the form endorsed by Spain as that came into effect at the end of 2019 early 2020. The Manager, therefore, informed the Complainant that as his S1 certificate was not endorsed by Spain, he could not claim to be considered as a 'frontier worker'. Furthermore, the Manager explained to the Complainant that because he was not 'ordinarily resident' in Gibraltar, by way of a permit of residence, he could not apply to register as a 'Voluntary Contributor' whereby he could pay the stipulated fee as set out in

the Medical (Group Practice Scheme) Act; the only way that contributions could be met by the Complainant to the GHA, given that due to his age he was exempt from paying social insurance contributions. The Manager concluded the email by informing the Complainant that unless his position in Gibraltar was regularized with respect to entitlement, she regretted to inform him that he did not meet the criteria to register with the GPMS.

Subsequent to the above, the Complainant engaged the services of a legal counsel with the objective of overturning the GHA's decision to cancel the healthcare cover. The Manger referred the matter to legal advisors and 'extraordinarily' agreed to provide the Complainant with prescriptions, for the interim period pending receipt of the legal advice which was received in February 2021. On the 19th February 2021, the Manager informed the Complainant's legal counsel via email that the central issue was the Complainant's ineligibility to have made social insurance contributions in the first place, separately from the S1 issue and his employment in his Gibraltar registered company. The Manager stated that the Complainant should not have been permitted to make social insurance contributions which triggered his purported eligibility for, and membership in the GPMS. Equally, it was clear from the Complainant's personal circumstances and history that he was never a frontier worker and should not have been issued an S1, and was not eligible for one to be issued now. Therefore, the cancellation of the Complainant's GPMS registration was correct and justified.

The Complainant's legal counsel disagreed with the legal advisors' decision and disputed the interpretation of legislation with respect to the term 'frontier worker'. He told the Manager that a person who lived in another jurisdiction, other than in Spain, could also apply if the person worked in Gibraltar. The Manager passed that email to the GHA's legal advisor and on the 9th March 2021 reverted to the Complainant and reconfirmed the decision. The Ombudsman researched the definition of 'frontier worker' in the European Union and found the following:

Under Community rules, the term 'frontier worker' means any worker who pursues his occupation in the territory of a Member State and resides in the territory of another Member State to which he returns as a rule daily or at least once a week. This definition, however, which apart from the intrinsic element of travel from home to work across a frontier retains the time criterion of a daily or weekly return home, only applies to social protection of the workers concerned within the European Union](Frontier Workers in the European Union (europa.eu) Date: 21/10/2021).

Regarding the Complainant having taken up residence in Gibraltar in March 2021, the Manager expanded on his eligibility to healthcare in Gibraltar. She explained that if an individual decided to reside in Gibraltar and was not working, they would have to provide documentation to the Civil Status & Registration Office ("CSRO") to substantiate that they would not be a burden on the State, part of which would be proof of private healthcare. This category was defined as 'Self-sufficient'. The other category was 'Self-employed'. If a person is in employment over the age of 60, the employee social insurance contributions would no longer be paid (employer social insurance contribution would continue to be paid regardless of age as long as employee remains in employment). If the person is resident in Gibraltar, he/she would be able to pay voluntary contributions towards healthcare. The Manager at the meeting advised that they had to date not been provided with a Civilian Registration Card ("CRC") by the Complainant, which was required for the purpose of applying for healthcare cover under 'Self-employed' category.

Regarding the issue of the Complainant claiming that he had found out that the healthcare cover had been cancelled when he was contacted by the pharmacist, the Manager provided the Ombudsman a copy of a report from the GHA officer who had spoken to the Complainant in December 2020. The report stated that the Complainant had contacted them for a repeat prescription at which point the officer noted that his healthcard had expired and informed the Complainant that he needed to sort that out. According to the officer, the Complainant acknowledged this and was fully aware of the situation but

seemed unhappy with what he had told him. The Complainant asked if he could at least get one month's worth of medicine which he really needed and he would resolve the issue within that month. The officer advised that he needed to notify the Registration Section but would book a doctor's appointment for him with a note informing the doctor that the healthcard was expired. The officer explained that in keeping with GHA protocol at the time, he booked the doctor's appointment for the following day, to allow time during the current day for Registration to undertake the necessary checks. In this case, the officer stated that Registration did not revert until three days later with the instruction that the officer should speak to the doctor to cancel any prescription issued to the Complainant. By that time the consultation had taken place and the prescription had been passed to the pharmacist. The officer had to contact the pharmacist to request that he/she hand back the prescription to the GHA and triggered the telephone conversation between the pharmacist and the Complainant. Notwithstanding the aforementioned, the GHA continued to provide prescriptions to the Complainant until the 19th February 2021 at which time the legal advice was received by the Manager and healthcare cover terminated.

For completeness of records, the Ombudsman requested information on the issue dates of the Complainant's healthcards and these were as follows:

First GHA card issued:	26th June 2015
Renewal:	2016/2017
Renewal:	2017/2018
Renewal:	2018/2019
Last GHA Card:	12th February to 12th June 2020

The last GHA Card was issued for the four-month grace period given by the GHA to service users who required the S1 form to be endorsed by Spain.

Conclusions

The complaint brought to the Ombudsman was that the GHA had allegedly, "unjustly and unlawfully" terminated the Complainant's healthcare cover in December 2020.

The findings of the Ombudsman's investigation established that there had been no maladministration on the part of the GHA.

The Complainant was a resident of the USA who occasionally travelled to Gibraltar for work purposes. On those occasions he stayed with his Son in Spain and crossed into Gibraltar through the land border to undertake work commitments. For the purpose of undertaking work contracts in Gibraltar, the Complainant was employed by his Gibraltar registered company. As the Complainant is over state pensionable age he is exempt from paying employee social insurance contributions, only his employer is required to pay social insurance contributions.

The Complainant claimed 'frontier worker' status on the basis that he travelled from the USA to Gibraltar for work purposes. Notwithstanding, for the purpose of obtaining an S1 certificate in 2015 (as the Complainant's USA address could not have been accepted) provided his residential address as being his Son's address in Spain, not his residential address in the USA. The fact is that 'frontier worker' status, for the purposes of this report, as explained in the 'Investigation' section, is defined as a worker who pursues his occupation in the territory of an EU member state and resides in the territory of another EU

member state. On his own admission, that was not the Complainant's situation at the time of application for the original healthcard and subsequent renewals.

The Ombudsman finds that on the basis that the Complainant resided in the USA and travelled to Gibraltar occasionally for work purposes he did not meet the criteria to claim 'frontier worker' status as he was not legally registered as resident in an EU member state. It was only due to the fact that in 2015, when the Complainant first registered for healthcare cover, the S1 form only had to be endorsed by the ITO, that the Complainant was able to obtain the healthcard and subsequent renewals up to and including 2019. Until that point, no checks had been made by Spain to confirm residency in their country. It is clear that in 2020 the status quo could not continue because Spain also had to endorse the S1 form and the Complainant was not registered as a Spanish resident and had never been and, therefore, not eligible to submit an S1. On this basis, the Ombudsman is of the view that the cancellation of healthcare cover was appropriate and justified.
Ref: CS1248A

Case 4

Complaint against the Civil Status & Registration Office (CSRO)

(i) Non-reply to three emails sent by the Complainant's legal counsel (Counsel) on the 14th 22nd & 27th April & 5th May 2021;

(ii) Delay in issuing a Civilian Registration Card (CRC)

The Complaint

The Complainant was aggrieved because CSRO had not responded to three emails sent by Counsel. He was further aggrieved because of the delay on the part of CSRO in processing his application for a CRC.

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

*[**Ombudsman Note**: By way of background, some details of which are relevant to this case, the Ombudsman had previous to these complaints, recently undertaken an investigation into complaints lodged by the Complainant (an American national) against the Gibraltar Health Authority ("GHA") (Case 3) for having allegedly "unjustly and unlawfully" terminated his healthcare cover in December 2020. Since 2015, the Complainant had work permits renewed on an annual basis by the*

*Department of Employment ("DoE") in Gibraltar. The Complainant travelled to Gibraltar on occasions to undertake work engagements, at which times he stayed in his son's ("Son") home in Spain (Son was a Spanish resident). The Complainant had obtained healthcare cover via the GHA under 'frontier worker' status (a worker who is employed in the frontier zone of an EU Member State but who returns each day, or at least once a week, to the frontier zone of a neighbouring country in which they **reside** and of which they are nationals) due to having provided in 2015, at the time of first application for a health card, his Son's address in Spain as well as proof of employment in Gibraltar. Healthcare was cancelled by the GHA when in 2019/2020, apart from the Gibraltar Income Tax Office ("ITO") endorsement on the S1 form (S1 entitles persons who are **resident** in an EU member state and work in another member state, to full, free healthcare and emergency healthcare in other EU member states) it became a requisite that Spain also had to endorse said form in order to verify that the service user was in fact registered as being a resident in Spain. The Complainant failed to have the S1 endorsed by the Spanish authorities because his residence was in the United States of America ("USA"); he was not registered as a Spanish resident or a resident of any other EU territory. Disagreeing with the decision of the healthcare cancellation, the Complainant engaged the services of the Counsel to deal with the GHA. The GHA sought legal advice on the matter and 'extraordinarily' agreed to provide the Complainant with prescriptions, for the interim period pending receipt of the legal advice which was received in February 2021 and confirmed that cancellation of healthcare cover was correct and justified].*

In March 2021, the Complainant and his Son rented a property in Gibraltar ("Property") and applied to CSRO for a CRC, submitting initial, pertinent documentation. The Complainant continued to engage the services of Counsel to deal with the application. [Ombudsman Note: The Son also applied for a CRC but for the purpose of this report, based on the complaints lodged by the Complainant, the Son's application did not form part of the Ombudsman's investigation].

Further to initial communications between CSRO and Counsel, a senior CSRO officer ("Officer") informed Counsel on the 24th March 2021 via email that the CRC application was not in order as they had only been 'evidenced' with a copy of the Complainant's work permit. The Officer advised that the Ministry of Employment's database showed the Complainant registered as a frontier worker but noted, through Counsel's own admission from recent email exchanges with CSRO, that the Complainant did not have residency in Spain. The Officer believed that the Complainant must be in the USA. The Officer requested Counsel to provide evidence of the following:

- That the Complainant was exempt from income tax and social insurance contributions;
- That the Complainant and his Son would be in receipt of sufficient income to pay the £25,200- annual rental fee of the Property.

In the same email, the Officer referred Counsel to one of his recent communications with CSRO in which he had stated that the Complainant needed the CRC to enter Gibraltar for medical appointments. CSRO notified Counsel that the GHA had advised that the Complainant was not entitled to medical treatment locally and that issue would, therefore, have to be taken up with the GHA.

Counsel reverted that same day and stated that he would discuss the contents of CSRO's email with the Complainant. Notwithstanding, he stated that the Complainant's current health was a major concern and with the GHA having cancelled his healthcard in the midst of receiving critical treatment, that had left him in a precarious situation. The Complainant had informed Counsel that he had been unable to leave Spain in 2020 due to Covid-19 restrictions and because his American passport had expired during the lockdown period. Furthermore, the Complainant's medication had recently run out and Counsel believed he was unaware that the GHA had cancelled his appointments and would let him know. The Officer

responded and referred to the fact that they only dealt with residency applications from persons whose intention was to take up residence in Gibraltar in the capacity outlined under the Immigration, Asylum & Refugee Act. In the Complainant's case it would be on the basis that he had been issued with a work permit and his intention was to take up residence in Gibraltar as a work permit holder. The Officer reiterated that they needed to be satisfied that the Complainant was in fact pursuing an economic activity in Gibraltar and it was in his best interest to provide the information required. Regarding the reference made by Counsel about the Complainant's expired passport, the Officer noted that the copy of the passport he had sent to them had been issued in the USA in September 2020 and was valid until September 2030. On the matter of healthcare cover, the Officer stated that they could not comment on eligibility as the matter rested solely with the GHA.

On the 14th April 2021, Counsel emailed CSRO. He explained that when the Complainant initially applied for healthcare cover to the GHA, he used his USA address but was informed by the GHA's Registration Section that he needed a Spanish address. They accepted his Son's Spanish address albeit him not officially being a Spanish resident and not having a residence card. Counsel reiterated that the Complainant's extended stay (in Spain) in 2020/2021 had been due to Covid-19 restrictions, the expiry of his passport and health issues. Counsel stated that the Complainant's work took him to different countries but his company had always been based in Gibraltar. When he travelled for work purposes to Gibraltar he would stay with his Son in Spain. According to Counsel, during some periods he had also become a Gibraltar resident and rented accommodation but due to the flexibility required for his job, did not remain in one place long enough to become tax resident. According to Counsel, he had always paid his taxes in Gibraltar and the Complainant's accountant had supplied Counsel with tax returns for the past five years and proof of income. The latter, combined with the Son's income, would allow them to afford the rental. Counsel advised that he had been instructed to state that they had substantial savings and investments and had paid a large deposit and advance rent on the Property.

Counsel explained that the position on whether the Complainant required a CRC to enter Gibraltar was not clear. The Complainant had now been allowed to enter from Spain on the back of his Gibraltar employment contract and company registration certificate. Counsel stated that the CRC would make it easier for the Complainant to travel back and forth between Gibraltar and Spain when required but it was his intention to make Gibraltar his permanent home.

Regarding access to GHA health services, Counsel explained that the matter was complicated, as for years, the GHA had allowed the Complainant to use his Son's Spanish address for the purpose of the application, and until January 2021 when this was revoked, he had accessed healthcare with the GHA whenever he was in Gibraltar. Counsel stated that they had contacted GHA but had no response despite chasers and he anticipated that the Complainant would refer the matter to the Public Services Ombudsman [Ombudsman Note: The Ombudsman undertook an investigation into the complaints lodged by the Complainant against the GHA. The report number is CS1248(1)]. Counsel concluded the email to CSRO by stating that he had attached PAYE certificate, company registration certificate and tax return for 2020/21. He asked CSRO to let him know what additional documents the Complainant needed to submit prior to the issue of the CRC and to contact him if they had any concerns. On the 22nd and 27th April and the 5th May 2021, Counsel chased CSRO for a response but due to not having received this, the Complainant lodged complaints of non-reply and delay in the issue of the CRC.

Investigation

The Ombudsman presented the initial complaints to CSRO.

[Ombudsman Note: *During the course of the investigation, the Complainant pressed the Ombudsman for a speedy conclusion of the matter due to the fact that his healthcare had been cancelled by the GHA. The Complainant sought reinstatement of healthcare cover on the basis of residency and employment in Gibraltar. He claimed that the change of residency had come as a result of Brexit, border chaos, lockdowns due to Covid-19 and travel restrictions. In order to apply for healthcare cover to the GHA, one of the requirements was presentation of a CRC. The Complainant stated that CSRO's delay in issuing the CRC was denying him healthcare which he was entitled to by virtue of his employment. He further stated that 'time was of the essence' as he was suffering from medical issues which needed to be addressed because his health continued to decline. In order to manage the Complainant's expectations, the Ombudsman wrote to the Complainant and explained that his investigations do not operate under any prescribed time constraints or marked deadlines. He also explained that once the investigation was completed, a report would be compiled and the complaints would either be sustained or not and in some cases, recommendations made. Notwithstanding, the Ombudsman asked the Complainant, in no uncertain terms, that in order to preserve his health, he should make alternative arrangements for the monitoring and/or treatment of his condition, at least until the investigation was concluded and closed].*

The Head of CSRO ("Head") responded to the Ombudsman on the 16th June 2021 and apologised for the fact that the Complainant had not been updated on his case. He stated that they were awaiting information from other Government departments in relation to the Complainant's submission and due to the time lapsed, his file had inadvertently been put away. The Head informed the Ombudsman that they would that same day send an update to the Complainant and provide him with a copy. No copy of the update having been provided to the Complainant by the 28th June 2021, the Ombudsman contacted the Head who informed him that the Officer (dealing with the application) would be reprimanded due not having sent the update, and assured that it would be issued that same day. Despite the assurance, the Officer did not provide the update to Counsel until the 4th August 2021.

Notwithstanding the above, on the 18th June 2021, the Officer informed the Ombudsman that CSRO was awaiting information from the Income Tax Office ("ITO") and the DoE in relation to the Complainant's application for CRC. She explained that the Complainant was a non-EU national who had been issued work permits since 2015. He did not pay income tax or employee social insurance contributions due to having been over state pensionable age (over 65) when he first applied for a work permit and had been a resident in the United States of America ("USA") during the period of self-employment in Gibraltar. The Officer stated that a reminder had been sent to both departments and advised that copies of correspondence previously exchanged with the two departments would be made available to the Ombudsman.

The Ombudsman reviewed the correspondence. The first email sent by CSRO to the ITO and the DoE was on the 12th March 2021. It informed the departments that they had received the Complainant's and his Son's applications for CRC but they were not in order and were contacting them for information. CSRO explained that the Complainant was a non-EU national who had never resided in Gibraltar and had been issued with a work permit in 2015 at the age of 77. Being over state pensionable age, the Complainant was not liable for employee social insurance contributions and according to CSRO, did not pay income tax (the Complainant's income was below the taxable income threshold). CSRO stated that because he was a non-EU national he held no immigration entitlement to enter Gibraltar to seek employment locally. CSRO informed the departments that the Complainant had submitted a copy of the one year rental agreement for the Property and as a resident and because he had a work permit would be able to register for GHA healthcare cover. The DoE reverted on the 21st March 2021 and confirmed that the Complainant was a non-EU national registered in employment as a 'frontier worker' since the 1st March 2015 with work permits renewed annually since then with the last one to expire in September 2021.

CSRO also contacted the GHA for their feedback as they were aware that the Group Practice Medical Scheme ("GPMS") (GHA healthcare cover) was a contributory scheme. On the 18th March 2021, CSRO emailed the two departments as well as

the GHA. CSRO stated that they had established, further to communications with the GHA that the Complainant was not entitled to free medical treatment, given the non-contributory nature of his self-employment. GHA had confirmed that the Complainant had never been a Spanish resident and CSRO had further confirmed this information via the Borders & Coastguards Agency ("BCA"). CSRO noted that the ITO had amended the Complainant's 'frontier worker' status in their records.

Regarding cancellation of healthcare cover, CSRO were informed by the GHA that the reason was because the Complainant had not been able to obtain the S1, required for the annual renewal of healthcare. CSRO reiterated that the Complainant had rented the Property but was not in Gibraltar, and that Counsel had informed them that the Complainant required the CRC to enter Gibraltar to obtain medical treatment. CSRO was puzzled, due to the Complainant's circumstances, as to how he had been issued a work permit and a business premises waiver. On the basis that the work permit continued to be re-approved, CSRO stated that they had no option but to issue the CRC as a worker and requested feedback from the departments.

Subsequent to the above and as stated in the 'Background' Section of this report, CSRO then wrote to Counsel on the 24th March 2021 referring him to the documentation required which was followed by Counsel's response and submission of further documentation and Counsel's chasers with no further communication from CSRO.

On the 18th June 2021, as a result of the Ombudsman's inquiries, CSRO chased the ITO and DoE for information and advised them that the Ombudsman had received a complaint on the matter. CSRO explained that residency could only be granted to the Complainant on the basis that he was pursuing an economic activity in Gibraltar via the issuance of renewable work

permits. CSRO requested that the ITO and DoE continue to renew the Complainant's work permit as he could only take up residence as a work permit holder. CSRO requested the departments' views.

On the 12th July 2021, DoE reverted. They stated that the Property tenancy agreement had been drawn to include the Complainant and his Son. DoE thought that it would be beneficial for CSRO to instruct BCA to undertake a house check prior to the work permit renewal date (September 2021) and asked that CSRO advise them of the outcome. The Ombudsman enquired from CSRO if BCA had requested this but no evidence to that effect was provided.

The Ombudsman met with the Head and the Officer on the 20th July 2021 and referred them to the non-replies. The Officer stated that a response had been issued to Counsel on the 24th March 2021 and that she had since been waiting for responses from the ITO and DoE, a response from which had been received from the latter a week earlier. The Ombudsman pointed to the Officer that Principles of Good Administration state that public services should be open and accountable and the Officer had clearly failed to respond to Counsel's emails and update him accordingly. The Officer advised that she would provide the Ombudsman with copies of the latest correspondence between the departments and CSRO. She also advised that she would forward a copy of the email she would send to Counsel. By the 4th August, the response to Counsel had still not materialized and the Ombudsman chased the issue. As a result of that chaser, the Officer proceeded to contact the ITO and enquire if the Complainant's address in their records had changed to that of the Property. ITO responded that the Complainant's record was showing a Spanish address.

That same day, the Officer wrote to Counsel and informed him that CSRO needed to be satisfied that the Complainant was in fact in Gibraltar. CSRO would require a copy of his passport with entry stamps into Gibraltar and he would need to change his business registration and tax code to reflect that he was residing in Gibraltar. She stated that the Complainant, an

American Citizen, had never held residency in Gibraltar. The Officer asked Counsel to let her know when he was in possession of the documentation requested. Counsel advised that he would take instructions and revert.

The Officer updated the Ombudsman on the 6th August 2021. She advised that when the Complainant applied for the CRC, his application was not in order and had resulted in extensive correspondence between CSRO, the ITO and the DoE. She explained that she wrote to Counsel to inform him of the additional documents required for both the Complainant's and the Son's applications to be considered (24th March 2021). In respect of the Son, she had informed Counsel that they needed evidence that he had relinquished Spanish residency and required payment of the fee to process the application and three months utility bills for the Property. In the Complainant's case, she had informed Counsel that he had still not changed the tax code and business registration to the Gibraltar address and is tax code still showed a care of (c/o) address in Gibraltar. Given that the Complainant was a non-EU national, evidence of entry into Gibraltar was also required.

On the 3rd September 2021, the Complainant emailed CSRO to enquire about his application and was informed by the Officer that they were waiting for the tax code c/o address to be changed. The Officer asked if his work permit had been renewed. The Complainant responded on the 13th September 2021 and advised that an email had been sent to ITO on the 3rd September 2021 requesting the change of address. Amongst other documentation, the Complainant also submitted to CSRO a copy of the new work permit.

On the 22nd September 2021, the Ombudsman requested from CSRO an update on the CRC issue. The Officer reverted and advised that she had been liaising with the DoE on whether the Complainant's work permit was going to be renewed. The DoE informed the Officer on the 9th September 2021 that they would have no option but to renew the work permit. Given that the Complainant's residence in Gibraltar would need to be regulated solely by the issuance of a work permit, and

nothing else, the Officer intended to write to the Complainant and request a copy of the new work permit. Once that was submitted, he would be issued with a CRC and a permit of residence as a work permit holder. Counsel was updated by the Ombudsman on what the Officer had advised. He reverted and noted that had already been sent to CSRO (on the 13th September 2021) but asked the Complainant to send it to the Ombudsman for onward transmission to CSRO. This was forwarded to CSRO on the 27th September 2021. On the 8th October 2021, further to an update request from the Complainant, CSRO reverted that his CRC was being processed on the strength of the work permit reissued on the 9th September 2021 and forwarded to the Officer by email on the 27th September 2021. Notwithstanding, the Officer informed the Complainant that she still had to look at the Son's application and check if all was in order as at the time of application she recalled he was not in employment, no fees had been submitted and he was still a Spanish resident. The Complainant reverted and advised that his Son had renounced his Spanish residency on the 30th August 2021 and that CSRO had been provided with the pertinent documentation but he would nevertheless resend. Regarding the fees, he stated that had been submitted at the time of application and both had been hand delivered at CSRO offices by Counsel. The Complainant confirmed that the Son commenced employment in April 2021 and currently continued to be employed. For completeness of records, the Ombudsman contacted CSRO on the 19th October 2021 for an update on CRC status and was informed that the CRC printer had broken down the previous week and they were presently pursuing repairs. The CRC was finally printed on the 2nd November 2021 and duly collected.

Conclusions

(i) <u>Non-reply to three emails sent by the Complainant's legal counsel ("Counsel") on the 14th 22nd & 27th April & 5th May 2021 - Sustained</u>

The Ombudsman sustained the complaint of non-reply.

There had been fluid communications between CSRO and Counsel until the 24th March 2021. On that day, the Officer informed Counsel that further documentation was required for the purpose of the application. Counsel reverted and advised that he would discuss the contents of the email with the Complainant but referred the Officer to the fact that the GHA having cancelled the Complainant's healthcard in the midst of receiving critical treatment was a major concern and had left the Complainant in a precarious situation. The Officer responded immediately and advised that it was in the Complainant's best interest to submit the documentation they had requested and that they could not comment on healthcare eligibility as that matter rested solely with the GHA. When Counsel wrote to the Officer on the 14th April 2021, he provided information and asked CSRO to let him know what additional documents the Complainant needed to submit and asked that they contact him if they had concerns. From that point on, Counsel did not receive any further communication from the Officer until the 4th August 2021, and then only as a result of the Ombudsman's investigation and enquiries, despite:

(i) The Head's apology to the Ombudsman on the 16th June 2021 that the Complainant's file had inadvertently been put away without the response having been provided;
(ii) The Head advising on the 28th June 2021 (again due to the Ombudsman's enquiries because no response had been provided) that the Officer would be reprimanded for not having provided the response which would be issued that same day;

(iii) The assurance given by the Officer at the meeting with the Ombudsman on the 20th July 2021 that she would be providing a response which did not materialise until the Ombudsman once again pursued the matter on the 4th August 2021.

As can be determined by the series of events detailed above, it is clear that from the 16th June 2021, the moment when the Ombudsman made the Head aware of the fact that Counsel had not received a response, the Officer **chose** not to provide a response and disregarded both the Head's and Ombudsman's calls to do so. The Officer should have updated Counsel and advised that she was awaiting information from various Government departments in relation to the CRC application.

(ii) Delay in issuing a Civilian Registration Card - Sustained

The role of CSRO with regards to the Complainant's application for a CRC was to check and establish whether the Complainant met the requirements to be issued with a CRC.

The application was made in March 2021 and a CRC issued in November 2021, a timeframe of approximately eight months.

When the Ombudsman concludes an investigation the question posed is what happened compared to what should have been the normal course of events. The latter should have been a fluid situation whereby Counsel should have been provided by CSRO with timely information as to what was required, further to the information he had initially submitted on behalf of the Complainant, including being informed of the changes required to be made at the ITO with respect to change of status from 'frontier worker' to a local address. What happened was that the application was left in abeyance and was only acted on when the Ombudsman intervened.

The Ombudsman sustains the complaint of delay in the issue of the CRC.

Observations

Notwithstanding the above, the Ombudsman is aware that the particular circumstances of the Complainant's case warranted a thorough investigation on the part of CSRO. It is clear from the complaints lodged against the GHA and from the information provided by Counsel, that the Complainant's main objective in procuring a CRC was to have healthcare reinstated by the GHA, on this occasion, on the basis that he worked and resided in Gibraltar. DoE confirmed that the Complainant was in possession of a work permit when he applied for the CRC and in September 2021 renewed this for a further year.

Under the circumstances, the fact that the Complainant was now in his 80's could also trigger the reasonable question as to whether the issuance of a work permit was justified. In that respect, Employment Regulations, 1994, allow for the Director of Employment under regulation 7(8) to revoke said work permit.

Ref: CS1248B

Case 5

Complaint against the Gibraltar Health Authority (GHA)

The Complaint

The Complainant was aggrieved as he had been asked by the GHA to provide an *Affidavit* (a written statement of facts signed under oath) to confirm that his partner lived in his address in order to process the renewal of her health card.

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

The Complainant explained that in September 2019 when attempting to renew her health card, his partner ("the Applicant") was asked to provide the Registration Department at the GHA with an *Affidavit* from the Complainant confirming that she was indeed living at his address. This was because neither the property nor the utility bills were in her name. The Complainant was unhappy with the GHA's request as he believed that since all of the Applicant's paperwork (Civilian Registration Card, Tax letters, bank statements and work contract), contained his address, a letter from him should have sufficed. Furthermore, he was of the opinion that the Applicant had all the necessary documentation listed in the guidance notes provided with the renewal form and that a further request for an *Affidavit* was unnecessary.

The Complainant, therefore, wrote to the GHA bringing all of the above to their attention on the 3rd September 2019. He also lodged his complaint with the Ombudsman on the same day. In his correspondence with the Ombudsman, he highlighted the fact that the Applicant had recently renewed her Civilian Registration Card at the Civil Status & Registration Office ("CSRO") and as proof of address, they had accepted a copy of his property deeds with a supporting letter from the Complainant stating that the Applicant resided with him. The Complainant, therefore, could not understand why the GHA required further proof than this.

Investigation

The Ombudsman wrote to the Primary Care Manager ("Manager") on 17th September 2019 setting out the Complainant's grievance. In that letter he asked for their comments in relation to the request for an *Affidavit.*

In their reply to the Ombudsman dated 18th September 2019, the Manager explained that from the documentation received from the Applicant, the registration office had not been able to confirm that she resided at the Complainant's address and clarified that in cases where an applicant was not the owner of a property and had no utility bills in the address other than a letter from the property owner stating that the applicant resided at their property, the GHA ordinarily requested an *Affidavit.* Contrary to the Manager's comments, the Complainant assured the Ombudsman on the 24th September 2019, that the Applicant had not submitted any documents to the GHA's registration office yet, given that the Applicant was due to pick up her newly renewed Civilian Registration Card on the 25th September 2019. He stated that since the Civilian Registration Card was required for her health card application, they had merely made verbal inquiries in relation to the paperwork required and had not physically handed in her application.

The Manager also provided the Ombudsman with an electronic link for the guidance notes and further explained that the Civilian Registration Card was a separate requirement not used as proof of address.

The guidance notes stated as follows:

"The Medical (Group Practice) Scheme is a contributing scheme, whereby persons are entitled, through contributions made to the Social Insurance Fund. This applies if the person is registered with the Ministry of Employment, and if residing in Gibraltar under a permit of residence or a residence permit granted under the provisions of the Immigration Control Act.

In order to apply for a Health Card the following documents must be submitted;

1. Fully completed application form.
2. ETB Contract (if applicable).
3. PAYE Allowance & Social Insurance Contributions Class Certificate.
4. One passport photo on a WHITE background.
5. Civilian Registration Card / Permits of residence if applicable (Current ID Card / Passport).
6. Proof of address (see below).
*•Deeds or Underlease of the property together with last receipt of rates or last three months' *utility bills (*water and electricity bills only).*
•Private Rental Agreements (not through an Estate Agent) must be accompanied by Deeds of the property and last receipt of service charges or rates in owner's name.

*•In the case of renewals please bring recent Rental Agreement and three months *utility bills (*water and electricity bills only).*
•Valid Tenancy Agreement with HM Government of Gibraltar or approved Tenancy List."

Upon review of the guidance notes provided, the Ombudsman also noted that the Applicant was in possession of another document listed under point 5 of the guidance notes (*Civilian Registration Card / Permits of residence if applicable)* and wrote to the GHA highlighting that the Applicant held a Permanent Permit of Residence Certificate which she had obtained to prove to her country of origin (Spain) that she no longer resided there. The Ombudsman also pointed out that the documents which the Applicant had provided the GHA, namely (Work contract, PAYE allowance and Social contributions, Civilian Registration Card) already contained the Complainant's address.

The Manager replied once again on the 31st October 2019 and clarified that entitlement to healthcare was not the issue at hand as the Applicant was a worker and, therefore, contributing to the health scheme. They stated that their inquiries were in fact geared at whether she was entitled to healthcare as a resident of Gibraltar or a frontier worker. The Ombudsman could not understand why the GHA had this doubt even after he had brought to their attention the Applicant's Permanent Permit of Residence Certificate, together with all her documents which contained the Complainant's address and the Complainant's willingness to write a letter confirming that the Applicant indeed lived with him.

In the meantime, given that he had not been able to reach a satisfactory position with the GHA, coupled with the fact that the Applicant had ongoing medical appointments which she needed to attend and feared that an expired card would result in cancellations, the Complainant informed the Ombudsman on the 2nd November 2019 that he had provided the GHA with

an *Affidavit* which had cost him £90 and the Applicant was now in possession of her renewed health card. He also stated that upon handing in the *Affidavit*, the Applicant was also asked to produce her Permanent Permit of Residence Certificate.

The following week, on the 7th November 2019, the Manager wrote to the Ombudsman once again stating that "*after further consideration, we (the GHA) would be satisfied to register the Applicant at the Complainant's address if she provides 3 months bank statements as proof of address".*

It was now apparent that this was a clear case of maladministration. Not only were the Complainant and the Applicant subjected to numerous requests to verify her residence, but it also appeared as though multiple members of staff were dealing with the case simultaneously which added to the confusion and the diverse documents requested.

The Ombudsman wrote to the Manager regarding the change of stance in relation to the request for bank statements and informed her that the Applicant was now in possession of her renewed health card. The Manager was unaware that the Complainant had handed in an *Affidavit* and clarified that the bank statements had been requested to prove that the Applicant had a further document with the Complainant's address.

Conclusions

On renewing the Applicant's health card, the Complainant was asked by the GHA to produce an *Affidavit* confirming that the Applicant resided with him in his property even though the Applicant was in full time employment, a permanent resident of Gibraltar and had previously held two health cards under the Complainant's address. All the requested paper work contained the Complainant's address, yet the GHA refused to accept a letter from him confirming that indeed the Applicant

lived at his address and insisted that he produce an *Affidavit.* Furthermore, the Applicant's recently issued Civilian Registration Card appeared to serve no purpose.

Although the Ombudsman understood that there were situations in which service users may be requested to provide *Affidavits*, he was not able to reconcile the GHA's request for an *Affidavit* in this instance.

The Manager eventually informed the Ombudsman that the GHA would be willing to accept 3 bank statements as a further proof of address for the Applicant, however this decision was unfortunately taken after the Complainant had handed in the *Affidavit.*

It is also noteworthy that the GHA ordinarily issues health cards for the same period as an applicant's Identity Card/Civilian Registration Card, yet they do not appear to rely on the same for proof of address. This practice appears to be cumbersome for applicants who provide the CSRO with all the necessary paperwork to renew their Identity Card/ Civilian Registration Card only to have to go through the same process again to renew their health cards. The Ombudsman, therefore, sustained this case against the GHA.

Classification

Sustained

Recommendations

(i) The Ombudsman recommended that the GHA review its practice in relation to the request for *Affidavits* from applicants and that they only do so when they have no other reliable source of verification.

Update

Upon reading a draft of this report, the GHA advised the Ombudsman that changes to the requirements for applications to the Medical Group Practice Scheme had been recently introduced and uploaded on the GHA website.

The Ombudsman checked the GHA website and found new guidance notes dated July 2021. These can be found on the following link:

https://www.gha.gi/wp-content/uploads/2021/07/Guidance-Notes-on-Applying-for-the-Medical-Group-Practice-Scheme-1.pdf

The Ombudsman noted than in the case of the Applicant, the new guidance notes stipulated that as an employed person, the next time she renewed her Health Card, her ID/Civilian Registration Card or Passport together with her Social Insurance Contributions would suffice.

Ref: CS1216

Case 6

Complaint against the Gibraltar Health Authority (GHA)

(i) Has not received effective pain management treatment further to having undergone two spinal operations, in 2017 and November 2018;

(ii) Specialist pain clinic consultation at a tertiary referral centre in Spain ("TRC1") in June 2019 was pointless due to the Complainant's medical notes and images not having been sent to TRC1 by GHA prior to or during the consultation;

(iii) GHA's Primary Care Centre ("PCC") automated appointment system does not cater for patients being prescribed controlled drugs (Fentanyl & Morphine in the Complainant's case);

(iv) A number of GHA departments have not updated the Complainant's address details resulting in some correspondence being sent to his previous address (ex-matrimonial home where is ex-wife resides)

The Complaint

The Complainant lodged the above complaints with the Ombudsman in January 2020.

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

The Complainant lodged his complaints with the Ombudsman in January 2020.

The Complainant explained that he had undergone two spinal surgeries at a tertiary referral centre in the UK, the latest in November 2018. The Complainant stated that in January 2019, subsequent to the second operation, the UK visiting consultant spinal surgeon, ("Dr C") who had carried out the procedures, reviewed him and recommended that he should receive specialist pain management treatment at the TRC1 and physiotherapy. The Complainant claimed that he was eventually provided with an appointment for pain management treatment at the TRC1 in June 2019 but explained that had proven pointless because the GHA had not sent his medical notes to TRC1 in time for the consultation. According to the Complainant, he had since had a consultation with the GHA's associate specialist orthopaedics and trauma ("Dr B"), in October 2019, and received an apology for the administrative error occurred and was advised that he would be contacted for another referral, with the assurance that records would be sent. By November 2019, the Complainant claimed there had been no developments and stated that had a knock-on effect on the implementation of a physiotherapy programme. The Complainant stated that he was in too much discomfort for the GHA's physiotherapy department to confidently carry out rehabilitation with positive results and referred to Dr C's recommendation that pain management was a priority to facilitate an effective rehabilitation physiotherapy programme. Notwithstanding, the Complainant explained he had been doing simple daily physiotherapy exercises (NHS publication he was given in the United Kingdom) specific for post-surgical spinal decompression.

Regarding the issues he was experiencing due to the PCC's automated appointment system, the Complainant stated that did not work for patients like him who were prescribed controlled drugs which required continuity of care and close monitoring by the same physician. The Complainant noted that he had seen more than five different General Practitioners ("GPs") in a short period because he had not been able to get an appointment with his GP. He also stated that at each appointment with a different GP he had to explain his full medical history and in doing so relive past traumatic issues which were extremely upsetting to him. The Complainant felt this situation was unnecessary and considered that the setting up of monthly advance appointments with his GP should not have proved to be so problematic considering his particular circumstances. Notwithstanding, the Complainant stated that despite attempts to assist him by both administrative staff at the PCC as well as GP's, these were being denied by management and his situation continued to be unresolved.

In respect of his address details, the Complainant stated that on occasions, some GHA departments sent correspondence to his previous residence despite the fact that he had informed the various departments of his current living arrangements; he now resided in his parents' home.

On the 1st November 2019, the Complainant lodged his complaints with the Patient Advisory Liaison Service of the GHA ("PALS") but disappointed with their response, he lodged his complaints with the Ombudsman.

The Ombudsman was aware from preliminary contacts with the Complainant that he had commenced legal proceedings against the GHA and wanted clarification before commencing any investigation, on whether the legal proceedings related to any of the complaints he wanted to lodge. The Complainant responded that he had instructed legal counsel with respect to a complaint which had originated in November 2017, and requested the Ombudsman's assistance with his November 2019 complaint in respect of ongoing care and medical concerns.

Investigation

[Ombudsman Note: For ease of reference, this report will be set out in keeping with the individual complaints where possible].

[Ombudsman Note: In March 2020, the Covid-19 pandemic struck. In the main, hospitals and clinics directed their resources towards the care of Covid-19 related cases. In order to protect the capacity of the health services in Gibraltar during the pandemic, Ombudsman investigations with respect to complaints against the GHA were paused in early April 2020 and resumed in September 2020. Parallel to the investigation, the Complainant continued to be in contact and attended to by the GHA].

The Ombudsman requested documentation from PALS with respect to their investigation which was received on the 17th March 2020.

<u>Complaint (i) - Has not received effective pain management treatment further to having undergone two spinal operations, in 2017 and November 2018</u>

The documentation provided to the Ombudsman by PALS included the statement submitted by Dr B and contained background information about the Complainant's medical situation.
Dr B explained that the Complainant was a long-term patient of the GHA's Spinal Clinic and had initially been seen on the 13th July 2017 (further to a June 2017 referral) due to his ongoing lower back pain.

Dr B stated that the Complainant had a longstanding history of back pain and suffered from sciatica and paraesthesia (an abnormal sensation, typically tingling or pricking ('pins and needles'), caused mainly by pressure on or damage to peripheral nerves) and weakness in the left foot for many years before that first appointment. The Complainant took anti inflammatory medication due to his condition.

He explained the examination revealed that it was likely that part of the Complainant's symptoms were related to his spinal condition. He added that an MRI scan (which the Complainant had done in a private clinic) was reviewed. The Complainant was referred to the GHA's visiting neurosurgeon, Dr C, who takes care of spinal patients. He was also referred to the doctor at the GHA's Pain Clinic ("Dr D") to help with his pain symptoms. Dr B noted that by this stage, the Complainant had a history of treatment in the physiotherapy department but that he had not improved post treatment and had confirmed he was not doing regular exercises on his own.

Subsequent to the above consultation, the Complainant attended the GHA's Accident & Emergency Department ("A&E") on a number of occasions because of pain symptoms and due to those being ongoing, was admitted in September 2017 to the GHA's hospital ("Hospital") where he underwent radio frequency treatment with Dr D.

The Complainant informed Dr B he was not happy with Dr D's treatment despite a slight improvement. At a later date, he told Dr B that the pain had returned and was worse than what he had experienced initially. According to Dr B, the Complainant complained about Dr D and was not happy with the pain service and refused treatment from the GHA's Pain Clinic.

Dr B stated that the Complainant was reviewed by Dr C on the 26th September 2017 and after a long discussion and detailed information, surgery was scheduled for the 20th November 2017 at a tertiary referral centre in the UK. In the interim, Dr B stated that the Complainant attended the spinal clinic on multiple occasions so that he could be provided with medication for the pain as he declined going to the GHA's Pain Clinic.

Further to surgery in the UK, the Complainant was reviewed by Dr B on the 30th November 2017. According to Dr B he was walking better and was not using any support and informed him that his condition was much better than before the surgery and was improving.

The Complainant was assessed by Dr B on the 14th December 2017. The Complainant stated his condition was improving but was concerned about quadriceps muscle weakness. Dr B believed this was most likely related to not exercising when he had pain symptoms and was advised to continue physiotherapy.

On the 6th February 2018 he was reviewed in Dr C's clinic where his case was discussed and a new MRI arranged. On the 5th March 2018 the Complainant attended the clinic for results of the MRI and images were sent for review to Dr C. On the 26th March 2018 the Complainant was seen when he received a prescription for pain medication and Dr B stated that he reassured the Complainant that he would be seen again by Dr C.

On the 21st May 2018, due to his ongoing leg pain and after review of the scan which showed there was a prolapsed disc, the Complainant was offered revision surgery by Dr C and that was also performed at the tertiary referral centre in the UK in November 2018.

In January 2019 the Complainant was reviewed by Dr C in Gibraltar. According to Dr B's statement, the Complainant continued to have back pain and it was agreed that he would proceed with physiotherapy for his condition.

The Ombudsman reviewed the Complainant's medical file and read through the letter dated 21st January 2019 from Dr C to Dr B, further to the former's review of the Complainant after the second surgery. Dr C stated that this had had some effect on his leg pain and he seemed a little better overall albeit his back was very stiff and his walking was poor. He stated that the Complainant had a complex pain syndrome and had expressed a very clear desire not to see Dr D in the GHA's Pain Clinic, which Dr C felt was entirely within reasonable limits. The latter requested that the Complainant be referred to an interventional pain specialist for consideration of any further post-operative adjunctive injections. Dr C stated that they could agree that he did need care for pain management and would also benefit from structured physiotherapy at the GHA which would be challenging for the Complainant but he hoped that he would make some progress and would see him at his next clinic visit.

The Ombudsman also noted an earlier letter from Dr C to Dr B dated February 2018, with respect to the Complainant's situation which concluded that the Complainant's pain syndrome was disproportionate with an operated L5/S1 microdisectomy, even if postoperative imaging were to demonstrate a marked complication. Dr C identified that the Complainant was trying to engage with physiotherapy postoperatively but had found it impossible due to his current pain syndrome and it was not likely to be a feasible prospect.
Dr B's statement set out that in April 2019, Dr C referred the Complainant to TRC1 (pain clinic). In that consultation, the Complainant was advised to select a GP familiar with his condition who could provide him with his medication when necessary and he was referred for a psychological review for chronic pain syndrome.

From the documentation on the Complainant's medical file, the Ombudsman found that the Complainant saw Dr C at the clinic again on the 1st/2nd April 2019. Dr C then wrote to the Complainant's GP about a number of issues, amongst which was the fact that the Complainant was not happy to see Dr D at the GHA's Pain Clinic and representations from the latter to TRC1 would need to happen directly but that it had been agreed that Dr B would take the matter up with the GHA's Pain Clinic or they could pass the referral directly. Dr C added that the Complainant had agreed to re-engage with physiotherapy.

A letter from Dr B to the TRC1 requesting that the Complainant be seen at the TRC1 is dated 19th July 2019. The Ombudsman could not find an earlier referral request on file.

According to Dr B, the Complainant had been informed about the GHA's procedure with respect to referrals to a tertiary referral centre whereby this required approval by the GHA's tertiary referral board ("TRB"). Dr B stated that the referral was approved in July 2019 and that all necessary images and medical files were transferred to the TRC1.

Dr B advised that after the consultation at TRC1, the Complainant attended the GHA's out clinic (on the 14th October 2019) and explained he was not very happy with the treatment provided, mainly because he was prescribed medication he would have to obtain from a pharmacy in Spain. The Complainant was informed that he would have to get the medication in Spain because the prescription had been issued by Spanish authorities. The Ombudsman asked the Complainant for his comments on the aforementioned and he responded that the fact that the doctor at TRC1 spoke little English which made the consultation a bit awkward with parts being lost in translation but advised that they got there in the end. The Complainant stated he had never said he was unhappy with treatment or consultation at TRC1; he was unhappy with the GHA administration for not having sent the documentation in time for the consultation.

Dr B in his statement advised that because the Complainant was unhappy with the treatment at TRC1, a referral to a different tertiary referral centre ("TRC2") was offered which again required approval from the TRB. Once he was seen by the pain clinic team at TRC2 he was advised to have a review with a consultant neurosurgeon there which would most likely take place on the 20th February 2020 after which he would be reviewed at the spinal clinic. Dr B further explained that during that time the Complainant had multiple appointments at the spinal clinic for prescriptions for his medication. He was also referred to physiotherapy on multiple occasions but very often declined treatment from them and did not show up for his physiotherapy classes. He was also seen by the psychology service and a suggestion by them was to proceed with further input with them which the Complainant declined.

The Ombudsman requested the Complainant's records from the GHA's Physiotherapy Department. These were reviewed and it was found that there were four appointments recorded in total between November 2017 and April 2019. All four of those were attended by the Complainant but the 20th December 2017 one had to be rebooked as he was late for the appointment. On the 9th January 2018 he was assessed and advised and the records from the following two appointments denote that the Complainant was in pain and the physiotherapist unable to intervene.

To conclude his statement, Dr B stated that the Complainant's spinal condition was well known to their clinic and they were fully aware of the Complainant's difficult situation and tried to help him in every possible way but for that to be carried out in the right way and to achieve the best possible outcome, they needed the Complainant's cooperation.

Considering that it was in January 2019 that Dr C first requested that a referral be made to TRC1, the Ombudsman asked Dr B for further details as to why this was not requested until July 2019; six months later. The Ombudsman further enquired as to why it took a further seven months for the referral at TRC2 to be requested.

There was a lengthy delay in obtaining a response from Dr B who had been away from the GHA until January 2021 and upon his return to work was further delayed due to the Covid-19 pandemic. Dr B provided further information in May 2021 regarding the delay in the referral to TRC1. He explained that once patients were seen by Dr C, his letters were returned to the Spinal Clinic for review and the most urgent and complex conditions that required immediate surgery being dealt with as well as all other cases. According to Dr B, the referral to the TRC1 for the Complainant was slightly more complicated as the GHA have a Pain Clinic which is run by Dr D but with which the Complainant was unfortunately not happy with. Dr B stated that they had to identify other pain management clinics to which the Complainant could be referred to. He added that it was always more challenging to refer patients to a new location because they needed to establish new pathways and only the patient (in this case the Complainant) could provide feedback about the quality of the service. Dr B stated that Dr D agreed that if the Complainant did not wish to be treated by him he was happy for him to get pain management treatment elsewhere.

Regarding the Complainant not being happy with the consultation at TRC1, Dr B highlighted that it could have been the case that the Complainant expected immediate treatment but had been pre-warned that did not happen at the first consultation where the patient was assessed and appropriate treatment discussed. Patients would then need time to decide if they wished to proceed with the treatment, especially spinal injections, which despite being a minimally invasive procedure are still related to multiple possible complications and risks. Dr B reiterated that the Complainant had been advised that it would be more complicated if he wished to proceed with pain management elsewhere as the GHA do not have much influence on the service provided in other centres. Dr B further advised that the Complainant was informed on multiple occasions that the way forward to improve his condition would be physiotherapy and ongoing regular exercise. Dr B concluded by stating that as explained to the Complainant, the pain management was not a main part of his treatment it was always the physiotherapy and pain management was only a small part of the process to improving his condition.

By way of update, Dr B stated that the Complainant had currently (May 2021) been seen by one of his colleagues at the spinal clinic and had been referred to Dr C for further review.

Whilst awaiting Dr B's response, the Ombudsman made enquiries to the Medical Director (Ag) to establish the dates on which the TRB had discussed the Complainant's case and whether part of the delay with respect to the Complainant's referrals could have been due to TRB meetings. The Medical Director responded that the TRB had weekly meetings on Thursdays to discuss and approve entries on the referral database. The Complainant's database entries were dated the 15th July 2019 and the 24th January 2020 and appointments offered at the TRC2 on the 6th, 12th and 20th February 2020.

<u>(ii) Specialist pain clinic consultation at a tertiary referral centre in Spain ("TRC1") in June 2019 was pointless due to the Complainant's medical notes and images not having been sent by GHA prior to or during the consultation</u>

The Ombudsman requested and reviewed information from the GHA's Sponsored Patients Department ("SP") to establish what had happened.

The Ombudsman requested pertinent documentation from SP and found that on Friday the 19th July 2019, Dr B wrote to TRC1 requesting that the Complainant be seen by the Pain Clinic. Subsequent to that request there was email communication between a staff member of SP and another from TRC1 for the purpose of establishing the appointment date. TRC1 advised that the doctor could see the Complainant 'on Wednesday' [Ombudsman Note: No further detail on the date was provided but the Ombudsman surmised that would have referred to Wednesday 24th July 2019] and requested that he bring all the documentation and imaging with him and be informed that at that appointment he would be assessed but no

treatment would be given. SP requested date and time and TRC1 responded 'Wednesday at 12pm with Dr J'. SP then confirmed in their email that the Complainant would attend on Wednesday 24th August at 12pm. No further communication from TRC1 was provided to the Ombudsman further to this last email and as such, the error is clearly the fact that SP stated 'August' instead of 'July'. Although the referral slip sent to the Complainant was dated 24th July 2019 the request for image transfer from GHA to TRC1 was not made by SP until the 29th July 2019, erroneously taking the date of the consultation as being the 24th August 2019 and, therefore, the images being sent as far as they were concerned, with ample time prior to the appointment. The Radiology Department confirmed the images were sent at the end of July further to the request.

Regarding the Complainant's statement that the consultation was pointless, the Ombudsman reviewed the report by Dr J from TRC1. The diagnosis stated 'failed back syndrome' and the treatment recommended was to increase Fentanyl dose to 25mcg/h and to have a lumbar MRI with contrast, prior to considering epidural blockade.

(iii) GHA's Primary Care Centre ("PCC") automated appointment system does not cater for patients being prescribed controlled drugs (Fentanyl & Morphine in the Complainant's case)

PALS, as a result of their investigation, had obtained information provided by the GP Leads at the PCC. The latter explained that they sympathised with the Complainant and agreed that due to the new automated system taking up so many appointments, continuity of care had been compromised for both patients and clinicians. The GP Leads stated that each GP now had little opportunity in the way of review slots (2 per clinic) which most GPs had to reserve for urgent cases but had no other control of their clinics. The GP Leads explained that they could offer further review slips which management then had to release but stated that the situation was not ideal for either party. The GP Leads stated that they had raised this issue repeatedly and it was due for discussion at their next management and GP meeting.

Regarding the Complainant, the GP Leads stated that she noted from the medical records that he was a very complex patient and agreed with him that ideally he should be seen by one or two GPs where possible. Due to the complexity of the Complainant's medical problems, the GP Leads advised that they would highlight his case to management and his preferred GPs and perhaps arrive at a solution whereby he could be given regular review slips to facilitate him getting an appointment for routine medical care. The GP Leads noted that any emergency issue would have to go via the usual emergency channels.

The GP Leads concluded her letter by informing PALS that they hoped the above was satisfactory and noted that they would be more than willing to meet the Complainant to discuss the matter further if required.

In the course of the investigation, the Complainant informed the Ombudsman that a letter from Dr B setting out a brief medical history had now been included in his medical records.

(iv) Not all GHA departments have updated his address details and correspondence continues at times to be sent to his previous address

The Complainant occasionally received correspondence from various departments of the GHA addressed to his previous address, despite him having informed various departments of his current living arrangements at his parents' address. PALS informed the Complainant that in order to update his address he, or a representative, needed to attend the Registration Desk at the PCC with proof of his current address and any other evidence required by the aforementioned department for that purpose.

Conclusions

Complaint (i) - Has not received effective pain management treatment further to having undergone two spinal operations, in October 2017 and November 2018 – **Sustained**

The Ombudsman sustains this complaint.

The Ombudsman's investigation found that there was an inordinate delay on the part of Dr B in referring the Complainant to TRC1 and subsequently to TRC2.

The information provided by the Medical Director with regard to the dates on which the Complainant's case was discussed by the TRB, establishes that no delay can be apportioned to them. The TRB database entries for the Complainant's referrals were dated 15th July 2019 and 24th January 2020 and appointments with TRC1 and TRC2 arranged shortly after those dates.

It took Dr B a period of just under six months, from the date of Dr C's letter on the 21st January 2019, to put the referral request to the TRB with the case discussed on the 15th July 2019 and Dr B making the request four days later, for TRC1 to see the Complainant. The reasons given by Dr B for the period of time elapsed were that Dr C's most urgent and complex cases that required immediate surgery were prioritised and that other pain management clinics that the Complainant could be referred to had to be identified. Dr B did not provide evidence of enquiries made to other clinics to justify the delay. Furthermore, the Ombudsman is aware that TRC1 is one of two tertiary referral centres in Spain which the GHA ordinarily refers patients to, the other being TRC2, and, therefore, neither would appear to be a new working relationship or a valid reason for the six-month delay in that referral.

Regarding the further six-month period between the TRC1 appointment for the Complainant to be referred to TRC2 because he was unhappy with the service at TRC1, once again the Ombudsman found that there was an inordinate delay in Dr B requesting the referral. The case was put to the TRB on the 24th January 2020 and appointments offered at the TRC2 on the

6th, 12th and 20th February 2020. The reasons provided by Dr B for the delay are the same as those provided for the delay in the referral to TRC1 as per paragraph above.

The Ombudsman notes Dr B's conclusion that the pain management was not a main part of the Complainant's treatment, that it was always the physiotherapy and pain management was only a small part of the process to improving his condition but it was Dr C's view as stated in his January 2019 letter to Dr B that the Complainant needed care for pain management as well as structured physiotherapy.

(ii) Specialist pain clinic consultation at a tertiary referral centre in Spain ("TRC1") in June 2019 was pointless due to the Complainant's medical notes and images not having been sent by GHA prior to or during the consultation – **Not Sustained**

The Ombudsman's investigation found that due to an error with the appointment date on the part of SP, taken as being the 24th August 2019 instead of the 24th July 2019, the Complainant's notes and images were not received at the TRC1 in time for the consultation.

Notwithstanding the above, despite the fact that it could be assumed that not having the GHA's images could have had a bearing in Dr J's assessment of the Complainant, the Ombudsman notes that Dr J was able to provide a diagnosis and treatment at that consultation. He prescribed increased medication (fentanyl dose) and required an MRI with contrast prior to considering epidural blockade.

Considering the above and noting TRC1's communication with SP in which the former advised that the Complainant would be assessed but no treatment given at that appointment, the Ombudsman does not sustain this complaint as no hardship was caused to the Complainant at that consultation as a result of the medical records not having been sent to TRC1 in time.

(iii) GHA's Primary Care Centre ("PCC") automated appointment system does not cater for patients being prescribed controlled drugs (Fentanyl & Morphine in the Complainant's case) - **Sustained**

The GP Leads accepted that continuity of care had been compromised due to the new automated system taking up so many appointments and GPs now having hardly any control over their clinics with respect to follow up or repeat appointments for patients. This issue is, therefore, a work in progress for a solution to be found for all patients affected.

The Complainant's case was one where obtaining his medication was proving to be traumatic, not least because he had to frequently recount his medical history to GPs who had not seen him before in order that they would prescribe his medication part of which were controlled drugs. In order to avoid a recurrence of this situation to the Complainant, there is now a letter from Dr B in the Complainant's medical records in which Dr B provides a brief medical history of the Complainant and, therefore, accessible to any GP.

The Ombudsman sustained this complaint. Despite the fact that the GHA continuously strive to better the PCC appointments system and is a continuous work in progress, the Complainant's grievance could have been resolved at an earlier stage and would have in some measure prevented the hardship endured by the Complainant when trying to obtain his medication.

(iv) Not all GHA departments have updated his address details and correspondence continues at times to be sent to his ex-wife's address – **Not Sustained**

In order for the GHA to update the Complainant's address in their records, the latter had to submit pertinent documentation of proof of his current address. The Complainant had been unable to provide said documentation. The Ombudsman, therefore, did not sustain this complaint.

Ref: CS1220

Case 7

Complaint against the Gibraltar Electricity Authority ("Gibelec") in relation to delay in replying to correspondence emanating from a written complaint lodged by the Complainant

The Complaint

The Complainants sent an email of complaint to Gibelec on 21st October 2020, in relation to the installation of new electric cables to their property.

As an aside, they complained to the Ombudsman that despite having received an acknowledgment to that email, a subsequent mail received from Gibelec some three weeks later, appeared to suggest that their initial email of complaint had been deleted from Gibelec's system.

In addition, no substantive subsequent reply addressing the crux of their complaint had been received.

Background

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

The Complainants explained that they had suffered a power cut at their privately owned house located in Gowland's Ramp Gibraltar. They telephoned Gibelec at the time, and the on call electrician was dispatched. That gentleman informed the Complainants that repairs were necessary (cables required replacing), and that the cost of the cables from the meter to the dwelling had to be expended by them as owners and not, by the utilities provider.

The Complainants were aggrieved at the cost of the cable (£250), as a result of the meter being located at a distance of approximately 60 metres from the house. They made representations to a named Gibelec Customer Services Engineer who the Complainants claimed was "unhelpful" and unwilling to accede to the request that the meter be moved closer to the property.

The issue of the repairs required immediate resolution since [Mrs Amselem] used a medical CPAP electrical breathing machine whilst sleeping. As a result, the Complainants were left with no option *"but to pay for the very expensive armoured cable (£250) plus £370 in labour costs."*

In a letter to Gibelec setting out the circumstances of their grievance, they requested that Gibelec "*consider participating in the expenses [invoices attached],"*as they considered it unfair that they had to pay for the relocation of a meter that Gibelec had originally placed so far away from their property.

A reply to the Complainants letter was received some three weeks later, on the 3rd August 2020, from the same Customer Services Engineer referred to above. He explained how the meter could not be relocated from its current position and how this was not a new issue with landlord/property owners. He further stated (rightfully), how issues arising from the meter to the main distribution board of any premises remained the responsibility of the landlord, hence why they had previously been informed that the expense would have to be met by them as owners.

The example was given (which the Complainants did not consider was a valid analogy), of a meter located in the basement of a building and the top floor flat owners, requesting that it be relocated as a result of considerable distance.

Gibelecs' reply concluded by stating, that although they sympathised with the Complainant's issue, they could not hold themselves responsible for consumer related faults and as a consequence, could not contribute to the associated expenses of the repair/replacement.

The Complainants wrote to the Ombudsman setting out their complaint as follows:

1) That the example Gibelec gave of a block of flats with a basement installation was not relevant or analogous to their situation since they lived in a house by a ramp and every resident had a meter close to their properties;

2) The electrical cable installed needed to be "*armoured*", since it had to be fixed inside a wall. If the meter would have been closer, the cost would have by far decreased. As a result, the Complainant sought a contribution on the cost of repairs from Gibelec;

3) The fact that the situation was not a new one did not, to the Complainants' mind, make it automatically correct.

In his acknowledgment to the Complainants, the Ombudsman noted that it had not been administratively appropriate for the same Gibelec employee who had initially told the Complainants on the phone that nothing could be done, to write to the Complainant's on the 3rd August 2020. It would have been administratively more appropriate for a complaints handler or manager to have undertaken the task. Additionally, the Ombudsman's initial view was also that a more detailed explanation as to why the meter could not be moved could have been given, as opposed to an outright negative.

The Ombudsman advised the Complainants to exhaust Gibelec's internal complaints procedure, affording them a further opportunity to address matters.

Subsequently, the Complainants wrote to Gibelec informing them that they remained dissatisfied with their 3rd August letter and requested information over their internal complaints procedure. Gibelec replied on the very same day, providing all the details where the Complainants could address their complaint.

Approximately one week elapsed and the Complainants wrote to the Gibelec CEO ("CEO") setting out their complaint in full. That same day, a Gibelec Financial and Administration Officer acknowledged receipt and stated that the written complaint had been forwarded to the CEO for his attention and reply. An email followed from Gibelec. It read that the Complainants

mail of complaint had been "***deleted without being read on Tuesday 10 November 2020.***" As a result of this, the Complainants formally lodged their complaint with the Office of the Ombudsman.

Investigation

The Investigation relating to this complaint centred on the issues of delay and non-reply.

The Ombudsman wrote to the CEO setting out the nature of the exchanges between the Complainants and Gibelec and requested comments on the following issues that were raised in respect of their complaints procedure:

1) Why did they not receive a reply in a timely manner considering that the initial email had been almost immediately acknowledged?

2) Why was the email deleted three weeks later?

3) How soon could [the Complainant's] expect to receive a reply, given the delay they had encountered?

The reply received set out as follows;

1) The Complainants email dated 27th July was replied to on the 3rd August 2020

2) In regard to the email being deleted…the Ombudsman was advised to note that "…… *the customer wrote to consumer@gibelec.gi which has a total of ten active recipients…. Those not involved in the issue, deleted the email from their inboxes.*"

3) A recent copy of the CEO's letter to the Complainants addressing their concerns, was made available to the Ombudsman for his review.

In said letter, the CEO stated that although he was sympathetic with the Complainants situation, "……*please note that the cable that was damaged belongs to yourself as part of your installation as it is beyond our point of demarcation."* Further, the CEO wrote, "……*given the fact that you have now installed an armoured cable and effectively modified your electrical installation, you are required to submit to our Consumer services Office, via an approved electrical contractor, updated copies of your wiring diagrams and test certificates*." It was also explained that once this information had been received, Gibelec would be more than happy to attend an onsite meeting to inspect and approve the works.

Conclusions

As concluding correspondence, the Ombudsman wrote to Gibelec in reply, stating that he was in fact referring to the Complainants email dated 21st October which remained unanswered and not, the July correspondence.

In relation to the email being subsequently deleted, the Ombudsman observed that despite Gibelec's explanation, the issue may be (and in this case was) extremely confusing to any user receiving such an email message, given they would be unaware that they had written to ten (or however many number) of recipients. The Ombudsman added, that in the interest of clarity, good customer relations and positive administrative practice, further information should be attached to the generic replies sent out to customers, in respect of emails that confirm correspondence has been "*deleted*" as a result of non- involvement in a particular matter by members of Gibelec staff.

On the more general issue of whether it is the consumers or service providers' responsibility to incur expenses for repairs The Gibraltar Electricity Authority Act provides at section 13(2) that "*the landlords or management company of the premises upon which the electrical lines, fittings, works, apparatus or meters of the Authority are situated, shall maintain and upkeep any structures, rooms, cabinets, infrastructure belonging to the Authority in a satisfactory state of repair, at no cost to the Authority."*

Although no specific reference was found confirming that any issues/costs in repair arising, "*from the meter to the main distribution board*" was the responsibility of consumers, the Ombudsman was of the view that Gibelec was relying on the above cited section of the Act in their contention.

Classification

(1)That the email of complaint was deleted from Gibelecs system- **Not Sustained** (although the impression had been given that the email had in fact been deleted, the CEO's letter explained that it had not been removed from their system).

(2) Delay in replying to the Complainant- the amount of time that Gibelec took to address the Complaint was not unreasonable- **Not Sustained**

(3)The Complainant seeking a contribution from Gibelec for the cabling work carried out from the meter to the distribution board- **Not sustained** (Gibelec could have offered to have moved the meter closer to the property and sought a contribution from the Complainants, but certainly was under no legal obligation to do so).

Recommendations

(1)The Ombudsman recommended that the "deleted email" practice be addressed/remedied in future as not to lead to any misunderstandings for consumers (Gibelec noted the recommendation and confirmed they would consider it).

(2)Customers should also be made aware that there is a designated member of staff dealing with their complaint or grievance. Perhaps it would even be advisable to assign complaints a unique reference number (as Gibtelecom do, for instance).

Ref: CS1244

Case 8

Complaint against the Housing Authority (HA)

(i) Delay in changing the Flat's tenancy agreement to the Complainant's name;

(ii) Delay rendered the Complainant homeless;

(iii) Rent arrears accumulated by the Complainant's mother ("Mother") (whilst tenancy was in her name) remained outstanding, despite the fact that she had always been in receipt of social assistance, was entitled to rent relief and the arrears should, therefore, have been waived;

(iv) Complainant is unemployed but not entitled to rent relief because he is not registered to receive social assistance.

(v) No electricity or water reconnection in the Flat due to the HA not confirming to the utility company that the tenancy of the Flat was in his name;

(vi) HA unjustifiably backdated the tenancy/licence agreement;

(vii) HA included the Complainant's younger brother ("Brother") in the new tenancy agreement but inexplicably excluded him at a later stage.

The Complaint

The Complainant was aggrieved because of the complaints listed above.

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

The Complainant explained that circa 2011 (he was in his early twenties at the time) his Mother travelled with his Brother to the United Kingdom ("UK") to care for her sick parents. The Complainant accompanied them to the UK for a short time, subsequently returning to Gibraltar by himself to reside in the Flat. According to the Complainant, because he was unemployed, he fell into arrears of electricity and water and that resulted in those services being disconnected. He claimed that during the ensuing years he made attempts to reconnect those services but stated that the utility company refused on the basis that he had no authority because he was not the main tenant. Furthermore, he stated that when the tenancy of the Flat was finally changed to his name in 2017, the utility company refused to reconnect the services until such time as the Housing Authority confirmed that the tenancy was in his name. According to the Complainant, he was left with no choice but to move in with relatives during those years.

Notwithstanding the above, the Complainant stated that he occasionally checked on the Flat and that when he next visited it, noted that the adjacent property had been allocated. According to the Complainant, the new tenant confronted him, putting into question that he was the tenant of the Flat and consequently changing the lock of the communal access patio door (which led to the properties) to prevent him from entering. The Complainant claimed that during the ensuing years, whenever he wanted to access the Flat, he had to jump over a five-metre wall and endure hostility from the neighbour. He stated that he had sought assistance to resolve the situation but explained that had taken a long time as he had no help

from family or friends and work commitments prevented him from focusing on the problem. The Complainant explained that it took him a number of years of communications with the Housing Authority requesting a copy of the key to the patio door for one to finally be given to him. During those years, the Complainant stated that the neighbour had ruined his life as despite not being able to live there, the rent had accumulated.

The Complainant further denounced that it had taken six years (from 2011 to 2017) for the Housing Authority to change the Flat's tenancy contract to his name, effectively making him homeless during that time. According to the Complainant, during the first years of his Mother having been in the UK, the Housing Authority had informed him that for the change to take place, his Mother had to be physically present. He further stated that it was only as a result of having contacted the Chief Minister's and Ombudsman offices that the contract was finally changed to his name (2017).

The Complainant explained that on the 10th March 2017 he signed the new tenancy agreement which included his Brother as an authorised tenant but on the 11th October 2019 the contract was superseded by a licence agreement which he signed and was backdated to the 6th March 2014. The licence agreement no longer included his Brother as an authorised tenant.

In relation to rent arrears, the Complainant wrote to the Housing Authority in September 2016. He stated that he was overwhelmed by the rent and electricity and water arrears his Mother had left him and thought it would be best to request a reallocation to a one-bedroom property which he could afford and maintain. Furthermore, the Flat was in a state of disrepair and suffered from water ingress and dampness issues. Notwithstanding, the Complainant asked the Housing Authority to review the rent arrears accumulated as he believed that his Mother was entitled to rent relief and that should be set off against the arrears.

At the time of lodging his complaints with the Ombudsman, January 2020, the Complainant had accumulated further rent arrears after taking over the tenancy of the Flat because he was unemployed and in receipt of no income. As such, the Complainant believed that he should be entitled to rent relief but claimed to have been informed by the Housing Authority that he was not eligible because he was not registered to receive social assistance.

Investigation

The Ombudsman put the complaints to the Housing Authority.

(i) Delay in changing the Flat's tenancy agreement to the Complainant's name

(ii) Delay rendered the Complainant homeless

Regarding the delay in changing the tenancy contract from the Mother's name to the Complainant, the Housing Authority stated that the Complainant submitted a form for the change of tenancy on the 6th March 2015 but due to the form not having been signed by the Mother, the change could not be undertaken. The Housing Authority explained that the Mother was informed of this on the 11th May 2015 and that it was not until the Housing Authority carried out an internal investigation which established that the Mother and Brother no longer resided in Gibraltar, that the change of tenancy was approved. The new tenancy agreement was dated the 10th March 2017.

In respect of the Complainant's complaint that the delay in changing the tenancy agreement had rendered him homeless, the Housing Authority stated that had never been the case as the Complainant was an authorised tenant in the Flat's tenancy.

(iii) Rent arrears accumulated by the Complainant's Mother (whilst tenancy was in her name) remained outstanding, despite the fact that she had always been in receipt of social assistance, was entitled to rent relief and the arrears should, therefore, have been waived

The Complainant provided the Ombudsman with copies of rent arrears agreements in his Mother's name which he had signed on her behalf, under the authority of a letter she had provided.

In April 2011, the arrears of rent amounted to seven years rent; in September 2014 these had increased to over ten years rent outstanding and by February 2020, although the Complainant had made some rent payments, the total rent outstanding amounted to over thirteen years.

In 2016, the Complainant wrote to the Housing Authority informing them, amongst other issues, that he was overwhelmed by the significant arrears of rent and utility bills that his Mother had left, and explained that he had lost his job and now found himself trying to sort out bills and arrears. The Complainant noted that because his Mother had never worked (because she was a full time carer for his Brother) he believed that she was entitled to rent relief and asked the Housing Authority to backdate this to set off against the rent arrears. By 2020 this had not materialised.

In a letter from the Ombudsman to the Housing Authority in July 2020, the Ombudsman enquired about the Mother's rent arrears issue and chased for a response on the 24th August 2020. The following day, the Housing Authority informed the Complainant (via an email to Action for Housing who were assisting the Complainant) that the Mother's arrears would be written off and that the balance remaining in the rent account would be from the date on which the Complainant signed the tenancy agreement in his sole name; the 6th March 2014 [Ombudsman Note: There is a discrepancy with this date which will be addressed under complaint (vi)]. In September 2020, the Housing Authority clarified that the 'write off' had been requested but that until approval was received from the Financial Secretary's Office, that could not be reflected in the Complainant's rent account].

The Ombudsman enquired as to whether the decision to write off the Mother's rent arrears had been arrived at based on historical data which showed that she had always been in receipt of rent relief. The Housing Authority responded that she had never been in receipt of rent relief and, therefore, the arrears had accrued at full value.

(iv) <u>Complainant is unemployed but not entitled to rent relief because he is not registered to receive social assistance</u>

The Complainant had informed the Ombudsman that he had been unemployed for long periods but did not want to register for social assistance. According to the Housing Authority, unless he was registered for social assistance he would not be entitled to rent relief.

The Ombudsman reviewed the Housing (Rent Relief) Rules 2009 and referred the Housing Authority to Points 3 and 4, which stated as follows:

> ***Prescribed amount***
>
> *3.(1) For the purposes of section 62(1) of the Act and these Rules the prescribed amount shall be an amount calculated by–*
>
> > *(a) multiplying the minimum hourly remuneration by 37;*
> >
> > *(b) multiplying the result of (a) by 52.2; and Housing HOUSING (RENT RELIEF) RULES 2009 © Government of Gibraltar (www.gibraltarlaws.gov.gi) 2007-36 Subsidiary 2009/073*
> >
> > *(c) multiplying the result of (b) by 1.5.*
>
> *(2) In this rule "minimum hourly remuneration" means the amount which appears in the table in the Schedule to the Conditions of Employment (Standard Minimum Wage) Order, 2001 as the "hourly remuneration".*
>
> ***Application for rent relief***
>
> *4. A person may apply for rent relief where the gross household income does not exceed the amount prescribed under rule 3.*

The Ombudsman referred the Housing Authority to the above rules and noted that there was no specific reference made to the effect that a person had to be in receipt of social assistance in order to be entitled to rent relief.

The Housing Authority responded that was indeed the case but that an applicant had to be in receipt of income, i.e. either through employment or social assistance, in order to be eligible to apply for rent relief. The Housing Authority advised that since 2008, the Complainant had qualified for rent relief between 20th February to the 21st May 2017 and from the 31st October 2019 to the 30th April 2020, periods when Social Services confirmed that he was on social assistance.

By way of further information, the Housing Authority stated that on the 30th March 2020 they had sent the Complainant a letter accompanied by the pertinent rent relief form which he had to complete and send back, in order to claim rent relief for the upcoming year. They explained that due to the Covid-19 pandemic they had agreed to extend the rent relief period to the 31st July 2020 but highlighted that if the form was not returned, the Complainant would be liable for full rent as from the 1st August 2020.

(v) <u>No electricity or water reconnection in the Flat due to the HA not confirming to the utility company that the tenancy of the Flat was in his name</u>

The Housing Authority advised that because the Complainant was an authorised tenant in the Flat, the utility company could have reconnected the services if he had produced a copy of the tenancy agreement.

The Ombudsman requested information from the utility company in relation to the Flat's account. The utility company advised that the electricity to the Flat had been disconnected in November 2010 and the water in March 2011. Reconnection was made in August and September 2018 further to the Complainant having completed and submitted an application form.

Regarding the Ombudsman's enquiry as to what happened during the interim period (disconnection to reconnection) the utility company stated that they had no record of any request made by the Complainant during that time but noted that if a verbal request had been made to their customer services prior to the 1st July 2018, the applicant would have had to provide

deeds, lease or rental agreements for the pertinent property as well as an application form. As from the 1st July 2018 the policy had changed and deeds, rental agreements, etc. were no longer required.

(vi) HA unjustifiably backdated the tenancy/licence agreement

(vii) HA included the Complainant's younger brother ("Brother") in the new tenancy agreement but inexplicably excluded him at a later stage

The Ombudsman reviewed the tenancy agreement signed by the Complainant on the 10th March 2017. In that document, the Complainant had replaced his Mother as the Tenant and his Brother was listed as a person permitted to reside in the Flat (the Mother had been removed from the tenancy).

Two and a half years later, on the 11th October 2019, the Housing Authority replaced the tenancy agreement with a licence agreement in the Complainant's name. The document was backdated to the 6th March 2014 and the Complainant's Brother had been removed as an authorised person to reside in the Flat.

Prior to signing the tenancy agreement, the Complainant had submitted to the Housing Authority, documentation in support of the fact that his Brother was in full time education in the United Kingdom, thereby making them aware that at that present time, his Brother was in the United Kingdom. A letter from his Mother was also presented at that time which stated that she wanted both her sons included in the tenancy as the Brother would be returning to Gibraltar when he completed his education in the United Kingdom. The Housing Authority accepted the documentation and included the Brother in the tenancy agreement.

The Ombudsman made enquiries to establish what had changed in order to warrant the removal of the Brother from the tenancy.

The Housing Authority explained that as a result of an internal investigation, it was confirmed that the Mother had left the jurisdiction and was residing permanently in the United Kingdom. The decision was, therefore, taken to remove the Mother from the tenancy and make the Complainant the tenant. According to the Housing Authority, it was also as a result of the internal investigation that they identified that the Brother was residing in the United Kingdom and had been erroneously included in the tenancy agreement. The latter was made void and a new license agreement (the Housing Authority explained that was the new form of tenancy agreement) was drafted and signed by the Complainant. Notwithstanding this information, the Housing Authority stated that they had been trying to contact the Complainant to sign the new tenancy agreement. Based on this information, the Ombudsman deduces that the licence agreement was issued as an interim measure until the investigation was completed at which time a new tenancy agreement was drafted.

Regarding the date of the licence agreement, the Housing Authority explained that it was backdated to the date when the change of tenancy form was submitted, the 6th March 2014. The Housing Authority stated that as a result of this investigation, they had identified that there had been a typographical error and the date stated should have been stated as being 6th March 2015.

Conclusion

(i) Delay in changing the Flat's tenancy agreement to the Complainant's name – **Not Sustained**

Due to the fact that his Mother had left for the United Kingdom, the Complainant requested that the Housing Authority change the tenancy agreement to his name and remove her as the tenant. The Complainant submitted a change of tenancy form in March 2015 for this purpose.

The Housing Authority wrote to the Mother, the tenant, to inform her that they had received the above request but as no response was received from her and the matter was left in abeyance.

It was as a result of an internal investigation that the Housing Authority ultimately established that the Mother and Brother resided in the United Kingdom and the tenancy agreement was changed to the Complainant's name.

The Ombudsman does not sustain this complaint. The Mother left Gibraltar in 2011 and the Complainant requested the change of tenancy four years later. The Housing Authority's requirement was that the Mother, the tenant, confirm to them that she had in fact left Gibraltar to reside in the United Kingdom and that the tenancy be changed to the Complainant's name but that did not materialise at that time. Instead, it took an internal investigation to establish that was the case and it was in 2017, that the tenancy agreement was changed accordingly.

(ii) Delay rendered the Complainant homeless – **Not Sustained**

The Ombudsman does not sustain this complaint. The Complainant was not homeless as he was registered in the tenancy agreement as a person authorised to reside in the Flat.

(iii) Rent arrears accumulated by the Mother (whilst tenancy was in her name) remained outstanding, despite the fact that she had always been in receipt of social assistance, was entitled to rent relief and the arrears should, therefore, have been waived – **Not Sustained**

The Ombudsman's investigation found that the Housing Authority's records showed that the Mother had never been in receipt of rent relief and, therefore, the arrears had accrued at full value. Although it appears to be the case that the Mother was in fact eligible for rent relief, the Ombudsman understands that she failed in her responsibility to apply for said rent relief on an annual basis as required by the Housing Authority. The Ombudsman does not sustain this complaint.

Due to the circumstances of the Complainant's case, the Housing Authority have requested a write off with respect to the Mother's rent arrears which amounted to over ten years rent. At the time of writing this report, the Housing Authority were awaiting the decision from the Financial Secretary's Office.

(iv) Complainant is unemployed but not entitled to rent relief because he is not registered to receive social assistance – **Not Sustained**

The Housing Authority stated that if a person was not in receipt of an income they had to be registered for social assistance in order to be eligible for rent relief.

In periods when he was unemployed and, therefore, in receipt of no income, the Complainant chose not to register for social assistance. As it was due to choice on the part of the Complainant not to register for that benefit whilst he was in receipt of no income, the Ombudsman cannot sustain this complaint.

(v) No electricity or water reconnection in the Flat due to the HA not confirming to the utility company that the tenancy of the Flat was in his name – **Not Sustained**

Despite the Complainant having obtained the tenancy to his name in March 2017, it took a further year and a half from that date for the utilities to be connected to the Flat. The Complainant contends that the reason for that delay was that the Housing Authority failed to confirm that he had the tenancy of the Flat.

Both the Housing Authority and the utility company concurred that if the Complainant had presented a copy of the tenancy agreement (pre-2017) in which he was an authorised tenant, the utilities to the Flat would have been reconnected. Reconnection prior to the change in the tenancy agreement would have of course come under the Mother's name and as such, the Ombudsman surmises that arrears would have had to be settled or an agreement made for settlement prior to reconnection being made. After the Complainant obtained the tenancy of the Flat, all that would have been required was that he present the tenancy agreement for the connection to take place.

The Housing Authority refuted that they would have had to confirm that the tenancy of the Flat was in the Complainant's name as the tenancy agreement proved that was the case. The Ombudsman does not sustain this complaint.

(vi) HA unjustifiably backdated the tenancy/licence agreement - **Sustained**

The only explanation as to why the Housing Authority backdated the tenancy/licence agreement from 2017 to 2014 (should have read 2015) must have been in order to make the Complainant liable to rent for the Flat since the date on which he submitted the original change of tenancy form; a request which according to the Housing Authority they could not act upon at that time because they were unable to contact or obtain confirmation from the Mother. As a result, the official change in tenancy did not happen until March 2017 once the internal investigation was completed, therefore, that is the actual date which must be reflected in the agreement.

The Ombudsman, therefore, sustains this complaint of clear maladministration.

(vii) HA included the Complainant's younger brother ("Brother") in the new tenancy agreement but inexplicably excluded him at a later stage – **Sustained**

The Ombudsman sustains this complaint.

The reason given by the Housing Authority to the Ombudsman for having taken the action to remove the Brother from the tenancy was that this was due to the outcome of the internal investigation they had undertaken which confirmed that the Mother and the Brother were residing permanently in the United Kingdom. The Housing Authority concluded that the Brother had, therefore, been erroneously included in the tenancy.

The Ombudsman noted the substantial documentation requested by the Housing Authority from the Complainant for the change of tenancy and for the Brother's inclusion in it but in contrast, the Housing Authority, upon identifying that there had been an error in including the Brother in the tenancy because he resided permanently in the UK did not inform the Complainant accordingly.
Principles of Good Administration state that public entities should be open and accountable and it is clear that has not been the manner in which the Housing Authority have dealt with this matter as the Complainant claimed to have received no

information as to what had led to the exclusion of his Brother from the licence agreement. Furthermore, the Housing Authority have not provided the Ombudsman with any evidence to the contrary other than verbal confirmation that the Brother had been included in the tenancy in error. The Ombudsman, therefore, sustains this complaint.

Classification

(i) Delay in changing the Flat's tenancy agreement to the Complainant's name – **Not Sustained**

(ii) Delay rendered the Complainant homeless – Not Sustained

(iii) Rent arrears accumulated by the Mother (whilst tenancy was in her name) remained outstanding, despite the fact that she had always been in receipt of social assistance, was entitled to rent relief and the arrears should, therefore, have been waived – **Not Sustained**

(iv) Complainant is unemployed but not entitled to rent relief because he is not registered to receive social assistance – **Not Sustained**

(v) No electricity or water reconnection in the Flat due to the HA not confirming to the utility company that the tenancy of the Flat was in his name – **Not Sustained**

(vi) HA unjustifiably backdated the tenancy/licence agreement - Sustained
HA included the Complainant's younger brother ("Brother") in the new tenancy agreement but inexplicably excluded him at a later stage – **Sustained**

(vii) HA included the Complainant's younger brother ("Brother") in the new tenancy agreement but inexplicably excluded him at a later stage – **Sustained** *Ref: CS1227*

Case 9

Complaint against the Housing Department ("Housing") in relation to delays in (1) Advancing ZB's position on the Medical "A" list as a result of having been on it for a period of six years and (2) Progressing a joint housing application.

The Complaint

The Complainants were sisters living together in a private rental property (*parts of which were in disrepair*). They sought a joint allocation to a flat from the Government's housing stock. Both sisters were of pensionable age and infirm. The crux of the complaint was that ZB had been on the Medical "A" list for six years and was still only in position number 2. She had asked for additional points to boost her position but the request had been denied.

Background

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

The Complainants explained that despite ZB having been on the Medical "A" list for 6 years, she had still not reached the top of that list. She had written to Housing, explaining that she lived with MB (*who had numerous ailments, mental health issues and required care*) and that as a result, she wished to add her jointly to her application for a Government property.

She had tried to do this since 2014, however all annual correspondence from Housing reflected the application as being for a 1RKB, as opposed to a 3RKB, to which the Complainants would have been jointly entitled. It appeared that MB did not meet the eligibility criteria at the time since she was not a British national.

Consequently, the Complainant's wrote to Housing on the 22nd August 2019 and received a reply some weeks later. In their letter, Housing advised that in order to consider the inclusion of MB within the application, she would be required to provide the following:

(1)ID Card/Passport
(2)Gibraltarian status with one year's proof of continuous residency in Gibraltar (or) British Citizen status with ten year's proof of continuous residency in Gibraltar

Given that MB had (by that stage), been a British national for over one year, her ID card was scanned and sent to Housing.

Consequently, the Complainants sought confirmation that all was now in order and that the application would be updated to include both sisters.

Investigation

The Complainants filed a complaint of delay with the Ombudsman.

The background to the application was explained. They were frustrated with the lack of service they felt they were entitled to.

They alleged that only in the preceding few weeks they had attended Housing offices in person on a number of instances for confirmation of their position, only to be told, on one occasion for instance, that the clerk attending them was new and that they should return another day when someone more experienced could advise them. ZB immediately informed the clerk that she had knee problems and would appreciate if someone from the back office could come out and see them, but that never materialised.

On the most recent visit to Housing, after which she attended the Ombudsman's office, ZB appeared confused and was tearful.

The Ombudsman wrote to Housing in November 2019 requesting an update on the current status of their application. A reply was not received until January 2020. The letter confirmed the following information (summary):

ZB had submitted a letter on the 7th October 2019 requesting MB's inclusion in her application (for a 3RKB). Housing confirmed in reply that "*at present MB is included as part of the **household** and not [as **applicant**], meaning that ZB continues [to be on the list] for a 1RKB."*

It was explained to the Ombudsman how the Complainants had been written to, setting out the documentation required (proof of nationality), in order to include both sisters as a **family unit** in the application. Matters had allegedly been explained to the Complainants at the Housing counter in person, but given the "*language barrier, this may be the reason that she feels she is not receiving the service expected."*

A month elapsed and the Ombudsman again wrote to Housing, stating that he had been informed by the Complainants that MB's ID card and ten years proof of residency, had been handed in at the Housing counter some three months back, "*yet she has now received another anniversary letter stating that she is still on the 1RKB list."* Additionally, the Ombudsman added *"the attached scanned documents which were sent to you via email on 13th November 2019 show proof of her residency in Gibraltar there is also a copy of her ID card which proves her British nationality*."

The Ombudsman's correspondence concluded by respectfully requesting Housing's attention to the matter, as the situation was causing the Complainants a high degree of anxiety. Given a lack of reply from Housing within a few weeks, the Ombudsman issued a final email stating that "*I understand that the Housing Department have proof to show that both [Complainants] are British Nationals, both having resided in Gibraltar for over forty years, living together all this time. Can you, therefore, explain why it is that [MB] has still not been included in the application so that they can both be placed on the 3RKB waiting list [to which they are rightfully entitled], where they can live together, each with their own room."*

In February 2020 a renewal letter was issued by Housing confirming that MB had been included in ZB's application.
An exchange of correspondence followed from which it became clear that the Complainants were progressing on the General List faster than they were on the Medical A list. It was also confirmed to the Ombudsman that indeed, the Medical A+ List was the "*top*" list which took priority over all others, given that the persons on that list were the most in need of accommodation. Housing further advised that if the Complainants health had deteriorated, they could submit an updated medical letter to enable the case to be reconsidered by the Housing Allocation Committee.

It was also made clear by Housing, that (as sense would dictate), that the Medical A+ list would have to be exhausted in its entirety before applicants on the subsequent lists could be made an offer of allocation.

This would explain why the Complainants appeared to be progressing on the General 3RKB List (*albeit slowly*), whilst maintaining an immovable position on the Medical A list.

It was confirmed to the Ombudsman by Housing that as at May 2021, there were a total of 92 applicants on the Medical A+ list. (Therefore, they would be in position 94, on the Medical list) but were in 75th position on the General 3RKB List. Either way, it appeared that the Complainant's would have to wait a not insubstantial amount of time, before being made an offer of allocation for Housing.

Conclusions

In conclusion, the Ombudsman could only sympathise with the Complainant's position. Two sisters of pensionable age residing in sub-standard private accommodation and living in the hope of being allocated a Government flat from the housing stock, either via the Medical or General lists.

For those applicants who are not deemed to be in "*urgent*" need, it is unfortunately, a question of waiting until they reach the top of their specific list or until their circumstances change to a degree that, upon submitting the requisite evidence to prove so (medical letters or specialist reports for instance), they are upgraded to a preferential list whereby waiting times would at least theoretically, be reduced. It did appear that the Housing Allocation Committee did not consider on the evidence presented before them, that the Complainants family circumstances were severe enough to be classified as one of top priority. The Ombudsman based upon the information reviewed and the lists criteria, could not counteract that view.

Classification

Delay by Housing in (1); advancing ZB's position on the Medical "A" list as a result of having been on it for a period of six years- **Not Sustained**

The Ombudsman learnt from Housing how the Medical "A" + list needed to be exhausted in its entirety before applicants on the standard Medical "A" list could progress on that list.

Delay in (2); progressing a joint application for a Government flat **– Sustained.**

Strictly speaking there were administrative delays (three to four months) in adding MB to the housing application as part of the "*Family Unit*", when in fact, the information required to facilitate that joint application had already been submitted by the Complainants to Housing.

However and notably, the Ombudsman observed that there was no gross delay and that even if the single application had been upgraded to a joint one immediately, their position on the list would not have altered materially or at all.

No detriment was, therefore, suffered by the delay.
Ref: CS1241

Case 10

Complaint against the housing department ("Housing") in relation to delays in processing the Complainant's application for social housing and her medical case for assessment

The Complainant was homeless and staying with friends. She complained that she had applied for housing in 2020 but that some eight months later, her application had not been processed for reasons she did not understand.

The crux of her complaint was twofold:

1. Delay in processing her application for housing and confirming the status of her application.
2. Bureaucratic delays in processing the Complainant's medical case for assessment.

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

The Complainant was in her 60s and sight impaired. She had lost her eyesight gradually as a consequence of diabetes. Medical professionals had told her that nothing could be done to alleviate the loss of vision.

She used to reside as a domestic intern at a private dwelling in Gibraltar (*address provided*), where she had been employed on a full time basis. The Complainant lived there until her doctor allegedly advised her that due to access problems within the property, she should move out.

Since then and for the past couple of years, the Complainant had been relying on the charity of friends and staying with them at their flat (*they were also Government tenants*). Although always made to feel welcome, the Complainant decided that the best way forward would be for her to acquire her own place- one where she could be independent and call "*home."*

The Complainant explained to the Ombudsman how she submitted a medical letter to Housing (attached with her application). She was however, unable to recall the exact date of contact with them. After the date of filing her application, Housing contacted her requesting proof of residence; which she provided in the form of her valid ID card (*which showed her residence as being her place of previous employment*).

Unhappy with the lapse of time and the resulting lack of progress on her application, the Complainant lodged her complaint with the Ombudsman.

Investigation

The Ombudsman wrote to Housing setting out the Complainant's grievance on the 6th May 2021, explaining that the delay was exacerbated by her medical condition. The Complainant's new contact details were also made available to Housing.

A reply was received that same day.

The reply stated that a letter had been sent to the Complainant in December 2020, requesting confirmation of her new address in order to continue to process the application but that no reply had been received. "*However, considering her circumstances, [arrangements have been made for the Complainant] to be contacted now [via telephone].*"

An exchange of correspondence followed between the Ombudsman and Housing (*as part of the Ombudsman's investigation*).

Pursuant to queries by the Ombudsman, Housing confirmed that the "*care of*" address could be used by the Complainant for the purposes of her application, as long as the tenants of the address where she was temporarily residing completed a declaration authorising the Complainant to use their address for **application purposes only.**

Housing's letter to the Ombudsman went on state that all the Complainant's medical letters addressed to Housing could be resubmitted , together with a medical form which would **have** to be completed, so that the Housing Allocation Committee ("HAC") could review and consider her case. In the absence of the form, HAC would have no authority to peruse matters. The Housing Policy document setting out the requirement of said medical form was made available by Housing to the Ombudsman.

Copies of letters dated 10th and 25th November and 24th December 2020 (*respectively acknowledging the Complainant's application, setting out the statutory requirements which needed to be fulfilled and finally, requesting her new address/contact details for their records*), were submitted by Housing to the Ombudsman for his records.

Consequently, Housing also explained that the 8 month delay arose as a result of Housing not holding a current contact address where they could reach the Complainant.

A medical letter by the Gibraltar Health Authority consultant ophthalmologist (*together with a Visual Impairment Certification*) and the completed medical form, were forwarded to Housing as requested. An issue then arose in that the "*care of*" address was that of a pensioner tenant. It was Housing's policy not to accept pensioner addresses for housing applications of non- residents within that address and as such, the Complainant was informed that her application could not be processed.

However, after due consideration, Housing "*exceptionally agreed to open but not activate the file, [so as to enable] Housing to forward the application and all its corresponding attachments, to HAC".*

Conclusions

The Ombudsman sympathised with the Complainant whom was a lady of pensionable age with a medical condition. As a result of leaving her place of work (*where she was also an intern*), she was rendered homeless. Fortunately she was taken in by pensioner friends who she continued to reside with, in their Government rented flat.

There did appear to be some confusion over the requirements that were necessary in order for the Complainant's application to have been considered. Nonetheless, when the Complainant did submit her housing application (*records showed that she did so on 10th November 2020*), an immediate acknowledgment was issued by Housing, only a day after the application had been received at their offices.

Subsequent letters were issued by Housing on the 10th November and 24th December 2020, the latter acknowledging receipt of a medical document and stating in clear terms "…*kindly note that in order to process your application, you would be* ***required to provide*** *the Department with* ***a new address for our records****."* There had however been no prior mention by Housing of the medical form which required filling out, until the Ombudsman was made aware of that requirement, via email, on 16th June 2021. It was indeed confirmed that the requirement was part of a new Housing policy (*policy document made available to and reviewed by the Ombudsman*).

Irrespective of whether the policy was new or not (*we adopt Housing's position that it was new*), the existence of it did not contribute to any delay on the Complainant's application. It did not cause any detriment to her either, since as previously advised by Housing, they did not hold any updated contact details for her and as such, although the application had been received and acknowledged, it had not been processed.

As the interested party, the Ombudsman found that the Complainant could have either provided Housing a forwarding address for correspondence, or upon claiming not to have received any mail from Housing, could have telephoned them at any stage in order to make enquiries. As an alternative, she could have made arrangements (*given her medical condition*) for someone to have escorted her to Housing's offices, in order to determine the reasons for the delay. In the Ombudsman's

view, the Complainant did not take the necessary steps to afford Housing the opportunity to properly process her application.

Consequently, the Ombudsman considered that Housing did not act unreasonably in this case.

Classification

(1) Delay in processing her application for housing and confirming the status of her application**- Not sustained**

(2) Bureaucratic delays in processing the Complainant's medical case of assessment**- Not sustained**
Ref: CS1249

Case 11

Complaint against the housing department ("Housing") in relation to delay in allocating a rental flat from the Government housing stock.

The Complainant had been informed in 2015 that a government rental property which would soon become available had been identified for him, and that an offer of allocation was imminent. However, 6 years elapsed and no offer had materialised.

The Complainant complained that:

1. Despite having been informed in writing that an offer of allocation would be made "*in the [forthcoming] weeks*", it was not.
2. Subsequent letters sent by the Complainant to Housing requesting information/updates remained unanswered.

Background

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

The Complainant had initially made an application for social housing some ten years ago. He was thus very happy to have received a letter from Housing on the 30th October 2015, which stated that as a result of allocations of purpose built flats for senior citizens, together with the completion of sales at Government co-ownership housing schemes completion of which were also imminent, "*government rental properties will become available in the next weeks for subsequent allocation via the waiting list…* ***one of these properties has been identified for you on the basis of your current room entitlement."***

The letter went on to state that full details of the flat in question would be provided to the Complainant as soon as it was vacated by the current tenant. Additionally, the Complainant was also informed that he would have to take no further action since he would be contacted by Housing "*once said properties [became] available".*

Given the above and the lapse of time which ensued, the Complainant made periodic enquiries for updates on the allocation, to no avail. He could not at all understand how as time progressed, he had still not been made an offer of allocation by July 2021.

As a result, he made a complaint at the Office of the Ombudsman for them to investigate the reasons behind the delay.

Investigation

The Ombudsman reviewed copies of correspondence between Housing and the Complainant (made available by the latter) from 2019-2021. The letters issued by the Complainant explained the background to the delay. A meeting appears to have been made by Housing for the Complainant to talk to the Executive Officer for Senior Management for January 2019, in order to discuss the Complainant's concerns and his personal circumstances.

Given the lack of progress, the Complainant sent Housing a further letter in April 2021. The reply received a month later sought to reassure him that Housing would "*endeavour to assist as soon as possible. A further communication will be sent…. as soon as a suitable flat is identified."*

Exchanges of correspondence between the Deputy Ombudsman and Housing Manager followed, as did a telephone conversation where all issues were discussed. A "closing letter" was sent to the Ombudsman requesting whether the Ombudsman could advise the Complainant that "*he should expect ….to be contacted in the next couple of weeks."*
Evidently, the Ombudsman complied with the request to contact the Complainant.

Conclusions

The factual background leading to this complaint was uncomplicated in nature hence the brevity of the investigation.

A flat from the Government Housing Stock had allegedly been identified for the Complainant, he was informed of that fact via an official letter in 2015 (pre-election), but the allocation did not materialise until July 2021.

For the Government, via Housing, to have written to the Complainant seven years before his allocation was made, informing him that a property would become available *"in the next few weeks"* could only be described by the Ombudsman as a travesty and a total mismanagement of the Complainants expectations.

The Ombudsman also learned of other cases where imminent property allocations were promised and individual letters issued to citizens pre the 2015 general election, but that the allocations took years to materialise.

Classification

(1) Despite having been informed in writing that an offer of allocation would be made "*in the [forthcoming] weeks*", it was not- **Sustained**

(2) Subsequent letters sent by the Complainant to Housing requesting information/updates remained unanswered- **Not Sustained-** the Ombudsman noted that despite the excessive delay in allocation, once the Complainant wrote to Housing seeking an explanation/update, he was provided with a written reply.

Observation - That although it is always advisable and a good standard of administrative practice to keep applicants updated on progress over their housing applications, to create a false expectation of imminent allocation is not acceptable, under any circumstance. *Ref: CS1251*

Case 12

Complaint against the Income Tax Office ("ITO")

(i) The Complainants had not received tax assessments for the years 2016/2017 and 2017/2018 although they had actively requested these from the ITO;

(ii) Non-reply by the ITO to emails sent by the Complainants accountant ("Accountant") on the 4th April, 26th April and 9th July 2019;

(iii) Non-reply to emails sent by the Accountant and the Complainants to the ITO on the 20th December 2019 and 13th February 2020 informing the ITO that they had not been tax residents in Gibraltar since 2018;

(iv) Penalty notice issued by the ITO on the 10th December 2019 due to the Complainants non-submission of the tax return for the year 2018/2019 despite the Complainants having informed the ITO that they had ceased to be tax residents in Gibraltar in 2018.

The Complaint

The Complainants were aggrieved because of the complaints listed above.

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

The Complainants explained that on the 21st March 2019 they emailed their Accountant because they had not received tax assessments for the years 2016/2017 and 2017/2018 [Ombudsman Note: The Gibraltar tax year runs from the 1st July to the

30th June with tax returns having to be submitted by the 30th November of the new tax year]. The Accountant emailed the ITO on the 4th April, 26th April and 9th July 2019 requesting the assessments but the Complainants stated that no response was received from the ITO. They pursued the matter by contacting the ITO by phone in July and August 2019 and via email on the 17th October 2019. In the latter they referred to the earlier requests made by the Accountant to which the ITO had not responded and also to their telephone calls which had failed to resolve the matter. The Complainants informed the ITO that they had become Spanish tax residents in 2018 and were required by the Spanish tax authorities to provide copies of those assessments (2016 and 2017) but were unable to do so as long as the ITO did not provide them with the assessments. Despite those communications, the Complainants stated that still no assessments were received.

On the 10th December 2019, the Complainants received a penalty notice from the ITO (to the Accountant's address which was used as their c/o address) due to non-submission of the tax return for the year 2018/2019. The Accountant emailed the ITO on the 20th December 2019 to inform them that the Complainants were not tax residents in Gibraltar since 2018 and, therefore, no longer their clients. The Complainants emailed the ITO on the 13th February 2020 to confirm the aforementioned and to reiterate that they had not received their assessments. On the 18th February 2020 they received a further penalty notice.

By July 2020 the Complainant stated that neither they nor their Accountant had received a response or acknowledgement from the ITO with respect to their change of tax residency nor received the pertinent assessments and, therefore, lodged their complaints with the Ombudsman.

Investigation

The Ombudsman reviewed the email correspondence provided by the Complainants. The Ombudsman noted that the email address used by the Accountant and the Complainants to correspond with the ITO was the generic self-employed section's email address and not one pertaining to a particular officer.

The Ombudsman presented the complaints to the Commissioner of Income Tax ("Commissioner").

In his initial response on the 30th September 2020, the Commissioner stated that he had been advised that the tax assessments requested by the Complainants were never issued because there were queries relating to their tax situation. The Commissioner stated that the Accountant was in direct contact with the ITO team member who was handling the assessment queries referred to in the emails of the 4th and 26th April and 9th July 2019 and as such, no other team member was fully aware of the matters under discussion [Ombudsman Note: The ITO did not provide any further details in this regard]. The Commissioner explained that the said team member was categorised as a vulnerable person due to Covid-19 and had been shielding at home (no date provided but March 2020 was when the lockdown in Gibraltar begun) and had additional absences from work due to other medical matters affecting a family member. The Commissioner added that it was important to put this into the context of:

- A predominantly paper based office;
- the limited and temporary nature of the remote working arrangements put in place during the Covid-19 lockdown;
- the impact that had on their processes and procedures.

The Commissioner advised that they had checked their records and been unable to find evidence of a notification or cessation form having been sent by the Complainants to the ITO advising that they were leaving Gibraltar. Given the lack of notification, the Commissioner stated that their record remained active and resulted in the imposition of penalties for the 2018/2019 assessments.

The Commissioner stated that an apology had been issued to the Complainants on the 17th September 2020 and mentioned the member of staff dealing with the matter had acted diligently to rectify the position as soon as practically possible.

The Commissioner asked the Ombudsman to convey their sincerest apologies to the Complainants for the delays and the non-responsive service encountered. He stated that they were addressing this issue as part of their working practices in order to mitigate reoccurrences, by cross-emailing colleagues to ensure operational continuity.

On a final point, the Commissioner stated that although they did not seek to be absolved of any responsibility from administrative shortcomings, he was of the view that the impact of COVID-19 was a material and mitigating circumstance which should be considered when evaluating this case.

The Ombudsman contacted the Complainants on the 17th November 2020 to enquire if they had sent a cessation form to the ITO. The Complainants responded that they were unaware of any cessation document having been submitted to the ITO but referred to their email correspondence with them. They also informed the Ombudsman that the ITO had emailed the assessments to them on the 18th September 2020 and that the situation regarding overpayments and penalties had been rectified in a most efficient manner and the refunds received into their account.

On the 19th November 2020, the Ombudsman put further enquiries to the ITO. The Commissioner requested an extension of time in which to provide the information required as most of their resources were diverted towards the filing of personal tax returns, the deadline date being 30th November 2020. The Ombudsman agreed to the extension.

Delays were experienced in the submission of the information requested above due to further lockdowns having been put in place in January and February 2021 because of the Covid-19 pandemic. The information was finally received in May 2021.

The queries put to the ITO were as follows:

1. Information with respect to the nature of the ITO's queries related to the Complainants' tax situation.

The Commissioner responded that the queries related to the Complainants' position vis a vis their address and property letting details and that those queries were raised directly with the Complainants in September 2020 and all necessary information provided which allowed their position to be fully regularised.

2. Details on what the system in place is at the ITO in order that emails received to generic email addresses are channelled to the pertinent member of staff dealing with each particular case.

The Commissioner explained that generic mailboxes are manned by a number of team members under the direct supervision of section heads who are responsible for the direct allocation of inbound emails and the monitoring of overall activity. Once a case is allocated to a particular team member, any future correspondence is typically carried out via that team member's direct email and not through the generic email addresses.

3. ITO's position regarding reassigning cases in situations where a member of staff has long absences from work.

The Commissioner noted the above and stated that they had ensured that there was now greater focus, on the part of section heads, to mitigate reoccurrences. Part of the strategy was for the identification of instances of repeat emails and queries to the extent that that was possible given the volume of activity and the manner is which service users presented their issue.

Conclusions

The issues experienced by the Complainants were due to the fact that the ITO did not have a process in place to reassign cases assigned to a team member who in this particular case had lengthy absences from work in 2019, and in 2020 had been shielding due to the Covid-19 pandemic. Despite the Commissioner having been advised that the Accountant was in direct contact with the ITO team member handling the Complainants assessments, from the copies of the email correspondence provided by the Complainants to the Ombudsman it was noted that those emails were sent to the ITO's generic email address and not to a staff member's individual email address. It follows that when those emails were received, section heads should have identified that the team member assigned that case was away from work due to medical reasons and the case should have been assigned to another member of staff. As that did not happen the following chain of events occurred:

- The Accountant's 2019 emails remained unanswered for approximately one year and five months;

- The Complainants email to the ITO in October 2019 informing them that they had ceased to be tax residents in Gibraltar in 2018 went unrecorded;
- The above resulted in the ITO sending penalties to the Complainants for not having submitted a tax return;
- The assessments requested were not received until September 2020 after the Ombudsman had commenced his investigation into the complaints.

The Ombudsman notes that as a result of this case, the Commissioner had stated that the ITO had ensured that there was now greater focus, on the part of section heads, to mitigate reoccurrences and that part of the strategy was for the identification of instances of repeat emails and queries to the extent that that was possible given the volume of activity and the manner in which service users presented their issue. He also stated that they would also be cross-emailing colleagues to ensure operational continuity.

The Ombudsman sustains the complaints. Despite the onset of lockdowns in 2020 and 2021 due to the Covid-19 pandemic, the origin of the complaints was 2019 and the issues should have been resolved before the 2020 pandemic struck. Of course, the Ombudsman agrees with the Commissioner that Covid-19 and subsequent lockdowns have been a material and mitigating circumstance and is the reason why this has been taken into consideration with respect to the lengthy delay experienced with the submission of information from the ITO. Notwithstanding, the Ombudsman notes that the Complainants issues were satisfactorily resolved in September 2020, further to the Ombudsman having presented the complaints to the ITO.

Classification

(i) The Complainants had not received tax assessments for the years2016/2017 and 2017/2018 although they had actively requested these from the ITO - Sustained

(ii) Non-reply by the ITO to emails sent by the Complainants accountant ("Accountant") on the 4th April, 26th April and 9th July 2019 - Sustained

(iii) Non-reply to emails sent by the Accountant and the Complainants to the ITO on the 20th December 2019 and 13th February 2020 informing the ITO that they had not been tax residents in Gibraltar since 2018 - Sustained

(iv) Penalty notice issued by the ITO on the 10th December 2019 due to the Complainants non-submission of the tax return for the year 2018/2019 despite the Complainants having informed the ITO that they had ceased to be tax residents in Gibraltar in 2018 - Sustained
Ref: CS1230

Case 13

Complaint against the Department of Social Security ("DSS") over the delay in processing an application for disability benefit in respect of their Complainant's young son

Complaint against the DSS also in respect of delays in processing the Complainant's son's disability application in a timely manner

The Complaint

Given the factual similarities between complaints, the Ombudsman took the view that he would draft a joint report since the issues he would be addressing would be identical in nature.

The Complaints

The First Complainant applied for disability benefit for their son (born 2017), in December 2019. At the time of filing their complaint with the Ombudsman in November 2020, they were still waiting for a decision to be made on the application.

The Second Complainant had also been waiting for a full year for the DSS to consider a disability benefit application made in respect of her child (born 2016).

Background

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

The First Complainant

The First Complainant was aggrieved because after having submitted an application for disability benefit for their infant son in in December 2019, ten months had elapsed and no reply had been received on the substance of the application. They were informed that the medical board ("the Medical Board") (which sat periodically to consider applications "*in batches*", had not convened as a result of the COVID-19 pandemic).

The Complainant stated that on every occasion they requested an update from the DSS they were informed that "*at present (the DSS) is unable to give an indication when the case will be considered. However, if it is approved it will be backdated"*

Despite the above, the Complainant considered the delay was inordinate and constituted an injustice for their family who would benefit greatly from any extra funds made available to them.

The Second Complainant

The Second Complainant complained that she had made the application for her sons disability benefit in November 2020 and had been waiting a full year before she filed her complaint on the issue of delay with the Ombudsman.

In January 2020, she had received an acknowledgement to her application which stated that a multi -disciplinary panel would meet to discuss her son's case (along with others). The fact that the panel (Medical Board) had not convened in such a long period of time was causing the Second Complainant (a single mother on social assistance with no maintenance from the child's father), a significant degree of financial hardship.

The reply she received from the DSS every time she questioned the delay was"… *unfortunately at present we are unable to give you an indication when the case will be considered. Please note that if the case is approved, payment will be backdated to the date of the application."*

The Second Complainant found this standard reply extremely frustrating given the fact that even if payment were to be backdated, it would be of no solace to her. She required **immediate** financial assistance.

Needless to say, the delays were also causing the First and Second Complainants worry, stress and anxiety.

Investigation

Given the delays encountered and the factual similarities between the complaints, the Ombudsman decided to launch a parallel investigation.

The Ombudsman reviewed all the correspondence between the respective complainants with the DSS. He noted the DSS's repetitive reply to the recurring question by both complainants as to when the Board would sit namely, that they were "*unable to give an indication"* as to when the applications would be considered.

Despite this, the DSS employee who had engaged in said correspondence, appeared to be sympathetic. In the case of the Second Complainant for instance, who was suffering added difficulty as a single parent as a result of her son's extreme behavioural issues which were exacerbated by the child's age, the employee in question did assist and issued advice, as an example, in respect of a swimming pool pass for the disabled child.

As part of the investigative process, the Ombudsman proceeded to write to the DSS, setting out both complaints in full and affording the DSS an opportunity to comment. The Ombudsman questioned the delays and noted that the replies which the First and Second Complainants had received were open-ended with no indication whatsoever as to when a decision would be reached.

No replies were received by the Ombudsman and as a result, chaser emails were issued three weeks later.

A written reply subsequently followed.

It stated that the COVID pandemic has placed "*a strain on the department which [is also] preparing for the challenges that Brexit will bring."*

"Under the current circumstances it is difficult to reply to all competing exigencies as promptly [as desirable]."

The letter went on to explain how disability benefit was not an automatic entitlement but a discretionary benefit which was non statutory or dependent on the applicants' social insurance contributions. "*Applications are assessed by a panel of health/medical professionals who make [recommendations]"* In conclusion, it stated by way of confirmation that the Medical Board had met and that all cases (*including the ones being the subject of this Ombudsman report*), had been assessed and recommendations had been made.

A pre-scheduled meeting to expedite the communication to the First and Second Complainants on the success or otherwise of their applications and for an overview and insight into the general workings of the "*disability applications system*" was also held between the Deputy Ombudsman and the Director of the DSS.

That meeting proved to be fruitful.

When he requested them, the Ombudsman was provided with copies of correspondence which had been sent out to the First and Second Complainants on the status of their applications.

The letters confirmed approval for both applicants, subject to named conditions and to a date certain at the expiry of which, the benefits would be reviewed. All the terms and payment amounts were appropriately set out in the letters.

The Ombudsman was satisfied with the final outcome.

Conclusions

The Ombudsman was perfectly familiar with the administrative stresses and strains as set out by DSS, "*brought about by the pandemic and [the necessary preparations] for the challenges Brexit will bring."*

It is safe to say that the entire global population has suffered the consequences of COVID in one way or another. Business, commerce and administration, whether public or private, reached a standstill. However, for public bodies to hide behind the veil of COVID and to ascribe all delays, flaws and administrative deficiencies to it, is undesirable. It must be said however in defence of the DSS in this case, that they did inform the Ombudsman that panels of medical professionals had been "*largely inaccessible*" during the pandemic.

In his meeting with the DSS Director, The Deputy Ombudsman was made aware of how staff from different Government departments (including the DSS) had been re-assigned and tasked to provide cover in unrelated departments, for the administration of essential services as a result of staff shortages. This was highly commendable.

Despite the above and the pressure to which DSS was undoubtedly subjected, the Ombudsman, objectively speaking, did not consider the delays to be reasonable.

The issue of benefits, particularly disability applications relating to children with such special needs, are hugely sensitive and important to the applicants and their families since they deal not only with the health of the child in question, but also with the general mental health and socio-economic wellbeing of underprivileged families. DSS it must be said, empathised with this view.

Classification

Unreasonable delays in the DSS convening a Medical Board to determine applications for disability benefit- **Unable to classify**

Although clearly the delays were real and unreasonable, it would not have been constructive for the Ombudsman to have ascribed blame to the DSS.

Recommendations

It would be generally desirable where possible, for applicants to receive approximate estimations as to when Boards are scheduled to meet to assess their cases, in order to manage applicants' expectations in accordance with good administrative practices.

Ref: CS1235-37

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