25TH ANNIVERSARY

PUBLIC SERVICES OMBUDSMAN

ANNUAL REPORT

2024

TABLE OF CONTENTS

Public Services Ombudsman

1

Introduction

1.1 Foreword

I am delighted to present my first Annual Report to the Gibraltar Parliament following my appointment as Public Services Ombudsman on the 1st May 2024. This report spans the period between 1st January 2024 and the 31st December 2024, incorporating both the end of my predecessor's tenure, and the start of my own.

Firstly, I would like to thank my predecessor, Ron Coram, for his handover and his willingness to assist me in taking over his role, as well as the Ombudsman team for their warm welcome and unwavering support these last eleven months. Significantly, this year marks the 25th anniversary of the creation of the Office of the Ombudsman, and it has been a real pleasure to celebrate it with all the office-holders from 1999 to date, namely Henry Pinna (1999-2002), Mario Hook (2003-2017), Dilip Tirathdas (2017-2020) and Ron Coram (2021-2024), as pictured on the cover of this report. It is clear that this photo demonstrates the legacy I have been entrusted with, and the importance of carrying out this role with integrity and fairness.

As I settled in, there were three aspects of the job that I immediately felt required my attention – a restructure of the team, the continuance of the international work that is of great value to the office and an overall analysis of the 2024 caseload. Another important issue to note is the pending amendment to the Public Services Ombudsman Act 1998 to allow for own-motion investigations.

1.2 Restructure of the Ombudsman Team

On my arrival at the Office of the Ombudsman, there were three internal matters that, to my mind, needed to be regularised as a short-term priority:

- a vacant Investigating Officer post within the complement, which had been covered by continuous substitution for approximately eight years;

- the secondment of the Complaints Handling Coordinator post, which had been in place since 2016. This arrangement had, in practice, operated as a transfer, as on the 2nd January 2018, it had been agreed that the Complaints Handling Coordinator's "basic salary will continue to be provided and paid for from the Public Service Ombudsman's budget. However, [he] will report directly to the GHA's senior management for all other matters related to his employment";

- the fact that, in 2017, three members of the team had been formally delegated extra tasks under s 7(2) of the Public Services Ombudsman Act 1998 with no changes to their job description or with no added remuneration (and in practice, four members of the team were consistently working outside their job description.)

I have been able to tackle all three issues - the vacant Investigating Officer post was filled via an internal recruitment process on the 1st August 2024. Sarah De Jesus, the Assistant Complaints Handling Coordinator, who was filling the post on a temporary promotion basis, was found suitable for the post and she attained the Investigating Officer grade. Additionally, the Complaints Handling Coordinator post was wholly transferred (together with its allocated budget) to the GHA on the 1 August 2024.

This means that the complement of the Office of the Ombudsman is now reduced to 7, with a vacant Assistant Complaints Handling Coordinator post forming part of the complement.

As regards the four officers working outside their job descriptions, these have been updated to include all tasks undertaken to date, and by consensus with the whole team, a Restructure Proposal was submitted to the Chief Secretary whereby the Assistant Complainant Handling Coordinator post is to be abolished and the remuneration for that post-split between the four officers equally. This restructure will not only redress an unfair situation vis a vis staff working beyond their job descriptions – it will also help to retain valued, experienced team members who are central to the provision of the services offered by the Office of the Ombudsman, in a manner that is cost neutral to the public purse.

The Chief Secretary considered the proposal and viewed it favourably. As such, as from the 1st April 2025, the beginning of the next financial year, the complement of the Office of the Ombudsman should be reduced to 6, a true reflection of the team.

Indeed, it is very important that the Approved Government of Gibraltar Estimates of Revenue and Expenditure "the Estimates Book" reflects the reality of the Office of the Ombudsman team, as this is the information that is presented to Parliament in respect of complement and payroll for public service entities. As with the Office of the Ombudsman moving forward, it should be a matter of priority to ensure that every department and public service entity is accurately portrayed in the Estimates Book.

1.3 International Work

Our office is affiliated to the Ombudsman Association (a professional association for ombudsman schemes and complaint handlers in the UK, Ireland, British Overseas Territories and British Crown Dependencies) and to the International Ombudsman Institute ("IOI") (a global organisation for the cooperation of more than 200 independent ombudsman schemes worldwide). These memberships give us pathways for support and advice, as well as the opportunity for training and networking with other professionals in the complaint handling world.

The 13th World Conference and General Assembly of the International Ombudsman Institute (IOI) was successfully hosted by the National Ombudsman of the Netherlands in The Hague from 12 – 17 May 2024. After the pandemic, the conference provided an opportunity for the entire membership of the IOI to meet again in person after eight years and 200 delegates from 60 different countries and all six IOI regions participated in this event. This event was attended by Nicholas Caetano, our Deputy Ombudsman and Karen Calamaro, our Senior Investigating Officer & Finance Manager.

Under the overarching theme of "The Value of the Future", the conference focused on the role of Ombuds institutions in creating a sustainable and inclusive society. Nicholas and Karen shared that one of the insights that was raised repeatedly is that climate change does not stop at borders and that we, as Ombuds institutions, need to work together on environmental issues. It was stressed that the right to a clean and healthy environment is part of the human rights agenda.

The conference was also the moment for presenting the first findings in the best practice paper development. The office of the National Ombudsman is working on a best practice paper on outreach and has conducted several extensive interviews with other Ombuds institutions. These were explored in depth and it is clear that outreach is an important part of every Ombuds institution. Indeed, these ideas triggered an internal discussion in our office, where we identified a number of outreach possibilities that we hope to explore in 2025.

In June 2024, accompanied by Nadine Pardo-Zammit, my Executive Assistant and Public Relations Officer, I attended a conference organised by the Ombudsman Association, themed 'Impact and Value in a time of finite resources'. Held from the 11th to the 13th of June, we attended sessions on driving cultural change, access to justice, delivering with limited resources, engagement with under-represented groups and ensuring impact. The summer seminar, which took place after the final day of the conference, focused on utilising generative AI to assist caseworkers, which was extremely interesting but ultimately not very applicable to small teams like ours.

A very welcome development that has arisen as a result of our attendance at this conference was that the Public Services Ombudsman for Scotland extended an invitation for my inclusion within the Public Services Ombudsman Group, which was a very useful forum for our office prior to the Covid pandemic.

From the 12th to the 13th September 2024, the 2nd Italian Edition of the International Ombudsman Conference was held in Cassino (Italy) and once again, this was attended by myself and Nadine Pardo-Zammit. It was organised by the President of the National Coordination of Italian Civic Defenders (as part of the European branch of the IOI) and was attended by 141 delegates from around the world, including over 50 Ombudsmen. The main theme of the conference was 'The Role of Ombudsman vis-a-vis Human Rights in Global Crises', with an emphasis on socioeconomic and environmental challenges. This conference was an opportunity to meet Ombudsmen from all over the world and to learn about how our work supports and furthers human rights globally.

On the 2nd October 2024, I attended my first Public Services Ombudsman Group meeting, which was hosted by the Irish Public Services Ombudsman in Dublin. This was an extremely valuable forum, where a range of practical topics were discussed which will inform the running of our office, such as complaint volumes, budgets, pay and grading, challenging behaviours from complainants, best practice in respect of vulnerable complainants and thresholds for substantially similar complaints.

I was able to bring back valuable insights on pay and grading, which helped me prepare my Restructure Proposal. Also, discussions on the balance between accessibility to complainants and the need to complete back office work led to us receiving policies on this issue from different offices within the UK, enabling me to change the hours that we are open to the public to best meet complaints' needs, as well as the operational requirements of our office.

I am also looking forward to participating in the 'Crown Dependencies and Overseas Territories Network' that is being reestablished by the Ombudsman Association, the purpose of which is to group together Ombudsmen from small territories that face similar challenges - limited resources, unique governance structures and the heightened political environment that can arise due to familiarity. Like the Public Services Ombudsman Group, I feel that this will be a forum that will offer practical advice and assistance to our office. The first meeting took place virtually on the 6th February 2025, which was mainly an introductory meeting with discussions on the governance structures of our jurisdictions. Meetings are to be held virtually on a quarterly basis.

1.4 Observations on Formal and Informal Complaints in 2024

Housing Department

In Case No Case 1263, fairness was achieved by the Minister for Housing, who decided to waive the requirement that the complainant submit a completion statement of a conveyance carried out over 20 years previously. Even though the complainant made every effort to locate this document, she was unable to find a copy for submission and the impossibility of complying with this request resulted in an unfair situation for the complainant. The ministerial decision was a very welcome outcome, rooted in common sense, practicality and justice and can only be commended.

However, I recommended the implementation of a policy to assist applicants who had previously been homeowners but who now, due to factors beyond their control, find themselves in need of social housing. It is my firm view that unfairness can result where complaints are considered on a case by case basis where there is no criteria, policy or framework to underpin the decision making - the creation of a policy would ensure an even playing field for all applicants. Indeed, it is essential that any rules regarding the scarce housing stock need to be very clear and transparent in order to ensure that government rentals are both allocated fairly and are seen to be allocated fairly. When resources are in great demand, a demonstrably fair distribution of these resources is required to ensure transparency and accountability in respect of the entire allocation process.

To this end, greater clarity is needed in respect of the categorisation of applicants into different housing lists.

For example, on the 12th December 2024, my office was informed that the 'immediate medical list' "has been in use for many years in this department". This has been surprising to my staff, all of whom have been dealing with housing complaints for many years, as they were not aware of this classification.

This created confusion, as throughout the course of 2023 and 2024, it appears that conflicting information has been provided to applicants:

- In a letter dated 3rd February 2023 to one of our complainants, he is advised that "Based on the medical report provided by your doctor, the Housing Allocation Committee agreed to categorise you as Medical 'A+'. The Housing Authority has accepted this recommendation The medical category list has four classifications, namely A+, A, B and C in order of priority. Applicants whose medical condition require an urgent allocation of Housing fall under the category A+".

- In a letter dated 14th August 2023 addressed to another of our complainants, he is informed that "Based on the medical reports provided by your doctor, the Housing Allocation Committee agreed for an 'immediate allocation'. The Housing Authority has accepted this recommendation. The medical category list has four classifications, namely A+, A, B and C in order of priority. Applicants whose medical condition require an urgent allocation of Housing fall under the category A+".

- In a letter dated 30th October 2024 to yet another of our complainants, she is advised that "Based on the medical report provided by your doctor, the Housing Allocation Committee agreed to categorise you as Medical 'A+'. The Housing Authority has accepted this recommendation. The medical category list has four classifications, namely A+, A, B and C in order of priority. Applicants whose medical condition require an urgent allocation of Housing fall under the category A+".

I subsequently reached out to the Principal Housing Officer for clarification on the 'immediate medical list' and the 'immediate allocation' list as it was unclear to me:

- how these relate to the category A+ list; and
- if they are considered more urgent than the urgent A+ list; and
- how do they relate to each other?

I had reviewed the Housing Allocation Scheme (Revised 1994), which is silent on the categorisation of these lists, and the Housing Act 2007. I noted that section 2(1) of Schedule 2 to the Act, sets out that the Housing Allocation Committee advises the Housing Department on the "categorisation of applicants", but I requested information as to any further rules or regulations or policy framework on the categorisation of applicants.

Consequently, I met with the Principal Housing Officer, together with members of my team and senior staff from the Housing Department. We discussed the lists and the process by which applicants are categorised into lists and are awarded points which determine their placement on the lists. Applicants who are categorised as 'immediate allocation' ('immediate medical allocation' was a typo and should have read 'immediate allocation') form part of the A+ list, as 'immediate allocation' is not a separate category.

However, I was surprised to discover that there are currently 8 'public' social housing categorisations, as follows:

- Medical A+, A,B, and C lists;
- Social A, B and C lists;
- Housing Pre-list.

Concerningly, there are at least 3 more lists that are held internally within the department, that are not made available to the public. It is unclear to me why these are not in the public domain – in my view, the categorization of applicants is a matter of public interest and there should be full transparency in this regard. In total, by my approximation, there are currently 11 social housing categories.

My observation on this large number of lists is that it creates confusion as to who the priority applicant is at any given time, as at all times, there will be 11 applicants who are 'top of the list'. Whenever a flat becomes available, which of the 11 applicants who are 'top of the list' should be allocated the property? It is harder for these lists to be scrutinised by applicants or by the public (indeed, in some cases impossible, as some of these lists are not disclosed) and it is harder to assess the fairness of decisions to allocate properties. I would welcome a simplification of this system and a narrowing of the categories currently in place to allow for greater transparency and accountability. It is important to note that the Principal Housing Officer and his team would also welcome a more streamlined set of categories, which would be easier to manage and they have confirmed that they are actively working towards this outcome.

Furthermore, once categorised on a list, an applicant's position on the list is determined by the number of points awarded by the Housing Allocation Committee [pursuant to the Housing Allocation Scheme (Revised 1994)]. We were informed by the Housing Department that "The minister holds her clinics and can make recommendations to HAC [the Housing Allocation Committee] to consider awarding discretionary points. These recommendations can vary, depending on the nature of the particular case but are up to a maximum of 1000 discretionary points. HAC can also independently recommend up to a maximum of 1000 discretionary points, on a case-by-case basis". However, these mechanisms do not feature in the Housing Allocation Scheme (Revised 1994) which does not allow for the award of 1000 points by the Housing Allocation Committee (the maximum is 500 discretionary points), nor for a ministerial discretion to recommend the award of 1000 points to applicants.

Given the absence of these mechanisms within the Housing Allocation Scheme (Revised 1994), I asked that the Housing Department "set out the statutory provisions or the regulations that set out the ministerial discretion to award points in the allocation process. Alternately, please attach the departmental policy that establishes these discretionary powers. If no statute, regulation or policy exists, please provide confirmation that they do not exist."

The response to this request was that "we clearly state that the Minister makes a recommendation to HAC to consider the award of up to 1000 discretionary points. Therefore, it is not the Minister who awards points."

As a result, I requested the legal or policy framework for the mechanism whereby applicants can seek an extra 1000 points via a ministerial recommendation. I also asked if there were any cases where a ministerial recommendation had been rejected by the Housing Allocation Committee. Via a telephone conversation, it was confirmed to me that there is no written framework for the Minister's recommendation to award 1000 points, nor has there been a case where the Minister's recommendation has not been followed by the Housing Allocation Committee. This suggests that the Minister's recommendation, in practice, functions like a discretionary power. It is concerning that there is no legal, regulatory or policy framework that sets out this mechanism for the award of 1000 points.

In addition, the existing Housing Allocation Scheme (Revised 1994) is not publicly available, nor is it available to applicants. This lack of scrutiny and accountability can lead to unfairness and it is imperative for more transparent processes to be adopted to create an even playing field for all applicants. All applicants should be aware of the mechanisms in place to apply for points, and the mechanisms currently in place should be available to all applicants.

Indeed, I feel that the following measures should be implemented to ensure a fairer, more transparent allocation process:

- The social housing categories should all be publicly available;
- There are too many social housing categories – these require simplification and need to be narrowed down;
- The Housing Allocation Scheme (Revised 1994) should be amended to reflect the current award of 1000 point to applicants and the amended scheme should be available to all applicants and to the general public;
- The Minister's power to recommend the award of 1000 discretionary points to applicants should be established via statute, regulation or via a policy that is made available to all applicants and to the general public.

Notwithstanding the above, I welcome the following improvements to service delivery achieved by the department, as follows:

- Properties in a state of disrepair were offered under the Rent and Repair scheme to Housing applicants. A first phase consisting of 17 flats were allocated on an as is basis, as long as the applicant agreed to repair the flats themselves. The agreement consisted of an exemption of paying rent for seven years. More than 500 applicants expressed an interest;

- New purpose made counters were built at the Housing Department's reception, including an accessible counter. These new counters have provided a closed door private 'room', enhancing the privacy of each individual. An additional counter is now also available, the Housing Works Agency Reporting Office;

- Rent can now be paid every day at the counter, as opposed to the previous specific days only;

- A Direct Debit payment method was introduced this year, adding to the Standing Order facility.

Department of Social Security

Throughout the course of 2024, we received two complaints regarding a delay in the issuing of U1 certificates, which are necessary to individuals who have terminated contracts of employment and need to claim unemployment benefits abroad. The failure to provide these certificates can result in a lack of unemployment benefits for these individuals, so the consequences of such delays can be very serious for those who have lost employment and need to rely on benefits for a source of income.

In considering the two complaints at the informal stage, where the DSS managed to issue the certificates within the stipulated 12-15 weeks (albeit at the top end of this time period), I reviewed Case No 1231 to 1245, a collective complaint investigated in 2023 relating to delays in processing U1 certificates. It felt to me that the main aspects of the complaints were substantially similar.

In the 2023 case, the complaints were sustained, and a recommendation was made whereby "H.M Government of Gibraltar provide the DSS Director with their full support, namely the additional and competent staff necessary and ensure that the department fulfils its function effectively and that current staff is not overwhelmed with the volume of applications and subsequent complaints."

Instead of passing the two complaints for formal investigation and duplicating work, I chased the 2023 recommendation and its implementation with the Director of Social Security. I received a very comprehensive answer, as follows:

"• In December 2023 the Department's vacancies amounted to 1x HEO, 2x AO's and 5x AA's. Furthermore, records reflect an additional 2x AO posts on Maternity Leave/ Career Break. The Short Term Benefit (STB) Section was staffed with 1x EO, 3x AO's and 3x GDC1. The only vacancy reflected in this section was 1x AA. It appears that around this period of time, the Director tried his utmost to address the situation in the STB Section by redeploying internal staff and must have sustained most of the vacancies within the other sections.

• Present day, the Department has a total of 1x HEO vacancy, 1x EO on maternity leave, 1x vacant AO post and 1x vacant AA post. Additionally, 1x AO has been selected for [an alternate post outside DSS] and will be leaving shortly, without notification of replacement. More worryingly, 2x AA's are waitlisted for [alternate posts outside DSS] and indications are that they might be called soon. 1x GDC1, who is deployed to the STB Section is on long-term sick leave, which has a direct impact on the section."

Departmental Vacancies by Grade	SO	SEO	HEO	EO	AO/GDC2	AA/GDC1
December 2023	NIL	NIL	1	NIL	2 (plus another 2 on ML/CB)	5
February 2025	NIL	NIL	1	NIL (plus 1 on Maternity Leave)	1	1 (Plus 1on long-term Sick leave

At first glance, it appears that, instead of an increase in staff, there has been a significant decrease, but the reasons for this were explained: "An overview of both points in time indicate that there were more junior staff members deployed to this section in December 2023 i.e. six junior staff compared to the four (plus 1 supernumerary ad-hoc) who are working within STB, present day, however as mentioned above, I believe that the section had just been reinforced to address the backlog and complaints so a direct comparison of these statistics, without taking into account, staff turnover, loss of expertise and the redeployment measures introduced, would be incongruous, particularly as an overall appraisal of the section's current day status indicates that the situation is considerably better and improving day-by-day."

Indeed, statistics were provided to show that from October 2024 to December 2024, 544 U1 counter queries and 1,330 email queries were dealt with by the STB and there was a clear increase in the number of U1 claims processed from July 2024 to December 2024, which showed a marked improvement in the knowledge, experience and productivity of the team.

I also took into account that in 2023, the formal investigation comprised 14 separate complaints, and in 2024, two complaints were received, which were resolved without formal investigation on the basis that the U1s were processed within a time period that did not bar the complainants from being eligible to apply for unemployment benefits in other jurisdictions. It seems that the scale of the problem has decreased, and the effects of the delay have also been less severe for complainants.

However, it still feels that a clearer, long-term plan for staffing, including filling vacancies quickly and reducing reliance on temporary staff, is needed to avoid future disruptions. At present there is a supernumerary AO who assists on an AD hoc basis, and it appears that maternity leave and long term sick leave impacts greatly on service delivery, especially over holiday periods, where workload accumulates for the team.

The importance of fully staffing the STB Section cannot be overstated, as complaints on the delayed processing of U1 certificates have been received for two consecutive years (a total of 16 complaints in 2 years). As this matter seems to be systemic, should further complaints be received throughout the course of 2025 they would be formally

investigated, and I would have to consider submitting a special report under section 21 of the Public Services Ombudsman Act 1998.

Civil Status and Registration Office

In cases 1271 & 1272 (Reported in 2023) complaints were directed at the Civil Status and Registration Office ("CSRO") in relation to delay and a lack of decisions reached on the complainants' respective applications for permanent residence as "persons living aboard motor yachts". At this time, my predecessor recommended that the applications be granted whilst HM Government decided on the way forward for future applications from applicants living aboard motor vessels.

However, in 2024, we were approached by one of the complainants, who was still not able to access permanent residency (a red ID card) because he lived in a vessel. Additionally, the following commitment in page 74 of the 2023 GSLP manifesto was noted, as follows:

"CITIZENSHIP & ID CARDS
ID CARDS FOR RESIDENTS LIVING ON VESSELS

We will issue Gibraltar ID cards to those qualifying applicants who live on vessels, honouring the GSLP Liberal Government's decision to reverse aspects of a policy which made it impossible for long-term and qualifying residents from obtaining the relevant ID cards."

This manifesto commitment makes it clear that there was a policy that did not allow permanent residency for individuals who live on vessels and that this policy would need to be amended if the recommendation was to be implemented. Nevertheless, the recommendation was followed up with the CSRO Head of Department and with the Chief Secretary, and the complainant was able to access permanent residency. A copy of the policy document was requested, but I was informed that "there is no actual policy document, but an internal Ministerial instruction which has been issued that the policy on vessels is now enacted and the CSRO can now accept and process applications from persons residing in vessels."

On further enquiry as to whether the policy had been enacted as a legislative amendment, the following clarification was provided: "the vessels update was purely a Government policy stance. No legal amendment was required."

It is very welcome that the 2023 recommendation was implemented, and that a fair outcome was achieved for the complainant. However, to achieve the most ideal outcome, this decision would be reflected in an official policy document, which would help create transparency and certainty and create an even playing field for all applicants.

Gibraltar Health Authority

It is clear that Case No 1250 has been one of the biggest areas of investigative work in 2024. Unfortunately, it is a very serious case of maladministration, both in terms of nursing care afforded to patient as well as severe failings in the complaint handling process, spanning the time period when the patient was in the care of the GHA to four years after she passed away.

Clearly, this case also provides an opportunity for self- reflection, in determining how we can also amend our working practice to ensure that we can complete our investigations within tighter time restraints. As GHA investigations often involve procuring the complainant's medical records and then arranging for expert medical opinion(s) via the Parliamentary & Health Ombudsman in the UK, it is inevitable that delays arise. However, it is also our responsibility to set deadlines for the submission of necessary evidence and documentation, and to ensure that the GHA, and any other public service entities under investigation, comply with the set deadlines. Failure to do so can led to unacceptable delays in completing investigations, and a failure in dealing with complaints in a timely manner.

There are eight recommendations that have arisen from this case, and it is imperative that the GHA takes action to implement them. Indeed, the first recommendation, which was that a letter of apology be sent to the complainant's family, was accepted on the 13th January 2025. Following an email chasing this recommendation from our office to the GHA dated the 18th March 2025, a letter of apology was sent to the complainant's family on the 19th March 2025. Even though it would have been more appropriate for the recommendation to have been implemented with no further delays, and without prompting from my office, one of the eight recommendations has already been implemented.

As an important area of work for me since my appointment has involved following up previous recommendations, I will also be following up on these recommendations in the hope of preventing similar instances of maladministration in future.

This case has also highlighted to me the importance of public services entities being open and willing to engage with us in meaningful ways, providing us with the information that we need in a timely manner and understanding that our fundamental aim is not judgement and blame, but rather improving the delivery of vital services to our community.

1.5 Own Motion Investigations

Own motion investigations give Ombudsmen the power to initiate and conduct an investigation without having received a complaint, and are essential in circumstances where there might be unfairness but complainants are (for whatever reason) unable or unwilling to lodge a complaint. Even though this would certainly increase workload, all Gibraltar Public Services Ombudsman have advocated for the implementation of own motion investigations, as they will allow our office to bring attention to significant matters of public interest and add real value to our work, always with the aim of creating tangible improvements to the lives of the people we serve.

At the June 2024 Ombudsman Association conference, Nadine Pardo-Zammit and I attended a seminar on reaching under-represented groups, which they described as 'hidden voices'. It is easy to identify areas where hidden voices might exist, where people are in vulnerable situations and would feel reluctant, or even afraid, to make a complaint. Those who are hospitalised for physical or mental ill-health and are in long term care, those who are in residential care (either for disability or children in care) or those who are in prison, might not be comfortable in raising their voices, given that their very survival depends upon the public services that are responsible for so many aspects of their lives. Even family members might be reluctant to raise concerns, since their loved ones are so dependent on the services that could be failing them.

This is why own-motion investigations are so essential – they can give a voice to the voiceless, and ensure safe working practices for the care of those among us who are vulnerable. On the other hand, it might be the case that services that undergo an own-motion investigation are doing a wonderful job taking care of service users and meeting all operational requirements - this would be reflected in an own-motion investigation, increasing public trust in those departments and services.

Indeed, on the 20th December 2019, there was discussion in Parliament relating to the powers afforded to the Public Services Ombudsman and it was determined that the Public Services Ombudsman Act 1998 should be amended to allow own motion investigations - the relevant extract from Hansard is attached as Appendix 1. On this date, the Chief Minister stated that "the issue of own motion investigations, is already on foot."

Regrettably, this foot is rather motionless (pun intended) as, to date, a draft bill has not been presented to Parliament. In his tenure as Public Services Ombudsman (2017-2020), Dilip Tirathdas prepared a draft bill, which was duly submitted to the Chief Secretary. This draft bill was published in the Public Services Ombudsman Annual Report 2020 (p 9-10), so the groundwork for this legislative change has been completed since 2020. The draft bill is included as Appendix 2.

The issue of own-motion investigations was once again discussed in Parliament on the 21st December 2023. The excerpt from Hansard is included as Appendix 3 and reads as follows:

"Hon. RM Clinton: Madam Speaker, can the Government advise when it intends to amend the Public Services Ombudsman Act 1998 to allow for own-motion investigations?

Clerk: Answer, the Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Madam Speaker, the Government will advise when it intends to amend the Public Services Ombudsman Act 1998 to allow for own-motion investigations when it is ready to do so.

Hon. R M Clinton: Madam Speaker, may I remind the Chief Minister that he actually put forward a motion in December 2019 resolving that the Act should be reviewed to enable the Office of the Public Service Ombudsman to launch investigations of its own motion? If he has read the Ombudsman's report for 2022, he will see quite prominently the request for own-motion investigation. So I would ask the Chief Minister does he have a more specific timeframe in mind, bearing in mind that this has been a subject that has been discussed for well over four years?

Hon. Chief Minister: No, ma'am."

Since my appointment, I have consistently raised this issue – on a public basis, whenever afforded the opportunity, and privately with the Chief Minister. Indeed, I have written to the Chief Minister on this matter on the 16th July 2024, on the 29th August 2024, on the 24th September 2024. On this occasion, the Chief Minister was busy with treaty negotiations and a potential non-negotiated outcome, so it was agreed that I would raise the issue again in early 2025. Unfortunately, my most recent email (of the 7th January 2025) remains unanswered. With great regret, I can only conclude that there is no political will to implement own-motion investigations, in spite of the fact that this was approved by Parliament, via a parliamentary motion that was voted on and carried on the 20th December 2019.

Interestingly, it appears that the Principal Auditor also finds himself in a very similar situation – awaiting the enactment of legislation that will allow him to better fulfil his role and his obligations to our community. GSLP Liberal Manifesto 2011 stated that audit legislation would be reviewed "to secure a more modern and efficient public audit service that is fully independent of the Government. We will work on bringing legislation on this subject to the Parliament during our first year of Government." This commitment has been reiterated in the GSLP/Liberals Manifesto 2015 and the GSLP/Liberals Manifesto 2023, but to date, a draft bill on audit legislation has not been presented to Parliament.

The parallel between the Public Services Ombudsman and the Principal Auditor is that both are parliamentary officers under section 25 (3) of the Gibraltar Constitution Order 2006. Parliamentary Officers have an important role to play within any parliamentary democracy – seeking to ensure transparency, accountability and proper governance. It would be fitting for both our offices to be given the necessary independence and powers to fulfil our roles as completely and comprehensively as possible, in full service of our community.

2

Case Reports

Report on Case No 1282

Complaint against Aquagib Ltd

1. Water meters were housed separately to the electricity meters and could have been read;

2. Complainants stated they were never formally informed that no meter readings would be carried out;

3. Inaccurate account representation;

4. Bill dated July 2022 showing exceptional usage of water was never sent to the Complainants tenant ("Tenant");

5. In possession of information between July 2022 and March 2023 that there was a leak and failed in their duty of care to notify the Tenant;

6. The unethical and menacing tactics used to obtain final settlement of a water bill.

Background

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

Complaint

The Complainants had owned the Property since 2007 and used it as a second home for a few months a year. In September 2021, they rented it out to a Tenant and settled their water and electricity account for the Property in order to have the account changed to the Tenant's name. In early 2023, the Tenant informed the Complainants that she would be moving away from Gibraltar and they took the decision to sell the Property. It was put on the market at the beginning of March 2023 and according to the Complainants the speed of the sale was such that the completion date was set for the 30th March 2023.

The Complainants pointed out to the Ombudsman that key to the issue at hand was the fact that the Property was housed within a residential estate ("Estate") which had in recent years experienced problems with the voids in which the electricity meters were located which had resulted in Aquagib not having read either the electricity or the water meters for a number of years. The Complainants stated that whilst the electricity meters were housed in the voids but were easily accessible, the water meters were in a full height cupboard that was lit and easily accessible from the second-floor corridor which was a common area used by both residents and the public, as a

walkway, and therefore not within the voids. It was the Complainants view that there was absolutely no reason for Aquagib to have also stopped reading the water meters by insisting that they could not access the area. The Complainants noted that the cupboard where the water meters were housed was locked so residents could not access their own meters and check consumption themselves. They drew attention to the fact that the pipework in the Estate was fairly old and the length of the pipe from the meter cupboards to the apartments was quite long making the likelihood of leaks going unnoticed quite high, especially considering that the water meters were not being read.

A few days before the Tenant was due to vacate the Property, she was informed by Aquagib that the water meter was running fast (the Investigation Section of this report explains how the meter reading recommenced) and there was a suspected leak. The Tenant contacted the Complainants who were in the United Kingdom ("UK") and they in turn contacted their managing agent to contract a plumber to investigate and repair the leak which was located beneath the Property. According to the Complainants, the leak had gone unnoticed and it had caused no damage to anyone else's property.

Throughout the eighteen months of the tenancy, the water and electricity bills received by the Tenant had been paid in full. The bills were estimated but in keeping with past comparative consumption. According to the Complainants, on the 30th March 2023, the date for which completion of the sale of the Property had been set, the Tenant contacted them completely distraught because she had been informed by Aquagib that the final bill for water was over £4,800.00. The Complainants assured the Tenant that must surely be a huge mistake and told her that they would resolve the issue with Aquagib.

The Complainants telephoned Aquagib and spoke to a senior executive ("Executive") who assured them that the money was owed, no ifs or buts. She advised them that the bill amounted to over £8,000.00 and that a discount had been applied but if the bill was not settled, Aquagib would not connect the new owners of the Property. The Complainants felt that was wholly unethical and menacing as the outstanding bill had nothing to do with the prospective new owners and Aquagib should not have threatened to withhold water connection from them if the Complainants did not settle the outstanding amount immediately.

After further discussion with Aquagib, the Complainants requested a copy of the final settlement bill to attempt to make sense of the situation. The Complainants obtained authority from the Tenant (the account holder) and Aquagib forwarded three bills which were for the months of July 2022, February 2023 and March 2023 as well as a statement. According to one of the Complainants who had been a Financial Director, after reviewing the bills and the statement he concluded that he had never seen such "…*shoddy account representation*…" which he found to be confusing and lacking in clarity or logic. The Complainant continued by stating that he could follow some of the

statement but that most of it was nonsensical and was appalled that Aquagib were happy to provide that as a final statement of account for such a substantial amount.

The Complainants reviewed the bill dated 31st July 2022 which showed over £4,000.00 payable and stated that they had no idea how the reading was obtained or by whom, but noted that it showed very high usage of water which would have indicated a leak as far back as July 2022. That reading was never passed to the Tenant. The Complainant also noted that there was a further bill from Aquagib in February 2023 showing a reading which again showed exceptional usage and stated that once again that information was not passed on to the Tenant. The Complainant deduced from those bills that Aquagib were in possession of the information that there was exceptional water usage in the Property between July 2022 and March 2023 and had failed to act, allowing the leak to continue, thereby failing in their duty of care to their customer.

Further to having reviewed the copies of the final bill, the Complainants contacted Aquagib to inform them that they were not happy and could not make sense of the billing and wished to discuss the matter further. According to the Complainants they were informed that the person they were speaking to was a senior executive, with her boss also in attendance, and that there was nobody within the organisation who they could raise the matter with further. If they did not pay the bill, the new owner would not have a water connection.

According to the Complainants, the following day they telephoned Aquagib and spoke to a colleague of the Executive. They agreed to pay the bill under protest and stated that once again Aquagib confirmed that if they did not pay the bill, the new owners would not be connected thereby leaving them with no choice but to pay.

The Complainants stated that they could have walked away and left their Tenant with a bill of £4,831.00 and the new owners with no water but they felt honour bound to resolve the situation. Under the circumstances, they felt there had been multiple failures on the part of Aquagib and asked the Ombudsman to investigate their complaints.

The Ombudsman directed the Complainants to first put their complaints to Aquagib and if not satisfied with the response, to then lodge their complaints with his office.

The Complainants duly complied and received responses from Aquagib (these will be reviewed in the Investigation Section of this report) which they were dissatisfied with and put their complaints to the Ombudsman.

Investigation

Complaint (1) - Water meters were housed separately to the electricity meters and could have been read

The Ombudsman reviewed Aquagib's response to the Complainants letter of complaint in which Aquagib advised that during one of their visits to the Estate sometime in May/June 2019, a piece of concrete fell on one of their workmen. In following health and safety protocols, the incident was reported to their Health & Safety Senior Manager who carried out a site inspection and concluded that the area was not safe. According to Aquagib, the issue had been highlighted years earlier and subsequent to an engineering survey commissioned by the landlord/owner of the Estate, a temporary fix was initially accepted, with the caveat that permanent repairs would be undertaken in due course. Years had passed since that report and no permanent fix was carried out so further to the incident, Aquagib contacted the Estate's engineer (who had submitted the survey report) and he would not put in writing that the area was safe for Aquagib employees to enter and read the meters. That left Aquagib with no choice but to contact His Majesty's Government of Gibraltar ("HMGOG's") Health & Safety Inspector ("HSI") who inspected the area, found it unsafe and informed Aquagib that the area would be out of bounds to any of their employees [Ombudsman Note: Aquagib provided the Complainants with a copy of the HSI's email dated 7th June 2019 stating the aforementioned. Aquagib from then on referred to said email as a 'Prohibition Notice']. Under those circumstances, Aquagib concluded that the best course of action until the area was made safe and the meters could be read was to estimate the monthly consumption based on past usage. Aquagib highlighted that they had gone above and beyond their call of duty in liaising with the landlord/owner of the Estate, his engineer and HMGOG to resolve something that did not come under their remit. Aquagib reiterated that all meter rooms, voids, etc. were the property of the Estate and had been identified in the engineer's report as unsafe. A 'Prohibition Notice' (HSI's email) was issued and anyone accessing those areas would be breaking the law. Aquagib stated that they would not have placed any of their employees at risk or indeed advised them to break the law.

According to Aquagib, they were eventually able to obtain an updated engineer's report, at their own cost, which they passed on to the Estate for recovery of fees, and that had resulted in Aquagib employees being allowed to re-enter the area. The reading of the meters was reinstated with the first true reading since June 2019 taken in February 2023.

In June 2023, the Ombudsman presented the complaints to Aquagib's Chief Executive ("CE") with his initial response received in July 2023.

Regarding the reason why Aquagib had commissioned an engineer's report, the CE explained that there had been a sewage pipe leak in the Estate and Aquagib had had to undertake works to stabilise the culvert. It was at that point that they engaged their own structural engineer to provide a report which then allowed them to access the meter cupboards. The CE reiterated that they were pursuing the Estate for recovery of those costs.

In August 2023 the Ombudsman made further enquiries and with respect to the above issue, asked the CE if they could have undertaken the works required in the Estate to enable them to read the meters and then recouped the costs from the Estate. The CE's response was not received until November 2023, and then only after a number of chaser emails from the Ombudsman, a lengthy delay for which the CE apologised and stated was due to a significant oversight. The CE advised that the maintenance of the property was the responsibility of the landlord and any suggestion that Aquagib should take responsibility for maintenance in those locations was incorrect and could set a dangerous precedent. He stated that an alternative action to get the Estate to make safe the areas would have been to stop the water supply to the Estate but knew that would have been a very drastic decision that would have negatively affected many customers.

Regarding the area covered by the Prohibition Notice, the CE confirmed that the electricity and water meters were located within the prohibited area. The CE stated that the door to the water meter was on the same wall that represented the outer perimeter of the prohibited area and that therefore, the meter cupboard on the other side of the door was within the prohibited area and not accessible. The CE provided photos of the pertinent area. To further substantiate how unsafe the area was, the CE stated that Aquagib held a company barbeque at the beach, adjacent to the Estate, and advised all personnel that they should not use that walkway for access to and from the beach.

The Ombudsman was seriously concerned that such a potentially dangerous situation was allowed to continue for years with no Governmental agency seemingly having taken over the matter and pursued the Estate for repairs to be undertaken. The Ombudsman would investigate that issue and include his findings in the 'Update' Section of this report.

Complaint (2) - Never formally informed that no readings would be carried out

The Ombudsman enquired from the CE whether they had formally informed their customers that they were unable to read the meters and that they would therefore receive estimated bills.

The CE responded that the management company of the Estate took the lead on informing residents of the issue with respect to the meter readings and highlighted that on the Aquagib bills it stated these were estimated. The CE further advised that there was also regular contact with some residents during the period as some had taken it upon themselves to read the meters in the area which had been deemed unsafe (the CE stated that they had advised customers against this due to the Prohibition Notice) and that therefore they had no reason to believe that there was anyone that was unaware of the situation in the Estate.

Complaint (3) - Inaccurate account representation

Complaint (4) - Bill dated July 2022 showing exceptional usage of water was never sent to the tenant

Complaint (5) - In possession of information between July 2022 and March 2023 that there was a leak and failed in their duty of care to notify the tenant

The Ombudsman reviewed the copies of the three Aquagib bills provided by the Complainants which were for July 2022, February 2023 and March 2023 and added up to **£8,523.86**, as well as a final statement [Ombudsman Note: This was provided to the Complainants subsequent to lodging their complaints to Aquagib in order that they could better understand the water consumption transactions on the account. The statement was data exported to excel]. The copies of the **estimated bills** were also provided which as per the information provided by the Complainants, had been duly settled by the Tenant at the time of receipt. The Ombudsman compared the estimated July 2022 water bill which amounted to £12.96 and showed no 'Aged Debt' to the newly issued July 2022 water bill which showed the consumption for the month as being **£4,076.45**. The **previous reading** was shown as having been taken on the **1st October 2021** and the **current reading** date shown as the **31st July 2022**. In this newly issued July 2022 bill the Aged Debt showed the following:

Aged Debt

Previous	December	January	February	Current	Balance
£2113.82	£0.00	£0.00	£2385.63	£336.16	£4835.61

The February 2023 bill received showed the **previous reading** date as being **31st July 2022** and the **current reading** date as being the **17th February 2023**. The amount outstanding for that month was **£3,898.21**.

The Aged Debt figures were the same as per above.

The March 2023 bill showed the **previous reading** date as being the **17th February 2023** and the **current reading** date as being the **16th March 2023**. The amount consumed for that month was shown as £549.20. Once again the Aged Debt figures recorded remained as per the table above.

The Ombudsman reviewed the statement provided by Aquagib to the Complainants in excel format. For ease of reference, there was a colour code key used to group together similar entries as follows:

- Estimated bills issued;
- Estimated bills undone;
- Bills disputed;
- Credit;

- Recalculation of bill due to tariff change in August 2022;
- Normal reading resumed.

All the monthly estimated bills issued (16 in total) and the payment made by the Tenant for 15 of them were cancelled against each other and the monies paid by the Tenant, listed individually as credits.

Aquagib's response to the Complainants on this issue explained that the actual meter reading in February 2023 was 12932 whilst the estimated reading for January 2023 was 931. That highlighted a huge discrepancy which pointed to Aquagib having either been seriously underestimating or there was a leak. Aquagib sent their plumbers to investigate and they ascertained that there was a leak. As that leak could not have been identified earlier by either party, Aquagib took the commercial decision to charge all units consumed at the **cheaper primary unit rate**. To do so, Aquagib removed all the bills issued to the tenant from the start of her tenancy, October 2021, and then split consumption into two. They created one bill up to July 2022 and one for February 2023. The reason for that being a tariff rate increase in August 2022. According to Aquagib, they did this acting in good faith, because they did not know when the leak started and did not want to charge all units at the new higher tariff. The bills were recalculated as a gesture of goodwill and the total amount charged was reduced from **£8,523.86** to **£4,758.84**, a difference of **£3,765.02**. The Complainants pointed out to Aquagib that despite the meter reading having been in February 2023 they were not made aware until the 30th March 2023 by which point even more water had been wasted. Aquagib responded that in February they read all the meters and had to manually fix issues presented when under/over estimating which was a rather tedious and long process. It was when they went to read the meters in March 2023 that the possibility of a leak was investigated. Aquagib again reiterated the fact that they had been prohibited from entering the area in which the meters were located and as the meters could not be read, they had no way of knowing if water was being wasted. Furthermore, they sated that they had chased and put pressure on the owner of the Estate to fix the issue in order to be able to provide the service to their customers.

Aquagib clarified that their remit ended at the 'point of sale' which was the meter, and any issues with the pipework after the meter were the responsibility of the tenant/landlord/estate agent and/or management company. Therefore, the leak which had been identified fell outside Aquagib's remit. They stated that they understood the frustration that a leak causes and that they always advised their customers to seek a claim via their insurance when possible.

The Ombudsman requested clarification from the CE about the Aged Debt table figures in the July 2022 and February and March 2023. He also requested further information as to why July 2022 was chosen as the month for the amendments to be made.

The CE explained that with respect to the July 2022 bill, the Aged Debt section was a reflection of the account status at the time when the copy of the bill was printed whilst the bill itself was a replica of the actual July 2022 bill. Therefore, in the Aged Debt table in the July 2022 bill, 'Previous' referred to all amounts outstanding prior to December 2022 whilst February and Current referred to 2023 items.

Regarding the choice of July 2022 for the amendment date, the CE stated that was because there was an increase in tariffs on the 1st August 2022 and a decision was taken to apply the lower tariff to a portion of the bill for all customers in the Estate. If all amendments had been processed in February 2023 subsequent to the meter readings, the customers would have been charged at the new higher rate.

Complaint (6) - The unethical and menacing tactics used to obtain final settlement of a water bill

Aquagib's response to the Complainants regarding this complaint was that they found this to be completely unfounded but understood that within the context of having received the massive bill, that would have already caused them undue stress for which they apologised.

Aquagib stated that they had heard the conversation and that the Executive had informed them that they would be putting the new application on hold until some sort of repayment was agreed. She further advised that as the Complainants still had to analyse the invoices and contact their insurance company, Aquagib were willing to allow them to take their time and should the new owners complete and apply, what Aquagib would do would be to put the application on hold and contact the Complainants to see where they were at with their investigations and then seek management advise on how best to proceed. Aquagib highlighted that the Executive at all times agreed with the Complainants that the new owner should not be subject to any issues, due to the fact that he/she had nothing to do with them.

The Ombudsman sought further details from the CE about the telephone conversation between the Executive and the Complainants.

The CE stated that he had listened to the telephone recording and did not consider that at any point in the conversation the staff member was threatening. In the CE's opinion, the staff member was very sympathetic and correctly pointed out to the Complainants that if the property was sold with an outstanding bill it would be standard practice to refer any new application to Aquagib management. According to the CE she did not make any reference to what decision management would take, as she rightly would not be aware of the outcome. It was at that point in the conversation when the Complainants made it very clear that they would not want a new owner to have issues with their application and indicated that they would rather pay the bill immediately. The CE offered the release of the telephone conversation recording to the Ombudsman and this was accepted.

The Ombudsman listened to the recording and documented a transcript of the conversation. The staff member attending to the Complainants provided a summary of events and a conversation ensued about how to read the meter and the cost of primary and secondary units. The Complainants then raised the fact that they could not afford to pay £4,800- and noted that the bill was not in their name and that it was not fair on the tenant. The staff member stated that she had offered the tenant a repayment plan as it was a lot of money but stated the amount had to be paid and that she hoped they understood; water that had gone through the meter needed to be paid. The Complainants pointed out that the reason why that had happened was because the meters had not been read. The staff member replied that they could not put the blame on Aquagib as the reason why they had not been read was because they were not authorised to enter the area. The staff member suggested to the Complainants that they approach the Estate management and show them the notice making all tenants aware of the situation.

In the conversation, the Complainants mentioned how the completion date for the sale of the Property had been scheduled for that same day and discussed with the staff member that there was going to be a new owner. The staff member said that was fine but the bill had to be paid as whoever lived in the Property might have the water disconnected if the bills were not paid. The matter of insurance covering the cost was discussed briefly and the Complainants request copies of the bills to submit to their insurer. The Complainants stated that they would not want the incoming people to have the problem (no water connection) as it was nothing to do with them and Aquagib should not, not let them have water. The Complainants continued that they were the landlords and they wanted to sort it out but that this had come as a big shock to them. The staff member replied that she understood and they would give them some time and raised the matter of the Complainants having mentioned that they had not completed on the sale yet and the Complainants replied that they thought it was going to be that same day. The staff member said that she would have to refer the matter to management to see if they could change the name of the account without knowing what was happening (regarding the outstanding amount). The Complainants understood that once they completed, they could say that the matter was nothing to do with them but again stated that they did not think it was fair for the people coming in to be left without water. The staff member then said that she would have to refer the matter to management as they could stop the connection until the bills were sorted out. The Complainants stated that what they were saying was that they were looking at it (the issue) and was something that they had just been faced with that day. They wanted to understand what had happened and then contact the insurance to see if they were covered but that would take them a few days. They did not want the new owners to have a bad experience as it was nothing to do with them. The Complainants asked the staff member to approach her boss and tell him/her that they were dealing with it. The staff member suggested that she could wait for their call for an update on the matter in a few days and if the new owner applied, the application would be put on hold until they spoke (Complainants and staff member) and then management would take a decision. The staff member pointed out that they would need a disconnection from the Complainants. The staff

member said that they would not be able to give any details to the new applicant but would have to inform them that there was an issue that needed to be referred to management.

The Complainants then referred to the bill amount, £4,835.61 and enquired if she could reduce the bill a bit more. The staff member replied that they had reduced it by £4,000.00 and that in other circumstances they would not have reduced it and referred to the reasons why that decision had been taken.

Further to some contact details exchanged, and before ending the conversation, the Complainants reiterated that they would not want the new owner to have a problem and if it came to that and providing that they completed that day they would just pay up so that the new people do not have problems. The Complainants stated that they did not want to sell the Property and have a problem on day one. The Complainants asked the staff member to contact them if the new owner applied and they could transfer the money quite quickly provided they completed that day. The staff member agreed and the conversation ended amicably.

In relation to the telephone conversation, the CE informed the Ombudsman that he had listened to the recording and thought that the suggestion of the staff member of referring the matter to management when the new owner of the Property submitted the application was a sensible approach. Although that did not materialise because the Complainants paid before the application was made, had that occurred, the CE stated that the management view would have been consistent with the policy that he had stated and the new connection would have gone ahead. The CE had earlier informed the Ombudsman that Aquagib's connection/disconnection process does not hold new owners accountable for any bill owed by the previous owners in the way that was being suggested. If an owner departs without paying a bill, that does not have an effect on the connection of the new occupier/owner. The CE referred to the fact that there was still an amount owing by the Complainants of £100.81 (due to the posting of the last invoice) which had not affected any subsequent owner's connection and attempting to recover monies in that way was not a policy which Aquagib followed.

Conclusions

Complaint (1) - Water meters were housed separately to the electricity meters and could have been read – Not Sustained

The Ombudsman did not sustain this complaint. The documentation provided by Aquagib substantiated that the Prohibition Notice/email from the HSI had designated the area where both the water and electricity meters were located as a no-go area.

Notwithstanding the above, the Ombudsman raised extremely serious concerns about the fact that the 'Prohibition Notice'/email from the HSI encompassed an area commonly transited by members of the public and yet despite the safety issues, the

area was never classified as out of bounds for the public throughout the four year period (2019 to 2023). Furthermore, it is clear because of the four year period in which no repairs were undertaken that no entity appeared to have pursued the Estate on the issue of repairs or evidence that an abatement notice was served. The Ombudsman will be investigating this and setting out his findings in the 'Update' Section of this report.

The Ombudsman noted that the Complainants, as owners of the Property, were shareholders in the Estate and therefore bore part of the responsibility for the repairs required.

Complaint (2) - Never formally informed that no readings would be carried out – Sustained

The Ombudsman sustained this complaint. Regardless of whether the Estate informed residents that there was an issue which prevented the meters from being read (the Ombudsman has not been provided with a copy of said notification and cannot verify that information), Aquagib, as a separate entity and provider of water supply, had a duty of care to inform their customers of the fact that they would receive 'estimated bills' until further notice and explained in some measure the reason for that, which would have ensured that all Aquagib's customers would have been aware of the non-reading of the meters and potential financial consequences this could mean once the readings were recommenced.

The Ombudsman raised serious concern about the health and safety situation in the Estate having been allowed to continue for years and only finally, fortunately but unintentionally resolved, for the time being, due to a sewage leak which made Aquagib carry out works, stabilise the culvert and engage their structural engineer to provide a report which then allowed them to access the area in which the meters were located. Had the aforementioned not occurred, the situation could have potentially resulted in a member of the public being hurt and with regards to the area in which the meters were housed being out of bounds, the estimated bills would have continued to be issued by Aquagib indefinitely with an even higher high chance of financial consequences to other Aquagib customers when the meter readings recommenced.

Complaint (3) - Inaccurate account representation – Sustained

The Ombudsman sustained this complaint. It is a fact that the root cause of these complaints is that the Estate had failed to undertake works required to make safe the area where the meters were housed, preventing Aquagib from reading the meters which led to a chain of events which in this case had serious financial consequences to the Complainants because of the leak not having been identified until Aquagib resumed the reading of the meters.

It is only as a result of the Complainants having complained to Aquagib and then lodged their complaints with the Ombudsman that they received details regarding the replica July 2022 bill and the reason as to why Aquagib identified that particular month; the cut-off date prior to the tariff increase in August 2022. What should have happened is that Aquagib, again in complying with their duty of care to their service users, should have provided detailed information about the billing amendments as a result of the meters not having been read for approximately four years. The fact is that the account representation is not an accurate chronological record. Meter readings stated in the replica bill as having been taken on the 1st October 2021 and 31st July 2022 were not taken as Aquagib had no access to the meters between June 2019 and February 2023.

The true reflection of the consumption history should have been set out accurately with amendments made subsequent to the February 2023 reading.

Complaint (4) - Bill dated July 2022 showing exceptional usage of water was never sent to the Tenant – Not Sustained

The Ombudsman did not sustain this complaint. The replica July 2022 bill the Complainants were provided with naturally led them to believe that Aquagib had taken a meter reading in July 2022 which showed exceptional usage of water consumption and had failed to send this to the Tenant. The investigation has established the reasons why Aquagib created a July 2022 replica bill (the increase in tariff in August 2022).

Complaint (5) - In possession of information between July 2022 and March 2023 that there was a leak and failed in their duty of care to notify the tenant – Not Sustained

The Ombudsman did not sustain this complaint. The investigation has established that the first reading in nearly four years was taken in February 2023. It took until March 2023 for Aquagib to amend customer accounts with the meter readings at which point they identified a huge discrepancy between the estimated and actual units consumed at which point they sent their plumbers to investigate and a leak identified. Aquagib did not take a meter reading in July 2022.

Complaint (6) - The unethical and menacing tactics used to obtain final settlement of a water bill – Not Sustained

The day before the completion of the sale of the Property had been set, the Complainants were presented with a bill for extraordinary water consumption amounting to £4,835.61, said bill in the name of the Tenant.

It is understandable that the Executive's position was to look after the interests of Aquagib and prior to the completion of the sale, attempted to have that large bill settled and used as leverage that the new owner 'could' be refused water connection if the monies owed were not paid. Notwithstanding, she did use the phrase '*…might*

have the water disconnected if the bills were not paid' and then in the course of the conversation, on at least three instances, stated that the matter would ultimately have to be referred to management for them to take a decision regarding water connection of the new owner. In the end, it was the Complainants who decided that they would settle the bill in order that they would not be faced with a problem on day one of the Property having been sold.

The CE confirmed to the Ombudsman that Aquagib's connection/disconnection process does not hold new owners accountable for any bill owed by the previous owners in the way that was being suggested. If an owner departs without paying a bill, that does not have an effect on the connection of the new occupier/owner. The Ombudsman assumes that Aquagib would seek payment of monies owed to them via the Courts.

Classification

Complaint (1) - Water meters were housed separately to the electricity meters and could have been read – **Not Sustained**

Complaint (2) - Never formally informed that no readings would be carried out – **Sustained**

Complaint (3) - Inaccurate account representation – **Sustained**

Complaint (4) - Bill dated July 2022 showing exceptional usage of water was never sent to the Tenant – **Not Sustained**

Complaint (5) - In possession of information between July 2022 and March 2023 that there was a leak and failed in their duty of care to notify the tenant – **Not Sustained**

Complaint (6) - The unethical and menacing tactics used to obtain final settlement of a water bill – **Not Sustained**

Recommendations

When a situation arises beyond Aquagib's control whereby electricity and water meters cannot be read and estimated bills will have to be issued, Aquagib have a duty of care to their customers to notify them of this and to explain that estimated bills are not a true reflection of liability, potentially resulting in a shortfall for which the customer will still be liable.

Update

For completeness of records, the Ombudsman reviewed the bills and final statement and identified that Aquagib had potentially made a mistake when adjusting the Complainants account. In order to reduce the bill, Aquagib had recalculated the units charged at the secondary rate (higher rate) to primary rate (lower rate) but instead of crediting the account with the difference between the two rates (higher less lower) they mistakenly credited it with the recalculated amount of units at the lower rate (which resulted in a lower amount of credit). The Ombudsman brought this to the attention of the CE in February 2024. Once again there was a delay of two months for a response to be received. During that time the Ombudsman sent various chaser emails and finally requested a meeting which was held on the 4th April 2024. Notwithstanding, the CE provided a response via email on the 27th March 2024 in which he apologised for the delay and confirmed that there had been an error in the calculations and that the Complainants would be refunded the sum of £1,511.37.

At the meeting on the 4th April 2024 the Ombudsman informed the CE that he was very disappointed at the lengthy delays experienced in receiving information requested from him and pointed out to the two instances which were in August 2023 with the information not received until November 2023 (approximately two and a half months elapsed) and the February 2024 email for which information was not received until late March 2024 (two months elapsed). A total of four and a half months delay.

The Ombudsman reminded the CE that the Public Services Ombudsman Act 1998 ("Act") provides the Ombudsman with the same powers as the Supreme Court for the purposes of any investigation under the Act and was sure that the CE would keep this in mind to prevent a recurrence in any future investigations.

The CE apologised for the delays and with regards to the February 2024 delay explained that a number of high priority operational matters had taken priority and left him unable to respond at an earlier stage.

Regarding what could be done going forward to prevent a similar situation of no access to meters, the CE stated that smart meters which could be read remotely were being fitted in new builds. Existing meters that needed to be replaced were also being substituted by smart meters but of course was not a solution in the short term. As to what powers Aquagib had to force repairs, the CE reiterated that all they could do was cut the water supply. The Ombudsman enquired about whether an abatement notice had been issued for the health and safety issue in the Estate but Aquagib were not aware of this. The Ombudsman resolved to investigate this issue and set out his findings in the 'Update' section.

Comments from AquaGib CE on the final draft report

Complaint

1. The CE stated that the Prohibition Notice affected three out of the five blocks in the Estate and that meter readers continued to read the meters of the two unaffected blocks.

2. Regarding Complaint (iii) the CE pointed out that their billing system is very much dictated by billing dates and Aquagib could therefore not have made all the amendments and show the dates after the February 2023 meter reading. The CE found it unfair that in trying to assist a customer by manipulating the billing dates to provide a reduction on the amount owed on the bill resulted in Aquagib being found to be inaccurately representing the account.

3. Also in relation to Complaint (iii) the CE stated that whilst the initial customer statement did not show the posting date of any adjustments, the spreadsheet presented to the Complainants did show the posting date of the July 2022 invoice as having been raised in March 2023 when the account was queried.

4. The CE welcomed the recommendation made by the Ombudsman and stated that Aquagib were already actively following this with respect to another location where meter access had been restricted.

REPORT ON CASE NO 1283

Complaint against Gibraltar Car Parks Limited ("Car Parks") in relation to administrative errors in dealing with the payment of fines by the Complainant and non-replies to correspondence seeking a refund for fines paid twice.

The First Complaint

The Complainant was aggrieved because:

1. After having paid a total of seven fines (placed on his stationary vehicle by Car Parks over a period of almost three weeks), Car Parks initiated the process which led to the Magistrates Court issuing summonses over two of those previously paid fines.

2. Correspondence the Complainant had sent Car Parks remained unacknowledged.

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 what he described as a "*long-standing saga*" with Car Parks.

He stated that the car in question (a second family vehicle primarily used by his wife for the running of errands locally), had been parked at South Barrack Road for some time. The car had been given to the Complainant by his sister and the keys to it had been subsequently misplaced; thus why it remained stationary for a period of three weeks. In addition, the Complainant had not realised that the zone parking permit pertaining to it had expired (hence the numerous amount of fines accumulated).

The Complainant explained that the first of seven fines was dated 5th October 2022, with the last one bearing a date of 22nd October 2022. He was baffled as to why he had not received a single "Notice to Owner" letter at home for any of the fines and also queried how the same officers issued fines within such a short lapse of time between them, in some cases, a single day apart.

The Complainant wrote to Car Parks arguing that had he received a permit renewal reminder letter he would have never been fined to begin with but, accepting that his permit had indeed expired, he was frustrated not to have received any Notice of the fine/s, by post or email. This would have obviated the need for officers to have kept issuing fines on such a continued basis. He explained how the payment would be a huge financial burden on his family and how, given the circumstances explained

above and his view of matters, he requested if the subsequent fines issued could be withdrawn or cancelled by Car Parks.

No reply was received.

The Complainant approached the Ombudsman. He was informed that the letter he had sent to Car Parks was not addressed to anyone and was also undated. He was thus initially advised to chase his (undated) correspondence, which he did.

No reply was received to that chaser from Car Parks either, although the Ombudsman did make note of the fact that the Complainant did receive a letter from the Royal Gibraltar Police ("RGP") dated 25th November (we assume that the Complainants letter had been made available to the RGP by Car Parks). The RGP stated that the fines could not be cancelled since they only had "*recourse to nullify fines as a result of a technicality*". Nonetheless, the letter went on to state that the opportunity of a court hearing existed if the Complainant felt the need to proceed down the legal route or sought to appeal the fines.

The Ombudsman further informally advised the Complainant to chase Car Parks in writing, for their reply.

The Complainant paid all the fines but frustrated with the state of affairs and feeling unfairly treated, he lodged a formal complaint against Car Parks with the Office of the Ombudsman.

Investigation

The Ombudsman presented the complaint to Car Parks on the 7th February 2023, seeking their comments in accordance with standard Ombudsman practice. In addition, he drew Car Parks' attention to the fact that the Complainant had issued two letters which remained acknowledged/unanswered by them (irrespective of any related correspondence he had received from the RGP). The Ombudsman reminded Car Parks that "*Principles of Good Administration*" dictate that service users should receive replies to letters within twenty one days of issue and sought an indication as to when the Complainant could expect a reply.

Car Parks reverted to the Ombudsman almost immediately with a holding letter stating they would reply more fully as soon as they could establish why the Complainant had not been written to sooner.

A substantive email followed very shortly thereafter.

Car Parks Management stated that after having made an in-house enquiry with their administration team, they could confirm that the last email received from the Complainant was dated 11th January 2023 (and that they hadn't replied to it). They alleged having no record of receipt of the first email from the Complainant in

December 2022. Despite this, Car Parks admitted that there was no reason or excuse for not having issued a reply to the January email. That email appeared to have been overlooked as they *"may have needed advice on [a] response and unfortunately never reverted."*

Car Parks management concluded their letter to the Ombudsman by informing him that the Complainant would receive a reply by the end of the day.

In reply, the Ombudsman sent a response stating that despite claiming to having never received the Complainant's original email dated 7th December 2022, the Ombudsman had seen a record of acknowledgment of receipt of that email generated by Car Parks' automated system, made available for his review by the Complainant.

Consequently, Car Parks investigated internally and found that *"scanning and validation software believed the uploaded file [to the latter of 7th December 2022] was harmful, and was therefore not delivered. This is not to say that it was harmful, because false positives occasionally occur, just that the system believed it to be so."*

The Complainant contacted the Ombudsman shortly thereafter to inform him that he had indeed received the reply Car Parks had promised.

In response to the Complainant's original complaint that he had not received a single "Notice to Owner" letter at home for any of the listed fines, the Complainant's view was that Car Parks had proceeded to pass on his complaint to the RGP, "*knowing that no technical faults could be found and that the RGP would not be in a position to abolish said fines*". The Complainant's view was that the issue giving rise to the complaint should have been discussed and "*cleared*" with him, as a service user.

The position, in summary, was that all fixed penalty notices (fines) were processed and forwarded to the RGP. This culminated in Magistrates court summonses being issued to the Complainant.

After some exchanges in correspondence between the Complainant and Car Parks, the Complainant attended court but did not contest the summonses and paid all fines via the courts, in order to bring *"the saga"* to an end.

It was brought to Car Parks' attention by the Complainant that two of the seven fines which had already been paid by the Complainant to Car Parks directly (there is evidence of this via a bank statement), were also laid as summonses and the Complainant, in order to avoid problems with the court, paid them twice. During the course of ongoing correspondence over the issue, six further months had elapsed and the Complainant was still awaiting reimbursement by Car Parks for the double payment.

Consequently, a second complaint against Car Parks ("the Second Complaint") was lodged at the Ombudsman Office relating specifically to the double payment issue.

The Ombudsman wrote to Car Parks in July 2023 setting out the complaint and querying why:

1. Due care was allegedly not taken resulting in administrative errors (in that paid fines were processed as unpaid), and Magistrates court summonses were subsequently issued?

2. Monies owing to the Complainant on account of double took such a long time to be returned to him?

3. Emails sent to car parks complaining about this delay remained unanswered?

Further to a short delay, Car Parks issued replies to the questions raised (numerically as follows):

1. There was no administrative mistake on this matter. Parking ticket numbers G10742317 and G141344819 were issued on the 5th and 9th October 2022 respectively. Both of these were processed for summonses on the 7th December 2022. Fifty nine and sixty three days after issue.

By law, after a parking ticket has remained unpaid for twenty eight days, the process may begin for a court summons to be subsequently issued. Car Parks confirmed that they received payment for the two fines (which were paid duplicitously), on the 30th January 2023. They contended that the Complainant should have realised that paying for parking tickets "*four months after their issue date*" ran the risk of the matter of non-payment being escalated to court.

2. It was explained that monies took so long to be refunded because the refunds were returned multiple times (by Treasury we assume) with distinct queries /issues arising. Nevertheless, Car Parks confirmed that the amount of £240 was processed on the 13th June 2023 and would be received by the Complainant by no later than 20th June.

3. In regard to the unanswered emails, Car Parks management took full responsibility for the non replies attributing the matter to an "*oversight,*" since they agreed that their administrative department were waiting for an internal response from management to advise them on the Complainant's refund.

Conclusions

The Complainant was aggrieved because his vehicle which had been parked at South Barrack Road for a period of three weeks had seven fixed penalty fines affixed to it as a result of being parked contrary to the Traffic (Parking and Waiting) Regulations 2011.

The Complainant explained that the car remained stationary because its keys had been misplaced and that the vehicle zone permit had expired. Although he did admit not to have realised that the permit had expired, he argued that had he been issued a Permit Renewal Notice, he would have never been fined. Additionally, he was also of the view that had a "Notice to Owner" of the initial fine been sent to him at home or by email, other fines would have been avoided.

During the course of his Investigation, the Ombudsman's Senior Investigation Officer ("SIO") met with Car Parks management at their premises to determine, specifically, whether there existed a duty in law for them to issue (a) renewal reminders to service users prior to the expiry of their parking permits and (b) to issue "Notice of Fines".

It was explained to the SIO that there was no legal obligation to do so, although and "*in all cases*", reminders and Notices were issued by post, with the latter being issued after a seven period of "non-activity" (i.e., non- payment), after the issue of a specific fine. The manager in question however, further stated that Car Parks could not make itself responsible for the amount of time the Royal Gibraltar Post Office ("RGPO") took to deliver such correspondence (*which although was strictly speaking true, the SIO found, based upon independent dealings with the RGPO was neither a relevant or fair comment*).

Despite the information disclosed by the manager to the SIO (*which the SIO had no reason to disbelieve*), the Complainant had maintained throughout, that he had not received any reminders or Notices via any medium. (*Similarly, there was no reason for the Ombudsman to dispute this allegation either).*

Irrespective of the veracity of the conflicting statements by the parties over which the Ombudsman was not in a position nor did he see fit to opine, what was clear to him was that as citizens and service users, we must be responsible for our actions and cannot attribute blame to any relevant authority (in this case Car Parks), for failure to remind or provide Notice, prior to initiating the recovery process. It would not be unreasonable to suggest that any citizen owning a stationary vehicle, as a result of loss of a key or engine failure for instance, to write to Car Parks or the RGP, explaining their predicament and the reason for the inability to be able to move the vehicle.

The Complainant also argued that Car Parks should not have processed the fines- (namely transferred them to the RGP for summonses to be issued). He believed that he should have been consulted and the matter "*cleared*" with him. The Ombudsman made note of the fact that the Complainant was fined at the beginning of October 2022 and that Car Parks processed the penalty notices for summonses fifty nine and sixty three days after the fines had been issued when legally, they were entitled to have processed them at any period after them having remained unpaid for twenty eight days after issue. Car Parks argued that although the fines were paid on the 30th January 2023 (before the summonses were listed in court), the Complainant should have realised that to have paid fines four months after they were issued, could have consequences. The Ombudsman agreed with this view and further opined that Car

Parks was not and **should not** be expected to "*clear*" the payment of fixed penalty notices/fines with vehicle owners prior to seeking formal recovery via the RGP.

The Complainant had written to Car Parks setting out his grievance on the 7th December 2022 (that had he been issued Notices of the fines, matters would not have escalated as they did). His letter of complaint (which allegedly was not properly received) and a chaser letter issued, also remained unanswered.

Car Parks attributed the lack of receipt of the initial correspondence to what had been identified by their systems as a "*harmful file*" and admitted that they had not replied to his chaser in error- perhaps because they were waiting on advice which never materialised.

The Ombudsman considered the lack of replies as unacceptable and not in keeping with good administrative practice. He suggests Car Parks review its internal computer programme/structure to ensure this does not happen to other service users in future. It would also be interesting to learn if other past users have suffered similarly.

There existed an additional complaint that the fines which had been paid twice took five months to be refunded by Car Parks. They argued that attempts to refund had been met by obstacles from Her Majesty's Government of Gibraltar's Treasury Department ("HMGOGTD").

The Ombudsman's view was that if HMGOGTD returned or queried requests made by Car Parks for payment/reimbursements because they were incomplete or incorrect, leading to an inability for them to process said reimbursements, the only potential explanation for this was that Car Parks was either making errors when requesting/processing payments from HMGOGTD or not following the proper procedures in doing so. That fact, together with a lack of replies to the Complainant in his queries seeking an explanation for the delay in reimbursement, was an administrative failure by Car Parks, to which the Complainant was unfairly subjected.

The Ombudsman, however, did not understand why the Complainant did not state in court that the fines had already been paid at the time the summonses were heard (producing evidence such as a bank statement to that effect) but instead proceeded to pay again in order to "*avoid problems with the court*" and to bring "*the saga to an end.*" Be that as it may, this is not a criticism by the Ombudsman of the Complainant's actions in court, but is merely raised as a curiosity. Had this explanation been afforded, it is highly unlikely that the Complainant would have been obliged to pay the fines twice. Nonetheless, that was a matter for the Complainant.

The fact is, that the Complainant should not have had to wait such a long time for reimbursement with no explanation offered by Car Parks for the delay (although a subsequent explanation of "*oversight*" (with no apology), was made to the Ombudsman.

Classification

The First Complaint

1. The Complainant was aggrieved because after having paid all fines, Car Parks unfairly started the process which led to court summonses being issued over two of those fines- **Not Sustained** (*the fines were not paid within twenty eight days as prescribed by law. Any recovery process initiated after that time frame could not be seen to be unreasonable by the application of any standard).*

2. Correspondence chasing the Complainants initial email of complaint, remained unacknowledged- **Sustained**

The Second Complaint

1. Due care was allegedly not taken resulting in administrative issues (the complaint being that previously paid fines were processed for court summonses to be issued) - **Not sustained.** *Car parks acted within the law and could have started the process up to almost four weeks earlier than they did. The Complainant paid these fines almost five months after they were issued.*

2. Monies owing to the Complainant on account of double payment took a long time to be refunded- **Sustained.** *The Ombudsman opined that the delay and reasons for it were inordinate.*

3. Email sent to car parks in respect of the delay remained unanswered- **Sustained**

REPORT ON CASE NO 1291

Complaint against Gibraltar Car Parks Limited ("Car Parks") in relation to their lack of replies to the Complainant's emails and non-reimbursement of a zone parking permit fee.

Complaint

The Complainant was aggrieved because:

He wrote to Car Parks in August and September 2023 in relation to a zone permit refund request which had been refused orally in person, but he received no replies to his correspondence.

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 mid-eighties, explained that on the 28th June 2023 his car was booked for an MOT. The car took and failed the test. After obtaining a quote for repairs that same day, the cost entailed did not make it a viable option for the Complainant to expend such an amount of money on a nineteen year old vehicle. He left the car at "Prime Auto" garage for them to dispose of it.

The Complainant realised that the zone parking permit which had only recently been renewed (and which was valid to the 29th June 2024), would no longer be required. He therefore took the necessary steps to request a refund. He attended the Car Parks' offices on the 29th June for that purpose. The Complainant stated that the lady who took down his particulars told him payment would take a while since it would be made via HM Treasury Department. A month elapsed and since he did not hear from Car Parks, he contacted them on the 3rd August, sometime in the middle of August and finally on the 29th August where he was informed that the £35 fee could not be returned to him. Later that same day, the Complainant emailed Car Parks requesting that they reconsider their decision on the grounds that the car had failed the MOT and had been destroyed, and that he had paid for a permit which could not be used, through no fault of his own.

No reply was received to that email or to the Complainant's subsequent chaser letter.

As a result, the Complainant lodged his complaint with the Office of the Ombudsman in March 2024.

Investigation

The Ombudsman requested that the Complainant submit proof that he did in fact have a valid permit and that his vehicle (number plate provided), had failed the MOT and had been subsequently destroyed. The Complainant provided us with a copy of his permit together with a Certificate of Destruction for the vehicle in question (dated 29th June 2023).

The Ombudsman proceeded and wrote to Car Parks setting out the complaint and requesting their comments, whilst also seeking the outcome of Car Parks' consideration of the Complainant's written request for reimbursement, on the 29th August 2023. No reply was received by the Ombudsman to her letter. Three further chaser emails were sent by the Office of the Ombudsman within the space of some weeks but to our surprise and indeed, regret, no replies or even an acknowledgement were ever received.

As a result, the Ombudsman's Senior Investigating Officer ("SIO") felt compelled to write to Car Parks' manager ("the Manager") expressing the Ombudsman's disappointment over the lack of replies given our numerous previous requests for comments and information. It was explained that the Complainant was an elderly gentleman who contacted us for updates but given Car Parks' inaction, we were unable to provide them. In effect, it was clearly stated that by their non-replies, Car Parks were obstructing an Ombudsman investigation. That state of affairs could not be tolerated.

A substantive reply followed that same day. The Manager was profusely apologetic, and explained the circumstances for the delay in his reply, in some detail. The letter concluded by stating that the Complainant could attend upon Car Parks' offices for an immediate refund of his zone permit fee.

Conclusions

The Ombudsman was satisfied with the outcome of the investigation and more so, since it was the only reasonable and equitable result for the Complainant. However, it was disconcerting that the Ombudsman had to become involved in the Complainant's grievance when it could have been resolved by Car Parks, saving many months of irritation and needless aggravation for the gentleman concerned [the Complainant] and even more so, that so many letters had to be sent before a reply was finally received.

It is important and given the nature of this complaint, appropriate for the Ombudsman to remind public entities of their statutory and administrative duty to provide timely and reasoned responses to the Ombudsman, without excuse, thereby facilitating her investigations.

The Ombudsman is a central figure in the pursuit of public fairness, accountability and justice- with that in mind, the Officeholder demands the highest degree of consideration and respect.

Classification

Failure to provide replies to the Complainant's correspondence and lack of a timely reimbursement for his zone parking permit- **Sustained**

REPORT ON CASE NO 1276

Complaint against the Civil Status and Registration Office ("CSRO") in relation to non-replies to correspondence and delay in processing the Complainant's father's identification card.

Complaint

The Complainant was aggrieved because she submitted her father's application for his identification ("ID") card renewal in April or May 2022 and by December, she still had not heard back from CSRO.

Background

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

The Complainant explained how at the time of filing her complaint with the Office of the Ombudsman, her father had been waiting over seven months for his ID card to be processed by CSRO.

The Complainant explained that her father's permit of residence stated that he was "employed" even though he had not been in employment for the previous 4 years. He had been suffering from alcoholism and had spent some time in Bruce's Farm rehabilitation centre and Ocean Views mental health unit. To worsen matters, his partner had unfortunately been diagnosed with dementia so was unable to care or support him.

The Complainant had relocated to Gibraltar in September 2020 and since then, had been supporting and assisting her father.

From his review of correspondence, it appeared to the Ombudsman that CSRO contacted the Complainant over the telephone querying whether her father was a property owner (which indeed he could prove he was).

The Complainant explained how she first emailed CSRO at the beginning of August 2022 attaching all the information requested by them but had never received any written reply. Further communications sent by the Complainant also remained unanswered.

As a result of the above, the Complainant proceeded to lodge a complaint with the Office of the Ombudsman by email on 6th December 2022.

Investigation

The Ombudsman wrote to the head of CSRO ("the Head") on the 7th December 2022 setting out the complaint as follows:

1. The Complainant's father had been waiting over seven months for his ID card to be processed by CSRO.

2. The Complainant had written to CSRO on numerous occasions (dates provided) yet she never received a written reply. She had taken calls from CSRO but she was not satisfied with either the casual form of reply (telephone calls) or the content of those conversations. As a result she wrote subsequent emails but those remained unanswered.

3. That the Complainant had written to the Head of CSRO on the 6th and 29th September 2022 and although an acknowledgement was received in September, no substantive reply had followed.

4. The Complainant alleged that a named CSRO staff member was, without reasonable explanation, refusing to accept that her father was a property owner even though property deeds existed proving the fact. Copies of those deeds had been made available to CSRO on three separate occasions.

In his letter presenting the complaint, The Ombudsman further explained to CSRO that while the Complainant's father waited for CSRO to process the ID application, she was becoming increasingly concerned on the practical effect of the delay to his healthcare and his future ability to apply for a pension. He was elderly and infirm and had a fragile state of mind. The Ombudsman concluded his letter by requesting a reply from the Head "by return" given the already unacceptable delay being suffered by the service user.

To the Ombudsman's regret despite his request, almost a month elapsed and no reply had been forthcoming. The Ombudsman set out how delays in replying to his correspondence constituted a "serious act of maladministration." Consequently, he granted a further short period by which a reply would be expected from CSRO without further unjustified delay or excuse. Said reply followed soon thereafter.

The response set out how by referring to Immigration records and documents on CSRO files, they had established that the Complainant's father had first taken residence in Gibraltar in 2016 and how his employer at the time had supported his application for a civilian registration card and residence permit, which were indeed issued by CSRO - valid from 5th December 2016 to 30th November 2017.

A subsequent application for residence was made on 21st March 2017 in order for the Complainant's father to change his address, whilst he still continued in employment. Another permit was issued by CSRO valid to 14th December 2022.

It also transpired, as stated by CSRO, that he had ceased employment in June 2018 shortly after he had been issued with a five year residence permit "as a worker." Be that as it may, the Ombudsman's view was that the Complainant's father would not have been in a position to update his status given that he was in and out of rehabilitation over the given period (as documented by health records). CSRO also pointed out that the flat was owned by his partner and that it had been "assigned" to him in October 2018. The Ombudsman considered this comment superfluous since how the property was acquired was irrelevant for the purposes of his application and our investigation. Suffice to say that the Complainant's father was indeed the proprietor of the flat in law as proved by title documentation.

CSRO's reply additionally set out that the Complainant's father had re-applied for residency (as a job-seeker) in April 2022. "He had not supplied evidence that he was actively seeking employment or that he could qualify for residence as [either] a pensioner, self-sufficient person, job seeker or family member of an EU national….. As a result, CSRO subsequently decided to exercise their statutory discretion and "issue him with a six month residence permit. The Gibraltar Health Authority ("GHA") would need to assess his continued eligibility or otherwise to medical treatment."

The letter concluded by offering future guidance in that, [he] "may apply to transfer his UK medical rights to Gibraltar if he has ever worked in the UK. We simply do not know whether this is in fact the case."

The Ombudsman appreciated the guidance offered which he then conveyed to the Complainant.

As a final point in their written reply to the Ombudsman, CSRO confirmed that "a residence permit will only be issued [to the Complainant's father] in order to assist him [thereby exercising their discretion] given [they opined] he held no such entitlement."

In reliance of CSRO's letter, the Ombudsman proceeded to advise the Complainant on the way forward for which she was grateful.

Conclusions

In their letter, CSRO admitted that they had not replied to the Complainant in writing but that instead, they attended to her over the telephone. From an Ombudsman perspective and an administrative standpoint, that method of handling the process was entirely unacceptable when the Complainant was setting out her concerns, queries and grievances in writing.

The Complainant was entitled to a written reply which could have been documented by her and referred back to, if and when required. Just as CSRO had eventually written to the Ombudsman setting out the chronology and position with great clarity and detail, they could and should have replied to the Complainant in the same manner yet, the Complainant continued to issue emails which remained unanswered.

Had CSRO set out the position to the Complainant in writing by way of a single detailed letter, the Ombudsman's intervention and complaint handling process that followed could have been entirely avoided. That would have been the desirable and proper course for CSRO to have followed.

Classification

1. Delay in processing ID card - **Sustained.**

2. Non reply to the Complainant's emails by CSRO - **Sustained.**

REPORT ON CASE NO 1288

Complaint against the Court Service ("CS") regarding how the complainant's data (his existing address) had been improperly obtained by the CS, and also had not been properly managed by the CS when compiling the jury list.

Complaint

The Complainant was aggrieved because his existing address had been improperly obtained by the CS and had not been properly managed by the CS when compiling the jury list.

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 summoned to attend court on 6th November 2023, via a Jury Summons issued on the 3rd July 2023. The Jury Summons was sent to the complainant's former address, so he did not receive it. Consequently, a To Show Cause Summons dated 5th March 2024 was issued to the complainant at his correct address. This required him to attend court on the 30th April 2024.

On the 8th March 2024, the complaint's partner, called the CS and spoke to an Administrative Officer ("AO"). The complainant alleges that his partner explained that he had not received the initial jury summons. The AO allegedly informed her that the initial summons had been sent to the complainant's former address, and that the former address was retained on the CS records as his existing address.

The complainant called the CS himself and spoke to an Executive Officer ("EO"), shortly afterwards. The complainant alleges that the EO once again confirmed that the CS records showed the complainant's former address as his existing address. The complainant was concerned that, given that the CS had his former address on record, that the 'To Show Cause Summons' ("TSCS") had been sent to his existing address. The fact that his existing address was known to the CS (when only his former address was on record) was extremely concerning to the complainant, and he felt that no valid explanation had been provided to him by the CS as to how his existing address was known to the CS. As a result, he felt that the CS had improperly obtained his existing address, or at least, had not properly managed his personal data.

Investigation

The Process for Compilation of the Jury List

The Ombudsman and Deputy Ombudsman met with the CEO of the CS and the Supreme Court Registrar on the 20th September 2024. Following this meeting, an email setting out the process for the compilation of the jury list was sent to the Ombudsman by the CEO of the CS on the 8th October 2024, as follows:

"Section 19B(1)(a) of the Supreme Court Act requires the Registrar to make a jury list at the beginning of September in each alternate year. You will see section 19(1)(b) requires its publication in whatever manner directed by the Chief Justice.

The Registrar then relies on the Supreme Court Jury Rules. There is some overlap with the Supreme Court Act, however, rule 4 specifies that the Registrar "shall be entitled to examine and make extracts from all books, documents and records in which the qualifications of persons resident within Gibraltar may be described." It further requires the custodians of such records to render assistance with the Registrar's inquiries.

As explained in our meeting, data is obtained from the Civil Status and Registration Office (CSRO) persons' database and the Gibraltar Parliament Register of Electors. This information is provided directly to a third party contracted by the Registrar who merges the data from both sources, and then eliminates duplicate entries – with the CSRO data always preferred in such an event. Those persons not qualified to serve pursuant to section 19A(1) of the Supreme Court Act are also removed, namely, persons who will not be 18 or have already reached the age of 65 and persons who have not been resident for a period of 5 years.

The draft list is then provided to the Registrar who neither adds nor amends any data contained within it. All the Registrar does at that stage is to eliminate from the draft list persons that require removal due to death (not yet recorded by the CSRO) or that are, to his knowledge, disqualified or ineligible to serve pursuant to section 19A(2) of the Supreme Court Act.

The list is then made available for inspection at the Supreme Court Registry and a sitting of the Magistrates' Court is held where any person can appear and make representations for the removal or addition of any person (see section 19B Supreme Court Act)."

Discrepancy between the address in the jury list and the CS database

The response from the CS was discussed with the complainant and the complainant accepted that the Registrar is entitled to obtain data from other departments to compile the jury list. However, he still felt aggrieved about the order of events he experienced, which he set out in writing:

"I received the letter to show cause on March 8 2024, at my existing address. On the same day, both myself and my partner contacted the courts, and their records still reflected my former address, even though the letter to show cause was correctly sent to my existing address. Since the registrar has the authority to access information from other departments, it's clear that something prompted them to send the letter to my current address, despite it not being in their system. With that in mind, shouldn't the registrar have realised that I hadn't received the original summons? And should they not have updated the court's records accordingly?

The timeline further highlights the oversight in recognising the incorrect address and failing to correct it and failing to realise I did not receive the initial summons."

The Ombudsman considered the complainant's grievance and requested clarification on the alleged discrepancy between the address for the complainant in the jury list and the CS database as per the interactions with both the complainant and his partner on the 8th March 2024. The CS responded by stating that "when the Complainant states that our records showed his previous address when he called our offices on 8 March 2024, this can only be a reference to the original jury summons. There is no such thing as a Court Service database or any other record as he envisages and therefore there can be no discrepancy. All we have is the Jury List which is compiled as we have explained."

At that point, the Ombudsman felt that the crux of the issue was the discussions held on the 8th March 2024 between the complainant, his partner, and the CS staff. Consequently, the Ombudsman requested the CS's position on the telephone conversations that took place on the 8th March 2024, as well as a timeline of the jury list compilation, spanning the period from October 2023 to March 2024, the time period relevant to the complaint.

Telephone Conversations of the 8th March 2024

The CS sent the Ombudsman statements from the AO and the EO. The statements were both dated 11th March 2024 and had been sent via email to the CEO of the CS on the 11th and 12th March 2024 respectively. The most relevant comments made by the staff members, as it appeared to the Ombudsman, are set out below:

"His query was that he had received the original summons at his old address but the TSCS at his new address and didn't understand why. I then explained the process of post office, then hand service and if he did not appear for jury then the TSCS would be sent to him, which is what happened. I checked our lists, files, letters etc and he was correct, the letter was sent to post office and not collected, so it was then hand served by the usher to his letterbox at his former address. Then his TSCS was delivered to his new address. I asked him when had he changed his address to the new one and he said from the day he moved there nearly 3 years ago….I explained to him that his

address must have been changed after the first jury letter was sent and that's why the TSCS now went to his new address."

It appeared to the Ombudsman that a miscommunication had occurred between the complainant and the CS Executive Officer. From the lists, files and letters that the Executive Officer reviewed, the complainant understood that the CS had a set of records separate to the jury lists. However, this assumption was incorrect, as the CS Executive Officer could only check the jury lists and any other files or correspondence, as these are the records retained by the CS. Indeed, it would not have been possible for the CS records to have deviated from the jury list as no separate records are held. The statements from the staff members highlighted how a misunderstanding between all parties was the most likely outcome of the telephone communication between the CS staff, the complainant and his partner.

Timeline of jury list compilation from October 2023 to March 2024

1	**1 October 2021**	Jury List published with effect from **1 October 2021 to 30 September 2023** (Complainant's address is shown as former address).
2	**3 July 2023**	Original Jury Summons issued on **3 July 2023** requiring attendance on 6 November 2023.
3	**1 October 2023**	Current Jury List published with effect from **1 October 2023** to 30 September 2025 (Complainant's address is shown as existing address).
4	**5 March 2024**	To Show Cause Summons issued dated **5 March 2024** requiring the Complainant's attendance on 30 April 2024.
5	**8 March 2024**	On **8 March 2024** Complainant's partner called the Supreme Court Registry and spoke to the AO. A few minutes later, the Complainant called and spoke to the EO.
6	**8 April 2024**	On **8 April 2024** the 'To Show Cause Summons' was rescinded by the Judge. Complainant was informed by the Registrar via email on 8 April 2024 that he did not have to attend Court on 30 April 2024.

On considering the timeline, it became clear that there was a discrepancy in dates – the complainant affirmed that he had updated his ID card (and therefore his address on the CSRO database) on the 21st May 2021 to his existing address. However, the jury list published with effect from 1st October 2021 reflected his former address.

Enquiries with CSRO

The CS was unable to provide any clarification on this as data obtained from CSRO and the Register of Electors is passed onto a third party who merges the data from both sources and then eliminates duplicate entries, with the CSRO data always preferred in such an event. Clearly, the CS obtain the data after the merge takes place, so the CS was not able to comment on the accuracy of the information provided to them to compile the jury list.

To this end, the Ombudsman made enquiries of the CSRO, and the Head of Department provided the following information:

"• Complainant held an active ID card with his former address issued on 24/07/2020 and expiring on 17/07/2030.

• On 25/03/2021, he applied for a change of address to another temporary address.

• On 20/05/2021, he applied for another change of particulars to his existing address. This card maintains the expiry date of 17/07/2030."

He also confirmed that "the Complainant's address on file with the CSRO is his existing address as of 20th May 2021."

The information from the CSRO enabled the Ombudsman to update the timeline of the jury list compilation as follows:

1. 24th July 2020	Complainant's address registered at his former address.
2. 25th March 2021	Complainant's address registered at his temporary address.
3. 20th May 2021	Complainant's address registered at his existing address.
4. 1st October 2021	Jury List published with effect from 1 October 2021 to 30 September 2023 (Complainant's address shown as former address).
5. 3rd July 2023	Original Jury Summons issued on 3 July 2023 requiring attendance on 6 November 2023.
6. 1st October 2023	Current Jury List published with effect from 1 October 2023 to 30 September 2025 (Complainant's address shown as existing address).
7. 5th March 2024	To Show Cause Summons issued dated 5 March 2024 requiring the Complainant's attendance on 30 April 2024.
8. 8th March 2024	On 8 March 2024 Complainant's partner called the Supreme Court Registry and spoke to AO in CS. A few minutes later, Complainant called and spoke to the EO in CS.
9. 8th April 2024	On 8 April 2024 the 'To Show Cause Summons' was rescinded by the Judge. Complainant was informed by the Registrar via email on 8 April 2024 that he did not have to attend Court on 30 April 2024.

The Ombudsman recognised that this aspect of the investigation was no longer an administrative matter and was within the remit of a judicial process. As per s19(B) (1)(A) of the Supreme Court Act 1960 it is the duty of the Supreme Court Registrar (as a judicial officer) to compile the jury list- " The Registrar must – before the first Sunday in September in each alternate year make a list in the prescribed form of all persons qualified and liable to serve as jurors". Consequently, the Ombudsman informed the Supreme Court Registrar of the discrepancy in the complainant's address between the CSRO data and the 2021 jury list via email on the 12th December 2024. The Supreme Court Registrar responded to the Ombudsman on that same day, noting the discrepancy in addresses and stating that he was "extremely grateful" to have had this matter brought to his attention.

Conclusions

As per the Supreme Court Act 1960 and the Supreme Court Jury Rules the Registrar of the Supreme Court is empowered to collect data to enable him to compile a jury list, so the Court Service was acting within the remit of the law in accepting the merged data from CSRO and the Register of Electors. This data included the complainant's former address (for the 2021 -2023 jury list) and the complainant's existing address (for the 2023-2025 jury list).

The telephone conversations held on the 8th March 2024 resulted in a misunderstanding between the complainant and the CS – the CS staff would not have been able to refer to a CS database because no such system exists. The CS staff would only have been able to make reference to the jury lists, as this was the only information available to them. Therefore, it is not possible for there to have been a discrepancy between the complainant's address on the CS database and his address on the jury list, so the Ombudsman was not able to make a finding of maladministration in this instance.

The complainant's registered address (as per the CSRO register) as of the 20th May 2021 was his existing address. This address was not reflected in the 2021-2023 jury list (published with effect from 1st October 2021), which registered the complainant's former address. The Ombudsman was concerned by this, but this matter was not within her remit as the compilation of the jury list is not an administrative process, but a judicial process. However, the Ombudsman was reassured by the fact that the Supreme Court Registrar had noted, and was grateful to be notified of the mismatch in the CSRO dataset and the 2021 Jury List. The Ombudsman observed that this investigation lay in a grey area between administrative and judicial processes and that it had required considerable dialogue between the Ombudsman, the CEO of the CS, and the Supreme Court Registrar, who had endeavoured to communicate openly and effectively on this matter.

Classification

Complaint (1) – the CS had improperly obtained the complainant's existing address – **Not sustained**

Complaint (2) - the complainant's data (his address) had not been properly managed by the CS when compiling the jury list – **Not sustained**

REPORT ON CASE NO 1268

Complaint against the Department of Education ("DOE") in relation to their alleged approval of a higher education course which the Complainant underwent and which he opined was not fit for purpose.

Complaint

The Complainant was aggrieved because he stated (summary) that the DOE:

1. Mistakenly approved a course that was not suitable to take up a teaching post in Gibraltar.

2. As a result, the Complainant alleged to have endured two years of educational delays, stress and a detrimental effect on his health.

3. The Complainant felt that in addition, he should not be made to suffer the financial repercussions of the DOE's error in having approved the course without having advised the Complainant of the practical consequences which would follow (namely, that successful completion of the course would not qualify the Complainant to teach in Gibraltar).

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 alleged that after completing his degree and PGCE in 2020 it was only on applying for a teaching post in Gibraltar that he was informed that the PGCE that he had undertaken, which had been approved and paid for by the Gibraltar Government, did not have QTS status and because of this he could not practise teaching in Gibraltar.

The Complainant explained that the DOE confirmed that they had approved his PGCE course by mistake and as a result of this he had to re-do his PGCE.

The discretionary grant application for his second PGCE was initially unsuccessful and as a result of pressure from his university to make payment and all the pressure he had from the change in circumstances, he decided to defer his second PGCE placement. This meant that he was still two years away of becoming a qualified teacher.

On 15th September, 5 days after he deferred, he received notice from the Education Department that his appeal had been successful. The decision was too late. He was nevertheless informed that his grant would be honoured and deferred to 2021/22 academic year.

The Complainant started his 2021/22 PGCE in August 2021 but on 1st October 2021 he was informed that funds for his course could not be released to him because he did not complete his original PGCE; (indeed, he had not completed the course modules) This meant that all of a sudden he had to fund his own studies. This the Complainant found very stressful. He explained to the DOE that it was as a result of Covid that he was only able to complete 50 hours instead of 100 hours of practical assessment for his PGCE and asked that in light of this and the DOE's mistake, if this could be overlooked and the grant paid to him. This was denied.

The Complainant feels that he has suffered a lot of stress and anxiety over the past two years as a result of the DOE's mistake in ill-advising him. He suffered further stress when his second PGCE grant was refused initially and he lost his placement, then, on appeal it was awarded it to him, only to then be told, months later, that he was not entitled to it. He is of the opinion that, in light of the circumstances surrounding why he had to re-do his PGCE, the DOE should have been more understanding and paid for the second PGCE grant.

Investigation

The Ombudsman wrote to the head of the DOE ("the Head") on the 20th May 2022 setting out the complaint as outlined above.

After a holding reply and a number of telephone conversations between the Ombudsman and the Head, full and substantive answers to the complaint were made available on 1 August 2022 for which the Ombudsman was grateful.

The Head expressed how very sorry she had been to hear about the Complainant's situation - it was one she stated she was very familiar with as she had given him and his mother quite a bit of her time, care and advice when they reached out to her last year.

The Head explained how she met with them both and that she had also engaged in an exchange of written communication. She went on to state that she had done her best to explain why the outcome of the Complainant's case had been such.

"1. DOE allegedly approved a PGCE course (2019/20) which was not fit for purpose for Gibraltar (no QTS). This meant that the Complainant allegedly 'wasted' a year of his studies".

The Complainant explained that after completing his degree and PGCE in 2020 it was only on applying for a teaching post in Gibraltar that he was informed that the PGCE that he had undertaken, which had been approved and paid for by the Gibraltar Government, did not have QTS status and because of this, he could not practise teaching in Gibraltar.

The Head clarified how it is not incumbent on the DOE to determine the suitability (or otherwise) of courses for particular individuals. They do not ask where an individual intends to reside upon completion of a course neither does the DOE request information on the career aspirations an individual has at the point of their application for His Majesty's Government of Gibraltar's ("HMGOG") scholarship funding.

The Head explained that *"a commitment to funding higher education is distinct from the commitment to employment. As a Department of Education we have made this clear to individuals on several occasions."*

…."It would be up to the individual, when researching higher education courses, to consider the entry qualifications required for whichever career pathways they are thinking about pursuing. This responsibility lies with the individual. It is up to them to select the course which gives them the best springboard to their chosen career. It would be impossible for the scholarship team to provide current and accurate career advice for all pathways and be able to match this with all available courses in all universities (both in UK and abroad as HMGOG funded students apply to courses across the world)".

The Head also explained how the DOE understood that the exact nature of some qualifications changed according to the electives selected and the attainment achieved by the individual through assessment. *"This is certainly the case with some teaching qualifications, with individuals being able to change / amend the precise nature of the title of their course / end qualification according to the modules completed and their performance within these. It is up to the individual completing a course to ensure that it will provide them with the end outcome that they require for the career pathway they aspire to".* The Ombudsman's attention was also drawn to the fact that students also have to ensure that they meet their contractual obligations (as stipulated in the HMGOG contract for scholarship funding). It is a requirement for payment of courses that those that have been previously approved are completed in their entirety.

The Head stated that she did not believe that it was correct to state that the PGCE course the Complainant had undertaken was not fit for purpose. Successful completion of the course would have provided him with a qualification and would have rendered him eligible for teaching jobs within the private sector (Loreto, Prior Park or the Hebrew School) and placed him in a good position to pursue any other private tutor roles he wished to pursue. She also explained that there existed numerous institutions in the UK and internationally who employed individuals upon successful completion of the PGCE undertaken by the Complainant. The Scholarship Team, at

the point of processing the Complainant's original scholarship application for his first PGCE, would not have known that his intention was to return to Gibraltar and teach within HMGOG (state) schools.

The Ombudsman could only agree with what he considered to be a most reasonable view.

"The essential criteria for entry into HMGOG's Department of Education, as a teacher, is clearly outlined in all teacher recruitment adverts which are published externally year upon year. This criteria is well documented and can easily be requested from the Human Resources Department who manage the recruitment process on behalf of HMGOG."

The Head concluded her comments on the first limb of the complaint by stating that a (named education adviser) on the Scholarship Team would have been available to advise had he been approached for guidance. However, the DOE's understanding was that there was no engagement between the Complainant and the adviser until after "completion" of his first PGCE.

"2. Application for discretionary grant to re-do another PGCE was unsuccessful initially, adding to his stress and as a result he had to defer, missing out on another year of studies".

The Head explained that funding was discretionary and not mandatory in nature. The title, process and communications make it clear to prospective students that funding is not guaranteed.

"We are sorry that there is not always enough HMGOG funding to stretch to all individuals who apply for discretionary funding and that the outcomes of some applications are negative. In cases where the demand for funding is high, only the individuals ranked above the funding cut-off point, upon consideration by the Scholarship Committee (a gazetted group of individuals including individuals external to the Department of Education), will be found to have been successful for funding that year.

Individuals can always re-apply for funding in the next academic cycle although we recognise that this will delay individuals' plans by a further year and there is no guarantee that they will be successful in future applications.

There is also recourse to appeal the outcome of the application. [The Complainant] appealed the initial negative outcome. I understand that he was waiting for the outcome of his appeal when he made the decision to defer because of the time frame the institution he had applied for gave him. I understand that he felt it was best to wait for the outcome of his appeal before committing to undertake the course. This was very much his prerogative."

It was explained how clarification was invariably offered to potential students that not all applications will be successful and that individuals are encouraged to have back up or alternative payment plans that they can put into effect, if the outcome to their application is negative.

"3. The Complainant commenced his academic year 2021/22 only to be told two months into it that his grant would not be paid because he did not complete his PGCE 2019/20, even though it had been approved previously and he was guaranteed that it would honoured for 2021/22".

The Head set out that she understood the Complainant had been successful in his application for discretionary funding in the 2021 scholarship cycle. The funding would have been honoured over the course of the 2021/2022 year had he not been a debtor of government funds (as is the general rule relating to educational funding/grants). As the Complainant never completed the first PGCE successfully, the funding for the second PGCE was not released when the Scholarship Team proceeded to issue the new scholarship.

The process was explained to the Ombudsman…."*Checks are taken to ensure previously funded courses have been completed, and this consists of a cross reference check with certificates of the qualifications attained. When this isn't forthcoming the team liaises with the previously funded individual to determine what has happened".*

Only upon ensuring successful completion of previous courses can, further approved funding be released. It was stated in no uncertain terms that if a previous course has not been successfully completed, the individual is not released from their contractual obligations and is required to reimburse government funds [as was the case here]

This appeared to be reasonable, just and fair to the Ombudsman. Said checks are important to "*ensure conscientious management of the public purse*"… and to ensure that funds are distributed responsibly and fairly amongst approved recipients. They are undertaken every year, for every course that funding has been provided for and they are also carried out between each year of study, "*to ensure prudent expenditure of government funds and also to protect individuals and ensure they do not accrue larger amounts of debt which they will inevitably find harder to reimburse*".

As the Complainant had not fulfilled his contractual obligations for the previously funded PGCE course, further funding was not released.

"4. Complainant argues that the second PGCE grant should be paid irrespective of whether he completed the 2019/20 PGCE or not as this second PGCE had to be done on account of the DOE, allegedly, ill-advising him at the time".

The Head repeated that had the Complainant completed his first PGCE successfully, he would have been funded for the second course.

It was only as a result of him not having met the contractual obligations that he found himself with a lack of funding for the second PGCE.

In reply to the stress suffered by the Complainant (which is not denied by any party), the DOE made it clear how they have supported other individuals who like the Complainant also completed a PGCE course that did not render them eligible to work in a HMGOG school and that they understood the challenges they have faced and have always been ready to support them. The DOE reiterated that the decision to fund the Complainant's second PGCE was evidence of this support but that despite that, they could not, unfortunately render him absolved from his previous contractual obligations.

The Complainant also argued that COVID had also proved to be a major hurdle and that because of it, he had only managed to complete part of his course. He stated that that should have been taken into account by the DOE before denying his second grant.

The DOE's reply was that all individuals who completed their studies during this academic year unfortunately experienced similar Covid interruptions. All universities provided mechanisms for courses to be completed. It was a matter of the Complainant ensuring completion of his course and successful completion of his contractual obligations. This responsibility lay with the Complainant alone.

The DOE's position was that higher education providers were well aware of the impact of the pandemic on the completion of qualifications and provided very flexible and favourable pathways for students to complete their courses. The DOE did not accept the Complainants assertion that he was only allowed to complete 50 hours (half) of his total practical assessment. They shared the view that "it is widely suggested that in real terms, completing a qualification during the covid pandemic was likely an easier accomplishment than in non-pandemic times. Such was the extent of adjustments and tolerance windows [provided]."

Conclusions

The Ombudsman was empathetic and fully sympathised with the Complainant's position. He understood the undeniably difficult period he must have faced in relation to his studies.

Despite this, the Ombudsman could only support and agree with the explanations provided by the DOE (given their full and frank disclosure not only in regard to the Complainant's case but also in relation to the workings of the entire system of discretionary awards). The Head had explained all processes clearly and expressed her views fully and fairly.

The fact that awards were not mandatory and that no further fees assistance could be provided to those applicants' who were existing HMGOG debtors is also an important condition which cannot **(and should not)** be overlooked or ignored.

In addition, there was no doubt in the Ombudsman's mind that all attempts had been made to assist and support the Complainant. The DOE had met with him and his mother and had fully explained all the circumstances of his case and stated that they would continue to provide guidance if and when required. The hard fact remained that had the Complainant successfully completed his first PGCE course, he would not find himself in the current predicament. Whilst it would have still been most unfortunate to be required to complete a second teaching qualification, he would not have had to self -fund had he had chosen to do so.

Given all the circumstances, the Ombudsman had no alternative but to dismiss the Complainant's complaints in their entirety.

Classification

Not Sustained

General Observation

The Ombudsman considered that Gibraltarian students were in a hugely privileged position compared to their UK counterparts. The fact that upon successful completion of an academic course, a local student is entitled to submit a further application for discretionary funding for an additional course/s at no personal expense whatsoever, is a very favourable position to find oneself in.

REPORT ON CASE NO 1282

Complaint against the Department of Education ("DOE") in relation to the allegation that the Complainant was never informed that if her daughter moved away from Gibraltar she would no longer be entitled to a previously approved University grant.

Complaint

The Complainant was aggrieved because *(summary)* she alleged that the DOE had (1) unfairly and improperly withheld her daughter's final year university tuition fees together with the maintenance grant for the last two years of her course. *(Payments ceased when the Complainant and her daughter relocated to the UK in 2019. The allegation is that the Complainant was never informed of the obligatory residency criteria and of the consequences on her daughter's educational funding, in moving away from Gibraltar).* (2) In addition, the possibility that the Complainant could have lodged her grievance with the Ombudsman was not disclosed to her, contrary to the DOE's complaints procedure.

Background

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

The Complainant complained in respect of her daughter's unpaid university maintenance grant for the years 2019-2020 and 2021-2022 as well as tuition fees for the final academic year 2021-2022. The course was a four year course undertaken at Liverpool Hope University, which commenced in September 2018 and which her daughter successfully completed in 2022.

The Complainant explained that the grant was stopped when mother and daughter relocated to the UK in 2019. It was only upon making subsequent enquiries that her daughter was informed that she was no longer entitled to a grant as she was not "*ordinarily resident in Gibraltar*". Her sponsorship therefore ceased with immediate effect as "*residency*" in Gibraltar is a core criterion to benefit from said entitlement.

The Complainant stated that the fact that she and her family were not made aware of the criteria to be eligible for the continuation of the Gibraltar grant meant that they suffered financial hardship when the Complainant relocated to the UK and her daughter started her second year of university. She feels that she should have been properly informed in writing/contractually.

The Complainant further alleges that legislation at the time did not reflect the "continuous residency" criterion and that it was therefore wrong of the DOE to withhold the grant. The Ombudsman took note of the Education Awards Regulations 1990 Section 3 (c) which states that *"the student be ordinarily resident in Gibraltar during the entire period of the award."* The Complainant complains that none of this was reflected or contained in the initial grant contract or any of the grant material at the time. The Complainant further complains that the Regulations in question were amended in July 2020 and is of the opinion that the wording she was subsequently presented with, may not have been an accurate reflection of the law at the time the grant contract was executed on the 16th August 2018.

A further associated complaint relates to the DOE's non-payment of tuition fees to the University, despite assurances that these would be settled.

Given the the DOE's stance on the matter and that as a result of the residency criteria not being met funding was discontinued, the Complainant, dissatisfied with the state of affairs, lodged her complaint with the office of the Ombudsman for investigation.

Investigation

The Ombudsman wrote to the head of the DOE ("the Head") on the 4th March 2024, setting out the main complaint in full (the cessation of payment of maintenance grant and tuition fees).

As an aside, the DOE was reminded of their internal complaints procedure which states that *"…if after the complaints process you are still unsatisfied by the result of the investigation, you can request a review of your case or take the matter up with the Ombudsman."*

The Ombudsman asked the DOE Director ("the Director") for her comments on the following issues appertaining to this complaint:

1. The alleged lack of information in respect of residency criteria at the start of the sponsorship arrangements.

2. The issue of the outstanding tuition fees for the final year of study.

3. The alleged change in legislation wording in 2020.

4. The DOE's alleged lack of signposting to the Office of the Ombudsman.

A substantive reply was received some weeks later. Based upon that reply, her review of all correspondence between the parties and independent research conducted, the Ombudsman was in a position to state and determine that:

The Complainant's daughter was awarded a scholarship under the Gibraltar Scholarship Award Scheme on the 16th August 2018 for a four year course "BSC in Computer Science with a year in Industry". The course was due to be completed in June 2022.

According to an email dated the 29th July 2019 from the Complainant to the DOE, the Complainant's daughter's father had worked continuously in Gibraltar since 2004 but the Complainant and her daughter had moved out of Gibraltar in 2018.

In that email, the Complainant also stated that before her daughter left the UK to fly back to Gibraltar (to fill in her "*Application for Continuation of Present Award*" after her first year of study) ("the Continuation Form"), the Complainant had called the DOE to ask what documentation needed to be provided by her daughter when she submitted the Continuation Form. The supporting letter accompanying the form which the Complainant's daughter was handed at the DOE subsequent to that telephone call, stated that a recent utility bill also had to be submitted. She was not able to provide this since according to the Complainant, no information had been given over the telephone of that requirement.

In her email, the Complainant also stated that it appeared to her that the criteria had changed, since at the time the award was initially approved, the Residency condition in place was that *of "a minimum period of five years prior to the commencement of the course". The Complainant's daughter had attended school in Gibraltar for fourteen years so that criteria was amply satisfied. The Complainant stated that "….had these new rules been in place when her daughter applied for her university course, we would have made different choices of where we lived."*

It was the Complainants contention that the rules and regulations had changed and that it was unfair that new rules should be imposed on students who had already received mandatory award approval.

In 2018/2019, funding was received as follows: tuition fees in full; travel allowance in full and a maximum assistive/maintenance grant, (even though, as stated by the DOE, the family relocated in 2018 and was therefore not eligible for 2019 payments).

On the 7th October 2019 in reply to the Complainants email, the then education adviser ("EA") stated that "*… as per our Education Act, a Gibraltar Scholarship Award is awarded to students who are ordinarily resident in Gibraltar. Students who are not residents in Gibraltar are not eligible for an award….our current policy generously allows us to continue to subsidise the students [sic] tuition for the duration of their current program of study but does not extend to a maintenance grant*"

Two days later, in an email exchange, the EA informed the Complainant that *"at the end of every academic year students need to submit a continuation form to ensure they continue to meet the requirements of a scholarship award. The moment that an individual ceases to be resident in Gibraltar they cease to be eligible for a Scholarship award… Despite the fact that students are not eligible for a scholarship award we generously continue to fund tuition fees until they complete their current programme as a way of support"*.

In her substantive reply to the Ombudsman to which we have referred, the Director highlighted that at no point had the EA (who had since left service) stated that *"the policy was to continue to fund tuition fees until the **degree** was completed, but "until they [students] complete their **current** programme"*. This refers to the **current academic year** or to the present modules that the student's current contractual details pertain to. [Given that there is an obligation to complete and submit the Continuation Form by students at the end of each academic year, the Ombudsman was satisfied with the explanation provided by the Director on this specific issue].

The Director also explained that in accordance with the policy outlined, all of the Complainant's daughter's tuition fees were paid up to and including the academic year 2019/2020 (the current program) whilst no maintenance/assistive grant was paid for that same academic year (since the residency criterion was not met). The Director also brought the Ombudsman's attention to the fact that in the Continuation Form submitted by the Complainant's daughter dated 24th July 2019, (which the Ombudsman has reviewed), the property known as "X" is provided as the Complainant's daughter address. *"Since the family relocated in 2018, those details appear to be incorrect"*.

In reliance of the information provided on the Continuation Form, the DOE paid the full tuition fees for the academic year 2019/2020 when the Complainant's daughter was not a Gibraltar resident at the time. It is the DOE's contention that since the residency criterion was not met for that period, funding should not have continued in July 2019 and that the Complainant's daughter received tuition fees for 2019/2020 when she was not eligible to receive that funding. The Director stated that *"Scholarship applicants are, to the best of their knowledge and belief, required to provide true and accurate information. It is a criminal offence to provide information that is false…."*

On the 21st April 2020, Chief Minister Fabian Picardo KC MP wrote to Mark Fletcher MP, in answer to an email received from him (after the Complainant had made representations to Mr Fletcher as her local MP). Mr Fletcher requested that the Complainant's issue be reviewed and favourably considered. Mr Picardo replied *"[The Complainant] will understand that it is impossible for Gibraltar to fund scholarships of those not resident"*. Furthermore, the Chief Minister stated that there was no discretion to continue to fund tuition fees nor was there ever any agreement with the DOE for them to do so [in the absence of eligibility]. In addition, *"there is also no discernible ethical duty that may have been breached despite the contrary assertion by [the Complainant]."*

On the 29th of September 2020, Dame Angela Eagle MP for Wallasey also wrote to the then Minister for Education for Gibraltar ("the Minister"), setting the background to the Complainants cause for complaint and requesting the possibility of *"exploring any room for discretion or any other form of support, to allow [the Complainant's] children (plural) to continue their education."* The Minister replied shortly thereafter stating that Dame Eagle MP would have seen the Chief Ministers letter of 21st April to Mark Fletcher MP. He also out the criterion contained at Section 3(c) of the Educational Awards Regulations 1990… that students must be *"ordinarily resident in Gibraltar during the entire period of the award."* Consequently, the Minister communicated that he was not able to assist in the matter.

Dame Eagle MP then addressed correspondence to the Chief Minister directly, explaining that funding for the Complainant's "eldest" had been withdrawn. She requested a meeting *"to discuss any room for discretion or any other form of support, to allow [the Complainant's] children (plural) to continue their education."*

Neither the Director nor the Ombudsman saw a copy of the Chief Ministers letter to Dame Eagle MP.

From having reviewed Dame Eagle's letters however and her reference to the Complainant's *"children",* it was unclear to the Ombudsman whether once the Complainant's daughter had finished her course it was the Complainant's intention to also apply for higher education funding from H.M. Government of Gibraltar for her youngest child? It may well be that was not the case and that Dame Eagle's letter was misconstrued.

A central part of the Complainant's contention is based upon her assertion that the Gibraltar Government Scholarship Awards 2019 contract does not make any reference to continuous residency as a core criteria for entitlement. In reply to this, the DOE stated that this eligibility criterion was clearly set out during the *"presentation on Scholarships delivered by the Department of Education and in all the written information given to the students by both the Department of Education and the school."*

From the documentation that the Ombudsman has reviewed, the criteria for a Mandatory Award at the time of the Complainant's daughter's application for her first year of study was *"students who are ordinarily resident in Gibraltar for five years [prior to the award being granted] and [who] take up the scholarship to undertake an undergraduate program within 2 years of completing the A2 examinations."*

The residency criterion for awards, as contained statutorily in The Education Awards Regulations 1990, states at section 3(c)…. that *"the student be ordinarily resident in Gibraltar* ***during the entire period of the award.***" The Ombudsman notes the implementation of amendments into the Regulations by way of update on 23rd July 2020, as contained in the second supplement to the Gibraltar Gazette No 4743 dated

Thursday 23rd July 2020 which gives notice of "Education and Training Act Educational Awards (Amendment) Regulations 2020."

The Ombudsman has seen no pre-existing section set out in law prior to 23rd July 2020 expressly stating that residency during the entire period of the award was a pre-requisite for the grant of a mandatory award. A statutory omission however does mean that the Complainant's daughter's entitlement was continuous, irrespective of her non-residency, if there was a specific policy in place which was being applied.

For our current purposes, Regulations 7(a) and 10(1) were also substituted with clauses 7(a) and 10(1)(a) namely…. *"has been ordinarily resident in Gibraltar for a continuous period of five years at the time that the application for the award is made."*

At section 20, a new clause (c) was also inserted, adding to the "Termination of Award" subheading and citing that *"if the applicant ceases to be ordinarily resident in Gibraltar at any time during the period of the award, the award shall be terminated forthwith."* This clause only has the effect of reiterating the content of 3(c).

Conclusions

The position in relation to being ordinarily resident for a period of five years at the time the application is made, is the criterion the Complainant's daughter satisfied at the time she applied for the award in 2018. She had been resident in Gibraltar for numerous years (fourteen- having carried out her primary and secondary schooling here.)

The Complainant's complaint in essence, arises from the insertion in law of the "Termination" subsection, added by the Education and Training Act Educational Awards (Amendment) Regulations 2020, which as previously set out, states that if an applicant **ceases to be ordinarily resident in Gibraltar at any period of the award, it shall be terminated forthwith**. From previous Ombudsman investigations and from conversations and correspondence with the Director in this case, that position has always existed as a matter of Government policy. The continuation of payment of bursaries has always been applied on the basis of residency (hence the existence of the Continuation Form). It was in 2020 that the Government considered it appropriate to reflect that long standing policy into statue. The fact that the policy was not expressly stated in law prior to July 2020 does not invalidate it prior to its enactment.
To the Ombudsman's mind, it cannot reasonably be argued that students who at any time prior to the 23rd July 2020 amendments qualified for a mandatory grant but whom, as a result of subsequent relocation lost their eligibility to receive future payments, have been treated unfairly, unjustly or discriminatorily.

Applying the objective test of reasonableness- no reasonable person could expect any Government to continue to fund a particular students' higher education qualifications after that student and their family had taken residence in another country. Indeed, there are numerous global jurisdictions where higher education is fully funded by the student despite being resident in that nation. In the case of Gibraltar,

just as when a citizen relocates they lose eligibility rights over Government owned or subsidised housing, GHA health entitlement and receipt of community care payments, the same applies to educational awards. In the Ombudsman's mind, there exists no administrative wrongdoing or inequity, in the status quo.

The Ombudsman does feel for the Complainant's daughter in that although having successfully completed her studies, she is now faced with mounting debt as a result of the family relocation to the UK (in which potentially, she had no say). Had she continued to reside in Gibraltar for the duration of her course- her studies would have been funded all the way to their conclusion. With respect, the Ombudsman also opined that despite the allegation that no information was ever provided on the effects of relocation on funding, (which is denied by the DOE), that it was incumbent upon her and/or the responsible parent to have made enquiries and confirmed the position. The decision to relocate or otherwise, would then have been made in possession of all the facts.

In consequence, the Ombudsman could only agree with the view set out by the Chief Minister in his correspondence to Mark Fletcher MP, that "no ethical duty had been breached." It would be a disproportionate proposition for Gibraltar taxpayers to be expected to fund the higher education of students who once lived in Gibraltar but whom have since relocated, with no intention of returning and contributing to the local economy.

On the issue of the DOE failing to inform the Complainant that she had recourse over her grievance with the Office of the Ombudsman, the DOE did state that she "may not have been informed of the role of the Public Services Ombudsman." On that basis and given the allegation by the Complainant that she was indeed never informed, we can only assume that the DOE did not properly follow its internal complaints procedure in this instance.

Classification

1. The alleged lack of information in respect of residency criteria at the start of sponsorship arrangements - **Not Sustained**

(The DOE delivered presentations and written information on the criteria required for sponsorship eligibility). They may not have advised specifically on what the position would have been if during the duration of a degree the student and their family were to relocate away from Gibraltar. One would suggest however that it would be incumbent upon the individual concerned to make specific representations and lodge queries in that regard, as opposed to assuming that funding would continue "as of right".

2. The issue of the outstanding tuition fees for the final year of study- **Not Sustained.** (The Complainant's daughter, regrettably, lost her entitlement to tuition fees payment by the DOE, in pursuance of law and policy). Strictly speaking, tuition fees were paid in full for the academic year 2019/2020 when in fact the Complainant's daughter did not meet the residency criteria at the time of the application for the continuation of funding in July 2019.

3. The alleged change in legislation wording in 2020 - **Sustained** (it is no secret that amendments were made to the Education and training Awards Regulations 1990 on the 23rd July 2020, as contained online (https://www.gibraltarlaws.gov.gi). However as previously stated in the body of this report, in effect, the Complainant's daughter's eligibility did not cease as a result of the amendments that were enacted. Common practice and policy dictate that once residence is taken up in another jurisdiction, the continuation of funding for education ceases with immediate effect.

4. The alleged lack of signposting by the DOE to the Office of the Ombudsman - **Sustained**

Observations

The Ombudsman would welcome the position where the DOE enjoys an element of discretion to continue to pay tuition fees/ university maintenance grants in exceptional cases, where the relationship between the student and his or her parents has broken down and as a result of relocation or abandonment, the student no longer meets the residency criterion and is left in a vulnerable state through no fault of their own. The student would of course have to satisfy the highest standard of proof for the discretion to be favourably exercised.

REPORT ON CASE 1250

The Complainants were aggrieved as the Gibraltar Health Authority (GHA) had not provided replies to the following complaints regarding the Patient's care.

Complaint

The Complainants were aggrieved as the GHA had not provided replies to the following complaints regarding the Patient's care;

1. Alleged poor management of diabetic condition, which led to several instances of crises.

2. The Patient was seldom-fed the right diet for her condition.

3. Alleged total lack of psychological support while admitted in St Bernard's Hospital prior to her transfer to residential care.

4. The Patient's walking stick was confiscated during an episode of crisis and a Zimmer-frame not provided. The Patient went to the bathroom without supervision, slipped and fractured her knee.

Background

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

In June 2021, the Complainants approached the Gibraltar Public Services Ombudsman for assistance in obtaining answers from the GHA in relation to the Patient who had passed away in Ocean Views Mental Health Facility on the 1st March 2020. The family had first submitted their complaints to the GHA in October 2020 and although they had chased the matter several times, the GHA continued to issue holding replies for a period of eight months stating that the complaints department was understaffed, hence delays in responding to complaints.

For further context and background, the Complainants explained that on the 2nd July 2019, the Patient, 71-years-old at the time, had been admitted to the ICU at St Bernard's Hospital where she had required intubation as a result of Aspiration Pneumonia. On the 1st August, following considerable recovery, the Patient was moved to John Ward within St Bernard's Hospital. The Complainants stated that by that stage, the Patient who had already had her mental health medications stopped upon admission to hospital, was beginning to display signs of increased anxiety and depression. She had a long history of mental illness and had been under the care of

the Community Mental Health Team, with recurrent stays at the former KGV Psychiatric Hospital and Ocean Views Mental Health Facility ("Ocean Views").

According to the Complainants, when the Patient was deemed fit for discharge from St Bernard's Hospital, she was assessed by a social worker as having capacity to make her own decisions and she was asked whether she wished to return home (with one of the Complainants where she had always lived). She chose not to. The Complainants told the Ombudsman that at that time, it was agreed by the family that her care needs had become such that it would have been impossible for the Patient to be looked after at home and as a result they briefly discussed residential care expressing a preference for the John Mackintosh Wing, situated near where she lived. This would have allowed her to go home during the day if she wished, or to go into town with her private carer as she used to do before her illness.

However, on the 4th September 2019, to the family's dismay, the Patient was suddenly and without notice, moved to Mount Alvernia Residential Home. According to the Complainants, this sudden and unexpected move, marked the start of a real deterioration in the Patient's mental health, rendering her very aggressive and physically violent towards staff, other patients and even relatives.

The Complainants highlighted that despite their repeated requests for a psychiatric review throughout her hospitalisation, it was only on the 16th September, two and a half months later, further to becoming increasingly agitated and refusing to eat, that a psychological review was carried out by Doctor 1. He informed the family that the Patient showed no evidence of mental illness and was of the opinion that the Patient was just angry to be in Mount Alvernia. This, they stated was a great surprise to the family since the aggressive, uncontrolled behaviour that the Patient was exhibiting at the time was what had caused her to be prescribed strong medication for decades.

At this point, the Patient herself was requesting to move to Ocean Views, and according to the Complainants, they were repeatedly told that there were no beds. However, later that week and as a result of a meeting with the Minister for Health, a bed became available and the Patient was moved to Ocean Views.

According to the Complainants, during her admission at Ocean Views, the Patient went through stages of "real agitation but [Doctor 2] insisted that there was nothing wrong with her mentally and that the real issue was her physical health". At this point, the Patient's private carer was asked to leave given that the Patient was now also being aggressive towards her, and according to the family, the nurses did not seem happy about her being there. However, the Complainants informed the Ombudsman that despite having lost the support of her private carer, "unfortunately, this did not mean that the nurses were more attentive towards her". The Patient had her walking stick removed because she was trying to hit out with it and she was not provided with a Zimmer Frame despite being at risk of falls and a history of hip, ankle and knee surgeries. The Complainants stated "On one occasion, she went off to the bathroom

in a fit of agitation and no staff bothered to go with her. She threw water over herself- to calm herself down- she later told us, slipped and broke her femur".

Following the fall on the 10th October 2019 where she fractured her leg, the Complainants described how the Patient had to wait in the Accident & Emergency Department ("A&E") at St Bernard's Hospital for hours before having an x-ray. The Complainants were disappointed in that no consideration was given to the fact that not only was the Patient in pain, but she was also in a state of great agitation. The Complainants described how she eventually had to go into surgery and remain at the surgical ward in St Bernard's Hospital where she was incredibly aggressive to staff and family. During her stay, the family requested a visit from the Mental Health Liaison team and even though the Charge Nurse was also asking for them to visit the Patient given that they did not know how to handle her outbursts, they initially refused, and eventually attended to her after much insistence from the Charge Nurse.

Aside from the above, during her stay at Ocean Views, the Patient had to transfer to A&E due to low blood sugar on the 2nd October, 19th October and 3rd November, despite the family repeatedly warning staff that the Patient's blood sugar was out of control.

Furthermore, during the week of the 28th October, the Complainants stated that "after having been told categorically that there was nothing wrong with [the Patient] mentally, we were called to say she was being sectioned because of refusal to take medication. She was refusing to see relatives as well. On Sunday 3rd November, she had agreed to see us, and we were with her as she rapidly became unwell with breathing difficulties. She recognised the signs of a hypo but despite us telling staff it took a long while to test her blood sugar which was as expected extremely low. An ambulance was called and she was transferred to St Bernard's where she was admitted to John Ward. Upon collection of her nightwear from Ocean Views we were told she had been discharged - despite having been sectioned less than a week earlier, and with no explanation".

The Patient remained in John Ward at St Bernard's until the 21st November when she was moved to Victoria Ward. The Complainants assured the Ombudsman that the Patients' pattern of low blood sugar in the early hours of the morning continued, something which the family repeatedly "flagged to doctors and nurses over and over". The Complainants also recounted an episode on the 25th November when a relative had visited her at around 17:45 and found her in what she described as having "real distress [and] difficulty breathing". According to the Complainants, the Patient had told the relative of the patient in the bed next to her that she was having a "hypo" and the relative had called a nurse, who happened to be arriving to take her blood sugar at the same time as her relative had arrived. According to them, "[the Patient's] blood sugar was 3.4 ml and she was offered a bowl of Banoffee Pie, in spite of being barely able to breathe, let alone eat". Her [relative] asked that she be given glucose in gel or liquid form, which was queried by the nurses, but done. Within a short period, she started getting a little better and more responsive but complained repeatedly that

she was feeling unwell. She was told the nebuliser (which had also been given to her at around the same time as the glucose) would work and that she was fine and just nervous. Her [relative] insisted that the Patient was unwell and her oxygen levels were measured, and were at 91, with her heart rate at 116. Her blood sugar was checked again and was so high the monitor wouldn't register. The nurse suggested using NovoRapid (despite this being an obvious reaction to the glucose gel just provided because of the hypo) but luckily did not proceed. Had the other patient's relative not called for help when she did and had this not happened at visiting time, it is quite possible that the [Patient's] blood sugar level would just have been allowed to drop lower and lower; this happened because she had skipped lunch, as a result of her very bad mental state."

Following the above incident, the Complainants wrote to the Clinical Director and the Medical Director with their concerns that the Patient was at risk because of her "blood sugar drops". The Complainants stated "the hospital was being given repeated warnings about a particular issue, and the likelihood of a patient going into a hypoglycaemic state, and we were extremely concerned that [the Patient] was being made to go through the suffering and distress of having this happen time and time again. We alerted the GHA so that preventative action be taken to avoid her having to suffer unnecessarily".

The Patient consequently spent approximately two months in Victoria Ward within St Bernard's Hospital in isolation as a result of a gastric infection. During this period, she was allowed to leave the hospital for walks but not to go into other wards or common areas. According to the Complainants, the Patient was extremely distressed and aggressive on many occasions and was eventually transferred back to Ocean Views on the 22nd January 2020.

In Ocean Views, the Patient was once again able to leave her room for a few weeks. "She had brief moments when she appeared calmer but was often depressed and extremely anxious". The family were told that they would get the psychologist to see her but according to them, this never happened. "She identified only a handful of nurses or nursing assistants (largely in fact assistants) who were kind to her. These few showed the patience and compassion that you would hope for in all nurses, and we are very grateful to them".

Sometime in mid-February, the Patient was once again kept in isolation in her "tiny" room in Ocean Views as a result of breathing difficulties and gastric infection. Furthermore, according to the Complainants, on one occasion where they visited the Patient, a couple of weeks prior to her passing, she mentioned that her back was sore from a fall on the bed when according to the Patient a nurse pushed her. "She told us she had hit a nurse, who had hit back and knocked her onto her bed saying "no-one hits me". [the Patient] was surprised to hear nurses were not allowed to hit patients. She begged us not to make a complaint as she was worried the nurse would take it out on her".

On the 24th February 2020, the Patient was taken to A&E as a result of breathing difficulties. She had previously complained to the family of waking early with breathing difficulties, and low sugar, stating that staff would not attend to her when she called. The Complainants additionally recall that on the 28th February, she had refused to keep snack crackers which they had taken for her, alleging that "nurses would shout at her if her blood sugar was high for eating a snack".

On the 1st March 2020, the Complainants received a call at approximately 6 a.m. to inform them that the Patient was very unwell. On arrival at Ocean Views approximately 20 minutes later, they were told that the Patient had passed away. According to Ocean Views staff, the Patient had called for help but it had been impossible to stabilise her. She died of respiratory difficulties and hypoglycaemia. The Complainants firmly believed that the Patient was not attended to promptly when she called for help and that this "would have caused serious distress, and that it led to her death at that time".

The Complainants summarised their final position on the GHA's involvement in the Patients' care by affirming that overall, they had experienced a "clear lack of holistic treatment of [the Patient] who had both physical and mental health problems", this was exacerbated by the "lack of communication and coordination between professionals on either side". The Complainants highlighted to the GHA and the Ombudsman that from their experience, there were some "very shoddy work practices in the GHA, too little interest in [the Patient] shown by too many of the nurses". They stated, "Something which was symptomatic of this was the fact that in the course of the seven months that [the Patient] was in hospital, before she died, the hospital seemed to find it impossible to get her diet right for more than two or three days at a time. She needed a diabetic and low-fat diet but she was repeatedly given dishes that made her unwell and gave her terrible diarrhoea, because she also had IBS and gallstones. It is no exaggeration to say that we were asked to repeat, about 30 times, over this period, what [the Patient] could and couldn't eat. Each time it was supposedly written somewhere but the problem continued. Once, we actually had to write "Diabetic" above the bed because she was being given desserts with sugar".
The Complainants urged the Ombudsman to intercede in providing them with answers to their complaints to "ensure that lessons are learned, and that improvements are made in the care provided to psychiatric patients for their physical health needs" and finalised their letter of complaint by stating that while they understood the difficulty in investigating the allegation of the physical violence against [the Patient] in Ocean Views, they firmly believed the incident took place, and the GHA needed to ensure that no other patient was subjected to similar incidents.

Investigation

[Ombudsman's Note: During the period of May 2020 to June 2022, both the Patient Advocacy and Liaison office and the GHA complaints office were understaffed and the single officer available, was understandably unable to deliver timely replies to complaints made by service users]

In June 2021, when the Complainants approached the Ombudsman for his intervention, the Ombudsman requested an update from the GHA Complaints Manager regarding the progress of the GHA's internal complaint lodged by the Complainants in October 2020. Unlike previous GHA complaints presented to him, this one together with a few others had suffered delays in delivery of an outcome and had not gone through the established process whereby complaints from service users would firstly be investigated internally by the complaints department within the GHA and escalated by the service user to the Public Services Ombudsman in the event they were not satisfied with the outcome. The Ombudsman, therefore, met with the then General Director of the GHA in order to find a way forward for both the future of the GHA complaints office and the unresolved complaints referred to him by service users. In that meeting, the Director confirmed that the GHA was actively recruiting to increase the complement of the complaints office to alleviate the backlog within the complaints department. At that point, the Ombudsman agreed to continue monitoring the situation and pursue GHA replies related to the complaints referred to him.

On the 5th October 2021, seeing that a full year had elapsed since the complaint was lodged with the GHA and the internal investigation remained unfinished, the Ombudsman contacted the then Medical Director as per standard procedure and requested his initial comments with regards to the complaints and access to the full medical notes of the deceased Patient in order to begin conducting his independent investigation.

It is significant and hugely regrettable to note that although the Ombudsman was initially able to obtain the Patients' medical notes in March 2022 given that they were previously being accessed by the GHA's Clinical Governance team themselves, for the purpose of the internal investigation, the Ombudsman found the medical notes to be missing several admissions to St Bernard's Hospital and was never able to retrieve the notes from the last month of the Patient's admission into Ocean Views following her discharge from St Bernard's Hospital on the 22nd January 2020 where she remained until the 1st March 2020, when she passed away.

It must be highlighted that the Ombudsman periodically chased and exchanged emails with the GHA for the missing notes from October 2021 to January 2023 to no avail. When the GHA finally provided the Ombudsman with the outcome of their internal investigation in January 2023. It was only then that the GHA confirmed that the medical notes dated 22nd January 2020 to 1st March 2020, had indeed gone missing. The GHA confirmed that after extensive attempts to retrieve the missing notes within the existing Ocean Views filing system, they had now reported the loss as a data breach to the Gibraltar Regulatory Authority and updated their system of storage within Ocean Views.

It is clear that the fact that the Patient's last month of medical notes was declared "unfound" was a matter of concern. However, in order to gain understanding of the Patient's last hours, the Ombudsman obtained a copy of the Emergency Ambulance Clinical Record from the GHA's Ambulance Department, with the notes entered by the paramedic who attended to the Patient. According to the entry, the Patient had been experiencing difficulty breathing since 3:45 am and although attempts were made to control her glucose levels, paramedics found her "not moving", "no breathing", "no pulse" and "cold to the touch" at 5:30 am. It was further documented that the Doctor 2 was contacted at 5:50 a.m. to certify the Patients' death. As per the information provided by the Complainants (before these notes were made available by the Ombudsman), the family was contacted by the GHA at approximately 6.00 a.m., so by the time they arrived at the hospital, the Patient was already deceased.

Clinical Advice

Given that the issues being investigated were entirely clinical, the Ombudsman obtained independent clinical advice from ("Expert 1") a Nurse Consultant in Diabetes leading an enhanced community diabetes service and ("Expert 2") a Specialist Nurse in Elderly Care with over twenty years' experience as Consultant Nurse for Older People at an NHS Foundation Trust in London.

[Ombudsman Note: The Gibraltar Public Services Ombudsman under its Memorandum of Understanding with the Parliamentary and Health Services Ombudsman in the United Kingdom enjoys full access to its panel of expert clinical advisors who voluntarily provide advice at a reduced rate to the Ombudsman. While on this occasion, the Ombudsman was able to retrieve advice regarding the Patients' physical health with ease, a mental health adviser was impossible to commission, despite all advisers within the panel being contacted. It was only in September 2023 that the opinion of a Specialist Nurse in Elderly Care was commissioned as an acceptable alternative to a mental health adviser.

1. Alleged poor management of diabetic condition, which led to several instances of crises.

With regard to the management of the Patients' Type 2 Diabetes, Expert 1 reviewed the Patient's medical history and treatment and expressed the alarming view that the Patient's case had indeed been "a very difficult case to read and follow as the management decisions made when using [Gliclazide] tablets and insulin [were] varied, inconsistent and [did not] follow any recommended best practice guidelines".

Expert 1 opined that for someone with such "complex mental health needs" the GHA's main priority should have been to "avoid hypoglycaemia at all times" and was extremely critical of the simultaneous use of the two medications, something which she described as "a high-risk combination and wouldn't be advisable for any patient of any age".

It was Expert 1's overall opinion that the hypos suffered by the Patient were "far too many" and could have been avoided had she not had what she described as "such a complicated insulin and oral therapy regimen". She also found that although attempts were made to control the Patients' blood sugar levels, the methods used resulted in further episodes of hypoglycaemia. She was critical of the fact that no other treatment was explored. Expert 1 stated "It is outside my remit to say that these led to her death, but according to the ambulance notes she was being treated for hypoglycaemia at the time of death with a glucose level recorded as 2 mmol/l and when the death was verified, her glucose level was 3.7 mmol/l".

Expert 1 identified two Diabetes Specialist Nurses ("DSNs") as consistent clinicians throughout the Patients' case who had been involved with the significant changes in the Patients' medication during her admission in St Bernard's Hospital, Elderly Residential Care and Ocean Views, yet despite the concerning number of hypos, Expert 1 was unable to find any evidence of the Patients' case being discussed with a senior colleague or Consultant Diabetologist for guidance and direction as she would have expected.

When asked to provide further details relevant to the Ombudsman's investigation, Expert 1 highlighted that Hypoglycaemia causes "dizziness, irritability, tearfulness, anxiety and bad moods" and although, she recognised that she was not able to comment on the Patient's mental health behaviour due to it being outside her line of expertise, she explained that "the continued wide fluctuation of blood glucose levels" would have affected her brain function and "possibly" heightened some of the behaviour problems especially when she was hypoglycaemic. "There is documented history of her remembering that she had been extremely violent & aggressive when hypo and she apologised for her behaviour after recovery (reference point 8) which evidences the point…Dizziness was also mentioned in that same entry in the nursing notes on 29.10.19 (refence point 8) and her unpredictable hypoglycaemia can't be ruled out as a contributory factor of some of her falls".

2. The Patient was hardly ever given the right diet for her condition.

Regarding the Patients' diet and the family's allegation that GHA staff were never fully aware of the Patients' nutritional needs, Expert 1 was unable to scrutinise the question put to her by the Ombudsman in detail given the lack of documentation found on the medical notes. Expert 1 was only able to identify around five mentions relating to the Patients' diet and highlighted that there were no details about foods offered, foods she refused or even approximate amounts of her daily intake usually recorded by ward staff/nurses. Expert 1 concluded that she was also unable to locate important information such as the Patients' weight and BMI, and only found mentions of 'poor appetite' recorded by the DSNs who had arranged for a review by a dietitian. According to Expert 1, despite the dietitian review having advised that a food diary be put in place, she was unable to find evidence that this was ever done or that a review or follow up ever took place.

3. Alleged total lack of psychological support while admitted in St Bernard's Hospital.

Expert 2 reviewed the medical notes and determined that although she found "mentions" of the Patients' mental health condition between the 3rd July and 4th September 2019 prior to her transfer to residential services, it was her overall opinion that the Patients' mental health needs were not adequately addressed throughout her stay at St Bernard's Hospital, lacking recognition, assessment, and care planning. Expert 2 was of the opinion that the lack of referrals and incomplete assessments, contributed to the overall failure to meet NMC standards for mental health care and was highly critical of the fact that despite the GHA having introduced a new Liaison Service for Mental Health Services in May 2019, failure to make use of this service, further emphasised the shortcomings in this case.

With regard to the sudden move to residential services on the 4th September, Expert 2 advised the Ombudsman that the GHA would have been expected to have carried out a structured discharge plan and in the case of the Patient, in view of her mental health needs, "care planning should have identified whether family support and location were relevant. She and her family should have been appropriately involved in the planning process so that they could exercise their right to make choices with respect to treatment and care services. This could be evidenced by records of Multidisciplinary meetings, family meetings, discussions and discharge planning documentation".

Further to the review of notes, Expert 2 found little evidence of discussions or meetings with the family, in line with the family's account of events. In fact, Expert 2 highlighted that it appeared that a multidisciplinary meeting was scheduled on 15th August 2019 to take place on the 16th September, yet the Patient was moved prior to this on the 4th September. Expert 2 also highlighted the fact that the Pre-Admission Assessment (for Elderly Residential Services) was not fully completed on the 1st August, noting the requirement for a mental health assessment and missing important information such as "Patient views" and "Main Carer's views", "Summary" and "Outcome". She also noted from this incomplete document, that a Mini-Mental State Examination was carried out where the Patient had scored between 20 – 24 points (indicating cognitive impairment). This score contrasted heavily with the fact that the family had been informed that the Patient was assessed by a social worker as having capacity to make her own decisions. Expert 2 concluded, "I advise that based on the available records, the GHA did not meet standards or guidance in relation to patient or family involvement in discharge planning and choice of discharge destination".

4. The Patient's walking stick was confiscated during an episode of crisis and a Zimmer-frame not provided. The Patient went to the bathroom without supervision, slipped and fractured her knee.

In her reply, Expert 2 referred the Ombudsman to NICE Guideline CG161-Assessment and Prevention of Falls in Older People and described that the GHA would have been expected to have initially assessed the Patient's level of mobility, need for any mobility aid and risk of falls upon admission, with review at appropriate intervals during her stay. Although she was unable to find evidence of an individual initial assessment, she found mentions of the Patients' mobility and risks of falls as well as walking stick by the different healthcare professionals who reviewed her at the time. She stated, "Individual risk assessment should have been carried out on transfer to Ocean Views and on transfers to SBH and followed through with an individual management plan to address risks. Any change in mobility or risk factors should have been documented. The NICE guidance implicitly acknowledges that not all falls can be prevented, or risk factors improved. The [GHA] should have recognised if risks could not be reduced or eliminated whilst still ensuring that they were managed".

Expert 2 concluded that the GHA did not appropriately review the Patient's falls risk and mobility needs, following the episode of agitated behaviour on the 5th October when her walking stick was removed which may have increased her risk of falls. She stated, "Whilst the fall on 10th October may not have been preventable, there is insufficient evidence that the GHA followed guidance and standards with respect to risk reduction".

Discussion of findings with GHA

The Ombudsman shared his final draft report with the GHA Medical Director in March 2024. In April, given that no response had been forthcoming, the Ombudsman sent a chaser email, at which point, a meeting was requested by the GHA Medical Director for a brief discussion of the Ombudsman's report given that he had been appointed in February 2023 and had not been aware of this particular complaint lodged back in 2020 prior to his appointment.

In May, the Ombudsman concluded his employment term and as such, the newly appointed Ombudsman took over and met with the Medical Director in early June. The Ombudsman highlighted the delays encountered by her staff during this particular investigation and stressed her wish to conclude the case to provide the family with closure. During the meeting, the Medical Director relayed his reservations regarding the scope of expertise of Experts 1 and 2 and agreed to revert to the Ombudsman by the end of the month. This was completed, albeit the replies received required further discussion and escalation to the GHA General Director whom the Ombudsman met on 5th September. The General Director agreed to provide the Ombudsman with an internal GHA clinical opinion on the report for the matter to be concluded. On the 16th September, the GHA provided two opinions, one from their current Consultant Physician in Diabetes and Endocrinology and the other from a GHA Consultant Psychiatrist. It is noteworthy that neither consultant was employed by the GHA when the complaint/s first arose and that both clinicians stated in their reports that their involvement was purely to assist the GHA Medical Director in replying to the Ombudsman's findings in this case.

Consultant Physician in Diabetes and Endocrinology - ("GHA Endocrinologist")

The GHA Endocrinologist reviewed Expert 1's report. According to him, Expert 1 was qualified to provide an opinion about the care of diabetic patients and although he endorsed most of the content of her report, he highlighted the difficulties of the Patients' case given her, old age, complex diabetes needs and personality disorder and chose to describe the GHA's management of the Patients' diabetes as suboptimal as opposed to "very poorly managed". He clarified, that he considered hypoglycaemia a complication of the management of diabetes and stated that there were no best practise guidelines for dealing with real life cases especially when they do not fall under a single category. "I however do agree that avoiding hypoglycaemia should [have been] paramount. The patient was on basal bolus insulin and oral glucose lowering medication. The combination of which would already make hypoglycaemia more likely. [Expert 1] clearly states it outside her remit to say if the glucose lowering treatment led to her death. It is clear that she did have too many hypoglycaemic events and sustainable and appropriate management should have been taken to avoid this".

The GHA Endocrinologist referred to Expert 1s timeline where she had established that the Patient had had a hypoglycaemic episode every night from August 2019 to 1st March 2020 when she passed away. This equated to a minimum of 183 nights and a maximum of 213 nights. He scrutinised Expert 1's comments regarding the adjustments made to the Patients' insulin and concluded that rather than the way these adjustments were made, it was the frequency and lack of insulin assessment/adjustments which concerned him and not the rationale behind the adjustments which he saw appropriate. He stated "I agree with Expert 1 that the treatment should have been adjusted. In my opinion every clinical contact [was] an opportunity to make changes to her treatment. The medication review should have been done at an outpatient clinic setting. The history of significant hypoglycaemic episodes dates back to 2015". He continued, "[Expert1] from the nursing notes has reported that [the Patient] was unable to self-manage her diabetes. This means that there [was] reliance on carers and health care professionals to get things right. This was indeed lacking. Interestingly [the Patient] was still able to recognise hypoglycaemic episodes however, health care providers were slow to respond and often gave inappropriate hypoglycaemia treatment".

The GHA Endocrinologist summarised his position regarding Expert 1s report and the Patients' management of hypoglycaemia during her hospital stay; "I do believe that these inpatient incidents could have been avoided if appropriate assessments and intervention had been carried out from 2015 when hypoglycaemia had become a concern". He continued, "The report has highlighted the need to individualise care in diabetes management. It has also recognised the lack of understanding of the management of diabetes in complex patients. In particular hypoglycaemia which is a complication of the treatment of diabetes and sometimes unavoidable. It has also shown that there is no set guideline for the management of hypoglycaemia.

He recommended the following changes for the GHA to improve on their service provision with regards to hypoglycaemia:

- Whilst [Expert 1] chose to state that no best practice guidance was followed. Often with patients like [the Patient] what is required is a holistic approach and therefore no standards of care are written to direct care for individuals, this remains a clinical judgement.

- Regarding Expert 1's comments that the two medications prescribed should not have been administered together to any patient of any age, the GHA Consultant Endocrinologist concurred, "The report does highlight the risk of concomitant use of glucose lowering agents administered orally and subcutaneously in a patient who is unable to self-manage their diabetes. In this case oral gliclazide alongside subcutaneous fast acting prandial insulin.

- There needs to be review or advice by a senior member of the diabetes team if there are any complexities or unresolved concerns while managing diabetes patient with concurrent problems that may compromise care delivered to the patient.

- I would recommend that the GHA organises sessions for, doctors, nurse and care providers that look after patients with diabetes. With sections dedicated to the recognition and management of hypoglycaemia.

- At the time of writing reviewing this report a hypoglycaemia algorithm has already be adopted and wards staff are becoming more adept with the appropriate management of hypoglycaemia.

- We are all involved in the management of older patients with co morbidities the onus does not lie solely on care of the elderly physicians or diabetes team to identify hypoglycaemia risk. This should be incorporated into CPD as a generic skill.

- Workforce was a recurrent feature in the report, there were only 2 diabetes specialist nurses and at times, no one available. The recruitment of competent staff to fill any vacant roles should be sought.

- The GHA should consider providing these sessions as part of an induction module with a need to add to the Trusts annual mandatory training schedule.

<u>Consultant Psychiatrist - ("GHA Psychiatrist")</u>

The GHA Psychiatrist reviewed Expert 2's report and he counselled the GHA about his reservations given the fact that she was an expert in Elderly Care and according to him, did not appear to have experience of working in mental health settings.

According to him, Expert 2 did not appear to have considered the difficulty that comes with working with patients who have personality disorders. He stated; "Such mental disorders can make management challenging, both at a systemic and individual patient level. The lack of expertise in this regard significantly limits the weight that might be placed on this expert evidence". He referred to Expert 2's interpretation of a Mini Mental State Examination (MMSE) score which the Ombudsman relied on as confusing and highlighted that, "There is no direct clinical link between a MMSE score and the capacity to make a specific decision, and this should have been made clear within the expert report to avoid the risk of confusion". The Ombudsman reviewed the context in which the MMSE was mentioned, i.e.; it was one of the only assessments found in the Patients' notes prior to her move to Residential Care. The Ombudsman had established that despite the Patients' historic mental health condition, a mental health assessment required in the Pre-Admission Assessment (for Elderly Residential Services) had not been carried out and highlighted that this document was also missing vital information such as "Patient views" and "Main Carer's views", "Summary" and "Outcome". Therefore, the reasonable mind would infer that the GHA had failed to properly assess the Patient before moving her to Elderly Residential Care while relying heavily on the MMSE without the prior notice/consultation with the family whom she had lived with throughout her life.

The GHA Psychiatrist was furthermore of the opinion that Expert 2 had not fully understood the Gibraltar context. He commented "The impression given is that they view the service as being effectively the same as an NHS Trust in England. This is not the case. The report refers to English legislation, policy and guidance that does not apply to Gibraltar. [Expert 2] does not appear to understand the roles of the different settings in which the patient spent time, nor the way that different agencies work here. Given the number of transfers between different settings, this is important. As an example, in relation to an incident at Ocean Views Hospital, [Expert 2] refers to guidance, which they explicitly note relates to care homes (at page 8)".

Regarding the NMC Codes and NICE guidelines referred to by Expert 2, the GHA Psychiatrist explained that the NMC codes related to "the conduct of individual nursing practitioners and not multi-professional groups and organisations; and ii) nursing colleagues in Gibraltar do not come under the regulatory remit of the NMC" and stated that "the NICE Guidelines, which were developed for use within the NHS in England." He explained that these guidelines cannot be applied to Gibraltar without amendment. He clarified, "This is due to the significant differences in how not only the GHA works, but also all of the other agencies. Requiring individual clinicians, or the GHA as an organisation to comply with NICE guidelines without all of the internal and multiagency resources available in a large country like England would be unrealistic".

The GHA Psychiatrist summarised his position by stating that Expert 2 had not considered Gibraltar's context. He stated; "Focusing on individual clinicians' actions without looking at the whole picture risks leading to the wrong lessons being learnt, and can add further to a harmful blame culture". He recommended the following changes for the GHA to improve on their mental health service provision:

- I would strongly recommend the GHA consider implementing an agreed set of overarching standards of care, quality and governance to operate at organisational, departmental and individual levels. This may help to enhance the quality of care, patient safety and improve our ability to learn from future adverse incidents.

- [Expert 2] refers to the NMC standards and applies them to the organisation as a whole. It is an important reflection that most GHA clinicians are subject personally to regulatory standards, often developed to apply in a UK context where organisations are subject to the oversight of the Care Quality Commission, Healthcare Improvement Scotland etc. However, in Gibraltar there is no independent external body monitoring the quality of care and safety of patients. I would recommend that the GHA and HMGoG consider identifying an independent body to take on such a role. Given the unavoidable links between the GHA and the Government in such a small jurisdiction, this would almost certainly need to be external to Gibraltar to function effectively.

- The GHA may wish to consider a future further review of this case to consider the systemic factors that affected the patient's care journey, using a 'human factors' approach, in order to fully learn the lessons this case might be able to offer.

Conclusions

The Ombudsman considered that there were two main components to this complaint - the medical treatment and nursing given to the Patient whilst in the care of the GHA (Clinical Concerns) and the manner in which the GHA handled the family's complaints after the Patient's death (Complaint Handling).

Clinical Concerns

Management of the Patient's Diabetes

Both Expert 1 and the GHA Endocrinologist concluded that the management of the Patient's diabetes was not of a reasonable standard. Expert 1 described it as 'very poorly managed' and the GHA Endocrinologist described it as 'suboptimal'. They both also agree that the Patient's treatment should have been adjusted. The combined medication the Patient was prescribed made hypoglycaemia more likely and she suffered a hypoglycaemic episode every night from August 2019 to 1st March 2020 (a minimum of 183 episodes). It is significant that the GHA Endocrinologist stated that "she did have too many hypoglycaemic events and sustainable and appropriate management should have been taken to avoid this" and that "there [was] a reliance on carers and health care professionals to get things right. This was indeed lacking." Furthermore "healthcare providers were slow to respond and often gave inappropriate hypoglycaemia treatment". It appeared to the Ombudsman that the evident failures in the management of the Patient's diabetes severely impacted the Patient's physical health. As hypoglycaemia causes irritability, tearfulness, anxiety and

bad moods, it is likely that the recurring hypoglycaemic episodes also exacerbated the patient's mental ill-health.

The Patient's diet

On the balance of probabilities, the Ombudsman could only conclude that the patient's diet and nutrition was not prioritised by the GHA. As per Expert 1, the record keeping in respect of the patient's diet and nutrition was substandard, with no details about her daily intake, BMI or weight. Even though the dietician recommended a food diary be kept, there is no evidence that this was done, nor is there any evidence of a follow up with the dietician. This, together with the frequent hypoglycaemic episodes suffered by the patient, lends weight to the complainant's assertion that the patient was hardly ever given the right diet for her condition.

Psychological support given to the Patient

As regards the mental health care given to the Patient at St Bernard's Hospital, the Ombudsman noted Expert 2's view that there was a lack of "recognition, assessment and care planning", citing in particular that the patient "had chronic mental health problems which should have been managed across care settings including SBH". When considering the patient's move from St Bernard's Hospital to Mount Alvernia, it was very significant to the Ombudsman that, following an assessment with a social worker, the patient's family were informed that the patient had capacity to make the decision to move to residential care. However, the patient's score on a Mini-Mental State Examination indicated cognitive impairment, and whilst the GHA Psychiatrist confirmed that "there is no direct link between a MMSE score and the capacity to make a specific decision", the move to Mount Alvernia took place without a multidisciplinary meeting or a proper Pre-Admission Assessment (importantly missing the mental health assessment). It appeared to the Ombudsman that the GHA failed to take the patient's mental health needs into account and address them adequately. There was no structured discharge plan and little engagement with the patient's family, and the Ombudsman was persuaded by Expert 2 's comment: "care planning should have identified whether family support and location were relevant. She and her family should have been appropriately involved in the planning process". A persuasive factor for the Ombudsman was that the Pre-Admission Assessment was missing the "Patient's views" and "Main Carer's views" indicating to the Ombudsman that neither the patient nor the patient's family had been sufficiently involved and that their views had not been taken into account in the decision-making process.

Removal of patient's walking stick

On the 5th October 2019, all of the patient's property, especially risk items, were removed from her because she was self-harming and refusing medication. It appears that, at this point, the Patient's walking stick was removed. As per Expert 2, the Patient Handling risk assessment and Moving and Handling care plans should have been reassessed after her walking aid was removed: "there should have been a plan to

reduce risks and in this case, there was not". On the 10th October 2019, the patient fell and injured her knee, following which a Zimmer frame was provided: "there is no record of a Zimmer frame being issued until after the fall". The Ombudsman was persuaded by Expert 2's assertion that "Whilst the fall on 10 October may not have been preventable, there is insufficient evidence that the GHA followed guidance and standards with respect to risk reduction" and concluded that the GHA did not properly assess the patient's falls risk and mobility needs.

The Patient's death

The complainant initially informed the Ombudsman that the GHA had called the family at approximately 6am on the 1st March 2020 to inform them that the patient was unwell, and that when they arrived at Ocean Views at approximately 6.20am the patient had already passed away. However, the Emergency Ambulance Patient Clinical record (obtained at a later date) shows that the patient was checked at 3.45am, having low oxygen levels and hypoglycaemia (Expert 1: "03.45 She had been unsuccessfully treated for hypo at 2.0mmol/l and patient stopped breathing. Ambulance report at 05.32 show glucose level 3.7mmol/l"). The Patient died at approximately 5.30 a.m. and Dr Ruiz was contacted at 5.50 a.m. to verify the patient's death. It is regrettable that the patient's medical notes are not available to give a full picture of what happened that night, and that the Patient's family were not contacted earlier. It is particularly regrettable that the Patient was not accompanied by her family in her final moments.

Complaint Handling

The GHA internal investigation took more than two years to complete- the initial complaint was lodged in October 2020 and the investigation was completed in January 2023. The delays in concluding this process required the Ombudsman to exercise his discretion and commence his own investigation in October 2021.

The Ombudsman was given the patient's medical notes in March 2022. However, the last month of the Patient's medical notes was missing. The Ombudsman continued to chase these notes, but it was only in January 2023 (a year and three months later) that the GHA confirmed that the notes from the 22nd January 2020 to 1st March 2020 were missing. To date, the Ombudsman has not had sight of these medical records.

The GHA was reluctant to engage with the complainant and other members of the Patient's family following the Patient's death. The complainant initially lodged her complaint with the GHA in October 2020 and made repeated requests for a meeting. However, a meeting did not transpire until July 2024, when the family met with the Medical Director. This delay of almost four years indicates to the Ombudsman a lack of accountability and transparency from the GHA, as well as a lack of compassion towards the bereaved family.

The Ombudsman provided the GHA with a final draft report in March 2024, but the GHA's lack of response necessitated two subsequent meetings with the Ombudsman in June 2024 and September 2024. A formal written response was provided to the Ombudsman on the 16th September 2024.

Final Observations

In considering the Patient's experience under the GHA's care, and the GHA's attitude and engagement with both the patient's family and the Ombudsman, the Ombudsman can only conclude that there have been very serious failings both in terms of the care afforded to the Patient and in the manner in which the family's complaint was handled. The failings in the medical treatment and nursing care provided to the Patient (in particular the critical mismanagement of the Patient's diabetes) had a severe negative impact on the Patient's health, to the point that she was hypoglycaemic at the time of death.

Furthermore, it appeared to the Ombudsman that the GHA's failure to maintain proper records, it's reluctance to engage with the Patient's family (both before and after her death), the delays in conducting its internal investigation and its delayed responses to the Ombudsman have added to the family's grief and bereavement, denying them clarity and understanding as to the patient's illness and suffering and any sense of closure in relation to her death.

The Ombudsman could only hope that valuable lessons are learned so that this situation never reoccurs, and that the GHA offers a sincere apology to the Complainants and the Patient's family so that they may obtain some closure and the reassurance that their tenacity in pursing this complaint will lead to a safer, more improved service for both psychiatric and diabetic patients.

Classification

1. Alleged poor management of diabetic condition, which led to several instances of crises. - **Sustained**

2. The Patient was hardly ever given the right diet for her condition. – **Sustained**

3. Alleged total lack of psychological support while admitted in St Bernard's Hospital prior to her transfer to residential care. - **Sustained**

4. The Patient's walking stick was confiscated during an episode of crisis and a Zimmer-frame not provided. The Patient went to the bathroom without supervision, slipped and fractured her knee. - **Sustained**

Recommendations

1. The Ombudsman recommended that the GHA offer the Complainants a sincere apology for their shortcomings in the Patient's care which should include "lessons learnt" and steps taken/future changes to be implemented as a result of this Complaint.

2. The GHA should conduct a full review of patients with diabetes who are not able to self-manage and may have been prescribed both oral and subcutaneous glucose lowering agents.

3. The GHA should introduce clear guidelines for patients to be reviewed by a senior member of the diabetes team if there are any complexities or recurring issues.

4. The GHA should organise training sessions for, doctors, nurses and care providers that look after patients with diabetes. These should include sections dedicated to the recognition and management of hypoglycaemia.

5. The Ombudsman recommended that an evaluation be conducted to determine how many specialist diabetes nurses are needed in Gibraltar, followed by a recruitment process, if deemed necessary.

6. The Ombudsman recommended that the GHA review existing policies to ensure that there is sufficient engagement with family and carers, particularly when significant decisions are being taken as regards the patient's care.

7. The Ombudsman recommended that the GHA consider implementing an agreed set of standards of care, quality and governance to operate at organisational, departmental and individual levels, similar to the NMC codes and the NICE guidelines, but adapted to Gibraltar.

8. Given that there is no independent external body monitoring the quality of care and safety of patients delivered by the GHA, the Ombudsman recommended that the GHA and HM Government of Gibraltar consider identifying an independent body that would carry out this role.

REPORT ON CASE NO 1263

Complaint against the Housing Authority ("HA")

1. On the 6th May 2021, the Complainant submitted her application for social housing ("Application") but by June 2022 had still not received a decision on whether the Application had been accepted;

2. The Complainant's son in law, on her behalf, submitted a complaint to the HA on the 6th June 2022 but by September 2022 had not received a substantive reply.

Complaint

The Complainant was aggrieved because a year after having submitted her Application to the HA she had not received a decision about whether the Application had been accepted. She was further aggrieved because by September 2022 they had not received a substantive response to the complaint sent to the HA on the 6th June 2022.

Background

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

The Complainant and her ex-husband owned a property ("Property") in Gibraltar (HMGOG affordable housing scheme) until 2004 when the Complainant claimed that they had sold it because their marriage broke down. According to the Complainant, since the sale, she had lived in privately rented accommodation whilst she was in employment but was unable to afford this once she retired and so, in 2016, she moved in with her son ("Son") and his young daughter, into a flat he had just purchased.

In 2021 the Complainant's situation changed when her Son and his partner, who had two children of her own, had a baby. The Son's flat was now overcrowded and according to the Complainant, the situation had created friction between her and her Son's partner. In April 2021 the Complainant decided to apply for social housing ("Housing") and submitted her Application via email. She received a prompt response from the HA in which they asked her to submit the following documents:

1. One year's proof of continuous residency in Gibraltar, from April 2020 to April 2021;

2. Completion statement (sale of Property);

3. Deed of assignment;

4. Letter from the owner of the dwelling confirming use of address for application purposes;

5. ID card copies of applicant and all household members.

The Complainant stated that she provided the documentation requested by the HA via email on the 6th May 2021 but by June 2022 had not received the HA's decision on whether they had accepted the Application.

On the 9th June 2022, the Complainant's son in law (on behalf of the Complainant) submitted a complaint via email to the HA. He explained that on the 6th May 2021 the Complainant had submitted further documentation requested by the HA to support her Application. In March 2022 the HA had confirmed that the documentation was sufficient and had been forwarded to senior management for a decision but since then no information had been received by the Complainant. The son in law referred the HA to the unsustainable living situation the Complainant was enduring and requested that a decision be provided as soon as possible.

Not having received a response by the 21st June 2022, the son in law sent a chaser email and received a reply the following day stating that the senior management team were still considering the Application.

In July and August 2022 the Complainant telephoned the HA to enquire about her Application and was on both occasions told that there was no update.

In September 2022 the Complainant lodged her complaints with the Ombudsman.

Investigation

On the 15th September 2022 the Ombudsman presented the initial complaint to the HA for their comments and requested information on their in-house complaints procedure including timeframes set out in their policy document.

The HA provided a prompt response and explained that they had been overwhelmed with high levels of workload due to the introduction of the 'Register of Property Occupation' [Ombudsman Note: In September 2021, HMGOG established the Register of Property Occupation Act 2021 which required all Gibraltar residents to register and detail the names of all persons residing in their property, whether owned, rented or licensed by them]. Notwithstanding, the HA advised that they were actively looking into the Complainant's complaint and that even though the matter had been with the Housing Allocation Committee ("HAC") for some time, it should be noted that a good part of 2022 had been spent chasing the Complainant to submit the completion statement (of the Property she and her ex-husband had sold in 2004). The HA stated that they would revert to the Complainant in due course.

The Ombudsman reverted to the HA and requested that they provide individual replies to the complaints set out in his letter of the 15th September 2022. The Ombudsman enquired about the Housing Authority's in-house complaints procedure and asked why in the Complainant's case this had not been followed with regards to timelines and decisions.

Regarding the HA's position that they had been chasing the Complainant to submit the completion statement, the Ombudsman asked the HA to provide him with copies of the emails and/or letters sent to her.

In November 2022 the Ombudsman met with the Complainant to discuss the information provided by the HA regarding not having received the completion statement. The Complainant explained that although she had tried to obtain a copy of the document, she had not been successful. She had contacted the UK head office of the Building Society, the mortgagee for the Property, as they had closed their offices in Gibraltar many years ago, but they did not have a copy of the completion statement and neither did the the lawyer who had undertaken the sale transaction as they have a policy of destroying records after seven years. The Ombudsman suggested that the Complainant could contact the Land Registry at Land Property Services ("LPS") and request from them a copy of any documentation they held related to the sale which she would then be able to submit to the HA. In January 2023, the Ombudsman contacted the Complainant for an update and she explained that on the 11th November 2022 she had obtained documentation from LPS (copies of 'Deed Details'). She had taken them to the HA who had accepted them and the Complainant was presently awaiting their decision. [Ombudsman Note: The Ombudsman was provided with a copy of the Deed Details which showed the total purchase price paid by the Complainant and her husband as being £63,345.75 and the sale price shown as £135,000.00] The Ombudsman and the Complainant agreed that the investigation would be paused/closed for the time being.

Notwithstanding the above, on the 8th December 2022 the HA provided the Ombudsman with the information requested in September 2022.

Regarding the Complainant's Application in May 2021, the HA stated they had informed the Complainant on numerous occasions that the Application could not be processed as eligibility for Housing had to be established and that to date (December 2022) the Complainant had not provided the paperwork required to ascertain eligibility.

On the matter of not having received a response from the HA to the complaint submitted on the 9th June 2022, the HA stated they had not processed the case as a formal complaint because they had been '…unable to finalise the Complainant's request to become a Housing Applicant as she had not submitted the required documentation'. Nevertheless, because of her insistence of formalising the complaint, the HA would now log this as such and revert to the Complainant.

On the issue of assessment for categorisation as a social or medical case with respect to social housing due to the Complainant's personal circumstances, i.e. the fact that she is elderly and suffers from medical conditions, the HA stated that they could not assess the Application as a social or medical case until eligibility for social housing was ascertained.

In relation to the Complainant contacting the HA via phone for updates and being told on each occasion that there were no updates, the HA stated they were unable to comment as they did not record or log telephone calls. Notwithstanding, they confirmed that they had continuously informed the Complainant and her representative about the documentation required for her Application to be considered and they provided the Ombudsman with copies of the written communications as follows:

1. Letter dated 21st April 2021 requesting submission of documentation;

2. 18th October 2021 from HA to Complainant's son in law requesting the completion statement for the Property and advising that the Housing Allocation Committee ("HAC") would meet on the 22nd. If document submitted before, HAC could consider the Application;

3. 8th November 2021 son in law emails to HA the 'Deed of Assignment';

4. 9th November 2021, HA respond and advise that they already have the Deed of Assignment and require the completion statement;

5. 11th April 2022 the Complainant's son ("Son") emails the HA to put across the Complainant's desperate situation as well as their present overcrowded living conditions;

6. 11th April 2022 HA acknowledge receipt;

7. 22nd April 2022 the Son emails enquiring about an update;

8. 25th April 2022 HA respond that they are looking into the case and a reply will be sent shortly;

9. 19th May 2022 Son emails HA for an update;

10. 20th May 2022 HA respond that the case is still under review;

11. 20th June 2022 Son emails HA for an update;

12. 5th July 2022 Son emails HA for an update:

13. 7th July 2022 HA respond apologising for the delay in responding and stating that they will revert back shortly as the case is being looked into;

14. 7th July 2022 the Son emails HA and sets out their desperate overcrowding situation and requests their assistance;

15. 2nd August 2022 the Son emails HA for an update;

16. 5th August 2022 HA respond that the case is still under review and once a decision is taken he will be notified;

17. 5th October 2022 the Son emails HA for an update;

18. 6th October 2022 the HA respond and state that their position remains the same. In order for her case to be considered they required the completion statement to properly assess her case as per normal procedure with previous homeowners. Once they were in receipt of the document they could pass that on to HAC for consideration;

19. 27th April 2023 email from HA acknowledging receipt of the 'Deed Details' and informing the Complainant that the Application is still pending due to incompleteness. The completion statement is fundamental in demonstrating and confirming the profits made from the sale of the Property.

Regarding the Ombudsman's enquiry as to what happens in cases similar to that of the Complainant's where it is impossible to produce a completion statement, i.e. what is the alternative suggested/acceptable to the HA, the latter advised there was none. They would be unable to process any application that was incomplete as eligibility had to be established. In the Complainant's case they had still to establish the profit made by the Complainant from the sale of the Property [Ombudsman Note: The Ombudsman is aware of the HA's policy whereby if a homeowner sells a property and makes a profit of £50,000- or over they will not be eligible for Housing, regardless of the time elapsed since the sale and the change in a person's circumstances] which they maintained would only be reflected in the completion statement.

In August 2023 the Complainant's Application situation remained at a stalemate because no matter how she had tried, she had been unable to procure a copy of the completion statement. The Ombudsman reopened the investigation. He contacted the Principal Housing Officer ("PHO") and a telephone meeting was held on the 23rd August 2023. The PHO reiterated that under the Government's current policy the completion statement was a requirement. That document would reflect the disbursements and payments and clearly show the profit. The HA stated that without that document they would not be able to establish if there was a mortgage at the time of the sale; if there was no mortgage, the HA would take the sale price of £135,000- as the profit made on the sale of the flat, without deducting the purchase price. Once again the Ombudsman enquired from the PHO whether there was an

alternative document that could be submitted but the PHO responded that there was none and that it was Government who established policy.

The Ombudsman enquired about the email correspondence between the Son and HA between April and October 2022 in which HA had consistently informed the Son that the Complainant's case was under review. The PHO responded that during that time they had actively been looking into the Complainant's case to identify if there was an alternative route to assist her but in the end that exercise proved unsuccessful.

Regarding the Complainant's assertion that the sale of the Property in 2004 was due to the marriage breakdown, the PHO stated that they had a copy of the divorce documents and those were dated 2018, fourteen years after the sale.

The HA noted that the Complainant continued to experience the consequences of the sale of the Property which had taken place twenty years earlier. The Ombudsman asked the PHO whether the Complainant and persons in a similar situation were therefore forsaken by both Government and the HA and the PHO responded that they worked on a case by case basis. The PHO stated that the Minister for Housing was trying to devise a policy to assist those persons who had previously been homeowners and now, due to factors beyond their control, found themselves without a home, but noted that the policy would have to be quite specific.

Conclusions

Complaint (1) - On the 6th May 2021, the Complainant submitted her application for social housing ("Application") but by June 2022 had still not received a decision on whether the Application had been accepted - Sustained

The HA's position regarding not having made a decision on the Complainant's Application was that she had failed to submit the completion statement; according to the HA, the only document that would establish the profit made by the Complainant and her husband.

Despite her best efforts, the Complainant was unable to obtain a copy of the completion statement because of the reasons explained in the 'Investigation Section' of this report, but submitted a copy of the Deed Details she had requested from LPS, as suggested by the Ombudsman in an effort to assist her. The HA maintained that in keeping with Government policy they could not accept an alternative document in place of the completion statement.

It is the Ombudsman's view that in this case, because the completion statement could not be obtained, the HA could use for the purposes of this Application the figures contained in the Deed Details as per below:

1. The total purchase price paid by the Complainant and her husband - £63,345.75;

2. The sale price of the Property - £135,000.00.

The Deed Details do not show if there was a mortgage on the Property at the time of sale. That information could be obtained from LPS' Property Register. Notwithstanding, the conventional method used to establish a profit is to deduct the purchase price from the sale price which comes out to be £71,654.25. The profit should then be divided between the two parties, i.e. the Complainant and her husband, even if they were not divorced at the time of sale, bringing the profit made by each to £35,827.13, below the £50,000- profit amount set by Government policy.

The Ombudsman sustains this complaint. The HA should have, in an effort to assist the Complainant, accepted that she had exhausted all means possible to obtain the completion statement and provided her with an alternative, similar to that suggested by the Ombudsman. This would have been in keeping with the HA's statement that they work on a 'case by case basis' and in line with delivering a service conducive to assisting the Complainant.

Complaint (2) - The Complainant's son in law, on her behalf, submitted a complaint to the HA on the 6th June 2022 but by September 2022 had not received a substantive reply – Sustained

On the 8th December 2022, the reason provided by the HA to the Ombudsman as to why they had not responded to the complaint submitted was that they had been unable to finalise the Complainant's Application because she had not provided the required documentation. Due to the Complainant's insistence of formalising the complaint, they would now log this as such and revert to the Complainant.

The Ombudsman sustained this complaint. The HA should have responded to the Complainant in the first instance as they did to the Ombudsman and concluded that matter.

Classification

Complaint (1) - On the 6th May 2021, the Complainant submitted her application for social housing ("Application") but by June 2022 had still not received a decision on whether the Application had been accepted – **Sustained**

Complaint (2) - The Complainant's son in law, on her behalf, submitted a complaint to the HA on the 6th June 2022 but by September 2022 had not received a substantive reply – **Sustained**

Recommendations

The Ombudsman recommends that the HA implement a policy to assist applicants who had previously been homeowners but who now, due to factors beyond their control, find themselves in need of social housing.

Consequently, each application should therefore be considered carefully and assessed on its individual merits, not in accordance with a blanket policy/criteria.

Update

The Complainant informed the Ombudsman in early 2024 that she had met with the new Housing Minister and that after explaining the circumstances of her case, her Application was accepted. The Ombudsman made enquiries with the Housing Authority and they confirmed that approval had been granted to accept the Complainant's Application. The Ombudsman requested information as to how the decision had been arrived at and the Housing Authority informed her that this was a ministerial instruction based on the exceptional circumstances of the case.

Further to reading the draft report, the PHO appointed on the 2nd April 2024 confirmed that he accepted the Ombudsman's report. He pointed out that the Housing Minister who took office in October 2023 had in fact assessed the Complainants circumstances on an individual basis and found that the case warranted a ministerial decision and the subsequent instruction followed, in order to assist her. The PHO highlighted that neither he nor the current Minister held their respective posts at the time when the Ombudsman's investigation was undertaken.

On the matter of the policy which the previous Minister for Housing had been trying to devise in order to assist those persons in a similar situation to that of the Complainant's, the PHO stated that they do not have a fixed policy in place. They will carry out Ministerial instructions which have been based on a decision taken in keeping with common sense in relation to a specific issue which has affected a person in very exceptional circumstances, but is not detrimental to the taxpayer.

The Ombudsman welcomed the new PHO's and Housing Minister's approach to assisting the Complainant, which will in future help others in similar exceptional circumstances.

However, moving forward, the Ombudsman is of the view that a policy is necessary to avoid complaints on the grounds of nepotism. Unfairness can result where complaints are considered on a case by case basis where there is no criteria, policy or framework to underpin the decision making.

REPORT ON CASE NO 1278

Complaint against the Ministry for Housing ("Housing") in relation to (1) initial difficulties faced by the Complainant in submitting her housing application and (2) a subsequent allegation of non- replies to the correspondence containing said application and chaser letter.

Complaint

The Complainant's complaint presented to the Office of the Ombudsman was twofold;

1. The Complainant had allegedly been making attempts to hand in her housing application since October 2020 but as a result of Covid-19 restrictions and ever increasing information requested by Housing, the submission of the application had taken in excess of two years. The Complainant therefore sought to have her application backdated.

2. She had sent a letter dated 24 January 2023 enclosing her application, together with a chaser letter on the 7th March- both of which appeared to have been "ignored" by Housing.

Background

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

The Complainant complained to the Ombudsman that she had not received a reply to a letter dated 24th January 2023 she had sent to Housing enclosing her application, (which had been made in joint names with her husband). In her letter, the Complainant explained to Housing that they would note from the application that it had been originally signed by her husband in October 2020. She further stated that unfortunately, due to requests for more information followed by the Covid outbreak and its associated restrictions, she had been unable to fully complete the housing application until the time of its submission. The Complainant explained how she had "now" (in January 2023) signed it herself.

In regard to her personal/family circumstances, she explained that her husband had been in prison in Spain for a year and she was unsure excatly when he would be released although she had been informed by the pertinent authorities "it would take another year". She further stated that they had two girls in common who were born in Gibraltar and attended local schools. The Complainant highlighted that despite her husband's incarceration she would like Housing to process the application in their joint names for "the benefit of the family, especially the girls. We all live in a one bedroom

flat and we desperately need social housing." The Complainant further alleged that her husband had lived in Gibraltar for ten years prior to being sentenced, hence the requirement to have the housing application activated in joint names. She concluded her letter by stating that she had been informed by Housing (in April 2022), that it was a requirement that an updated permit of residence accompany the application. As a result, she included her updated ID card (permit of residence) as well as her British naturalisation documentation, in addition to one year's proof of continuous residency in Gibraltar in the form of utility bills, school letters, rental agreement and other associated documentation.

No reply was forthcoming.

As a result, she handed in a chaser letter in person on the 7th March 2023 at Housing's premises.

Consequently, frustrated with the delays encountered and based upon the information provided and requirements sought by Housing which the Complainant considered were inaccurate, she proceeded to lodge her complaint at the Office of the Ombudsman on the 14th March 2023.

At the time of submitting her complaint, the Complainant informed the Ombudsman that in addition to the lack of written replies, when she had made verbal enquiries at the Housing Counter about the delay being experienced, she was allegedly told she needed to be patient and wait. The Complainant explained she was anxious, unable to pay her rent and needed confirmation that her application had been accepted.

Investigation

The Ombudsman wrote to Housing on the 29th March 2023 presenting the complaint and requesting Housing's comments.

Coincidentally, that same day, the Complainant also received a written reply to her 24th January letter at her registered address. The letter set out that "in order to be eligible for Government rented accommodation, the following criteria regarding Civil Registration must be met;

Gibraltarian Status with one year's proof of continuous residency in Gibraltar or;
British Citizen status with ten years proof of continuous residency in Gibraltar."

Housing's letter concluded by stating that from the documentation submitted, the criterion was not met by the Complainant. It was explicit in the letter that this condition was an essential requirement and that should the Complainant require further information or clarification, she should contact Housing's Allocation Unit.

In their reply to the Ombudsman, Housing accepted that there had been a delay in reverting to the Complainant and assured him that a letter would be issued. That letter (contents referred to above) was issued the very same day.

The fact that the Housing Allocation Unit had determined that the Complainant did not meet the mandatory criteria to become a Housing Applicant was also conveyed to the Ombudsman.

The Office of the Ombudsman issued further correspondence to Housing seeking an explanation as to the reasons for the delay in reverting to the Complainant and again setting out the Complainant's contention that her husband had been a continuous resident in Gibraltar for a period of ten years prior to his detention. The subsequent reply received set out (as an explanation for the delay), that Housing was short staffed. The Ombudsman accepted this as fact.

A subsequent meeting was held between the Ombudsman and Housing at the Ombudsman's office in order to discuss this complaint and the eligibility criteria more generally.

It was established at said meeting that an applicant of non- British origin may only apply for housing from Government stock, having provided proof of continuous residency ten years after the date of naturalisation. It was confirmed that this criterion had been applied for a number of years and continued to be strict in its application.

As far as the process is concerned, once the eligibility criterion is met, an applicant is entitled to join the Housing pre-list. At that stage, existing extenuating personal circumstances may be considered and an element of discretion applied in circumstances where for instance, the view is taken that health considerations exist or the "children's welfare principle" should be applied. In the vast majority of cases, once the eligibility criteria is met, the applicant is placed on the appropriate pre- list which he or she would be entitled to join as a result of their particular family composition.

In direct correlation to the above and in relation to the Complainant's specific case, Housing considered that by late 2023 the Complainant's application could be processed in joint names (as she had initially requested), on the sole basis that the ten year permanent residency eligibility criterion had, by then, been met.

A further conversation between the Ombudsman and Housing on the second week of January 2024, confirmed that indeed, the position was that the Complainant had been placed on the 3RKB pre-list on the basis that the eligibility criteria had been satisfied. As a married couple with 2 young daughters a 3RKB flat was the size of flat they were entitled to at the time of any property allocation.

Conclusions

Despite having worked on countless complaints of a housing nature over the years, the Ombudsman considered his office's knowledge management had benefitted from having met with Housing. He was grateful for the clarification and updates provided by Housing on the more general issues of naturalisation and permanent residency and how these impacted on the strictly applicable, non- discretionary conditions in order to meet the eligibility criteria for acceptance onto the housing waiting list.

The Ombudsman was satisfied that the Complainant had been treated fairly and given her family's personal circumstances and difficulties, was pleased to learn that by December 2023, the permanent residency conditions had been met.

Classification

(1) The Complainant had allegedly been making attempts to hand in her housing application since October 2020 but as a result of Covid-19 restrictions and ever increasing information requested by Housing, the submission of the application had taken over two years to complete and submit. As a result, the Complainant sought to have her application backdated - **Not Sustained**

The Ombudsman found it difficult to reconcile how, despite all the obstacles the Complainant had referred to such as Covid restrictions and office closures, it could take an individual two years and three months to complete and submit any type of form or application. The only possible and reasonable explanation for this (which later proved to be so) was that the Complainant did not meet the eligibility conditions when she began the application process and thus, was unable to provide the information/proof/documentation requested by Housing. On that basis alone any attempt to seek that her application be backdated to 2020 was not only unreasonable but also impermissible since the mandatory conditions had not been satisfied.

(2) The Complainant had sent a letter dated 24th January 2023 enclosing her application, together with a chaser letter on the 7th March- both of which, the Complainant alleged, had been "ignored" by Housing- **Not Sustained**.

In Housing's 24th January 2023 letter to the Ombudsman, they accepted that there had been some delay in replying to the Complainant but explained that the delay was attributed to staffing issues and that a reply would be forthcoming (which it immediately was). As a result, the Ombudsman could not reasonably determine that Housing had "ignored" the Complainant. However despite the Ombudsman classifying the Complaint as "not sustained", in accordance with the "Principles of Good Administration" (that replies should be issued within 21 days), a reply to the 24th January 2023 letter should have been forthcoming. The reply took nine weeks to reach the complainant, as opposed to the desirable three week time frame.

REPORT ON CASE NO 1287

Complaint against the Income Tax Office ("ITO")

1. Documents submitted by the Complainant on the 30th May 2023 with regards to her Claim for Final Tax Assessment ("Claim") were requested by the ITO on three more occasions;

2. The Complainant could not provide details of an 'end destination' as she was working remotely whilst travelling, and ITO offered no flexibility or discretion to find a solution;

3. ITO telephoned the Complainant on a Saturday before 9a.m. which she felt was an unreasonable time to expect a call for someone who is resting at the weekend;

4. No reply to formal complaint sent via email to the ITO on the 13th August 2023.

Complaint

The Complainant was aggrieved because of the above complaints.

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].

On the 30th May 2023, the Complainant emailed the ITO submitting documentation for a Claim. She informed them that she had left employment in Gibraltar to work as a contractor in Spain and work remotely. She stated she would continue to reside at the same address in the nearby town in Spain (where she had resided whilst in employment in Gibraltar) until the 23rd June 2023. She stated that she did not have flight details she could provide as proof of leaving the area as she and her partner would be travelling in the foreseeable future but she could provide several hotel booking confirmations instead. In her email, the Complainant asked the ITO to advise if there was anything else they required.

The ITO responded to the Complainant the following day and explained that if she was leaving Gibraltar, either permanently or indefinitely, she was entitled to claim for assessments to be processed to date and that to do so she was required to submit the following documentation:

- Claim for Final Assessment Form;
- Part 1 of P7A Form (given by employer);
- Travel documentation as proof that she was leaving the country;
- Bank Authority Form;

- Proof of Identity Card ("ID").

The ITO informed her that if her new place of residence was within a 200km commuting radius from Gibraltar, her claim would not be accepted.

The ITO also provided information of dates by which claims for a given tax year would have to be submitted, as well as information on how to settle assessments resulted in payables and on payments for assessments that resulted in refunds.

On the 4th June 2023, the Complainant submitted a copy of her ID but reiterated she had no flight details to prove she was leaving the country. She again offered to provide the ITO with booking confirmations of hotels in Spain, France and Italy and pointed out she had signed a contract in Spain and would not return to Gibraltar for employment. The ITO responded and asked her to submit her employment contract or a utility bill. On the 10th July 2023 the Complainant provided her contract but asked the ITO to note that it had been drafted with her current Spanish address. She could not provide a utility bill as she would be travelling during for the next few months but provided a copy of her Hungarian Residency Card. The ITO replied and informed her that they could not process her application unless she provided all the information requested and advised her to send this once she arrived at the end destination so that they could proceed with her enquiry. They also advised that they had been unable to open the attachment to view the Hungarian Residency Card. The Complainant emailed the ITO on the 11th July 2023 and explained that she had already provided all the documentation, including her new work contract in Spain, and stated that even when she arrived in Hungary, she would not have a utility bill in her name as she would reside with her parents. She resent the attachment. The ITO maintained in their response that they could not process the Claim if all the information was not available. The Complainant referred to having sent the documentation as instructed on the 30th May 2023 but stated that she would forward it all again. On the 12th July 2023 the ITO once again replied and informed the Complainant that her application had been rejected due to missing documentation failing to prove her new place of residence and referred her to the rules and regulations for the 'Leaving Gibraltar Application' and the way it was processed. The Complainant's response stated that she had sent them her Hungarian residency card and asked how that was not proof of her leaving. She stated that she had and never had a residence in Gibraltar. She lived in Spain with her partner, her name was never on the rental contract and that ended in June 2023. She stated that she had provided her new work contract which had nothing to do with Gibraltar and asked how that was not proof enough of her not having employment in Gibraltar.

The ITO informed her on the 14th July 2023 that they required the forms to be completed in full and asked the Complainant for her telephone number so that they could contact her in order to avoid further confusion. The Complainant provided her telephone details that same day via email at 20:07hours. The following day, Saturday 15th July 2023, the ITO sent the Complainant an email and advised that they had telephoned her but there had been no reply and advised that if she wished for them

to proceed she should send the application form completed. The Complainant responded that same day and stated that it was Saturday and she had just woken up and again informed them that she had already sent all the forms on the 30th May 2023.

The next communication between the Complainant and the ITO was on the 24th July 2023 via email whereby the Complainant requested details in order to raise an official complaint. The ITO's response the following day advised that she should address the complaint for the attention of the manager and send it to the email paye.enquiries@gibraltar.gov.gi

The Complainant emailed her complaint to the ITO on the 13th August 2023. She received an acknowledgement that same day in which the ITO informed her that they were experiencing a significant increase in the volume of emails received which was causing delays in response time and stated that they would make every effort to reply as soon as possible.

The Complainant did not receive a reply and on the 1st February 2024 she lodged her complaints with the Ombudsman.

Investigation

There was a delay on the part of the Ombudsman in presenting the complaints due to an influx of complaints which had impacted response timescales. The Ombudsman presented the complaints to the ITO on the 5th April 2024 with the response received from the Commissioner of the ITO ("Commissioner") by email on the 23rd April 2024. Due to an oversight, the Ombudsman missed that email and it was not until a chaser was sent to the ITO on the 3rd July 2024 that the Commissioner referred the Ombudsman to his email reply in April 2024.

(1) Documents submitted by the Complainant on the 30th May 2023 with regards to her Claim were requested by the ITO on three more occasions

The Commissioner informed the Ombudsman that the ITO had liaised with the Complainant regarding the information that was required in order to process her Claim. He pointed out that it was important to consider that the extent of information required to satisfy concerns on the part of the ITO varied, depending on an individual's circumstances. In the Complainant's case, she could not provide all the information required in order to accede to her request; she did not provide evidence of a fixed address as proof of having left the 200km radius from Gibraltar. The ITO pointed out that the Complainant had declared in 2020 that she was leaving the jurisdiction but had nevertheless returned to Gibraltar.

The Ombudsman reviewed the Claim form, 'Leaving Gibraltar Form, Claim for Final Assessment' and the guidance notes entitled 'Leaving Gibraltar Permanently or Indefinitely (Claim for Final Assessments)'. The form requested details of the applicant's new address and noted that the new place of residence must be outside of a 200km

radius of Gibraltar in order for it to be processed. The form specified that the person submitting the Claim did so in the understanding that they would not become employed in Gibraltar before the end of the current tax year, nor would they derive any income from Gibraltar after leaving. Should they return to Gibraltar in the current tax year and take up employment, they accepted that any repayment of tax made to them would have to be paid back.

The notes stated that if a person was leaving Gibraltar permanently or indefinitely they were entitled to claim for their assessments to be processed to date. To do so they had to submit the following documentation:

- Claim for Final Assessment Form;
- Part 1 of P7A Form;
- Travel documentation as proof of leaving the country.

The notes defined leaving Gibraltar permanently as leaving the country or usual place of residence, if living in Spain, to live in another country and not returning to live or work in Gibraltar. Leaving indefinitely was defined as leaving the country or usual place of residence if living in Spain, to live in another country for a period of time, at least one year, but could eventually return to live or work in Gibraltar after one year. If the place of residence was within a 200kilometre radius from Gibraltar, the claim would not be accepted. All final assessment claims would be processed after the end of the pertinent tax year, i.e. after the 30th June. Any application received after the commencement of a new tax year, i.e. as from the 1st July, would be processed after the end of that tax year.

(2) The Complainant could not provide details of an 'end destination' as she was working remotely whilst travelling and ITO offered no flexibility or discretion to find a solution

The Commissioner stated that although they understood the Complainant's comments regarding the possibility of recognition on the part of the ITO, he pointed out that those comments should be taken into account within the context of the Complainant's particular case as explained above (Ombudsman Note: The fact that in 2020 she had left the jurisdiction and then returned). The Commissioner advised that information requested by the ITO safeguarded the Gibraltar Tax Authority from individuals seeking to exploit mismatches in tax systems to obtain a tax advantage. Whilst the Commissioner stated that the ITO do not have evidence to suggest that was the purpose of the application, no flexibility or discretion was applied given the lack of specific evidence being provided and past information available on the Complainant.

(3) ITO telephoned the Complainant on a Saturday before 9a.m. which she felt was an unreasonable time to expect a call for someone who is resting at the weekend

The Commissioner fully understood the complaint and offered the ITO's sincerest apologies to the Complainant for the inconvenience caused. He advised that the matter had been raised internally with the staff member concerned. Notwithstanding, whilst not seeking to justify such a course of action, they understood that the motive behind the call was to seek to expedite the matter which had been ongoing for some time.

(4) No reply to formal complaint sent via email to the ITO on the 13th August 2023

The Commissioner advised that the position maintained by the ITO had not changed in the intervening period, given that the Complainant had not provided the information requested. As a result of the complaint lodged with the Ombudsman, consideration had now been given by senior management for de-escalation of the matter by exercising discretion and affording the flexibility sought on the basis of the additional information now available as a result of the process and for the purpose of good administrative practice due to the amount of time the matter had been ongoing.

……..

On the 25th April 2024, two days after the Commissioner sent the response to the Ombudsman, a manager at the ITO emailed the Complainant to inform her that her Claim had been accepted and that she would receive further information in the near future. On the 16th June 2024, the Complainant requested an update. On the 1st July 2024 the manager responded. She apologised for the delay and informed the Complainant that her assessment had been raised and would be issued at the end of July. The Complainant emailed the manager that same day, pointing out that the only 'acceptable document' she had been unable to provide back when she originally submitted her Claim was proof of her new address. She stated that she was now in Hungary after their road trip and could provide a copy of a bank statement with her new address. The Complainant emailed a copy of the document noting that it should complete the check list and she received a response from the manager thanking her for providing the remaining document and reiterating that her assessment would be issued in the near future; a term which the Complainant found quite vague.

On the 5th August 2024 the Complainant emailed the ITO manager because she had not yet received the final assessment and they responded that they had transferred monies to her account on the 29th July 2024 and that the funds would take about twenty working days. The Complainant received the tax refund monies into her bank account on the 8th August 2024.

Conclusions

Complaint (1) - Documents submitted by the Complainant on the 30th May 2023 with respect to her Claim were requested by the ITO on three more occasions – **Not Sustained**

The Ombudsman does not sustain this complaint. The ITO did not request the Complainant to resubmit the same documentation three times. The detailed investigation undertaken has found that the documentation sent by the Complainant subsequent to the original submission were:

1. The ID;
2. The new work contract and Hungarian Residency Card;
3. The Hungarian Residency Card resent as the ITO could not open the original attachment.

The Ombudsman has found that there is a discrepancy between what the notes accompanying the Claim form list as the documentation required to be submitted and the documentation the ITO later requested from the Complainant; i.e. Bank Authority Form and Proof of ID. The Ombudsman will recommend that the ITO review the notes and list all required documentation in the notes.

Complaint (2) – The Complainant could not provide details of an 'end destination' as she was working remotely whilst travelling, and ITO offered no flexibility or discretion to find a solution – **Not Sustained**

Under Section 31A of the Income Tax Act 2010, the ITO have a six-year period in which to process tax returns. It is on the basis of this timeframe that the Commissioner states that the information requested by the ITO from individuals leaving the jurisdiction is to ensure that they do not 'exploit mismatches in tax systems to obtain a tax advantage'. The tax advantage being referred to is the individual stating that they are leaving the jurisdiction in order to have their tax assessment fast-tracked and the ITO ensuring that they are leaving by requesting documentation that substantiates this.

Regarding the Complainant, the ITO stated that in 2020 she had declared that she was leaving the jurisdiction but had nevertheless returned to Gibraltar. The Ombudsman did not request details of this declaration from the ITO but notes that the guidance notes make provision for persons to return to employment in Gibraltar after the current tax year. It also states that if persons return to Gibraltar in the current tax year and take up employment, any repayment of tax made to them would have to be paid back. There is no mention from the Commissioner that the Complainant breached this but the fact that the ITO raised the Complainant's 2020 application for leaving Gibraltar and then having returned, points to them having been doubtful of her new Claim and wanting to ensure that she was not fast-tracking the assessment. With the seed of doubt already in place and the Complainant's travel arrangements not being clearcut flight out of the area, the ITO's doubt increased and their position was that

they would not process her Claim until she provided proof of her new residential address; ultimately her parents' home in Hungary although there is no mention of this document in the guidance notes.

The Complainant provided her new employment contract but the residential address was within a 200km radius although the Complainant had explained her position to the ITO and the fact that she would be working remotely.

It was in July 2024 when the Complainant was able to send the proof of her new address requested by the ITO.

Based on the present requirements of the Claim form and guidance notes, the Ombudsman cannot sustain this complaint. The Complainant could not provide travel documents to substantiate that she was leaving the 200km radius other than hotel bookings as she claimed she was going to be travelling. Furthermore, although her new work contract was with a Spanish company, the residence address was within the 200km radius.

Complaint (3) - ITO telephoned the Complainant on a Saturday before 9a.m. which she felt was an unreasonable time to expect a call for someone who is resting at the weekend – Sustained

The Ombudsman found that the ITO telephoned the Complainant the day after she provided her telephone contact details which was a Saturday. The Ombudsman assumes that the ITO staff were working overtime on that day as the normal working week runs from Monday to Friday. The Ombudsman notes that the ITO have now apologised, via the Ombudsman, for the inconvenience caused to the Complainant and have advised that the matter was raised internally with the staff member concerned. Notwithstanding, the Ombudsman is of the view that the telephone call would have gone some way in clarifying the ITO's position to the Complainant and further to her email of the 15th July 2023 they should have made arrangements with the Complainant to schedule a telephone call at a mutually convenient date and time.

Complaint (4) - No Reply to formal complaint sent via email to the ITO on the 13th August 2023 – Sustained

The Ombudsman sustains this complaint. The ITO failed to respond to the Complainant's complaint email sent on the 13th August 2023 to the email address: paye.leavinggib@gibraltar.gov.gi

The Ombudsman is critical that the ITO have not had a dedicated email address for complaints until August 2024 but welcomes that this is now in place.

Classification

Complaint (1) - Documents submitted by the Complainant on the 30th May 2023 with respect to her Claim were requested by the ITO on three more occasions – **Not Sustained**

Complaint (2) – The Complainant could not provide details of an 'end destination' as she was working remotely whilst travelling, and ITO offered no flexibility or discretion to find a solution – **Not Sustained**

Complaint (3) - ITO telephoned the Complainant on a Saturday before 9a.m. which she felt was an unreasonable time to expect a call for someone who is resting at the weekend – **Sustained**

Complaint (4) - No Reply to formal complaint sent via email to the ITO on the 13th August 2023 – **Sustained**

Recommendations

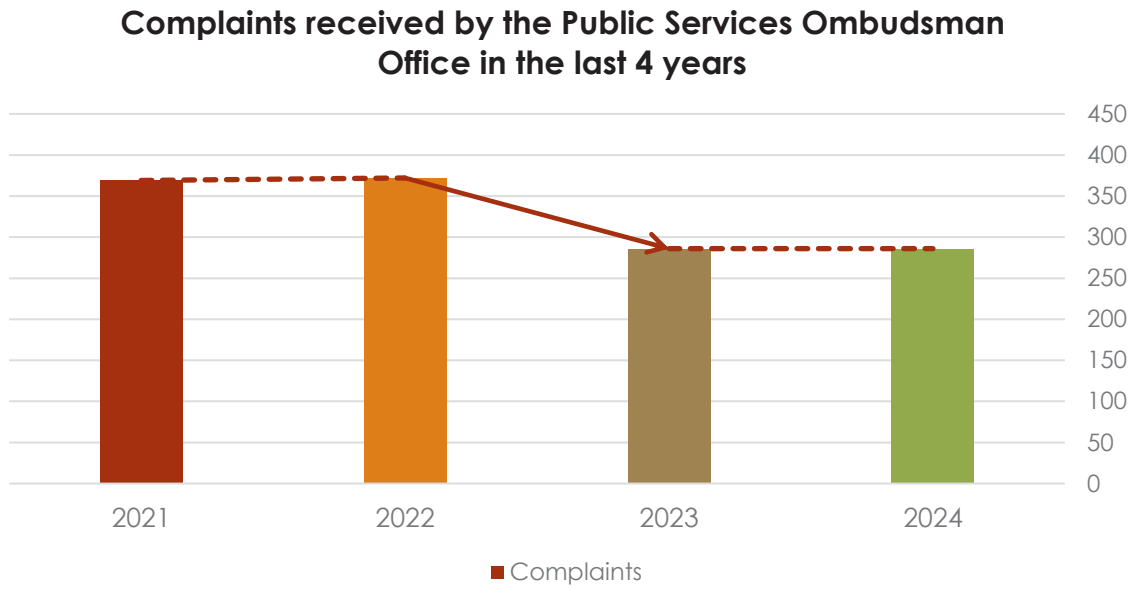
The Ombudsman recommends that the Income Tax Office review the guidance notes entitled 'Leaving Gibraltar Permanently or Indefinitely (Claim for Final Assessments)' in order that all the documentation required when submitting a 'Leaving Gibraltar Form, Claim for Final Assessment' is listed.

3

Statistical Information

3.1 Volume of Complaints 2024

This year, we received 286 Complaints in our office. Taking into account the 41 active complaints brought over from the previous year, a total of 291 complaints were completed by the end of this year which left 36 complaints open by the end of 2024.



Year	2021	2022	2023	2024
No of Complaints	369	372	286	286

Figure 1

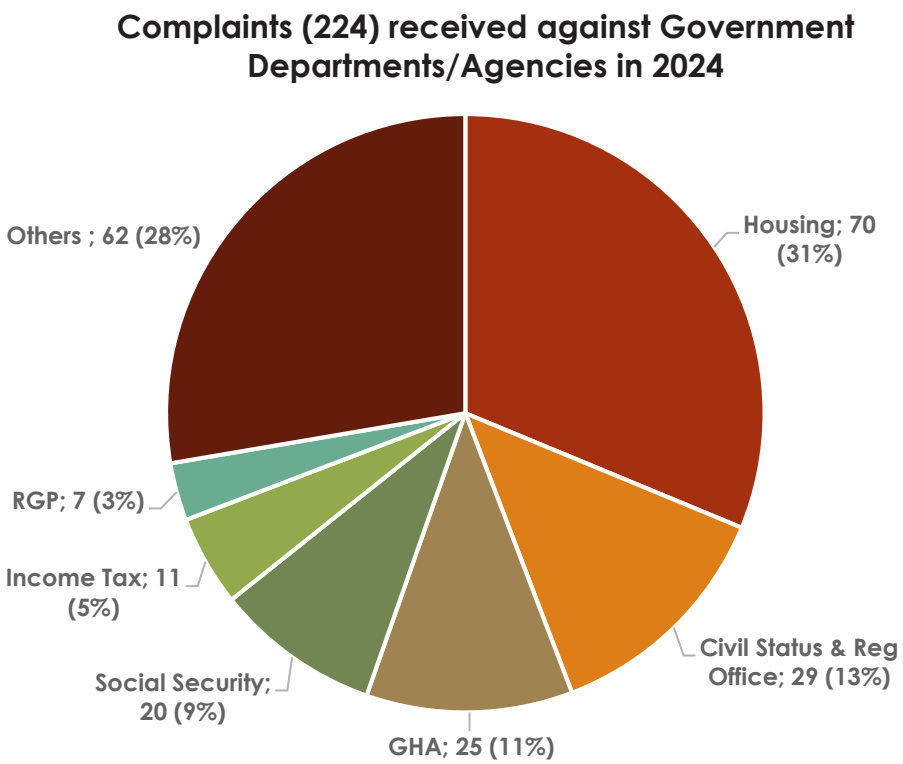
2021 (369) and 2022 (372) brought almost an identical number of complaints to the office and even though the number of complaints have decreased considerably since 2023, it appears that history has repeated itself as the office has received an equal number of complaints in a 2-year period, 286 complaints in both 2023 and 2024 respectively.

Of the 286 Complaints received this year, 62 were related to private entities, the majority of these complaints that were outside our jurisdiction involved gambling and legal issues, consumer related complaints and financial services matters. The remaining 224 complaints were related to Government Departments, agencies and other public entities.

3.2 Breakdown of Complaints against Government Departments/Agencies

A total of 70 complaints were received against the Housing Authority in respect of housing matters. This represented 31% of the total number of complaints received that were within the Ombudsman's jurisdiction. These complaints included issues such as inordinate delays in being allocated a government flat, non-replies to email/letters regarding housing issues and housing applications being refused too. This year there were 29 complaints against the Civil Status and Registration Office (CSRO). This represents an increase of 5 complaints over the previous year. The complaints related to issues such as delay in getting naturalization, non-reply to emails/letters and issues relating to residency. We also received a substantial number of complaints against the Gibraltar Health Authority (25) and the Department of Social Security (20).

Figure 2



3.3 Overall Nature of Complaints

Figure 3

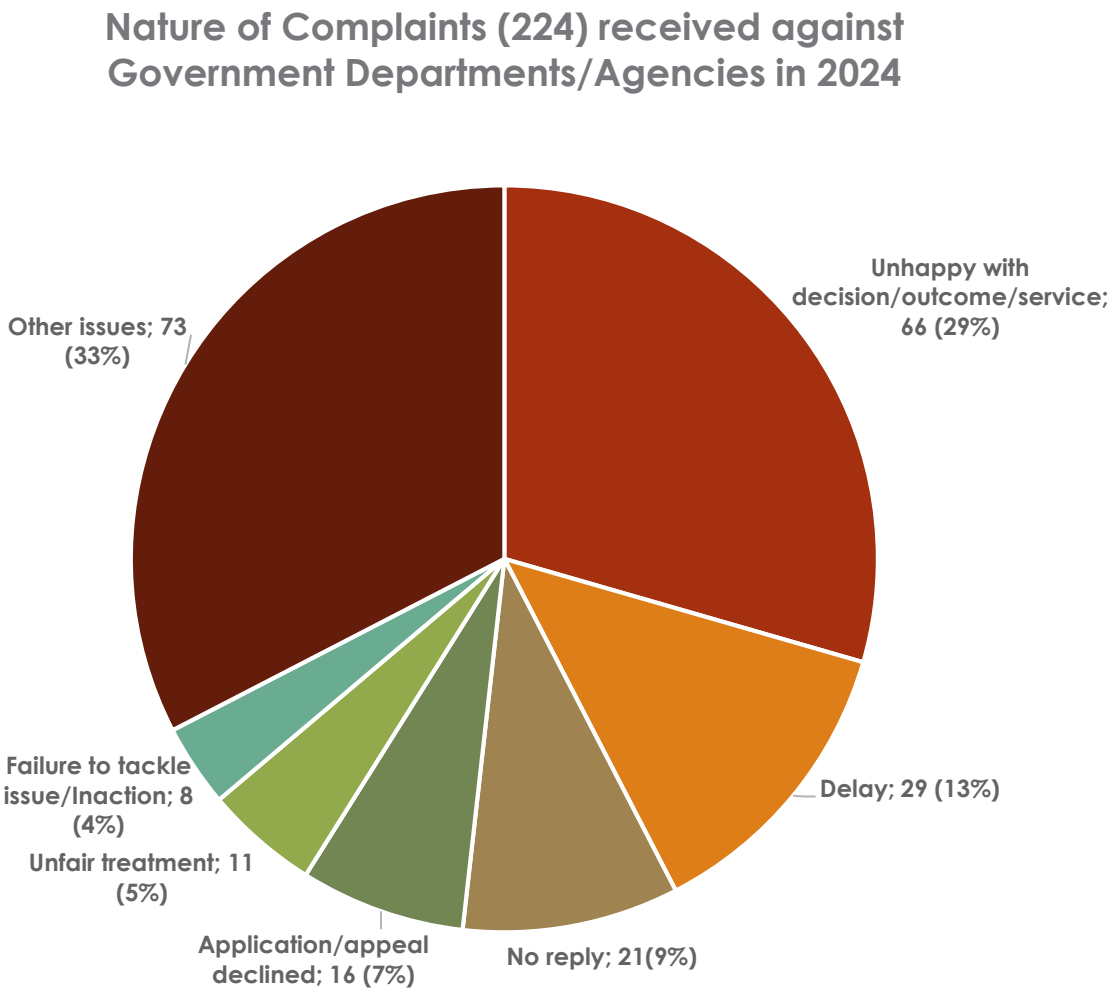
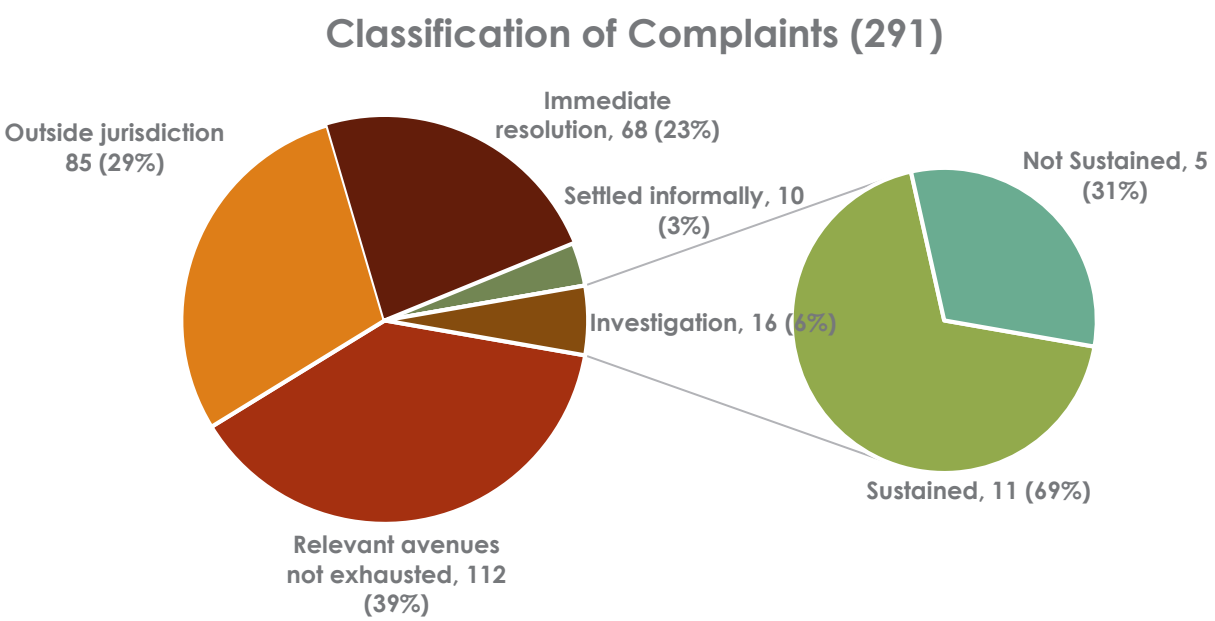


Figure 3 above shows generally the main types of complaints received by the Office of the Ombudsman. Similarly to other years, communication problems lie at the heart comprising: delays (at 13%); non-replies (9%); and inaction (4%). This amounts to 26% which coincidentally bears the same total as last year. Although there has not been an increase percentage-wise in these types of complaints, it should be reiterated that much greater attention should be focused and considered at the front line of public services in order to reduce what is effectively a repetitive cyclical communication problem that occurs year-after-year.

3.4 Classification of Complaints

85 complaints were classified as being 'Outside the Ombudsman's Jurisdiction'. Although there were 62 complaints against private entities which were outside jurisdiction, 23 more complaints have been classified as such, these after having been initially related to Government Departments, agencies or other public service entities, were investigated and after careful consideration were deemed as being 'Outside Jurisdiction' mainly due to them not being administrative in nature. Up to 112 complaints were closed as 'Relevant avenues not exhausted' as it was considered that the Complainant(s) had not exhausted all their avenues of redress with the Public Service Provider concerned. These refer to complaints lodged at the Ombudsman's Office without the Complainant having formally submitted their complaint to the relevant Public Service Provider in the first instance. Note that up to 68 complaints were classified as dealt with by 'Immediate Resolution', whilst 10 complaints were settled informally.

Figure 4



Finally, 16 complaints were meticulously investigated by the Ombudsman and concluded by the end of the year with 11 of these upheld or partly upheld, whilst 5 of them were not upheld. Detailed reports were written for 11 investigations, see page 21.

4

Recommendations

4.1 Table of 2024 Recommendations

Case No.	Nature of Complaint	Recommendation(s)	Status
1263	Complaint against the Housing Authority ("HA") (i) On the 6th May 2021, the Complainant submitted her application for social housing ("Application") but by June 2022 had still not received a decision on whether the Application had been accepted; (ii) The Complainant's son in law, on her behalf, submitted a complaint to the HA on the 6th June 2022 but by September 2022 had not received a substantive reply.	The Ombudsman recommends that the HA implement a policy to assist applicants who had previously been homeowners but who now, due to factors beyond their control, find themselves in need of social housing. Consequently, each application should therefore be considered carefully and assessed on its individual merits, not in accordance with a blanket policy/criteria.	Accepted waiting for implementation.
1282	The Complaints against Aquagib were as follows: (i) Water meters were housed separately to the electricity meters and could have been read; (ii) Never formally informed that no readings would be carried out. (iii) Inaccurate account representation; (iv) Bill dated July 2022 showing exceptional usage of water was never sent to the Tenant; (v) In possession of information between July 2022 and March 2023 that there was a leak and failed in their duty of care to notify the Tenant; (vi) The unethical and menacing tactics used to obtain final settlement of a water bill.	When a situation arises beyond Aquagib's control whereby electricity and water meters cannot be read and estimated bills will have to be issued, Aquagib have a duty of care to their customers to notify them of this and to explain that estimated bills are not a true reflection of liability, potentially resulting in a shortfall for which the customer will still be liable.	Accepted and implemented.
1287	Complaint against the Income Tax Office ("ITO") (i) Documents submitted by the Complainant on the 30th May 2023 with regards to her Claim for Final Tax Assessment ("Claim") were requested by the ITO on three more occasions; (ii) The Complainant could not provide details of an 'end destination' as she was working remotely whilst travelling, and ITO offered no flexibility or discretion to find a solution; (iii) ITO telephoned the Complainant on a Saturday before 9a.m. which she felt was an unreasonable time to expect a call for someone who is resting at the weekend; (iv) No reply to formal complaint sent via email to the ITO on the 13th August 2023.	The Ombudsman recommends that the Income Tax Office review the guidance notes entitled 'Leaving Gibraltar Permanently or Indefinitely (Claim for Final Assessments)' in order that all the documentation required when submitting a 'Leaving Gibraltar Form, Claim for Final Assessment' is listed.	Accepted and implemented.

Case No	Nature of Complaint	Recommendation(s)	Status
1250	Complainants were aggrieved as the GHA had not provided replies to the following complaints regarding the Patient's care; (i) Alleged poor management of diabetic condition, which led to several instances of crises. (ii) The Patient was seldom-fed the right diet for her condition. (iii) Alleged total lack of psychological support while admitted in St Bernard's Hospital prior to her transfer to residential care. (iv) The Patient's walking stick was confiscated during an episode of crisis and a Zimmer-frame not provided. The Patient went to the bathroom without supervision, slipped and fractured her knee.	1. The Ombudsman recommended that the GHA offer the Complainants a sincere apology for their shortcomings in the Patient's care which should include "lessons learnt" and steps taken/future changes to be implemented as a result of this Complaint. 2. The GHA should conduct a full review of patients with diabetes who are not able to self-manage and may have been prescribed both oral and subcutaneous glucose lowering agents. 3. The GHA should introduce clear guidelines for patients to be reviewed by a senior member of the diabetes team if there are any complexities or recurring issues. 4. The GHA should organise training sessions for, doctors, nurses and care providers that look after patients with diabetes. These should include sections dedicated to the recognition and management of hypoglycaemia. 5. The Ombudsman recommended that an evaluation be conducted to determine how many specialist diabetes nurses are needed in Gibraltar, followed by a recruitment process, if deemed necessary. 6. The Ombudsman recommended that the GHA review existing policies to ensure that there is sufficient engagement with family and carers, particularly when significant decisions are being taken as regards the patient's care. 7. The Ombudsman recommended that the GHA consider implementing an agreed set of standards of care, quality and governance to operate at organisational, departmental and individual levels, similar to the NMC codes and the NICE guidelines, but adapted to Gibraltar. 8. Given that there is no independent external body monitoring the quality of care and safety of patients delivered by the GHA, the Ombudsman recommended that the GHA and HM Government of Gibraltar consider identifying an independent body that would carry out this role.	Accepted and implemented. Accepted waiting for implementation. Accepted waiting for implementation. Accepted waiting for implementation. Accepted waiting for implementation. Accepted waiting for implementation. Accepted waiting for implementation.

Appendices

motion to the House and I would thank all hon. Members for having indicated that there will be unanimous support for this motion which deals with a fundamental issue that will soon be before all voters in Gibraltar.

Mr Speaker: I now put the question in the terms of the motion, as amended, proposed by the Hon. Chief Minister. Those in favour? (**Members:** Aye.) Those against? Carried.

Public Services Ombudsman –
Amended motion carried

Clerk: The Hon. the Chief Minister.

The Chief Minister (F R Picardo): Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

This House:

Notes:

1. That it has been 21 years since the House of Assembly passed the Public Services Ombudsman Act ('the Act') unanimously, with the support of the GSLP in its then role of official Opposition in November 1998;

2. That 2019 marks the 20th anniversary of the appointment of the first Public Services Ombudsman under the Act by motion of the House of Assembly, which motion also enjoyed the support of the then GSLP Opposition; and

3. That the office of the Public Services Ombudsman enjoys the full support of all members of this Parliament.

Further notes the publication by the Public Services Ombudsman of its Annual Report for 2018 as well as the recommendations contained therein;

Acknowledges the Government's support for the review and modernisation of the function and powers of the Public.

And resolves that the Act should be reviewed to enable the office of the Public Services Ombudsman to launch investigations of its own motion, as recommended by the Public Services Ombudsman in 2016.

Mr Speaker, this is a motion that arises from the Report of the Ombudsman, Mr Dilip Dayaram Tirathdas, who is the third of Gibraltar's Public Services Ombudsmen. It also arises from various meetings I have held with former incumbents of the post of Ombudsman, namely Mr Pinna and Mr Hook.

The first thing to reflect upon is the success of the office of the parliamentary or Public Services Ombudsman in Gibraltar. This was an initiative of the then new GSD Government of 1996. Within two and a half years of their election they moved the creation of an office in Gibraltar for an ombudsman.

On balance, having been outside of Government and in Government, in exchanges with the Ombudsman both as a Member of Parliament and not as a Member of Parliament before I was

first elected in 2003 and after I had been elected as Chief Minister, I think the public as a whole recognise that the role of the Ombudsman in our community is one to be universally considered as having been a positive one. In particular, I want to congratulate all of the individuals who have held the post of Ombudsman in the two decades since that office has been created and I want to reflect in particular on the success of Mr Dilip Dayaram Tirathdas in the role.

The House has already reflected on the successful tenure of Henry Pinna and Mario Hook and I do not mean, by not concentrating on their contribution, to suggest that their contribution has been any less important than Dilip Dayaram Tirathdas's, but I do want to concentrate, as the House has not already done so, on his contribution.

I want to say, Mr Speaker, that although we had what might have been called a fairly unnecessarily divisive debate on the appointment of Mr Tirathdas to that post on 26th July 2017 because of his previous role as a member of the public service, as a civil servant in Gibraltar, I think in the time since his appointment Mr Tirathdas has demonstrated that his integrity and ability, of which we all spoke at the time of his appointment, have not in any way been vitiated by the fact that he was a retired senior civil servant. In fact, as I indicated when I presented the motion to the House for his appointment, his understanding of the mechanics of Government from the inside – from the guts, if those listening in the Treasury will permit me; almost from the pancreas of Government, Mr Speaker! – has assisted the way that we have seen Mr Tirathdas being able to resolve issues and engage with senior officers in the administration. I think that the position that the House took to appoint Mr Tirathdas – unfortunately not unanimously but with Members opposite abstaining on the appointment – was a wise choice indeed and I congratulate Mr Tirathdas for the work that he has done in his role.

One of the things that Mr Tirathdas has written about in the context of his reports and indeed one of the issues on which he has written generally to the public is the adoption of what are known as the Venice Principles on the Protection and Promotion of the Institution of the Ombudsman. The Venice Principles are adopted by the Council of Europe, Mr Speaker. They were adopted earlier this year, in March 2019, and those set out 25 principles for the protection of those who hold the office of ombudsman and indeed for the protection of the institution of ombudsman in all of the jurisdictions in which ombudsmen operate. Those are laudable principles, a review of which will indicate to hon. Members of this House that most are already understood and respected in Gibraltar.

I think there is one in particular that is not, and that is the issue of the Ombudsman's ability to initiate his own investigations without having to have a report signed by a member of the public. That is now recognised, not just in the Venice Principles but in most of the jurisdictions where there are ombudsmen, as a valuable tool in the hands of those who discharge the office of the ombudsman, and that is why the Government's motion will seek not just to congratulate those who have held the post of Ombudsman and indeed to look at the value of the work that they have done, but also to seek that there should be a review of the legislation that creates the office of the Ombudsman in order to provide for own motion investigations.

The key issue that you see coming across in the Venice Principles is the principle of respect for the findings of ombudsmen. I am very pleased indeed to be able to refer the House to the Ombudsman's latest report, which is of course tabled in this House; the Ombudsman is a Member of this House *ex officio.* In his introduction, Mr Tirathdas refers to the fact that the recommendations made by the Ombudsman are invariably respected and followed by Government Departments, which I think is a laudable position for the Government to be taking. At 2.1, he talks about recommendations are normally given very careful consideration by public service providers and in most instances taken on board – absolutely exactly the right approach that the Venice Principles seek there should be to the role of the ombudsman.

Mr Speaker, setting out that position, the Ombudsman himself issued a press statement on 10th July this year welcoming the adoption by the Council of Europe of the Venice Principles, which is what put the Government on an inquiry in respect of these issues, and recently has

written to a local newspaper setting out his position and confirming that he would be welcoming of the ability to commence those own motion investigations.

I do appreciate that there is likely a consensus in respect of the issue that I am putting to the House today. It would have been absolutely better to take the view together that we could present this motion, but unfortunately we were not presented with the opportunity to do so by those Members opposite who sought to present their own motion.

I am afraid that it would not be possible for us to agree that one should *have* to follow the recommendations of the Ombudsman, for a simple reason – which I hope hon. Members will understand and share – and that is that if a Government Department were to be required to *have* to follow recommendations of an Ombudsman, then the Government Department would have to become involved in the investigation leading to those recommendations, almost as if it were involved in a court case. That would clog up the mechanism, which is so successful, for the Ombudsman to be able to become involved and to have the utmost goodwill provided to him by the Departments without the Departments needing to consider taking legal advice or legal representation in making submissions to the Ombudsman. For that reason we will go down the road of pursuing the Venice Principles and agreeing the own motion investigation, but I do not think it would be in anybody's interest that we should go further.

Mr Speaker, for all of those reasons I commend the motion to the House. *(Banging on desks)*

Mr Speaker: I now propose the question in the terms of the motion moved by the Hon. the Chief Minister.

Hon. K Azopardi: Mr Speaker, there is no other party that has supported the office of the Ombudsman more than the GSD. (**A Member:** Hear, hear.) Indeed, we introduced the legislation. When I was on the other side of the House I had carriage of the work that led to the drafting of the Public Services Ombudsman legislation 21 years ago and I was the Minister responsible for the Ombudsman and any liaison with the Ombudsman initially. So I have no doubt that we introduced the legislation, supported the office of the Ombudsman and the principle that the office should be there, and have for decades been supporting it.

The hon. Member, when I look at the motion that he has presented it is clear that all he is seeking to do in this motion is take a scoop and react against a motion that was presented by the Hon. Mr Clinton some weeks earlier, because in some way he felt as if the initiative had not been taken by him. The first couple of paragraphs, and, I have to say I am quite dismayed by that, because the motion of Mr Clinton – to which I am not speaking, but of course I must respond to some of the comments that the hon. Member has made because he has made reference to it – was entirely, much more neutral, much more non-partisan than his, and yes, called upon the Government to ensure that all the recommendations are acted upon, but the hon. Member in his last comment, when he said 'I cannot accept the idea that Government should act upon the recommendations', should not stop there because that is not what that motion says. It does not say that we want to force the Government to act upon all recommendations, because it then continues ' that if not that a proper explanation be given', so that the Government has leeway to do that.

Twenty years on, it is right and proper that we look at the office of the Ombudsman and see what improvements can be made. That is the only message that was being put across in a non-partisan motion. For the hon. Member to bring forward his own motion in a petulant kind of way and then reject, after the Speaker's ruling today, the offer that we sit down and seek consensus when we have just done precisely that – pass a motion on an issue of public importance in Gibraltar by consensus … For the. Hon. the Chief Minister to react in that petulant and childish way is a matter of dismay. That is the reality behind that gesture and refusal to engage with the Opposition on this issue.

If he did not like the language of the motion that the Hon. Mr Clinton put forward, it was within his gift to engage with us and come to a conciliatory position on it and we would have

welcomed that initiative. Instead, he brings forward a motion which in essence is seeking to congratulate the Ombudsman – which of course we congratulate the work of the Ombudsman and intends to support the initiative that they can launch their own motion investigations, which was in our first motion. So it is not new ground but adds a couple of paragraphs, as a preface to his motion, of a self-congratulatory nature. He wants to congratulate the GSLP for voting, in opposition, in support of the legislation that the GSD introduced but without mentioning the GSD, and wants to congratulate, in his paragraph 2, that in 2019 the motion which appointed the first Ombudsman also carried the support of the then GSLP Opposition.

Mr Speaker, the hon. Member knows I am fond of him, but there are times when I almost feel, when I view his performance, that he is in a Monty Python film. There are moments when I honestly feel there are stances that he takes that he does not need to take if he wants to behave like a statesman and as a leader of this community, and this is an example. Perhaps it is not the most, the biggest example, but it is an example where it was within his gift as Chief Minister of this community to engage with the Opposition. We would have come to a consensus. We would have supported the work of the Ombudsman without the need for these facile self-congratulatory statements that are incredible and beyond belief.

For those reasons, we are unable to support the motion and we will abstain on it. We will abstain because of the self-congratulatory, childish paragraphs of this motion, but we absolutely make clear in doing so that we support the work of the Ombudsman, as we have done from the initial moments of the office of the Ombudsman when we introduced the Bill on that side of the House 21 years ago. *(Banging on desks)*

Mr Speaker: The hon. Lady.

Hon. Ms M D Hassan Nahon: Mr Speaker, I really think that the people of Gibraltar must be very confused – if they are watching Parliament at all, that is. We have two motions before us which are actually almost totally identical. The hon. Gentleman initially came in with a motion, which then has been hijacked by Government, and of course Government has the front foot on this and gets to speak on it first. We still do not even know when the Opposition Member's motion will even, if ever, be heard.

I consider myself a layperson, and I am around many political veterans here and I find myself tied up in knots in legal and parliamentary language which does not really make sense, because now there seems to be a precedent. What does that actually mean for opposition? That every time we may be the architects of a motion that maybe Government has not thought of, that Government will then run with their own motion and put ours to the back of the shelf and we have to wait until it is deemed appropriate to be heard, when the heat of the moment is over?

I do not consider it fair and I will reserve my offering on the actual substance of the motion of this discussion to when the Hon. Roy Clinton presents his own.

Thank you. *(Banging on desks)*

Mr Speaker: If no other Member wishes to speak, I will call on the mover to reply.

Hon. Chief Minister: Mr Speaker, it had all been so convivial until now.

The hon. Gentleman says that no one has supported the office of Ombudsman as much as he has, and he reminds us of the time when he had carriage of the legislation when he was a Minister in the Social Democrats. I do sense that he is going to remind us more and more of the work that he did in the Social Democrats, hoping perhaps that we will forget more and more the work that he did to denigrate the Social Democrats when he was the leader of the Progressive Democratic Party. But however often he tries to do that, he knows that I will be his foil – *(Interjection and laughter)* in ensuring that Gibraltar will remember that indeed we almost have to thank him for our election victory in 2011, because if he had not taken the 400-odd paltry votes that he was able to take from the GSD, we might not have won by 200 votes. But I do

know that I do not need to remind staunch supporters of the GSD of what it is that they need to remind themselves that he was responsible for.

The hon. Lady and hon. Gentleman are making points which seem to ignore the reality of the political system in which we run. The political system in which we run is tried and tested. It will no doubt need reform, it needs to be modernised, but it has done this community proud in the time that we have run it. Indeed, it is based on the Westminster model. In the Westminster model you win an election and you have a majority in the Parliament. In the context of our Parliament, without backbenches, we have what is known as an inbuilt majority. And so, in order to pass legislation or motions in this Parliament one must enjoy a majority of the votes supporting it.

Hon. Members on this side of the House meet every Monday, unless it is impossible for us to do so; we debate the legislative measures that we are going to take, we agree in what form we would each support them and therefore when we present a motion or where we present a piece of legislation, we do so in the knowledge that out of the 17 votes in this place 10 will be deployed to support it. That is the way in which democracy works. In other words – and I am sorry to have to labour this point – out there, the voter decides who should enjoy a majority in this place. Once they have determined who enjoys a majority in this place, 10 votes are provided to one side and a spread … Usually, successful Oppositions enjoy seven. In this case, the hon. Gentleman enjoys six; I suppose on most occasions, he should enjoy six. We have seen that fracture even more under a former leader of his party – another FLOP, Mr Speaker, the one sitting to his left. I say 'FLOP', as the hon. Gentleman understands, only as an abbreviation. So, if you want to see a measure prosper in this place, it must enjoy the support of a majority of Members in this place who will raise their hands or their voices in support of it.

I was very conscious, in discharging my obligations as Chief Minister when it came to the motion that we have just debated on abortion, which I could simply have passed by a Government majority, to reach out to the hon. Gentleman and seek on that issue, which is greatly divisive as to the substance – as we have managed to avoid showing today for the reasons that hon. Members have heard and Members of this community will have heard – to reach a consensus in respect of that very difficult issue.

On an area where it might have been possible to reach consensus … and indeed the hon. Gentleman is right, there are two motions on the Order Paper and there are areas between them which are almost identical. It might also have been possible to reach a consensus. But of course, Mr Speaker, it is not possible to reach a consensus on the basis of that consensus being sought after a measure has been published. In the normal way, in the responsible way, the mature way of doing things … And I must say to the hon. Lady she sometimes does it, so I do not see why she does not expect her fellow Members of the Opposition to do it – picks up the phone and says, 'I am intending to move a measure. Would it enjoy the Government's support? And how might the Government wish to see it change in order to enjoy support?'

If you want to enjoy the support of the majority in this House, you get in touch with the leader of the majority, you do an agreement, and then you still move it and you have the benefit of saying, 'I am moving this, even if it is from the Opposition benches, knowing that I have the support of the majority in this House.' That would be the normal way of genuinely trying to do something which is not designed in order to try and steal a political march – in other words, all of the things that the hon. Gentleman has described that he says I have tried to do: the petulance, the childishness and the other matters that have led to his dismay. Well, he might have said that, but he knows in his heart of hearts that the disagreement on an issue which could have been an issue of agreement arises from the fact that a Member of the Opposition published a motion, in relation to an issue on which we might have agreed, without getting in touch with the Government and understanding the Government's sensitivities on the issue.

The Opposition motion goes much further than the Government motion. Indeed, Mr Speaker, the Opposition motion goes further than the Opposition's manifesto. The GSD manifesto contains a paragraph on the issue of the Ombudsman which is much more circumspect than

what they have tried by motion to seek the Government's agreement for. If the hon. Gentleman does not recall that, Mr Speaker, then I do not know who the author of his manifesto was, but he might like to look at the fact that the paragraph in their manifesto talks about certain Departments and categories of cases being specified where the Ombudsman's recommendations will have to be followed within 120 days or reasons given for the failure to do so. That is not included in the motion. In the motion that is being proposed the language is different. Of course, they are now not in Government. They might have sought a way out with a 120-day period – I will give way to the hon. Gentleman in a second – and written reasons and certain specific cases. In their motion, which I am not debating and which comes later on the Order Paper, the language is completely different. So, Mr Speaker, I do not accept that there is even a good reason for them to say that they had sought a mandate on what they are now seeking to put a motion on.

The hon. Gentleman has asked me to give way – and we have had a convivial afternoon, so I shall agree.

Hon. K Azopardi: And I will not abuse the request to give way, because there is a simple explanation for that.

In the motion, that was drafted when we debated it, we are not seeking to implement what was GSD policy. We were trying to call on the Government to put in place a mechanism to ensure recommendations are followed, or, if not, reasons are given, but to give the Government side leeway to do it in whatever way it wanted and not necessarily do it in implementation of the GSD manifesto.

Hon. Chief Minister: I am grateful for that clarification, Mr Speaker, because simply reading the two, one might have been left with the impression that they were seeking to impose on the incumbent Government a tighter position than they were seeking to have imposed on themselves by way of their manifesto commitment on the subject.

So let's be very clear. It is possible for this House to continue to work on the basis of us, together, being able to reach difficult decisions which are good for the community and where we might have different views but where there may be areas, like a Venn diagram, on which we agree and where we can proceed together. That is not going to be possible if we do not talk to each other. The hon. Gentleman and I, as leaders of our respective parliamentary factions, and the hon. Lady, speak to each other and were therefore able to reach consensus. We speak to each other directly; we do not speak to each other over the airwaves. By the time we get to the airwaves we are expressing the differences between us.

And so, Mr Speaker, I commend anyone who wishes to bring a motion to enjoy the support of the majority of this Parliament … that there should be more inter-parliamentary debate and discussion between Members before we escalate matters to publication, because otherwise all that happens is that you are exposing the old politics of trying to steal a march.

I say to the hon. Gentleman, as I have said before in this House – and I want this to be on the record, on *Hansard* – if I am approached by a Member of the Opposition seeking my support for a motion or other measure which can enjoy the Government's support, when I tell that Member of the Opposition that they will enjoy the Government's support they will be able to publish their measure and say that they will have the Government's support when it comes to the House. I will not seek to tell them that it will only enjoy my support because it is now a lovely, good idea if they allow me to put the measure or a Government Minister to move the measure. I say 'measure' because it could be a motion or it could be a piece of legislation that can be moved as a Private Member's motion.

So, Mr Speaker, for all of those reasons, the Government is ready to act as the leader of this community and to support the Opposition in putting measures which might enjoy the support of the whole community. But what we are not ready to do is to see petulant, childish games played by Members of the Opposition who simply want to get their name in print and get their name in

a headline as soon as possible, having been disregarded by the general public once again, having seen their support fall during the course of the General Election, and looking desperately for relevance once more.

And so, Mr Speaker, for all of those reasons, I commend the motion standing in my name to the House and I ask that hon. Members now, in future, act in a way more consonant with their parliamentary responsibilities going forward.

Mr Speaker: I now put the question in the terms of the motion proposed by the Hon. the Chief Minister. Those in favour? (**Members:** Aye.) Those against? Abstentions? Carried.

Hon. Chief Minister: Mr Speaker, I wonder whether that might be a convenient moment to recess the House for 15 minutes.

Mr Speaker: The House will now recess for 15 minutes.

The House recessed at 5.52 p.m. and resumed its sitting at 6.15 p.m.

GOVERNMENT BILLS

FIRST AND SECOND READING

Marriage (Amendment) Bill 2019 – First Reading approved

Clerk: Bills – First and Second Reading.

A Bill for an Act to amend the Marriage Act. The Hon. the Minister for Justice, Multiculturalism, Equality and Community Affairs.

Minister for Justice, Multiculturalism, Equality and Community Affairs: (Hon. Miss S J Sacramento): Mr Speaker, I have the honour to move that a Bill for an Act to amend the Marriage Act be read a first time.

Mr Speaker: I now put the question, which is that a Bill for an Act to amend the Marriage Act be read a first time. Those in favour? (**Members:** Aye.) Those against? Carried.

Clerk: The Marriage (Amendment) Act 2019.

Marriage (Amendment) Bill 2019 – Second Reading approved

Minister for Justice, Multiculturalism, Equality and Community Affairs: (Hon. Miss S J Sacramento): Mr Speaker, I beg to move that the Bill for the Marriage (Amendment) Act 2019 be read a second time.

The Bill is a simple one. It consists of three clauses. The substance of the Bill is contained in clause 3, which deletes section 6B of the Marriage Act in its entirety.

This House will recall that in 2016 the Marriage Act was amended to introduce civil marriage to same-sex couples in our legislation. That amendment included clause 6B, which provided for

Clerk: A Bill for an Act to amend the Marriage Act.
Clauses 1 to 3.

Mr Chairman: Stand part of the Bill.

Clerk: The long title.

Mr Chairman: Stands part of the Bill.

Marriage (Amendment) Bill 2019 –
Third Reading approved: Bill passed

Clerk: The Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Mr Speaker, I have the honour to report that the Marriage (Amendment) Bill 2019 has been considered in Committee and agreed to without amendments, and I now move that it be read a third time and passed.

Mr Speaker: I now put the question, which is that the Marriage (Amendment) Bill 2019 be read a third time and passed. Those in favour? (**Members:** Aye.) Those against? Carried.

PRIVATE MEMBER'S MOTION

Public Services Ombudsman –
Amended motion carried

Clerk: Private Member's motion. The Hon. R M Clinton.

Hon. R M Clinton: Mr Speaker, I have the honour to move the motion standing in my name, which reads as follows:

This House:
Notes the Public Services Ombudsman's Annual Report for 2018 and the recommendations contained therein especially in respect of the Housing Authority and the Civil Status and Registration Office.

This House further notes:

1. That it has been 20 years since the office of the Public Services Ombudsman was created in order for the public to complain about any act of maladministration by Government Departments or Public Service Providers,

2. That the Office of the Ombudsman enjoys the full support of Parliament,

3. That twenty years on the powers of the Office of the Ombudsman and the duty of Government Departments or Public Service Providers to take account of recommendations should be reviewed to see what improvements could be made to the current system.

Calls upon the Government to ensure that all the recommendations of the Ombudsman are acted upon in a timely manner, or if not that a proper explanation is given by heads of department on a case by case basis.

Resolves that the Public Services Ombudsman Act 1998 be amended so as to allow for Own Motion Investigations as requested by the Ombudsman in 2016.

Mr Speaker, the role of the Public Services Ombudsman is an important one in giving the public an independent avenue to complain about any act of maladministration by Government Departments or public service providers. This importance is reflected not just in the powers granted to the Ombudsman under the Public Services Ombudsman Act 1998, but also that under the Gibraltar Constitution Order 2006 the Ombudsman is a parliamentary officer under section 25(3)(b). And so, Mr Speaker, the Ombudsman should thus be able to rely on the support of this House in performing their duties.

Every year, for the last 20 years, the Ombudsman's Report is formally laid in this House – without, I must say, much further comment or debate, although I am sure that Members do read his report with considerable interest.

The motion I have brought to the House today should, I hope, enjoy the full support of Members, including those opposite, as the office of the Ombudsman deserves. My motion tackles two specific areas arising from his report and his recommendations for 2018: firstly, addressing the recommendations; and secondly, looking to review legislation following the request by the Ombudsman for additional powers.

Mr Speaker, let me deal first with the recommendations. The 2018 report varies from the previous year in that it carries over a number of findings that have yet to be acted upon by the relevant Government Departments. I am glad the Minister finds it so amusing. These can be found on pages 9 to 15 of the report.

There are four outstanding recommendations from 2017, and one, in fact, in respect of 2016. These are in respect of the Gibraltar Electricity Authority, the Housing Authority, the Driver and Licensing Department and the Gibraltar Health Authority. If the Ombudsman's recommendations are not acted upon in a timely manner, it undermines his credibility and authority in the eyes of the public. The Ombudsman had to state publicly, in an interview with the GBC on 12th November 2019, that it is now for Parliament to take the matter up and he has no power of enforcement, nor does he necessarily seek such power. The Ombudsman has appealed to this place for help, and help we must give.

This motion calls upon the executive, i.e. the Government, to act upon the recommendations. This is necessary if public faith is to be maintained in the office of the Ombudsman. To fail to act is to fail the Ombudsman and to fail the people of Gibraltar.

Over the last 20 years a lot has changed in the world of public finance and administration. The public now, quite rightly, demands a high level of accountability and scrutiny. In his 2016 annual report the Ombudsman at the time requested that his powers be extended to allow for what are called 'own motion' investigations. Ombudsman offices in other jurisdictions were asking for this, as it was reasoned that it would, and I quote, 'allow the investigation of matters which are brought to their attention but where people may be reluctant to make written complaints for a variety of reasons'. We can achieve this simply by adding such powers to section 13 of the Public Services Ombudsman Act 1998.

Mr Speaker, such is the strength of their conviction that such powers are necessary that the two previous Ombudsmen wrote and co-signed a letter to the *Gibraltar Chronicle* on 6th December 2019. For the purpose of recording their views into *Hansard*, this is what they had to say on the matter, and I quote directly from their letter:

> As previous holders of the post of Gibraltar Public Services Ombudsman, we are pleased that Parliament will shortly be considering a resolution to allow 'own motion' investigations to be carried out by the Ombudsman. This

> will certainly be a welcome development, especially following the 20th anniversary of the establishment of the office of the Ombudsman in Gibraltar.
>
> We are of the view that the ability of the Ombudsman to investigate any issue of maladministration without having to rely on receiving a written complaint from the public should not be underestimated. The power to conduct own motion investigations is a much desired and necessary tool to have in the pursuit of administrative justice. We would also like to highlight that the Public Services Ombudsman in Gibraltar is now one of the very few such ombudsmen worldwide that is not empowered to conduct own motion investigations. In our view, this is a matter that should be regularised by the Government and by Parliament as soon as possible.

Mr Speaker, if this appeal is not convincing enough for Members, the current Ombudsman also wrote to the *Gibraltar Chronicle* a few days later, on 9th December 2019. He wrote that he was 'fully agreeing with the views expressed by my predecessors and I would welcome such a development in Gibraltar'. He also urged the full adoption of the Venice Principles in Gibraltar, which are a set of internationally accepted standards for the proper functioning and independence of public service ombudsmen.

Mr Speaker, the issues are really quite clear as to outstanding recommendations, and the request for a review of legislation is clear and unequivocal. It is now time for us to act.

I commend my motion to the House. *(Banging on desks)*

Mr Speaker: I now propose the question in the terms of the motion moved by the Hon. R M Clinton.

Chief Minister (Hon. F R Picardo): Well, Mr Speaker, the motion, of course, as we all know, has been overtaken by events, namely the motion that the House considered earlier on the substance of the issues that the hon. Gentleman has now addressed, but which dealt with –

Hon. R M Clinton: Point of order, if I may? Mr Speaker, you did, did you not, rule that they were different motions?

Hon. Chief Minister: Mr Speaker, you did rule that they were different motions, but the substance of one of the parts of the motion is clearly one that has already been overtaken by events, namely the earlier motion, because the hon. Gentleman has told us everything in his motion and completely ignored that one part of his motion has already been dealt with. And although the motions addressed different aspects of what ombudsmen might want, past and current, he has not addressed the fact that one of the key things that he was putting is already dealt with now with the motion passed already.

I nonetheless fully recognise the human issue that was in play here: the hon. Gentleman had written a speech and he wanted to read it. Look, Mr Speaker, given that it is almost Yuletide we should not hold that against him. If he wants to come here and read us the speech that he had prepared, I think that is absolutely within the remit of what he is entitled to do as a Member of this Parliament.

On the issue of whether or not the Ombudsman's recommendations are followed, I will remind the House of what I said earlier about the Ombudsman's own introduction to his annual report of 2018, filed in this House on 17th April 2019. The introduction says:

> The investigations carried out by the Ombudsman's Office and the many recommendations made by the Ombudsman, which are invariably respected and followed by Government Departments … have made a significant contribution towards the improvement of our public services over the years.

I think that that is an excellent testament to the position that this Government takes to the investigations and recommendations of the Ombudsman, but for the reasons that were ventilated during the course of the debate earlier, Mr Speaker, I do believe that this motion is no longer necessary and I do believe that it is important that we do not simply let this pass.

The things that the Hon. the Leader of the Opposition said to me about why I had put my motion etc. I have already replied to, but I do think we need to take this further, Mr Speaker. I do think that we need to ensure that we start to behave in a more convivial way, and therefore I am asking hon. Members, as I did during the course of my earlier intervention, to remember what the structure of this place is and how it is that they can bring motions which might enjoy Government support.

And so, Mr Speaker, I hereby give notice of an amendment that I intend to move to this motion. The notice that I am passing in writing of the amendment that I intend to move is:

Delete every word after 'This House' and insert thereafter the following:
'This House calls upon all Members to seek to work together for the benefit of the community as a whole on all matters on which consensus may be achievable and to consult widely with other parliamentarians in order to seek to achieve that consensus in debate.'

Mr Speaker, in formally moving this amendment to the motion, what I am seeking to do is to turn a moment of discordant disagreement into a step forward for consensus in this House to ensure that the community sees us working together wherever possible to try and achieve that consensus.

On the substance, the key issue which the Ombudsman wrote about to the *Chronicle* and has been pursuing, which is the issue of own motion investigations, is already on foot. The other aspects of the motion which the hon. Gentlemen has put, he knows, for the reasons I set out before, we are not going to agree. But this is an important step forward, an important way taking … the way that the Hon. the Leader of the Opposition and I, and the hon. Lady, have demonstrated that it is possible to take areas of discord and produce unity for our community, therefore showing the maturity that we are required to show in leadership at this difficult time, and leaving aside the sort of point-scoring that we have seen attempted by the Hon. Mr Clinton. Let us call that all the deleterious approach of the past Parliament, and let us look forward to trying to continue to work together to achieve consensus in debate where possible, to lead this community together, where all of that consensus is possible on this particular issue.

Mr Speaker, a moment ago we saw a genuine, heartfelt disagreement on the issue of 6B, where Mr Bossino has acted to vote in a way that his leader suggested is unconstitutional. There will be areas where we cannot agree. But where there are opportunities for agreement, let us work harder to try to achieve that agreement. Let us set down in the *Hansard* of this place and in the decisions and resolutions of this place our opportunities to do so, by seeking conviviality and seeking consensus in a way that puts down a marker for the future, so that we can see that it is possible, even where we disagree, to find a way to work together that delivers for this community an approach that we need to see delivered, especially given the moment in which we find ourselves. This is now not a question of trying, each of us, to present a position which the other cannot support. It is trying to find a position going forward which each of us can support, even in the areas where at first blush there might be disagreement, or indeed not mining away to find the opportunity for petty political disagreement where there is broad political consensus.

For that reason, Mr Speaker, I think moving this amendment can help us – in the New Year, perhaps when each of us have had an opportunity to reflect – to try and keep foremost in our minds those principles that make Parliament strong, that make democracy what it is and that enable us to look always forward in the way that we take the mandate that the people of Gibraltar have given us and turn it into action in a positive way. Not to do so and to simply be dismayed when we do not get our way, *(Laughter)* to seek to simply get a way for the purposes of trying to score cheap political points, is not what people have elected us to do. That is why I genuinely commend to the House the approach of talking to each other before we publish what it is that we intend to bring, of talking to each other in an attempt to reach that understanding, and of doing what we have done in very difficult circumstances – probably on the issue of

deepest disagreement that we will have in the context of the lifetime of this Parliament, which is the separate positions that we have each defended on the issue of abortion, and yet we have been able to come together.

Mr Speaker, we must never allow disagreement to be snatched from the jaws of consensus, as we appear to have allowed each other to fall into the trap of doing in respect of this important issue, namely the issue of the office of the Ombudsman. I therefore move the amendment as set out in the written notice. *(Banging on desks)*

Mr Speaker: I now propose the question in the terms of the amendment moved by the Hon. the Chief Minister.

Hon. Chief Minister: On the amendment only.

Hon. K Azopardi: On the amendment only.

Mr Speaker, the hon. Member is a master at snatching seriousness from the jaws of comedy. It really is quite incredible how he can, with a straight face, propose this under the guise of being uber-reasonable, when I said to him that he is like a Monty Python sketch on the other issue and he transitions into now hijacking this motion of the Hon. Mr Clinton and transforming it. Rather than it being anything to do with the Ombudsman, he wants to delete all the words and now it is a motion about consensus.

Mr Speaker, I do not need a motion to be voted on by this House to call upon me to be how I am. The hon. Member knows, because I have said it during the election campaign, I am not a tribal politician. When I used to sit on that side … Those people who were in this House at the time know that I am not a tribal politician. I may disagree, but I always try to find the most constructive way forward, and answer questions and be clear and honest. That is what I stand for in politics, and I will never be a populist. There may be a time when I am out of sync with the way that politics is run, but that is what I believe in.

And so the Chief Minister, when I rise to make this contribution on the amendment … I know he does it with great mirth; we are days away from Christmas and there will be party games, no doubt, played in his house, but this is not one of them. Most of the Members in this House – all of them, I would say – are here because we feel strongly that we want to make a contribution to the politics and the future of this community. We may disagree with each other when we do so, but I have no doubt that every single Member in this House does so from a standpoint of good faith and of the interests of this community. We do not need to play games with each other and this is the second time today that the Chief Minister tries to play games with this House and with the Members opposite. *(Banging on desk)*

Mr Speaker: The Hon. Daniel Feetham.

Hon. D A Feetham: Mr Speaker, I rise because I think that there is an important point of principle that has been raised in the speech that the Hon. the Chief Minister has given in response to the motion brought by my hon. Friend Mr Clinton.

He has said during the course of his intervention, and in fact he was very keen to emphasise, that my friend's motion on the Ombudsman was 'no longer necessary'. He then said it had been 'overtaken by events'. What he is really saying is that my friend Mr Clinton's motion was rendered otiose, redundant, irrelevant by his later motion.

Of course, the rule against anticipation is there, Mr Speaker, in order to prevent that kind of situation. It is there to prevent a situation where a Member files a motion for debate within this House and then there is a subsequent motion that effectively renders it irrelevant, redundant and otiose, which is what the Hon. the Chief Minister is essentially saying.

It raises an important point, because although of course we accept Mr Speaker's ruling that the motions, on reading, there were some differences in the motion, in substance one can see

from his intervention that they were exactly the same, and that impacts, in my respectful submission … and whilst we accept the ruling of Mr Speaker, I urge the Government not to go down this route, because it is, in my respectful submission, a route that is fundamentally undemocratic.

Here you have an Opposition that… Yes, of course we have an obligation at times, and I would say in the majority of times, if it is possible, to attempt to work with the Government of the day in order to achieve the best outcome for this community, but it is also the role of an Opposition to hold the Government to account – that is why we are here – and to bring before this House, so that there is a proper debate, the issues that are impacting on the community at any given moment in time.

I myself have said that I am going to be presenting a motion on disability benefit in the New Year. If I do that and I find that the Government then presents another motion which renders, somehow, mine irrelevant, redundant and otiose, I think that that does a disservice because what the Hon. the Chief Minister is really doing … Whether by design or not, the effect of it is that before we present a motion, in order to avoid the situation that we have been faced with today we are going to have to go to the Government of the day and say, 'We are presenting this motion – what do you think about this?' Effectively it leads us to a situation where the Government of the day – and our role is to hold the Government to account – become the ultimate arbiters *(Interjection by Hon. Chief Minister)* of what we can or we cannot present to debate before this House, and that cannot be right.

I just leave this House with this thought: most of us here have been both in government and in opposition. Well, I think most of us have been in government and in opposition. My maths is not my best point, but a lot of us have been in government and opposition, and you know that it is very difficult when you are in opposition because the Government of the day holds all the cards. The Government of the day always has the last word. When we ask questions, our questions have got to be short and sharp – and I am very grateful to Mr Speaker for the indulgence that he has provided Members of this House during the course of this session, which I think has been extremely convivial, where there has been a toing and froing in great spirits; it has allowed us to do our job and the Government to do theirs, but they always have the last word.

In relation to motions, for example, it has always been possible … I happen to think that it infringes both the spirit and the letter of Standing Orders – the previous Speaker, as indeed other Speakers, have not been with me or with others in relation to that argument – where a Government can just simply say, 'I am deleting from (a) to (z) and I am replacing it with a completely different motion'. That is when we present a motion. The reason why I have always felt that that infringes the spirit or the letter of Standing Orders is because Standing Orders provides that there ought to be five clear days for a motion, so that you give advanced warning to the other side that you are bringing a motion. The Government has the capability of in fact coming to this House, without notice at all, and amending the motion, completely substituting it for a different motion, without notice. If, on top of that, we are going to be faced with a situation where there is going to be a virtually identical motion, certainly in substance, presented by the Government before ours, that, I think, represents a democratic deficit, in my respectful view. I would certainly urge the Government to deploy the device as infrequently as possible; otherwise it is going to be a very slippery road indeed. Ultimately, we want democracy to function; we want democracy to function efficiently and we want democracy to function properly.

I hope, Mr Speaker, that my intervention has not been interpreted as a criticism of your ruling but rather as a caution to the Government – who ultimately, judging from the Hon. the Chief Minister's words and his new motion, obviously want to work with the Opposition, want democracy to function – for the Government not to stifle debate by using this device inappropriately in the future.

Mr Speaker: The hon. Lady.

Hon. Ms M D Hassan Nahon: Mr Speaker, I am really sorry to be here on a Friday night – when I usually do not even like to be working – to have to witness this sad situation, honestly. I find it sad that the Government is denigrating the integrity of a motion that was the brainchild of an Opposition Member and mocking him for wanting to read a speech, a speech that he himself wrote and thought of himself before the Government even exercised its privilege to overtake him and now somehow undermine this motion.

I think it is great that the Government have put this amendment to work together, and I welcome that – my own party name implies the importance that we give to unity and working together – but that should not mean that if Opposition Members choose *not* to consult, that we should lose the right to own our own motions. Where does that leave each and every Member of Parliament in opposition now? Either we consult or we lose our steer on our own motions? Basically,, does Opposition now not have any tools anymore to own the mechanisms that allow us to present a debate effectively?

Mr Speaker, following on from my reasoning, I will present my own amendment to the Government amendment, which will read as follows:

After 'and to consult widely with other parliamentarians in order to seek to achieve that consensus in debate' insert 'but if and when motions are not consulted in advance this will not render them effectively meaningless and undermined'.

Mr Speaker, I had a few words to say on the substance of the motion, but the mover is not even here, so what has happened today has totally overtaken and I find that extremely sad, so I will not even bother.

Thank you.

Mr Speaker: If no other hon. Member wishes to speak, I will call on the mover to reply.

Hon. Chief Minister: No, Mr Speaker, I am afraid that we have found ourselves in a difficult situation. I am not going to rise to reply to the contributions that have been made, because first I think I am required to reply to the amendment to the amendment that has been put. So I will limit myself to the amendment to the amendment before speaking to the amendment.

The amendment to the amendment is frankly nonsensical. It does not have any meaning whatsoever and it will not enjoy the support of this side of the House because hon. Members have not understood what it is that we are talking about and how it is that motions appear to work. The Hon. Mr Azopardi, as the Leader of the Opposition, a man who has been in this House before as a Member of the Government and a Member of the Opposition, understands how motions work. His contribution has been different, but the things that Mr Feetham has said and Ms Hassan Nahon has said just make absolutely no sense whatsoever, and the amendment is more nonsensical than even their contributions. So I will restrain myself and not respond to their contributions on my amendment until I reply to that, and I will simply say that this amendment to the amendment takes us absolutely no further and it flies in the face of how Parliament is designed to work, not just here but also in the United Kingdom.

Hon. K Azopardi: Just on the amendment to the amendment, and in particular that last contribution, yes, I have been on that side of the House and I understand how motions work. I remember being in this House when Sir Peter might have taken the view that he would have deleted every word after 'This House', but that was a practice that he followed from Sir Joe. *(Interjection by Sir J J Bossano) (Laughter and interjections)* No, but the point that I was making in my contribution was that in my experience that has happened, and in both cases they have adhered to the subject matter, so when we have been debating something on education and

they have deleted every word after 'This House', it has been on the subject matter. That has been my experience. It may have changed since I was away, but that was my experience and that was why I made the contribution that I did, and why also the amendment to the amendment does not address the substantive point that I was making, that I fear … Where I do not want to go is to play this game of in effect presenting a motion on Ombudsman of a Health Service and it ends up being a motion on sovereignty or something completely different. That is not what we are trying to do; nor is it, surely, what the Chief Minister is commending to this House.

I entirely understand the point that he makes, that you have a majority and we do not, and that if we wish to maximise the prospects of ensuring a motion is carried, if we engage with you it *might* maximise those prospects. I get that. All I am saying is that when and if we take the view that we should not play a game with each other … That is the only point that I make.

Mr Speaker: Does the hon. Lady I wish to respond as the mover of the amendment to the amendment?

Hon. Ms M D Hassan Nahon: No, Mr Speaker, very much the same, and the Chief Minister knows himself I often consult him – I want to find effective and constructive results for this House – but I would not want to feel that on the occasions where we do not the mechanics are taken and swept from underneath us.

That is the only reason why I proposed this amendment to the amendment, because one thing is calling for collaboration and co-operation – and I think that is a great thing and is constructive for all sides of the House – but I do not want that to be the only vehicle that allows for every Member to actually have the possibility to own their motion and to ensure integrity over their own vehicle for debate, which is the way to present it being a motion. Today we have seen that that has been overtaken, and this is why I felt compelled to propose these two lines, Mr Speaker.

Mr Speaker: I now put the question in the terms of the amendment to the amendment proposed by the hon. Lady. Those in favour?

Hon. Chief Minister: Aye! No, sorry, the amendment to the amendment – no! *(Laughter)*

Mr Speaker: Those in favour?

Hon. Ms M D Hassan Nahon: Aye – I am on my own again.

Mr Speaker: Those against? (**Several Members:** No.) Defeated.

We now revert to the amendment to the original motion, and it is the mover of that amendment.

Hon. Chief Minister: Mr Speaker, the Hon. Mr Azopardi started his intervention on my amendment once again seeking to suggest that there was comedic value to what we were doing. I am sure that this is a theme that will develop, and I am sure that we will develop jointly about each other in the less convivial moments that this Parliament's life will continue for, but I do think, frankly, that it is unfair. It is unfair because I have been very careful with what I have said in the context of the amendment that I have proposed. I have not sought to be tribal; I have sought to be neutral. I have sought to be neutral in the context of what I had already said about the way that the motion was being pursued.

In this place we win and we lose votes, depending on where we sit. In some instances, if matters are not on Government whip, so to speak, we may lose votes even if we are on this side, or we may win votes even if we are on that side. When we lose a vote, or when we lose an

argument, we do not walk away from it and we certainly should never walk away from this place.

Today what I have done is to try and, at the first session, lay down a marker which is positive, not negative. It is not comedic in any Monty Python sense. It is actually designed to try and set out for hon. Members how it is that we can work together.

It is not often – indeed in the time that I have been in this House since 2003, the moment that he left, I have not seen an invitation from a Leader of the House to try and allow Members the opportunity to succeed in votes that they might present. That may or may not be something that they are willing to pursue. I think the hon. Gentleman has completely understood my position, and indeed he and I have already demonstrated how we are able to work in that way. But he is absolutely right that this motion is not intended to change his attitude, because he and I have shown that our relationship and our attitude enables us to do very difficult things together and to leave disagreement outside and to bring agreement – in other words, to snatch agreement from the jaws of disagreement and not do the opposite, which is to seek disagreement where there is agreement. That is an important dividing line. There is nothing Monty Python-esque about understanding that, and I am going to have to, unfortunately, develop this during the course of my intervention in response because it is fundamental. What we have done at the beginning of today's session is what everybody must want us to do: to seek that agreement from the jaws of disagreement. That is what we are here for. To disagree, we can issue press releases against each other setting out the different positions we might take in respect to a particular issue. Here we are to debate, to parley – that is what Parliament is about – not to seek to find disagreement where there actually could be agreement.

When Mrs Thatcher became Prime Minister, he will recall the famous words she uttered: that she was there to seek accord and not discord. It would take us more than three or four volumes to determine whether in 12 years she actually found more discord than she found accord, but that must be one of the leading principles of whichever ideology we represent, to try and find that agreement. There is nothing Monty Python-esque about trying to do that, although I do recognise that the hon. Gentleman is trying to use that device, and I am interested to see how he develops it going forward. I have some devices in mind which I will be developing in respect of his leadership. But I am not for one moment suggesting that he is a populist. I was expressly saying that his example and my example and the hon. Lady's example on abortion is the position that we should be following.

So, Mr Speaker, frankly this is not something that can be described as playing games with this House. It is the opposite. It is being able to demonstrate that this House is about more than just politics; it is about seeking community consensus, and that unfortunately was not the case in an attempt to bring the motion that the Hon. Mr Clinton was bringing.

Turning to the position that Mr Feetham put, I said it was no longer necessary for us to consider the substance of this motion not because the rule of anticipation had been incorrectly applied … And if I can just footnote here for a moment, Mr Speaker – your rulings are your rulings; they are not open to appeal and we must not tangentially seek to appeal them or to speak against them. Very often, those who find that you rule against them seek, by the device of the point of order, to try in effect to appeal them. I hope I have never fallen into that mistake in the context of any ruling that a former Speaker may have made against me and I certainly will endeavour not to fall into that trap should you ever find that you need to call me to account, as may be the case going forward. But we have to be careful that when that device is used the points do not go unanswered.

Mr Feetham, not in a point of order but now in the context of replying to my amendment, was suggesting that my actions had demonstrated why the rule of anticipation was there. He is wrong for this reason: my motion dealt with congratulations and the own motion ability of the Ombudsman; Mr Clinton's motion dealt with congratulations, own motion ability and review in other respects. My position is that on own motion the Government was prepared to have a consensus motion if we had been consulted before publication of the Opposition motion, but we

were not prepared to do the other aspect of the substance of what the Opposition motion sought to do – for the reasons I explained. In other words, the Opposition motion sought to do what the Opposition manifesto had sought to do in a wider, more restrictive way of the Government. And so, for that reason, there were two very key differences of substance and we are not prepared to go down the route of supporting the motion as presented by the Opposition. That is why it was not necessary to continue with it, because it was not going to enjoy Government support. It was going to be, in the words of the great Manolo Mascarenhas, *palabras al viento*. *(Interjection)*

In that context, Mr Speaker, there is nothing undemocratic about the Government putting its own motion. Indeed, it is the very essence of democracy. And we are still within touching distance of the election result. Hon. Members, I am sure, can still feel the heat of the result – the warmth on this side; the heat on that side – that which the former editor of the *Gibraltar Chronicle* used to describe, in the years when he and I were the young fillies of the political parties in Gibraltar, as the 'cold steel' of election night.

Still feeling the cold steel of election night, hon. Members will know that the maximum exercise of democracy is the general election. It has given us 10 votes here and them six, and in that context their paragraph on the Ombudsman was not accepted by the majority. Indeed to do the maths, the way that the hon. Gentleman likes to do it, their paragraph on the Ombudsman was rejected by 75% of the electorate, because the hon. Lady did not have it in her manifesto and neither did we. It is not just 21 and 25 that can be added; it is actually 54 and 21 that can also be added to demonstrate the level of rejection –

Hon. Ms M D Hassan Nahon and Hon. D A Feetham: The grand alliance.

Hon. Chief Minister: – that there was for the position that they have today tried, through their motion, to get the Parliament to approve. So it is not undemocratic; it is indeed wholly democratic that this attempt to now pass by motion that which did not pass by general election should not pass.

Then Mr Feetham did one of the things he tends to do a lot, and I think is why he finds himself where he finds himself today: where we can, we should work together. (**A Member**: FLOP.) As a FLOP – a former leader of the party opposite, Mr Speaker – he knows that he has consistently sought to find a way for us *not* to work together where we might be able to, by seeking always to steal a political march from an otherwise potential consensus. That is what Mr Clinton has fallen into the trap of. That is exactly what I do not accuse Mr Azopardi of falling into the trap of, exactly what he described himself as being in a non-tribal sense. So I am afraid Mr Feetham has chosen the wrong issue on which to try and give that example.

He seems, however, to understand that you do need the Government's support in order to pass an item through the Parliament. But you do not need the Government's support to present it. I am not suggesting that you need the Government's support if you want to present a motion, and this is where the hon. Lady has got it wrong. Of course you can present your own motions, you can own your motions and you can speak to your motions, but we can own ours too and we also own our votes, and we owe our votes to our voters – and we are not going to come here to give support to motions that we do not support and to give support to motions that set out the position of their manifesto and not ours. So I am afraid that they have got it completely wrong.

It is also wrong to say that the Government holds all the cards. That is a very defeatist way to look at the important role that hon. Members are now elected to discharge in holding the Government to account and in bringing their own motions and in bringing their own Private Member's Bills. It is if they want them to prosper that I advise them to call us. They can bring their motions and they can speak to them, and we can support them or vote against them – of course, because we all own our parliamentary action – but what they do not own is the right to have us accept their parliamentary action and not react with the parliamentary devices that are available to us. That is to defeat democracy. It is an attempt to stymie a Government that has

won a third successive majority. We will not have it, Mr Speaker. We will not have it, and the reason we will not have it is not to play a parliamentary game, but because we need to be the defenders of the ability of the executive to act, whether it is our executive or their executive.

Mr Speaker, the Hon. Mr Azopardi has referred to the fact that these things might have been done in the past but always on the same subject. Well, first of all I do not accept that; and second, I do not accept that this is not the same subject, because we were talking during the course of the first motion about how motions can pass and conviviality and consensus. It has been a practice in this House to amend motions in this way, and of course we have to continue to have the right to do so.

The Hon. Ms Hassan Nahon gave us an introduction which was, as usual, laced with her view that we should all be better with each other. It is a view that the Government subscribes to of its own motion, but it is also true that she says that even her name talks about us working together – until we disagree with her, because I have not seen more passion displayed in fighting a corner in a tribal manner than when we might have the temerity to take a view which is different to hers.

On the issue of clause 6B she has been tough on us. She will say, 'I am elected to hold you to account and be tough on you' – of course you are, but then do not pretend that you are just here to work together with us. We are not here just to work together with each other, but what I am saying is where we are able to work together we must make the effort to do so. That does not mean that we will not be supportive of action which we support in reasons which are clear from our policy, but what we will not do, Mr Speaker – and she needs to understand that this is not about owning motions, it is about owning *our* decisions and answering to *our* voters – is be brought here to support a motion that gives effect to their manifesto.

In the context of the pity that she expresses, I must say that today will be a day that will go down in this Parliament's history because it is to treat this Parliament and the principle of democracy and of parleying with utter disrespect to walk away from its argument and from its decision making, in particular on a motion that you may have put yourself. So perhaps less pity might be expressed in respect to the actions of a particular Member, and one might remember that that same Member is the Member who makes allegations against others in print and then does not stand up against them, and that today we are here to debate.

We are about to end our deliberations. We have done excellent work and we are going to end on a discordant and sour note because somebody has walked away from owning his own failure. That is the reality, Mr Speaker, and I therefore commend the amendment to the House. *(Banging on desks)*

Mr Speaker: I now put the question in the terms of the amendment proposed by the Hon. the Chief Minister. Those in favour? (**Members:** Aye.) Those against? Carried.

This amendment now becomes the motion before the House and any hon. Member who has not spoken to the original motion may do so now.

I now put the question in the terms of the amended motion proposed by –

Minister for Education, Employment, Utilities and the Port (Hon. G H Licudi): Mr Speaker, on a point of order, should you not call upon the mover to reply?

Mr Speaker: Yes, I should have called the mover of the original motion to reply, but he is not present, he has absented himself, so we now move to my putting the question in terms of the amended motion as proposed by the Hon. the Chief Minister.

Hon. Chief Minister: Mr Speaker, I call a division.

Voting resulted as follows:

FOR	**AGAINST**	**ABSENT**
Hon. P J Balban	Hon. K Azopardi	Hon. S E Linares
Hon. Sir J J Bossano	Hon. D J Bossino	Hon. R M Clinton
Hon. Prof. J E Cortes	Hon. D A Feetham	Hon. E J Phillips
Hon. V Daryanani	Hon. E J Reyes	
Hon. Dr J J Garcia		
Hon. Ms M D Hassan Nahon		
Hon. A J Isola		
Hon. G H Licudi		
Hon. F R Picardo		
Hon. Miss S J Sacramento		

Mr Speaker: The count of the division is that there are 10 persons in favour of the amendment, there are 4 against and there are 3 absent, so the amended motion is carried.

Adjournment and season's greetings

Chief Minister (Hon. F R Picardo): Mr Speaker, thank you very much.

Seeking to set aside that discordant note now, and to thank all hon. Members for the things that we have been able to agree during the course of this afternoon, I rise to adjourn the House *sine die*. In doing so, I want to welcome the fact that this has been the first working session of the House since the General Election and I look forward to the work that we will do in the coming 45 months.

I advise the House that we may have to return earlier to work than we might expect, because of the publication of the Withdrawal Agreement Bill, although I note that the Speaker and the Clerk will be representing Gibraltar at the CPA meeting of Speakers and Clerks in Canada, which you will no doubt do with the support of all Members and in doing so you will do Gibraltar rightly proud – although I do fear for the cold that you will suffer.

I would wish the hon. Lady a happy Hanukkah and all Members of her community – and apologise to her for sitting late on the Friday, which as she knows we seek to avoid – and to offer all other Members the best wishes of the Government for a very Happy Christmas, and to wish every member of this community, no doubt on behalf of all Members of this House, a healthy and happy Christmas feast and a healthy, happy and prosperous 2019. (**A Member:** Twenty.) Twenty! *(Laughter)*

Mr Speaker: I now propose the question, which is that this House do now adjourn *sine die*.

I now put the question, which is that this House do now adjourn *sine die*. Those in favour? (**Members:** Aye.) Those against? Passed.

The House will now adjourn *sine die*.

The House adjourned sine die at 7.46 p.m.

Draft BILL

FOR

AN ACT to amend the Public Services Ombudsman Act 1998 to extend the powers of the Ombudsman to enable investigations to be conducted on the Ombudsman's own motion, without the Ombudsman having to rely on receiving written complaints made by the public.

ENACTED by the Legislature of Gibraltar.

Title and commencement

1. This Act may be cited as the Public Services Ombudsman (Amendment) (Own Motion Investigations) Act 2020 and comes into operation on the day of its publication.

Amendment to the Public Services Ombudsman Act 1998

2. The Public Services Ombudsman Act 1998 is amended by inserting the following new section after section 13-

"Power to investigate on own motion

13A (1) The Ombudsman may investigate any administrative action taken by or on behalf of any Authority to which this Part applies, without a written complaint by a member of the public having been made to the Ombudsman.

(2) Before the Ombudsman begins an investigation under this section, the Ombudsman must-

(a) be satisfied that conducting such an investigation is in the public interest; and

(b) have a reasonable belief that there is, or has been, systemic maladministration arising from administrative action taken by or on behalf of any Authority to which this Part applies.

(3) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section."

EXPLANATORY MEMORANDUM

The purpose of this Bill is to amend the Public Services Ombudsman Act 1998 ("the Act") in order to give effect to the resolution, passed by the Gibraltar Parliament on 20th December 2019, that the Act should be reviewed to enable the office of the Public Services Ombudsman to launch investigations of its own motion, as recommended by the Public Services Ombudsman in 2016.

Hon. R M Clinton: Madam Speaker, I am grateful for that 'yes'. Could the Chief Minister elaborate as to what approach the Government is thinking of taking? Is the Government considering the issuing of a consultation, perhaps?

Hon. Chief Minister: I am almost minded to tell the hon. Gentleman that I shall ask ChatGPT what the answer should be.

This is an issue that has to be dealt with in consultation, Madam Speaker. It would be a consultation across the digital services that the Government provides and across other departments. For example, there are issues in relation to financial services, there are issues in relation to health, there are issues that would affect all of the departments in the context of artificial intelligence, and therefore I envisage a very wide consultation. The European Union has recently adopted legislation – it is the first entity to have adopted legislation on artificial intelligence – and the United Kingdom is leading on the Bletchley Park principles to try to establish a global standard.

Hon. R M Clinton: Madam Speaker, I am grateful to the Chief Minister for his more comprehensive answer. Even the Pope has expressed the view that artificial intelligence should be regulated. Can I ask the Chief Minister if he has a timeframe in mind?

Hon. Chief Minister: Not at this stage, ma'am.

Madam Speaker: Next question.

Q764/2023
Own-motion investigations –
Amendment of Public Services Ombudsman Act 1998

Clerk: Question 764. The Hon. R M Clinton.

Hon. R M Clinton: Madam Speaker, can the Government advise when it intends to amend the Public Services Ombudsman Act 1998 to allow for own-motion investigations?

Clerk: Answer, the Hon. the Chief Minister.

Chief Minister (Hon. F R Picardo): Madam Speaker, the Government will advise when it intends to amend the Public Services Ombudsman Act 1998 to allow for own-motion investigations when it is ready to do so.

Hon. R M Clinton: Madam Speaker, may I remind the Chief Minister that he actually put forward a motion in December 2019 resolving that the Act should be reviewed to enable the Office of the Public Service Ombudsman to launch investigations of its own motion? If he has read the Ombudsman's report for 2022, he will see quite prominently the request for own-motion investigation. So I would ask the Chief Minister does he have a more specific timeframe in mind, bearing in mind that this has been a subject that has been discussed for well over four years?

Hon. Chief Minister: No, ma'am.

Madam Speaker: Next question.

NOTES

NOTES

NOTES

Public Services Ombudsman

ANNUAL REPORT 2024

10 Governor's Lane, Gibraltar
Tel: (+350) 20046001 • Email: info@ombudsman.gi
Web: www.ombudsman.org.gi