PUBLIC SERVICES OMBUDSMAN

ANNUAL REPORT 2025

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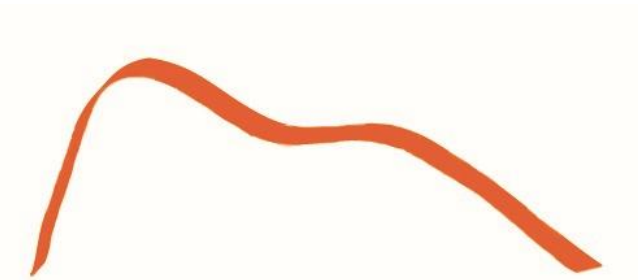

Public Services Ombudsman

10 Governor's Lane, Gibraltar

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Introduction

1.1 Foreword

I am very pleased to present my second Annual Report to the Gibraltar Parliament. This report spans the period between the 1st January 2025 and the 31st December 2025. This has been my first full year in post and it has been very rewarding to see the continuation of our work from 2024 to 2025.

Similar to last year, I have structured my introduction with a summary of the international work undertaken (pages 7-8), as well as my observations on formal and informal complaints in 2025 (pages 13-21), which I include as an overall summary on the most impactful cases that we have undertaken throughout the year. I feel that this is essential, as it allows for the identification of any trends or patterns which may emerge both within and across public service entities. For example, in my analysis of the disability benefit application process, I came to the conclusion that, in cases where claims are dismissed, the Director of the Department Security should provide the reasons for the dismissal to the applicants (Cases Nos 1300, 1318, 1283 and 1339; pages 199-216). This is comparable to the conclusion arrived at in relation to the Housing Allocation Committee, where I recommended that the committee provide applicants with the reasons for their decisions, in the interests of fairness and transparency (Case No 1289; pages 118-122). In my view, it is noteworthy that similar conclusions have been reached for both the Department of Social Security and the Housing Department. This suggests that there is work to be done in respect of decision-making bodies, in ensuring that they provide all relevant information regarding their decision-making and their reasoning to service users, stakeholders and interested parties. This would not only create greater transparency, accountability and trust in our public services – it would have the practical effect of ensuring that appeal processes become fairer, more meaningful, and more efficient.

It has also come to light that the need for transparency cuts both ways (Case 1285; pages 109-117) – just as public service entities need to operate transparently, so do complainants. I have understood the equitable maxim "he who seeks equity must come with clean hands" as it applies to the work of my office. As complainants have rights and entitlements vis a vis the public services they can expect, they also have the responsibility to operate transparently when they complain about those services to my office. It will be my responsibility, in the course of 2026, to introduce mechanisms within my office, in so far as possible, to verify complaints at the point of submission.

I also include a review of the implementation of the recommendations made in 2024. I feel that this is an important aspect of my work, as it helps to chart any areas that require improvement, as well as highlight the good work done by public service entities where recommendations have been implemented and improvements achieved. Indeed, it is very rewarding to note significant areas of positive change within the GHA – for instance, the creation of a Diabetes Steering Group, the recruitment of two specialist diabetes nurses, and the introduction of the ROCK accreditation programme across wards (page 15).

Similarly, the Housing Department has introduced greater transparency and accountability in the government housing allocation process by publishing the new Housing Allocation Scheme Rules 2026 (pages 16-18). These areas of improvement serve as a great motivation to my team and I, as we can see our work translating into real outcomes for both complainants and our community.

Indeed, it is important to my team and I that we should be able to operate within the widest range of public services. To this end, I have included in my introduction the various jurisdictional issues that I have encountered this past year (pages 9-12). I am very glad that the jurisdiction of my office has been reestablished over the Gibraltar Savings Bank and I remain hopeful that it will one day be extended over the Gibraltar Bus Company. Indeed, my greatest hope is that my office shall be granted the power to undertake investigations of its own-motion, as highlighted in last year's report and reiterated once again this year.

Lastly, I would like to take the opportunity to thank my wonderful team - without their hard work, efforts and support, this report would not have been possible.

Wendy Cumming
Public Services Ombudsman

1.2 International Work

This year, my involvement with the Crown Dependencies and Territories Network has continued. On the 29th May 2025, a well-attended virtual meeting was held by the chairman of the group, Michael DaSilva, Public Services Ombudsman for Bermuda. The meeting was very useful, broaching subjects like workforce, HR issues, the constitutional basis of our roles and the powers of each ombudsman. It was agreed that the members of the group attending the Ombudsman Association Conference in June would meet informally.

The Ombudsman Association Conference was held on the 9th-12th June 2025, in Belfast. Entitled 'Providing a Modern Service' it was a busy but enriching experience, where I was able to meet a number of colleagues from the Crown Dependencies and Territories Network in person.

I also had the privilege of chairing a session under the heading "A Pivotal Shift in our Work: moving from resolving individual complaints to implementing systemic recommendations." In that session, we discussed the importance of analysing patterns in complaints to inform policy recommendations that can lead to lasting improvements in public services. This approach not only enhances the impact of our work but also aligns with the growing emphasis on accountability and transparency in public administration. One of the key takeaways was the need for robust data analysis and collaboration with public bodies to ensure that our recommendations lead to tangible changes. By fostering a culture that values systemic improvement, ombudsman offices can play a crucial role in shaping public policy and enhancing service delivery.

The conference featured further discussions on topics such as vulnerability, access to justice, and the role of ombudsman schemes in promoting human rights. It was an invaluable opportunity to engage with colleagues, share best practices, and reaffirm our collective commitment to providing a modern and effective service to the public.

In reflecting on this year's conference, I am reminded of the significant responsibility we bear in not only addressing individual grievances but also in advocating for systemic change that benefits society as a whole. The discussions in Belfast have reinvigorated my dedication to this important mission, and I look forward to continuing my work towards a more accountable and just public service.

I have maintained my links with the Public Services Ombudsman Group, a group which comprises Public Services Ombudsman from England, Wales, Scotland, Northern Ireland and Ireland. I attended a virtual meeting in September 2025, where very interesting discussions were held on the management of increased workloads with limited resources, and the possible implementation of AI to manage the more routine, administrative aspects of complaint handling work.

I was invited to the International Ombudsman Institute (IOI) Asian Regional Meeting and International Conference 2025 held in Lahore from the 7th -9th October 2025, as Pakistan hosted this global gathering for the first time. I was very glad to attend, together with Sarah De Jesus, Investigating Officer. The event served as a platform to enhance institutional cooperation and reaffirm the critical role of Ombudsman institutions in safeguarding citizens' rights and promoting good governance. The themes explored at the conference were: "Making the Rule of Law Accessible: The Ombudsman as a Bridge between People and Government" and "Ensuring Accountability and Good Governance in Public Administration." Whilst these themes, for me, highlighted that no matter the differences in culture, language or approach, the fundamental purpose and principles that underpin all Ombudsman entities are very much the same.

At this conference, I was able to broach the issue of AI implementation vis a vis Ombudsman bodies with the Director of the IOI. I was subsequently given access to on online platform containing all the training resources for a seminar entitled "AI and the decision-making processes, compliance with the rights of individuals" which was financed by the IOI and delivered in Estonia in October 2024. I am currently working my way through the training materials, which are extremely informative.

My final meeting with other Ombudsmen was on 9th December 2025, where a virtual meeting was held with my colleagues from the Crown Dependencies and Territories Network. The focus of the meeting was small size jurisdictions, with emphasis on training provision for staff members, software for case management and the use of AI to assist small teams, with a focus on data protection.

This engagement with the Ombudsman Association and the International Ombudsman Institute has been very enriching and educational, and I look forward to further participation in 2026.

1.3 Jurisdictional Issues

Gibraltar Savings Bank

In early 2025, I received an enquiry from a service user in relation to the Gibraltar Savings Bank. Upon discussing the same with my team, I was surprised to learn that it had previously been determined that the Gibraltar Savings Bank was out of our jurisdiction.

In 2022, our office received a complaint against the Gibraltar Savings Bank, which proceeded to formal investigation (Case Number 1263). However, once the report was presented to the Accountant General on the 10th October 2022, the Accountant General, by return, questioned the legal basis upon which the report had been drafted. Via email dated 17th October 2022, the Accountant General communicated the view that "pursuant to section 3 of the Gibraltar Savings Bank Act, the Gibraltar Savings Bank is by statute a body corporate and is therefore separate to the Treasury Department and should not be confused as such."

However, the Gibraltar Savings Bank is under the management and control of the Treasury Department it was my view that it should remain under the jurisdiction of the Public Services Ombudsman.

As per Section 4 of the Gibraltar Savings Bank Act 2019 "GSBA 2019": "The Savings Bank shall be under the management and control of the Director who may, subject to the provisions of this Act and any rules or regulations made thereunder, take such steps as may be desirable for the encouragement of thrift, for the proper management of the Savings Bank, and otherwise for the promotion of the social and economic development of the community." The Director of the Gibraltar Savings Bank was the Accountant General, and to date, remains the Accountant General.

Section 5 of the GSBA 2019 deals with the workforce: "Employment of officers. 6. The Director may, with the approval of the Minister, engage such officers as may be necessary for the execution of this Act, and for that purpose may employ for part of their time officers in the service of the Government." As a body corporate, the Gibraltar Savings Bank is run by the Head of the Treasury Department and is staffed by civil and public servants. This does not suggest a separation between the Gibraltar Savings Bank and the Treasury Department that justifies the exclusion of the Gibraltar Savings Bank from the remit of the Public Services Ombudsman. The administration of the Gibraltar Savings Bank remains with the Treasury Department, and as an administrative function, this should remain under the scrutiny of the Public Services Ombudsman.

It is also significant that, like the Gibraltar Savings Bank, there are other 'bodies corporate' that are firmly within the remit of my office. Indeed, in the Schedule to the Public Services Ombudsman Act 1998, there is a specific section for companies providing services to the Government of Gibraltar or to the general public. For this reason, I felt that the argument that the Gibraltar Savings Bank should be excluded from my jurisdiction because it is incorporated as a company by statute is refuted by the fact that it is intended that my office should retain jurisdiction over companies that provide a public service.

Indeed, on the 1st July 2022, the Terms and Conditions for the Gibraltar Savings Bank Debentures included the following:

"Complaints

You can make a complaint in writing to the Treasury Department at 206/210 Main Street or email us at complaints@treasury.gov.gi. A leaflet with details of our complaints procedure is available on request. If your complaint is not resolved satisfactorily, you may refer the matter to the Office of the Ombudsman, 10 Governor's Lane or at info@ombudsman.gi."

On the instigation of the investigation into Case 1263, the prospectus was revised and the reference to the Office of the Ombudsman was excluded. The reason given by the Accountant General (via email dated 3rd February 2023, was that: "Unfortunately, this was an administrative error and that statement should not have been included in the GSB Prospectus. This is evidenced by the fact that the statement was deleted from subsequent prospectuses." It was my view that the inclusion of the statement was correct, and that the exclusion of the statement, and with it the exclusion of the Gibraltar Savings Bank from the jurisdiction of my office, was the error.

I corresponded with the Chief Secretary and the Financial Secretary on this matter in the course of 2025 and in January 2026 my Senior Investigating Officer and I met with them to share our concerns. I was very pleased when, via email dated 23rd February 2026, the Chief Secretary confirmed that:

"It has been accepted that administrative matters connected to the Gibraltar Savings Bank, for example, the handling of queries, applications and customer correspondence undertaken by Treasury staff, fall within the administrative functions carried out by public officers.

Accordingly, insofar as complaints relate to the administrative handling of such matters, these may properly fall within the Ombudsman's remit, as they concern the actions of public servants performing administrative functions.

This clarification is intended to distinguish administrative processes from the separate legal status of the Gibraltar Savings Bank as a body corporate and its operations, while recognising that certain operational activities are carried out through Government personnel."

I fully agree that my remit should be restricted to administrative matters, but I feel that recourse to my office, on any complaint of maladministration, is a proper pathway for clients of the Gibraltar Savings Bank and that this reestablishment of the jurisdiction of my office is a step forward in ensuring accountability and best administrative practice.

Gibraltar Bus Company

In December 2025, we received an inquiry from a service user of the Gibraltar Bus Company, who wanted to lodge a complaint with our office. Upon inspection of Schedule 1 of the Public Services Ombudsman Act 1998, we realized that the Gibraltar Bus Company was not included and therefore outside our jurisdiction.

Given that the Gibraltar Bus Company is wholly owned by the Government, I raised the issue with the Chief Secretary, requesting that the GOG consider incorporating it to Schedule 1 of the Public Services Ombudsman Act 1998.

The Chief Secretary engaged with me immediately and discussed the matter with the Chief Minister. Via email dated 19th December 2025, the Chief Minister's views were communicated to me as follows:

"Although the company is wholly Government-owned, it operates as a commercial service provider. Its day-to-day service delivery (such as reliability, customer service and operational matters) is commercial in nature, comparable to taxis and other bus operators. Extending the Ombudsman's remit in this way would risk moving it into an operational service-complaints role, which is addressed through the operator's own complaints process and the usual legal and contractual mechanisms such as the Transport or Traffic Commission.

HMGOG will ensure that Gibraltar Bus Company maintain a clear and accessible complaints procedure and that issues raised by service users are properly handled."

Whilst I accept that my jurisdiction within any complaints submitted in relation to the Gibraltar Bus Company would be limited to administrative functions only, and that operational matters would be out of my remit, I was disappointed by the response and feel that the inclusion of an independent complaint handling process for the Gibraltar Bus Company would be a positive addition for its service users and would have an important role to play in ensuring the transparency and accountability of the Gibraltar Bus Company, which is ultimately providing a public service.

Royal Gibraltar Police ("RGP")

As per s1.1 of the Schedule to the Public Services Ombudsman Act 1998 "All Gibraltar Government departments and agencies, including, but without prejudice to the generality of the foregoing, the Royal Gibraltar Police." I was glad to have discussed the remit of my jurisdiction with his Excellency the Governor, especially in view of the Steering Group that was established by himself and the Chief Minister to consider reforms to the governance of the RGP.

From my perspective, the Police Complaints Board hears complaints against specific police officers, whereas I have jurisdiction over broader, systemic complaints limited exclusively to maladministration. Any complaints on operational matters are out of my remit, particularly investigative decisions.

Having said that, I did find; in formally investigating Case 1319 (non-reply and unreasonable delay in investigating fraud), it was necessary to look into how the criminal investigation had been undertaken to determine if there was unreasonable delay. I do understand that there is sometimes a fine line between administrative and operational matters and that I need to be open to discussion in these circumstances.

In considering future reform, I feel that there is value in retaining an independent complaints process for the RGP, especially one that is long standing, currently operational and already within the taxpayers' budget. Evidently, I would be disappointed if any reforms resulted in the loss of my jurisdiction over the RGP, and in such an event it would be essential to ensure the establishment of an equal, or better alternative to the service presently provided by my office.

Own Motion Investigations

It is disappointing to note that, as in 2024, no steps have been taken to give my office powers to initiate investigations of my own motion (that is to say, without the need for a complainant to lodge a complaint with my office.)

These powers are important in situations where there are areas of unfairness but the individuals affected are unable or unwilling to make a complaint, usually due to vulnerability or fear of reprisals. For example, 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.

Once again, I would like to draw attention to the fact that Parliament approved the establishment of own motion powers for my office in 2019, but regretfully, to date, no action has been taken to amend the Public Services Ombudsman Act 1998 and bring these powers into effect. I am saddened by this and hope that the necessary legislative amendments are made soon to allow my team and I to better serve our community.

1.4 Observations on Formal and Informal Complaints in 2025

Department of Immigration and Home Affairs ("DIHA") (formerly known as the Civil Status and Registration Office - CSRO)

Without a doubt, the most significant investigation carried out in 2025 in relation to immigration matters was Case 1330, which I investigated with the intention of publishing as a special report. The facts of the case were very straightforward – the complainant was aggrieved by the delay in the processing of her Certificate of Permanent Residence.

As the Office of the Ombudsman is an avenue of last resort, before we are able to investigate a complaint, complainants must first raise their grievance, in writing, with the relevant department or public service entity and allow a reasonable time for a response. In this case, the complainant had clearly communicated her grievance to DIHA and notified them that she would be submitting a compliant to my office.

The reason why this case was so noteworthy was because of DIHA's response to the complainant. It was clear to me that the tone of the email sent in reply was not only disrespectful but intimidatory, and the purpose of the email was to punish the complainant for giving notice of her intention to lodge a complaint with my office, as well as dissuade her from actually lodging a complaint. It went as far as stating that an update on her application would be withheld from her and that, as result of the complainant notifying DIHA of her intention to complain to my office, her application would be further delayed. I considered this communication from DIHA to be entirely unacceptable. As stated in my report, the right to make a complaint to the Ombudsman is enshrined in the Public Services Ombudsman Act 1998 and it is open to every user of a public service in Gibraltar. It is a fundamental part of access to justice in our community as undertaking legal action against public entities can be an expensive and time-consuming process which is not available to everyone. For this reason, I consider any action by a public entity to deter and discourage service users to lodge a complaint with my office as a severe form of maladministration. In this case, the complainant received both her Certificate of Permanent Residence and an apology from DIHA, so on the basis that there was no longer a situation where an "injustice ha[d] not been …remedied" as stipulated in the Public Services Ombudsman 1998, I could not proceed with the investigation via the special report route. However, it was still very disappointing to conclude that there were six instances of maladministration in this case, and two of these were instances of severe maladministration.

I sincerely hope that this process has served to highlight to DIHA the need to engage with service users in a respectful and constructive manner, as well as the importance of handling complaints cooperatively, as taking a defensive or obstructive approach can result in severe maladministration and unfairness to service users.

Department of Social Security ("DSS")

Throughout the course of 2025, we conducted two formal investigations into complaints made against the DSS, both of which were collective investigations. We formally investigated four complaints relating to the disability benefit application process (Cases No 1300, 1318, 1283 and 1339) and we formally investigated two complaints relating to the Closed Long-Term Benefits Appeals Board (Cases No 1286/1316).

Upon investigation of the disability benefit application process, it was immediately apparent why this area of our public service had been the subject of multiple complaints. The process itself is completely lacking in transparency – not enshrined in statute, it is based on a set of 'Administrative Arrangements' which operate as an internal policy, and are therefore not available to the general public or to applicants. The criteria for eligibility set out in the Administrative Arrangements is not disclosed to applicants, so they are unable to determine, before they apply, if they meet the criteria and if they should spend time submitting an application.

Once submitted, their applications are subject to assessment by a Panel of healthcare professionals whose identity is kept anonymous. This means it is impossible for applicants (or any other person or entity) to determine if the Panels have been convened correctly, if the Health Professionals making the recommendations have the appropriate specialisms for the medical conditions presented by the applicants, if there exist any conflicts of interest, or at worst, if there are any Health Professionals on the Panels at all.

The Panel then makes a recommendation to the Director of the DSS (a senior administrator with no healthcare qualifications), who then has 'absolute discretion' as to whether the disability benefit should be granted. This 'absolute discretion', could well make the Director of the DSS vulnerable to ministerial interference and could potentially place this senior administrator in a difficult position.

Once the Director of the DSS makes a decision as to whether the disability benefit should be granted, the decision is communicated to the applicant. The current DSS policy, where applications for disability benefit are dismissed, is to simply communicate the decision, and not provide reasons for the dismissal of the applicant's claim. This means that, in submitting an appeal or "reconsideration" the applicants can only resubmit their initial application with limited chances of success. A true appeal would focus on why the reasons to disallow the application were wrong. In the absence of the reasons for the disallowance, applicants are unable to truly appeal the decision of the Director of the DSS.

The average time taken to process the disability benefit applications investigated was, on average four years (from initial application to determination of the appeal or "reconsideration"). It appears to me that this is an unacceptable delay, especially given that some applicants will be experiencing acute disabilities and are likely to experience financial hardship in this waiting period.

I am, however, reassured by the fact that, as per my recommendation, the DSS have agreed to conduct an external, independent review of the disability benefit system, to be undertaken within an 18-month period from the date of my report. As per my recommendation, all the above failures of transparency will be examined, as well as the placing the disability benefit system on a statutory footing (as was determined by Parliament in 2020.) Needless to say, I will be reporting on the implementation of this recommendation in subsequent Annual Reports.

Indeed, in considering Cases 1286/1316, it seems that it would be beneficial to also conduct a review of the administrative processes surrounding the Closed Long-Term Benefits Appeals Board. In both these cases, the complaints were sustained, but the Second Complainant has been waiting for seven years for his appeal to be heard. In my view, this delay is a case of severe maladministration, which limits the Second Complainant's access to justice and it should be remedied without any further delay.

Gibraltar Health Authority ("GHA")

In my 2024 Annual Report, I was critical of the GHA in their engagement with my office as regards delay in responding to our enquiries in providing us with information. I am glad to report that, throughout the course of 2025, our engagement with the GHA has improved significantly, which in turn allows us to complete our investigations in a more timely manner.

This year, Case 1290 has been our most significant healthcare complaint, involving a child who had a temporary urinary stent inserted, which became encrusted. Due to the encrustation, instead of keyhole surgery, the patient needed open surgery to remove the stent. In making a determination of maladministration, I had sight of a medical opinion from an expert commissioned by my office (a consultant urologist), as well as the medical opinion of the GHA endourologists. Although in complaints of this nature, I consider the expert information provided by all experts very carefully, I am mindful of the fact that our experts are impartial (sourced via the UK Parliamentary & Health Ombudsman). I am also mindful of the Parliamentary & Health Ombudsman's 'Guidance on Balancing Evidence' when assessing medical opinions and the entirety of the evidence that is gathered throughout the investigation process. This may include, but is not limited to, complainants' accounts (verbal or written), the GHA's policies and guidance and clinical records, as well as advice from our experts and GHA clinicians.

The breadth of the evidence that must be obtained unfortunately means that clinical complaints against the GHA can often be lengthy and time consuming. However, the value of these investigations can be seen in the implementation of our 2024 GHA recommendations (set out in pages 22-24) of this report. Amongst the implemented recommendations is the recruitment of two specialist diabetes nurses and the establishment of the Diabetes Steering Group, which shows how our work can lead to tangible improvements to public services offered to our community.

Housing Department ("HD")

Throughout the course of 2025, a significant number of our investigations involved the HD. As mentioned in my 2024 Annual Report, the number of social housing categories is a matter that continues to cause confusion. In 2024, we estimated that there were at least 11 social housing categories – this year, we are estimating that there could be as many as 16 social housing categories. Once again, I reiterate the point that, if there are 16 social housing lists, it is extremely difficult to determine who the next priority applicant is at any given time, as there are potentially 16 applicants who are 'top of list'. Last year, the Principal Housing Officer indicated that he and his team would also welcome a more streamlined set of categories which would be easier to manage. Although this does not seem to have transpired yet, I was glad to note that they are still working on the simplification of the housing lists and I hope that I will be able to report a positive step in this direction in next year's report.

Indeed, the importance of this can be seen in cases 1295, 1296 and 1305, where the complainants' position on the social, medical and 'immediate allocation' lists where a central aspect of the grievances lodged with our office. Case 1305 is a particularly poignant example, as it related to an elderly complainant suffering from terminal cancer. She and her husband had been categorised on the 'immediate medical list' (which I understand is a sub-category of the Medical A+ list and not a separate list). The complainant and her husband had been offered a flat and had refused it, following which her husband (the primary applicant) had passed away. Four years later, the complainant was still waiting for an allocation (by this time suffering from metastatic cancer). She was living in an upper town flat that was unsuitable for her needs, as she was unable to negotiate steps and given the progression of her illness, she requested re-allocation to a ground floor flat. In this investigation, the interplay between 'immediate allocation' subcategory and the Medical A+ list was crucial to the determination of maladministration. We were glad to learn that, at the conclusion of our investigation, the complainant was number 1 on the Medical A list. We subsequently learned that the complainant had indeed been offered a flat, but tragically, in the intervening period from then to the preparation of this report, she passed away. I cannot help but feel that the simplification of housing lists could help to avoid situations where applicants suffering from terminal illness spend years living in unsuitable housing. As also mentioned in my 2024 Annual Report, I also consider that the social housing categories (however many there are) is a matter of public interest and this information should be publicly available.

Certainly, it has been in the same interests of transparency and accountability that the HD has taken on board my 2024 suggestion to amend the Housing Allocation Scheme (1994) to reflect the ministerial award of 1000 points to applicants and to make the amended scheme publicly available. In January 2026, the Housing Allocation Scheme Rules 2026 were published. They are available to the public on the Laws of Gibraltar website and the award of 1000 discretionary points is set out in rule 6.6. This change would have been relevant to Case 1293, where the complainant was aggrieved by the fact that her application for government housing had been refused pursuant to clause 5(d) of the Housing Allocation Scheme (1994). On lodging her complaint with our office, the complainant had only had sight of clause 5(d) and not the entirety of the Housing Allocation Scheme (1994), where, for example, the appeal procedure would have been

relevant to the complainant: "*representations In writing to the Housing Allocation Committee setting out the reasons why he is aggrieved" and failing this process, a second appeal "to the Chief Environmental Officer*".

I am very pleased that the entire regulatory framework is now publicly available, and I consider this a very positive step forward in achieving greater transparency in respect of the allocation process.

In fact, the new Housing Allocation Scheme Rules 2026 has changed the appeal process set out in the Housing Allocation Scheme (1994) and the appeal process for challenging Housing Allocation Committee decisions now needs to be directed to the Housing Tribunal. This was of importance in Case 1329, where the matter in question was the categorisation of the complainant as a permanent resident under provisions 4(b) and 5(b) (ii) of the Housing Allocation Scheme (1994) which were not transposed to the new Housing Allocation Scheme Rules 2026. As our investigation was completed in November 2025, my recommendation was that the provisions of the Housing Allocation Scheme (1994) should be applied and the complainant's application reconsidered. My recommendation stands as, in my view, it predates the Housing Allocation Scheme Rules 2026, which should not be applied to this case. HD did not reply on the recommendation itself and rejected the report in its entirety, citing s 14(1) of the Public Services Ombudsman Act 1998, as follows:

"14.(1) The Ombudsman shall not conduct an investigation under this Act in respect of any of the following matters, that is to say –

(a) any action consisting of a decision or ruling by an Authority in respect of which the person aggrieved has or had a right of appeal, reference or review to or before any tribunal howsoever constituted by or under any enactment;"

I considered it unfair that a recommendation arrived at in November 2025 should be invalidated by HD on the basis of rules implemented in January 2026, especially as the complainant had never been informed that the right to appeal to the Housing Tribunal would be available to her as of January 2026. In any event, as the complainant had been unemployed and a single parent with no income at the time the complaint was lodged, s 14(2)(a) applied, whereby:

"(2) Notwithstanding the provisions of subsection (1), the Ombudsman may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy, if satisfied that, in the particular circumstances, either –

(a) by reason of the inability of the person making the complaint to bear the costs likely to be incurred, or the disproportionality of the same;"

When considering this matter, it was unclear, in considering the Legal Aid and Assistance Act 1960, if Legal Assistance would be granted for the purpose of making an appeal to the Housing Tribunal.

Although the specific issue will not reoccur, given that s 4(b) and 5 (b) (ii) are not included in the new Housing Allocation Scheme Rules 2026, it is very likely that we shall receive complaints regarding decisions on housing allocations made by the Housing Allocation Committee from complainants with very low incomes who will meet the s 14(2)(a) exception. These complainants will need to be referred to the Housing Tribunal by the HD. However, in my view, for this to be a fair process, it will be necessary for the Housing Tribunal to be open to litigants in person and to follow procedures that are not overly legalistic, to ensure that legal costs do not become a barrier for applicants seeking to appeal decisions made by the Housing Allocation Committee. In circumstances where the Housing Tribunal follows a civil litigation process that makes it necessary for applicants to have legal representation that they cannot afford, I would need to invoke the section 14(2)(a) exception and accept complaints from individuals who fall into this category. I have broached this matter with the Principal Housing Officer and I am hoping to have further discussions on this issue in the coming months.

In all our investigations we focus on the responsibilities and obligations of public service entities as regards service users and the complainants that have recourse to our services. However, Case 1285 has also been a learning curve for me, making me aware that there is also a need for complainants to be honest and transparent when lodging a complaint with us.

In this case, the complainant had provided us with written statements to the effect that he did not have family support and was homeless, whilst suffering from a serious illness. One aspect of his complaint was that the HD had failed to take his homelessness into account and had not categorised him as a social case. This was the basis upon which we proceeded with the complaint on his lack of points on social grounds, which I sustained. After the investigation was completed, it came to light that the complainant had been in a relationship for 40 years and had been cohabiting with his partner. Although the complainant had been properly allocated a flat on medical grounds, I was taken aback by this sudden revelation, which put into question my determination of maladministration in respect of his non-categorisation as a social case.

I immediately apologised to the Principal Housing Officer for my erroneous assessment of the situation and my finding of maladministration on this aspect of our investigation. I also included a note to the Case 1285 report to reflect that new information had been received with respect to the complainant's personal circumstances and sent a copy to the complainant. I am concerned that this situation should not reoccur and to this end I have included as a discussion point for my next Public Service Ombudsman Group meeting mechanisms for verifying complaints at point of submission, to see if we can improve our processes and to prevent a similar situation from occurring in future.

Land Property Services ("LPS")

Case No 1307 was of concern to me as it brought to light the potential conflict between managing subsidised housing estates to prevent misuse by homeowners, and the homeowners' right to enjoy family life within their own homes. In this case, the complainant was unable to have her partner registered as residing within her property as he was not classified as a 'family member'. The complainant required a letter of authorisation from the Land Management Committee ("LMC") in order for the Department of Immigration and Home Affairs to process her partner's residence card.

The complainant and her partner had provided affidavits as to their relationship, but the LMC had not approved their application as it was not possible to arrange a surprise inspection by the Borders & Coastguard Agency. The complainant and her partner had initially filed their request in 2022, and it was not until March 2025 that the LMC provided the letter of authorization, and this was only after the complainant had informed the LMC that she and her partner were expecting a baby.

Although I am reassured by the fact that LPS agreed that the delay in this case was wrong, it feels unfair that the LMC could have a determining voice on who is considered a homeowner's family member, especially as many committed partnerships nowadays do not enter into marriage or civil partnership. This seems heavy handed even where, as in this case, the homeowner owns 50% of the property conjunctly with the GOG, but many homeowners in subsidised housing estates own their properties 100%, and many of these homeowners have bought their homes as resales, paying market value for their homes.

I am of the view that there should not be unnecessary or unreasonable obstacles to prevent homeowners enjoying their family life and cohabitation with their loved ones. I am also of the view that it is unseemly for the complainant to have to disclose the personal details of her pregnancy to the LMC to obtain the letter of authorisation, especially after 3 years of cohabitation with her partner and the submission of affidavits to the effect that they were in a committed relationship. It was not the complainant's fault that the LMC could not arrange a surprise home visit, and the onus should not have been on the complainant and her partner to wait for three years and to have to disclose personal medical information to obtain the authorisation that they required.

Even though this was the first time the LMC had had a request of this nature, indicating that this situation does not occur often, my suggestion in this case is that a policy should be established for cases such as these, to prevent a reoccurrence of the delays and unfairness suffered by the complainant.

RGP and the Office of Criminal Prosecutions and Litigation ("OCPL")

Throughout the course of 2025, three complaints have been lodged by individuals who were aggrieved that they had been defrauded and asserted that their cases had met with non-reply and unreasonable delay by the RGP or the OPCL.

In the 25-year history of the Office of the Ombudsman, complaints from fraud victims had not been received before, and it is of note that, in the very first instance, three complaints were lodged with us in a twelve-month period.

The first of these complaints was against the OCPL. The prompt attention given to the complaint by the Director of Public Prosecutions meant that the case was resolved quickly and informally to the satisfaction of the complainant.

The second complaint, against the RGP, proceeded to formal investigation and is included in this report as Case 1319. The complaints made to us by the complainant were sustained and three recommendations were made - one in relation to unblocking the delay in recovering monies and its distribution to fraud victims and the other two relating to the resourcing of the Economic Crime Unit, to ensure that lack of resource does not contribute to unreasonable delay in providing an adequate service to fraud victims, who have already been defrauded and may be suffering financial hardship. All three recommendations were accepted by the RGP. The third complaint is still under informal investigation.

I have had the opportunity to discuss these three complaints (and the fact that this seems to be a new area of work for us) with both the Commissioner of Police and the Director of Public Prosecutions. Indeed, the RGP sent me a detailed report "to provide strategic oversight of emerging trends, contextualise recent scrutiny and demand, and offer assurance regarding the organisation's approach to prevention, investigation, and professional standards."

I was very pleased to note that, of the three recommendations made in Case 1319, the report states that "all associated actions are currently on track to be complemented within the timeframes specified by the Ombudsman". Statistics are also provided which explain the rise in complaints relating to fraud: "From 2020/21 to 2024/2025, reported cases increased from 96 to 189, representing an overall increase of approximately 96.9%". It is encouraging to note that:

"In contrast, during the same period, Professional Standards has instigated only four investigations relating to the conduct of investigators or investigations in the context of fraud or deception matters. This being 0.5% of all financial crime being reported to the organisation resulting in a compliant from the victim or members of the public.

This disparity provides important contextual reassurance. It suggests that, despite increasing demand and complexity, investigative activity is being conducted to an appropriate professional standard, with a low level of concern regarding misconduct or procedural failure."

Other positive developments have also been highlighted by the RGP:

- "the ECU and the wider organisation have deliberately increased public-facing awareness campaigns to highlight emerging fraud trends, common methodologies, and preventative measures";

- "The organisation has made significant and sustained investment in tackling fraud and other acquisitive crimes. This includes an uplift in specialist capability within the Economic Crime Unit, ensuring that the complex and high-risk investigations are managed by officers and staff with the appropriate skills, experience and oversight.";

- "the organisation has delivered regular training inputs and development sessions to frontline officers. These sessions are designed to enhance early identification of fraud, improve evidence-gathering practices, and ensure appropriate victim advice and safeguarding are provided."

I very much welcome the fact that the RGP has taken such a proactive approach to implementing the recommendations made in Case 1319 and have used the recommendations therein to improve the services provided to victims of fraud. Ultimately, the purpose of the Office of the Ombudsman is not blame or criticism, but rather to instigate a process of learning from any failings of the past to improve systems and processes for the benefit of future service users.

1.5 Review of 2024 Recommendations

In 2024, eleven recommendations were made. All eleven recommendations were accepted, and three of them had been implemented prior to the publication of the 2024 Annual Report. I conducted a follow up exercise on the remaining eight recommendations, seven of which related to the GHA and one to the Housing Department ("HD").

Furthermore, an additional four suggestions were made relating to the housing allocation process that arose from three complaints that had been resolved informally. I include each recommendation and suggestion made in 2024 below, together with the feedback from the GHA and the HD directly below each recommendation and suggestion. I have then set out my thoughts and conclusions on the implementation of my recommendations and suggestions per department, pointing out which of these will still require more follow up in my next Annual Report.

GHA

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.

The GHA has implemented a comprehensive review framework for patients with diabetes who are unable to self-manage, particularly those prescribed complex regimens involving both oral and subcutaneous glucose-lowering therapies. Specialist Diabetes Nurses (DSNs) provide structured support to community teams caring for housebound patients, ensuring safe administration of diabetic medications. A daily emergency diabetes clinic operates within the Primary Care Centre (PCC), providing rapid access for patients requiring urgent medication review or clinical intervention.

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.

Clear escalation and review pathways have been established to ensure that patients with complex needs or recurrent issues are reviewed promptly by a senior member of the diabetes team. A multidisciplinary Diabetes Steering Group, established in October 2025 and led by the Consultant Endocrinologist and Head of Clinical Governance, provides strategic oversight of all diabetes services. This group ensures robust governance, standardised processes, and alignment with patient safety principles.

A virtual diabetes ward has been implemented to maintain oversight of all diabetic patients, ensuring appropriate pathways, follow-up, and continuity of care. Daily review clinics are in place, with protected emergency slots for walk-in patients. A dedicated generic diabetes email enables timely GP referrals and patient queries, reviewed daily by the diabetes team.

The DSN's work in collaboration with the A&E senior team to ensure that all diabetes-related attendances follow agreed pathways and that patients leave A&E on appropriate treatment regimens. A&E clinicians have direct access to DSN advice at all times. In addition, DSNs conduct daily ward outreach to review in patients with diabetes and support clinical teams.

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.

A structured education programme is being rolled out for doctors, nurses, and care providers involved in diabetes care, with a strong focus on the recognition and management of hypoglycaemia. Ward-based training will commence in January, led by an experienced RGN within the diabetes team. Workforce capacity has been further strengthened with the recruitment of a new RGN, who will undergo specialist training in 2026.

Patient education remains a priority, with the DESMOND programme, led by DSNs, now delivered quarterly following two successful cohorts.

5. An evaluation be conducted to determine how many specialist diabetes nurses ae needed in Gibraltar, followed by a recruitment process, if necessary.

In line with the Ombudsman's recommendation, the required number of Specialist Diabetes Nurses is kept under continuous review by the Diabetes Steering Group. Current staffing includes two Specialist Diabetes Nurses, two RGNs, and one newly appointed RGN. Workforce requirements are reviewed monthly to ensure service sustainability and responsiveness to demand.

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.

A systematic review of policies is underway to strengthen engagement with families and carers, particularly in relation to significant clinical decision-making. This work is led by the Diabetes Nurse Specialist and prioritised through the Steering Group. The maternity diabetes policy has been addressed as a priority and is progressing through final governance approvals. All remaining diabetes-related policies will be reviewed and updated from 2026. The inpatient insulin prescription chart has also been reviewed, updated, and is awaiting formal approval.

7. The GHA should 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.

To strengthen organisational, departmental, and individual accountability, the GHA has introduced the ROCK accreditation programme across wards. This framework enables Charge Nurses to systematically assess quality and safety against agreed standards. Performance is reviewed by Matrons, with action plans implemented where gaps are identified. Formal reports are escalated to divisional senior management, ensuring transparency, assurance, and continuous quality improvement aligned to patient safety.

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.

In recognition of the absence of an independent external quality assurance body, the GHA, in collaboration with HM Government of Gibraltar, will explore options for independent oversight to further strengthen patient safety and clinical governance.

Current Clinical Governance will be led through the Diabetes Steering Group

A dedicated Diabetes Steering Group has been established to provide system-wide leadership, accountability, and strategic direction. Its objectives are to:

- Set strategic direction for diabetes prevention, early diagnosis, management, and long-term outcomes.
- Ensure robust governance, accountability, and coordination across all diabetes services.
- Drive quality and safety through oversight of clinical standards, pathways, and best practice implementation.
- Champion patient outcomes by reducing complications, health inequalities, and avoidable mortality.
- Monitor performance and impact using data and evidence to inform decision-making.
- Enable collaboration across hospital services, community care, primary care, and patient groups.
- Identify and mitigate risks while removing barriers to effective diabetes care and service.

Conclusion

The GHA has clearly made significant efforts to implement the recommendations made, and I am pleased to conclude that out of the remaining seven recommendations, six have now been implemented. An independent external body to monitor the quality of care and safety of patients delivered by the GHA has not yet been identified, so that recommendation will once again be followed up in my next Annual Report.

Housing Department

1. The social housing categories should all be publicly available;

Applicants are placed in social housing categories based on their circumstances. Their situation is assessed and recommendations made. It would not be beneficial for applicants to know why or how one can be on a specific list because you do not 'qualify' to be in a social list.

2. There are too many social housing categories – these require simplification and need to be narrowed down;

This is being looked into and simplification of all housing lists is being worked on.

3. 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 Housing Allocation Scheme (Revised 2026) states that the Housing Allocation Committee (HAC) may award discretionary points up to a maximum of 1000 points. The amended scheme has been Gazetted and is available to the general public.

4. 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.

As per the Housing Allocation Scheme (Revised 2026), it is HAC that can recommend the award of 1000 discretionary points.

5. Case 1263 - 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.

The Housing Allocation Committee considers the merits of every case and does assist where appropriate. Section 4.2.2 of the Housing Allocation Scheme (Revised 2026) makes it very clear as to who cannot qualify and highlights the fact that the HAC may consider a previous homeowner in very exceptional circumstances. The Committee must be satisfied that the circumstances of the applicant are unique and that the hardship suffered by the applicant is significantly worse than would be the case for a similar applicant whose application would not be accepted.

Conclusion

The publication of the Housing Allocation Scheme Rules 2026 has superseded the Housing Allocation Scheme (Revised 1994) which was an internal policy that was not available to the general public or even to applicants for social housing. The fact that this policy has been amended and then published as secondary legislation is a positive step forward in ensuring transparency over the housing allocation process. Indeed, I consider that this deals with points 3, 4 and 5. These suggestions have been accepted and implemented, creating greater transparency and clarity for applicants.

However, as regards the number of social housing lists, I still consider that the social housing categories is a matter of public interest and they should consequently be disclosed to applicants and to the general public. Indeed, throughout the course of 2025, my office has identified at least 16 categories, and the lack of transparency in this matter makes it extremely difficult to determine who is 'first on the list' and therefore identify the next applicant entitled to an allocation. Indeed, this point has once again emerged in 2025 (Case No 1305 et al, referred to on pages 9-10) where the complainant's position on the Housing Lists was the crux of the investigation. Due to this, points 1 & 2 will be once again followed up in my next Annual Report.

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Case Reports

REPORT ON CASE NO 1281

Complaint against the Civil Status and Registration Office ("CSRO") in relation to the Complainant's application for exemption from immigration requirements ("Exemption") which she feels has not been processed as a result of an inefficient system.

Complaint

The Complainant was aggrieved because she had been waiting eight years for a decision on her application for Exemption. A successful application would allow her to subsequently apply for British nationality.

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

The Complainant was a French national with a property in Gibraltar. Together with her four children, that had been granted permanent residency in Gibraltar in May 2015, under the provisions of the Immigration Asylum and Refugee Act ("IARA") 1955. She subsequently applied for Exemption (the first stage in her naturalisation process) in March 2016. Despite various emails, calls and meetings throughout the entire period, the decision on her application has been continuously deferred. The Complainant remains unhappy with the status quo. She blames an inefficient system of applications being progressed in "batches", for the ongoing delay.

At the time of lodging her complaint, she did allege that she was aware of other applicants whose "Exemptions" had been granted before hers, despite submitting applications after she had done so.

As a result, the Complainant proceeded to file her complaint with the office of the Ombudsman.

Investigation

The Ombudsman noted the chronology of events and familiarised herself with the Complainants background and personal circumstances.

It appeared that at the time of her application, crucial information necessary to enable the authorities to properly consider her application had been omitted; (relating to amongst other things, her tax status and lack of proof of her self -sufficiency). It also appeared that her file had been misplaced by CSRO at some point in 2019 but that after the information was resubmitted, the Complainant had been informed that "all was now in order and that [she] should hear from the CSRO soon."

A further four years elapsed since then. The Complainant sporadically sought updates throughout. She received subsequent emails from CSRO on multiple occasions stating that her file was very much an active case; "as you are aware, your case was submitted for consideration in July 2019 and it remains active and under consideration. Although I understand that a considerable amount of time has now lapsed, I am unable to commit to a time frame"…… "as previously informed your case remains very much active… I am unable to state how much longer you will have to wait for an outcome to be made known, given that other pressing matters are dictating work streams (Covid dominating the panorama at the time, together with the ongoing Brexit Treaty negotiations).

Further to changes within CSRO, the Ombudsman wrote and subsequently met with the new head ("Head") of CSRO in February 2024. The Complaint was set out to him and explanations for the inordinate delay in determining the application were sought. It was brought to the Head's attention that the Complainant felt that her case had not been dealt with in the diligent and professional manner she deserved as a service user. The Ombudsman could only agree with this sentiment.

In addition, the Ombudsman informed the Head that this was one of many similar type cases which had historically been investigated and reported on by her office in the past.

CSRO replied to the Office of the Ombudsman soon afterwards.

In his reply, CSRO stated the delay was indeed unacceptable, that he would discuss the file with his team and revert shortly afterwards.

The Head wrote again more substantively on the 8th February 2024. As the Ombudsman was already aware, it was confirmed that applications were indeed sent out by CSRO in "batches". The Ombudsman considered this to be a perfectly reasonable practice. A good working system only if accompanied by a system whereby the decision makers consider and communicate decisions as diligently.

The Head was apologetic and "Given the lapse of time [he "proposed] the team contacts her to initiate the resubmission of paperwork for her application, given that the case was not deliberated upon fully when it should have been…. The process of resubmitting a fresh application will acknowledge the time lapse and the history of the case, ensuring fairness to all [mostly her]…." The Head, who had only recently taken the helm at CSRO was proactive in his approach. He made an internal request that the Complainant be contacted by his office for this purpose. He continued by stating that "her application will be totally different to that submitted all those years ago. [The Complainant] will be advised that due process will be followed and that her application will now be properly processed. Should she require further updates, she can contact the main passport office of the CSRO email and a reply will follow."

True to his word, the Head resubmitted the application to HM Government of Gibraltar ("HMGOG") as soon as the refreshed information was made available, for their review and decision.

Despite this, eight further months have now elapsed and still no decision has been made. Of course, it should be said that the matter rests solely with HMGOG and is out of CSRO's remit.

Conclusions

In conclusion, the Ombudsman could only sympathise with the Complainant's position. The delays, the constant chasing by the Complainant and the suggested resubmission of the application, as a attempt by CSRO to assist due to the excessive amount of time that had elapsed since the original application, can only be described as a substandard and an embarrassing state of affairs.

As mentioned, the issue of Exemption deferrals is one over which numerous Public Services Ombudsmen have reported, commented and expressed grave concerns over the years to successive H.M Government Chief Secretaries, clearly, with little effect.

As reported in almost identical circumstances in 2022, for us in Gibraltar to profess to be a modern, democratic and administratively transparent and fair society, it is totally unacceptable to submit a citizen to such treatment. There will be many applications dismissed for varying reasons. That is perfectly acceptable and even welcome. This is why there are conditions and requirements in place. But to be so consistently ignored over such a fundamental issue as one's status, over such a long period of time is a depressing state of affairs. The lack of any explanation as to what action an applicant should take over their deferral in order to improve their chances of securing a successful application (or otherwise) is not at all helpful or constructive.

As previously reported by this office, a straight and outright refusal if indeed it is the view that certain criteria is not satisfied, would be infinitely more desirable than no decision being made at all.

Classification

Failure to process the Complainant's Exemption application as a result of an inefficient system- Sustained.

It would be grossly unfair for the Ombudsman to describe "the system" as altogether inefficient. However, despite not being responsible for the decision-making process itself, CSRO did fail the Complainant (in that her file was lost thereby extending the delay and in not providing the Complainant with clear written answers to her queries). Credit should be given to the new Head, in attempting to expedite and resolve matters within his remit, from a practical standpoint. The problem lies with HMGOG in failing to consider and communicate decisions on these types of applications in a timely manner.

Recommendation - As recommended by previous Ombudsmen, decisions on Exemption applications should be processed, determined and communicated within a reasonable time frame. If deferred, reasons should be provided in the interest of fairness and administrative justice.

REPORT ON CASE NO 1292

Complaint against the Civil Status and Registration Office ("CSRO") in relation to the Complainant's application for exemption from immigration requirements ("Exemption") which to date, has not been processed. The Complainant is of the opinion that the applicable law has not been correctly implemented in his case.

For the sake of clarity, the CSRO has recently been renamed the "Department of Immigration and Home Affairs" by HM Government of Gibraltar. However, for the purposes of this report, we will continue to refer to it as the "CSRO".

Complaint

(1) Section 55N(1)(a) of the Immigration, Asylum and Refugee Act ("IARA"), specifies proof of continuous residency in Gibraltar for a continuous period of five years to qualify for a grant of "permanent residency". The Complainant asserts he has fulfilled this criterion.

(2) He complains that points raised in his letter to CSRO dated 27th February 2024, remain unanswered and that CSRO's letter dated 28th May 2024 does not give reasons for the decision reached. It simply states that the Complainant is "in breach of our Immigration Act."

The Complainant is unhappy with CSRO's decision that he is not eligible for Permanent Residence in Gibraltar, under Section 55N(1)(a) of the IARA.

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 is a sixty-five-year-old British national living in Gibraltar with his wife. Both hold blue id cards. Their only son who is now 21 years old was born here- he possesses a red id card and is currently undergoing a higher education degree programme in the UK (funded by the Government of Gibraltar's Department of Education).

Significantly, the Complainant resides in a Government housing stock flat- obtained under a tenancy dated 11th February 2016 in his sole name as "tenant"; on a self- repair basis.

He holds a valid Gibraltar Health Authority ("GHA") health card and is in receipt of a Gibraltar state minimum pension.

The Complainant applied for Permanent Residence under Section 55N(1) IARA in October 2023. On the 15th November 2023 an acknowledgement of receipt of his application with supporting documentation was received from CSRO. The letter advised that after the verification of the documentation, the process for obtaining permanent residence could be lengthy. It further stated that the average processing time was between 6 months to a year, depending on numerous factors. The Ombudsman considers this type of explanatory

letter to applicants, a measure of good administrative practice, by informing applicants of processes and time frames.

On the 5th January 2024, CSRO wrote to the Complainant stating that their records showed the Complainant's failure to renew his permit of Residence ("Permit") on the 19th September 2017 up to and including 22nd June 2023. "Unfortunately, to be able to apply for Permanent Residence, applicants have must resided in Gibraltar for a continuous period of 5 years an accordance with [the IARA]….. I am therefore unable to process your application for Permanent Residence any further."

The Complainant was of the opinion that Section 55N(1)(a) does not specify that the qualifying period requirement must be proved by a Permit of Residence for the entire period and as a result, does not understand why this has been the reason for the refusal to process his application.

The Complainant sent the head of CSRO ("the Head"), a letter dated 27th February 2024 stating that he could not reconcile why, on the evidence presented, CSRO had taken the view he had not resided in Gibraltar for the preceding five years, when the reality was that he had. He confirmed he had submitted copies of (a) his utility bills for the last five years (b) current Government of Gibraltar tenancy agreement and (c) confirmation of his Gibraltar pension. To his mind, that should have sufficed. He claimed there was no legal provision disallowing the grant of the application solely on the basis on non- renewal of his Permit of Residence/ID card. He requested that the decision be reviewed.

The reply received from CSRO on the 28th May 2024 expressed that despite the information provided there was still insufficient evidence to support the grant of his application.

Some months elapsed and aggrieved by the state of affairs and "unfair treatment" afforded, the Complainant lodged his complaint with the Office of the Ombudsman.

Investigation

The Ombudsman wrote to the CSRO, presenting the Complaint on the 20th September 2024.

CSRO replied shortly afterwards.

They explained how the Complainant had first registered with the Immigration Authority in 2016, but failed to renew his permit upon expiry, only approaching CSRO to renew in 2023. In addition, they stated that they were unable to find any record on file of his employment (DSS confirming that the Complainant had only contributed towards Social Insurance in 2003/2004 and 2007/2009.

"[The Complainant's] lack of employment and failure to renew his Permits of Residence means that, although he may have been physically residing in Gibraltar, he was not doing so in accordance with our Immigration Act and his application for permanent Residence cannot be approved at this moment in time". (Copy email sent to the Complainant by CSRO with reasons explaining the refusal and email from DSS confirming social insurance contributions were sent by CSRO to the Ombudsman).

The Ombudsman replied to CSRO explaining the Complainant's view that despite him not having renewed his Residence card, he could prove he had continuously resided in Gibraltar for the required period. In addition, the Act did not expressly state that the qualifying period had to be evidenced by a valid permit of Residence.

In response, CSRO set out the relevant section of the IARA.

"Section 55N(1)(a) of IARA states that [an EEA national] is entitled to reside permanently in Gibraltar if they have resided in Gibraltar in accordance with this Part (Part IV) of the Act for a continuous period of five years….. a "Qualified person" under Section 55E(1) is allowed to reside in Gibraltar if they are either of:

(a) Job Seeker
(b) Worker
(c) Self-employed person
(d) Self-sufficient person
(e) Student

CSRO stated that "any person residing in Gibraltar, who does not have a red id card, and therefore, a right of abode in Gibraltar, must apply for a permit of residence under section 55O(1)IARA". According to CSRO, "the Complainant was residing in Gibraltar for a considerable number of years without a permit of residence and in breach of our Immigration laws. It is for this reason that we are unable to issue him with a Certificate of \permanent residence, at this time."

Further exchanges of correspondence ensued between the Office of the Ombudsman and the CSRO. The Ombudsman put forward the argument over various letters that in this particular case, although the Complainant's permit of residence may have lapsed as a result of non-renewal, the fact remained that the Complainant was able to prove continuous residency in the form of his Government rental agreement/tenancy, utility bills and Government pension. His partner had worked in Gibraltar at a regarded bank from 2003-2010 and then as a hairdresser from 2013-2020. Their son (born in Gibraltar) was in receipt of a Government funded University grant. The Ombudsman asked whether CSRO held discretion to grant the application if the Complainant was able to prove residency in this way (as opposed to the renewed permits of residence)

Why was the issue of the permit of residence being used as the sole criteria for the grant of the Permanent Residence in spite of all the other supporting facts?

Was there an issue with the requirement of "Good conduct" as a consequence of the applicant not having contributed to social insurance or taxes for a number of years (this also forming part of his "breach of our Immigration Act?") Was this the reason why the application had not been processed and considered?

The reply that followed quoted Section 55(O)(1)(b) IARA which "……..clearly states that an EEA National Residing in Gibraltar must register with the Immigration Authority if they have resided in Gibraltar for over 3 months."

In exchanges with the CSRO seeking answers to the above questions raised by the Ombudsman, CSRO informed our office that the Complainant was in "substantial arrears with the Housing Department" the latter apparently having tried to contact him in that regard, to no avail. "Recent instructions issued to the CSRO prevent us from entertaining any application from persons who have any type of debt with other Government Departments."

At this juncture of the Ombudsman's investigation matters became somewhat confused. Was the reason for the non- processing of the application the lack of the renewed permit and/or absence of contributions, or was it as a result of this new information, namely the outstanding housing arrears?

The Ombudsman was surprised that this issue had been raised at such a late stage, particularly when she had previously asked about "issues of conduct".

The Ombudsman asked CSRO to provide her office with their "criteria document or policy statement" in order to determine entitlements for similar type applications.

The response received some two months later, copied the Ombudsman into a previously circulated email dated July 2024 sent by the CSRO Head to his staff, stating that with immediate effect, they would be implementing Housing arrears checks where possible for the following processes under CSRO's responsibilities:

(1) Nationality Applications
(2) Permanent Residence Applications
(3) Gibraltarian Status Applications
(4) Requests to Reside.

"This initiative aims to help Housing curtail their position in relation to arrears, whenever possible".

The issue of arrears and the effect it would have on any application was communicated by the Ombudsman to the Complainant and as a result, he approached Housing and entered into a thirty-five-month payment plan arrears agreement, on the 7th February 2025.

The Ombudsman made the existence of the executed agreement between the Complainant and Housing known to CSRO and asked whether the Complainant's application would now be processed? The letter received in reply explained that in the Head's view, Permanent Residence "and everything that comes with it" cannot be issued or reconsidered on the back of an arrears agreement. The scenario was raised where, for arguments sake, an applicant for Permanent Residence makes one or two payments and then ceases payments….. yet he is granted permanent Residency and all its associated benefits. "Arrears should be paid in full apart from having no further arrears accumulated". The Head also explained that applications for Permanent Residency now had "many more factors than when this issue was duly considered back in the day". Those factors however were not set out and as a result the Ombudsman considered this reply vague and lacking transparency.

The salient issue with CSRO (and one which the Ombudsman understands and shares), is that such applications are not simply about obtaining a red ID card, but are for Permanent Residence and the benefits that those status holders derive. A status reserved for qualifying citizens who have lived in Gibraltar continuously for five years preceding the date of the application (as contained in IARA 55N(1) and who meet the conditions/criteria set out). An application for Permanent Residence is not simply an application for obtaining a red ID card. Permanent residence is but a pre-requisite for obtaining a red id, the holder of which can enjoy all the services and benefits Gibraltarians enjoy.

Conclusions

The Ombudsman clearly shares the CSRO's view that in order to process and subsequently grant applications for Permanent Residence, the applicable law must be complied with. Immigration status particularly, has an effect on services enjoyed and benefits acquired. It is therefore fair, reasonable and proper that conditions are met and the eligibility threshold is set high.

The much-cited Section 55N(1) states that "the following persons are entitled to reside permanently in Gibraltar (a) An EEA national who has resided in Gibraltar in accordance with this Part for a continuous period of five years…."

The definition of "Qualified person" under section 55E(1) "means a person who is an EEA national and is in Gibraltar as-

(a) a job seeker;
(b) a worker;
(c) a self- employed person;
(d) a self-sufficient person; or
(e) a student."

Under the sub-heading of "Residence Documentation", section 55O(1) states that an EEA national residing in Gibraltar "…..(b) shall register with the Authority if he has resided in Gibraltar for over three months; shall after registration, notify the Authority in writing of any change of residential address including notifying the Authority if he ceases to reside in Gibraltar and (d), [the person]who fails to comply with a requirement under paragraph (b) or (c) is liable to a civil fine of £100."

There is no specific reference in the Act to renewed residence permits being part of the criteria to prove continuous residency (although taken objectively, it is not an onerous task nor is it an unreasonable condition or request to expect an applicant seeking permanent residency to have complied with permit renewals and social insurance/tax contributions, when that applicant has made Gibraltar his home and wishes to regularise his position).

As far as the CSRO is concerned and as stated in their initial letters to the Complainant, by said breaches (namely, not renewing his permits of residence and thereby failing to obtain the necessary permission to reside here under IARA), the Complainant, was in breach of Immigration laws and for a certain period, residing "illegally."

The Ombudsman can only agree that the Complainant did not keep his affairs in order at that time. However, by virtue of other important factors he is placed in quite a unique position as far as proof of his continuous residency is concerned.

The Complainant has a twenty-one-year-old son born in Gibraltar who is the recipient of a higher education Government of Gibraltar award for his studies at a UK University.

The Complainant also holds a minimum state pension and a valid GHA medical card under "Pensioner" status.

More significantly as to proof of his continuous residency, the Complainant was granted a Government of Gibraltar tenancy (in his sole name as tenant), in respect of a flat located within a housing authority council estate in 2016.

The Housing Allocation Scheme (Revised 1994) at Section 4 under the heading "Persons Eligible to Apply for Government Housing," provides that "the following persons are eligible to apply for Government Housing;-

(a) Persons who are registered in the Register of Gibraltarians
(b) Persons who are not registered Gibraltarians, but who at the time of application, have a right of permanent residence;
(c) Persons who are British Dependent Territories citizens by virtue of a connection with Gibraltar, as defined by the British Nationality Act 1981."

Under the "Qualification" section, at clause 5, "To qualify for the allocation of Government housing, the application must satisfy the following conditions, that is to say:-

(a) The application must be made on the appropriate form to be obtained from the Housing Allocation Unit, City Hall Gibraltar

(b) An applicant must be-

(i) Either- (aa) a single person eighteen years of age or over; or

(bb) eighteen years of age and the head of a family (that is, married, or a single parent having legal care and control of at least one child); and

(ii) Permanently Resident in Gibraltar and have been so for one year prior to application; and (ii) In need of re-accommodation (that is to say, no application will be considered if, at the time of applying, the accommodation occupied by the applicant whether public or private housing, is in the opinion of the Housing Allocation Committee (which opinion shall be final), of the same basic standard as Government post -war accommodation).

(c)An applicant's name must have been on the pre-list for a period of one year prior (the qualifying period) before he becomes eligible to be allocated housing……

Housing is by far the most valuable commodity in Gibraltar. Government tenancies are only granted after all criteria and requirements are met and under strict conditions, more so for non-Gibraltarians. For Housing to have entered into a tenancy agreement with the Complainant on the 11th February 2016, they must have, without a shadow of doubt, been satisfied that the Complainant satisfied all criteria. As far as Permanent Residency is concerned, he must have certainly been able to prove the five-year continuous period (in addition to having been on the pre-list for a year), before becoming eligible for Government Housing. In effect, the Compliant, must have, at the very least, been able to prove continuous residency for six years (from 2010) prior to the grant of his tenancy.

Insofar as the Complainant's current complaint and his wish to "formalise" the position of his Permanent Residency with the CSRO, it is at the very least odd, that under the same political administration, albeit under different departments thereof (Housing and CSRO), the Complainant's Permanent Residency was accepted as de facto in 2016 (resulting in the tenancy) but not in 2023, when the Complainant applied to regularise his position. Insofar as the access, status "and everything else that comes with it [Permanent Residency]" as described by the Head of CSRO is concerned, the Ombudsman takes the view that the Complainant already enjoys numerous and important benefits; the generally coveted Government flat being the most obvious one.

On the evidence we have examined, the Ombudsman further considers that there would not be public policy implications in granting this Complainant Gibraltarian status. There would be no danger of "floodgates" opening, given the factual peculiarities and the unique circumstances of the Complainant in this case. However, from our analysis, statutory requirements must be met without exceptions.

Classification

(1) Section 55N(1)(a) IARA, specifies proof of residency in Gibraltar for a continuous period of five years to qualify for a grant of "permanent residency". Taking those fixed requirements of Section 55N(1)(a) into account, and despite the Complainant having lived in a Government rented flat for nine years, the Complainant (as being argued by CSRO), has technically not fulfilled the statutory test since he was not in continuous lawful residence (with valid permits of residence to prove so) throughout the stipulated five-year period. He only had residence documentation for the periods 19th September 2016-19th September 2017; 23rd June 2023 -23rd June 2024 (as a "self-sufficient pensioner"); and 24th June 2024- to date (renewed on the same pensioner basis).

The complaint that he has statutorily fulfilled the residence criterion therefore, is Not sustained.

(2) The Complainant also complained that the points raised in his letter to CSRO dated 27th February 2024 remain unanswered, and that CSRO's letter dated 28th May 2024 did not give reasons for the decision reached. It simply states that the Complainant is "in breach of our Immigration Act." Not Sustained

The Ombudsman was satisfied with the written explanation for the refusal given to the Complainant on 28th May 2024, namely that "….there is still insufficient [legal]evidence to support your claim of Permanent Residency in Gibraltar during the qualifying period…. failure to renew your permit of Residency from 2017 to 2023 along with your lack of social contributions and Income Tax payments, place you in breach of the Immigration Act."

From an explanatory perspective, CSRO's reply was administratively acceptable.

Recommendation

*The Honourable Chief Minister of Gibraltar in his summer 2025 address to the electorate, where he outlined the elements of the Brexit Treaty ("The Treaty") negotiations, stated that once implemented, all Gibraltar residents holding ID cards (irrespective of status:- permanent or otherwise) will enjoy free movement into Spain and the Schengen area.

The Permanent Resident/Red Id card holder currently enjoys this benefit (by way of agreement/concession from Spain) without the need for passport stamping.

It appears that the Complainant will either (i) have to wait until the treaty provisions come into force, or (ii) be in a position in which he can prove continuous lawful residence of five years by way of consecutively renewed annual permits.

The Ombudsman would have recommended, given the peculiarities of this case and the personal circumstances of the Complainant, that CSRO exercise their discretion and grant the Complainant permanent residence (his entire household already enjoy it). However, CSRO made it clear that given the statutory framework there was no possibility of any discretion being exercised in the Complainant's favour and consequently, no recommendation is made.

REPORT ON CASE NO 1303

Complaint against the Department of Immigration and Home Affairs ("DIHA") (formerly the Civil Status and Registration Office- CSRO) in relation to the treatment afforded to the Complainant by DIHA staff whilst submitting documentation for his marriage in Gibraltar. He accuses the DIHA of being discriminatory and unprofessional. He further complains of non- reply to his email setting out his grievance.

Complaint

(1) Treatment received at the Marriage Registry Office left the Complainant and his fiancée ("Fiancee") feeling unwelcome and discriminated against.

(2) Non- reply to the email of complaint setting out the above allegation.

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 attended the old CSRO offices (Marriage Registry Office) with his Fiancee between the 22nd and 24th April 2024 by appointment, to submit documentation and make arrangements for their impending marriage in Gibraltar. He had dealings with two (named) DIHA staff.

The Complainant alleged that one of the staff members "continuously raised unnecessary and discriminatory obstacles to prevent [the Complainant] from proceeding with [the]marriage appointment."

"She initially questioned the condition of our birth certificates, then shifted to enquire about my Fiancee's UK entry stamps and UK visa status. Despite providing satisfactory explanations and documentation, [the staff member] persistently found new reasons to delay and obstruct the process."

The Complainant explained to the Ombudsman how DIHA raised the issue of why the birth certificates' were covered in plastic. As a result, the plastics were removed from the documentation by the Complainant. As referred to above, subsequent questions were raised as to why the Fiancee's passport did not contain UK entry stamps The Complainant provided UK Government website advice and USA Travel information where it stated that American citizens do not require stamps at UK airports (since electronic gates can be used). Indeed, the Ombudsman confirmed this was the case – a basic position which DIHA experienced staff should have been well aware of. DIHA stated they would confirm the position with UK Border Force, a position that the Complainant welcomed.

The Complainant then explained to the Ombudsman how the staff member continued to closely analyse his Fiancee's birth certificate. (The Ombudsman considered there was nothing untoward here, simply that DIHA were being thorough).

The Complainant suggested to DIHA that if they believed that by having the birth certificate covered in plastic the original document had been soiled in any way, his Fiancee could always apply for a new certificate in the United States and their Gibraltar wedding could be postponed. In the Complainants account of events, he told the Ombudsman that the DIHA Staff member then expressed their view in very clear terms "…….. you will not be able to get married in Gibraltar." When the Complainant asked what was meant by this, the alleged reply was "Go back to your country and get married there."

When accused by the Complainant of racist/discriminatory behaviour, by DIHA staff member apparently rebutted the Complainant's allegation of being a racist. According to the Complainant, she stated that she needed to be satisfied that all documents were original and that the partnership was a real one. The Complainant replied by alluding to his interpretation of DIHA's marriage guidance notes (which will be referred to by the Ombudsman under the Investigation section of this report), that all he and his Fiancee were required to do was to present original documentation as set out therein.

The staff member allegedly replied "I am not convinced" [by the veracity of the relationship and documentation provided].

The Complainant complained to the Ombudsman that if there were issues with the documentation, why didn't DIHA raise them when the Complainant first visited Gibraltar in March 2024. Everything was "physically seen" on said date and there had been subsequent email exchanges. Why, the Complainant asked, did DIHA subsequently email him stating that the initial verification of documents had been completed and that he could pay the fee for the marriage booking?

The Complainant stated that his Fiancee's family had travelled from New York for the wedding, and that costs for the preparations and entire trip were £5500 for which he sought a refund. (This seems at odds with his earlier suggestion that if documents were considered not to be in order, they could reapply for them in the US and the marriage could be postponed).

Dissatisfied with the state of affairs and feeling discriminated against and frustrated, the Complainant wrote an email to the DIHA on the 29th April 2024 complaining of the treatment he had received. After no reply to that email of complaint or to a chaser email dated 23rd May 2024, he lodged his complaint with the Office of the Gibraltar Public Services Ombudsman.

A letter of complaint to the Office of Fair Trading Commissioner was also sent by the Complainant. (The Ombudsman has read said letter but will not comment on it given that it has no bearing on our investigation or report writing nor was it the correct entity to voice concerns to).

Investigation

The Ombudsman wrote to the DIHA, setting out the complaint and affording them the opportunity to reply, as is standard Ombudsman practice.

After an exchange of emails with DIHA and a subsequent meeting with the head of DIHA ("Head") to discuss the progress of this complaint and other unrelated matters, a full reply followed some weeks later.

In the interim, the Head wrote to the Complainant. The tone of the letter was cordial, apologetic and explanatory.

It set out how the complaint had been taken "extremely seriously"
and that an in-depth interview with the Staff member concerned had been undertaken. He pointed out that the crux of the issue was that "certain paperwork appeared to the team to have been tampered with and was therefore not accepted in accordance with our policies."

The Head apologised for the Complainant's perception of his Staff's attitude but further to the internal interview (conducted by him), he had been informed and therefore concluded that no racist comments were made nor was any lack of respect shown. "Reports from the counter suggest that the situation became slightly agitated on your behalf when questioned about the documentation in question, which may have contributed to the misunderstanding."

The Head reassured the Complainant that further training on customer service and internal complaint handling by the team had been taken. The Ombudsman questioned the need for this if indeed, there had been no maladministration or customer related issues necessitating improvement. He was satisfied that his office provided the "safe environment", which the Complainant had suggested was missing. The Head concluded his letter by stating that he trusted the Complainant understood that policies (in relation to the acceptance of documents) must be adhered to in accordance with Government regulations. The Complainant was thanked for bringing the matter to the Head's knowledge, reassuring him that he was available if there were further concerns or issues requiring clarification.

In the Heads' comprehensive reply to the Ombudsman, his opening statement was that "upon reviewing the Complainant's marriage documentation, immediate red flags were identified prompting the team to escalate the matter for further investigation".

Key issues identified as set out by the Head

1.Lack of Valid Immigration Documentation: "The Complainant (a Pakistani National) did not hold a Pakistani passport but a UK Travel Document issued to individuals granted Refugee Status in the UK."

This lack of documentation was not identified until the Complainant attended the DIHA in person to finalise all arrangements. DIHA informed the Ombudsman that the Complaints case predates the recent introduction of Uk share codes and as a result, the refugee status detail only came to light when the Complainant and his Fiancee were already in Gibraltar.

2. Failure to Meet Documentation Standards: "The Complainant attempted to present a laminated copy of his birth certificate, despite the Marriage Guidance notes being explicitly clear."

The Ombudsman reviewed the Marriage Guidance notes, readily available online at the Government of Gibraltar/DIHA's webpage.

Section 3 clearly states that "ORIGINALS means the original physical certificate(s) issued at the time of registration. Where originals cannot be provided, the applicant must present Verified copies of the original certificate(s) from the registry/court that issued the original certificate(s). Those certified copies must bear the seal of the registry/court that issued the original certificate(s). Certified true copies of originals attested by a Notary Public or other person entitled in law to certify the authenticity of a document is acceptable….. Laminated documents are not accepted…. Please do not submit unverified photocopies or scanned copies of documents, as these will be declined."

3. Suspected Tampering of Documents: "During a subsequent visit, [the Complainant] attempted to remove the lamination from his birth certificate in what appeared to be an effort to circumvent the rules."

4.Immigration Concerns with Partner [Fiancee]: "[The Complainant's partner], an American national, did not reside in the UK. Upon reviewing her passport, it was evident that she had travelled specifically to Gibraltar for the marriage [ceremony]. This raised concerns whether the marriage was intended to facilitate settlement in the UK, which is not permitted under UK Immigration Rules without a proper visa."

Actions Taken

The Head's view was that the Marriage Section (DIHA staff in question), informed the Complainant that his documents were not in order and could not be accepted. Despite thus, he returned to argue his case, becoming "agitated and confrontational."

In summary, the Head confirmed that:

(a) "The documents presented did not meet the requirements for marriage in Gibraltar.
(b) The circumstances suggested red flags on a potential marriage of convenience.
(c) Given the lack of a Biometric Residence Permit and the questionable intent behind the marriage, it was deemed necessary to step up scrutiny for this case."

It was also made known to the Complainant, that when potential applicants enquire about the process for getting married in Gibraltar, they receive an automatic notification with all the guidance. That guidance includes a clear information of all documentation requirements, visa obligations and other conditions and pre requisites. As cited earlier the unacceptability of laminated certificate(s) is also expressly stated.

Conclusions

An important aspect of this complaint, apart from the non-acceptance of the Complainant's physical presentation of the documentation necessary for marriage by DIHA, is the manner in which the information was conveyed to the Complainant. There exist allegations of racial discrimination and an attitude which if verified, would amount to severe maladministration.

Insofar as said "treatment received" by the Complainant and his Fiancee is concerned-making them feel "unwelcome and discriminated" against, the Ombudsman finds difficulty in classifying this part of the Complainant, given that there are opposing versions of the words expressed and the tone or intention behind them.

Irrespective of the pre-conditions for marriage not being met by the nature of the documentation presented, if the Complainant did feel offended or humiliated ("unwelcome and discriminated against"), by the tone or language used by DIHA staff, then the Ombudsman would have little option but to uphold the Complaint on a purely subjective basis. However, if any reasonable person would not have been offended by the manner in which the comments were made, or the Complainants reaction was deemed to be unreasonable or disproportionate given the context; (for instance a comment interpreted in bad faith), then the Ombudsman would not uphold the discriminatory aspect of this complaint.

In relation to DIHA declining to accept the documentation as original, the Ombudsman can only assume that the "immediate red flags" identified were done so when the physical documentation was presented just days before the intended wedding ceremony, given that previous mails submitting copies of the documentation and an in-person visit some months before did not raise issues. As mentioned, the marriage fee was requested and payment and other arrangements were also made.

It must be said that there is no doubt whatsoever that the Marriage Guidance notes are clear on what the strict requirements are. Documents presented must be Original, untampered with (including lamination) and unaltered. The Complainant should have only come to Gibraltar with original documents in their purest form or with notarised original copies (as also set out in the Guidance notes). No adverse judgment can be issued against the DIHA for upholding the established, published and readily available rules and conditions. In that respect the DIHA acted correctly.

Classification

Given that this aspect is a question of "he said she said" and not tested evidentially, the Ombudsman finds herself unable to Classify Complaint 1.

It may well be that the internal investigation/interview should have been carried out by HM Government's Human Resources Department on the Head's recommendation.

In relation to Complaint 2 - Lack of reply to the Complainant's email of complaint sent to DIHA. The email was sent on the 24th April 2024, a chaser was issued in May and a response was sent on the 12th June (some six weeks later).

Although an earlier holding reply would have been desirable, perhaps acknowledging the Complainants letter and further explaining that the matter was being internally investigated, a reply was issued nonetheless and not excessively out of the parameters of good administration. For this reason, the Ombudsman does Not Sustain complaint 2.

Ombudsman Note - Any allegations of lack of professionalism and/or misinterpretation could have been obviated in this case by DIHA Staff providing a short letter (issued during the scheduled appointment time or shortly thereafter), citing reasons why the documentation was not accepted or simply by referring the Complainant to the conditions in the Marriage Application Guidance Notes which he did not meet, meaning as a result that the marriage ceremony could not go ahead at the scheduled day and time.

REPORT ON CASE NO 1330

Complaint against the Department of Immigration and Home Affairs ("DIHA" formerly known as "CSRO") regarding DIHA's handling of the Complainant's Permanent Residence Application.

Complaint

Complaint regarding an email sent to the complainant regarding her application for permanent residence, namely:

1) The complainant was labelled a 'vexatious correspondent' for seeking an update on the progress of her application;

2) That information on the complainant's application would be withheld at the prerogative of the DIHA Head of Department;

3) That the complainant's application would be paused until any Ombudsman investigation was completed on account of the complainant's expressed intention to make a complaint to the Office of the Ombudsman;

4) That no further correspondence would be entered into unless the complainant "reset the tone" of her communications, when the complainant's communications were professional and courteous;

5) That the complainant's initial application for permanent residency was not duly processed.

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 17th May 2024, the complainant applied for Permanent Residence in Gibraltar. With her application form, she attached a tenancy agreement, proof of deposit and proof of payment of utility bills which showed that she was residing in Gibraltar as from 1st May 2019. However, on the 2nd August 2024, the complainant was informed that her application had been denied on the basis that she "must have resided in Gibraltar for a continuous period of 5 years".

The complainant wrote to DIHA on the 26th September 2024 and on the 1st November 2024, asking for a reconsideration of the decision to deny her application. She never received a response.

On the 20th March 2025, the complainant wrote to the Chief Minister and also reapplied for permanent residency, paying a newly introduced £100 application fee. From this date to the 26th June 2025, the complainant emailed the Chief Minister, but received no reply.

On the 26th June 2025, the complainant called DIHA and was given the relevant Higher Executive Officer's [HEO's] email address. The HEO then started dealing with the complainant's application. On the 8th July 2025, the complainant received an email from the HEO stating the following:

"Following a discussion with …Head of Civil Status and Registration Office, I have been asked to extend his sincere apologies for the lack of response to your previous emails....Regrettably, your earlier application can no longer be re-considered, as the discretionary approach that was occasionally applied in the past is no longer available under the current administration. However, in light of the unacceptable delay in communication, I will be prioritising the processing of your application ahead of others currently in the queue."

From June 2025 to September 2025, according to our records, the complainant wrote to the HEO on the 1st July 2025, on the 10th July 2025, on the 4th August 2025 and the 5th September 2025. She also wrote to the Head of DIHA on the 5th September 2025. On that day, she put both the HEO and the Head of DIHA on notice of the fact that she intended to make a compliant to the Office of the Ombudsman "on the basis that despite the assurance my application would be expedited it still has yet to be processed."

On the 8th September 2025, the Head of DIHA wrote an email to the complainant, where the following statements were made:

- "the tone and content of your recent email, particularly the message purporting to "put him on notice" is completely unacceptable."

- In your email of the 20th March, you stated "given my circumstances – a British passport holder, a legal practitioner and member of the Parole Board with sound background checks, stable employment for five years and clear evidence on residency – I believe my case should be straightforward." This statement speaks volumes and reflects an unfortunate sense of entitlement."

- "There was in fact, an update on your file last week. However, given the tone and manner of your recent communication which in my view is both inappropriate and unfair, I will not be addressing this issue at this moment in time."

- "…you have now been classed as a vexatious correspondent under our internal processes."

- "I trust that you will now also reflect carefully on this. Depending on your approach going forward, my team will resume respectful correspondence on our terms and within our final timelines, not yours. Alternatively, we will await contact from the Office of the Ombudsman and, as per policy, pause the application until any Ombudsman investigation is completed by both sides and a final determination reached."

- "I am not one that normally like to this this type of corrective action, but in this case your repeated conduct and insistence on imposing your own timetable for such a serious process has left me with no alternative."

- "…this process is not akin to obtaining a MOT appointment or a fishing licence renewal."

The complainant was worried that her application was going to be disregarded and pushed to one side. She felt she had been wrongly advised by DIHA in 2019, when she had arrived in Gibraltar, with no friends or family to turn to for guidance and support. She also felt that her initial application was not duly processed, given that she had evidenced that she had continuously resided in Gibraltar for 5 years, as per the legal requirement in s55N(1)(a) of the Immigration, Asylum and Refugee Act 1962.

Investigation

The complainant's initial application for permanent residence

In considering this matter, the Ombudsman had regard to the cover letter submitted to DIHA with complainant's initial application, dated 17th May 2024. In this letter, the complainant sets out the evidence submitted in support of her application (to prove 5 years of continuous residency), as well as the reasons behind the delays in her application for a residence permit when she first moved to Gibraltar in May 2019, as follows:

"I enclose my application for Permanent Residence in Gibraltar, in support of which I kindly refer to the enclosed file which contains the following documents:

1. Duly completed and signed Application Form;

2. Certified copies the Applicant's Civilian Registration Card and Permit of Residence, birth certificate, British Passport together with 2 photographs;

3. Certificate issued by the Royal Gibraltar Police pursuant to the Subject Access Request submitted by the Applicant;

4. Certified copy of the Deed of Assignment for property in Gibraltar;

5. Certified copies of bank duly registered Notice of Terms of Engagement, wage slip, PAYE and Social Insurance certificate and confirmation letter issued by all employers;

6. Certified copies of the Utility bills for the period 2019 to 2024;

7. Certified copies of bank statement for the Applicant for the period 2019 to 2024; and

Further to our phone call during the course of last week (w/c 6 May 2024), we discussed the events causing my delay in applying for a residence permit when I first moved to Gibraltar in 2019. To summarise:

• I was contracted to work for [Employer 1], an insurance company based in Gibraltar, from 1 July 2018 (Tab 11). At the time, I resided in Spain.

• Given my low income at the time and difficulty in finding low-cost accommodation in Gibraltar, coupled with the uncertainty of the free movement of persons at the border, I entered into a tenancy agreement for [Address 1] on 1 May 2019.

• The landlord for [Address 1] prohibited me from applying for a residence permit, but I kept all copies of the tenancy agreement, proof of deposit and proof of payment for utility bills to show that I was residing in Gibraltar. I have included these in the bundle (see Tabs 9 and 10 specifically the 2 x utility bills for 2019).

• Around July to August of 2019, I recall contacting a female officer from the CSRO and I explained my situation to her. I also mentioned to her that due to issues with the condition of the property, I would be leaving by 1 November 2019 by exercising the six months' break clause which would allow me to terminate the tenancy agreement early. Whilst I do not recall her name, given the amount of time which has since passed, I do remember the office holder stating that as I would be leaving [Address 1] soon, it would not be practical to file my application now as I would then have to change it again in 3 months' time when I moved address. I also mentioned that I had received an offer for new employment to work at [Current Employer]. Again, the office holder again mentioned that I would need to re-send in my evidence of employment and that it would make sense to apply once I have sorted out my new rental accommodation and employment. I therefore held off on making my application until I was in a new tenancy agreement, which transpired to be [Address 2] (Tab 8).

• I terminated my tenancy at [Address 1] and moved into [Address 2] on 1 November 2019.

• Once I had my three months of utility bills, wage slips and ETB forms finalised with work, I applied for my first residence permit/blue ID card (which was issued on 4 March 2020 and set to expire on 15 January 2021).

To provide a complete timeline of my living situation in Gibraltar, I would like to add that:

• I moved out of [Address 2] on 31 October 2020 at the end of the tenancy agreement. Towards the end of the tenancy of [Address 2] my partner and I were already looking to purchase a property together in Gibraltar. We paid a deposit on [Current Address] on 1 December 2020.

• In the meantime, we were living with my partner's mother whilst we waited for the purchase of the [Current Address] to complete. Due to the Covid-19 pandemic and the Christmas holidays, it took longer than usual for us to complete the conveyance which was finalised on 1 March 2021 (Tab 7). After we moved into our new home, I renewed my blue ID card/residence permit (Tab 2).

I trust the enclosed documents will suffice for the purposes of the application, and that the above breakdown on my living situation in Gibraltar over the last five years assists the CSRO with my application. If, however, you require anything further please do not hesitate in contacting me by email, …or telephone …"

On the 2nd August 2024, the complainant received a letter informing her that:
"Our records show that your first Permit of Residence was issued on the 15th January 2020. Unfortunately, to be eligible to apply for Permanent Residence, applicant must have resided in Gibraltar for a continuous period of 5 years in accordance with Section 55N(1)(a) of the Immigration, Asylum and Residence Act.

I am therefore unable to process your application for Permanent Residence any further."

The Ombudsman noted s55N(1)(a) of the Immigration, Asylum and Refugee Act 1962, which states that:

"55N.(1) The following persons are entitled to reside permanently in Gibraltar–

(a) an EEA national who has resided in Gibraltar in accordance with this Part for a continuous period of five years".

However, in accordance with Part 55, the Ombudsman also noted s55O(1)(b) of the same Act, which states the following:
" 55O(1) An EEA national residing in Gibraltar,-

(b) shall register with the Authority if he has resided in Gibraltar for over three months;"

The Ombudsman considered that the complainant had not complied with s55O(1)(b), as she moved to Gibraltar in May 2019 and did not apply for a residence permit until January 2020. However, the Ombudsman also considered that the complainant had provided evidence to show continuous residency in Gibraltar from 2019 to 2024, and a detailed explanation as to the delay in submitting an application for a residence permit (crucially, having been advised by DIHA to delay making the application to when she had changed address and changed employment). As above mentioned in the complainant's cover letter to DIHA of 17th March 2024, the complainant did contact DIHA in July/August of 2019. According to the complainant, at that time, she spoke to a female officer whose name she did not recall, who advised her to wait to apply for a residence permit until she had changed her address and her employment.

On the 1st November 2024, the complainant wrote to DIHA, stating the following:

"Prior to making my application I explained my circumstances with the Senior Executive Officer [SEO] and I was informed that the CSRO have discretion on the permanent residence applications and that the handler may exercise such discretion in certain cases. I completely accept that there is no automatic entitlement for such discretion to be exercised but I feel that the letter I received from CSRO does not deal with my particular circumstances which were set out in my cover letter."

Indeed, in later correspondence, the complainant informed the Ombudsman that:

""I first applied for my permanent residence permit on 17 May 2024. The cover letter which I submitted with my application and attachments to the CSRO sets out why I had not applied for my permit after I first moved to Gibraltar in May 2019. I had included this evidence following on a phone call I had with SEO who, at the time of the application, handled permit residence applications. I explained to SEO the background of my case as seen in the cover letter. She informed me that the immigration officer had a certain amount of discretion that he could apply and whilst she didn't think I would encounter any difficulties, it would be up to the immigration officer. Therefore, when I applied, I included all of this information."

The Ombudsman requested DIHA's views and comments on the complainant's assertions that she had been advised to delay applying for a residence permit by DIHA, as per the phone call that the complainant claimed took place in July/August 2019.

DIHA's comments, communicated to the Ombudsman via an email dated 22nd October 2025, were as follows:

"I believe [the complainant] is referring to a conversation she may have had with a member of staff regarding her first permit of residence and civilian registration card. While I am unable to comment on the accuracy of this conversation due to the time that has elapsed, I can confirm that staff within the Immigration Section are well aware that individuals taking up residence in Gibraltar are required to register with the authorities within 90 days of their arrival.

Upon reviewing [the complainant's] records and the documents she has provided, I can confirm that her first rental contract for [Address 1] was signed in April 2019. Therefore, if [the complainant] did indeed contact our office during the summer of 2019, she would have already been in breach of the Immigration, Asylum and Refugee Act (IARA). Furthermore, her Termination of Employment contract from [Employer 1] dated September 2019 lists her residential address as La Linea, Spain.

[The complainant] commenced employment with [Current Employer] in September 2019 and entered into a new rental agreement for [Address 2] in October 2019. However, her application for her first permit of residence in Gibraltar was not submitted until January 2020."

In relation to the complainant claiming that she had been informed that discretion could be applied to her application, DIHA communicated to the Ombudsman that:

"The information provided to [the complainant] was accurate at the time, based on the instructions and guidance available to staff. However, after discussing this with [the Head of Department], we do not consider it appropriate to comment on or evaluate the policies or practices of previous predecessors."

The Ombudsman considered the information provided by both the complainant and DIHA carefully. She disagreed with DIHA's statement that "staff within the Immigration Section are well aware that individuals taking up residence in Gibraltar are required to register with the authorities within 90 days of their arrival". Pursuant to s55O(1)(b) of the Immigration, Asylum and Refugee Act 1962 an EEA national residing in Gibraltar "shall register with the Authority if he has resided in Gibraltar for over three months". Therefore, the complainant did not have to apply for a residence permit within 90 days of arriving in Gibraltar – she was required to register after having resided in Gibraltar for over 3 months. It appeared to the Ombudsman that there was a continuing need for DIHA to review the advice given to service users in relation to residence permits and the application of the relevant provisions of the Immigration, Asylum and Refugee Act 1962.

The Ombudsman reviewed the complainant's tenancy agreement for Address 1 and noted that, whilst it was signed on the 25th April 2019, it came into effect on 1st May 2019. This meant that, in contrast to the view expressed by DIHA, the complainant would have been in time to apply for a residence permit as from the 1st August 2019. The complainant claimed she had called in July/ August 2019 – DIHA could not comment due to the time elapsed since the telephone conversation. However, the Ombudsman noted that in the complainant's emails to DIHA dated 17th March 2024 and 1st November 2024, the complainant communicated the content of the telephone conversation of July/August 2019 to DIHA, giving DIHA the opportunity to refute her statements or present an opposing view of the content of that telephone conversation, but as already stated, the complainant never received a reply to those emails.

The Ombudsman did not see a copy of the complainant's Termination of Employment contract from Employer 1 dated September 2019, which listed the complainant's residential address as La Linea, Spain. However, the Ombudsman had seen the complainant's tenancy agreement for Address 1 (effective as from 1st May 2019) and she noted that, in her email to DIHA dated 17th May 2024, the complainant had sent DIHA "copies of the tenancy agreement, proof of deposit and proof of payment for utility bills" in relation to Address 1. The Ombudsman further noted that, at no time in their engagement with the complainant, had DIHA raised the issue of the complainant not residing in Gibraltar – she had simply been told she did not have the requisite residence permit in her five years of continuous residence. Therefore, the complainant had not been given the opportunity to explain or clarify the issue of the Spanish address on her Termination of Employment contract.

The Ombudsman considered DIHA's statement that there was a three-month gap between the complainant's change of address and change of employment (September 2019 and October 2019) and the date of the complainant's application for a residence permit (January 2020). The Ombudsman noted that in the complainant's email of the 17th March 2024, the complainant had stated that "Once I had my three months of utility bills, wage slips and ETB forms finalised with work, I applied for my first residence permit/blue ID card". It appeared to the Ombudsman that the complainant had been required to submit 3 months-worth of utility bills, so she therefore could not have applied sooner than January 2025.

The Ombudsman was unable to independently verify requirements the complainant would have had to satisfy at the time. The current Guidance Notes for Application for a Civilian Registration Card and a Permit of Residence state that evidence of accommodation in Gibraltar must now be provided by an LPS verification of Property Occupancy. This would clearly not have been the case in 2020/2019, as the Register of Property Occupation was introduced in February 2022.

In any event, the Ombudsman considered that the most important aspect of this part of the complaint was the advice given to the complainant by DIHA in July/August 2019. The Ombudsman considered that there seemed to be some confusion in DIHA (even at the point of the investigation) about the legislative provisions in place and how these applied to applicants – the need to apply for a residence permit after residing in Gibraltar for three months, rather than within 90 days of arrival in Gibraltar. There was also a lack of understanding regarding the tenancy agreement for Address 1, which had been signed on the 25th April 2019, but which came into effect on the 1st May 2019. Furthermore, DIHA acknowledged that the advice the complainant claimed she was given in July/August 2019 (in relation to the discretion that could have been applied to her application) was the practice that would have been followed in 2019.

It seemed to the Ombudsman that this confusion as regards the law and the relevant tenancy, the complainant's awareness of the discretionary approach that was followed in 2019 (which could only have emanated from DIHA), coupled with the fact that DIHA did not refute the version of events presented to them by the complainant in March and November 2024, meant that on the balance of probabilities, it was more likely than not that the complainant had been misadvised in July/August 2019.

The discretionary approach

It was unclear to the Ombudsman what the parameters of the discretionary approach were, and how these were applied to previous cases. It seems to be the case that there was no legal or policy basis for this 'discretionary approach' and therefore the decision to no longer implement such an approach was welcomed by the Ombudsman.

However, the Ombudsman was mindful of the fact that the complainant had applied for permanent residency in May 2024 when a discretionary approach would have been available to the complainant. The fact that there was no reply to her requests for the reconsideration of the decision to deny her a certificate of permanent residence (from May 2024 to July 2025) meant that the discretionary approach was no longer available to the complainant, so she had to reapply for permanent residency in January 2025 and pay the new £100 fee, which she would not have had to pay if the discretionary approach had been applied to her original application. From the complainant's perspective, she felt DIHA had advised her to delay her initial application for a residence permit in 2019 (contrary to immigration law) until she changed her address and her job, and that the discretionary approach could be applied to her case to take this advice into account. The Ombudsman understood how the complainant subsequently felt aggrieved when her initial application for permanent residence was denied on the basis that she did not have the requisite resident permit as from 2019 when she first moved to Gibraltar.

In addition, the complainant's requests for reconsideration of the decision to deny her permanent residency (spanning a period of 10 months) were met with non-reply from DIHA.

The outcome of the complainant's application for permanent residence

On the 22nd September 2025, a week after the Ombudsman initiated her investigation into this complaint, the complainant was issued a certificate of permanent residence. Whilst the Ombudsman was pleased that the complainant's application had come to a positive conclusion, there were still many aspects of the investigation that were concerning for the Ombudsman.

The classification of the complainant as a 'vexatious correspondent'
The DIHA internal policy on "Managing Vexatious Correspondence", sets out the following:

"3. What Constitutes Vexatious Correspondence
Correspondence may be considered vexatious if it includes any of the following:

- **Persistent and repetitive demands for updates outside of normal processing times.**
- **Threatening, abusive or aggressive language directed at staff.**
- **Setting unreasonable deadlines or ultimatums for responses.**
- **Repeatedly raising issues that have already been addressed.**
- **Attempting to bypass standard procedures by applying undue pressure."**

The Ombudsman considered that, from the 17th May 2024 to the 8th July 2025, none of the complainant's communications could be considered vexatious, given that, on the 8th July 2025, the complainant had received "sincere apologies for the lack of response to [her] previous emails" from the Head of DIHA. It was also on this date that the complainant was informed that, "in light of the unacceptable delay in communication, [DIHA] will be prioritising the processing of your application ahead of others currently in the queue." Clearly this gave the complainant the expectation that her application would be processed promptly.

As an aside, the Ombudsman felt it was irregular that the complainant was informed that her application would be prioritised "ahead of others in the queue" – this made the Ombudsman question the fairness of the processing procedures in DIHA – it could well have been the case that there were other urgent or pressing applications in the queue that should not have been bypassed. Indeed, it should not be open to DIHA to determine the order of applications internally, in the absence of a set criteria for urgent cases or exceptional circumstances.

The Ombudsman then considered the complainant's communications with DIHA (which were exclusively via email) from the 8th July 2025 to the 8th September 2025 in a detailed manner:

10th July 2025:

"Good morning [HEO]

Thank you for your email and apologies for the delays.

I note that your department is unable to exercise discretion under the current administration but appreciate that my current application has been expedited given the circumstances.

Should you require anything further from me, please do not hesitate to reach out.

Kind regards"

4th August 2025:

"Good afternoon [HEO]

I write further to the below as some time has passed since our last correspondence. Please could you provide me with an update on my application as soon as possible.

Kind regards"

5th August 2025:

"Good morning [HEO]

Thank you for your email. Please can you confirm how long the consideration process will take.

Kind regards"

"Dear [HEO]

Thank you for your email.

It is disappointing to hear that 'the time required to process your application depends on the number of applications currently awaiting consideration 'when you previously informed me on 8 July 2025 'in light of the unacceptable delay in communication, I will be prioritising the processing of your new application ahead of the others currently in the queue.' I had expected my application to be expedited given the previous promise, but it appears that is not what has happened.

Please can you explain why my application is not being processed ahead of others currently in the queue?
Kind regards"

8th August 2025:

"Dear [HEO]

I note the contents of your below email and await to hear from you in due course.

Kind regards"

5th September 2025:

"Dear [HEO]

I hope my email finds you well.

I write to put you on notice that I will be raising an official complaint with the Ombudsman should I not be in receipt of my residence permit by COB Friday 12th September 2025.

Kind regards"

"Dear Head of DIHA

I hope my email finds you well.

I understand from [HEO] that you have been made aware of my compliant about lack of contact from the CSRO with my application from May 2024 to March 2025.

Please see the below email correspondence which I have sent to [HEO] that I will be escalating my issues with the Ombudsman, that despite the assurance my application would be expedited it still has yet to be processed.

Kind regards"

The Ombudsman then reviewed the emails within the parameters of the DIHA Managing Vexatious Correspondence Policy, as follows:

- **Persistent and repetitive demands for updates outside of normal processing times.**

The complainant sent 7 emails within an 8-week period, the emails were sent within working hours.

- **Threatening, abusive or aggressive language directed at staff.**

The language and tone of the complainant's emails were at all times professional and civil.

- **Setting unreasonable deadlines or ultimatums for responses.**

The complainant was informed on the 8th July 2025 that her application would be expedited. Eight weeks later, the complainant informed DIHA that she would make a complaint to the Office of the Ombudsman after the 12th September 2025, which would be almost ten weeks after she was informed that her application would be expedited and prioritized "ahead of others in the queue." The complainant's expressed intention to make a complainant to the Ombudsman (after 10 weeks) could not be classified as an unreasonable deadline.

- **Repeatedly raising issues that have already been addressed.**

At all relevant times, the complainant had not received a response as regards her application for permanent residence.

- **Attempting to bypass standard procedures by applying undue pressure.**

The complainant applied for permanent residency in the usual manner and, as all public service users, was entitled to make a complaint to the Office of the Ombudsman.

The Ombudsman was clear that the complainant could not be classified as a vexatious correspondent. Indeed, DIHA's classification of the complainant as such was concerning as it was a clear misapplication and breach of their own policy, resulting in unfairness to the complainant.

In addition, the misapplication of this policy led to DIHA erroneously applying s7 of the internal policy to the complainant, whereby:

"Where correspondence is judged to be vexatious:

The Director (or delegated senior officer) may formally notify the correspondent that their behaviour is unacceptable.

Updates or responses may be restricted to essential communications only.

In extreme cases, further correspondence may be suspended until the behaviour ceases or is remedied (e.g. through an apology)."

It seemed that the complainant's email of the 5th September 2025, was categorised as an "extreme case" as the complainant was informed that "No further correspondence will be sent to you until you reconsider your last exchange with HEO and should you wish to, reset the tone of your communications." The Ombudsman found it shocking that DIHA categorised the complainant's communications as an extreme case of vexatious correspondence that would justify the suspension of further correspondence until the complainant apologised or took some form of remedial action. The Ombudsman was of the view that the complainant's correspondence and conduct had been professional and civilised throughout and that it was unacceptable of DIHA to require an apology or remedial action to resume correspondence with the complainant (especially in view of the fact that there was an update to her application which was not communicated to her.)

The email from the Head of DIHA to the complainant dated 8th September 2025
The email read as follows:

"Dear [Complainant]

Thank you for your email below.

I am aware of recent correspondence with HEO, regarding your permanent residence application. For the avoidance of doubt, let me start by saying that HEO has handled your case to an exemplary standard.

However, at this connection and at this juncture, the tone and content of your recent email, particularly the message purporting to "put him on notice" is completely unacceptable. Permanent residence is not a routine administrative request (as it appears you consider it to be), it is a significant determination that requires careful scrutiny, liaison with other departments and external agencies and strict adherence to due process. I will not approve any application unless it is fully compliant, complete and free of outstanding queries or investigations, nor will I be pressured into making a "rushed" determination by any applicant.

Your own comments in the exchange reinforce this concern. In your email of 20th March, you stated again that "given my circumstances — a British passport holder, a legal practitioner and member of the Parole Board with sound background checks, stable employment for five years, and clear evidence on residency - I believe my case should be straightforward." This statement speaks volumes and reflects an unfortunate sense of entitlement to a process which, by necessity, is rigorous and complex. Applications of this nature are not processed on demand, nor are they subject to arbitrary deadlines imposed by applicants. While HEO did mention that he would take it upon himself to progress this application further, you must still understand that there are limits to this.

There was, in fact, an update on your file last week. However, given the tone and manner of your recent communication which in my view is both inappropriate and unfair, I will not be addressing this issue at this moment in time.

In light of your repeated tone with HEO, you have now been classified as a vexatious correspondent under our internal processes. This means that repetitive communications, unreasonable deadlines, ultimatums, or other attempts at exerting undue pressure will not be entertained. No further correspondence will be sent to you until you reconsider your last exchange with HEO and should you wish to, reset the tone of your communications. Your current stance is unacceptable and it will be entirely your prerogative to pursue any action you deem fit.

At the Department of Immigration and Home Affairs, we try and work to the highest professional standards and will not tolerate attempts to pressure, coerce, or demean the integrity of the process or of my officers. The team knows full well that if we drop the ball, we will be the first to accept, react and remedy the situation as it is something I strongly believe in, but while we do this, an officer cannot be unreasonable pressured as it actually becomes counterproductive to the end goal for both parties.

I trust that you will now also reflect carefully on this. Depending on your approach going forward, my team will resume respectful correspondence on our terms and within our timelines, not yours. Alternatively, we will await contact from the Office of the Ombudsman as per policy, pause the application until any Ombudsman investigation is completed by both sides and a final determination reached.

I am not one that normally likes to take this type of corrective action, but in this case your repeated conduct and insistence on imposing your own timetable for such a serious process has left me with no alternative. My team requires realistic schedules for this type of work, not timelines dictated by an applicant's view of what is "straightforward." In reality, every applicant believes their case to be simple, but once scrutinised, each application can reveal complexities that must be fully addressed before final submission.

I must reiterate, this process is not akin to obtaining a MOT appointment or a fishing licence renewal.

Kind regards"

The Ombudsman reviewed the email very carefully, in particular the comments made by both DIHA and the complainant in respect of its contents, which are set out below.

- **"the tone and content of your recent email, particularly the message purporting to "put him on notice" is completely unacceptable."**

It was confirmed by DIHA that the email described as completely unacceptable was the email dated 5th September 2025 sent at 09.50 to HEO (included in this report for the second time, for ease of reference):

"Dear HEO

I hope my email finds you well.

I write to put you on notice that I will be raising an official complaint with the Ombudsman should I not be in receipt of my residence permit by COB Friday 12th September 2025.

Kind regards"

The comment made by DIHA was:

"it must also be viewed in the context of the wider correspondence and the overall tone of engagement in this case. HEO was equally affected by this matter, though his position has not been recognised. While applicants have a right to be heard, I equally have a duty of care to protect my staff so they can carry out their work diligently and free from intimidation or undue pressure."

The comment made by the complainant was:

"The Head of DIHA takes offense to my comment that I have put HEO 'on notice' that I would complain to the Ombudsman. The words 'on notice' are something I use in my day-to-day work as a lawyer and I have yet to have someone be offended that I have put them on notice of action I intend to take. Whilst the tone of my email on 5 September 2025 may be straight to the point, it is also the tone of someone who feels frustrated by the entire laborious process to obtain a residency permit."

The wider correspondence referred to by DIHA are the emails from the complainant included in pages 6 & 7 of this report. The Ombudsman considered the tone, language and frequency of the email correspondence from the complainant to DIHA to be professional, civilised and not repetitious.

Furthermore, the Ombudsman was of the view that the complainant put DIHA 'on notice' of her intention to complain to her office as a courtesy, to give them forewarning of her intended action. Although there is a requirement under s14(1)(c) of the Public Services Ombudsman Act 1998 to make a complaint directly to a department or to a public service entity before lodging a complaint with the Ombudsman, there is no requirement that a complainant express their intention to lodge a complaint with the Ombudsman prior to doing so.

To the Ombudsman, the putting 'on notice' was a positive, rather than a negative statement – it meant that DIHA was forewarned that an investigation from the Ombudsman was forthcoming, and it gave them the opportunity to resolve the matter prior to the complaint being lodged with her office. The Ombudsman felt it was to the complainant's credit that she had communicated her intention to make a complaint, especially given that she was under no obligation to do so – it meant that the investigation from the Ombudsman would not come as an unpleasant surprise to DIHA at some future moment, as they had been put 'on notice' by the complainant that she intended to make a complaint to the Ombudsman.

- **"In your email of the 20th March, you stated "given my circumstances – a British passport holder, a legal practitioner and member of the Parole Board with sound background checks, stable employment for five years and clear evidence on residency – I believe my case should be straightforward." This statement speaks volumes and reflects an unfortunate sense of entitlement."**

The comment made by DIHA was:

"From the outset, the applicant appeared to take the position that her case should be treated as exceptional. Her own quotation from an email to the Chief Minister, which I referenced, underlines this impression. However, in my view, all applications must be subject to the same rigorous checks, regardless of professional background or personal standing."

The comment made by the complainant was:

"As a British passport holder, this will undoubtedly make the processing of my application easier. British passport holders are allowed to apply earlier than others by 5 years, so we are treated differently than non-British passport holders. Of course, being a British passport holder would make the process easier given the relationship between immigration offices in Gibraltar and Britain.

Being a lawyer and member of the parole board shows that I have a clean criminal record and I am a law-abiding citizen. Where I to have any sort of conviction on my record, I would not be able to be a member of the parole board. This demonstrates the low level of risk to the CSRO of accepting my application from the angle of the likelihood of previous convictions and committing offences.

I have remained in the same employment for more than 5 years. Again, this will make the application much easier for the CSRO than someone who has had 5 different jobs over 5 years.

My residency information is also more than adequate – I have tenancy agreements, title deeds, utility bills, etc to prove where I have resided.

I think that the Head of DIHA has seriously misconstrued my comments in the email of 20 March 2025 and I think he should apologise for being inappropriate and calling me entitled."

The Ombudsman considered that DIHA's statement that the complainant had a 'sense of entitlement' was inappropriate and unprofessional. This was particularly the case given that DIHA had confirmed to the complainant that her application would be expedited, and following that confirmation, there were further delays to the processing of her application. The complainant's ensuing frustration is understandable (especially given the long period of non-reply from January 2025 to July 2025, which resulted in an apology to the complainant).

The Ombudsman also noted that the complainant lodged a complaint with her office on the 15th September 2025, and an investigation was opened immediately. The complainant then received her certificate of permanent residence on the 22nd September 2025, (in a period of five working days). It appeared to the Ombudsman that there was merit to the complainant's view that, due to her British citizenship, clean criminal record, stable employment and home ownership, the complainant's application was in fact straightforward and the rigorous checks mentioned by DIHA were able to be completed in a period of five working days.

- **"There was in fact, an update on your file last week. However, given the tone and manner of your recent communication which in my view is both inappropriate and unfair, I will not be addressing this issue at this moment in time."**

The comment made by DIHA was:

"At no point did the Department halt the application. Our track record of clearing backlogs, including cases outstanding for many years before my tenure, speaks for itself. The concern was not about outcome, but about the manner in which correspondence was conducted. To put a civil servant "on notice" in relation not only to the pending application but even to future processes (such as a residence permit, which could only be applied for after permanent residence was granted – is it that she thought this came together or she wanted this done without application and free of charge) created unnecessary pressure. This is why we considered the tone unacceptable."

The comment made by the complainant was:

"I am highly concerned that the update is something such as requiring me to submit further information, and because the Head of DIHA intends to withhold this information it means that my application will be delayed even longer than it already has. This is reprehensible conduct, and I question how this can be a just and fair process and how can I trust that my application will be dealt with in a fair and just process"

The Ombudsman was of the view that, even if the application had not in fact been halted, it was very serious that the statement had been made at all, giving the complainant the impression that due to the tone of her email of the 5th September (which in the Ombudsman's view was entirely professional and civilised), she would not be informed of the update on her application, potentially leading to even further delays in processing her application. The Ombudsman questioned whether, given the complainant's right to access her own data, it was within DIHA's remit to withhold information from the complainant in relation to her own application process, especially on the grounds of the complainant's (perfectly acceptable) email of the 5th September 2025. The Ombudsman was extremely disappointed by DIHA's statement and agreed with the complainant that it was unfair and clearly brought into question whether DIHA was following a just and fair process.

- **"…you have now been classed as a vexatious correspondent under our internal processes."**

In response to this inquiry, DIHA attached their DIHA internal policy on "Managing Vexatious Correspondence", which has already been considered at length.
The comment made by the complainant was:

"As the Investigative Officer who received this complaint knows, I was in tears when I received this email because I was just utterly shocked at its nasty tone. As someone who, before becoming a lawyer, worked for many years in customer service, and in complaints departments for financial institutions banks, this type of response from the Head of DIHA demonstrates to me that he has a very limited experience dealing with complaints, and how to draft professional communications when dealing with members of the public who are dissatisfied with the service they have received. Disgruntled customers are not always vexatious customers, and the Head of DIHA also needs to understand this.

I know from my training in those complaints roles that when you are dealing with an actual vexatious customer, the agent is to put the customer on notice a couple of times that they are acting in an abusive manner and what this will mean for them. I wholly reject the notion that I have acted in a vexatious manner but if I had been, the CSRO and the Head of DIHA never put me on notice that if I continued with such behaviour then there would be consequences and neither did they warn me on how they perceived my conduct to be vexatious. My repeated emails being regarded as 'unreasonable' is laughable. Had I been sending emails every day for the last year requesting updates then I would agree, but I haven't. I have my own busy life, and it is usually a month before I send chasers. Interestingly, the Head of DIHA has not produced the internal policy which deals with

vexatious customers. He has applied a procedure under a policy but has not provided me with a copy. He will, no doubt, state that this is for internal purposes only but when the policy impacts on someone's application it is only fair for them to know what this means for them going forward."

The Ombudsman had already reviewed the policy and applied it to the complaint's communications, which could not, under any circumstances, be classified as vexatious. The Ombudsman was disappointed that DIHA had failed to apply the policy correctly, and had therefore classified the complainant as a vexatious correspondent erroneously, leading to unfairness for the complainant, and distress and uncertainty regarding her application for permanent residence.

The Ombudsman also considered that it would have been good practice, in terms of transparency, to have shared the policy with the complainant and to have clearly informed her how her communications and her conduct fell within the parameters of the policy.

- **"Depending on your approach going forward, my team will resume respectful correspondence on our terms and within our final timelines, not yours."**

The comment made by DIHA was:

"The aim was to allow the officer to progress the case to finalisation without the distraction of repeated ultimatums or demands. These applications involve detailed checks. Any additional exchanges inevitably take time away from the substantive work on the application."

The comment made by the complainant was:

"Here he is saying my application is paused and unless and until I apologise, the CSRO won't work on my application. Even if I were to apologise, which is not going to happen, I have no trust whatsoever that my application will be dealt with accordingly. I feel like it will be excessively scrutinised, and they will be actively looking for anything that they can reject me on."

The Ombudsman considered that the statement made by DIHA was unacceptable. DIHA is requiring the complainant to "reset the tone of [her] communications" as her "current stance is unacceptable". Given that the tone and the frequency of the complainant's emails were entirely appropriate, the Ombudsman took the view that it was the complainant's expressed intention to make a complaint to her office that DIHA found unacceptable.

- **Alternatively, we will await contact from the Office of the Ombudsman and, as per policy, pause the application until any Ombudsman investigation is completed by both sides and a final determination reached."**

The comment made by DIHA was:

"Our practice, when a complaint is referred to your Office, is to await your correspondence in order to understand the precise grounds of the complaint, as these often differ from the applicant's framing. Normally we receive your enquiries promptly (within 2 working days) and can then progress matters in tandem or via discussion."
The comment made by the complainant was:

"[It] is another highly improper comment to make, and I would also like a copy of the policy that states applications are placed on hold when a complainant has been registered with the Ombudsman. Given that my complaint is concerning delays it is absurd for the CSRO to believe it is correct in its approach to create further delays by pausing my application unnecessarily. I feel that the Head of DIHA is acutely aware that the local Ombudsman deals with many complaints and that his threat of halting my application if I were to report the CSRO to the Ombudsman, means that he can kick the can further down the road with my application. A further abuse of process. I would add that it is worrying he seeks to dissuade me from complaining to the Ombudsman and goes against basic customer service standards."

The Ombudsman was extremely concerned at the existence of such a policy and requested a copy of the same. It was not provided, and instead the pausing of the application was classified as a 'practice' rather than a policy. In any event, the implementation of this practice (of which the Ombudsman was previously unaware), would clearly have the effect of deterring service users from having recourse to her office, as any service user would face further delays if they lodged a complaint. The Ombudsman was also very concerned that, in implementing a practice that deters service users from accessing her office, DIHA is limiting service users' access to justice. This seriously undermines the Office of the Ombudsman and is detrimental to all who utilise public services in Gibraltar.

Furthermore, the Ombudsman did not agree that complaints are presented to DIHA within 2 working days, as there are many occasions where presenting a complaint is not a simple process. Information relating to the complaint has to be collated and understood and meeting with the complainant is often necessary to understand the scope of the complaint. Complainants who seek assistance from the Ombudsman regarding DIHA on occasion have language barriers which can make the collation of information and the identification of the specific areas of complaint more time-consuming. Indeed, complaints are usually resolved at the informal stage more promptly (but extremely infrequently in days or even weeks, mostly within a number of months). Complaints that move into formal investigation will take considerably longer to complete and DIHA was at all relevant times aware of the Ombudsman's procedures and timescales. To pause an application until the conclusion of an Ombudsman investigation (or to threaten to do so) was, without a doubt, a deliberate attempt to create further delay for the complainant.

- **"I am not one that normally like to this this type of corrective action, but in this case your repeated conduct and insistence on imposing your own timetable for such a serious process has left me with not alternative."**

The comment made by DIHA was:
"There was no suspension. The application continued as normal through its final stages. The "corrective action" referred to was simply a request for more constructive engagement so that the process could be completed efficiently (permanent residence not residence permit)."

The complainant did not make a comment on this particular phrase.

The Ombudsman's understanding of this statement (in the context of the overall email) was that the 'corrective action' to be imposed by DIHA was to stop all communication with the complainant until she 'reset the tone of her communications' and changed her 'approach'. If the complainant lodged a complaint with her office, by way of 'corrective action', DIHA would pause her application. The Ombudsman was very disappointed by this statement, which, in her view, was a very serious instance of maladministration. DIHA was threatening to either block communication with the complainant (in response to the complainant's expressed intention to make a complaint to the Ombudsman) or pause her application as a punitive measure in the event that an actual complaint was lodged with her office.

- **"…this process is not akin to obtaining a MOT appointment or a fishing licence renewal."**

The comment made by DIHA was:

"Other administrative processes, such as MOT bookings or fishing licence renewals, are relatively quick transactions. Permanent residence, by contrast, is a substantive legal process with significant consequences. The comparison was intended only to emphasise the gravity of what was being sought and to explain why applicants must allow the necessary time for rigorous checks to be completed."

The comment made by the complainant was:

"I fully appreciate that permanent residence applications require thorough scrutiny and adherence to due process, and I have at all times intended to respect that. My concern lies with the disproportionate and punitive tone of the Head of DIHA's reply, as well as his decision to delay consideration of my application because I exercised my right to seek information."
The Ombudsman felt that the comment was entirely unnecessary and intended for the sole purpose of patronising the complainant. Its tone is clearly condescending and inappropriate for any form of correspondence with service users.

<u>Outcome of the Investigation</u>

On the 14th November 2025, the Ombudsman received an email from DIHA, stating the following:

"1. Apology to the Complainant

While the DIHA team frequently manages challenging and at times, demanding interactions, we fully recognise the importance of ensuring that all communication remains consistently courteous and professional. We feel that the communication with the Complainant towards the end of the process and more specifically the email sent on 8 September 2025, could have been different in tone and language. For this we apologise.

3. Processing of Applications During Ombudsman Investigations

With respect to the recommendation concerning the handling of applications during ongoing Ombudsman investigations, we wish to reassure you that applications have continued to be processed in the usual manner, irrespective of any complaint lodged with your office. This approach reflects our shared commitment to procedural fairness and efficiency and it will absolutely remain our practice going forward.

4. Transparency of Information

We also wish to reaffirm that information relating to a service user's own application will continue to be made fully available to them, including in instances where they have submitted a complaint to DIHA or to your office. This has been and will continue to be, our standard practice."

In turn, on the 24th November 2025, the complainant received an email stating the following:

"Following reflection on the exchanges, we acknowledge that the tone may have come across more strongly than intended. Our intention at the time was to address communication that had become strained and to clarify the expectations and processes surrounding permanent residence applications. Nevertheless, we apologise if the wording caused any undue concern."

The Ombudsman was glad to note that DIHA expressed remorse for the email of the 8th September 2025 to the complainant. She was particularly pleased that the practices that would penalise service users for making complaints to DIHA or to her office (halting or delaying their applications or withholding information about their applications) had either not been implemented or, if they had been implemented, would be discontinued. The Ombudsman found it regrettable that, in this instance, DIHA had communicated their intention to apply such measures to the complainant, who felt intimidated and distressed as a result, but she was pleased that DIHA had reflected on these issues and apologised accordingly.

Conclusions

The first concerning aspect of this complaint was the advice given to the complainant in her first approach to DIHA in July/August of 2019. As per the complainant's recollection, she was informed that she should wait until she changed her address and her employment before she applied for a residence permit. This advice was in contravention of s55O(1)(b) of the Immigration, Asylum and Refugee Act 1962, which required her to register after living in Gibraltar for three months. As the complainant had moved to Gibraltar in May 2019, she should have been advised to apply for a residence permit after the three months elapsed (which would be August 2019). Even though, in this instance, the complainant is a legal practitioner, she was not legally qualified in 2019, when she asked DIHA for advice, and she had no friends or family in Gibraltar to advise her. Also, it is not unreasonable for a service user to rely on the advice given by DIHA on any immigration matter. Furthermore, she was informed that discretion could be applied once she completed 5 years of continuous residence. The erroneous advice, in particular the advice that was not in compliance with immigration law, is the first instance of maladministration in this case.

The complainant relied upon the erroneous advice and filed for a residence permit in January 2020, and then for permanent residence in May 2024, after having lived in Gibraltar continuously for 5 years. The application was denied on the basis that she had not had residence permits in place for the five- year period. Whilst this might be technically correct in that the complainant had not lived in Gibraltar for the continuous five year period "in accordance with this Part" which requires registration after 3 months, it is unfair to make that determination without regard to the advice given to the complainant by DIHA, and the expectation that a discretion might be applied to her case if she registered with DIHA after her change of address and employment.

The complainant wrote to DIHA and to several Ministers, explaining the advice she had received from DIHA and requesting that the decision to deny her application for permanent residency be reconsidered, but from the 26th September 2024 to 26th June 2025 (a 9-month period) the complainant did not receive a reply. Due to the non-reply, the complainant reapplied for permanent residence in March 2025, having to pay a newly introduced £100 application fee. This period of non-reply is the second instance of maladministration, but on the 26th June 2025, the complainant received an apology from DIHA, who took accountability for the lack of engagement with the complainant.

At this point, the complainant was told that DIHA would be "prioritising the processing of your new application ahead of the others currently in the queue." This calls into question the fairness of the processing procedures in DIHA – it could well have been the case that there were other urgent or pressing applications in the queue that should not have been bypassed. How does DIHA determine the order in which applications are dealt with internally? To avoid an arbitrary and unfair processing practice, DIHA clearly needs a set-criteria for urgent cases or exceptional circumstances. Additionally, this assurance gave the complainant the expectation that her application would be dealt with as a matter of priority – this mismanagement of the complainant's expectations was the third instance of maladministration in this case.

Having had this assurance from DIHA, the complainant understandably had the expectation that her permanent residence application would be processed without further delay. She therefore requested updates on her application from the 8th July 2025 to the 5th September 2025. The Ombudsman carefully reviewed all the email correspondence between DIHA and the complainant in this period and felt that it was professional and civilised both in tone, language and content. Nevertheless, the complainant was classified as a 'vexatious correspondent'. The misapplication of the DIHA internal policy on "Managing Vexatious Correspondence" to the complainant is the fourth instance of maladministration in this case. The misclassification of the complainant triggered s7 of the policy, following which DIHA threatened to restrict communication or suspend communication with the complainant until she 'reset her communications' (in other words, as indicated in the example provided in that same section, apologised for her email informing DIHA that she intended to complain to the Ombudsman). This shows that the policy can be misused to stonewall service users who may be perfectly entitled to raise a complaint, denying them access to information about their applications, as well as non-reply to their enquiries, pressuring them to make an apology in a situation where none should be forthcoming. The Ombudsman also notes that, in this case, the complainant was not given a copy of the policy, nor was she given an explanation as to how her communications and her conduct were in line with the classification of a 'vexatious correspondent'.

Indeed, it is extremely concerning to the Ombudsman that this classification came about as the result of the complainant's expressed intention to make a complaint to her office. The fact that the complainant put DIHA 'on notice' of her intention to lodge a complaint by the 12th September 2025 seems to be the fundamental reason for her classification as a vexatious correspondent and the reason behind DIHA's assertion that the complainant's application would be paused until the complainant reset her tone and her approach. This was clearly intended to deter the complainant from lodging a complaint - DIHA was threatening to either block communication with the complainant (in response to the complainant's expressed intention to make a complaint to the Ombudsman) or pause her application as a punitive measure in the event that an actual complaint was lodged with her office.

The right to make a complaint to the Ombudsman is enshrined in the Public Services Ombudsman Act 1998 and it is open to every user of a public service in Gibraltar. It is a fundamental part of access to justice in our community as undertaking legal action against public entities can be an expensive and time-consuming process which is not available to everyone. For this reason, the Ombudsman considers any action by any public entity to deter and discourage service users to lodge a complaint with her office as a severe form of maladministration. Had an apology not been issued to the complainant and had DIHA not confirmed to the Ombudsman, in writing, that no applications would be halted or further delayed in the event of a complaint to DIHA or to her office, the Ombudsman would have considered this complainant appropriate for a special report. This was the fifth, very concerning, and very severe instance of maladministration in this case.

This maladministration is further compounded by the fact that the complainant was informed that there was an update regarding her application, but the update was deliberately withheld from her (once again, as a punitive measure for the complainant's expressed intention to make a complaint to the Ombudsman.) The Ombudsman feels that it is entirely unacceptable for any public entity to withhold information from a service user to which they are entitled. This may contravene the complainant's right to access to her own personal data, but it clearly shows a lack of fairness and transparency, especially in this case, where the withholding of information is deliberately undertaken as a corrective measure, to punish the complainant for giving notice of her intention to make a complaint to the Ombudsman. The Ombudsman was glad that DIHA had confirmed, in writing, that no information will be withheld from service users about their applications where service users make a complaint to DIHA or to her office. This is the sixth, also very severe instance of maladministration in this case.

Classification

1) The complainant was labelled a 'vexatious correspondent' for seeking an update on the progress of her application – Sustained

2) That information on the complainant's application would be withheld at the prerogative of the DIHA Head of Department – Sustained

3) That the complainant's application would be paused until any Ombudsman investigation was completed on account of the complainant's expressed intention to make a complaint to the Office of the Ombudsman – Sustained

4) That no further correspondence would be entered into unless the complainant "reset the tone" of her communications, when the complainant's communications were professional and courteous – Sustained

5) That the complainant's initial application for permanent residency was not duly processed – Partially sustained (the complainant should have registered with DIHA three months after her arrival in Gibraltar to have been in accordance with Part 55 of the Immigration, Asylum and Refugee Act 1962, but she failed to do so following DIHA's erroneous advice)

Recommendations

1) That the £100 application fee for the complainant's second application for permanent residence to be refunded to the complainant;

The recommendation was not accepted on the following grounds:

"At inception, there were issues with the application and in our view, it was rightly rejected. Refunding could create an unfair precedent in this respect as on reapplication, the new holistic departmental fee regime had come into effect."

2) The 'Managing Vexatious Correspondence' policy should be reviewed with the aim of preventing the misclassification of service users as 'vexatious correspondents' and the DIHA senior management team should receive training on the identification and proper management of vexatious correspondents within six months of the date of this report.

This recommendation was partially accepted, as follows:

"We accept that this policy will be reviewed and discussions with external counterparts for this policy will be adopted. While training in this respect could be a step too far, particularly with what the team is handling right now, we will no doubt review it accordingly in line with best practice, particularly in its application. We will accept this recommendation and review this policy accordingly."

Update

The Ombudsman was disappointed that her recommendation that the £100 application fee should be refunded to the complainant was not accepted by DIHA, and that training on the Managing Vexatious Correspondence policy would not be offered to the DIHA senior management team. However, given that the complainant was (by the time of completion of this report) in receipt of her certificate of permanent residence, and had been issued an apology by DIHA, the Ombudsman felt that the complaint had been largely resolved.

REPORT ON CASE NO 1280

Complaint made against the Department of Education ("DOE") in relation to the non-payment of the Complainant's son's scholarship application for the academic year 2021/22 despite having received funding for the preceding two years.

Complaint

The Complainant was aggrieved as a result of:

(1) The lack of communication and continuous non-reply from the DOE over a 19-month period in respect of his third-year scholarship application (2021/22) having experienced no issues with his first and second-year scholarships;

(2) The decision ("Decision") not to fund was final with no recourse to appeal. No information was provided for the reasons behind the Decision other than not satisfying the Gibraltar five-year residency criteria.

(3) The Complainant's requests for transparency on the criteria and dates and times of alleged house checks at the Complainant's address were not provided.

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

The Complainant was a medical practitioner at the Gibraltar Health Authority ("GHA") who had been in employment there for 21 years.

The Complainant's son ("The Student") was 19 years old, having lived in Gibraltar since 2013. He was carrying out a degree at a university in Spain.

The Complainant had lived in a Government of Gibraltar ("HMGOG") subsidised flat for health workers, since 2013. Further to the implementation of HMGOG policy, a notice to quit was issued in June 2021. The flat was subsequently surrendered that August. An alternative flat was rented at Ocean Heights whilst the Complainant waited for the completion of a property purchased on Devil's Tower Road.

The Student applied for his third-year scholarship on 26th July 2021 after having received the award for the previous two years. The application was acknowledged by the DOE soon afterwards. That October, the DOE requested proof of residency and a rental agreement for the new address. The Student replied to the DOE providing the information requested. The Student heard nothing further.

On the 31st December 2021 and as a result of the delay, the Complainant wrote to the Minister for Education ("the Minister") directly, explaining the position and requesting his intervention. He explained that he would not be able to fund his sons third year at the university if the scholarship were to be revoked. He also stated that he had a younger son at the local comprehensive sitting A levels who already had a place at a prestigious

London university for his higher education and words to the effect that a lack of funding would be catastrophic.

Pursuant to a number of emails sent by the Complaint to the Minister airing his grievance; complaining about the delay on DOE's part and the way matters were being handled, a meeting was held at the Minister's office on the 17th March 2022, at the Complainant's request. The Complainant, the Head of the DOE and the Education Adviser were in attendance. Proof of residency (property documentation), residency card, and utility bills were presented by the Complainant and matters were discussed although a record on file states that the Complainant was given the reason why the Student did not meet the residency criteria. This however, has not been expressly stated in writing with any form of explanation. The information the Ombudsman has is that despite the Complainant being told that the required conditions were not met, the documents presented were accepted and the Complainant was told matters would be considered. The DOE would allegedly revert in due course with a decision.

For a whole year, the Complainant (and the Student) kept sending emails (the Ombudsman has seen a record of approximately 20 in total), attaching relevant utility bills and/or chasing for a reply Despite some "polite acknowledgment" (as described by the Complainant), from the DOE, no substantive reply was ever received. To cite two examples of emails sent by the Complainant, on the 3rd August 2022, he wrote stating that "[the Student will be] possibly forced to discontinue his studies" and on the 7th September 2022, all the relevant parties were copied into another email from the Complainant repeating all the facts, the lack of replies and his desperation.

On the 28th March 2023, the DOE replies to the Student thanking him for providing further information to support his case but that upon further discussion, "I regret to inform you that you do not meet the five-year continuous residency criteria, therefore, no further funding can be afforded to you. We now consider this matter closed.

The Student replied on the 27th May (in this instance the Ombudsman did not understand the 2-month delay on the Student's part), seeking an explanation of the criteria and stating that although he was grateful for the previous awards paid, the only change since the preceding academic year had been a change of address. He stated that he had provided all the information requested, but that despite that, payments had been stopped for 2021/22 with no reasons given, save for a "rather vague explanation [in the 23rd March 2023 email].

The Student finalised his letter by stating he did not agree with the decision taken and "kindly asked for a revision of [his] case and an explanation of the prior mentioned residency criteria."

Subsequently, the Complainant and Student lodged their complaint with the Office of the Ombudsman on the 30th May 2023.

Investigation

Concurrent to the Ombudsman's preliminary investigation of this Complaint, the correspondence between the parties continued. The ongoing thread was made available by the Complainant to the Ombudsman contemporaneously:

On the 31st May, the DOE replied to the Student's 27th May email. The response explained that residence checks were cleared on annual bases upon submission of the completed forms returned by students. "Applications are checked each academic year to conclusively establish that students are in fact residing at the address provided. Based upon documents provided, we were unable to conclusively establish that you are in fact residing at the address provided, therefore, further checks were undertaken. Borders and Coastguard Agency visited [the rental] on four separate occasions at different times of the day and elicited no response from the residence. This leads us to conclude that while you may be registered at that address at the time, you are not ordinarily resident in Gibraltar and thereby not eligible to receive a Scholarship award. As per my email of the 28th March 2023, your case was further discussed and it was concluded that you do not meet the five-year continuous residency criteria and the matter was considered closed." On the 1st June, the Complainant wrote to the DOE thanking them for their prompt reply to the Student's latest email. The Complainant sought to fully respond and clarify any misunderstanding in relation to his family's living arrangements.

The Complainant set out what the Ombudsman considered to be a perfectly reasonable explanation (providing a picture of his family composition and their daily routines) for the absence of any family member at the Ocean Heights address when Borders and Coastguards must have attended (no times or dates of the actual inspections were provided at that stage).

He explained that he lived at the flat with his two boys:

In regard to the Student, he was of course at the university during term time and logically therefore out of the family flat when Borders and Coastguards must have inspected (The Complainant could provide appropriate documentation of the Student's attendance at term times). His youngest son was sitting A levels at Bayside Comprehensive School at the time. The Complainant stated that after hours, his son would study at the public library and when not doing that, played basketball for two teams (including the Gibraltar national team). All these activities could be confirmed by teachers and team mates.

The Complainant also explained that he was extremely occupied by working at the "COVID Contact Tracing Bureau" as a doctor, from 8am-8pm (this could also be confirmed by colleagues). "We were resident [and registered] at (the address] and [thereafter] residents at the purchased property from October 2022. This is the truth and we are prepared to defend it…. I include all this information in case you feel it necessary to [obtain] statements from neutral people." The Complainant also highlighted the fact that he had provided multiple utility bills and the rental agreement, accompanied by numerous emails with few responses from the DOE, only to be told a year later that the case was closed, for the reasons set out in the March 2023 email.

He expressed the view (which, in the absence of comment from the DOE the Ombudsman shared), that his case had not been managed in a timely, fair or transparent manner.

The DOE replied confirming that "all the evidence provided has been looked at and that the process for determining whether [the Student] had been ordinarily resident in Gibraltar for five continuous years had been carried out with due diligence. As you have been informed, we have determined that this eligibility criteria is not met and therefore, [the Student] does not qualify for an award. The matter is now closed."

Further to review of all the correspondence and meetings with the Complainant and Student to properly familiarise herself with the background, the Ombudsman formally presented the complaint to the DOE, particularising all the issues and seeking their comments. The entire chronology was set out in the Ombudsman's presenting letter to the DOE.

The questions set out by the Ombudsman and the answers received are set out below as follows:

-What address was visited by Borders and Coastguards and on what dates and times did they attend?

"[Address provided]. They attended on four different occasions at different times. Typically, this would be before 8:30am, midday, early evening and late evening.

-What criteria does the DOE use to assess residency?

"The criteria stipulates that an individual must have been ordinarily resident in Gibraltar for a continuous period of five years and continue to be so throughout their entire period of study. If water and electricity bills show a low consumption as was the case, the matter is referred to the Borders and Coastguards Agency to determine conclusively that the applicant resides at the given address. The Agency visited the property on four different occasions and there was no reply. They therefore concluded that the property was unoccupied."

-Why did it take the DOE a full year to make a decision and communicate this to the Complainant?

The reasons provided for this were that the Education Adviser responsible for scholarships would have been the person liaising with the Complainant initially but that he had not been discharging his duties as such. Since mid- August 2022, he had an "out of office" setting. Any emails sent to him directly would have been met with an out of office reply and mails should have been redirected accordingly by the sender. Despite this explanation for the delay in replies, the Ombudsman did also see evidence (a log) of numerous mails sent by the Complainant to other senior employees at the DOE (not the Education Adviser).

The DOE also stated that what they could clarify was that the Student had been informed that he did not meet the criteria for eligibility. It was explained that this was so, because it had not been established that he had a residential address in Gibraltar that satisfied the checks in place. This was the position of the Education Adviser and of the DOE's main office administrative section.

It was also noted that once the matter was escalated to the Minister by the Complainant, in his direct emails to him, "the Administrative staff as well as the Advisory team, understood that the matter was taken beyond [their] remit and ceased further interactions with the Student in relation to his appeal." The Ombudsman was of the view that the Complainant should have been told in clear terms that since the Minster had become personally involved, there would be no further interaction or communications by the DOE. This would have eliminated the expectation of further replies.

The DOE Head stated that they would have processed the application differently if instructed to have done so by the Minister, if it was deemed that the DOE's processing of information had been incorrect. "To the best of our knowledge and understanding, we continue to believe that the Student is not eligible for funding and we take our responsibilities of ensuring prudent expenditure of taxpayers' monies very seriously."

- Why are the Complainant and Student not provided with an explanation for the decision taken in respect of eligibility criteria?

According to the DOE an "appeal" of the determination of ineligibility resulted in interactions between the Complainant and the Minister. According to them, explanations were given verbally in March 2022 at the meeting held at the Minister's office. Additionally, "an explanation has been afforded on at least six occasions between 28th March 2023 and 21st June 2023 (where it was confirmed that the matter had been carried out with due diligence and it had been determined that the residency criteria was not satisfied.)

Conclusions

This complaint can be summarised as follows: (i) the Student had been awarded annual scholarships for the first two years of his university degree; (ii) the 2021/22 scholarship was withheld without a detailed explanation; (iii) a meeting was held in March 2022 with all the parties concerned where the Complainant was verbally informed why it was deemed that the student no longer met the criteria. At that meeting, the Complainant handed in documents as evidence of continuous residency (iv) numerous subsequent emails and chasers were sent by the Complainant and Student, none of which were substantively replied to over the course of one year, (v) the student was informed by email in March 2023 (without reasons) that he did not meet the criteria for the grant of an award for his third year of study.

The Ombudsman considered the 28th March email sent by the DOE as lacking in substance, explanation and totally insensitive to the chronology of the complaint. The brevity of that email, simply stating that "I regret to inform you that you do not meet the five-year continuous residency criteria, therefore, no further funding can be afforded to

you. We now consider this matter closed," fell well below any acceptable administrative standard, irrespective of the merits of the Student's application for the scholarship award. It was clear to the Ombudsman that the Complainant and Student were desperate for reasons for the refusal. Reasons they could digest and consider. Over the course of one year the treatment they received from the DOE (despite the latter view that as a result of ministerial intervention they considered matters were pushed out of their remit), was unacceptable and below any reasonable administrative standard. The Ombudsman could only agree with the Student's 27th May 2023 reply to the DOE's 23rd March email, that the contents thereof were "rather vague."

The criteria for a Mandatory Scholarship Award is for "students who must have been ordinarily resident in Gibraltar for a continuous period of five years at the time the application for the award is made." This criterion is statute and policy based and must be met without exception. Understandably, the criteria acts as a necessary tool to ensure that only qualifying individuals can benefit from the already generous contributions made by HMGOG towards higher education.

For the purposes of the current complaint, given that it is accepted that the Student was continuously resident in Gibraltar from 2013 until 2021 (since the first two years of his higher education course were fully funded), it remains unclear to the Ombudsman what the change/s in circumstances were (apart from the new address in Gibraltar), that prompted the cessation of the award for the third and subsequent year of study. Was it only that there was no-one in occupation at the Ocean Heights flat when Borders and Coastguards attended, for which the Complainant provided subsequent and in the Ombudsman's view, reasonable explanations? Was any other undisclosed or undocumented information made available to the DOE which led them to believe that the Student was not continuously resident and to which the Ombudsman is not aware?

Whether that is the case or not, neither the Complainant nor Student have received a reasoned and transparent written explanation as to why the DOE was so firm in their belief that the conditions for payment of the award were no longer met and why, clearly, the Complainants explanations in an attempt at rebuttal have not been accepted. Their email to the Student dated the 31st May expanded on the checking process and also referred to the conclusions drawn from the absence of occupation at the time of the Borders and Coastguards visits but even then, the Ombudsman considers the content of that mail lacking in substance and reason.

The Ombudsman is not privy to the conversations that took place at the meeting of the 17th March 2022 when the Complainant was told that the view was that the criteria was no longer met. Clearly the Complainant remained of the opinion that that view was incorrect since (1) he kept producing evidence of utility bills (albeit these showed low consumption) and (2) both he and the Student kept corresponding with the DOE in an attempt to try and prove their case.

Whether the Student was habitually resident in Gibraltar for the continuous period necessary, only he will know. The fundamental issue is whether this can be proved. In the opinion of the DOE, that proof has not been sufficiently met.

Classification

(1) The lack of communication and continuous non- reply from the DOE over a 19-month period in respect of his third-year scholarship application (2021/22) having experienced no issues with his first and second-year scholarships: Sustained in part. There existed a lack of written communication/explanation for the loss of entitlement, from March 2022 to March 2023, (although the DOE has explained that they considered the matter "beyond their remit" as a result of the initiation of communication by the Complainant with the Minister).

(2) The decision ("Decision") not to fund was final with no recourse to appeal. No information was provided for the reasons behind the Decision other than not satisfying the Gibraltar five-year residency criteria. Not Sustained (In fairness, it should be noted that the decision not to fund is not subject to appeal as no appeals process exists. The test is one of statute and policy and is strictly applied. The residency criteria is either met, or it is not).

(3) The Complainant's requests for transparency on the criteria and dates and times of alleged house checks at the Complainant's address were not provided. Sustained in part. (From what the Ombudsman has seen, no exact dates or specific times of Borders and Coastguards house checks were provided).

Observations

The Ombudsman is aware that there are proposed changes currently being reviewed in respect to scholarship awards reverting to a two-tier mandatory and discretionary system, as opposed to mandatory for all, with stricter rules being applied. It used to be the case that grants were means tested with greater assistance afforded to students who needed it most and it is possible that his system will be re-established. The five-year residency aspect will apply to all cases.

What is fundamental from an administrative perspective is that in cases where the residency criteria is not met, that the DOE be direct and transparent and provide full explanations for decisions made. If a decision not to make an award cannot be appealed, applicants are at the very least, entitled to have a full and reasoned explanation why the criteria is not satisfied and why as a result, the application for the award is rejected.

Gibraltar is a highly political society, more than most jurisdictions, with citizens having easy access to voice their issues directly with Ministers. The Ombudsman understands and sympathises with Government bodies in these instances, where the entity concerned is by-passed by the users and often placed in an unfair and difficult position. Even in circumstances such as these, public bodies need to continue to interact with service users, even if to state that as a result of Complainant's actions, matters have been pushed out of their hands (remit). This will alleviate service user frustration and expectations.

REPORT ON CASE 1290

Complaint against the Gibraltar Health Authority ("GHA") over the delay in arranging for the removal of the Complainant's daughter's (the "Patient") temporary ureteric stent.

Complaint

The Complainant was aggrieved as the GHA had taken too long to arrange for the removal of the Patient's temporary ureteric stent.

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

The Complainant was aggrieved as she believed that the Gibraltar Health Authority ("GHA") left the Patient's temporary stent on for too long before arranging for its removal in the UK despite their attempts to speed up the process by chasing the Sponsored Patients Department continuously.

According to the Complainant, her 13-year-old daughter attended A&E on the 14th July 2023 following extreme pain and vomiting where an obstructed left pelvic-ureteric junction ("PUJ") was detected. As a result, the Patient was referred to the GHA Urologists where she had a temporary urinary stent inserted on 16th July 2023 and was subsequently referred to the UK for a permanent solution.

However, following the fitting of the stent, she continued experiencing pain, bleeding and discomfort which severely impacted her life to the point that she ended up being admitted in the children's ward due to extreme pain in November 2023. A solution was not provided until she was seen by the specialists in the UK six months after the stent was initially inserted.

The Complainant alleged that the Patient's definitive treatment should have been carried out faster and her stent should have been reviewed sooner given the symptoms she was reporting for the six months that followed after the initial insertion.

Furthermore, the Complainant alleged that the GHA had initially informed her that the Patient would only require keyhole surgery in the UK, and according to her, the excessive delay in removing the stent had led to it being, as she described; highly encrusted which led to the Patient requiring a more extensive surgery for its removal, resulting in a large scar on the young Patient's abdomen.

Notwithstanding the above, the Complainant was also aggrieved by the fact that the Patient had been complaining from pain and discomfort since the age of four, and believed that the GHA should have identified the obstruction earlier.

As per standard procedure, the Complainant made use of the GHA's complaints office to highlight the obstacles encountered by the Patient. The outcome of her complaint, as stated in a final GHA Clinical Governance & PALS office letter dated 10th June 2024 was,

"We have reviewed all documentation around your daughter's care and can see that our urologists have ensured that your daughter received the best possible care from both the UK and Gibraltar.

All decisions were made in keeping with evidence-based practice, and with a view to ensuring that your daughter received optimal surveillance, investigation and treatment. The speciality care which your daughter received in both Gibraltar and the UK was correct and in line with current clinical guideline. All referrals were made in a timely manner and regular contact from yourselves and the urologists was evident in all correspondence".

Aside from the above, the Complainant was offered a meeting with the head of Clinical Governance where the Patient was asked to choose between one of the local urologists for the continuation of her care alongside a paediatrician.

In the end, the Patient had required to travel a further five times to the UK until she was fully discharged back to St Bernard's hospital in December 2024.

Despite the GHA's attempts to address the Complainant's concerns about the events which transpired from 16th July 2023 to 10th January 2024, she opted to contact the Ombudsman for an independent assessment of the complaint as she believed that no other child should have to go through what her daughter experienced.

Investigation

The Ombudsman reviewed the response letter provided by Clinical Governance, requested the internal complaints file from them and reviewed its content. As per usual practice, the Patient's medical notes were also reviewed.

Clinical Advice

Given that the issues being complained of were entirely clinical, the Ombudsman prepared a case file and dispatched it, together with a request for independent specialist medical advice, to an expert ("Expert") in the United Kingdom.

The questions presented by the Ombudsman to the Expert (a Consultant Urologist with over 30 years' experience looking after patients with renal and upper urinary tract problems) and the replies received (which have been summarised for the purposes of this report) were as follows;

Timeframes for stents and encrustation risk

The Expert explained that time was indeed a dominant risk factor for ureteric stent encrustation. He referenced that literature summarised encrustation rates rising from about 9% at 6 weeks to 48% at 6–12 weeks and 77% beyond 12 weeks. According to the Expert, the stent used on the Patient had a manufacturer-referenced maximum indwelling time of 6–12 months. He clarified that although six months did not exceed the device maximum, clinically, encrustation risk rises substantially well before that limit and as such symptomatic stents require early reassessment.

The Expert was therefore of the opinion that the prolonged indwelling interval increased the likelihood of significant encrustation and that encrustation was the probable cause of the difficulty encountered during the attempted laparoscopic pyeloplasty, which saw the Patient necessitating an open procedure as opposed to the less invasive keyhole procedure she was previously scheduled for.

The Expert noted that had the Patient undergone targeted imaging on the 19th November (four months post-insertion of the stent) when she presented to the A&E Department and was admitted to Rainbow Ward, encrustation may have been detected. That may have prompted earlier stent exchange or an expedited intervention in the UK. This, he opined, could have significantly reduced the operative complexity she had to undergo in January 2024.

Treatment by the GHA after stent insertion

The Expert reviewed the initial stent insertion procedure carried out by the GHA urologists on the 16th July 2023. He opined that although the Patient had been intervened appropriately when the stent was initially inserted, a subsequent reassessment of the stent was lacking. He highlighted that for a Patient with a symptomatic stent, best practice required prompt reassessment, imaging when acutely symptomatic, and consideration of stent exchange or expedited definitive treatment. In this regard, the Expert was not fully satisfied that the GHA had provided the Patient with the attention her symptoms required on the lead up to definitive surgery in the UK.

Furthermore, the Expert identified that one of the specific tests ordered by the UK specialist had not been carried out as requested and instead a different test was performed. He noted that a DMSA had been recommended by the UK specialist in September 2023, two months after the initial insertion of the stent, to assess the Patient's kidney function prior to her travel to the UK for definitive surgery. The purpose of this test was to assess her renal function in order to make an informed decision on the upcoming surgery. He explained, "Chronic obstruction to a kidney sometimes causes permanent loss of function. When function has become severely impaired, removal of the affected kidney (nephrectomy) may be preferred to treating the obstruction (pyeloplasty). He clarified that at that stage, the aim was to ascertain the kidney's function in order to make an informed decision on arrival to the UK, however, he noted that the Patient had a renogram instead. He commented, "The report stated that both kidneys showed good function and drainage. Since there was a stent on the left side, this was not a valid assessment of renal drainage,

but confirmation of unimpaired function was important in the decision to proceed with pyeloplasty".

Role of Paediatric monitoring

When asked about whether the Patient should have had a Paediatrician overseeing her care given her young age, the Expert considered it unlikely that paediatric involvement alone would have prevented the delay the Patient encountered. It was his opinion that a paediatrician may have provided a more "holistic approach" to her overall care and clarified that the issue was lack of timely reassessment of the Patient's symptomatic stent by urology.

Duty of Candour & earlier diagnosis

The Ombudsman noted from the GHA internal complaints file, that a duty of candour note had been added by one of the Clinical Governance members reviewing the complaint. It referred to previous related tests the Patient had had, namely an ultrasound in 2016. When asked by the Ombudsman whether the GHA should have identified the Patient's obstruction during the early years of her childhood, the Expert reviewed her full set of medical notes from birth and was able to identify that in the two occasions where the GHA had performed ultrasounds in 2011 and 2016, they had recorded renal pelvis measurements below the guideline threshold for continued follow-up; the guideline in place recommended discharge where the pelvis was <12 mm. The Expert judged that local guidance had been applied appropriately in 2011 and 2016 and opined that there was insufficient evidence that earlier follow-up would have substantially altered the Patient's prognosis. As such, he concluded, "there were no failings that required a Duty of Candour"

GHA comments on Ombudsman's Investigation findings

In response to the Ombudsman's findings, the GHA urologists expressed their sincere sympathy for the challenges experienced by the Patient and her family. They explained that as parents themselves, they understood the concerns and anxieties that arise when a child is unwell and highlighted that despite the lapse in time prior to the removal of the stent, they maintained regular and frequent communication with the family, providing clinical reviews and assessments whenever the Patient exhibited symptoms. They stated "The Ombudsman's Expert reviewer's conclusion regarding a lack of interim stent management differs from our professional assessment of the care provided to the Patient and her family. We are experienced endourologists with extensive UK NHS experience in performing pyeloplasty surgeries, and our management of patients in Gibraltar closely aligns with our NHS practice. While the expert witness reviewed the patient notes and internal case documentation, it is notable that frequent correspondence and contact with the Patient, her family, and colleagues at Evelina were not referenced".

The GHA Urologists highlighted that since St Bernard's Hospital was a small district general hospital, definitive management of paediatric pelvi-ureteric junction obstruction typically involved referral to tertiary paediatric urology centres and highlighted the fact that the nuclear medicine imaging is also commissioned externally with a dependence on these external service providers to coordinate imaging and reporting.

Commenting on the Expert's suggestion that "It is possible that had there been imaging on the 19th November 2023, when the Patient presented acutely with pain, encrustation of the stent may have been seen and the replacement of the stent at this time would have improved her pain, and avoided the surgical problems that were encountered during attempted laparoscopic plyoplasty two months later", the GHA urologists stated, "When the Patient re-presented on 19th November with stent-related symptoms, inflammatory markers were normal and urine cultures negative; therefore, additional imaging was not deemed clinically necessary. The difficulties experienced were acknowledged, and an offer of stent exchange was extended to the Patient and her parents should surgery not be imminent. When surgery was scheduled [on] 16 December, it was considered inappropriate to perform a stent exchange immediately prior, as there was no clinical suspicion of stent encrustation in a child with no prior history of stone disease or imaging evidence of encrustation".

The GHA consultant concluded his statement by stating that "While acknowledging that the six-month duration of stent placement contributed to the complexity of the pyeloplasty, we do not believe there was negligence by the GHA Urology Department. The outcome was unfortunate but not foreseeable. The challenges of delivering healthcare in a geographically remote setting necessitate commissioning external services and reliance on their capacity and scheduling. We are confident that the UK Consultant and [the UK Hospital] would have preferred to provide earlier surgery dates; however, NHS waiting times are a known reality. It is for [the UK Hospital] to advise whether the surgical timeline deviated from their standard of care for external referrals".

Conclusion

The Ombudsman noted the comments made by the GHA urologists explaining the factual background and the circumstances surrounding this case (including, the GHA limitations highlighted by the relevant medical professionals), but remained critical of the GHA for their handling of this young Patient's health complications.

The Ombudsman endorsed the Expert's views and findings.

It appeared that, despite the correct treatment being delivered by the GHA upon initial insertion of the stent, and the correct diagnosis and treatment being given at first instance, the absence of interim stent management when the Patient remained symptomatic, increased the risk of encrustation and contributed to the need from laparoscopic (keyhole) to open surgery resulting in the thirteen year old Patient having undergone a lengthy surgery which may have been avoided.

Beyond the clinical shortcomings identified, the Ombudsman was particularly concerned by the broader consequences of the delay in care, which she understood did not exclusively rest with the GHA but was also dependant on the UK healthcare provider. The fact remains that the Patient, a thirteen-year-old child, endured prolonged pain and distress which significantly disrupted her education and daily life. No child should have to endure such suffering, especially when a remedial temporary solution was available, despite the delays and limitations we have referred to.

The Ombudsman considered that in this case, the avoidable distress caused to the Patient and her family was unfortunate and regrettable.

Classification

The Complainant was aggrieved as the GHA had taken too long to arrange for the removal of the Patient's temporary ureteric stent- Sustained

Recommendations

1. The Ombudsman recommended that the GHA offer the Patient a sincere apology for their shortcomings in the Complainant's care.

2. The Ombudsman recommended that the GHA improve written patient/carer information provided at stent insertion about expected symptoms, red-flag signs, contact points and anticipated timelines for review.

REPORT ON CASE NO 1313

Complaints against the Gibraltar Health Authority's ("GHA") Registration Department ("Registration") over various registration issues relating to the Complainant's representative's healthcare in Gibraltar.

(i) Registration were not willing to assist the Complainant's representative (The "Patient") in resolving an issue related to the delay he was encountering in obtaining the International Pension Centre ("IPC") 586 Form ("Form") from the Department of Work & Pensions ("DWP") in the United Kingdom ("UK") which would enable him to receive healthcare in Gibraltar;

(ii) There is a reciprocal arrangement for GHA to contact the IPC but the Registration Reg Manager ("Reg Manager") refused to phone or email them to enquire about the Form, despite the inordinate delay the Patient was experiencing;

(iii) The Complainant provided Registration with a copy of the Form the Patient had been sent directly by the IPC but this was refused, with the Reg Manager allegedly stating they needed to receive their own copy;

(iv) Despite the excessive delay in the transfer of the Patient's medical rights from the UK to the GHA, and being elderly and in ill health, he was not offered healthcare at the GHA in the interim period;

(v) The Complainant had reason to believe that the Reg Manger did not email or telephone the IPC on the 10th August 2024, despite having given an assurance that she would.

Complaint

The Complainant was aggrieved because of the complaints set out above.

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

The Patient, an 83-year-old UK national who had health issues, had taken up residence in Gibraltar. On the 3rd June 2024 he telephoned the IPC and requested that a Form be sent to Registration, for the purpose of transferring his healthcare entitlement in the UK to Gibraltar and was informed that it would take about a month.

On the 3rd July 2024 and the 17th July 2024, the Patient and the Complainant enquired at Registration if the Form had been received but were informed it had not. It was on that second occasion that the Complainant asked the Reg Manager to phone the IPC to find out what the delay was but claimed that she refused stating they were not allowed to telephone the IPC. The Patient telephoned the IPC and was told that the Form had been sent and that they would send a second copy. By the 10th August 2024, and the Form not

having been received, they asked the Reg Manager for assistance to resolve the matter by telephoning the IPC. She refused to call but told them that she would send an email. Notwithstanding, that same day the Patient emailed the IPC requesting confirmation that the previous two Forms had been sent and asking them to send a third copy. Not having received a response from the IPC by the 21st August 2024, the Patient contacted them once again and was informed that they would send a third Form to Registration as a matter of urgency and a copy directly to him.

By the 2nd September 2024 the Form had not been received and the Complainant lodged a complaint with the IPC asking for an investigation on the missing Forms. The reply from the IPC on the 12th September 2024 stated that the Complainant did not have a power of attorney nor was he listed on the Patient's account as his appointee, so they were limited as to the information they could provide. The IPC had checked the Complainant's account and seen that the Form had been sent to: Primary Care Centre, Harbour View(s) Road, Gibraltar, on the 3rd June 2024 and again on the 27th August 2024 with a copy also sent to the Complainant on the same day. [Ombudsman Note: The IPC sent the second Form to Registration and a copy to the Patient on the 27th August 2024. This establishes that no Form was sent out on the 17th July 2024 after the Patient's telephone conversation with the IPC]. The IPC informed the Complainant that they have a reciprocal agreement with Gibraltar and there was no reason for the GHA not to have contacted them requesting information.

On the 13th September 2024, the Complainant and the Patient visited Registration and once again met the Reg Manager who informed them that they had not received the Form and would do nothing until they did. The Complainant enquired about the response received by the Reg Manager to the email she had sent to the IPC and according to him she became very aggressive and told them that the IPC never reply to emails. The Complainant showed the Reg Manager the two emails he had received from the IPC and referred her to the reference made by the IPC about the reciprocal agreement and being able to contact the IPC directly requesting information. According to the Complainant, from that point on the Reg Manager refused to talk to him and would only speak to the Patient. She then repeatedly promised that she would telephone the IPC later that day to sort out the problem.

On the 21st September 2024 (Saturday) the Patient received the Form and, on the Monday, went personally to Registration. According to the Complainant, as they entered the reception area, the Reg Manager appeared and went directly into the back office. They were attended to by a clerk at the counter and they explained the situation. The clerk consulted with the Reg Manager in the back office and returned a few minutes later to tell them that the Reg Manager refused to accept the Form they had provided because it was not addressed directly to them (Registration) and they would wait for their copy to arrive.

On the 26th September 2024, the Patient lodged a complaint against the IPC with the Parliamentary & Health Services Ombudsman ("PHSO") in the UK and with the Gibraltar Public Services Ombudsman against Registration. The latter was deemed to be premature, as a reply was pending from the PHSO and a written complaint had not been submitted to the GHA. Desperate for assistance, the Complainant met with one of the

Ombudsman's staff members on the 27th September 2024 to discuss the Patient's grievance. In an effort to assist, the Ombudsman's Office emailed the GHA Complaints Department to put across the Patient's circumstances; i.e. that he had a heart condition which required regular checkups and had a UK prescription until the 30th September 2024 after which he would have no medication. A few days later, the Patient received confirmation from Registration that they would accept his copy of the Form.

According to the Complainant, he had subsequently contacted the IPC and they had confirmed that they had not received any emails from Registration nor received any phone call from them regarding the Patient. This led the Complainant to believe that the Reg Manager had lied on two occasions with regards to the email and the phone call. The Complainant was of the view that the Reg Manager was fully prepared to risk the Patient's health, initially because she could not be bothered and later because she took an instant dislike to him (the Complainant) because he had been insistent that she sort out the problem.

The Complainant stated that he knew exactly what the problem was with the missing Forms, after the Patient received a copy of the Form addressed to him directly and pointed out that he had had exactly the same issue when he applied for his Form three months earlier. However, the Complainant was not prepared to allow the Reg Manager to take credit for sorting out the problem. In the Complainant's opinion, the Reg Manager was guilty of misconduct in a public office and in order to avoid a repetition of what they had experienced believed that she should at least be relieved from her position as Reg Manager.

The Complainant lodged his complaints with the Ombudsman.

Investigation

On the 31st January 2025, the Ombudsman presented the initial complaints to the Primary Care Services Manager ("PCC Manager"). An immediate response was received on the same day which provided a timeline with respect to Complaint (v). Further detailed information followed on the other complaints on the 19th February 2025.

The PCC Manager stated that it was unfortunate that the Patient had experienced such a significant delay in receiving the Form. He advised that in the past they had raised the issue of similar delays with the IPC in order to find another way (email instead of postal mail) to confirm the transfer of patient's medical rights but the IPC'S position was that email was not a secure method.

The Ombudsman contacted the Complainant for information on the details of the process for transferring medical rights from the UK to Gibraltar. The Complainant explained that the request for the transfer could only be made once the person had moved abroad and could provide an address. Once that was done, the IPC Form would be sent to Registration who upon receipt of the Form would contact the Department of Immigration & Home Affairs ("DIHA") (formerly Civil Status & Registration Office) to inform them that the medical rights had been transferred and it was at that point that the person could apply

for a Civilian Registration Card ("CRC") and permit to reside and then be in a position to apply for a health card.

Complaint (i) - Registration were not willing to assist the Patient in resolving an issue related to the delay he was encountering in obtaining the Form from the IPC which would enable him to receive healthcare in Gibraltar

The PCC Manager acknowledged the significant delay experienced by the Patient which had impacted his ability to access healthcare services in Gibraltar. Whilst they recognised the reciprocal arrangements between the GHA and the UK, they clarified that the process of transferring the Patient's medical rights had to be initiated by him as per UK's protocol. The PCC Manager highlighted that the person was required to respond to security questions and for the GHA to do that could lead to a GDPR breach.

The PCC Manager pointed out that the Reg Manager did not speak to the Patient every time he attended the counter and that the clerks recalled that in most instances it was the Complainant who attended the counter on his own stating that the Patient was unable to come himself because he had been admitted to hospital [Ombudsman Note: The Complainant informed the Ombudsman that he had never said that the Patient had been admitted to hospital]. The PCC Manager stated that they could not verify that claim as no account had been opened for the Patient with the GHA. In following data protection compliance, the staff were unable to provide the Complainant with specific details regarding the Patient's case. The PCC Manager stated that the staff had informed him, as a result of his in-house investigation into the complaints, that the Complainant was very rude and offensive every time he attended the counter, despite the team dealing with him in a polite manner and providing him with correct information [Ombudsman Note: The Complainant informed the Ombudsman that at no time had he been rude and offensive. He was angry and assertive due to the fact that he was witnessing the health of the Patient rapidly deteriorating and felt that the PCC were not taking appropriate action].

According to the PCC Manager, when both the Complainant and the Patient attended the counter in September 2024, the Patient sat in the waiting area whilst the Complainant was at the counter [Ombudsman Note: The Complainant informed the Ombudsman that the Reg Manager failed to state that the Patient sat in the waiting area due to the fact that he could not stand or walk unassisted]. On that occasion, the Reg Manager came out to speak with the Patient directly. She told him of the challenges patients face when transferring their medical rights form the UK which were unfortunately outside the PCC's control as the Form could only be sent by postal mail. She also explained that this inevitably caused delays for some patients which was something that the Registration Department had raised with the IPC on numerous occasions.

On the 23rd October 2024 the Complainant submitted the Patient's Gibraltar permit of residence and later that day the application. This was processed on the same day and he was fully registered as from that date.

Complaint (ii) - There is a reciprocal arrangement for GHA to contact the IPC but the Reg Manager refused to phone or email them to enquire about the Form, despite the inordinate delay the Patient was experiencing.

The PCC Manager noted the reciprocal agreement between Gibraltar and the UK concerning healthcare and social security arrangements but stated that did not extend to direct communication with the IPC. Despite this, the Registration Department did assist the Patient by following up with the IPC and working to confirm his transfer of medical rights to Gibraltar.

Below is the timeline provided by the PCC Manager of the Registration Department's communications with the IPC.

1. 13.09.24 The Reg Manager emailed the IPC.

2. 25.09.24 The Registration Officer emailed the IPC specifically requesting a Form.

3. 26.09.24 The IPC responded to the Reg Manager's email (1) asking for the Patient's UK national insurance number or date of birth to facilitate record tracing.

4. 27.09.24 The Reg Manager provided the information requested in (3).

5. 02.10.24 IPC emailed the Registration Officer (2) requesting further information about the Patient.

The Ombudsman enquired as to why the Registration Office reacted to the Complainant's and Patient's request for assistance on the 13th September 2024 but did not offer it when they attended the offices in July and August 2024. The PCC Manager replied that their aim was to assist all patients as best as they could with the resources available to make their experience as seamless as possible. In the Patient's case, he reiterated that it was his (the Patient's) responsibility to reach out to the IPC when applying to transfer his medical rights. Notwithstanding, the Registration Team would do their utmost to help out and they do that via emails to the relevant UK department although they do not always get a prompt reply from the IPC as can be noted from the timeline above. The PCC Manager stated that the Reg Manager had confirmed that attempts to obtain information from the IPC was usually a very drawn-out process.

The PCC Manager advised that the Reg Manager had confirmed that they had received an IPC586 Form dated 4th October 2024 on the 29th October 2024 and another dated 7th November 2024 on the 26th November 2024.

Complaint (iii) - The Complainant provided Registration with a copy of the Form the Patient had been sent directly by the IPC but this was refused, with the Reg Manager allegedly stating they needed to receive their own copy

The PCC Manager explained that the reasons given by the Reg Manager for refusing the Form was because it was handwritten and there was no official stamp to confirm that it had been issued by the IPC. She had also informed the PCC Manager that in the past, some individuals had submitted blank forms or ones that they had completed themselves and hence why verification was necessary. The PCC Manager stated that upon reviewing the Form, he authorised the processing of the Patient's application as there was no reasonable evidence to suggest that the Form was not valid.

The Ombudsman had been provided with a copy of the Form by the Complainant. The Form had in fact been completed by hand. The letterhead shown was that of the IPC and the address shown was 'The Pension Service' address in the UK. The Patient's name, national insurance number, date of birth, address, date of residence in Gibraltar (stated as being 15.11.23) [Ombudsman Note: The Ombudsman believed this to be a typo and at the conclusion of the investigation requested information from the Complainant on this which has been included at the end of the Investigation Section in this report] type of UK benefit in payment, were all completed in the Form. There was a Reference Number on the left-hand side of the Form and had a signature in the 'Pension Payments Officer' box but no name printed. There was no official stamp on the Form.

Complaint (iv) - Despite the excessive delay in the transfer of the Patient's healthcare entitlement from the UK to the GHA, and being elderly and in ill health, he was not offered healthcare at the GHA in the interim period

The PCC Manager stated that the 'Medical (Group Practice) Scheme' (Gibraltar's public healthcare system) is a contributory scheme. The only way in which the Patient could register would be by transferring his medical rights from the UK as that would require confirmation from the IPC. Without confirmation they were unable to proceed with registering him. Despite those limitations, the Reg Manager reassured the Patient, when he visited the Registration Office in September 2024, that if he was running out of medication while waiting for the Form, he should contact them (Registration Department). The Patient confirmed that he had enough medication at that time.

Complaint (v) - The Complainant had reason to believe that the Reg Manger did not email or telephone the IPC on the 10th August 2024, despite having given an assurance that she would

The PCC Manager referred the Ombudsman to the timeline provided. The Ombudsman noted that no reference to the 10th August 2024 had been made and could only conclude that no email was sent on that day.

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In April 2025 the Ombudsman asked the Complainant for an update on the complaint he had lodged with the PHSO in September 2024. The Complainant responded that nothing had materialised as the complaint form had to be sent first to the Patient's Member of Parliament ("MP") in the UK and neither he nor the Patient were residents in the UK anymore. Notwithstanding he had been told that they could send the form to the MP in the constituency where the Patient had last resided. The Complainant felt that the complaint against the IPC was secondary to the GHA complaint and asked the Ombudsman if he needed to pursue this as he was happy to drop it. The Ombudsman explained that the IPC comes under the jurisdiction of the PHSO. If that investigation was not carried out then he would not find out what really happened at the IPC other than the information they had provided him with on the 12th September 2024. The Complainant understood that the Ombudsman could not investigate the IPC but noted that if he started asking an MP now to authorise an investigation it could take more than a year for conclusions to be made.

The Ombudsman made enquiries with the PCC Manager regarding whether part of the delay could be due to the incomplete address that the IPC held in their records for the PCC. The complete address is: GHA Primary Care Centre, Saint Bernards's Hospital, Europort Road, Gibraltar, GX11 1AA not Primary Care Centre, Harbour Views Road, Gibraltar and furthermore, did not specify 'Registration Department'. The PCC Manager explained that all mail sent to the PCC was received by the clerks at the PCC and they were tasked with distributing all mail to the pertinent recipients when the addressee was clearly stated on the envelope. If it was not, the clerks would open the envelope and pass it on to the relevant section. She confirmed that IPC Forms take a long time to arrive in Gibraltar but once they arrived, they were immediately delivered by the messenger at the Royal Gibraltar Post Office ("RGPO") to the PCC.

In delving further into the delay in the delivery of mail from the IPC to the PCC, i.e. from the UK to Gibraltar, the Ombudsman reviewed the copy of the envelope in which the Form had been sent to the Patient by the IPC. The Ombudsman identified on the right-hand corner a small stamp which read 'Pays-Bas'(Netherlands) and on the left-hand side 'Air Mail'. She contacted the RGPO to find out how this postal item would have made its way to Gibraltar. The RGPO explained that they were aware that frequently, incoming mail originating from the UK which stated 'Air Mail' on the envelope had in fact been sent by land. RGPO explained that numerous companies and organisations contract the services of mail processing companies for the distribution of their postal mail. In Gibraltar's case with respect to receiving mail from abroad, it was a regular occurrence that instead of the mail being sent directly to Gibraltar via air mail, which would take a few days to arrive, the mail went from the UK to Netherlands where mail gets sorted and may then be sent to Madrid or France, whichever route the mail processing company uses. Once there, the lorry transporting the mail would have to be filled for it to be cost effective and once that is achieved, the lorry sets off on its route to finally arrive in Gibraltar.

Upon reviewing the Form details, the Ombudsman had identified that the IPC had noted the Patient's date of residence in Gibraltar as being the 15th November 2023. The Ombudsman believed this to be an error as the Patient had contacted the IPC on the 3rd June 2024, six and a half months later. The Ombudsman sought information on this from the Complainant. He confirmed that the Patient arrived in Gibraltar in November 2023 in his boat. He had moved from a marina in Spain to a marina in Gibraltar but was not eligible to apply for residency whilst living on his boat. On the 1st April 2024 he signed a rental agreement to rent a room in the Complainant's property which made him eligible to apply for residency and he could then apply for the Form. The Ombudsman enquired as to what medical insurance or healthcare cover the Patient had when he moved to Gibraltar in November 2023 until June 2024 and the Complainant stated he was still under his UK national health doctor and returned to the UK when necessary. A local pharmacist agreed to dispense his medication using his UK prescriptions.

Conclusions

Complaint (i) - Registration were not willing to assist the Patient in resolving an issue related to the delay he was encountering in obtaining the Form from the IPC which would enable him to receive healthcare in Gibraltar – Not Sustained

Complaint (ii) - There is a reciprocal arrangement for GHA to contact the IPC but the Reg Manager refused to phone or email them to enquire about the Form, despite the inordinate delay the Patient was experiencing – Not Sustained

The Ombudsman does not sustain the above complaints.

The Ombudsman's investigation has established that delays in receiving the Forms, which according to Registration were a frequent occurrence, stemmed from the fact that these were sent by the IPC via postal mail. The information provided by the RGPO provides an insight into the reasons for the postal delays. In an effort to resolve this problem, Registration had suggested to the IPC that confirmation of the transfer of medical rights by email would avoid delays but that option was refused by the IPC on the basis that email was not a secure method.

In the Patient's case, the first Form sent by the IPC on the 3rd June 2024 was never received by Registration. The second Form sent by the IPC on the 27th August 2024 to Registration with a copy to the Complainant was received by the latter on the 21st September 2024 but not by Registration. They received the Forms on the 29th October and 26th November 2024.

It is clear that the request for the transfer of medical rights had to be initiated and followed through by the Patient which was in fact the case but two months after having requested the transfer and Registration and not having received the Form, the Complainant asked for their assistance by contacting IPC. The Ombudsman's investigation has found that the first contact between Registration and the IPC was by email on the 13th September 2025, three months after the Patient requested the transfer of medical rights.

Although there are reciprocal arrangements between the GHA and the IPC concerning healthcare and social security arrangements, the PCC Manager stated that agreement did not extend to direct communication as per the timeframe provided by the Reg Manager above.

The Ombudsman concludes that there should not have been a need for Registration to intervene in this situation as it was outside their remit and the process of sending a Form from the UK to Gibraltar should not have resulted in all this stress and delay. Registration's role was to process the Form once it was received. Notwithstanding they did finally assist the Patient by contacting IPC but that action had no impact in speeding up the remittal of the Form.

Complaint (iii) - The Complainant provided Registration with a copy of the Form the Patient had been sent directly by the IPC but this was refused, with the Reg Manager allegedly stating they needed to receive their own copy – Sustained

Although the Reg Manager's reasoning for refusing the Form were based on past experiences, the fact that the PCC Manager ultimately reviewed the Form (after the Complainant contacted the Ombudsman's Office and the latter informed the GHA) and authorised the processing of the Patient's application because he did not find reasonable evidence to suggest the Form was not valid, clearly shows that the Reg Manager should have discussed her decision with the PCC Manager.

The Ombudsman sustains this complaint.

Complaint (iv) - Despite the excessive delay in the transfer of the Patient's medical rights from the UK to the GHA, and being elderly and in ill health, he was not offered healthcare at the GHA in the interim period – Not Sustained

Towards the end of the investigation, due to a query regarding the Patient's date of residence in Gibraltar stated as being the 15th November 2023, the Ombudsman contacted the Complainant who confirmed the date and provided details about the Patient's circumstances between that date and the 3rd June 2024, the date when the Patient contacted the IPC. He also provided details on the healthcare arrangements that the Patient had in place during that period.

The Ombudsman observed that despite having a rental agreement in place as from the 1st April 2024 and being in a position to request the Form from the IPC, the Patient did not do so until two months later, i.e. a delay of two months that at face value could have been prevented.

As explained by the PCC Manager they were unable to register the Patient with the GHA until his medical rights were transferred from the UK. Notwithstanding, it is worthy to note that despite this, when the Patient visited Registration in September 2024 the Reg Manager reassured him that he could contact them if he was running out of medication whilst waiting for the Form.

The Ombudsman did not sustain this complaint.

Complaint (v) - The Complainant had reason to believe that the Reg Manger did not email or telephone the IPC on the 10th August 2024, despite having given an assurance that she would – Not Sustained

The Ombudsman did not sustain this complaint.

This is a situation of the Complainant accusing the Reg Manager but there is no evidence to support it.

……..

Ombudsman Comment: The fact that the Patient did not lodge his complaint with the PHSO means that nothing will change at the IPC and delays in the receipt of Forms will continue.

Classification

Complaint (i) - Registration were not willing to assist the Patient in resolving an issue related to the delay he was encountering in obtaining the Form from the IPC which would enable him to receive healthcare in Gibraltar – Not Sustained

Complaint (ii) - There is a reciprocal arrangement for GHA to contact the IPC but the Reg Manager refused to phone or email them to enquire about the Form, despite the inordinate delay the Patient was experiencing – Not Sustained

Complaint (iii) - The Complainant provided Registration with a copy of the Form the Patient had been sent directly by the IPC but this was refused, with the Reg Manager allegedly stating they needed to receive their own copy – Sustained

Complaint (iv) - Despite the excessive delay in the transfer of the Patient's medical rights from the UK to the GHA, and being elderly and in ill health, he was not offered healthcare at the GHA in the interim period – Not Sustained

Complaint (v) - The Complainant had reason to believe that the Reg Manger did not email or telephone the IPC on the 10th August 2024, despite having given an assurance that she would – Not Sustained

Recommendations

The Ombudsman recommends that the GHA Primary Care Centre request that the International Pensions Centre update the address they hold on record, Primary Care Centre, Harbour View Road, Gibraltar, to the complete postal address as follows: GHA Primary Care Centre, Saint Bernards's Hospital, Europort Road, Gibraltar, GX11 1AA

REPORT ON CASE NO 1307

Complaint against Gibraltar Residential Properties ("GRP") (managed by Land Property Services Limited) over the decision of the Land Management Committee ("LMC") not to allow the Complainant's Partner ("Partner") to use the address of her property ("Property") for residency purposes; for the incommensurate period of time taken by the LMC to arrive at a decision and for the non-response from GRP with regards to the reason/s for LMC's refusal.

Complaint

The Complainant was aggrieved by the LMC's decision, communicated to her through GRP, not to allow her Partner to use the Property address for residency purposes. She was further aggrieved due to the incommensurate period of time taken by the LMC to arrive at a decision and also due to not having received a response from GRP with regards to the reason/s for LMC's decision.

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 Partner, a UK national, begun a relationship in June 2020 and since he relocated to Gibraltar in late 2021, resided together at her Property. The Complainant explained that the Property was a flat located within an estate, part of one of His Majesty's Government of Gibraltar's ("HMGOG") affordable housing schemes ("Scheme") of which she owned 50% of the Property and HMGOG owned the remaining 50%.

In early 2022, her Partner applied to the Civil Status & Registration Office ("CSRO") for a residence card, Gibraltar Civilian Registration Card ("CRC"), which is a requirement under Gibraltar law. In support of the application, the Complainant had written a letter confirming that he resided at the Property. When CSRO considered the application, they informed the Partner that the letter was insufficient and they needed a letter of authorisation from the LMC which they should request via GRP (the sales unit for HMGOG affordable housing schemes (as per information provided by Land Property Services Limited ("LPS")). The Complainant made the request to GRP.

Months after that request during which the Complainant had pursued GRP for updates on LMC's decision, the Complainant was informed on the 10th October 2022 by GRP that their request was being looked into and they would provide an update when that was available.

In February 2023, once again after frequently chasing for updates, they were informed by GRP that the LMC had requested that they provide affidavits confirming that they were in a relationship and living together at the Property [Ombudsman Note: The Ombudsman reviewed copies of the affidavits. The Complainant and the Partner had signed individual affidavits attesting to being in a relationship since the 28th June 2020 and residing together since 2021 (only year provided)].

In March 2023 they emailed the affidavits to GRP and in June 2023 submitted the originals. In April 2024 they were still awaiting a decision. The Complainant had maintained regular contact with GRP during that time seeking updates but was on each occasion informed that the delay was due to the LMC not having met. Desperate to resolve the impasse, the Complainant met with Minister Bruzon in his capacity as MP for the eastside area. He consulted with LPS on the matter and advised the Complainant that further communication would follow from the LMC. On the 15th July 2024 GRP informed the Complainant that the request to authorise the Partner to reside at the Property had not been approved by LMC. Reason/s for the refusal were not provided and so on that same day, the Complainant emailed GRP requesting them to ask LMC to provide an explanation for the decision. On the 7th October 2024 the Complainant contacted GRP for an update and was advised that they had chased LMC for a response and would revert as soon as they received a reply. A month later the Complainant requested an update and was on this occasion informed by GRP that they had chased the matter and would revert as soon as they heard back from LMC.

For over two years they had pursued a letter of authorisation from the LMC, via GRP, and throughout that time experienced a lack of transparency and repeated updates citing the LMC's failure to meet as being the root cause for the delay. The Complainant stressed that this had caused them significant stress, as not being able to use the Property address had prevented the Partner from obtaining a CRC, registering for healthcare, changing his UK driving licence to a Gibraltar one and importing his vehicle from the UK, amongst other issues. Furthermore, the Complainant highlighted that they could not understand why they had been asked to submit affidavits at a cost of £100- to confirm their relationship if the request was ultimately going to be rejected.

In November 2024, the Complainant and her Partner lodged their complaints with the Ombudsman.

Investigation

The Ombudsman presented the complaints to GRP on the 12th November 2024. She set out the information provided by the Complainant and enquired as to the reason/s why it had taken them nearly two years to arrive at a decision. She also referred them to the fact that they were still waiting for a reply from GRP as to the reason/s for the LMC's decision and enquired as to when the Complainant could expect to be provided with a response. The Ombudsman also requested information on what the average timeframe for a decision on similar applications was and whether the criteria for those applications was policy dictated and if so, whether said policy was in written format.

In December 2024, the Ombudsman chased GRP for a response and was shortly after contacted by LPS by telephone to discuss the case which was followed by a written reply in January 2025. Verbally, LPS advised that there was no policy in place for requests of this nature and that in fact, it may have been the first request from someone who was not a Gibraltarian National; LPS recalled that in the past, it had been either Gibraltarians or direct family members of the owner of the affordable property seeking authorisation to reside there. Regarding the period of time taken to arrive at a decision, LPS agreed that it was wrong of them to have taken so long.

As a final point, LPS mentioned that the LMC had raised concerns on whether the Complainant and her Partner were in a relationship due to the Partner being twenty years older than the Complainant.

In their written response, LPS referred to the underlease of the Property and pointed out that this states that only the leaseholder and their family are allowed to live in the Property. However, the Complainant made a request for her Partner to be given permission to reside in the Property with her and this was considered by the LMC. It was decided that:

(i) Affidavits would be required from them to confirm the relationship and the fact that they were residing together; and

(ii) a surprise inspection would be carried out by the Borders & Coastguards Agency ("BCA").

LPS advised that the affidavits were provided but understand that due to issues between BCA and HMGOG, the inspection was not carried out and therefore not possible to establish whether the Partner in fact resided at the Property. As such, the LMC decided not to grant consent. LPS advised that it was not possible to advise the Complainant that the reason for the decision was because a surprise inspection could not be carried out, due to the nature of this having to be a surprise, as otherwise, arrangements could have been made to fraudulently make it appear as if someone was living in a property when they were in fact not living there. (No reference was made in this communication of there not being a policy in place to address these requests or to the age difference issue). LPS offered to discuss the case further over the phone with the Ombudsman in order to take the matter forward.

In a telephone conversation with LPS on the 5th February 2025, the Ombudsman put to LPS that it was her view that the manner in which the Complainant and her Partner's request had been dealt with left a lot to be desired. On the matter of not being able to inform the Complainant of the reason for the decision, the Ombudsman informed LPS that she would include this information in her final report to the Complainant. She referred LPS to the Principles of Good Administration which advocate that public services should be open and accountable to service users and it was evident that they had failed to do so in this case. The Ombudsman pointed out to LPS that it was public knowledge that BCA carry out residency checks and have done so for decades, so the element of surprise was nonsensical as anyone making a fraudulent application would undoubtedly have already made the pertinent arrangements at the property to make it appear as if they were living there.

The Ombudsman highlighted that if the residency request had been made to CSRO from an open market property instead of an affordable property, no authorisation would have been required from the LMC and the hardship caused to both the Complainant and her Partner would not have happened. LPS referred the Ombudsman to the clause on the Property's underlease where only the leaseholder and their family are allowed to reside. LPS referred to the Sixth Schedule Part I, Paragraph 20(a) where it states that the property shall be used:

"…as a self-contained flat in one occupation by the Lessee and his family only and as their sole residence…"

The Ombudsman pointed out that the meaning of 'family' could be open to interpretation and in May 2025, LPS advised that although not relevant to the present case, the definition of 'family' had now been included in underleases for newer subsidised estates and was as follows:

" "Family" means the Lessee's spouse or civil partner, the Lessee's children or such other family member as may be approved in writing from time to time by the Surveyor at his sole discretion."

The telephone meeting concluded with LPS proposing to put the matter forward to the LMC for further review. The fact that the Complainant had brought their grievance to the Ombudsman was an indication that they were telling the truth about being in a relationship. LPS advised that the LMC met every four to six weeks. They had met two weeks earlier (mid-January 2025) and did not have a date for the next meeting.

Subsequent to the telephone conversation with LPS, the Ombudsman updated the Complainant on the fact that the LMC were going to further review their case at their next meeting. A couple of weeks after that update, the Complainant emailed the Ombudsman to let her know that they were expecting a baby in early August and wanted to mention it in case that could be considered by the LMC at their review. The Ombudsman congratulated the couple and advised that the good news should have a positive bearing on the LMC's review and they should pass on that information. The Ombudsman enquired if she could also relay the news to LPS, something which the Complainant immediately agreed to.

On the 19th February 2025, the Ombudsman passed on the information to LPS who responded that GRP had also received an email from the Complainant and that would be put forward for consideration by the LMC at their next meeting.

On the 25th March 2025, with no information on the LMC's next meeting date having been received, the Complainant contacted the Ombudsman because her Partner's passport had expired and he urgently needed to travel to the UK to see his severely ill mother. Without a residence card in Gibraltar he was unable to apply for a new passport and he could not obtain a residence card without an address in Gibraltar. The Ombudsman advised that they could not assist on this matter as it is the Civil Status & Registration Office ("CSRO") that sets the criteria for passport applications in Gibraltar, but in view of the fact that her Partner was a United Kingdom national, recommended that he should contact the Passport Office in the United Kingdom for advice.

The Ombudsman contacted LPS for an update and was informed that the LMC's next meeting would be on the 1st April 2025 and they would notify the Complainant by the end of that week, 4th April 2025. The Ombudsman updated the Complainant accordingly.

By the 8th April 2025, not having heard from LPS, the Complainant contacted the Ombudsman who immediately contacted LPS. The latter's response that same day stated that they had just received the minutes of the LMC meeting the previous afternoon and would contact the Complainant during the course of the day. The LMC minutes stated that they granted consent for the Partner (name withheld) to reside at the Property with the Complainant (name withheld) on the basis that they would be considered a family unit once their child was born.

Later that day, the Complainant emailed the Ombudsman delighted with the news received from GRP (via email) confirming that the LMC had granted consent to the Partner to reside in the Property and could now approach CSRO as well as register in the Register of Property Occupation.

For completeness of records, the Ombudsman had further queries she wanted to put to LPS before closing the investigation and these are listed below with the replies received from LPS.

1. Are GRP managing agents for HMGOG?

Reply: GRP have no managerial role with regards to the affordable properties scheme. They are the sales unit for the affordable housing schemes and its role is to sell affordable homes in accordance with instructions received from HMGOG.

2. What are the functions of the LMC?

Reply: The LMC determines and deals with various land matters on behalf of HMGOG. This can be in relation to land, so an extremely wide range of matters are dealt with in this forum.

3. What is the role of LPS within the LMC?

Reply: LPS attends the LMC on an advisory capacity.

4. How many times did the LMC meet between March 2023 and July 2024?

Reply: The LMC met eight times between those dates.

5. Does LMC consider similar applications from affordable properties often?

Reply: These types of applications do not arise often and it would be extremely hard to provide an exact figure.

6. What is the average timeframe for a decision?

Reply: The timeframe for any decision on any application considered by the LMC varies greatly, depending on any number of factors, including but not limited to, the nature of the application, the complexity of an application, the requirement to obtain information from other parties, the requirement to obtain legal advice, etc.

7. Why did LPS and not GRP continue to deal with the complaint lodged with the ombudsman?

Reply: LPS manages the GRP sales unit. Whilst the request was initially raised through GRP it was taken forward to the LMC by LPS and it was therefore more appropriate for LPS to liaise with the Ombudsman instead of GRP.

Conclusions

The Ombudsman sustains the complaints of maladministration against LPS. The complaints were lodged against GRP, but in the course of the investigation it has come to light that LPS manage GRP and act in an advisory capacity for the LMC.

Due to the Property being part of an affordable housing scheme, the Complainant had to request authorisation from the LMC for her Partner to be allowed to use the Property address for residency purposes. A clause in the underlease of the Property states that only family can reside, in order to prevent these properties from being let or sublet, hence the authorisation required.

LMC took two years to arrive at a decision. When the Complainant contacted GRP for updates during that period, she was continuously told that the LMC had not met and that was the reason for the delay. The Ombudsman's investigation has found that was not the reason as between March 2023(when the Complainant and her Partner submitted the affidavits) and July 2024 the LMC had met eight times. A clear breach of Principles of Good Administration which advocate for public services to be open and accountable.

The reality of the situation was that it was the first time a non-Gibraltar national had requested authorisation to reside in an affordable property and there is no policy in place for requests of this nature. Despite the affidavits attesting to them being in a relationship, the LMC had doubts. As these could not be proven or disproven because the BCA who would have ordinarily undertaken a surprise inspection at the Property to establish the reality of the situation were not carrying these out due to issues with HMGOG, the LMC decided to go with their gut instinct and refuse the request. This is the reason why LMC via GRP did not provide the Complainant with the reason for the refusal; again, a clear breach of Principles of Good Administration.

It was the complaint being brought to the Ombudsman which led LPS to believe that they were telling the truth about being in a relationship and proposing to put the matter forward to the LMC for further review as well as the Complainant advising that she was pregnant prior to the review, that led to the original decision being overturned.

Lack of a policy on the part of the LMC for cases like this one as well as the fact that no inspections were being undertaken by BCA at the time of this complaint resulted in unnecessary hardship to the Complainant and her Partner throughout a long and arduous three-year period. The Ombudsman stresses that an urgent solution has to be found by the pertinent authorities in order that these necessary checks can be reinstated as well as a policy to be put in place to prevent a recurrence of a similar case.

Classification

Complaint (i) - Aggrieved by the decision of the LMC not to allow her Partner to use the address of her Property for residency purposes – Sustained

Complaint (ii) - Aggrieved by the incommensurate period of time taken by the LMC to arrive at a decision - Sustained

Complaint (iii) - No response received from GRP with regards to the reason/s for LMC's refusal - Sustained

Recommendations

None Made

REPORT ON CASE NO 1284

Complaint against the Housing Authority ("HA") for having refused to include the Complainant's Son and Daughter in the tenancy; the fact that the Daughter and the Son are not included in the tenancy has deprived the family from obtaining overcrowding points to assist their application in the Government Housing Waiting List for larger accommodation and due to the introduction of the Property Register, the Complainant has been unable to renew his son's Identity Card ("ID") and realized the consequences of not having him included in the tenancy.

Complaint

The Complainant was aggrieved because of the above-mentioned 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].

The Complainant explained that when his marriage broke down, he left the matrimonial home, a privately owned property, to his ex-wife, and for a number of years rented in Spain where rentals were cheaper than in Gibraltar. During that period, he had a number of relationships and fathered two children from two different partners (a Son born in 2005 and a Daughter in 2006). According to the Complainant, the children had no official nationality because neither of the mothers were of Spanish nationality and he could not bring them into Gibraltar. In subsequent years he became unemployed and could no longer afford the private rental in Spa in and in 2012 was allocated a room in the Government Workers Hostel ("Hostel"). The Complainant resided there until 2014 when he was allocated the Flat by the HA comprised of a small bedroom, living room, kitchen and bathroom. According to the Complainant, because he now had a permanent address in Gibraltar he was able to register both his children as British Citizens, further to having obtained authorisation from the HA for the use of the Flat's address for that purpose. He stated that from then on, he brought his children over from Spain to stay with him at the weekends.

In order to be able to accommodate his children adequately, the Complainant required a larger property and in 2015, a year after the allocation, the opportunity arose where he found a Government tenant who was willing to exchange his two-bedroom flat for his. The Complainant submitted the exchange request to the HA but it was refused on the basis that their policy did not allow tenants to be under housed. [Ombudsman Note: The 'underhoused tenants' being referred to, were the tenants the Complainant proposed to exchange with; an adult son and father].

A year later, July 2016, the Complainant resubmitted the exchange request for the same property as the tenant's situation had changed; it was now only the adult son residing in the flat. On that occasion the HA refused the request stating that the Flat had been offered to him under exceptional circumstances and was therefore not available for exchange.

In the interim, the Complainant had renewed the relationship with the mother of his Daughter, a Colombian national, and they married in May 2016. The Complainant tried to include his wife in the tenancy of his Flat as she required a Gibraltar residential address in order to obtain an Identity Card (ID). According to the Complainant that proved challenging and he had to request assistance from the Chief Minister's Office. In July 2016, at a meeting between the Chief Minister's Private Secretary, the HA and the Civil Status & Registration Office ("CSRO") it was agreed that his wife could use the Flat's address for registration purposes only and the HA would provide a letter to CSRO to that effect in order that she could be issued with an ID.

According to the Complainant, they all lived in the Flat for over a year until his Son was taken back to Spain by the mother and then only stayed with him during weekends and holidays. That changed again in 2021 when the Complainant stated the mother of the Son gave him care and control and his Son returned to reside in the Flat.

Regarding his wife, the Complainant stated that she left the Flat in 2019 leaving him with his Daughter.

According to the Complainant, since being allocated the Flat, it was his understanding that his Daughter was officially registered in the Flat for allocation purposes and his Son for registration purposes.

The Complainant stated that during successive years he contacted the HA on numerous occasions to put across to them that the cramped living conditions in the Flat were putting a lot of pressure on the family unit.

On the 6th February 2024, the Complainant emailed the HA and explained that they had encountered a problem regarding the use of the Flat's address by his Son for registration purposes. He stated that when registering both his children in the Flat his Son had only been permitted registration for documentation purposes as the property was only deemed suitable for a single person. According to the Complainant, the HA had assured them that the arrangement would not pose any complications with respect to renewal of documents, i.e. passports, IDs, etc. The Complainant explained that his Son had just lost his ID and when he applied for a replacement at the CSRO this was refused because he could not provide proof of residency. [Ombudsman Note: Subsequent to the arrangement put in place by the HA for the Son, the Register of Property Occupation ("Register") came into effect (February 2022). Application for inclusion in the Register, which applies to any one residing in Gibraltar for the purpose of establishing proof of the residency address, requires submission of rental contracts, deeds, etc., as well as confirmation from landlords that a person is residing in said property. The Register is used by Government Departments to verify a person's address. The CSRO checked the Register and as the Son was not registered as residing in the Flat, he was refused a replacement ID].

The Complainant requested the HA's urgent assistance to resolve the matter. On the 19th March 2024 the Complainant chased for a reply which was received on the 5th April 2024 and informed him that they could not include his Son in the tenancy as that would mean that the Complainant would be underhoused and entitled to overcrowding points.

In April 2024, the Complainant lodged his complaints with the Ombudsman.

Investigation

In May 2024, the Ombudsman presented the initial complaints to the HA and made a number of enquiries.

Regarding the issue of the Son and Daughter not being included in the tenancy, the HA's prompt response stated that the Flat had been given to the Complainant due to 'exceptional social circumstances'. They explained that the HA together with other agencies are assisting persons who are allowed to use an address as a 'Care of Address', for the purposes of applying for Government Housing, to also use it as a 'Care of Address' to obtain an ID Card and other documents. In the case of the Complainant's children, they are not applicants for Government Housing and therefore do not have the authority to use the address as a 'Care of Address' in their own right. Notwithstanding, it was exceptionally agreed to allow the Daughter into the Complainant's housing application (for larger accommodation) and therefore use of the Flat's address as a Care of Address. The HA reiterated that the Flat was a 2RKB and his children were unable to register in the tenancy because they would be under-housed.

On the issue of overcrowding points, the HA stated that the daughter and son were not authorised to reside at the Flat and that that was fully explained to the Complainant at a meeting with a member of staff from the Chief Minister's Office on the 19th July 2016. At that meeting he was informed that it had been exceptionally approved to include his wife and Daughter in his tenancy 'for application purposes only' and according to the HA, the Complainant fully understood that he would not be entitled to overcrowding points. A letter was sent to the Complainant on the 17th August 2016 explaining the decision and stating that although his wife and Daughter were not authorised to reside within his tenancy, he would be able to include them in his housing application for re-accommodation for a larger flat. The Ombudsman was provided with a copy of the letter.

The HA referred to a letter received from the Complainant in January 2022 explaining that his circumstances had changed and that his daughter had been living with him since 2019. The HA pointed out that the year did not coincide with the information the Complainant had provided to the Ombudsman which was that she had been living with him since 2016 [Ombudsman Note: 2019 refers to the year in which the wife left the Flat whilst the Daughter continued to live with the Complainant]. The HA also noted that the Complainant had informed them in that letter that Social Services had visited the Flat in order to submit a report of their living conditions to the Housing Allocation Committee ("HAC") but the HA stated that there was no report on file. The HA stated that the Complainant had an active application for larger accommodation since the 19th January 2018 and noted that on the 31st January 2022, HAC considered the Complainant's case and made no recommendation. It was agreed that he should wait his turn on the Housing Waiting List.

Regarding his Son, the HA stated that he had not been added to the Complainant's housing application and that he would be able to do so subject to eligibility and proof of one year's residence.

To finalise, the HA advised that they would be contacting the Complainant to arrange a meeting. In late July 2024, the HA advised that they would allow the Son use of the Flat's address in order to obtain the ID.

In early July 2024, the Ombudsman requested further information from the HA and this was received in late August 2024.

Regarding the HA's refusal to include the Son and Daughter in the Complainant's tenancy, the HA stated that the Complainant was residing at the Hostel and was allocated the Flat on the 9th July 2014 due to his position on the 2RKB Social List for Government Housing. The HA pointed out that the Complainant's application was solely for himself as he had no family members moving in with him to his Government tenancy.

On the 20th May 2015, the Complainant handed in an application for an exchange of accommodation, and according to the HA, that was where he first mentioned that his Son was also residing in the Flat. The application for the exchange was denied by the HA because the persons the Complainant wanted to exchange with would have been underhoused. The HA informed the Complainant of this by way of letter and a copy of this was provided to the Ombudsman.

A year later, May 2016, the HA received a request from the Complainant to include his Colombian wife and daughter into the tenancy. The HA stated that they liaised directly with CSRO on the matter. The outcome was that further documentation was required with respect to his wife and Daughter, and in particular, a permanent permit of residence for his wife. The HA stated that the Complainant was notified of this by letter dated 28th June 2016. Regarding the Son, the HA stated that the outcome was that he did not have authorisation to reside in the Flat. The Ombudsman was provided with a copy of said letter and noted that the latter information was not contained in the HA's letter.

In July 2016, the HA received another request from the Complainant for the same exchange. On this occasion, the HA denied the request because "…your Flat was offered to you under exceptional circumstances and therefore, is not available for exchange." The HA informed the Complainant of the refusal by way of letter dated 21st July 2016.

The HA continued by stating that on the 20th July 2016 the HA received an email from the CM's Office, subsequent to a meeting with the Complainant on the 19th July 2016, informing them that after careful consideration it had been exceptionally approved to include the wife and daughter in the tenancy for application purposes only in order to enable him to apply for larger accommodation. According to the HA, the CM's Office confirmed that the Complainant had fully understood that he would not be entitled to overcrowding points and HAC wrote to the Complainant informing him accordingly on the 17/8/2016. The Ombudsman was provided with a copy of that letter where the Complainant was also informed that his wife and Daughter were not authorised to reside within the tenancy. The Ombudsman noted that in that letter there was no reference to the Son nor any mention of not being entitled to overcrowding points. Notwithstanding, the copy provided to the Ombudsman of the CM's Office email to the HA, does refer to the Complainant having understood that he would not be entitled to overcrowding points.

Regarding Complaint 2, the HA explained that there had been further communication between the Complainant and the HA regarding the matter of the Son and Daughter's renewal of documents. The Complainant's case was forwarded to the Ministry for Housing and in order to facilitate the renewal of documents for his two children, the use of the Care of Address was approved in July 2024 and IDs issued for a one-year period. The HA stated that they believed the matter had therefore now been resolved.

In relation to Complaint 3, the HA stated that the Complainant had been made fully aware that overcrowding points would not be obtained. This was explained to him in 2016 by the CM's private secretary when it was exceptionally agreed that the HA should include both the Daughter and the wife in the tenancy for application purposes only. The HA noted that no instruction had ever been received with respect to an inclusion for the Son in the Complainant's application for larger accommodation.

The reason given by the HA to the Complainant for refusal of the exchange on the second occasion raised queries with the Ombudsman and in September 2024 she asked for a copy of the Complainant's tenancy agreement which was duly provided. The copy of the agreement was a 'License' for the Complainant to reside in the Flat. The agreement was not with the HA but with GRP Investments Company Limited ("GRP") a wholly owned Government company. The Ombudsman made further enquiries from the HA as follows:

1. The reason/s why the Flat was owned by GRP instead of the HA;
2. Figures on how many similar properties are owned by GRP;
3. Eligibility criteria for allocation of one of the properties owned by GRP;
4. A copy of the Complainant's housing application;
5. A copy of the minutes of the meeting at which the Housing Allocation Committee ("HAC") socially categorised the Complainant's application.

The initial responses from the HA to the above were as follows:

1. The flats in the Estate are managed by the HA as part of the Government housing stock but belong to GRP. Within the Estate there are tenants with different status, i.e. owners, tenants who rent from GRP and pay their monthly rent to GRP through the HA, and 'Option C' tenants who have a forty year 'mortgage' with Government whereby they pay monthly instalments and end up owning the property at the end of that term.
2. The HA did not understand the reason behind this query.
3. Eligibility criteria for allocation of one of the properties owned by GRP was in keeping with the standard criteria followed by the HA as per the Housing Allocation Scheme.
4. Not provided.
5. The minutes of HAC meetings cannot be divulged.

The Ombudsman pursued further details on the information provided as her queries had not been fully answered. In respect of Point 5, the Ombudsman referred the HA to Sections 13 & 17(1), 'Powers to Investigate' of the Public Services Ombudsman Act.

Due to senior management changes at the HA, a complete response to the Ombudsman's queries was delayed until January 2025 as follows:

1. The headlease of the Estate is in the name of GRP which is also Government owned.
2. All flats in the Estate are owned by GRP.
3. Query responded to.
4. The Complainant's file was cancelled in August 2014 due to the allocation of the Flat. Between five to seven years after cancellation, due to lack of space, files are put into storage. The HA advised that they were attempting to locate the Complainant's file but had been unable to do so. Unfortunately, the stores had suffered substantial water ingress and a number of files had been damaged.
5. Regarding the minutes of the HAC meeting, the HA stated that due to migration of their computer systems, and the time elapsed, they had not been able to locate the minutes.

In respect of Points 4 and 5 above, the Ombudsman contacted the HA to refer them to the fact that she had been provided with documentation from the Complainant's file and could therefore not understand how it was now the case that the file could not be found. The HA explained that the documentation requested dated back to later dates than the ones contained in the Complainant's current file.

Regarding the HA's reason for refusal for an exchange, on the second occasion that the Complainant requested this, the Ombudsman enquired whether there was a policy whereby applicants who are allocated flats due to 'exceptional circumstances' under discretionary provisions in Rule 14(b) of the Housing Allocation Scheme are barred from exchanges. The HA stated that there is no policy that stipulates the barring of exchanges under those discretionary provisions.

Conclusions

(i) The Complainant's Son and Daughter reside with him in the Flat but the HA have refused to include them in the tenancy – Partly Sustained

(ii) The fact that the Daughter and the Son are not included in the tenancy has deprived the family from obtaining overcrowding points to assist their application in the Government Housing Waiting List for larger accommodation – Partly Sustained

The HA stated that the Complainant's housing application was solely for himself as he had no family members moving in with him to his Government tenancy and that he was allocated the Flat, a 2RKB, via the Social List. The Ombudsman has not been provided with either a copy of the housing application to substantiate that the housing application was solely for him nor the minutes of the HAC meeting where the Complainant was socially categorized. Notwithstanding this, subsequent to the allocation, the Complainant's marital status changed and his Son and Daughter moved in with him.

The HA's position was that they could not fast track the allocation of a larger property but agreed to include his wife and Daughter in his application for larger accommodation and that they would have to wait their turn.

The Ombudsman partly sustains Complaint (i) due to the non-inclusion of the Daughter in the tenancy. The HA made the allocation in 2014 based on the Complainant's application which they claim was only for himself. Notwithstanding, the HA could not possibly restrict the Complainant to that status forever more. Any other Government tenant who subsequent to an allocation had married and had a child would have automatically had his wife and child included in the tenancy of the property because of the legitimate connections to the Complainant, substantiated by a marriage certificate with respect to the wife and a birth certificate with regards to the Daughter. The HA should therefore have included the Daughter and wife in the tenancy.

Complaint (i) is not sustained with respect to the Son as the Complainant has provided information whereby the son has come and gone from the Flat throughout the years. In this case, the HA have asked that the Son submit proof of one year's residency in order to be included in the Complainant's housing application for larger accommodation.

Regarding Complaint (ii), the Ombudsman partly sustains this. Not having included the Daughter in the tenancy has deprived them from obtaining overcrowding points to assist their application for larger accommodation.

The Ombudsman does not sustain Complaint (ii) with respect to the Son.

(iii) The HA allowed the Son to use the Complainant's address as a 'Care of Address' for the purpose of obtaining official documentation and being able to attend school in Gibraltar, but due to the introduction of the Property Register, the Complainant has been unable to renew his son's Identity Card ("ID") and realized the consequences of not having him included in the tenancy - Sustained

The Ombudsman sustains this complaint. When the Complainant put the issue to the HA in February 2024, his request for urgent assistance was in effect dismissed by a standard response. What should have happened was that the HA should have reviewed the Complainant's file, identified the particular circumstances of the case and from thereon provided the assistance required. It was only as a result of having lodged his complaint with the Ombudsman that the issue was resolved by the Ministry for Housing in liaison with CSRO. Notwithstanding the above, the HA, in the knowledge of the issues that the introduction of the Register would bring to persons in a similar situation to that of the Son, should have put the pertinent arrangements in place to prevent these situations.

<u>Ombudsman Comment:</u>

Although the matter of the exchange of accommodation was not part of the complaints submitted by the Complainant, it is an issue that has come to light as a result of the investigation and is clearly maladministration which has caused and continues to cause hardship to the Complainant and his Daughter. It is distressing that eight years ago the Complainant was deprived from exchanging his Flat for a two bedroom one which at that time would have served to accommodate him, his wife and Daughter. The fact that the HA have now confirmed that there is no policy in place that bars persons who have been allocated a flat under exceptional circumstances to exchange it, comes eight years too late for the Complainant and his Daughter who have throughout that time and to date,

endured cramped living conditions. All due to erroneous information having been given to the Complainant by the HA. Considering the aforementioned, the HA should actively assist the Complainant and his Daughter, to at the very least, find an adequate exchange in order to make amends for their failing over eight years ago.
Classification

Complaint (i) - The Complainant's Son and Daughter reside with him in the Flat but the HA have refused to include them in the tenancy – Partly Sustained

Complaint (ii) - The fact that the Daughter and the Son are not included in the tenancy has deprived the family from obtaining overcrowding points to assist their application in the Government Housing Waiting List for larger accommodation – Partly Sustained

Complaint (iii) - The HA allowed the Son to use the Complainant's address as a 'Care of Address' for the purpose of obtaining official documentation and being able to attend school in Gibraltar, but due to the introduction of the Property Register, the Complainant has been unable to renew his son's Identity Card ("ID") and realized the consequences of not having him included in the tenancy – Sustained

Recommendations

1. The Housing Authority should review the Complainant's case and include the Daughter in the tenancy, in order that their current living arrangements are accurately reflected and overcrowding points awarded retrospectively.

2. The Housing Authority should establish a policy vis a vis the implementation of the Property Register to cater for individuals who are not included in a Government tenancy but have been allowed the use of the address as a 'Care of Address'

Update

On the 21/5/2025, further to reading the Ombudsman's final draft report, the HA informed the Ombudsman as follows:

Regarding Recommendation 1, the HA's stance was that the Complainant never declared his Daughter when he applied for Government housing. Furthermore, the Complainant was made aware that his Daughter could not be included in the tenancy.

In respect of Recommendation 2, the HA stated that had already been tackled and a solution put in place months ago. The HA explained that due to the problem the Son and many other people had encountered in early 2024, the issue was tackled and a policy to assist was implemented. The Ministry for Housing approves care of addresses for individuals not included in a Government tenancy who may need to update their documentation. The problem arose as a result of the implementation of the Property Register by Land Property Services Limited.

The Ombudsman would continue to pursue the acceptance of Recommendation 1.

REPORT ON CASE NO 1285

Complaint against the Housing Department ("Housing") for not categorising the Complainant as a social case despite his homelessness; and for their failure to include him in the Pensioner's list.

Complaint

The Complainant was aggrieved due to the following:

1.He had been on the Housing Waiting List for fifteen years since January 2010 and more specifically, had been requesting to be placed on the Social A list since July 2022 further to adhering to a Notice to Quit from his landlord, yet he was never accepted as a social case.

2. He was categorised as an urgent case in the Medical A+ List in February 2023 as a result of his cancer diagnosis, yet he was informed a year later that there was another list with more priority; the Immediate List.

3.He requested to be placed on the Pensioner's List in January 2024 and was informed that he was not entitled to this.

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 seventy-seven-year-old gentleman had been privately renting while waiting for an allocation on the regular Housing Waiting List for fifteen years (since January 2010) and on the Medical A+ list for two years (since April 2023). According to him, he was finally placed on the Pensioner's List after much insistence, in January 2024, yet by August 2025, the Complainant continued to wait his turn for an allocation.

He alleged that the Housing Department had failed to respond adequately to his requests despite submitting the necessary documentation to support his case, both for the social category since July 2022 due to his homelessness and for a medical categorisation since December 2023 as a result of his cancer diagnosis.

The Complainant provided the Ombudsman with paperwork confirming that he was rendered effectively homeless and was currently residing with friends and relatives, and also shared medical documentation confirming a diagnosis of high-risk prostate cancer stating that at the time, he was undergoing radiotherapy and other treatments.

However, despite providing the required documentation, including a completed medical form, eviction details, and an updated care of address, he did not receive a formal decision regarding his status as a social case, and his request for medical categorisation was not processed with the urgency he believed his circumstances merited.

The Complainant lodged his complaint with the Ombudsman citing that he felt "totally ignored" despite submitting paperwork from his doctors and surgeons. "I have now completed my 28 sessions of radiotherapy treatment and will start my next treatment and still not heard from Housing Department. I am still finding it difficult living from day to day in friends and relatives' accommodation."

The Complainant urged the Ombudsman to consider his case and requested assistance in getting the Housing Department to review his position in the Housing waiting List.

Investigation

The Ombudsman accepted the complaint and in the first instance, reviewed all the correspondence provided by the Complainant including all his previous contacts with the Ombudsman's office in relation to Housing summarised below;

2021

The Complainant sent a letter to Housing dated 5th July requesting a review of his application because having been waiting his turn for a government allocation for eleven years since 2010, his position was pushed down, instead of progressing on the Waiting List. The Complainant informed Housing that at his seventy-six years of age, he was forced to stay in employment to afford his monthly rental in the private sector.

On the 27th September, two months later, the Complainant wrote to Housing once again expressing his dissatisfaction for not receiving a reply to his previous letter. In that same correspondence, he advised Housing that his private Landlord had now served him with a Notice to Quit and requested that Housing urgently review his position on the Waiting List in order to help mitigate his expected eviction in February 2022, the date by which he needed to comply with the Notice.

On the 14th October, the Complainant sought assistance from the Ombudsman. He was extremely worried about his impending homelessness and his letters to Housing remained unanswered. The Ombudsman intervened albeit at informal stages and resolved the matter of non-reply. Housing explained that the head of Allocations had been transferred out of the department which had caused delays in their response time. The Complainant was offered an apology and an appointment for a Social Interview which took place on the 22nd October. Housing assured the Ombudsman that the Complainant would have his application backdated to July of that year should he be included on the Social A List. The Complaint was settled informally and the Ombudsman closed the file.

2022

In July 2022, nine months later, the Complainant wrote to Housing again despite his several visits to the Housing counter to request verbal updates. He had been effectively homeless since February of that year and had not been contacted since his social interview had taken place. Housing acknowledged his letter and advised that the matter had been passed onto the Senior Management Support Team for consideration.

Two months elapsed without a response from Housing so the Complainant wrote again on the 12th September, this time requesting an update on whether Senior Management had considered his case and alerting Housing that his situation was now critical. His friend who had allowed him to stay in her home in Spain was now selling the property and he would have nowhere to stay as from the month of October. In his letter, he also updated Housing regarding his employment situation in that he had needed to give up his job. He stated that at 77 years of age, he was no longer able to stay in employment due to the physical nature of his work and the toll it was taking on his body.

On the 7th November, the Complainant chased Housing once again for a reply to his previous letters and informed them that he was now staying in Gibraltar with a friend for ease of access to GHA services.

Given that by the end of November, he continued to have no news of his application, the Complainant wrote to Housing again. He provided medical reports indicating that he was being investigated for High-Risk Prostate Cancer. He also provided them with a letter dated 28th November from his friend whom he had been residing with. In this letter, it was explained that since falling ill, the Complainant was staying in Gibraltar under his care, where the two shared a one-bedroom apartment. According to both the complainant and his friend, he was in "no shape to be travelling in and out of Spain" in his condition.

On the 8th December, given that he had still not received any correspondence from Housing, the Complainant sent them an urgent email requesting that they consider him an urgent medical case. He provided copies of medical letters confirming his cancer diagnosis and the imminent start of Radiotherapy as well as Chemotherapy treatments. In the same correspondence he also urged them to reconsider allocating him a one-bedroom apartment as opposed to a bedsit in order for his daughters to take it in turns to visit him from abroad to take care of him. He informed Housing that he would require attending St Bernard's Hospital at least three times a week for the treatments required and stressed that he would need support from his daughters.

Housing replied on the 12th December acknowledging his email and all the previous letters sent in November. They informed him that the GHA medical reports provided could not be accepted as they were considered internal reports and provided him with the correct Medical Form his doctor had to complete for the Housing Allocation Committee ("HAC") to consider him as a medical case. The Complainant was also asked at this point to provide an Eviction Notice and informed that his application had been "temporarily suspended" pending him providing an alternative address for his application.

The Complainant complied with Housing's requests and submitted the completed medical Form shortly after. A letter dated 5th January 2023 sent to the Complainant confirmed and acknowledged his application for medical categorisation and advised that further communication would be sent in due course.

On the 7th February, the complainant chased Housing for the outcome of his submission for medical categorisation.

On the 25th March, having still not heard from Housing in relation to the matter, the complainant contacted the Ombudsman once again.

Seeing as the Complainant was not being given the attention he required, the Ombudsman agreed to re-open the file.

In accordance with Ombudsman procedure and subsequent to the initial review of all relevant material referred to, the Ombudsman set out the complaint to Housing via email dated 5th April, providing a timeline of the complainant's attempts to resolve his homelessness since his eviction the previous year which left him homeless and, more recently, since his cancer diagnosis. Housing was also asked to comment on whether, 1. A social interview had been conducted? 2. Why had the Complainant not been considered a social case? 3. Why had he not had a reply to his request to be considered a Medical Case?

Housing replied to the Ombudsman's queries via email dated 14th April confirming that as a result of the social interview conducted on the 22nd October 2021, HAC had awarded the Complainant with 200 points. This outcome had not been communicated to the Complainant and to the Ombudsman's mind; was, not proportionate considering the Complainant's homelessness. He had no place of abode and relied on friends.

In the same correspondence, Housing confirmed that HAC had classified the Complainant as a Medical A+ during their meeting held on 27th January and according to them, had communicated this via letter dated 3rd February 2023, copy of which was made available to the ombudsman. In that letter, Housing informed the Complainant that "The medical list has four classifications, namely A+, A, B, C in order of priority. Applicants whose medical condition require an urgent allocation of Housing fall under the category A+". The Ombudsman thanked Housing for their responses and informed them that the Complainant had not received their letter. The Ombudsman was able to provide the Complainant with a copy and also provided Housing with an explanation of the circumstances in relation to the Complainant's eviction whereby, he had left his rented home when served with a Notice to Quit by his former landlord. The Complainant was therefore not in possession of a Notice to Quit.

The Ombudsman also relayed the Complainant's wish to continue receiving letters at his previous address given that the new tenant of the flat had agreed to pass on his correspondence. Housing requested that the Complainant seek written permission from the tenant as per usual administrative practice.

On the 21st April, the Complainant provided Housing with a letter from the friend he was now staying with in order to update his address. Housing acknowledged receipt on the 25th April informing him that further communication would be sent. On the 25th May, the Complainant received further communication advising him that the department had accepted his change of address for 'Application Purposes Only' and that the changes had been reflected on the Housing Database.

By November, seeing that he had still not had an allocation or any contact from Housing despite being informed that he was in the most urgent medical list for almost a year, the Complainant sought a meeting with the Minister for Housing. His request was accepted and he was subsequently informed via letter dated 19th December that a meeting would be scheduled.

2024

In January 2024, the Complainant received his yearly review letter as do all Housing applicants on the anniversary of their initial application date. In this letter, he was informed that his case had been reassessed for the reasons stated below and it had been awarded 9370 points as shown below for a 1RKB flat;

Social Points – 200
Medical Points - 0
Personal (to applicant) 50
Personal (sharing accommodation with one or more family) 100
Overcrowding (every room used for sleeping purposes) 0
Overcrowding (Points per square feet remaining after ca) 0
Mixing of Sexes (2 > 5, 1 or 2 > 10) 0
Mixing of Sexes (2 > 10, 1 or 2 >15) 0
Waiting Time 7800
End of qualifying period 100
Dampness (slight) 0
Dampness (medium) 30
Dampness (heavy) 0
Inadequate natural lighting and ventilation 0
No individual WC 0
No Kitchen 0
No bathroom 0
Annual Sanitary Points 90
Discretionary Points 100.

Desperate that he had been waiting for an allocation from Housing for a total of fourteen years, coupled with the fact that he had also been on the most urgent list, i.e. the A+ List for a full year due to his ill-health, the Complainant urged the staff at the Housing counters to reassess his situation once again.

To his surprise, the counter staff advised him to complete another Medical Form. They explained to him that his case could still be reconsidered on a higher category than his A+ status, the Immediate List.

The Complainant urgently sought guidance from the Ombudsman on the matter. As far as the correspondence he had received from Housing was concerned, he believed he had been placed in the highest category in the Housing List a year earlier.

A telephone conversation between the Ombudsman and Housing confirmed that indeed the Complainant had been advised to complete another medical form in order to be considered on the Immediate List, a higher list than the Medical A+ List. The Ombudsman requested more information via email dated 24th January. In the same correspondence, Housing was asked whether they would be amending the wording on their template regarding the A+ List which implied that this was the highest list for all medical cases, when in reality, it was the Immediate List. It was important for the Ombudsman that service users' expectations were managed in this regard. As it stood, the Complainant had believed he was in the highest list for a full year and although he continued to struggle as a result of not having his own space while receiving cancer treatments, he accepted that he simply had to wait his turn.

In the same correspondence, the Ombudsman also relayed the Complainant's wish to be placed on the Pensioners List. As far as the Ombudsman had been aware, Pensioner's flats were only offered to service users returning a government flat to the Housing stock. However, during the verbal exchange regarding the Complainant's condition earlier that day, the Ombudsman was given information indicating that, despite not having a property to return to the Housing stock, the Pensioners List, was also an avenue available to the Complainant. Housing acknowledged the request via email dated 24th January 2024 and shared a letter sent to the Complainant acknowledging his application for Medical Categorisation.

By April, the Complainant continued to wait for an outcome regarding his new medical categorisation. The Ombudsman contacted Housing via email dated 18th April. The Ombudsman also chased the outstanding matter of whether Housing had considered updating their template and specifically the wording that indicated that the A+ List was the most urgent list in order to manage service user's expectations.

On the 22nd May, Housing shared a letter dated 5th February 2024 which the Complainant had once again not received. In the letter, Housing confirmed that "The Housing Allocation Committee had thoroughly reviewed [his] case and has made no further medical recommendation. In these circumstances, the Housing Authority agrees with the previous recommendation of the Housing Allocation Committee and your application status remains as Medical A+".

Aside from the above, on the 30th May, the Ombudsman received confirmation from Housing that the Complainant had indeed been placed on the Pensioners List in January of that year. The Ombudsman responded to Housing's email seeking further information in order to both manage the Complainant's expectations of an allocation through this list as well as for general information and publication. The questions asked were; 1. What was the criteria used for the Pensioner's List?2. How are applicants made aware of the possibility of requesting to be placed on this list? 3. What is the average waiting time for an allocation to a Pensioner's flat?

The responses received from Housing were;1. Applicants needed to be of Pensionable age and in possession of a government flat to exchange. 2. Applicants approached Housing to be considered for this list. It was also confirmed that there was no standard letter sent to tenants informing them of this list. 3. It was impossible to provide average waiting times as "it is dependent on various factors occurring" No further information was provided in this instance.

The Ombudsman could not reconcile the information received with the Complainant's circumstances. On the one hand, Housing's (policy) was that an applicant needed to release a government flat in order to be placed on the pensioners list yet on the other hand, the Complainant had been placed on this list while he was essentially homeless with no government flat to exchange.

On the 16th September, upon review of the case, the Ombudsman requested an update regarding the Complainant's position on all lists, namely the Normal Waiting List, the Medical A+ List and the Pensioner's List. In their response the very next day, Housing apologised for the oversight and misinformation provided three months earlier and explained that the Complainant had not actually been placed in the Pensioner's List as they had confirmed in their email dated 30th May. They clarified that in order to be on the Pensioner's List, users must be in the position to return a government flat to Housing's rental stock, and the Complainant was not. Housing informed the Ombudsman that the status of the Complainant's application was; 29th on the 1RKB List and 32nd on the Medical A+ List. The complainant continued to wait his turn on both lists. In the meantime, he continued to receive medical care for his cancer and continued to rely on the goodwill of his friends for accommodation. He was now eighty years old.

Conclusion

The Ombudsman expressed her utter dismay at what this elderly Complainant had endured since first reporting his scheduled eviction in September 2021 and after he had to leave his private rental in February 2022. Despite the social interview taking place prior to the Complainant finding himself homeless, it appears that Housing had failed to consider the Complainant's change of circumstances and had not reassessed his situation after eviction despite him continuously alerting them that his homelessness was an impending reality. The Ombudsman's view was that he should have been placed on the Social-A List after February 2022. As it stood, the Complainant's homelessness was never formally acknowledged which resulted in him only being awarded 200 social points on the General Waiting List.

Subsequent to the Ombudsman's intervention the Complainant was provided further information regarding the status of his application and copies of letters which he had never received, yet, according to Housing, they had been sent. The Ombudsman was dissatisfied with the lack of good administrative practice suffered by the Complainant. He should have been kept informed and updated as to the progress of the outcome of HAC's deliberations on his case and ultimately his position generally.

Regarding the temporary suspension of the Complainant's application in December 2022, the Ombudsman found this step unnecessary and lacking in empathy from the part of Housing, especially given the Complainant's dire health condition and his extensive correspondence keeping them abreast of his situation. Despite the need for rigorous checks by Housing, the Ombudsman considered this move as tough administrative practice towards a service user who had patiently waited his turn on the list for many years.

The Ombudsman sustained this case against the Housing Department who, as the entity tasked with the administration of the public housing stock, had dismally failed the Complainant.

Classification

Sustained

Recommendation

None made

Update (1)

In August 2025, almost sixteen years after he initially applied to the Housing General List and two and half years after applying for medical categorisation, the Ombudsman welcomed the news that the Complainant had been offered an allocation at a Pensioner's flat to accommodate his needs.

Update (2)

In January 2026, the Complainant sought the Ombudsman's assistance once again. On this occasion, he provided a letter dated 7th January 2026 in which he requested that his partner of approximately forty years be added to his newly allocated tenancy agreement, notwithstanding that they were not married. "I write, however, with deep respect and some personal distress regarding the decision not to authorise my partner of 40 years, to reside with me". This was the first disclosure that the Complainant was not living alone. Throughout the investigation, the Ombudsman had proceeded on the basis of the Complainant's earlier representations that he was without family support and reliant on the care and hospitality of friends. The Ombudsman had been provided a copy of a letter dated 28th November 2022 where "at the present time, he is under my care sharing my one-bedroom apartment awaiting rental government accommodation". The Ombudsman was disappointed to learn that these representations were misleading and had resulted in a misunderstanding of his personal circumstances.

This late disclosure of material information has clarified that the concerns raised regarding his "social categorisation" would not have been sustained by the Ombudsman had the full circumstances been known from the outset. In this context, the Ombudsman notes the long-established equitable principle that he who seeks equity must come with clean hands, and considers that the omission of relevant facts substantially affected the assessment of this aspect of the complaint.

In recognition of this oversight, the Ombudsman contacted the Principal Housing Officer to clarify the position and apologised for any misunderstanding arising from the misleading information originally provided which led to the Ombudsman erroneously sustaining the complaint regarding Housing's refusal to categorise him as a social case.

For completeness, the Ombudsman confirms that this clarification does not affect the Complainant's entitlement to his accommodation. His allocation was made on the basis of his medical needs, and the Ombudsman is satisfied that he should retain his tenancy on those grounds. However, the Ombudsman acknowledges that the Complainant should not have been accepted as a social case, notwithstanding her earlier view on this matter.

REPORT ON CASE NO 1289

Complaint against the Housing Authority ("Housing") regarding the Complainant's categorisation on the Housing Waiting List, the absence of a timely social inquiry report, and the lack of explanations provided by the Housing Allocation Committee (HAC) regarding its decisions.

Complaint

The Complainant was aggrieved due to the following:

1. Despite declaring that he had no fixed address and including his three children in his application for government housing in April 2020, he was placed on the 1RKB list rather than the 4RKB list or the Social A list where homeless cases are categorised.

2. A letter sent to him by Housing dated 24th April 2023 was considered dismissive, as it did not afford him the opportunity for a social inquiry report, contrary to standard practice. The same letter lacked reasons for the HAC's decision not to consider him homeless.

3. Following Action for Housing's intervention in February 2023, a social inquiry report was commissioned, but on 5th February 2024 HAC made no social recommendation and advised that his application should follow the standard procedure.

4. Action for Housing wrote again on 4th March 2024 reminding Housing that no explanation had been given, but no substantive reply was received.

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

The Complainant, a divorced father of three children, left the matrimonial home after his marriage broke down five years ago. He initially lived with his brother in Spain until he was required to move out after his brother got married. He explained that as a result, he was temporarily residing in a spare room at a friend's house in Spain and therefore considered himself homeless, citing his inability to afford private rental accommodation in Gibraltar due to a monthly maintenance payment of £800 to his ex-wife.

In April 2020, he submitted an application to Housing for government accommodation. Despite including his children in the application, he was placed on the standard 1RKB list rather than the 4RKB list or the Social A list.

In February 2023, he sought help from Action for Housing. Following initial representations, Action for Housing decided to correspond formally on the matter. On 20th September 2023, they wrote to Housing raising concerns about the handling of the Complainant's

case. They noted that the letter of 24th April 2023 was dismissive, lacked reasons, and failed to afford the Complainant a social inquiry report.

Following this intervention, Housing agreed on 3rd October 2023 to commission a social inquiry report. On 5th February 2024, the Complainant was informed that HAC had deliberated on the Complainant's inquiry report and had made no social recommendation. He was advised that his application should follow the standard route in the 1RKB list.

On 4th March 2024, Action for Housing wrote again reminding Housing that no explanations had been provided as to why they had not categorised him as homeless. This letter was acknowledged but no substantive reply was received.

Given that their efforts were not yielding any meaningful results for the Complainant, Action for Housing lodged a formal complaint with the Ombudsman on 29th May 2024, citing concerns that Housing's lack of transparency amounted to administrative malpractice, given that public services should be open and accountable.

Seeing as these were core values outlined in the Venice Principles of Good Administration which the Gibraltar Public Services Ombudsman has been promoting and encouraging public services to do so locally since 2009, she accepted the complaint.

Investigation

In accordance with Ombudsman procedure and subsequent to the initial review of all relevant material referred to, the Ombudsman set out the complaint to Housing via email dated 29th May 2024, providing a timeline of the complainant's attempts to resolve his homelessness since his divorce.

The Ombudsman was initially informed that HAC had discussed the Complainant's case in January 2024 and that no social recommendation had been made. Housing had also received an appeal from Action for Housing and informed the Ombudsman that as a result of this letter, an updated social inquiry report was requested.

On the 28th August 2024, seeing as no tangible replies had been afforded to the Ombudsman, the case was escalated to Formal Investigations and a letter issued to the Principal Housing Officer. It was at this point that the Ombudsman began a detailed review of the Housing Allocation Scheme, the Complainant's file, and Housing's responses.

On 2nd October 2024, Housing replied to the Ombudsman's queries. They stated that a social inquiry report had been prepared in December 2023 and presented to HAC, but that cases could not be re-presented until six months have elapsed. When revisited in May 2024, HAC requested an updated report. Housing therefore argued that Action for Housing's intervention was not a "reminder" but a recommendation to update the report. Housing further stated that HAC was not required to provide reasons for its decisions and that the Complainant had not submitted legal documentation to prove shared care of his children. In the absence of such proof, he was placed on the 1RKB list.

On 3rd October 2024, Housing amended its earlier response to the Ombudsman, clarifying that while Action for Housing's letter of 4th March 2024 had not received a formal reply, the matter had been addressed through ongoing meetings.

On 14th October 2024, the Ombudsman expressed concern that HAC had deliberated on the Complainant's case in April 2023 without a social report. The Ombudsman noted that the first such report was only prepared in December 2023, following Action for Housing's intervention. The Ombudsman further commented that, while not a legal obligation, providing reasons for HAC's decision would have constituted good administrative practice in the interest of fairness and transparency.

On 22nd October 2024, Housing reiterated that HAC's decisions were not accompanied by reasons and that the Complainant had still not provided legal proof of shared care. The Complainant had only provided a copy of the divorce where there were no separate court orders for his children and he had subsequently been unable to provide an affidavit as requested by Housing given that his ex-wife refused to assist him with this request.

On 16th January 2025, the Ombudsman requested a copy of the social report deliberated on by HAC in November 2024, an update on the Complainant's position on the Housing list, and clarification regarding the alleged reply to Action for Housing.

On 17th January 2025, Housing provided the requested social report and confirmed that HAC had again made no social recommendation. However, the Complainant had been awarded 1,000 discretionary points, placing him at position 587 on the 1RKB list. He had been in position 925 in April 2024. Housing reiterated and maintained that HAC did not disclose reasons for social list decisions to avoid incentivising applicants to manipulate their circumstances.

The Ombudsman noted that while Housing cited justifications in line with the protection of government rental stock, the lack of transparency and formal communication had contributed to the Complainant's sense of exclusion and confusion throughout the process and was indeed not good administrative practice.

Conclusions

The Ombudsman expressed concern at the manner in which the Complainant's application was handled by Housing, particularly in relation to the absence of a social inquiry report at the time of HAC's initial deliberation in April 2023. The Ombudsman found that the case was first considered without the benefit of a social report, and that such a report was only commissioned following Action for Housing's intervention.

The Ombudsman acknowledged Housing's position that HAC was not legally required to provide reasons for its decisions. However, the Ombudsman maintained that the absence of any explanation for HAC's refusal to make a social recommendation fell short of the standards of fairness, transparency, and accountability expected of a public body.

The Ombudsman was also concerned by the lack of formal response to Action for Housing's letter dated 4th March 2024. While Housing cited verbal updates and monthly meetings as sufficient, the Ombudsman considered that a formal written reply was warranted, particularly given the seriousness of the issues raised.

Regarding the Complainant's family composition, the Ombudsman noted Housing's requirement for legal documentation to support claims of shared care. The Ombudsman understood and agreed with this requirement; however, she felt that the reason for refusal needed to have been formally communicated to the Complainant in writing.

The Ombudsman also reviewed the Housing Allocation Scheme and noted the distinct role of HAC in assessing social need. According to the Scheme, HAC is empowered to examine social reports prepared by the Department of Social Services and either award social points (up to a maximum of 200) or recommend placement on a Social Category List. The Ombudsman noted that the 1,000 discretionary points awarded to the Complainant were not issued by HAC under this framework, but rather through a separate administrative mechanism. This distinction is significant, as it suggests that while the Complainant's circumstances were acknowledged to some extent, they were not formally recognised under the established social categorisation process and the current Housing Allocation Scheme. The Ombudsman continued to ask Housing for clarification on the point system. Noting her comments in her 2024 report, whereby there is no mechanism for the award of 1000 discretionary points on the recommendation of the Minister for Housing. Indeed, to date, the Ombudsman is not aware that the Housing Allocation Scheme (Revised 1994) has been amended to reflect this.

Classification

Sustained

Recommendation

The Ombudsman recommended that Housing consider adopting a practice of providing brief, non-prejudicial explanations for HAC decisions, where appropriate, in the interest of fairness and transparency.

Ombudsman Note

In April 2025, Action for Housing lodged a further complaint against Housing citing that they had been making representations on behalf of an elderly lady since November 2023. Despite not having her own home, Housing refused to categorise her as homeless. As with the Complainant in this case, HAC did not give any reasons for its refusal to socially categorise her despite numerous requests.

The Ombudsman has previously made it clear how she considers the lack of explanations to be unacceptable and unfair, hence the Recommendation contained at the conclusion of the main body of this report.

Since the completion of this report, the Housing Allocation Rules 2026 have been published which now supersedes the Housing Allocation Scheme (1994).

There is now a formal mechanism under which HAC can award 1000 discretionary points.

REPORT ON CASE NO 1293

Complaint against the Housing Authority ("HA") for having refused the Complainant's application for Government Housing, pursuant to Clause 5(d) of the Housing Allocation Scheme ("HAS"), despite the Complainant having affirmed that she had never been a homeowner.

Complaint

The Complainant was aggrieved because the HA had refused her application for Government Housing, pursuant to Clause 5(d) of the HAS, despite the Complainant affirming that she had never been a homeowner.

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].

As a child, the Complainant lived in care until 2004 at which time she turned 18 and was allocated a Government rented property ("Flat"). In 2012 she moved in with her husband ("Husband") and their son into his privately owned property ("Property") and she handed the Flat back to the HA. When the couple separated in February 2019 the Complainant remained in the Property until February 2021 when the financial agreement was finalised. She received £70,000- from the Husband which she stated was a goodwill gesture from him and which would partly go towards payment for a private rental whilst she waited for an allocation from the HA. The Complainant highlighted that the monies were not proceeds from the sale of the Property as that was not sold until a number of years after they divorced.

The Complainant stated that since leaving the Property she had spent approximately £40,000- in rent (up to December 2024) from those monies. She also referred the Ombudsman to the fact that her financial circumstances had been further impacted in 2023 when she became unemployed due to not being able to work as a consequence of suffering from depression, anxiety and psychotic episodes and in 2024 had to be admitted to Ocean Views Mental Health Facility ("OV") for a period of thirteen weeks. At the present time, the Complainant has a part time job in the Government's supported employment scheme ("Scheme") and is living at a friend's house.

Subsequent to the breakdown of the marriage, the Complainant applied to the HA for Government rented accommodation. In June 2024, after being discharged from OV and contacting the HA for an update, she found out that her housing application ("Application") had been refused because the HA deemed that she had been a homeowner. The Complainant asked the HA to confirm their decision in writing. The HA provided a copy of the letter they had sent to her in May 2024 (addressed to OV as she was a patient there at the time) which was returned to the HA by the Royal Gibraltar Post Office because it was insufficiently addressed [Ombudsman Note: The letter stated the Complainant's name, Ocean Views, Gibraltar. 53 Europa Road had been omitted]. The letter referred to Clause 5d of the Housing Allocation Scheme ("HAS") which reads as follows:

'People who have been homeowners and have chosen to sell their homes shall not be entitled to go on the public waiting list unless, in the judgement of the Housing Allocation Committee, the sale was genuinely necessary or there is some justification for being admitted. No other person shall be allowed to earn 'overcrowding points' when people move into his home after having sold their own home, unless the Housing Allocation Committee rule that the sale was genuinely necessary.'

The Complainant appealed the decision. She claimed she had never been a homeowner and to substantiate this, provided the HA with a copy of the deeds of the Property.

Regarding the £70,000.00 received from her Husband, the Complainant reiterated that that was a goodwill gesture from him in order that she could rent a place after leaving the Property.

The HA stood by their decision and refused to accept the Complainant's Application.

In June 2024, the Complainant lodged her complaint with the Ombudsman.

Investigation

The Ombudsman presented the complaint to the HA.

The HA's initial response referred the Ombudsman to Clause 5d of the HAS, as set out in the Background Section of this report, as being the reason for the refusal of the Application. Regarding the Complainant's position that she had never been a homeowner officially on the deeds of the Property, the HA stated that she had married the Husband in 2012 which meant that she '…automatically gained an invested interest in the Property…'. She became a 'home co-owner' and the Property became a matrimonial asset.

The HA further referred the Ombudsman to the Financial Agreement ("FA") signed by the Complainant and the Husband on the 10th February 2021 and quoted the following clause, Page 2 paragraph 1 (set out below exactly as provided by HA):

'The Former Husband shall pay to the Former Wife the sum of £70,000 ("the payment") in full and final settlement of all and any interest she may have in the former matrimonial home namely [address provided] ("the Property") subject to and in accordance with the following terms…'

And continued on to Paragraph 5 on Page 4 as follows:

'The Parties hereby agree that the matrimonial assets have been evenly and equitably distrusted [typo: distributed] between them and this represents a full and final settlement between them...'

On the basis of the above, the HA concluded that the Complainant had been apportioned £70,000- in the marital separation in a final settlement of all and any interest in the Property.

The Ombudsman is aware that the HA have a policy in place whereby a homeowner who has sold their property and made a profit of £60,000- or over (until recently £50,000-), will have their application for Government housing refused. Notwithstanding, as a result of the recommendations in the Ombudsman's Report 1263 and the new senior management of the HA since late 2023, the HA are now assessing and carefully considering applications from previous homeowners on its own individual merits and not in accordance with a blanket/policy criteria. The Ombudsman would pursue this avenue with the HA but first sought to challenge the HA's position that the Complainant had been a homeowner.

The Ombudsman requested a copy of the FA from the Complainant which was duly provided. On reviewing the document, the Ombudsman noted that it was under the heading, 'Former Matrimonial Home' in Point 1 that reference to the £70,000- payment was made. The four other points under that section had to do with the Property having been left in a good state and all bills having been settled during the time that the Complainant resided there after the marriage breakdown until vacating the Property.

The Ombudsman identified that Paragraph 5 on Page 4 (part of which had been quoted by the HA) continued as follows:

'…and furthermore, neither party shall from now on make any financial claims whatsoever as against the other in any respect. For the avoidance of doubt this includes the respective pensions and gratuities of each party and any liabilities owed by either party.'

It was the Ombudsman's view that the above statement signified that the sum received by the Complainant in full and final settlement also took pensions and gratuities of both parties into account.

In order to substantiate that the Property's sole owner was the Husband, the Ombudsman requested copies of the Property Deeds from the Complainant and this was duly corroborated. The Husband had bought the Property in 2009 with his previous partner. By Deed of Assignment, he became the sole owner in May 2013 by which time he and the Complainant were married. Notwithstanding, it was the Ombudsman's view that the HA could not automatically deem the Complainant to be a co-owner of the Property due to being married, as financial arrangements in each marriage will vary. In fact, had it been the case that the Complainant was a co-owner of the Property, either the sale of the Property or a valuation would have taken place prior to the completion of the FA and the Complainant would have in all probability received a higher sum.

The Ombudsman met with the HA on the 26th February 2025 to discuss this case, amongst others, and provided the HA with the information the Complainant had submitted to her during the investigation, i.e. having been in care as a child, her recent mental health issues and current employment situation as well as the private rental costs she had paid since leaving the matrimonial home. The Ombudsman requested that the HA resubmit the Application and include this new information for HAC to reconsider their decision. The HA reverted and informed the Ombudsman that the Complainant's Application had been refused by HAC on the basis of Clause 5(d) of the HAS and they could not overturn the decision. Notwithstanding, they would present the case again to HAC with the information that the Ombudsman had provided.

On the 22nd April 2025, the HA informed the Ombudsman that after deliberating the Complainant's case HAC had agreed to reinstate her Application and it would be backdated to when she first applied. They stated that they would contact the Complainant to inform her of the decision and would then follow up with an official letter.

On the 6th May 2025, the Complainant emailed the Ombudsman to thank her and her team as she had received a call from the HA to tell her that they had accepted her Application. She advised that she had to decline the offer as her circumstances had now changed. She had married and was living with her husband so would not qualify for Government housing at this time.

The Ombudsman was taken aback at the turn of events in the Complainant's circumstances in the space of three and a half months since they had last communicated but nevertheless wished the Complainant well. Notwithstanding, the Complainant should have informed the Ombudsman of the change in her circumstances in order that the investigation would have been discontinued and the work hours invested in this case by all parties put towards assisting other individuals.

Conclusions

The Ombudsman sustained this complaint.

Based on a paragraph contained in the FA, the HA deemed that the Complainant had been a homeowner and that the £70,000- she had received was in settlement of her part in the Property. On the basis of Clause 5(d) in the HAS and also in applying their blanket policy, that any homeowner who made a profit of £60,000- or over would not be eligible to apply for Government housing, contrary to the recommendations made in the Ombudsman's Case 1263 and the stance taken by the HA's new senior management whereby they are now assessing and carefully considering applications from previous homeowners on its own individual merits and not in accordance with a blanket/policy criteria, the Complainant's Application was refused.

Notwithstanding the above, the Complainant argued that she had never been a homeowner which was substantiated by the fact that she was not listed as such in the Property Deeds. Furthermore, it was the Ombudsman's view that had she been a co-owner the settlement would have been substantially higher. Also, Paragraph 5 on Page 4 of the FA makes reference to no further claims being made from either party including pensions and gratuities and would further substantiate that the monies received by the Complainant, had taken these assets into account.

It was as a result of the Ombudsman's investigation into this case that the HA agreed to put the information provided by her to HAC for them to consider the Complainant's Application a second time. The HA maintained their decision that the Complainant had been a homeowner but, on this occasion, took the Complainant's circumstances and current situation into account and agreed to accept the Application.

The Complainant had no choice other than to move out of the Property because of the marriage breakdown and in the space of over four years had spent more than half of the monies she received from the FA in rentals. She had also been unable to work for a substantial period of time so the remaining funds she was using for living expenses. Furthermore, the Complainant's financial position was not strong as she was in part time employment under the Government's supported employment scheme.

The Ombudsman takes the opportunity of raising the fact that although the HAS is frequently referred to and cited by the HA as it sets out eligibility criteria, policies and rules with respect to housing applications it is a document that the HA do not provide the service user with nor is it published. The HA only provide the service user with the pertinent clause they are referring to, leaving the service user at a loss to challenge. The Ombudsman has in the past two decades highlighted this matter and in recent years been told by the HA that once the new Housing Act is in place the HAS will be made public but years on, the situation remains unchanged.

Classification

Sustained - The HA refused the Complainant's application for Government Housing, pursuant to Clause 5(d) of the Housing Allocation Scheme ("HAS"), despite the Complainant having affirmed that she had never been a homeowner.

Recommendations

None Made.

REPORT ON CASE NO 1294

Complaint against the Housing Department ("Housing") in relation to the state of the flat from Government Housing stock which had been allocated to the Complainant after his release from HM prison.

Complaint

The Complainant was unhappy with his flat allocation and had not moved in at the time of lodging his complaint with the Ombudsman. He complained that the property was in an undesirable area (Flat Bastion Road) and not habitable. He understood the consequences of accepting the allocation and having signed the relevant licence agreement, but despite that, he complained that his subsequent appeal for another allocation, in a different area of Gibraltar, had been refused outright by Housing without any consideration by the Housing allocation committee ("HAC").

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

The Complainant had been a tenant (by way of Licence) of a Government Housing stock property within a residential estate in the north district, since 2018. He then began to serve a medium-term custodial sentence at HM Prison in Gibraltar, thereby leaving the flat vacant.

In March 2020, whilst incarcerated, Housing wrote to the Complainant referring him to a clause in his Licence Agreement whereby; after issuing the appropriate Notice, they could re-enter and take possession of the premises at any given time. On that basis, Housing made the Complainant a without prejudice offer of a suitable 1RKB flat ("the Flat") upon his release from prison, subject to him relinquishing any rights over the current dwelling, and handing the property back voluntarily, by signing a "termination form".

The offer was accepted by the Complainant and communicated in writing to Housing by the Prison Superintendent. A month later, Housing wrote to the Complainant again, reaffirming their commitment to offer him a suitable 1RKB as soon as reasonably practicable upon his release. They stated that they required notification of his forecasted release date for that purpose. In addition, the small matter of outstanding arrears in the amount of £8.77 would have to be settled "with immediate effect", for the offer of re-housing upon release, to remain valid.

Some time elapsed and the Complainant completed his sentence. He contacted Housing for the purposes of the re-allocation promised. An offer was made around June 2024. Given that during the period of release from prison and the offer of reallocation, the Complainant had been sleeping on a sofa, he accepted out of need. He signed a Licence Agreement, on the 9th July 2024.

The Complainant became unhappy with the state and location of the Flat and made unsuccessful attempts for Housing to consider an alternative offer. As a result, he saw fit to lodge a complaint with the Office of the Ombudsman. He was of the view that he had surrendered a perfectly adequate property whilst serving his sentence and that the Flat was unfit for purpose in its current state and location (an area allegedly known for delinquency and drug use). Therefore, his view was that Housing had in fact, not offered a "suitable" property as previously stated in writing.

The Complainant wrote to Housing shortly after the allocation, stating that the flat which he had previously surrendered (a 2RKB) was furnished at the time, whereas the flat allocated now was "bare". He stated how he had no income to make it habitable. In addition, and more significantly, the Complainant expressed deep concern about the location; an area plagued with ex offenders' and drug users. He felt the environment was "unsafe" and detrimental to his well-being, particularly since it was also documented that he struggled with mental health issues which he was doing his best to manage, with medical and charitable support (letters provided). He said that "… had I known that this was going to be my [place of residence], I would not have given up my [previous] flat."

The Complainant also provided a medical letter stating that despite having succumbed to alcohol and drug abuse in the past, the Complainant had remained clean for 5 years (whilst in prison) and that he had expressed concern that living in this new area would set him back and cause him to start "using" again. ……"he has done well to stay off alcohol and drugs for 5 years and is working hard to address his depression. I feel that housing him in this environment will be setting him up to fail in staying clean and well."

Housing replied to the Complainant's petition for a reallocation stating that they were unable to adhere to his request, since the Flat had been previously approved by the Gibraltar Public Protection Unit ("GPPP"). They also confirmed the previous property which had been surrendered was not furnished. [The Ombudsman could not reconcile how the surrendered flat would have been unfurnished if the Complainant had been living there prior to being incarcerated].

Although Housing did express sympathy with the Complainants request, they said there was "little they could do". His concerns however, had been passed on to his "Offender manager".

The Complainant opined he was being treated unfairly and as a result, lodged his complaint with the Office of the Ombudsman in August 2024.

Investigation

[The Ombudsman Investigator with responsibility for drafting this report, familiarised himself with the Complainant's personal circumstances, background and the sensitive nature of the offences (sexual) for which the Complainant had been convicted and sentenced].

A letter presenting complaint was issued to Housing by the Ombudsman on 22nd October 2024.

The letter set out the complaint, stating (as Housing had already been made aware by the Complainant), that he was dissatisfied with his allocation since the Flat was located in an area which the Complainant (supported by medical opinion) considered counter-productive to his recovery and rehabilitation. Additionally, he had not moved in yet since the Flat was not "habitable" i.e., basic fittings such as kitchen units, worktop, boiler, shower head etc. had not been fitted. The Ombudsman pointed out that although the Complainant understood that he had already signed a licence agreement and that as a consequence, he had accepted the allocation (although in conference with the Ombudsman, the Complainant admitted he only signed because he was desperate to secure a dwelling), the Ombudsman queried why his appeal for another reallocation in a different area, had not been forwarded for consideration by the Housing Allocation Committee ("HAC").

The Ombudsman also stated that she understood that on the 18th July 2024, the Complainant wrote to the Housing manager expressing his discontent and his view as to why the Flat was unsuitable for him:

(1) The Flat was located in an area where he felt unsafe; a known anti-social area

(2) He was concerned for his mental wellbeing because it is a well-known area for social cases with whom he used to associate with in the past. Having spent five years in prison, he did not want to relapse.

(3) The area was notorious for substance abuse. He would not like to be placed in a position where he has easy access to alcohol and drugs.

The Ombudsman noted Housing's reply (as set out in the "Background" section of this report, informing the Complainant that "…….we are unable to adhere to your request for an exchange of property area, as this has been approved by the GPPP (Public protection Unit)".

The Ombudsman asked for an explanation as to why the Complainants request for re-consideration of another housing stock flat was not referred to HAC for their determination. The Ombudsman referred to a conversation with the GPPP's team manager, where she understood the procedure as being that Housing contacts the GPPP when an allocation is identified and asks if a particular property is suitable for an ex-offender. In the case of the complainant, they agreed that the specific Flat Housing had identified did not breach his Offender Order. Why then, was the Complainant not allowed to undergo the ordinary appeals process and ask HAC to consider an alternative property, based upon the concerns set out by him to the Housing manager on the 18th July 2024?

It is misleading for Housing to say that the Flat had been approved by GPPP for the Complainant's use when in fact- it was the only property presented for consideration. Further, in a meeting held between the Deputy Ombudsman and a Multi-Agency Public Protection Arrangements ("MAAPA") Coordinator, it was confirmed that when Housing presents a property for consideration- it is always approved.

Housing replied to the Ombudsman promptly.

In their reply, Housing stated that the allegation that the Flat was not habitable was "a lie". The Flat, they said, had been "fully refurbished" prior to handover and therefore, was "in a habitable state." (It came to light at a later date that the Complainant had in fact, not been "lying")

The allegation that the area was "anti-social" was also dismissed by Housing. There are many families in the area and the area is as anti-social as any other area in Gibraltar. There are social cases all over Gibraltar and the area is not well known for "social cases" as the Complainant is claiming. Gibraltar is very small; there are social cases all over and it is unfair to single out this area in particular."

The Ombudsman found Housing's reply to be defensive, personal and inappropriate. The Complainant was not "singling out" the area in question; he was making an observation and sharing his view over the area where he happened to have been housed. Objectively speaking, sections of the Flat Bastion Road and the surrounding area are indeed, undesirable. This is a fact and not a derisive description.

In regard to the Complainant's complaint that the area was well known for substance abuse and that he would not like to be placed in a position where he had easy access to alcohol and/or drugs, Housing replied by stating that there were very limited placement areas in Gibraltar (which the Ombudsman understood) and the issue was further exacerbated by trying to find a suitable area for offenders such as the Complainant. "The GPPP agreed that this location did not breach his offence order…. There was no concern by them about easy access to alcohol/drugs."

As to the issue why the Complainant's request for an allocation exchange was not referred to HAC for reconsideration, "The HAC are not involved with the housing of offenders. This is discussed with MAPPA/GPPP".

Housing reiterated that it was not within HAC's competence to consider offender allocation. "This is discussed via multi agency meetings. There is a duty of care not only to the offender but also to families/people who will have a person such as [the Complainant] living in close proximity to them. The Complainant is also under an offender management program, making it even more difficult to find a suitable location for him. The GPPP agreed that this was a suitable location."

The Ombudsman was grateful for the information and clarification, on the process of housing allocation for ex-offenders.

In the conclusion to their reply, Housing stated that the Complainant had not connected utilities, owed rent or showed any interest in moving into the Flat, "clearly demonstrating that he had somewhere else to stay. If [he] continues to refuse to reside in the fully refurbished flat that has been assigned to him and which he signed for an agreed [to accept], steps will soon be taken to repossess the flat as per standard procedure. [The Complainant] will shortly be receiving communication with reference to the aforementioned steps that will be taken should he continue not to reside in the Flat. It is unfair on people who really need accommodation."

In a further exchange of correspondence, the Ombudsman centred her questions on the issue of the state of the Flat at the time of allocation and the conflicting information provided by the Complainant and rebutted by Housing, as to its habitability.

Housing had stated that they "didn't provide boilers" when later they rectified they do. In summary, the missing fixtures were subsequently installed by Housing to make the Flat "liveable".

Issues also arose with the level of security offered by the front door to the Flat.

The Flat was broken into via the front door which was damaged and repaired by Housing. It was subsequently damaged again and despite the Complainant contacting the Housing manager for the purposes of re-repair, Housing seemed reluctant to proceed to repair and bear the cost of the same.

Further to a meeting between Ombudsman staff and Housing, where matters were discussed and progressed- it was agreed (despite some initial reluctance) that the front door would be repaired if the Complainant paid arrears owing – circa £800 owed. At that meeting, it transpired that the Complainant was subject to rent relief which to that date had not been applied. The re-calculation of his debt decreased his rent from £160 per month to £4.05 (since he was in receipt of social assistance but "employable"). This reduced the amount of arrears significantly.

The Housing Manager suggested that repairs would be carried out if a contribution was paid by the Complainant. The Ombudsman argued that as landlord, Housing (as agents for the Government of Gibraltar), owed the Complainant a duty of care to ensure that the Flat, was at the very least, safe and secure.

Further to additional break ins and damages caused, the Complainant subsequently sought the insertion of a gate affixed to the door for added security but at the date of drafting this report- that request had not been granted.

Upon inspection of the external communal area surrounding the Flat and the adjoining properties within the "estate," the Deputy Ombudsman saw for himself, to his surprise and in support of the Complainant's contention that the era was "rough" "anti-social" and "unsafe" that the majority of the flats there had iron gates affixed to front doors/windows at ground floor level.

One week before drafting this report (the last week of June 2025), the Deputy Ombudsman met the Complainant again. He was informed that only a few days prior, the Flat had been broken into yet again. This had triggered anxiety and the Complainant had self- inflicted physical harm (suicide attempt). The Complainant was discovered by Police after they attended and entered the Flat, after having received a call from a family member stating that contact with the Complainant could not be established. As a result, the Complainant spent a few days at the Ocean Views Facility until he settled. That was his second visit there in the past few weeks. The Complainant had also spent time at St Bernard's Hospital for dependency issues and the physical/medical consequences resulting therefrom.

Clearly, despite the Complainant's efforts and those of the professionals assisting him, he was not in a good place psychologically.

Conclusions

The Ombudsman absolutely agreed that the protection and safety of the public, particularly children and adults at risk of harm, is and must always be paramount. There is also the issue of the Complainant being treated with dignity, respect and as a "rights holder" himself. It is clearly a very fine balance and one which, in the case of MAAPA, they achieve to an exceptional standard. We are indeed privileged that such a small jurisdiction such as ours enjoys the benefits of this highly efficient and dedicated multi-agency support structure for those who require it.

Without delving into much detail, the Ombudsman has done some research on MAAPA, its core principles and its application and challenges, in the United Kingdom.

The "National Accommodation Strategy for Sex Offenders in Scotland" (which forms part of MAAPA) and sets out how housing contributes to those arrangements, published advice and guidance in September 2019:

The publication states that finding suitable Housing is the highest re-entry barrier for sex offenders. A survey conducted, revealed that 92% of MAAPA respondents found it "more challenging", for sex offenders than non-sex offenders to find suitable housing within their jurisdiction.

There exists a legal and operational responsibility for assessing and managing risk. Environmental Risk Assessments "are carried out by the Responsible Authorities to identify whether there are any housing related risks associated with a particular offender." There are minimum standards to be applied, reviews conducted, Partner Agency involvement, disclosure of relevant information and information sharing protocols. The overriding principle being the protection of the public.

The Office of the Ombudsman is satisfied, further to its review of the above cited information and their meeting with the Gibraltar MAAPA Coordinator (which was extremely informative, inciteful and useful for the purposes of drafting this report), that all Environmental risk assessment factors have been considered and continue to be actively reviewed in relation to the Complainant. However, in the Ombudsman's mind, that does not preclude a "suitable" flat being allocated to the Complainant if MAAPA are presented with alternatives by Housing. Gibraltar (in comparison to Scotland) enjoys a huge advantage thanks to its diminutive size. There exist fewer offenders and numerous professionals offering those offenders effective monitoring and assistance, whilst maintaining public safety.

The Ombudsman also wishes to refer in this section of the report to a "Request for Alternative Housing on Medical and Social Grounds" made by a Gibraltar Health Authority Approved Mental Health Professional/Best Interest Assessor, dated 3rd June 2025, addressed to Housing (and copied to MAPPA-Royal Gibraltar Police, GHA (Ocean Views) Consultant Psychiatrist and the Care Agency):

"I am writing in my professional capacity as an Approved Mental Health Professional [AMHP] to advocate for urgent accommodation for [the Complainant]…. His current housing situation is having a profoundly negative impact on his mental health, safety, and ability to engage with rehabilitation…. [The Complainant] has a long history of addiction and offending, which led to several custodial sentences during his adolescence and early adulthood. He is now making a determined effort to turn his life around, engaging actively with community support services. He is currently receiving care from a specialist agency and is being managed under [MAAPA], involving close cooperation between police, probation and prison services to reduce risks to both himself and the public. Despite these strong support systems, his current living environment is highly detrimental. He is experiencing ongoing and escalating threats from neighbours, which have severely impacted his sense of safety and mental stability. He has reported multiple incidents of attempted break-ins and harassment, leading to frequent emergency calls and repeated removals to a place of safety under the Mental Health Act, where I have been personally involved in assessing him."

The practitioner makes reference to the persistent "stress and fear" he lives in reinforcing his "low mood, anxiety and paranoia" all of which are highly likely to cause "relapse" and are "incompatible with rehabilitation". "Each crisis incident puts additional pressure on an already overstretched emergency and mental health service". He identifies "a clear and pressing need of relocation to a safer, more stable environment. His current housing is no longer viable. Without intervention the situation is likely to deteriorate further, undermining his recovery and potentially increasing the risk he poses to himself and others"

The AMHP concludes his letter by urging Housing to treat his request with "urgency" and "compassion". "Rehousing…. Is [inter alia] a necessary measure to protect this individual's mental health and support ongoing public safety work."

Part of the information gathered during the course of this investigation was that in the case of serious offenders seeking rehousing, once Housing identifies a specific property, it requests MAAPA's approval for the allocation. The Flat for which approval is sought is selected by Housing. Given this fact, together with the recent compelling medical request urging reallocation as a matter of "urgency", the Ombudsman can only endorse said request and firmly recommend that Housing identify a suitable property as soon as reasonably practicable for MAAPA's consideration and approval.

Classification

That the Complainant be reallocated to suitable housing in accordance with the Complainant's wishes and the expert medical view- Sustained

Recommendation - (1) Housing to identify a suitable property and request MAAPA's consideration and approval (taking all relevant safety aspects and other criteria into account).

(2) Given the need for "urgency", the reallocation to be completed as soon as reasonably practicable and in any event, no later than sixty (60 days) from the date of this report being made available to Housing (copied to MAAPA).

REPORT ON CASE NO'S 1295 & 1296

Complaints against the Housing Department ("Housing") for their alleged failure in not categorizing both Complainants on the respective medical and social housing waiting lists.

Complaint

The First Complainant was aggrieved because he believed that the Housing Allocation Committee ("HAC") had treated him unfairly in not having categorized him as a medical case, despite evidence of his condition. His current accommodation at the Queens Hostel was "inadequate" since he did not have exclusive use of a kitchen or bathroom and the general state of the accommodation was dirty and substandard.

The Second Complainant was frustrated and annoyed that HAC had not classified him as a social case. He could not reconcile that decision with his allocation of a room at Devil's Tower Road initially and subsequently at the Queens Hostel, based on the fact that he was "homeless". He too complained about the state of the Hostel's disrepair.

Given the similarities in the nature of both Complainants, the Ombudsman took the view she would investigate and draft a joint report for publication.

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.

<u>The First Complainant</u>

The First Complainant was a man in his mid- sixties who despite being born in Gibraltar emigrated to the UK in his youth, prior to returning to Gibraltar with his young family around twenty-five years ago. His hope was to live and work locally. They bought a flat at Bayview Terraces and as principal earner, he established a small business. The business venture did not do as well as expected and the pressures of failure took a toll on the couples' marriage. The First Complainant started drinking heavily which in turn caused him mental distress and physical health issues. He was hospitalized for nine months with liver complications. By then the marriage had broken down irretrievably.

Whilst in hospital, his wife asked him to move out of the family home permanently, which he did in order to ensure that his young sons had a secure home. A financial agreement was reached with his wife and after discharge from hospital, he never returned to the matrimonial home.

Due to the fact that he had nowhere to return to, he was seen by Social Services and Housing, as well as the then Minister for Health whilst still in hospital. All of them assured the First Complainant that accommodation would be found for him by the time of discharge, but no offer of accommodation was made.

He subsequently found work as a security officer but his salary did not afford him the possibility of renting privately in Gibraltar. He was eventually able to find a suitable rental in la Linea with the intention of it being short term.

His application for Gibraltar Government housing was initially rejected. In 2018, his application was accepted and he joined the waiting list with hundreds of other applicants.

Regrettably, The First Complainant's health took a turn for the worse and in 2019 he suffered "blood circulation problems that caused a thrombosis." He underwent surgery and then attended post-operative care and physiotherapy in Gibraltar; a long-term plan, necessary to enable him to make a full recovery. As a result of him being unable to walk far and not owning a car, he was unable to meet the financial burden of taking regular paid transport from La Linea to Gibraltar. His reduced income on account of his sick leave and his depleted savings resulting from his marital breakup, contributed to him giving up on the rehabilitation sessions.

The First Complainant approached Housing again an updated them on his position, both in person and via "Action for Housing". He received standard replies from HAC. Consequently, Housing declined his request to be categorized as a medical case, less so to be considered for the allocation of a Government flat.

In 2022, the First Complainant was offered a "bed to sleep in Gibraltar". He was allocated a single occupancy room at the Queen's Hostel. The then Minister for Housing also exceptionally allocated him storage facilities so he could store his personal belongings. The First Complainant was grateful for the gesture but has ever since continued to state his case for a flat on medical grounds to which he believes he is entitled. He has forwarded numerous GHA practitioners' (including specialists') medical letters to Housing- most letters citing his principal medical condition of serious vascular issues limiting his mobility and necessitating suitable accommodation, to recently diagnosed skin cancer (which is not terminal). To date, all requests for medical categorization have been consistently rejected with no substantive reasons provided for the refusals.

The First Complainant has not been afforded any medical points on his application for housing. HAC however, was satisfied in May 2024, that he met the criteria for eligibility to be placed on the Social "A" list. This was communicated via letter dated the 13th May 2024.

Frustrated at the fact that his repeated requests to be categorized as a medical case have been declined- the First Complainant lodged his complaint with the Office of the Ombudsman.

<u>The Second Complainant</u>

The Second Complainant was a gentleman aged seventy who divorced his wife in 2001. The matrimonial home which they had previously purchased jointly was ceded to the ex-wife by agreement at the time of separation.

He took refuge at his sisters flat and after being unable to remain there, became homeless. His anxiety worsened and mental wellbeing suffered as a result, as did his diabetes. Numerous medical letters recommended that he be granted accommodation by Housing.

He was eventually allocated a room at the Devil's Tower Road workers' hostel and later, at the Queens Hostel. The shared use of a bathroom aggravated his mental health. The alleged inability to shower regularly (as a result of painful and swollen feet and legs) caused him depression which in turn led to lack of sleep and weight-loss.

He was frustrated and angry at the fact that he was placed on the "ordinary" waiting list as opposed to the "social" or "medical" list. The latter would have added an element of urgency to his application.

Investigation

The First Complainant

The Ombudsman presented her letter of complaint to Housing in October 2024.

From the exchange in letters that followed, the following information was forthcoming:

1. Confirmation that the First Complainant had been on the 1RKB social list since 2018.

2. He was indeed allocated a room in the Government (Queen's) Hostel in 2022 (As a result of a Ministerial decision to assist with his medical needs- namely access to St Bernard's Hospital for treatment).

3. He was placed on the Social A List in May 2024- being in 47th position on that list, at the time that Housing replied to the Ombudsman's letter presenting complaint.

4. An Occupational Therapists report was undertaken in June 2024. However, HAC did not a medical recommendation after considering it:

"The fact that a medical categorisation may not be granted does not in any way mean that HAC is commenting on the illness but rather on their analysis in relation to the Housing situation [of the individual concerned]. In other words, it is not the seriousness of the medical condition or the disability itself but that there is a clear, adverse and demonstrable link between the current accommodation and the illness."

Housing asserted that they had managed the First Complainant's expectation of that aspect of the complaint, namely, that they communicated they will not overrule a Committee's [i.e., HAC's] decision. However, without commenting on the decision itself, they made observations on different medical letters/recommendations presented by different medical practitioners:

A letter dated 11th October 2022 by Doctor X stated that "…. Due to his current medical condition, it is no longer reasonable for the patient to stay in their current accommodation."

Housing commented that said comment formed part of a "tick box" statement that "mostly describes the patient's situation". However, the doctor "also ticked the box confirming that he had not visited the First Complainant's home".

An ensuing letter from Doctor Y the following year, dated 13th December 2023 also stated that "….Due to the current medical condition it is no longer reasonable for the patient to stay in their current accommodation" and "patient is physically disabled and is not able to make full use of the facilities in his current accommodation."

The same doctor also reported in March 2024 that "he is having significant difficulty with the accommodation in the [hostel] due to his disabilities……I would be grateful if you could help [him] move to accommodation that meets his needs."

"The doctor also states that there is a lift, but that the First Complainant prefers the stairs. The latter reports that the lift is usually broken."

The First Complainant informed the Ombudsman that he preferred the stairs because he did not feel safe in the lift since it was constantly breaking down.

In relation to the Ombudsman's question as to why the First Complainant was only recognised as a social case on the 13th May 2024 when he had been living at the Hostel since 2022, Housing stated that the First Complainant had informed them that he was living with a friend in Spain, paying rent. That demonstrated that he was able to sustain himself, given he had an income at the time.

Secondly, prior to May 2024, HAC had not made any social recommendations as they were not satisfied that he met the criteria for eligibility. "Nevertheless, HAC did feel the need to assist by enquiring with Government Hostels despite [the First Complainant] not being a social case".

The Ombudsman did not understand nor could she accept this explanation. Why, would HAC feel the need to assist an ineligible applicant who does not meet their own criteria? Surely, allocating accommodation to an ineligible individual is not only detrimental to eligible individuals waiting their rightful turn on any given list, but also makes a mockery of their own procedures.

In direct correlation to this point, when the Ombudsman requested a copy of the written policy/eligibility criteria, Housing confirmed there was "no written policy". This case is a textbook example of why in a mature democracy, it is so important to measure decisions against the backdrop of established written policy.

Housing also stated that although HAC may not have recommended that [the First Complainant] be placed on the medical list, his situation was recognized, leading to an award of 1200 discretionary points. In addition, in order to assist him, he was also allowed to rent a Government owned shed in which he kept his personal belongings.

The First Complainant again wrote to Housing on the 24th January 2025 expressing his frustration with his living conditions. He wrote to the Ombudsman on a regular basis.

In his email to Housing and his communications with the Office of the Ombudsman, he alleged that his room at the Hostel had been broken into and had its lock changed, his bed removed and possessions scattered/tampered with. He also stated that he had moved in with his mother in la Linea in order to assist her (she was 91 years old) whilst simultaneously enjoying a better quality of life in a "safe and clean flat". Although he slept on a sofa, The First Complainant could shower and cook meals.

Housing replied to him promptly. They advised him that they had revisited his case "yet again" and after consulting with the Hostels Management Team (JT Security) ("JT") (a private security company whose services the Government utilizes and whom was thereby authorized by Government (Housing) in all matters relating to the Hostel), they had obtained the following information from them:

"You occasionally visit the Queens Hostel to collect your personal mail from reception, and then you leave the premises. The [following dates] are a few of the [recorded] days you went to collect your mail- [a total of seven days between August and December 2024 cited]. The room allocated to you (29) has neither been touched or have items been removed. The lock remains the same. You state that items were stolen from your room. You were advised to report the matter to the Royal Gibraltar Police but to date, you have not.

Housing further informed the First Complainant that "….Your rental is not up to date and you have not entered into an agreement with JT either as requested; hence your rent is piling up. We have reached a stage whereby you are required to confirm;

-When you will return to the Queens Hostel? An imminent date is necessary.

-You need to enter into an arrears payment plan, for your return to be accepted.

-Failure to address the aforementioned will result in the removal of your room.

- [Use of] your shed will remain, in light of the fact that you are up to date with [payments therefore]."

For many months after the receipt of that letter, the First Complainant continued to hold and insist on the view that since he had a contractual relationship with Housing (with whom he had executed a "Gibraltar Hostels Licence Agreement" for room 29 in consideration of the sum of £9.50 per week), he should settle his debt directly with Housing and "not with JT, with whom I have nothing signed." He felt he was hard done by and "not being treated as a human or with any respect by Housing…. [they are] only interested in the money outstanding than in helping me get a home to go to."

A further annual medical letter submitted to Housing was not accepted by HAC. A letter to the First Complainant from Housing dated 4th June 2025, stated that "based on the letter provided by your doctor, HAC made no medical recommendation and the Housing Authority has accepted this recommendation…. The fact that your application has not been medically categorized does not in any way mean that the Committee is commenting on your medical ailment but rather on their analysis in relation to your housing problem."

The First Complainant complained to Housing on the nature of this reply and contacted the Ombudsman and Action for Housing to determine if he could be assisted further by those organisations.

It appeared that the First Complainant owed in the region of £900 in arrears of rent (he disputed that amount) and that he had not made any attempts to enter into an arrears agreement with JT as requested by Housing on numerous occasions.

Housing made the Ombudsman aware that the First Complainant had met with the Hostels Management Company (JT) on at least three instances, during which he was informed of the amount he owed in rent. "Unfortunately, he continues to refuse payment as justification to obtain a Government rental flat. His case has been submitted ty HAC on no less than thirteen occasions. However, on each occasion no medical recommendation has been issued in support of his application. In short, he must wait his turn to be allocated a suitable flat. Additionally, he is still required to enter into a payment plan to address his arrears. Should he fail to do so, any future allocation will be put on hold until the arrears issue is resolved."

This position, in line with general Government policy not to process applications from individuals who are indebted to it, was explained in no uncertain terms to the First Complainant by both the Ombudsman and Action for Housing in repeated instances. The First Complainant clearly had to take responsibility for his debt before seeking any additional assistance from the state. This is a more than reasonable position under any standard.

<u>The Second Complainant</u>

The Second Complainant was a pensioner who had been given temporary accommodation at the Worker's Hostel at Devil's Tower Road as a result of being homeless after a failed marriage, where the matrimonial home was transferred to the wife solely. He had no savings or assets.

Despite not being classified as a medical case, HAC requested a Social Care Report from the Care Agency and it appears that on the strength of that (The Ombudsman has not seen the report despite requesting a copy), he was offered a room at the Queen's Hostel until more suitable accommodation could be provided.

His principal grievance related to his frustration for not having been categorized as a social case by HAC, despite having been previously recognized as "homeless". He also expressed concerns and annoyance with the contents of a letter he had received from Housing, stating that if his circumstances changed, he could present his case to HAC, six months from the date of that letter (October 2024).

He considered the terminology used was inappropriate and insensitive, given he was "homeless" and living in a "half way house" sharing a kitchen and bathroom in a "dilapidated building", with a constantly broken lift. An exchange of letters between the Ombudsman and Housing ensued whereby issues were set out and responded to by Housing swiftly.

Housing noted the difficulties this elderly gentleman had been subjected to and they promised to actively look into resolving his grievance, based upon his background and the content of the Social Welfare Report. He was allocated a pensioner flat at Bishop Canilla House in July 2025.

Conclusions

The First Complainant

The Ombudsman recognised the numerous struggles that the First Complainant had encountered for the last twenty-five years and one can only be sympathetic with him and his personal circumstances.

A failed marriage and an unsuccessful business resulted in desperation and alcoholism which in turn led to significant ill health and hospitalization for an extended period. It was at that time that the administration (the previous Government) promised him accommodation which never materialised.

A further bout of serious illness in 2019 (caused by vascular problems leading to thrombosis and requiring regular rehabilitation in Gibraltar), resulted in the loss of his employment. That lack of income and mobility prevented his continued and necessary attendance for long term rehabilitation therapy at the Gibraltar Health Authority, more so since he was living in la Linea at that time for financial reasons. The Government eventually offered him "a bed to sleep in Gibraltar" in order to facilitate his recovery, in 2022.

It appears at odds to the Ombudsman that given the medical condition (upon which the allocation of the room was made at Ministerial level) and successive doctors' letters, that HAC did not deem him eligible to be classed as a "Medical Case", at the very least from 2022- only having placed him in the "Ordinary" list from 2018.

The Ombudsman however is not a medical expert and note is taken of Housing's explanation that HAC is composed of numerous experts in social and care fields (medical professionals included), and that a lack of categorization is not a judgment on an applicants' illness but rather on their analysis in relation to the particular Housing situation.

"It is not the seriousness of the medical condition or the disability itself but that there is a clear, adverse and demonstrable link between the current accommodation and the illness".

The First Complainant central grievance is that the current accommodation is unsuitable for his needs, caused by his condition. It is small, in a bad state and not conducive to any sort of physical or mental recovery. From an objective standpoint, one could hardly disagree.

The Ombudsman is also of the opinion that an element of false hope has been given by Housing to the First Complainant. By their own admission they have forwarded the Complainant's case for HAC's consideration no fewer than thirteen times when in their judgement, there has not been any significant change in circumstances.

It seems a waste of HAC's resources to constantly revisit the case and more importantly (undoubtedly in the absence of mala fides), cruel to mismanage the First Complainant's expectations in such a way.

The Second Complainant

The Second Complainants grievance- the incongruence of not having being recognized as a Social case but being given temporary accommodation as a result of his homelessness, was eventually resolved after close consideration to a Social Welfare report requested by HAC.

The Ombudsman was glad that this deserving pensioner, with no resources who also suffered from physical ailments (swelling, leg pains and diabetes) as well as depression and anxiety as a result of his situation, was allocated a corresponding pensioner flat.

Classification

The First Complainant's grievance that he had been treated unfairly in not having been recognised as a medical case – Unable to classify.

On the medical evidence presented to and considered by HAC the Ombudsman is not able to rebut or disagree with their classification.

Ombudsman Note- It appears to the Ombudsman that the Complainant should have been categorized as a medical case all those years ago when he was an inpatient at St Bernards Hospital for such an extended period of time.

It must also be said that irrespective of the above, the First Complainant needs to take responsibility for his arrears of rent and enter into an agreement to settle his debt, not only as consideration for the room he was allocated (whether he stays there or not), but also to improve his chances of hopefully being allocated a suitable flat, when he reaches the top of the Social List, if indeed HAC continues to hold the view that he should not be categorized as a medical case.

The Second Complainant's frustration and annoyance that he had not been classified as a Social case, yet allocated a room at two successive Hostels on account of the fact that he was "homeless"- Sustained.

The Ombudsman has already commented on the above disparity.

She was pleased to hear from the Second Complainant that after careful consideration, he had been housed in a suitable pensioner flat.

On the issue of Housing Lists, the Ombudsman has made comments in her 2024 Annual Report and on national media (contemporaneous to the drafting of this report), of the Government's need to streamline Housing waiting lists in the pursuit of fairness and transparency.

There appear to be eleven lists, each with distinct headings- social, health etc. running concurrently. It is therefore impossible in a practical sense, for an applicant or an external regulatory body to determine who is "next" on the list. Which applicant from any of the mentioned lists will be allocated the next available property? Who is more deserving or in greater need? It is impossible to decipher under the current system.

It is in the interests of administrative justice, that lists be streamlined.

Recommendations

(1) As stated, the streamlining and availability of the Housing List for easy reference.

(2) The drafting of clear written policies on the eligibility criteria for qualification under the current classification system (Medical or Social), since as confirmed by Housing, no written policies exist.

REPORT ON CASE NO 1305

Complaint against the Housing Department ("Housing") in relation to "extraordinary delay" in offering the Complainant a second flat allocation on medical grounds having rejected the first property which had been offered as suitable accommodation.

Complaint

The Complainant was aggrieved because:

1.She had been on the Housing waiting list for twelve years and more specifically, on the Medical A+ list since April 2021 (as a result of her husband's ("Husband") cancer diagnosis).
2.An offer of a flat was made in June 2021 which the Complainant and the Husband refused at the time (reasons provided); yet no further offer has been made to date.
3. She has been removed from the "Immediate medical categorisation" 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 stated that she had been on the Housing waiting list for twelve years (since December 2012) and on the Medical A+ list for three years (since April 2021). She explained that her Husband had passed away from cancer in August 2024. She is also a cancer sufferer (having been first diagnosed in early 2021). Her condition has unfortunately worsened and she is now a terminally ill patient.

The Complainant and Husband were initially offered a flat from Government housing stock, deemed suitable for their needs, in June 2021. That allocation was refused on the basis that the flat was small, open plan and on a ground floor offering no privacy from passers-by. The couple discussed the allocation but ultimately decided to reject the offer, in the hope that a second allocation consisting of a more comfortable home would be imminent.

The reasons for the refusal ("small and open plan") were communicated by the Complainant and Husband to Housing.

Housing accepted the explanation but as a result of the refusal, they were informed that they would be removed from the "Immediate medical categorisation list", whilst still remaining on the Medical A+ list. Time elapsed and a year later, in July 2022, they were informed that they were at position fifteen on that list, progressing to thirteenth place in 2023.

Unhappy with the lack of a second offer of a flat and with the progression of just two positions in a full year, the Complainant (by this time a widow), lodged her complaint with the Office of the Ombudsman.

Investigation

The Ombudsman accepted the complaint and in the first instance, reviewed all the correspondence provided by the Complainant.

A letter dated 4th May 2021 by Housing addressed to the Husband, confirmed that further to a meeting held and recommendations made by the Housing Allocation Committee ("HAC") the preceding April, Housing agreed to categorise them as a "Medical A +" case, for "immediate allocation". It was explained in the letter that whilst Housing endeavoured to deal with all applications promptly, all allocations under that category were prioritised depending on the availability of suitable flats and the number of applicants already placed on the Medical A+ List, who had similar needs. The Ombudsman found this explanation to be both logical and fair.

Housing issued a further letter shortly thereafter (on the 9th June 2021), informing them that they had approved a flat for the Complainant and Husband to view, at Sir William Jackson Grove Gibraltar ("SWJG"). The letter explained the procedure, setting out that "following the date of the viewing you will be required to express your desire to accept/reject this offer within a period of three working days from the viewing date. In the event of the offer being rejected after the flat has been viewed, the Housing Authority will review your application should the reasons for the refusal not be justified."

The offer, as mentioned in the "background" section of this report, was rejected.

Housing issued further correspondence on the 13th July 2021 referring to the offer and its subsequent refusal. Consequently, they stated that HAC had met on the 28th June 2021 and "….having considered your reasons for refusal as stated on your refusal form that "the house is too small and the kitchen and living room are open plan", HAC [nonetheless] determined that the flat met [your] current entitlement and was adequate to suit [your] needs. Although the refusal has been accepted, please be advised that HAC has now instructed that this immediate categorisation be removed." In practice, this meant the Complainant and her Husband would continue as applicants on the 2RKB Medical A+ List. However, given that the "immediacy" basis had been removed, they were placed on position twenty-three on that list.

Further reviews and meetings held in October 2021 and July 2022 led to the same recommendation by HAC. The previous decision of not reinstating the Complainant and Husband for "Immediate medical categorisation" was upheld. In response to enquiries by the Complainant and Husband, the March 2023 anniversary letter issued by Housing stated that based on a medical report (now provided by the Complainant's medical doctor as opposed to her Husband's), no further recommendation was made and that they were presently in position thirteen on the Medical A+ List. "The committee would also like to bring to your attention that on the 11th June 2022, a suitable flat was offered to you, however, you chose to reject it……"

As a result of delay and the lack of a further offer of accommodation having been made, together with the decision not to re-categorise for "immediate allocation", the Complainant and Husband were, in their own words, made to feel helpless and penalised, as if being "punished" for not having accepted the first offer made. They decided to approach "Action for Housing" for their assistance. It is also at this point when the complaint is lodged with the Office of the Ombudsman.

In accordance with Ombudsman procedure and subsequent to the initial review of all relevant material referred to, the Ombudsman set out the complaint in writing, raising various matters for Housing's attention, clarification and reply. The Ombudsman enquired why the Complainant had not been made an offer on the 2RKB List, having been waiting for twelve years and asked, in order to gauge movement on that list, how many allocations had been made in the preceding twenty-four months. Housing stated that from 1st January 2022 to 12th December 2024, there had been a total number of one hundred and forty 2RKB allocations and that no offer had been made to the Complainant (on that List) because quite simply, she had not reached the top of it. It was further confirmed that as at December 2024, she was currently 66th on the 1RKB List and 13th on the 1RKB Medical A+ List (no longer on a 2RKB since she was a widower and being a one-person family unit was no longer entitled to a 2RKB allocation).

The Ombudsman had also questioned how, having now spent three years on the Medical + A List whilst suffering from cancer, a further offer had not been made in all this time? Housing replied by stating that positions on lists vary according to needs and priority (a newer applicant may understandably be given a higher position due to necessity), but that in any event, the Complainant had not reached the top of that list either.

In relation to the "Immediate medical list", the Ombudsman asked how it came to be that the Complainant had been removed from the "Immediate medical List" when as applicants, she and her now deceased husband, having been offered the benefit of choice, deemed the Flat not suitable for their needs at the time. Housing stated that HAC had considered the refusal to be unjustified and as a result, their immediate allocation was removed. In addition, the primary applicant was the Husband and as his condition worsened, "… he was approved to be reinstated in the Immediate medical list [with the Complainant benefitting from this]. Unfortunately [the Husband] passed away and as a result [the Complainant] was promoted to primary applicant. Despite her illness, HAC never approved her reinstatement onto the Immediate medical list after the refusal of the [SWG] flat." The Ombudsman was troubled by what appeared to be a seemingly blanket policy.

It was explained to the Ombudsman that as a matter of procedure, when an applicant on the "Immediate medical list" refuses an offer of allocation, which in the opinion of HAC (composed of respective professionals within their social and medical fields of expertise) was deemed suitable, the applicant/s is removed from that list if HAC considers the refusal is unjustified. In practice, does this mean that if deemed "suitable" there can be no grounds whatever for refusal? It long used to be Housing policy that in the event of refusal/s, two subsequent offers of accommodation were made.

At a recent meeting between the Ombudsman and Housing held on the 25th February 2025, it was confirmed that the Complainant is now at position 1 on the Medical A+ List and that an offer would be forthcoming. Both the Ombudsman and Housing were in possession of the Complainant's latest medical report/update from her Consultant Oncologist dated 20th February 2025, setting out the progression of her now metastatic illness. The Ombudsman expressed in very clear terms that a flat which is fit for purpose is now most urgently required for this Complainant.

Conclusions

The Ombudsman understands and considers it reasonable and proper that the respective position/s of applicants on housing waiting lists may fluctuate, depending on the particular needs of others on that list, and of stock availability at any given time

It may well be the case that the SWJG flat offered in June 2021, apart from being objectively suitable, may have provided a missed opportunity for the Complainant. In hindsight, almost four years on, it may have been the wrong choice to have refused the offer. Since then, this unfortunate but resolute lady has lost her Husband to cancer and has herself developed a "lung metastasis" of the same deadly disease. She is currently on palliative care.

Perhaps a reader of this report may consider the Complainant and Husband picky or fastidious, ungrateful for having refused a suitable flat at the time. On the other hand, they must have had their reasons for doing so and in fairness, they were given the option to refuse. They believed their refusal to be justified. Perhaps they had an expectation that another more attractive property would be offered soon afterwards, something with a separate kitchen or maybe with some sort of view? Not on a ground floor with more privacy?

Only five weeks had elapsed from the day on which Housing informed them that they had been placed on the "Immediate" list (4th May 2021), to the offer at SWJG (9th June 2021). It was not farfetched to have expected a second offer to have been made almost as quickly, nor is it punishable to have perhaps wanted something a little "better". As mentioned, it was always historically the case with Housing, that an applicant would be made three successive offers in the event of refusal. This no longer appears to be the case, even in "urgent" circumstances.

Fast forward four years and the Complainant is now a widow suffering from advanced cancer herself, in an upper town flat unsuitable for her current needs, and no further offer has been made.

It does seem incongruous and non-sensical to the Ombudsman that HAC, basing their decision for "immediate allocation" upon a serious illness backed by a written medical report, recognised the urgency behind the need for allocation and that as a result of the refusal of the only property shown to the Complainant and Husband, they saw fit to de-categorise them from a top priority to a non-urgent "Medical A +" case, with all the consequences (delay) that has brought.

The Ombudsman does understand that if all applicants rejected offers in the first instance, this would place an even heavier burden on waiting lists. A hardly ideal situation. However, the apparent general policy of "if you don't accept what we deem suitable you have to wait" or the alleged….."you can't be in such dire need if you don't accept what we offer you" is quite plainly wrong.

In the absence of updated evidence having been provided after the rejection of SWJG, that the Husband's serious medical condition had improved or that he was in recovery or remission, a reasonable onlooker can only share the Complainant's view (not least backed by the last letter from Housing, confirming that HAC's re-classifies based on prior refusal), that the Complainant and Husband were being "penalised" or "punished" for not accepting the first property they had been shown. This is a serious state of affairs, unjust and cruel. Administratively, this cannot be condoned.

The Ombudsman recognises that a result of losing her husband the Complainant as a widow and one person family, has been re-categorised as eligible for a (1RKB), (despite being seriously ill herself). However, thirty-seven months elapsed from the date of the SWJG offer to the date of the Husband's death, and a further six months from then to now. Should we assume that no suitable alternative flats have become available in four years? Surely any reasonable person would encounter extreme difficulty in reconciling that assumption.

Classification

Sustained

Recommendation

That the Complainant be offered a suitable flat as soon as possible. The Ombudsman would further strongly recommend that given the history and current medical condition and personal circumstances of this Complainant, an exception be made and that she be offered a 2RKB with the appropriate bathroom facilities. The increased space will offer additional comfort and the possibility of carers staying overnight and assist in the Complainant's palliative and personal hygiene needs, when this becomes necessary.

Further to the recent meeting held between the Ombudsman and the newly appointed Housing CEO and Manager, they confirmed to the Ombudsman that (1) the Complainant was in position number 1 on the Medical A + list and that an offer of reallocation (1RKB) was imminent [this was also communicated to the Ombudsman in writing] and (2) that inter alia a review of lists was currently being undertaken to slimline the number of lists available with a view to making the allocation system fairer, less cumbersome and more transparent. The Ombudsman was further informed that an updated Housing Act ensuring greater general efficiency, effectiveness and transparency is also forthcoming. This was very welcome news indeed.

The Ombudsman was grateful for the meeting and expressed her support for the modernisation and improvements which will be implemented by this new leadership at Housing. She expressed the view and hope that moving forward, all these changes will greatly benefit service users.

REPORT ON CASE NO 1312

Complaint against the Housing Department ("Housing") in relation to an offer for exclusive use of a storeroom adjacent to the Complainant's flat which he accepted in writing but which was never assigned to him.

Complaint

The Complainant complained that despite being offered exclusive use of a storage room adjacent to his Government rented flat ("the Flat") and signing a contract for it (supplied by Housing), the contract terms were never enforced.

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

The Complainant was a tenant of a Government Housing stock property within a residential estate in the south district. The building consists of several floors with individual flats' front doors contained within an open-air linear corridor format. Each row of flats is flanked by a single store room at either end. Several store rooms throughout the building have for years, been and continue to be used exclusively by neighbours living closest to them. Store rooms and the flats directly adjacent to them, share a common wall.

The store room closest to the Complainant's corner Flat had been disused and allowed to fall into disrepair for a number of years, contributing to excessive mould forming within the entirety of the Flat. The fact that said storeroom remained unlocked, led to some neighbours storing hazardous items therein (such as petrol and oil). Youths also congregated there; occasionally talking loudly in the early hours and getting up to no good. The Complainant's electric panel (fuse box) was also contained within the store. It had been tampered with and switched off/damaged on numerous instances- leading to food wastage and the Complainant having to contact the local utilities provider to solve the issue and repair damage caused.

The combination of these factors were understandably affecting the Complainant in the quiet enjoyment of his tenancy; both physically and mentally.

As a result, the Complainant approached Housing requesting exclusive use of the store which he would take responsibility for maintaining, given the area would only be accessed by him. This seemed a more than reasonable request, given the position was identical in relation to numerous other stores located within the building.

Housing appeared to accept the Complainant's suggestion.

In 2019, Housing contacted the Complainant and he was presented with a contract for signature. The Complainant executed that contract at Housing's offices after which, a Notice was affixed on the storeroom's door, requesting that unauthorised items contained therein would have to be removed "by no later than Tuesday 6th August 2019…. Failure to do so will result in items being removed and disposed of."

The promise to assign the store to the Complainant for his sole use never materialised. Despite numerous phone calls, email messages from 2019-2025, and in person meeting in the Complainant seemed to be hitting his head against a brick wall….". Housing did communicate to him that the contract had not been signed by Housing adding however that the issue was "under review with higher management."

The Complainant issued a substantive and formidably expressed letter to Housing dated 22 October 2024 setting out his "deep frustration, anger and growing sense of injustice regarding the ongoing mishandling" of the issues causing him grievance.

The letter set out how over the past five years, he had received no formal communication explaining why his signed contract for the storage room had been "voided without his consent". The Complainant stated that "……[I was subsequently] called and informed that an agreement had been reached and if I was still interested- naturally I confirmed my interest since I had been waiting for five years. However, to my shock, when I [proceeded] to sign the paperwork, I learned that the offer was only for a cubicle within the storage room and not for the entire space I had been promised originally".

The Complainant pointed out that throughout the five year "ordeal" he had received no official letters or written updates, only phone calls and one in person meeting, noting his deep concern at "the complete lack of transparency and professionalism." The Housing Department has had five years to resolve the broader issues with storage rooms across the estate yet the only [storage space] affected has been the one I had [been offered and] signed for…"

He also complained of the reported disturbances (referred to in the "background" section of this report) which will now persist, affecting his quiet enjoyment of the Flat. Additionally, allegedly due to the lack of the storerooms upkeep, mould had now spread throughout the entirety of the northern walls of the flat (the walls separating the flat from the store room).

The Complainant concluded his letter by seeking an immediate rectification of the situation indicating that all storage rooms being used exclusively by certain neighbours, should be converted into multi-storage facilities for communal use, as was the case with the one he had been promised. The Complainant considered it grossly unfair that Housing had apparently unilaterally withdrawn their promise to allow him single use of the storeroom by turning it into a multi-use area, whilst numerous other storerooms within the same building were being exclusively enjoyed by the neighbours residing closest to them, without consent.

He did not seek preferential, but equal treatment, particularly when he had attempted to acquire use by proper means; asking for permission and signing a contract.

Housing replied to the Complainant's email, stating that they had attempted to obtain supporting evidence of his claim (i.e. a signed contract) but it soon became clear that "neither the department or yourself could exclusively provide a [written] agreement to support your position".

A few weeks later, Housing wrote to the Complainant enquiring if he was interested in retaining a storage cubicle within the communal storage area with an acceptance deadline. Failure to accept would result in the shed/cubicle being offered to the next tenant on the list.

The Complainant accepted but said he needed time to sign (since he still wanted explanations for the turnaround in the offer- from sole to shared use). Two extensions for acceptance were requested and granted by Housing. The position was that Housing appeared to dismiss the Complainant's contention that sole storage use had been previously offered and accepted (in the absence of written proof).

After having chased Housing for answers since May 2019 with limited success, the Complainant decided matters had progressed to such an extent that he had little choice but to lodge a complaint with the Office of the Gibraltar Public Services Ombudsman.

The Complainant's complaint was accepted by the Ombudsman in January 2025.

Investigation

The Ombudsman read all the correspondence which had been issued by the Complainant to Housing throughout the entire period.

A letter presenting complaint was issued to Housing by the Ombudsman on 28th January 2025

The letter set out the complaint, stating that the Complainant was dissatisfied with the points particularised below. For the purposes of fluidity, the replies received from Housing some weeks later are also set out numerically as follows:

1. Lack of Transparency and Accountability:

The Complainant stated that in 2019 he was called by [a named ex-employee] who used to work at Housing and in her presence, he signed a contract for the storage adjacent to his flat. It was then agreed that a notice would be placed on the door requesting that any items be removed within a certain time period in the absence of which, they would be destroyed. Since then, the Complainant has been unable to have full use of the store and his repeated attempts to resolve the issue of the storage room and have sole use of it have been ignored or dismissed by Housing. He complains that there has been no clear, written explanation for why his signed contract for the storage room was "voided without his consent".

Reply from Housing

The contract was indeed drafted and subsequently signed by [the Complainant]. However, when the contract was presented to the then Principal Housing Officer, she investigated the matter and after noting inconsistencies did not sign the contract. It therefore never came into effect.

"We have an email dated 14 May 2020 in which it states that [the Complainant] has been informed on several occasions that the store [issue] was under review [since other tenants had expressed an interest in it]. An email [the Complainant] sent to Housing in October 2024 further corroborates the fact he had been called and had an in-person meeting (where it was made clear that the store was under review and that a "contract" had never existed because it was not signed by the department).

Housing further stated that "….[the Complainant] attended our offices on Monday 7th November 2022 and the situation was clearly explained to him. The contract was [provided] in error and never countersigned by the then Principal Housing Officer (PHO). The department [Housing] finds it alarming that [the Complainant] states that the contract was "voided without his consent". The then PHO noted that it would be unfair on other tenants [to grant exclusive use] and that the matter needed further investigation".

2. Restoration of Original Contract and Removal of Cubicles:

The Complainant has been actively fighting for the storage room, allegedly assigned to him under contract for the past five years. He is requesting the immediate restoration of his contract for the full storage room and the removal of the cubicles recently installed. These cubicles compromise the space and make it prone to potential misuse by other residents, which previously led to hazardous items (such as containers of oil) being stored adjacent to his living room.

Reply from Housing

"The store has never been assigned to him. He has known this but refuses to accept it. He has had many phone calls and a meeting with the Department in which he has been clearly informed that there is no signed contract [by Housing] and the reasons why the Department did not sign the contract. All landings have a storage room in the exact same location and these storerooms have never been officially allocated to anyone. Residents have exceptionally shared the use of these sheds/store rooms without ever paying rent. During the recent refurbishment of the building and in order to regularise these sheds and enter into contracts with those wanting to use them, all residents have been asked whether they wish to rent the cubicles. The sheds were very large for one tenant to use, so all tenants were given an opportunity to express an interest, in fact, many have. Whereas they were previously shared communally and indeed a dumping ground, the store has been divided into smaller cubicles that individual tenants are responsible for. These cubicles can now be monitored and should there be concerns about the materials stored within, tenants [will be] responsible for any damage this may cause in future"

3. Failure to Address Severe Dampness and Mould:

The storage room adjacent to the Complainant's living space had been in disuse for five years, leading to extensive mould growth that has spread throughout his home. This mould is causing continuous damage to his walls, peeling paint, and health concerns. Despite multiple reports to the Housing Department, no action has been taken to repair it. He is requesting either full repairs to resolve the mould and dampness issues or allocation to another flat, as he alleges that his current living conditions are unsustainable.

Reply from Housing

"We have contacted the Housing Works Agency ("HWA") in respect of this and they have investigated the matter and are now dealing with the issue of repairs. However, the damage is due to a possible leak from above and is completely unrelated to the store".

4. Noise and Safety Concerns Due to Adjacent Storage:

The storage cubicles are not only causing noise disruption but also raise safety concerns regarding what may be stored right next to the Complainant's living room. He complains that this set up places him in a vulnerable position, particularly after discovering hazardous items in the past, and adds to his concern that the mould problem will persist.

Reply from Housing

"The area had been used as a communal area and a dumping ground for unwanted materials. However, as aforementioned, the area is now regularised and individual tenants are responsible for their cubicles. The mould and dampness are not related to the store.

We would appreciate further information about the "noise disruption". Are the leaseholders storing and removing items on a regular basis, are items being moved or dropped or is the Complainant referring to the creation of the cubicles themselves where there may have been an element of noise.?"

5. Main Electrical Controls Located in Adjacent Storage Room:

His main electrical box is located in the storage room. In the past, neighbours have allegedly tampered with his mains, cutting off the Complainant's electricity and requiring an emergency response from the Gibraltar Electricity Authority to restore power. This poses serious safety and security concerns, as his electricity access is compromised by the shared nature of this storage space.

Reply from Housing

"The storage space is accessible via a locked door. This locked door opens up to a corridor in which the cubicles are housed. Each cubicle leaseholder has access to this door and the cubicle that corresponds to them. There are various Main Electrical Controls corresponding to different flats, side by side in which [the Complainant's] box is one of them and is in this corridor. There is no compromise having the boxes inside this space as it

provides further security as opposed to being outside of this area. Arrangements can be made to provide keys to those tenants whose boxes are in this corridor."

6. Neglect and Poor Communication:

It is alleged that the Complainant received no formal written communication regarding his claim to the storage room for five years until 14th November 2024 where he was simply informed that 'the Department's stance remains the same'. Regarding his continuous complaints regarding dampness issues, these have not been discussed or communicated in writing to him at all. All communications have been conducted informally via phone calls, with only one in-person meeting over the past five years, lacking any official documentation or clear information.

Reply from Housing

"This has been addressed in the above responses. The Department has made [the Complainant] well aware of the fact that the contract was void on many occasions, via phone calls and an official meeting at the Department."

7. Discriminatory Treatment and Unfair Singling Out:

The Complainant feels unfairly singled out; he alleges that 95% of tenants who live next to the storage areas in the block have sole use of said storage areas. He alleges that he is the only person in the building that has been treated differently from others, with the excuse of insufficient government funds cited by [another named Housing employee] for delaying the resolution of other storage room issues. This inconsistent handling of storage spaces within [the housing estate] is unfair to him.

Reply from Housing

"The Department extends its assurance to both the Ombudsman's Office and [the Complainant] that he is not being singled out. The inconsistencies in storage spaces are historical and not due to the Housing Department's involvement. There have been many tenants over the years who without obtaining relevant planning permissions have extended their flats by encroaching upon communal shared spaces. The Department is assessing how to tackle this and is in the process of also regularising the situation".

The Ombudsman was informed that the Department "has never granted express consent for use of a store facility by a single tenant."

Furthermore, we are concerned that [the Complainant] uses language such as "rightful claim", "contractual entitlement to this space" and the continued insistence in stating that his concerns have been "dismissed" or "ignored" with "no fair resolution in sight."

[Before receiving a reply to the above particulars of complaint, the HWA visited the Complainant's flat on the 6th February 2025 to inspect the mould. The Ombudsman also attended at a later date to view the location of the storeroom(s) and examine the mould first hand. The Flat was found to be stuffy, with a smell of damp and mould in the air (the Complainant had a dehumidifier running)].

The Complainant informed both Housing and the Ombudsman that his dehumidifier was indeed running non- stop, describing the flat as a "serious health hazard". The Department has met with him, spoken to him and emailed him over several years explaining the situation. It would appear that a fair outcome to him is the outcome he wants, namely, the full use of the whole storage area which would have been completely unfair to his neighbours.

He was also asked whether he was interested in one of the cubicles [but kept deferring his answer until the issue of the store room was sorted out.] Eventually after several emails and phone calls, a number of deadlines to accept a cubicle in the shared store were granted and extended, but he never signed for one.

Some months elapsed and the Ombudsman wrote to Housing to enquire whether there had been any developments on the issue of the use of storerooms generally which Housing was in the process of investigating and addressing."

The Ombudsman queried whether existing contracts for any storage rooms at Knights Court had now been rescinded or was it the case that some storage units were still being used by specific neighbours exclusively?

Housing stated in reply that "contracts have not been voided because none have ever been entered into and we are in the process of regularising the matter" noting that the problem was "complex" because the inconsistencies in storage spaces was "historical". "Over the years tenants have taken it upon themselves to encroach upon communal shared spaces and in several cases, have extended their flats by using these spaces."

Housing also informed the Ombudsman that when the Complainant was allocated his flat in 2019, they were not fully aware of the situation or of the encroachments into communal spaces. "After the matter was investigated and after recent refurbishment of the building, it was illogical to officially continue the practice of unfair usage of communal spaces by granting [the Complainant] the sole use of such a large area. He refuses to accept a cubicle and demands the use of the whole area because other people have encroached upon these areas. This would be totally unfair on other residents."

The Ombudsman also asked Housing for them to confirm that other storerooms had been subdivided for multiple tenants;' use or just the one adjacent to [The Complainant's] flat?

Answer: "At present due to monetary constraints, no other storerooms have been subdivided but the plan, where possible, is to do exactly the same."

It was also determined that on the issue of works to the Complainant's flat to address the mould and dampness issue- no action had been taken either. The Housing Works Agency's report (pursuant to their inspection in June 2025)- had not been sent to Housing at the time of drafting this report- five months after they inspected the Flat.

Conclusions

In summary, the position is as follows: Whilst residing in the Flat and coming into the knowledge (shortly after allocation) that numerous tenants who live adjacent to storerooms enjoy exclusive use of them, the Complainant formally approached Housing in 2019 to enquire about the possibility of deriving the same benefit. Housing accepted the proposal and a contract was provided which the Complainant signed in the presence of a Housing ex-employee at Housing's office premises. Housing proceed to affix an official Notice on the storeroom's door requesting that items contained therein should be removed by a certain date (6th August 2019) or be destroyed, in order to we assume, grant the Complainant sole access. However, Housing never executed the agreement after the PHO raised concerns that to do so would be unfair towards other tenants. The intention to assign the Complainant said storeroom was therefore short lived.

Subsequent to numerous phone calls, the Complainant was informed that the matter was under review by higher management. Housing also state that the Complainant was told on numerous occasions and at an in-person meeting in November 2022 that the contract was "done in error and never countersigned by the then PHO" - that the matter is "still being reviewed" continues to be a live issue.

The Complainant has throughout the entire period (from 2019 to date) insisted in "exercising his contractual rights" to enjoy the sole use of the storeroom previously offered, which offer he accepted by signature.

Time elapses and the storeroom in question is subdivided and offered to multiple tenants (the Complainant included) to occupy on a communal basis. The Complainant feels he is being treated unfairly and that "his contract has been unfairly voided by Management (Housing) without giving him the opportunity to defend [his] claim."

That Housing never signed the document in question is not disputed. In fact, the Ombudsman did have sight of the contract, reviewed at Housing's offices. Indeed, said agreement was signed by the Complainant but never countersigned by Housing.

It is concerning to the Ombudsman that a Housing employee was able to make an offer to the Complainant for exclusive use and provide a contract for signature, only for it not to be admitted by the more senior PHO. Did the employee take it upon herself to conduct matters unilaterally or did Housing consider the ramifications (opening of floodgates) in delivering on their promise after they made it?

From the evidence we have seen, it appears that all other storerooms have been illegally occupied by other tenants for their single use (without Housing's approval/agreement).

Only the storeroom which is the subject of this report (for which proper consent was sought for single use by the Complainant), has been converted into a communal storage for the benefit of multiple neighbours. Viewed objectively, this is an equitable step taken by Housing in the pursuit of fairness to all tenants. That equity however, is reversed by Housing's knowledge that the remaining storerooms have been illegally occupied historically and that no action has been taken to remedy those incursions. "…. Over the years, tenants have taken it upon themselves to encroach upon communal spaces and in several cases, have extended their flats by using these spaces."

The implication is that no action will be taken against these illegal occupations due to the fact that the issue is "complex" and "historical" and, to add insult to the Complainant's injury, that no further storage rooms will be subdivided due to "monetary constraints". Despite this," the plan where possible, is to do exactly the same."

The result, in practice, is that the Complainant's offer was effectively withdrawn and instead, a communal storage space offered to him which he has not accepted. Only by having approached matters as any reasonable, decent and law-abiding tenant would, (by seeking consent for single use as opposed to illegal encroachment), has the Complainant found himself in this unfortunate position.

Irrespective of the above and without seeking to delve into intricate legal argument which is beyond the Ombudsman's remit, the Complainant's position however, lacks legitimacy.

In simple terms, the Complainant's situation is that the landlord (Housing) made an offer of exclusive use of a storeroom to the Complainant (tenant) which the latter accepted and signed for.

Housing however, as has been repeatedly stated, did not sign the agreement. Had a contract been formed even without both signatures on the document? Did Housing's lack of signature constitute a withdrawal of their offer?

Based upon English case law, the key question in our view is whether Housing communicated acceptance of the Complainant's signed offer (or created a binding contract by conduct as opposed to signature), before they withdrew.

Despite the perceived unfairness which will understandably be a bitter pill to swallow for the Complainant, we have seen no evidence whatsoever of any conduct by Housing tantamount to acceptance. No payment (by way of rent) was ever taken in consideration for use of the store and to our knowledge there was no key handed over for its exclusive access, use and enjoyment.

In reliance of the above (and I must make absolutely clear that this is not a legally enforceable judgement), the Ombudsman opines that no contract was ever formed. There could have been no subsequent "voiding," repudiation or breach of a contract which was never properly constituted in the first place.

The legal authorities suggest that a party who hasn't signed can usually withdraw the offer before it is accepted. Once the offer is withdrawn, there is no contract unless there is another written form of acceptance (e.g., clear written or oral agreement). This alternative agreement was missing in this case. In addition, there was no partial performance by the unsigned party. They did not act in a way that clearly indicated acceptance which a court could reasonably find may have constituted a binding contract. The position was from the outset that Housing did not sign because the offer should by their own admission, have never been made at all. "It was made in error."

RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH [2010] UKSC 14- shows that courts look at intention and conduct, not just signature.

Carhill v Carbolic Smoke Ball Co [1893]- illustrated that acceptance can be by conduct (lacking in this complaint).

Despite my view, I disagree with Housing's assertion that the Complainant has been treated fairly and that "he has not been singled out."

It is very probably the case that Housing has not acted in bad faith. Their withdrawal may have been driven by a fear of floodgates opening by granting lawful consent in regularizing the use of a communal area. Nevertheless, Housing should have been transparent and direct with the Complainant as soon as they realised the error in making the offer due to its potential ramifications. To have given the Complainant false hope and perpetuating an expectation by repeatedly stating that the matter was "under review" was unjust, undesirable and lacked administrative transparency.

From an administrative (as opposed to a legal) standpoint, Housing has failed the Complainant.

A continuing act of maladministration is also being committed against him, law abiding Government tenants and the Gibraltarian public at large (taxpayers), by Housing's inaction in recovering property which has been illegally taken over by a few, at the expense of many. For our current purposes, these encroachments have caused a clear and direct detriment to the Complainant. Unauthorised encroachments exist in numerous housing estates and extend to storerooms, patios and other extensions or structures. This uncivil behaviour is a prime example of the culture of entitlement which is prevalent within some sectors of our community and which the Government ought to openly condemn, rectify and penalise, difficult as that may be.

Classification

Complaint against Housing in relation to an offer for exclusive use of a storeroom adjacent to the Complainant's flat which he accepted in writing but which was never assigned to him- for the reasons cited above- Not Sustained.

However, it is grossly unfair for Housing to withdraw their offer without simultaneously tackling the illegal encroachment by other tenants, of which Housing is perfectly aware.

Recommendations

1. That the Complainant be offered shared use of storage facilities if he wishes to now take up said offer with immediate effect.

2. That steps be taken by Housing against tenants to recover illegally encroached communal areas (within a reasonable time frame).

3. That all storerooms recovered and any and all remaining storerooms be converted for multiple use by qualifying tenants so that all tenants have equal access to shared spaces.

Update

At the time of drafting this report, the Complainant asked the Ombudsman to focus her efforts on the issue of the storeroom. He informed her office that he had been contacted by the HWA for a projected start date for remedial works to the Flat to address the issues of dampness and mould.

REPORT ON CASE NO 1329

Complaint against the Housing Authority ("HA") for the unjust decision to refuse the Complainant's application for inclusion in the Government housing waiting list ("List") for rented accommodation

Complaint

The Complainant was aggrieved by the HA's decision to refuse her application for inclusion in the List because she considered it was unjust.

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, now in her thirties, was born in Gibraltar to parents of Moroccan nationality (who later became British nationals) and was raised and educated in Gibraltar. She obtained British Overseas Territories Citizenship ("BOTC") at the age of ten and then went on to apply and obtain British Citizenship. In her mid-twenties, the Complainant left Gibraltar for approximately four years to pursue professional opportunities. She returned to in 2023 and now has a son who was also born in Gibraltar.

In early 2025 she applied to the HA for inclusion in the List and was informed that as a British National she had to provide proof of ten years continuous residency in Gibraltar. The Complainant was unable to provide this because she had been away for four years but pointed out that apart from those years, she had always resided in Gibraltar and it was her homeland. The Complainant argued that whereas the HA required only one year's proof of continuous residency in Gibraltar from persons who had Gibraltarian Status or were 'Permanent Residents', she was being treated as a newcomer to Gibraltar. She put it to the HA that she was a permanent resident in Gibraltar and that the HA should therefore only require one year's proof of residency. The HA's response to the Complainant was that they could not waive eligibility criteria and they could not ignore the fact that she had left Gibraltar for four years as that would contravene the parameters of the Housing Allocation Scheme ("HAS"). They informed her that if she was a registered Gibraltarian they would only require one year's proof of residency and suggested that she check with the Department of Immigration & Home Affairs ("DIHA"). The HA did not make any reference to the 'Permanent Residents' eligibility.

The Complainant, although eligible to have applied for Gibraltarian Status before leaving for the four-year period, had never applied for Gibraltarian Status so that avenue was not an option for her. Her stance was that Gibraltar was her home where she had been born, raised and resided all her life, excepting the four year period, and she was being asked for ten year's proof of continuous residency whereas 'Permanent Residents' (persons who were not British Nationals and had moved their residence to Gibraltar were eligible to apply for permanent residency after five years of continuous residency in Gibraltar) were only required to submit one year's proof of residency.

Having reached an impasse with the HA, the Complainant lodged her complaint with the Ombudsman.

Investigation

The Ombudsman presented the complaint to the HA in September 2025 and specifically asked for their comments with respect to eligibility to apply for Government Housing under Section 4 of the HAS, and in particular to 4(b) and 5(b)(ii) as follows:

4. PERSONS ELIGIBLE TO APPLY FOR GOVERNMENT HOUSING

The following persons are eligible to apply for Government housing: -

(a) Persons who are registered in the Register of Gibraltarians;

(b) Persons who are not registered Gibraltarians, but who at the time of application, have a right of permanent residence;

(c) Persons who are British Dependent Territories citizens by virtue of a connection with Gibraltar, as defined by the British Nationality Act 1991.

5. QUALIFICATION

To qualify for the allocation of Government housing, the application must satisfy the following conditions, that is to say:-

(a) …
(b) …
(i)…
(ii)Permanently resident in Gibraltar and have been so for one year prior to application; and…

The HA's response stated that in order to become a housing applicant, evidence of continuous residency must be provided. They advised that as set out in the notes that accompanied the housing application form, the latter had to be stamped by DIHA if the person was a registered Gibraltarian.

Registered Gibraltarians had to provide proof of one year's continuous residency i.e. pay slips, contract of employment, utility bill if in applicant's name, record of medical appointments at the Gibraltar Health Authority. Students can provide a letter from the Department of Education confirming studies, in addition, if studying abroad, the grant letter would be required. If unemployed, unemployment form, last P7, confirmation of social assistance, termination of employment etc. If of pensionable age, confirmation of pension being received.

British nationals who are unable to obtain the Gibraltarian status stamp had to provide proof of ten years continuous residency in Gibraltar.

The HA stated that the Complainant had confirmed that she was not a registered Gibraltarian and therefore had to provide ten years of continuous residency in Gibraltar. The Complainant's argument that she was born and schooled in Gibraltar were not valid criteria to approve the application.

The Ombudsman noted that in their response, the HA had not made any reference to the 'permanent resident' category in the HAS (as set out above). The Ombudsman wrote to the HA requesting this information. The HA's reply was that they had responded to the aspect of her query and asked the Ombudsman to clarify where she thought this may not have been answered. The Ombudsman once again pointed to the pertinent sections of the HAS and asked the HA where in their response they had provided the information regarding 'permanent residents'. The HA contacted the Ombudsman for clarification as they were not clear on what she required and she referred them to the fact that 'Permanent Resident' is in fact a status and has its own category within the HAS. The HA did not offer any further comment on this other than that they would be raising it with the senior management team for their views.

In order to obtain further information on permanent residency status, the Ombudsman contacted DIHA and provided an overview on the Complainant's complaint. DIHA stated that the Complainant could not apply for 'Permanent Resident' status because she had been naturalised and was a British Citizen. The Complainant had a red Identity Card obtained via the naturalisation process and had the 'Right of Abode' which meant that she had a right to live permanently in Gibraltar without any immigration restrictions.

They advised that the Complainant was born in Gibraltar and first registered at DIHA ten years later as a British Overseas Territories Citizen ("BOTC"). They explained that at that time; after residing in Gibraltar for ten years, her parents would have applied for her naturalisation. According to DIHA, the ten-year qualification period was subsequently changed to five years [Ombudsman Note: At the time of writing this report, November 2025, His Majesty's Government of Gibraltar ("HMGOG") were implementing changes to the qualifying period, from five years to ten years]. Regarding 'Permanent Residency', DIHA explained that after five years of continuous residency in Gibraltar, EU and British nationals could apply for a certificate of Permanent Residency and would obtain a red Identity Card. After ten years of continuous residency, they would qualify to apply for Gibraltarian Status. If a 'Permanent Resident' left Gibraltar for an extended period of time after obtaining permanent residency, they would lose that status [Ombudsman Note: At the time of writing this report, November 2025, HMGOG were implementing changes to the qualifying period, from ten years to twenty years]. DIHA highlighted that since 2014 when HMGOG reduced the qualifying period for obtaining Gibraltarian Status from twenty-five years continuous residency in Gibraltar to ten years, the Complainant would have been eligible to apply.

The Ombudsman contacted the Complainant further to the conversation with DIHA. She queried what the Complainant's nationality had been for the first ten years of her life and the Complainant advised that she had Moroccan nationality through her parents. The Ombudsman enquired as to why she had not applied for Gibraltarian Status and she replied that it was because she was young and did not prioritise that but obviously now regretted not having done so.

Conclusions

The Ombudsman sustains this complaint.

The Complainant applied to the HA for inclusion in the List and was told that because she was a British National she would have to submit ten years proof of continuous residence in Gibraltar. As the Complainant had left Gibraltar for four years to pursue a career, she was not able to provide this but argued that she was a permanent resident in Gibraltar and as per the qualification set out in the HAS, the HA should only be requesting one year's proof of residency from her.

The Complainant was eligible to have applied for Gibraltarian Status but did not do so.

Considering the particular circumstances of the Complainant which were that she was born in Gibraltar, naturalised as a British national and had the 'Right of Abode', the Ombudsman considers that the Complainant falls under the following category as specified in Section 4(b) of the HAS:

Persons who are not registered Gibraltarians, but who at the time of application, have a right of permanent residence;

As such, the qualification period for 'Permanent Residents' which is one year's proof of continuous residency is what the HA should request from the Complainant.

Classification

Sustained

Recommendations

The Ombudsman recommends that the Housing Authority review the Complainant's application to the Government Housing List and categorise her as a 'Permanent Resident' as per Section 4(b) of the Housing Allocation Scheme and apply the qualification period as per Section 5(b) (ii) of the said Scheme, where the qualification period applicable is one year's proof of continuous residency in Gibraltar.

REPORT ON CASE NO 1299

Complaint against the Income Tax Office (ITO) regarding the decision to exempt the Complainant from Pay As You Earn (PAYE) for the period July to October 2022, while subsequently informing him that he was not entitled to Social Insurance Credits (SIC) for the same period on the basis that he was not enrolled as a student for the full 2022/2023 academic year. He is also dissatisfied with the quality of the response provided by the ITO's Social Insurance Team in relation to this matter.

Complaint

The Complainant was aggrieved because although he was exempt from PAYE for the period July to October 2022, he had been informed by the ITO that he was not entitled to SIC for the same period because he was not enrolled as a student for the full academic year 2022/2023.

He was further aggrieved by the quality of the reply received from the Team.

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

The Complainant had enrolled as a student in the University of Gibraltar ("University") for a course which commenced on the 1st August 2021 and terminated on the 31st October 2022. He explained that it was an intensive full-time course and that it ran for a continuous period of fourteen months instead of the standard two-year course with vacation breaks.

In parallel to his studies, the Complainant informed the Ombudsman that a condition of his course was that he should be in full time employment. According to the Complainant, at that time, his employer submitted the pertinent documentation to the ITO and was granted Student Exemption for the duration of the course which exempted him from PAYE and granted him SIC. Immediately upon completion of his full-time studies, the 1st November 2022, the Complainant's Student Exemption terminated and he commenced PAYE and SI payments.

In November 2023, the Complainant was informed by his employer that he (the Complainant) had to contact the ITO as subsequent to the employer's annual submission of the P8 forms, the ITO had identified an issue. The issue was that the ITO would not grant the Complainant Student Exemption for the period July to October 2022 and he would have to pay SI for those months. Upon receiving these news, the Complainant's first port of call was the eGov offices where he claimed to have been informed by clerical staff that in their opinion, he was a student during that period and he should not owe the ITO anything. Notwithstanding, when eGov staff checked their electronic records, it showed there was a SI error and he was referred to the Team.

According to the Complainant, when he attended the Team's offices, he was told that having been a full-time student at the time there should be no issue, unless he was not completing the academic year or not returning to study. He was asked to resubmit the letter from the University so that his case could be reviewed. The University letter was dated 10th August 2022 and stated that the Complainant would be in full time study from the 1st August 2021 to 31st October 2022, substantiating the information already provided by the Complainant.

Since contacting the Team in November 2023, the Complainant stated that the Team had responded to his email enquiry rejecting his request for Student Exemption for that period. He had asked for another review of his case which was again rejected on the 11th June 2024. The reply informed him that the Team had reviewed his documentation and taken into account the period of study but unfortunately, they were unable to grant him student status for PAYE and SI purposes further than the 30th June 2022. The Complainant was aggrieved by the quality of the response.

The Complainant stated that he was a low-income earner studying in Gibraltar with no support from the Gibraltar Government or the Department of Education and needed to work full time. He felt he had been treated unfairly as he was aware that several students working during the summer who returned to their studies only to drop out mid-year and not complete the academic year had not had any requirements to pay back SI.

The Complainant lodged his complaints with the Ombudsman in June 2024.

Investigation

The Ombudsman presented the complaints.

The ITO's response stated that the Complainant was a student from the 1st August 2021 to the 31st October 2022 as confirmed by the University. However, Student Exemption for PAYE and SI purposes could only be granted for the duration of the relevant tax year; in the Complainant's case that was for the tax year 2021/2022 covering the period 1st July 2021 to 30th June 2022, despite the course extending to the 31st October 2022.

Furthermore, the ITO pointed out that the Complainant was registered under a part-time Terms of Engagement ("ToE") but worked over thirty-nine hours per week which was classified as full time employment and noted that factor also contributed to the rejection of his student status. The ToE were not categorised as 'Student' by the Employment Service and no variation of terms and conditions were filed by the employer to notify the ITO of the increase in contracted hours. Consequently, the ITO issued the corresponding tax code and did not grant Student Exemption for the period in dispute. The ITO provided a copy of the ToE as requested by the Ombudsman. The document was dated 18th January 2021 and the hours of work per week were stated as being sixteen. As highlighted by the ITO, there was no reference to the Complainant being a student.

Regarding the Complainant having stated that he was exempt from PAYE for the period 1st July to 31st October 2022 but not exempt from SI, the ITO provided clarification. The ITO noted that the Complainant had been classified as a low-income earner for PAYE purposes because his earnings were below £19,500- per annum. He applied for the low-income earners allowance in his 2021/2022 tax return, submitted in November 2022, and the allowance was applied against his tax code on the 1st March 2023 but was for the entire tax year 2022/2023.

In respect of the Student Exemption, the ITO advised that it was the responsibility of the student or the employer to contact the ITO Contributions Section annually to determine if the Student Exemption could be carried forward into the subsequent tax year. The ITO stated that had not been done in this case despite adequate instructions being provided to the employer through the tax code.

Regarding the ITO having stated in their reply that the Complainant working full time had contributed to the rejection of his student status, the Ombudsman asked the ITO whether they would have in fact had discretion to allow him Student Exemption for part of the tax year. The ITO responded that they did not and reiterated that Student Exemptions are not extended for part of the year.

Based on the information provided by the ITO, the Ombudsman enquired as to how it was possible for university students to be exempt from SI and PAYE when in employment during the two summer months (ordinarily July and August). The ITO explained that they referred to two different types of years, i.e. the tax year and the academic year. Student Exemptions are granted for the duration of the relevant tax year irrespective of when the academic year ends. The Ombudsman further enquired as to whether there was any written rule or policy with regards Student Exemption and the ITO referred the Ombudsman to Section 49(a) of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992.

On the issue raised by the Complainant of being aware of several students who had worked during the summer and returned to their studies but not completed the academic year and not had to pay back SI and PAYE, the Ombudsman enquired as to what the ITO's policy was if that situation arose and how they would find out about those cases. The ITO replied that they would be made aware at assessment time through liaison with the Education Department and the situation corrected at the time when the student's personal assessment was raised.

Regarding the quality of the reply provided to the Complainant, the Ombudsman noted that the Complainant had only provided a copy of the reply provided by the Team when they reviewed the case (June 2024) and not the response provided to the Complainant's initial enquiry via email on the 27th November 2023. The Ombudsman requested this correspondence from the ITO which was duly provided. Further to submitting the letter from the University as proof that he was in full time education, the Team provided a substantive reply and stated that he had been granted Student Exemption up to and including the 30th June 2022. He was informed that the ITO work with the relevant tax year and for them to extend his status he would have had to be enrolled on a fulltime basis and in full time attendance for the full academic year 2022/2023.

A number of further emails were exchanged between them and in the last email dated the 7th December 2023, the ITO advised the Complainant that if he wished to discuss the matter further or required additional information, he could contact them by telephone.
Conclusions

Complaint (i) - Exempt from Pay As You Earn ("PAYE") for the period July to October 2022 but informed by the ITO in 2023 that he was not entitled to Social Insurance Credits ("SIC") for the same period because he was not enrolled as a student for the full academic year 2022/2023 – Not Sustained

The Ombudsman did not sustain this complaint.

The Ombudsman's investigation found that in order to be granted Student Exemption, the Complainant would have had to be enrolled as a student on a full-time basis for the duration of the relevant tax year. In the Complainant's case, the period July to October 2022 did not meet that criteria.

Regarding the Complainant having stated that he was exempt from PAYE but not SI for the period July to October 2022, the Ombudsman's investigation found that this was due to him being in receipt of the low-income earner's allowance with respect to PAYE and not due to Student Exemption.

Complaint (ii) - Aggrieved by the quality of the reply received from the Team – Not Sustained

The Ombudsman did not sustain this complaint.

Although the information provided by the Team to the Complainant was somewhat complex to understand, the November and December 2023 responses adequately dealt with the Complainant's query. Furthermore, the Team offered the Complainant in their December 2023 email to contact them by phone if he required further or additional information.

REPORT ON CASE NO 1308

Complaint against the Gibraltar Port Authority ("GPA") after the Complainant's vessel ("Vessel") was seized, removed and moored by the GPA on the 2nd July 2024 in an unsafe manner; for the failures from the GPA to communicate the condition of his Vessel since being seized and in finding a resolution regarding his berth; for being treated unfairly by the GPA since 2017 and this has affected him financially and mentally and for the non-reply to email sent to the Captain of the GPA.

Complaint

The Complainant was aggrieved because on the 2nd July 2024, the GPA had seized, removed and moored his Vessel in an unsafe manner. He was further aggrieved because there had been no communication from the GPA with regards to the condition of his Vessel since being seized, nor in finding a resolution regarding his berth. The Complainant further complained that he had been treated unfairly since 2017 and this had affected him financially and mentally. He also lodged a complaint of non-reply to the email he had sent to the Captain of the GPA ("Captain") on the 28th August 2024.

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 2018 the Complainant had lodged complaints with the Ombudsman against the GPA. These were investigated and report CS1176 compiled. The complaints stemmed from an application the Complainant had made for a berth allocation at the new Government owned marina (inaugurated in 2016), Mid Harbours Small Boats Marina ("MHSBM") in order to move out of the Watergardens Marina ("WM") (also Government owned) (where he had been berthed since 2005) where the Complainant claimed the pontoons were dangerous and had become a health and safety issue. According to the Complainant it was due to the latter that he had been told he would have priority for an allocation [Ombudsman Note: Both the MHSBM and WM were owned by His Majesty's Government of Gibraltar (HMGOG) and the monthly rental of berths in those marinas was very economical when compared to private marinas, with annual berth fees starting at £365- per annum].

When the MHSBM was completed in 2016, the GPA initially refused to allocate a berth to the Complainant because it had been noted that the length of the Vessel appeared to exceed the maximum length permitted. The Complainant argued that the length stipulated in the Vessel's Red Book had been established by the GPA as being 30 feet (9.144metres), so further to discussions with the Captain of the GPA at that time ("Captain 1"), he was allocated a berth in April 2016 and paid the pertinent fees. In 2017 the Complainant moved the Vessel from WM to the new berth at MHSBM after it had undergone repairs which the Complainant told the Ombudsman had been requested by the GPA in order to upgrade it to the required standard and specifications. The GPA denied this stating that the Complainant expended the repairs because they were necessary and not because they had been imposed on him.

In May 2017 the Complainant once again took the Vessel to Spain for repairs to the engine and whilst there, the GPA contacted him on the 3rd July 2017 to ask if they could go and measure the Vessel; a request which the Complainant agreed to. The GPA informed the Ombudsman that they had gone through the expense of having surveyors measure a number of vessels after having received information that some boats at the marinas exceeded the limitations. The result of that survey was that the hull length was found to be 9.90metres which was in breach of the Small Vessels (Mooring Controls) Rules 2016, which set the limit at 9.05metres. On the 18th July 2017 the Complainant received a letter from the GPA giving him one month in which to reduce the size of the Vessel failing which, his permit would be revoked and he would have to seek alternative berthing (in a private marina), an option which the Complainant was not able to afford. It was only as a result of engaging legal counsel to represent him on the issue that he was able to secure a return to WM, albeit at a substantial cost in legal fees. The return to WM was verbally agreed by a new GPA Captain ("Captain 2") who allowed him to return to WM on the pre-condition that no claims for compensation for the Vessel would be accepted, as works carried out to the Vessel were not due to the berth situation (at WM). The Complainant agreed to this.

In the course of the investigation, the Ombudsman made enquiries from the GPA as to whether all vessels at MHSBM adhered to the 9.05metres limitation. GPA stated that there were eight vessels, including the Complainant's, with five having made amendments to their boats and a further two either making changes or selling them. Only the Complainant had had his berth removed.

From information provided by the GPA to the Ombudsman it was established that in 2005 a concession was given to the Complainant by the then Minister of the Port under humanitarian grounds (the Complainant was being evicted from Sheppard's Marina (private marina) where he lived onboard the Vessel with his disabled son) with several other exceptional accommodations made. It was also the only Vessel supplied with electricity and water in order that they could live aboard. They also stated that when the ministerial decision was made to exceptionally grant a berth at WM by special concession, the GPA measured the Vessel for practical reasons specifically and exclusively in connection with accommodating the transfer of the Vessel to WM (to ensure that it would fit that berth as well as for the subsequent issue of the Red Book).

The complaints investigated by the Ombudsman in 2018 and his conclusions were as follows:

1. No mention of maximum dimensions for the mooring of a boat at MHSBM at the time of application- Not Sustained

2. Vessels of the same size or larger are berthed at MHSBM - Sustained

3. Alleged unprofessional practice at the GPA in the manner that his request for a berth at the MHSB marina had been dealt with and how it was subsequently revoked- Sustained.

4. Feels he should be allowed to return to the MHSB marina for all the issues raised as well as the fact that WM is unsafe- Not Sustained (disallowed by law).

Further to the Ombudsman's investigation and findings as per above, the Complainant continued to berth his Vessel at WM until April 2023 when he took the Vessel to Spain to be refurbished and antifouled. According to the Complainant, the refurbishment had to be carried out because of the damage the Vessel had sustained at WM due to the continued precarious state of the pontoons and vandalism. The Complainant informed the Ombudsman that in June 2023 the GPA begun refurbishment works at the WM which were completed in October 2023. By that time, works on his Vessel had been finalised and the Complainant wanted to return to his berth, as having the Vessel in Spain was costing him 400 Euros a month. His request to return to WM was refused by the GPA until the Vessel was measured. The Complainant's stance was that the Vessel had been measured in 2005 and 2017 by independent surveyors appointed by the GPA and questioned the need for another survey. In an attempt to resolve the impasse and seek assistance due to believing that he was being treated unfairly, the Complainant contacted the Minister for Industrial Relations, Civil Contingencies and Sport ("Minister 1") as well as the Minister for Health, Care and Business ("Minister 2"), and stated that he received an email in February 2024 from the latter advising him that they would be willing to consider a three month grace period for him to return to WM. According to the Complainant, between March and June 2024 he communicated with Minister 1 via message and on the 6th June 2024, asked Minister 1 to inform Minister 2 about the situation regarding the Vessel. On the 17th June 2024 the Complainant returned to WM and berthed in what he had identified as an appropriately sized berth; a berth which he claimed had been empty since the completion of the WM refurbishment works and believed could potentially be his, due to the size of the other boats berthed there. Furthermore, in May 2024 he had been contacted by a prospective purchaser for his Vessel who informed him that there were three 10 metre berths at WM; two were taken and the GPA had allocated him the remaining berth. The Complainant advised that upon returning to WM he immediately informed Minister 1 and sent photos to show where the Vessel was berthed. He also notified him that the steering was broken and asked him to notify Minister 2. The day after his return, 18th June 2024, a GPA officer ("Officer") informed the Complainant that the berth he was occupying had been allocated to someone else and he had to vacate it. The Complainant told the GPA that he had permission from Minister 2. On the 19th June 2024 the Officer contacted him and reiterated that the Vessel had to be measured before returning to Gibraltar. Once again, the Complainant questioned the need. He explained that he had permission to berth but the Officer refused to accept this and insisted that only the Captain ("Captain 3") [Ombudsman Note: Captain 3's appointment replaced Captain 2] of the GPA could make that decision. On the 25th June 2024 the Complainant claimed to have received verbally aggressive and threatening recorded messages, from who he later identified was the prospective purchaser of his Vessel, who had been told by the GPA that the Complainant was occupying his berth and wanted him to vacate it. On the 26th June 2024, the Complainant received a letter from the GPA instructing him to remove the Vessel by the 27th June 2024. He was also contacted on that day by a GPA employee by phone and told that he needed to be at the Vessel by 3pm as the GPA would be removing the Vessel. The Complainant replied that he was feeling unwell and could not attend but also said that he would not give authorisation for the removal and as such, GPA could not touch the Vessel.

The Complainant emailed Minister 1 and Minister 2 on the 28th June 2024 to inform them of the GPA's plan to remove the Vessel without his authorisation and added that if it was moved, due to the Vessel's steering not functioning correctly he would be unable to inspect and maintain it or show the Vessel to potential buyers. He provided the Ombudsman with a copy of Minister 2's response which noted that she had written to him on the 6th February 2024 stating that they would be willing to consider a three-month grace period (for the Vessel to be berthed at WM) and that they would have expected something to have been done in the intervening period since February. She also stated that bringing the Vessel over with no form of communication was not at all what the correspondence had envisaged.

The Complainant responded to Minister 2 and explained that on the 17th June 2024 when he returned to WM he had informed Minister 1 and asked him to notify her. The Complainant also provided a summary of what had transpired to date.

On the 30th June 2024, the Vessel was still at the berth. The Complainant alleged he was waiting for spare parts he had ordered because the Vessel's steering had broken on the way to Gibraltar. On the 3rd July 2024 the Vessel was no longer at the berth and the Complainant reported to the RGP that the Vessel had been stolen. Later that evening, the RGP contacted the Complainant and informed him that the Vessel had been seized by the GPA.

The Complainant contacted the Ombudsman to lodge his complaints but was advised that he first needed to put his complaint to Captain 3. The Complainant did so on the 28th August 2024 setting out his situation and requesting his prompt attention to the matter [Ombudsman Note: The letter (sent via email) was addressed to Captain 3 but email to Minister 1 and Minister 2 as main recipients]. A month later and not having received a response, the Ombudsman took on the complaints.

Investigation

The Ombudsman presented the complaints to Captain 3 on the 18th October 2024 and received a response on the 28th November 2024. Captain 3 provided a timeline and highlighted that they had had longstanding issues with the Complainant for a number of years. Regarding his non-reply to the Complainant's communication, Captain 3 stated that the Complainant was fully aware of the GPA's position and wrote to both him and Minister 2 with a view to seeking a change in the position taken by the GPA. He provided the Ombudsman with a copy of Minister 2's reply to the Complainant dated 28th August 2024, in response to the email sent by the Complainant to Captain 3, Minister 1 and Minister 2 on the same day. Minister 2 referred the Complainant to her email of the 6th February 2024 in which she stated they would be willing to grant a three-month grace period but pointed out it was now August. Captain 3 stated that there was nothing further for the GPA to respond to in addition to Minister 2's response. Captain 3 pointed out that the timeline provided showed that the GPA had been in regular correspondence with the Complainant and continued to be, although with very little success in terms of responses from him.

The timeline commenced in April 2016 when the GPA stated that the Complainant signed a letter of commitment (for the purpose of applying for a berth at MHSBM) in which he declared that the overall length of the Vessel was 9.00metres. In May 2017, a year after MHSBM had been completed, the Vessel, along with others, was identified as being too large for MHSBM and those individuals were asked to modify their vessels to comply with the length limitations. The GPA appointed a private surveyor to represent them to undertake measurements of those vessels. In July 2017, a survey was carried out by the GPA whilst the Vessel was on land undergoing refurbishment/antifouling, and LOA (Length Overall) was established at 10.10metres and hull length at 9.90metres. Captain 3 referred the Ombudsman to the Small Boat (Mooring Controls) Rules 2016 under the section 'Interpretation' where:

"small vessel" means a fishing vessel, pleasure boat or sailing boat of a hull length not exceeding 9.05metres.

In August 2017, the Complainant appointed a surveyor who concluded that the measurement was 9.22metres from 'rubbing strake at the bow to the stern'. Subsequent to that measurement, the Complainant emailed Captain 2 and highlighted the discrepancy between the 'Red Book' (30feet equivalent to 9.14metres) length and measurements taken by the GPA in 2011, the latter disputed by the GPA. The GPA decided that another survey would be carried out due to the discrepancy between the two surveys. The Complainant wanted his private surveyor to be present for that but the GPA were clear that at no point would his measurements be accountable. In the end, neither the Complainant nor his surveyor were available to attend the GPA survey and ultimately, the Complainant did not consent to it. On the 3rd November 2017, in light of the aforementioned developments, the GPA gave the Complainant a deadline for the removal of the Vessel from MHSBM, the 10th November 2017. The following day, the Complainant acceded to the GPA survey which was carried out on the 7th November 2017 and on that occasion concluded that the Vessel measured 9.85metres. Subsequent to that outcome, the Complainant instructed legal counsel as did the GPA and Captain2 agreed that the Vessel could remain at MHSBM until the case concluded. In March 2018 further to discussions between both parties, GPA legal counsel advised Captain 2 to arrange a meeting with the Complainant without lawyers present. On the 29th March 2018, subsequent to that meeting, the GPA informed the Complainant that the Vessel should be removed from MHSBM by the 6th April 2018. On that date, it was resolved that the £365- paid by the Complainant for the annual berthing fee of MHSBM would be refunded and permission was given for the Vessel to return to WM.

In October 2018 the GPA received inquiries from the Ombudsman in relation to his investigation and subsequently the final report. Between 2019 and September 2022, the GPA had no further information until they received a phone call and email from the Complainant in October 2022 requesting permission to moor at the MHSBM due to the WM deterioration. The GPA timeline noted that a meeting was held between Captain 3 and the Complainant on the 4th November 2022 but no details were provided and so the Ombudsman requested information on what was discussed at that meeting. Captain 3 advised that the meeting was requested by the Complainant and he asked for permission to return to the MHSBM which was rejected and was once again reminded of the legislation in place limiting size of vessels in Government marinas.

In March 2023 the Complainant emailed the GPA to inform them that the Vessel was out of the water and followed this up with an email update on the 11th August 2023 which was forwarded on to the Dock Controllers. On the 14th August 2023 the GPA timeline noted that the Dock Controllers were made aware that the Vessel's LOA was too large for the berth and in consultation with a senior staff member intended to tackle the problem when the reallocation process to WM began. In September 2023 the Complainant emailed the GPA enquiring about the berthing of the Vessel once the WM works were completed. GPA replied that all berth holders had been contacted and given notification of works at the WM. If he had not received that notification, he should contact the Dock Controllers or Port Officer immediately to update his contact details. The GPA further advised that there was no completion date for the works but he would be contacted once they were in a position to provide a further update.

Between the 4th October and the 4th December 2023, the Complainant sent a number of emails to the GPA requesting information. In late October 2023, the GPA noted that there was confusion between the LOA in their system and the Vessel's true LOA and Captain 3 instructed one of the officers to revoke the berth if the Vessel was oversized. On the 4th December 2023, the Complainant was informed that the GPA would engage a private surveyor to investigate the matter further before confirming he could return to WM and they enquired about the Vessel's location. The Complainant responded that the Vessel was out of the water but made no mention of its location or any reference to GPA's request. That same day, the GPA contacted and informed the Complainant that before they could allow entry into WM the Vessel had to be surveyed. The Complainant's response was that he was confused as to why they were asking for another survey when the Vessel had been surveyed before and again made no mention of the Vessel's location. The next entry on the GPA's timeline was the 24th June 2024. It was noted that the Complainant had decided to moor the Vessel in WM without a permit to moor and without advising the GPA beforehand. Many failed attempts were then made by the GPA on that day to contact the Complainant via their landline.

In a final attempt to contact him, one of the GPA officers called the Complainant from his Spanish mobile phone and the Complainant replied. He was then informed that in keeping with instructions from Captain3, the Complainant had to remove his Vessel immediately or the GPA would remove it at his expense. The Complainant responded that he had permission from Minister 2, that the GPA had no jurisdiction to remove the Vessel from WM and that he would see them in Court. He then cut the conversation short due to work commitments and when asked by the GPA to return their call when he was in a position to do so he replied that he would not call them back. In keeping with the instructions issued by Captain 3, the GPA sent a registered letter to the Complainant on the 25th June 2024 in which they notified him that the Vessel was to be removed by the 28th June 2024; a Writ was taped to the Vessel. GPA made all the necessary arrangements for the Vessel to be transferred to Waterport Messroom and that was done on the 3rd July 2024. On the 28th August 2024 the Complainant sent an email to Minister 2, Minister 1 and Captain 3 and that was responded to by Minister 2 [Ombudsman Note: The Complainant's email of complaint to Captain 3].

The timeline terminated on the 5th September 2024 where it was noted that the Complainant had sent an email to the GPA in which he stated that he had been unable to collect the registered letter until that day and it had been returned to the sender. He enquired if it was the GPA who had tried to contact him. Captain 3 sent the email on to the Dock Controllers for action.

Regarding the complaint of non-reply, Captain 3 advised that the Complainant had written to him and to Minister 2 with a view to seeking a change in the position taken by the GPA. As far as he was concerned there was nothing for them to respond to in addition to Minister 2's response. Captain 3 added that the GPA had been in regular correspondence with the Complainant and continued to be, although with very little success in terms of responses.

Further to reviewing the information provided by Captain 3, the Ombudsman met with the Complainant in February 2025 to obtain further details. Regarding having lived onboard the Vessel, the Complainant confirmed that he and his disabled son had lived in it between 2003 and 2010 after which they moved into a flat with his partner. He also informed the Ombudsman that he had not paid berthing fees since 2018 at the WM because of the precarious state of the pontoons and the lack of safety measures and pointed to having had to pay a diver approximately £300- on three different occasions to repair mooring ropes. The Ombudsman enquired if there were still oversized vessels in the marinas and the Complainant said that there were still a number of them. Regarding whether he could have made alterations to the Vessel to reduce the LOA for it to be compliant with the Rules, the Complainant stated that he could have cut the nose off the Vessel but he did not [Ombudsman Note: Reviewing the file of the previous investigation, the Ombudsman found a copy of the survey commissioned by the Complainant in August 2017 whereby the surveyor had made suggestions to the Complainant on the alterations that could be carried out to the Vessel to make it compliant with the measurements required. These were to cut the front rail so that it would not extend over the bow and weld back so that it would reach the bow and the removal of the fixed ladder at the stern which could be put back in place as and when required. The estimated cost of the works was shown as £385.00].

The Complainant told the Ombudsman that because of the number of years he had been berthed at the WM he had heard from someone that he could have acquired 'grandfather rights' [a provision in which an old rule would continue to apply to some existing situations while a new rule would apply to all future cases]. The Ombudsman could not provide advice to the Complainant on that course of action as that would be a matter for the Courts.

The Complainant stated that he had spent 'a fortune' on repairs to the Vessel and since being removed from the berth by the GPA it was not being kept in a safe and secure location.

The Ombudsman wanted further clarification from the Complainant on a number of issues (these have been set out below and the responses shown in red):

(i) What had finally been agreed between his lawyer and the GPA back in 2017?

Answer: The Complainant was permitted to return to WM and await refurbishment. Upon receiving the Ombudsman's report, he expected the GPA to implement his recommendations which did not occur. [Ombudsman Note: The Ombudsman reviewed the report and noted there was no recommendation made. Four complaints had been investigated and two of them sustained (2 & 3 as set out in the 'Background Section' of this report].

(ii) How was his lawyer able to secure a place at WM for the Vessel, considering the length restriction rules?

Answer: The Complainant was informed that his Vessel was relocated from the MHSBM due to the new regulations introduced in 2016. Captain 2 approved his return to WM following a meeting he attended with him without legal representation. [Ombudsman Note: The Small Vessels (Moorings Controls) Rules, 2016, include WM and therefore the same rules as in MHSBM apply, including the maximum vessel length. Captain 3 confirmed that this legislation replaced the Small Vessels (Moorings Controls) Rules, 1990, which also contained a size limitation/restriction].

(iii) Were there any developments between 2019 and 2022?

Answer: The Vessel remained at WM from April 2018 with no developments until August 2023 but the Complainant maintained regular correspondence with the GPA seeking updates and information due to ongoing issues, including persistent damage to the Vessel.

(iv) Did the issue of the length of the Vessel resurface as a result of the email the Complainant sent to the GPA in 2022 asking for a berth in the MHSBM due to the WM deterioration?

Answer: The Complainant stated that there was no prior discussion about the Vessel's length until December 2023 when the GPA removed his Vessel and revoked his berth. In November 2022 he enquired about returning to MHSBM noting that a larger vessel was still berthed there and requested temporary relocation due to ongoing damage to the Vessel, safety concerns with the pontoons and lack of access. The GPA's decision to measure the Vessel came as a surprise as it had been measured in 2005 and again in 2017.

(v) What was discussed at the meeting of the 4th November 2022 between the Complainant and Captain 3?

Answer: The discussion focused on the issues as described above.

(vi) The reason for not immediately taking up Minister 2's offer in February 2024 of a three-month grace period in which to berth the Vessel at WM.

Answer: The Complainant owed over 3,000Euros in berthing fees at the Spanish marina and was not able to settle the amount until June 2024 when he obtained a loan.

The Ombudsman then put the following questions to Captain 3 (these have been set out below and the responses shown in red).

1. The Complainant engaged the services of a lawyer in 2017. What agreement did the GPA and the lawyer come to in order for the Complainant to be allowed to remain in WM?

Answer: Captain 3 provided a copy of a letter sent by the Government Law Offices ("GLO") to the Complainant's lawyer dated 24th January 2018 and stated there was no mention there of a return to WM. He added that he had no records or awareness of any other agreement having been reached. [Ombudsman Note: The information provided in the timeline contradicts this response].

2. There is reference in the GPA timeline of a meeting between the Complainant and yourself on the 4/11/2022. Grateful if you could provide information on what was discussed at that meeting.

Answer: The meeting was requested by the Complainant and he asked for permission to return to MHSBM which was rejected. He was once again reminded of the legislation in place limiting size vessels for Government marinas.

3. What works were undertaken at WM in 2023?

Answer: The pontoons were completely demolished and replaced with new pontoons organized in a new layout/arrangement.

4. Where were the vessels berthed at the WM relocated to for the duration of those works?

Answer: They were moved around within WM in order to allow the contractor to proceed with the demolition of the old pontoons and construction of the new pontoons in a phased approach.

5. Why did the Complainant not receive a letter from the GPA in 2023 for the allocation of a berth?

Answer: Captain 3 referred to the last paragraph of the GLO letter (24/1/2018). In essence it stated that as an exceptional measure, the Captain ("Captain 2") would permit the Vessel to remain at the MHSBM until the 28th February 2018 (without any further extension) in order for the client (Complainant) to find a suitable berth elsewhere. As a further exceptional measure, Captain 2 was willing to reserve the berth until the 30th April 2018 (without further extension) in order for the client (Complainant) to undertake such works on the Vessel as would bring it into conformity with the Rules or indeed, to acquire another vessel that conformed to the Rules.

6. Was there a change to the Rules at Watergardens Marina in 2023 whereby the length restriction is being applied there too?

Answer: WM is subject to Small Vessels (Mooring Controls) Rules, 2016, in the same way as MHSBM is.

7. We note from the timeline that between 2019 and September 2022 there were no developments. It is as from October 2022 when the Complainant emails GPA to request a berth at MHSBM because of the precarious state that WM is in that the issue of the Vessel length arises. To the point that the Complainant is now not allowed to berth at WM. Please provide your comments on this.

Answer: The Complainant was aware that his Vessel was and continues to be oversized and as such is not able to be accommodated at a Government marina. The Complainant was still occupying a berth at WM and the issue with the size of the Vessel had not been remedied. Captain 3 referred to the timeline GPA provided and noted that the Complainant had advised them that he was taking his Vessel for an overhaul/servicing in March 2023 and the expectation created by him was that it would include solving the length problem. Captain 3 again referred to their timeline and stated that from there it could be ascertained that the issue with the actual length of the Vessel did not become an issue for the berth at WM until December 2023. Captain 3 noted that the Complainant refused to share with the GPA the location of the Vessel in order for them to engage a surveyor to verify the length.

8. Please provide a copy of the correspondence between the GPA and the Complainant revoking the berth at WM.

Answer: Captain 3 provided the copy of the letter dated 25/6/2024 which had been sent by registered post on the 26/6/2024 and eventually returned to the GPA marked as 'Not Claimed'. The letter referred to sections 3(1), (2) and (3), 6 (f) and 6(1) and (2) of the Small Vessels (Mooring Controls) Rules 2016. It concluded that due to the Vessel exceeding 9.45metres, including appendages, Captain 3 had instructed that the Complainant remove the Vessel from WM by the end of the business day on the 28/6/2024 and that failure to do so would result in the GPA confiscating the Vessel and any associated costs for the towing and storage of the Vessel would have to be met by the owner.

9. How many boats exceeding the stipulated length are still berthed in Watergardens Marina and are there any in MHSBM?

Answer: Captain 3 stated that as far as he was aware there were none at either marina. There had previously been a number of vessels which had been identified as being oversized and in those cases the owners either carried out physical modifications to the vessels or alternatively had their berth allocation revoked. Notwithstanding, the GPA continued to work on the issue and if and when they identified vessels as being oversized, pertinent action was taken to implement the corrective action, i.e. vessel modification or berth revocation.

In April 2025 the Complainant wrote to the Ombudsman, concerned that the Vessel had been moved by the GPA from where it was being berthed; from a place where the Complainant could see the Vessel, to an unknown location.

The Complainant stated that the GPA had yet to provide any formal communication to him or clarification regarding the removal or the status of his berth. He highlighted that the Vessel was at increasing risk of damage due to the prolonged lack of maintenance and the engine not being operated. A few days later he contacted the Ombudsman and provided photos of the location of the Vessel. It had been raised from the water and was being kept on land (GPA remit) sitting on tyres. The Complainant denounced the serious lack of care and professionalism on the part of the GPA.

The Ombudsman contacted Captain 3 to enquire about the Complainant's concerns and the GPA's duty of care over the Vessel and forwarded the photos sent by the Complainant. She also asked for information on the standard procedure followed by the GPA prior to removal of vessels from one of the Government marinas.

Captain 3 responded that he failed to see how the photos demonstrated any failing on behalf of the GPA in its duty of care. He reiterated that the Vessel had been removed from the berth following notification to the Complainant which included attaching a copy of the notice to the Vessel giving him time to remove the Vessel himself. The Complainant was also contacted by phone and a letter sent via registered mail (a copy of the letter and the registered mail stub were provided). Regarding their standard procedure on how vessels are removed from a berth, Captain 3 stated that they contract a dedicated company who tow the vessel. They also contract the lifting of the vessel to an experienced company with a specialised crane to accommodate the vessel 'on the hard'. Captain 3 highlighted that the Vessel was towed from the berth in July 2024 and that having the Vessel on land was a further step from the GPA in exercising their duty of care.

The Ombudsman enquired whether the GPA had communicated with the Complainant further to the removal of the Vessel from the berth to provide him with information on what happened next. Captain 3 replied that they had not engaged in any further correspondence since the moment they were forced to remove the Vessel from the berth. The current situation was that the Complainant could recover the Vessel at any time of his choosing by settling the fees incurred by the GPA in the towing and lifting of the Vessel and if he did not, the GPA were currently taking legal advice on the next steps as they could not accommodate the Vessel indefinitely on land. The Ombudsman conveyed this information to the Complainant.

On the matter raised by the Complainant that there were more oversized vessels in the marinas, the Ombudsman arranged a site visit accompanied by the Complainant for those vessels to be pointed out and referred to Captain 3.

Both marinas were visited and it was at the MHSBM that the Complainant pointed out three vessels which the Ombudsman took details of and passed on to Captain 3 for his comments.

Captain 3 reverted with details on the three vessels. One of them had been investigated in August 2016 and it was found that the vessel had a LOA of 9.33metres which is within the marina tolerances of 9.45metres [Ombudsman Note: The Ombudsman reviewed the Small Vessels (Moorings Controls) Rules, 2016 to substantiate the 9.45metres tolerance but she was not able to find this, only reference to 9.15metres under Section 18(5) and asked Captain 3 to provide the details of where in the Rules, that could be found]. Captain 3 stated that the legislation is somewhat unclear in the terms used. He explained the three measurements referred to in this report as follows:

'Hull Length'
A technical definition of the boat's main structural dimension. Measures the core structure of a vessel's body from its foremost to its aftermost point, excluding any attached extensions or fittings.

'LOA' (Length Overall)
Is a more inclusive measurement from the absolute furthest point of the bow (like an anchor roller or bowsprit) to the furthest point at the stern such as a swim platform or outboard motor. LOA accounts for all permanently attached extensions that increase the boat's actual footprint.

'Rubbing Strake'
This would be part of the hull length.

Captain 3 further explained that 'Hull Length' is distinct and separate to 'LOA' and that the legislation specifically mentions 9.05metres hull length and additionally identifies the 9.15metres 'Hull Length' as a grandfather right for vessels which had previously been issued a mooring permit under the Small Vessels (Moorings Controls) Rules, 1990 and only applicable to WM. Captain 3 referred to the outcome of the surveyor appointed by the Complainant which stated 9.22metres hull length and therefore exceeded the stipulated length. He also referred to the outcomes of the surveys carried out by surveyors appointed by GPA which also concluded the Vessel exceeded the required dimensions. Captain 3 further pointed out that additionally, where a vessel met the required 'Hull Length' limitations, vessels being allocated a berth at MHSBM must also comply with the 'LOA' limitation of 9.45metres which was put in place as part of design characteristics of MHSBM and linked the design criteria and subsequent warranty conditions placed on the GPA by the contractor who set up the marina.

Regarding the second vessel, Captain 3 referred to it as an excellent example of how GPA ensures that vessel lengths are within the required dimensions. He explained that following on from an initial unofficial measurement by GPA officers, they raised the issue with the owner who acceded to make modifications which consisted of shortening the bathing platform. This now has a LOA of 9.45metres. The third vessel has a LOA of 8.40metres.
Conclusions

The origin of this matter stems back to 2005 when the Complainant and his disabled son who both resided in the Vessel were required to vacate from the berth at Sheppard's Marina (private marina). A concession was at that time given to the Complainant by the then Minister of the Port under humanitarian grounds to exceptionally grant a berth at WM.

The GPA measured the Vessel for practical reasons, specifically and exclusively in connection with accommodating the Vessel to ensure that it would fit the allocated berth as well as for the subsequent issue of the Red Book. It can therefore be concluded, when taking the outcome of subsequent surveys into account, that the measurement registered in the Red Book was inaccurate. The length of the Vessel on the Red Book is shown as being 30 feet (9.144metres) only 6cm short of the maximum length stipulated in the marina rules. A GPA survey carried out in July 2017 showed the Vessel's LOA as being 10.10metres. A survey carried out by a surveyor appointed by the Complainant in August 2017 showed the Vessel's length from the edge of the rubbing strake at the bow to the stern as being 9.22metres. A survey carried out on the 7th November 2017 at the GPA's request concluded that the Vessel measured 9.85metres.

In 2010, the Complainant moved in with his disabled son into his partner's home but the concession continued at WM until the time came for the Vessel to move to a berth at the MHSBM. It was in 2017 that the GPA requested that the Vessel, as well as a number of others, be measured as a result of having received information that some boats at the marinas exceeded the limitations. Further to the survey carried out by the GPA which established that the Vessel was oversized, the Complainant was informed by the GPA by letter dated the 18th July 2017 that they would give him one month in which to reduce the size of the Vessel or the permit would be revoked and he would have to seek alternative berthing. The Complainant subsequently engaged legal counsel and further to a meeting with Captain 2 it was verbally agreed that he would not claim for damages sustained by the Vessel whilst berthed at the WM in return for being allowed to return to WM which he had been given assurances would undergo refurbishment works.

The Complainant was never given a written assurance of this arrangement, neither did he pursue one. It must be highlighted that the Complainant had not paid berthing fees at the WM since 2018 on the basis that the marina was in a precarious state. When the WM refurbishment was completed in 2023, the GPA now fronted by Captain 3 revived the matter of the LOA of the Vessel before allocating a berth to the Complainant and requested that he allow the Vessel to be measured, something which the Complainant refused due to measurements having been taken on three occasions in the past. In an attempt to supersede the GPA's decision, the Complainant contacted Minister 1 and Minister 2 and achieved a three-month grace period offered by Minister 2 in February 2024. It was four months after that offer that the Complainant brought the Vessel back to WM from Spain where works had been carried out to it and moored it in a berth he had identified but had no permission to be in. The situation culminated with the GPA sending a registered letter to the Complainant giving him an ultimatum to remove the Vessel from the WM to avoid having it removed by them. Despite not having collected the registered letter, the Complainant was aware of the GPA's plan of action, possibly due to the physical notice placed by the GPA on the Vessel prior to its removal, and attempted to prevent this by contacting Minister 1 and Minister 2 but was unsuccessful. The GPA removed the Vessel from the WM berth on the 2nd July 2024.

Complaint (i) - Complainant's vessel ("Vessel") was seized, removed and moored by the GPA on the 2nd July 2024 in an unsafe manner – Not Sustained

The Ombudsman did not sustain the above complaint. The evidence provided by the GPA demonstrates that they have shown a duty of care when moving the Vessel. The Vessel was initially moved to 'Waterport Messroom' and the Ombudsman's investigation found that the GPA had contracted a dedicated company for the purpose of towing the Vessel to that location. In April 2025, when the Vessel was moved to land, the GPA contracted the lifting of the Vessel to an experienced company with a specialised crane.

Complaint (ii) - No communication from the GPA regarding the condition of his Vessel since being seized – Not Sustained

The Ombudsman did not sustain this complaint. The GPA did not have a duty of care to the Complainant to have to keep him updated on the condition of the Vessel. The GPA had informed the Complainant that the Vessel would be removed from the berth if he did not do so himself by the deadline. Only as a consequence of the Complainant's failure to comply with the request for removal did the GPA proceed to remove it themselves. Despite the fact that the Complainant did not collect the registered letter sent to him by the GPA which also included information on what would happen if the GPA confiscated the Vessel, i.e. any associated costs for the towing and storage would have to be met by the owner, the Complainant had been in Gibraltar marinas for twenty years and would have been cognisant with GPA procedures.

Complaint (iii) - No communication from the GPA with regards to finding a resolution regarding his berth – Not Sustained

The Ombudsman did not sustain this complaint. The timeline provided by the GPA denotes that there had been fluid and frequent communication between the Complainant and the GPA on the issue through the years. The GPA's position since the completion of MHSBM was that the Vessel was oversized and did not comply with the MHSBM or WM rules with regards maximum length. The Complainant had had the option of exploring the suggestions made by the surveyor he had contracted in August 2017 to carry out alterations to the Vessel to make it compliant with the measurements required but he chose not to pursue that avenue.

Complaint (iv) - Treated unfairly by the GPA since 2017 and this has affected him financially and mentally – Not Sustained

The Ombudsman did not sustain this complaint, as per the facts set out in Complaint (iii) above. In 2018 the Complainant agreed that he would not claim for compensation for damages to the Vessel in exchange for the Captain 2 allowing the Vessel to remain in WM. The verbal arrangement continued until March 2023 when the Complainant took the Vessel to Spain for works to be undertaken. The monthly cost for berthing in Spain was 400Euros in contrast to £1- per day at WM (which the Complainant was not paying due to the precarious state the pontoons were in as a result of which he had had to pay £900- to divers to repair mooring ropes) undoubtedly a considerable financial impact. During that year the WM was refurbished and once the works were completed, the GPA would not allocate a berth to the Complainant until a further survey was carried out that would verify the Vessel's length. Captain 3 stated that there was an expectation that the works to the Vessel would include solving the length problem.

The Complainant confirmed that the works did not entail reducing the length of the Vessel so the GPA could not agree to the return of the Vessel if it did not comply with the length restrictions in the rules.

It is obvious that the Complainant has been financially and mentally impacted due to all that has occurred during the past years but undoubtedly, the upkeep of a vessel is costly. Berthing at the Government marinas is very affordable but repairs and refurbishment of the Vessel and having it berthed in Spain for the duration of the works at WM plus the extra months amounted to thousands of pounds to the point where the Complainant had to resort to obtaining a loan to pay for the berthing fees in Spain.

Complaint (v) - Non-reply to email to Captain of GPA of the 28th August 2024 – Sustained

The Ombudsman sustained this complaint. The letter the Complainant had sent by email was addressed to Captain 3 and included as main recipients Captain 3, Minister 2 and Minister 1. Although the Complainant did receive a reply from Minister 2, it was Captain 3 in his capacity as the ultimate authority for the Government marinas, to have responded to the Complainant one last time and concluded the matter.

Classification

Complaint (i) - Complainant's vessel ("Vessel") was seized, removed and moored by the GPA on the 2nd July 2024 in an unsafe manner – Not Sustained

Complaint (ii) - No communication from the GPA regarding the condition of his Vessel since being seized – Not Sustained

Complaint (iii) - No communication from the GPA with regards to finding a resolution regarding his berth – Not Sustained

Complaint (iv) - Treated unfairly by the GPA since 2017 and this has affected him financially and mentally – Not Sustained

Complaint (v) - Non-reply to email to Captain of GPA of the 28th August 2024 – Sustained

Recommendations

The Ombudsman recommends that the Gibraltar Port Authority specify in the berth application form that the LOA of a vessel at MHSBM must not exceed 9.45metres.

REPORT ON CASE NO 1319

Complaint against the Royal Gibraltar Police ("RGP") for the failure to reply to the complainant's emails and for the delay in progressing the investigation.

Complaint

The Complainant was a victim of fraud and the complaint related to the RGP's handling of the investigation into the crime, namely:

1) Non-reply to the complainant's emails;
2) Delays in progressing the investigation.

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].

More than ten years ago, the complainant became a victim of financial fraud, which led to the loss of his life savings, as well as additional borrowed funds.

The matter was initially investigated by Essex Police before being transferred to the Royal Gibraltar Police, as the principal companies involved were registered in Gibraltar. The investigation, which extended internationally and involved multiple formal requests to foreign authorities, was overseen by RGP officers from the Economic Crime Unit ("ECU").

Initially, the complainant remained in contact with these officers and was informed that there were other victims who had also suffered losses. It was acknowledged that some funds had been frozen in a bank account, but no significant progress followed beyond the completion of some international correspondence.

Indeed, the complainant asserted that his last three emails, dated 25th August 2023, 10th November 2023 and the 8th January 2024, seeking information on the investigation, remained unanswered.

Investigation

Ombudsman's initial inquiries

In response to the Ombudsman's initial inquires on the compliant, via email dated 3rd June 2025, the RGP apologized for their failure to respond to the complainant's last communication in January 2024, attributing this to extraordinary operational demands at the time. Via email dated 16th April 2025, the RGP affirmed that "Regarding correspondence, [the complainant] last corresponded with us on 8 January 2024. I can only apologise as it appears, we did not respond at the time…. The previous occasion that we corresponded with him was 24 August 2023".

They reiterated their appreciation for the complainant's patience and confirmed that the investigation into the fraud remained open. The explained that case was hindered by jurisdictional complexities, primarily due to the suspects being based in Spain while using Gibraltar as a conduit for funds. Despite attempts to obtain evidence from Spain via a European Investigative Order and, later, through post-Brexit mechanisms, cooperation was limited and protracted. The RGP emphasized that progress in the criminal case was contingent upon acquiring the necessary evidence from Spanish authorities.

It was also their view that: "[The complainant] is correct in saying that we have indicated to him that there is a sum of money restrained that we hope will be recovered and returned to victims. We are obliged to pursue this the criminal courts unless we can see a reason for doing so through the civil courts, notwithstanding that the criminal investigation, which remains active. We continue exploring this, balancing this interest against other live criminal investigations."

The RGP also recognized the lack of recent engagement with the complainant and accepted that they should have provided reassurances regarding the case's continued status, even in the absence of new developments.

Formal Investigation ("RGP")

As the complaint progressed to the formal stage, on the 20th May 2025 the Ombudsman requested the following information from the RGP:

- "A timeline of the actions taken from the date on which the case was referred from the Essex police to the RGP …;
- The steps that are currently being taken to progress this matter; and
- Details on any recent communications with the complainant."

On the 4th June 2025, the RGP conformed that "we have communicated with [the complainant] within the past couple of weeks to confirm to him that the matter remains under investigation.

As explained below, our bottleneck to the criminal investigation remains the related to a mutual legal assistance request to Spain that must be undertaken by a crown counsel at the OCPL." In respect of providing the timeline of actions, the RGP stated that; "We aim to have a response by the end of the month."

Inquiries to the Office of Criminal Prosecutions & Litigation ("OPCL")

The Ombudsman was concerned that there was a bottleneck in the criminal investigation relating to the Office of Criminal Prosecution and Litigation ("OCPL"), so information on this point was requested from the Director of Public Prosecutions ("DPP"), via email dated 25th June 2025.

A comprehensive reply was received on the 27th June 2025, the summarised timeline of events as follows:

- A European Investigative Order was issued to Spain in June 2019 but ultimately rejected due to claims it lacked a sworn translation, despite one being provided.

- Letters of Request were successfully issued to the UK, Canada, USA, and Switzerland and executed between 2020 and 2024.

- The Letter of Request to Spain was never finalized or sent, as it was to be reissued under the Proceeds of Crime Act 2015 for civil recovery, but the DPP never received a formal request or updated case summary from the RGP.

- The DPP had reviewed all correspondence and confirmed that no updated request for Spain had been submitted since June 2021.

The Ombudsman felt that the information received from OPCL indicated that there wasn't a 'bottleneck' that could be attributed to the OPCL. Consequently, the Ombudsman requested the email correspondence from the OPCL relating to the civil recovery route that was not pursued by the RGP.

Timeline of the RGP Investigation

On the 9th July 2025, the Ombudsman received the timeline of actions in the criminal investigation from the RGP, as follows:

"1. Company Background and Initial Intelligence (2015–2016)

- In August 2015, [Company 1] was officially struck off the companies register following a formal application.

- By July 2016, intelligence was received indicating potentially fraudulent activity involving a local company, [Company 2].

- A meeting was held in August 2016 with a financial intelligence source to discuss the intelligence received. Topics included [Company 1], [Company 3], potential addresses, and possible offences. A response from UK police-to-police enquiries was awaited.

- In September 2016, further intelligence was provided to the Royal Gibraltar Police (RGP), highlighting various suspicious financial inconsistencies.

2. Initial Investigative Actions (Late 2016 – Early 2017)

- In September 2016, consideration was given to applying for production orders concerning several individuals and entities. These included multiple bank accounts, company secretaries, accountants, and a telecommunications provider.

- A meeting with a local bank in October 2016 yielded basic, non-evidential information and confirmed a no-consent position based on the current intelligence.

- In January 2017, discussions were held with local companies regarding the material sought and the likelihood of production order applications. Formal notices were served shortly thereafter.

- In March 2017, six restraint orders were obtained for individuals connected with the fraud.

- On 20 January 2017, production orders were applied for, obtained, and served on the relevant companies. Material was seized in late January, with the bulk of the responses received by March 2017.

3. Evidence Gathering and Review (2017)

- Employment records were obtained in April 2017, followed by additional evidence pursuant to the January production orders in May 2017.

- In September 2017, files held by Companies House were retrieved for [Company 1], [Company 3], and [Company 2].

- Throughout 2017, a review of the collected material was conducted, and Mutual Legal Assistance (MLA) requests were initiated.

4. International Cooperation and MLA Responses (2021–2024)

- In February 2021, a response was received from Scotland to one of the MLA requests.

- An MLA request to Spain was returned unexecuted in April 2021 due to a technical translation issue.

- Further MLA responses were received from:

    i. Scotland in May 2021, concerning banking details of a suspect.

    ii. Switzerland in May 2021, relating to a suspect's account that initiated transactions into local accounts.

    iii. Canada in June 2021.

    iv. United Kingdom in September 2021 and again in October 2022.

    v. United States in April 2024."

Proceedings for civil recovery

On considering the timeline, the Ombudsman felt that the information provided failed to satisfactorily address the possibility of commencing civil proceedings for the recovery of the funds that had been frozen in a bank account, particularly as the RGP were of the view that "As a police service, the RGP is bound to pursue criminal investigations, which require a higher standard of proof and adherence to stricter evidentiary rules. While legislative developments have been positive, the use of civil remedies, such as civil recovery orders, remains challenging. These actions expose the public purse in civil litigation, including particularly the risk of adverse cost awards."

The Ombudsman reached out to the OPCL for information on civil recovery pathways, and was told that the appropriate route would be a Part 8 application under the Civil Procedure Rules. The Ombudsman noted that, as per rule 8(1)(2) CPR, "A claimant may, … use the Part 8 procedure where they seek the court's decision on a question which is unlikely to involve a substantial dispute of fact."

The Ombudsman had also had sight of emails between the Director of Public Prosecutions and the RGP on his point, particularly an email dated 13th November 2020 from the Director of Public Prosecutions to the RGP officers with conduct of this case, where he states the following:

"My view was and remains that there are no issues with seeking the confiscation and release of these funds to the relevant parties. My reading of the law is that at the same time as we institute the proceedings, we seek to appoint the official receiver as trustee of the funds and then distribution is a matter for her.

At the end of the day this matter is not going to be contested by anyone and the civil balance of probabilities applies.

Grateful for a time frame as to when we could have the draft statement ready?"

A reply, on the same date, from the RGP officer with conduct of the case, reads as follows: "I would be reluctant to commit to any meaningful timeframe. I am not sufficiently familiar with the material having not fully addressed this for more than a matter of weeks or of months now.

I will endeavour to progress it next week as able and give a considered response thereafter. The evidence is relatively basic, coming down to the fact that there were insufficient investments to cover the companies' debts, but the devil is in the detail."

The Ombudsman noted that, as previously indicated by the OPCL, the OPCL had never received a formal request or updated case summary from the RGP to enable to OPCL to commence civil proceedings.

The Ombudsman was also mindful of the fact that, as per the UK Crown Prosecution Service: "Civil recovery and other civil powers are available asset recovery tools that should be considered whether or not there is a criminal investigation or prosecution and regardless of what stage any criminal investigation or prosecution may be at." (https://www.cps.gov.uk/legal-guidance/proceeds-crime).

At that point, the Ombudsman felt that there had been an unreasonable delay in commencing proceedings for the confiscation and release of the funds that had been frozen in the course of the RGP investigation. The Ombudsman communicated this view to the RGP via email on the 11th July 2025 and received a response on the 14th July 2025, as follows:

"Whilst it is correct that civil proceeding should be considered alongside a criminal investigation, the guidance we follow allows prioritises the criminal route. I agree that a point came in the last few years when we felt that proceeding civilly was appropriate. This was referred to the Economic Crime Unit under different leadership at the time but was not progressed. I cannot give specific reasons for this, but understand it was due to operational priorities."

Next steps in the investigation

In respect of the OPCL, on the 11th July 2025, it was confirmed to the Ombudsman that: "As soon as [the OPCL] have a request for the issue of a LOR [Letter of Request] to Spain for evidence for the criminal and civil recovery investigation, [the OPCL] will draft the Request(s)."

However, the RGP disagreed with the view of the DPP (as per the DPP's email of the 13th November 2020) that a statement from the officer conducting the case, together with exhibits, would suffice for the purposes of commencing civil recovery. On the 14th July 2025, the RGP officer with conduct of the case communicated to the Ombudsman that: "I disagree that a statement alone would be sufficient for our purposes. I believe that we additionally require an expert opinion to the effect that the funds were not used in way that would make the returns on investments being promised. We will be advancing this enquiry, but would like to do so with the benefit of having reviewed the UK accounts that is currently being done, as can be a considerable expense that we would not like to have to repeat.

It is likely that at that stage, we will also consider progressing the matter criminally, through use of informal police-to-police enquiries as well as seeking international arrest warrants, although we have no idea how long this latter approach may take to bear fruit."

On the 18th July 2025, the Ombudsman met with RGP officers from the ECU to discuss the complaint and pathways for civil recovery in this case. In that meeting, it became clear to the Ombudsman that volume of work and lack of resources had clearly impacted the RGP's ability to conduct the fraud investigation, and that these matters also needed to be considered in her report. It was agreed that the RGP would send the Ombudsman further information in this regard.

Workload and Resourcing Issues

In an email dated 15th August 2025, the RGP explained that there had been a number of major criminal investigations carried out from 2017 to date, namely the Southease Robbery (2017), the R v Balban fraud investigation (2018-2024), the Alwani case (2017-2020), the Grace 1 sanctioned vessel case (2019), as well as telephone and banking scams with a total value of approximately £4million. The ECU was also "involved in numerous other investigations including various money laundering cases resulting in two vessel seizures, judicial reviews (Verralls Legal Limited and others v the Commissioner of the RGP and another, Commissioner of Police v Villa and Villa), and civil recovery proceedings. The Serra case against HMAG resulted in a historic circa £2 million recovery of assets that remains subject to a final appeal before the Privy Council."

In addition, "Gibraltar's evaluation by MoneyVal in 2019 and subsequent grey-listing by the Financial Action Task Force (FATF) in June 2022 created extraordinary demands on the [ECU]." Also, in the period spanning 2017-2019, two murder investigations led to the temporary deployment of ECU officers. The Ombudsman noted that the workload set out in the RGP's email and the temporary deployment occurred within the timeframe of the criminal investigation related to the complaint.

In terms of human resources, the RGP explained the following:

"The Economic Crime Unit currently operates with six detective constables, four of whom are still undergoing significant development. As a snapshot, this team is currently managing a total of 160 investigative matters including:

- Some 40 active criminal investigations …
- Ongoing Mutual Legal Assistance requests from other jurisdictions
- Intelligence reports from the Gibraltar Financial Intelligence Unit
- Police-to-police enquiries

Whilst we have received an uplift of an in-house counsel and three civilian financial investigators over the last year, it takes time to train and develop human resources. Indeed, we undertook formal training for the entire department for the first time ever in February 2024, with a single detective constable trained to the NCA Confiscation level this summer."

Furthermore, "The Economic Crime Unit experienced significant personnel changes around 2021-22, resulting in a notable loss of experience and institutional knowledge. This transition period, combined with the departure of our in-house accountant in January 2025 (leaving a six-month gap in this capability), impacted our ability to progress complex financial investigations."

The Ombudsman noted that the ECU were a small team tasked with a significant volume of complex work, and that there appeared to be a number of changes to personnel within the period of time relevant to the complaint, as well as markedly low levels of training.

In spite of the above, the ECU outlined the steps that were being taken to advance the fraud investigation relevant to this complaint:

"Despite these challenges, we are taking concrete steps to advance this investigation:

1. Appointment of New Forensic Accountant: A new in-house accountant joined in July 2025 and has been specifically tasked with reviewing the banking records in this case. They have yet to finalise this work due to the volume of material.

2. Renewed OCPL Engagement: We are actively pursuing the Spanish MLA request through the Office of Criminal Prosecution and Litigation.

3. Expert Opinion Procurement: We are progressing arrangements to obtain expert testimony regarding the fraudulent use of investment funds, essential for both criminal and civil proceedings.

4. Civil Recovery Assessment: We will consider pursuing civil proceedings as soon as we obtain the information from Spain that represents a major line of enquiry, or following receipt of a positive expert opinion. We feel it would be imprudent to proceed without these elements as it could result in the frozen funds being unfrozen. We are not aware of any other agency in Gibraltar that would be able to secure the funds for the victims if the restraint was lifted."

The Ombudsman was reassured that the ECU had identified the steps to be taken to progress the investigation, and was especially reassured by the acknowledgment and commitments provided by the RGP:

"The Economic Crime Unit fully acknowledges that:

- Communication with [the complainant] has been inadequate
- The January 2024 correspondence should have received a response
- Regular updates, even when substantive progress was limited, should have been provided
- The delay in pursuing major lines of enquiry at the case's instigation have significantly delayed victim compensation

We commit to:

- Prioritising specific lines of enquiry in this case over the coming months
- Providing quarterly updates to [the complainant] regardless of substantive developments
- Expediting the expert opinion necessary for potential civil proceedings
- Reviewing our communication protocols to prevent similar lapses"

Conclusions

As regards the complaint of non-reply, the RGP confirmed non-reply to the complainant's email of the 8th January 2024, and confirmed that the last correspondence with the complainant had taken place in August 2023. It can therefore be concluded that the RGP did not reply to the complainant's emails dated 10th November 2023 and 8th January 2024.

In relation to the delays in the investigation, the Ombudsman is satisfied that the delays have not arisen due to a bottleneck at the OPCL stage. It is clear from the correspondence that the OPCL have been ready to proceed with civil recovery since 13th November 2020 and are willing to proceed with a Letter of Request to Spain to progress the criminal investigation and the civil recovery as soon as an instruction for the same is received from the RGP.

The RGP initially informed the Ombudsman that "we are obliged to pursue this the criminal courts unless we can see a reason for doing so through the civil courts". However, the clear view of the UK Crown Prosecution Service is that "civil recovery and other civil powers are available asset recovery tools that should be considered whether or not there is a criminal investigation or prosecution and regardless of what stage any criminal investigation or prosecution may be at." Furthermore, on the 13th November 2020 the DPP clearly stated that "my view was and remains that there are no issues with seeking the confiscation and release of these funds to the relevant parties."

As a result of the Ombudsman's investigation, it has come to light that the RGP disagreed with the DPP's view that a statement from the officer conducting the case, together with exhibits, would suffice for the purposes of commencing civil recovery. It is regrettable that this view was not communicated to the DPP in November 2020, so that this matter could have been discussed and resolved and the next steps agreed to progress both the criminal and civil aspects of the case.

It seems that civil recovery could have been pursued as from 2020, and had that been the case, by now the complainant (and the other victims of this fraud) might well have had some return of the monies from which they were defrauded. The Ombudsman understands that the loss of his life savings and further borrowed funds has caused hardship to the complainant, and that efforts towards the civil recovery of these monies might have gone some way to mitigate this hardship. The Ombudsman also notes that 10 years have elapsed since the fraud allegations first came to Essex police - a decade where the complainant has been suffering from severe financial loss.

The Ombudsman also noted the RGP's contention that "the use of civil remedies, such as civil recovery orders, remains challenging. These actions expose the public purse in civil litigation, including particularly the risk of adverse cost awards". In view of the fact that, in this case, the perpetrators of the fraud had absconded from the jurisdiction and would be extremely unlikely to apply for a costs order, the Ombudsman felt that this reasoning was a factor that led to unreasonable delay in progressing civil recovery in this case. As per the DPP, in November 2020: "At the end of the day this matter is not going to be contested by anyone".

The Ombudsman was also informed that the process for civil recovery would also be under Part 8 of the Civil Procedure Rules, which is unlikely to involve a substantial dispute of fact and tends to be a relatively simple process. This means that costs, in an application of this nature, are unlikely to be substantial, and in view of the fact that the process would be uncontested, the risk of an adverse costs order is negligible. It is the view of the Ombudsman that these important matters needed to have been properly considered, and that the RGP needed to become more familiar with civil proceedings to ensure that victims of fraud are given a fair opportunity to recover their financial losses.

Notwithstanding the above, the Ombudsman considered that the ECU is a team of six detective constables, with four of those officers still in the process of gaining experience and training. The demands on the ECU from 2017 to date have been considerable, especially given the changes in personnel and the loss of experience and expertise from the team. The lack of training is a particularly concerning factor, as this clearly impacts the ECU's ability to carry out their complex work in an effective and efficient manner. The Ombudsman concluded that, although the complaints made by the complainant should clearly be sustained, the context within which the ECU were operating from 2017 to date needs to be understood, as the volume of work, lack of human resources and training, and changes in personnel led to a workplace environment which was not conducive to the provision of a satisfactory service to the complainant. The Ombudsman was reassured that, moving forward, the ECU were taking concrete steps to advance the investigation and that the ECU had been open and honest in acknowledging that communication with the complainant was inadequate that there had been a delay in achieving victim compensation. The Ombudsman commended the RGP for this openness and honesty, and for setting out their commitment to progressing the investigation in a timely manner and to ensuring proper communication with the complainant in future. The Ombudsman felt that the ECU's positive and constructive approach to this complaint was the first step to ensuring improved service delivery, but that it is also necessary to ensure that the ECU is sufficiently supported in terms of human resources and training to be able to deliver an improved service to the victims of financial crime.

Classification

Complaint (i) - Non-reply to the complainant's emails – sustained
Complaint (ii) - Delays in progressing the investigation - sustained

Recommendations

1. That the RGP provide the OPCL with all the information required for the issue of a Letter of Request to Spain for evidence for the criminal and civil recovery investigation within six months of the date of this report;

2. That the RGP provide training on civil litigation to all officers dealing with fraud and white-collar crime;

3. That a review of the human resources and training needs of the ECU be carried out within 12 months of the date of this report.

REPORT ON CASE NO'S 1286 & 1316

Complaint against the Department of Social Security ("DSS") in relation to an ongoing delay in the Long-Term Benefits Appeals Board ("the Board") convening to consider the Complainant's appeal on the decision not to backdate her old age pension

Complaint made against the DSS in relation to excessive delay in the Board being convened to consider the Complainant's appeal on the refusal to grant him Invalidity Credits.

The First Complaint

The First Complainant was aggrieved because she had been waiting two years since she had appealed against the DSS's decision not to backdate her old age pension. There was (at the time of lodging her complaint with the Ombudsman), still no sign of the Board convening.

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

The Complainant had been in constant correspondence with the DSS in relation to her grievance. In essence, she was told by the DSS Director that the delays had been due to various factors:

1. The completion of the Board's term which required the appointment of new members.

2. The availability of those Board members

3. The subsequent departure of two members

4. The sudden departure of a chairperson and difficulties in appointing their replacement.

At the time of lodging her complaint with the Ombudsman in June 2024, the Complainant was very specific in her "instruction" that the Ombudsman obtain compensation on her behalf.

After numerous email exchanges with the Complainant setting out the Ombudsman's processes, powers and procedures and repeatedly explaining that it was not within our legal powers or remit to seek financial remedies, but to investigate any allegations of administrative wrongdoing, the Complainant finally accepted the status quo and that the Ombudsman investigation proceeded on that basis.

Investigation

In offering the Complainant updates during the course of the investigation and it must be said, being subjected to unacceptable bullying and insults by the Complainant (as a result of the Ombudsman not having the powers to compel the Board to convene or to seek financial redress for the Complainant's frustrations), the Ombudsman wrote to the Complainant stating that her file would be closed as a result of her behaviour and her "lack of interest and confidence" in our office.

Be that as it may, the Ombudsman decided to continue with the subject matter of the investigation for the benefit of administrative justice and public interest. The Ombudsman had also previously reported on Board delays in June 2023, having sustained that complaint at the time. The acceptance of the current complaint was indicative that matters may not have improved.

As a result, exchanges in correspondence between the Office of the Ombudsman and the DSS continued. Ultimately, explanations and reasons for the delays (as set out in the background to this report summary) were substantively provided. At the conclusion of our investigation and dealings with DSS, it was confirmed to us on 24th October 2024, that the Board had meet on the 23rd June 2023 and that the Complainants appeal (together with other appeals listed) had been heard. DSS stated that determinations on specific cases had been subsequently communicated to the individual appellants in writing.
The Second Complainant

The Second Complainant was aggrieved because he had been subjected to a delay of over six years in his appeal being heard.

The Second Complainant had applied for invalidity credits in August 2017 submitting medical evidence and letters of recommendation from medical practitioners to substantiate his application.

A year and two months after the date of his application, he was examined by a medical board convened by the DSS, as per standard practice. Three months later, on 8th November 2018, the Second Complainant was informed that his application had been denied. No reasons were given for the refusal. He subsequently lodged an appeal in writing within the appeals timeframe.

Almost six years later, on the 16th July 2024, the DSS arranged for the Second Complainant to be interviewed and examined by an Occupational Health Practitioner who prepared and submitted a report. At the conclusion of his report he stated …. "in my opinion….the disability provisions of the Act are likely to apply at this time."

Whilst he waits for his appeal to be heard, the Second Complainant is receiving reduced pension payments.

The Ombudsman has only recently received this second complaint. Given the factual similarities with the First Complainant and the unfathomable delay that the Second Complainant has had to endure, the Ombudsman has taken the view to report on the complaints jointly. Firstly, in order to spare the Second Complainant further bureaucratic obstacles and waiting time and second, to be able to simultaneously offer both Complainants a determination on the administrative justice they appear to have been deprived of.

Investigation

The Ombudsman presented the Second Complaint to the DSS on the 6th March 2025, setting out the chronology of events and requesting their comments. Concern and dissatisfaction over the alleged delays in the Board being convened was expressed by the Ombudsman in no uncertain terms.

A detailed reply was received from the DSS three weeks later.

The reply stated that force majeure events such as the COVID-19 Pandemic, compounded by the turnover of legal appointments to the Board, had exacerbated the waiting time. There was an open admission that …"regardless of reasons, the wait can only be [described as] excessive."

The reply continued by setting out the main factors which had contributed to the delay:

(a) the impact of COVID-19, which caused additional delays as the DSS depended and relied on professionals working within a hospital environment and the physical medical examinations required as part of the appeals process could not be undertaken;

(b) the absence of a Director of Public Health following the previous incumbents' departure;

(c) three changes in [the Board's] chairpersons, each requiring statutory appointments, ministerial approval and gazette publication;

(d) departmental staff turnover and new officers' appointment as Secretary to the Employment Injuries Act;

(e) industrial action, which resulted in DSS staff members working from home for circa six months;

(f) the relocation to new premises;

(g) the implementation of new working practices and recommendations under the newly appointed Director of Public Health;

(h) the introductions of a new stage in the process as requested by the Director of Public Health i.e., the involvement of an Occupational Health doctor who prepares an independent report for the Tribunal [Board], has also played a role in the delays.

The letter expanded upon further issues and concluded by informing the Ombudsman that the DSS "would be looking into the matter of the constituted Board and their availability, with a view to improving disposal and readiness."

Observations and Conclusions

The Ombudsman investigated the administrative aspect of both complaints (i.e., the delays to which the Complainants had been subjected) and not the merits of the individual cases (which this office is not judicially empowered to do).

It is significant to note that Boards are constituted under section 25 of the Social Security (Closed Long- Term Benefits and Scheme) Act 1996. Their composition and competence are set out therein and therefore not open to question or challenge by the Ombudsman. It is noteworthy however that no mention is made in the governing law of any time scale by when a Board should be convened after an appeal is lodged by an applicant.

The Ombudsman was grateful for the frankness and transparency of the DSS in their responses to her. As a result, clearly, there were lessons to be learnt.

It is undeniable that both Complainants had suffered administrative injustices, the Second Complainant to a more significant degree as a result of the extended delay.

The Ombudsman did partly accept the reasons which would have contributed to an "acceptable period" of delay. Global factors such as the unexpected Covid-19 pandemic with all the difficulties and limitations resulting from it, and more specific to the DSS, issues such as resignations and appointment of Board members, industrial action, relocation of offices etc.

Despite all of the above, the amount of time taken to gather a properly constituted Board to consider matters, was unduly excessive, disproportionate, inexcusable and administratively unjust so much so that any reasonable arbiter would have determined the DSS unfit for purpose in that regard.

Classification

<u>The First Complainant</u>

The unacceptability of a two-year delay in the Board meeting to consider the First Complainant's appeal against the DSS in their decision not to backdate her pension – Sustained.

The Second Complainant

A six-year delay in the DSS's failure to convene a duly constituted Board to determine the Second Complainant's appeal against the decision not to grant Invalidity Credits (irrespective of the reasons provided)- Sustained.

The Ombudsman investigated the administrative aspect of this complaint (i.e. the delay) and not the merits of the individual cases (which this office is not judicially empowered to do).

We must reiterate the finding that despite the reasons provided by the DSS for the delay (which the Ombudsman did not consider to be unreasonable per se), the amount of time taken to gather a properly constituted Board to consider matters, was unduly excessive, disproportionate and administratively unjust.

Finally, it is important to state that the role of the Ombudsman is not to single out public bodies' misgivings or to impose administrative punishment or sanctions. Complaints such as the ones under consideration serve as a useful tool to improve practices and processes with a view to build on and enhance the fundamental services departments such as the DSS are designed to provide.

The Ombudsman will as a result of this investigation, open a channel of communication with the Director of the DSS, to determine whether the Ombudsman can assist and make independent representations or recommendations to the Government for additional resources to be employed to the DSS to enable them to fulfil their functions for the benefit of our citizens.

Recommendations

(1) That a Board be convened to determine the first and second complaints as soon as reasonably practicable, and in any event, not later than 28 days from the date of the publication of this report

(2) In the event that the Board finds in favour of either or both of the Complainants, that payments to them be backdated to a reasonable time frame from the date of the submission of their respective appeals (payments to commence from six months after the appeals were lodged).

(3) That future Boards be convened in a timely manner and as a matter of administrative priority. This will ensure that applicants do not suffer the administrative unfairness and injustices caused by such inordinate delays, which in many cases impact directly on an applicants' physical and/or mental wellbeing.

(4) In direct correlation to point 3, it would be an administrative step forwards if HM Government implemented time scales for the convening of Boards by way of an amendment to the Social Security (Closed Long-Term Benefits and Scheme) Act 1996.

Update

In relation to the First Complainant, The Appeals Board met and dismissed the application on the basis that the appeal had been filed by the First Complainant after the statutory time period allowed to lodge it had elapsed. This was the correct and only decision available for the Appeals Board to reach, given the expiration of the statutory timeframe.

The Appeals Board tasked with considering the Second Complainant's appeal had, to the Ombudsman's dismay and disbelief, still not been convened by December 2025 (six months after the date of the Ombudsman's report on the complaint). In her April 2025 report, as a result of the extended delay, the Ombudsman had recommended that the Board "be convened as soon as reasonably practicable and in any event not later than 28 days from the date of publication of [this] report".

Despite the numerous difficulties expressed by the DSS in convening a Board, the Second Complainant had been now waiting for seven years for his appeal to be heard!

The Ombudsman considered this delay to be unjustifiable, laughable and shocking in equal measure. Irrespective of the number of difficulties or hurdles the DSS may have come across in convening a Board, no issue/s could ever explain or excuse the injustice that the DSS was directly responsible for by in effect, not facilitating the Second Complainant's legal right of appeal.

The Ombudsman urged the DSS in the strongest possible terms, to correct this shambolic behaviour and take urgent steps to enable the appeal to be heard without further delay. In addition, a full explanation and a frank letter of apology should be issued to the Second Complainant forthwith.

REPORT ON CASEs NOs 1300, 1318, 1283 and 1339

Complaints against the Department of Social Security ("DSS") concerning the Complainants' applications for Disability Benefit. The complaints relate to the failure to provide information regarding the applicable eligibility criteria, the absence of reasons in the responses to the initial applications and/or appeal decisions refusing the claims, and the delay in processing the applications.

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

The First Complainant

The First Complainant applied for disability benefit on the 10th December 2020 and received a negative reply two years later on the 11th December 2022. She was invited to appeal the decision within 21 working days from the date of the letter if she felt the director had "made an error in rejecting her application". No information was given on the reasons for the decision.

The First Complainant appealed the decision via letter dated 15th November 2022, where she explained that "I would like to appeal against the decision…I am prone to dislocations of all joints… there are times I can't physically leave my house. Yesterday I had a knee dislocation and I am now house bound until I heal. This is an ongoing issue as I have hypermobility from birth."

On 16th April 2024, 18 months after her appeal, and after continuing correspondence with the DSS, she received an email from DSS stating, "Due to the time elapsed, we have requested an updated application form… to ensure we have the most up to date and accurate information…" The First Complainant duly submitted an updated application form and on the 8th May 2024 the Disability Benefit Panel convened and disallowed her appeal, but deferred her application to the Mental Health Team.

On the 9th October 2024, the First Complainant wrote to DSS and asked "what the criteria is to claim disability benefits?" Via e-mail of the same date, she received a reply stating that "Disability Allowance is a discretionary benefit and every application is reviewed on a case-by-case basis."

On the 18th December 2024 the First Complainant received a letter advising her that following the re-assessment of her application "by a multidisciplinary panel consisting of health professionals" her claim for Disability Benefit was disallowed. No reasons were given for this decision. She was further told that she "will be unable to reapply for the Disability Benefit, unless there is a documented deterioration of your medical condition which severely impacts on your ability to carry out a range of activities which are fundamental to everyday life. Such deterioration would need to be substantiated with new additional medical evidence."

The First Complainant was aggrieved by the lack of information provided to her in respect of the eligibility criteria for the disability benefit, the lack of reasons provided for disallowing her claim both at the application stage and at the appeal stage and for the delay in processing her application.

The Second Complainant

The Second Complainant submitted a Disability Benefit application on the 28th February 2022 on behalf of her son, who was five years old at the time. On the 13th November 2023, the application was denied - no reasons were provided for the dismissal of the application.

On the 5th December 2023, the Second Complainant submitted an appeal, explaining to the DSS that her son suffered "from a language and developmental learning disorder, that is severe and which has a significant impact on his ability to undertake daily living activities."

The Second Complainant informed the Ombudsman that "a hearing was scheduled for April 2024 but never took place… to this day, no panel has been convened, and no alternative arrangements have been communicated." She was aggrieved by the delay and the fact that, despite having provided all relevant medical evidence and reports evidencing her son's significant and lifelong needs, more than three years after submission of her application, the matter was not yet resolved.

The Second Complainant highlighted the fact that:

- "No updates [were] provided on the appeal process or timeframes.
- Repeated attempts to seek clarification have gone unanswered.
- There is no published guidance on Disability Benefit eligibility or appeal criteria, making the process inaccessible and opaque for families."

The Third Complainant

The Third Complainant suffered from back pain, for which she underwent Coflex surgery in 2016. However, her condition continued to worsen and in 2021, she had to take early retirement from work on medical grounds. The Third Complainant first applied for Disability Benefit on the 27th July 2022, to which she never received a response.

Her chronic neck and lower back pain, and her subsequent divorce, led to depression and alcohol addiction. After a four-month rehabilitation in Bruce's Farm, the Third Complainant tried to re-enter working life and found employment as a part-time receptionist, but once again, she was unable to sustain employment due to her chronic back condition, which had worsened to the point that she needed crutches to get to work.

She then contacted DSS to enquire about her application but was told that she had been removed from the list because she had to re-apply every year, and because she had not reapplied, she had been automatically removed from the list.

The Third Complainant subsequently reapplied for disability benefit on the 16th October 2023.

Unfortunately, in January 2024, she attempted to commit suicide. This led to the Third Complainant entering Bruce's Farm on the 9th February 2024, where, on the 26th March 2024, she received a letter from the DSS informing her that her application for disability benefit had been disallowed. In April 2024, the Third Complainant called the DSS and asked about appealing the decision – she was informed that because she was in Bruce's Farm, she could submit her appeal verbally, over the phone. She was then informed that she would be placed on the appeals waiting list and would receive a reply after 4 months. The Third Complainant contacted the DSS on the 14th November 2024 to enquire as to the outcome of her appeal and she was told that she had been misinformed as to the time frame as the process by which the Disability Panel is formed does not allow for timescales to be communicated to applicants. She was advised to send in an appeal in writing, as her April 2024 appeal could not be located. On the 19th November 2024, the Third Complainant submitted a written appeal to the DSS.

The Third Complainant was aggrieved because:

- She disagreed with the policy obliging applicants to re-apply annually;
- She had been allowed to submit an appeal over the phone in April 2024 and was informed that her appeal had been accepted;
- She was not given reasons for the dismissal of her application for disability benefit;
- The delay in processing her application for disability benefit and her subsequent appeal.

<u>The Fourth Complainant</u>

The Fourth Complainant suffered from a number of ailments – degenerative disc disease, permanent nerve damage, fibromyalgia, hypermobility, ADHD and chronic depression and anxiety. She initially submitted an application for disability benefit on the 14th January 2020. She was informed on the 18th November 2021 that her application had been disallowed.

On the 18th February 2022 the Fourth Complainant submitted her appeal. On the 4th September 2025 she received a letter from the DSS informing her that her application had been reassessed by a multi-disciplinary panel, who had made a recommendation to the Director of the DSS, who had subsequently decided not to award her the Disability Benefit. The letter also stated the following:

"Please note that you will be unable to reapply for the Disability Benefit, unless there is a documented deterioration of your medical condition which severely impacts on your ability to carry out a range of activities which are fundamental to everyday life. Such deterioration would need to be substantiated with new additional medical evidence."

The Fourth Complainant was aggrieved by this and made a formal complaint to the DSS on the 22nd September 2025, contesting the decision and providing updated medical evidence confirming her ongoing and permanent disability. The DSS acknowledged receipt of the Fourth Complainant's letter and informed her on the 6th October 2025 that "the matter was being escalated to senior management for review". Since that date, the complainant had not received any further updates on her complaint.

The Fourth Complainant then submitted a complaint to the Ombudsman in respect of:

- the delay in processing her application for Disability Benefit and her subsequent appeal; and

- the fact that she had been barred from reapplying for Disability Benefit, given her serious medical conditions.

Investigation

No information was provided in respect of eligibility criteria

At the initial phases of this investigation, the following questions (in bold) were posed to the Director of the DSS, and the answers provided were communicated to the Ombudsman via email dated 18th December 2024.

"1. The criteria, if any, used for considering Disability Benefit cases. The criteria for awarding the Disability Benefit is focused on the outcome and the impact of the health condition or impairment on the individual's ability to carry out a range of activities which are fundamental to everyday life and/or be unable to work because of a physical, cognitive or intellectual impairment arising from and illness or disability. The Medical Panel appointed considers impact and severity, not diagnosis.

2. Why the criteria requirements are not shared with applicants so as to avoid receipt of non-compliant applications. Disability Benefit is a non-statutory benefit that is awarded under discretionary administrative arrangements. The criteria is based on the individual's ability to carry out activities of daily living. These activities are listed in the application form completed by the applicant, notwithstanding the Medical Panel has direct access to EMIS, the electronic medical system used by GHA, and may consider other activities/factors that may be relevant to a particular Claimant but may not be applicable to others.

3. If there is no criteria your comments in respect to maintaining equal standards and thresholds. As highlighted in point number 2 above, the Medical Board is guided by the criteria set out under administrative arrangements to ensure uniformity and consistency of standards."

Consequently, the Ombudsman requested a copy of the Administrative Arrangements to review the criteria considered by the Medical Board. At this point, the Ombudsman noted that, exceptionally, the Disability Benefit has not been established via statute or by regulation. It is a purely administrative mechanism and as such, the entirety of the process comes under the jurisdiction of her office. This lies in contrast to all other boards, panels and decision-making bodies – in such cases, there is a statutory or regulatory framework

and whilst the administrative aspects of these entities can be scrutinized by the Ombudsman, their substantive, decision-making process is outside of her jurisdiction.

The criteria for eligibility for an adult applicant are set out in paragraphs 3, 4 and 6 of the 'Administrative Arrangements' which are, on the face of the document, entitled 'Disability Benefit Arrangements'. The criteria for eligibility for a child applicant are set out in paragraph 5 of the Administrative Arrangements. In both cases, the threshold for eligibility for disability benefit is, in the Ombudsman's view, significantly high.

Even though the eligibility criteria is clearly laid out, this information is not disseminated to applicants nor to the general public. This was communicated to the Ombudsman by the DSS via letter dated 12th February 2025: "kindly note that the Administrative Arrangements are not provided to applicants or the general public as the document constitutes an internal written policy in respect of discretionary arrangements."

<u>The responses to their initial applications and/or their appeal decisions provide no reasons for the decision to disallow the complainants' applications</u>

Via email dated 22nd November 2024, the Ombudsman posed the following questions to the DSS on the complainants' claims that no reasons were given for the decision to disallow their applications, and received a reply on the 18th December 2024. The questions and answers were as follows:

"Why, it appears, applicants are not afforded reasons for the decisions on their applications, as a matter of standard practice?

This benefit experienced major reform in 2015 when H.M. Government of Gibraltar amended eligibility to include Claimants who had not been born with a disability. Prior to this date, the only persons who were eligible to apply had to have been born with a disability. This radical amendment generated a flooding of applications that was regrettably disrupted by the COVID-19 pandemic and resulted in a substantial backlog of cases, especially when considered in conjunction with reconsiderations (usually referred to as appeals) and periodic reviews. As can be expected from any major change that impacts diverse scenarios, both management and board members appointed to assess the cases for Disability Panels, highlighted that developments indicated that a reform of the benefit was required and in 2020 H.M. Government of Gibraltar approved this request, however inopportunely, it was also interrupted by the pandemic and the reform continues to this day. I understand that at the onset, some brief reasons for the decision was provided, however following judicial review of a specific case, the Department's Counsel recommended that this was discontinued. The matter of disclosure is also being considered as part of the reform.

Why the grounds for an appeal are so wide with respect to the comment 'you are invited to appeal the decision if it is felt the director had made an error in rejecting her application'?"

Given that this is not a statutory benefit, there is no formal appeals process as such, however given the progressive nature of medical/physical conditions and in order to

follow best practice, reconsideration of cases is set out under the administrative arrangements. Claimants are always invited to appeal the decision, however as explained in point 4 above, the details of the assessment made by the Medical Board is not disclosed to the Claimant."

The Ombudsman was clear that there was no dispute between the complainants and the DSS on this issue – no reasons were provided to the complainants for the decision to disallow their applications. In fact, no reasons are provided to any applicants as a matter of usual practice.

The delay in processing the complainants' applications

The First Complainant

The Ombudsman obtained a copy of the First Complainant's file and set out a chronology of the application process, as follows:

- 8th December 2020- initial application submitted.

- 10th October 2022- minutes of panel convening at PCC from 9.40am to 12.40am. 'case not recommended'.

- 8th November 2022- Director of DSS decides to uphold recommendation from the panel.

- 9th November 2022 – date of letter to complainant communicating decision to reject her application. No reasons provided.

- 15th November 2022 – complainant communicates decision to appeal decision to DSS via email.

- 20th December 2022- email to complainant acknowledging receipt and stating that "we will reconsider your case and inform you accordingly of any updates."

- 27th July 2023- email apologising for delay, reason given that they have been unable to reconvene a panel.

- 9th April 2024 – complainant asked to resubmit a Disability Benefit application form.

- 8th May 2024 – Minutes of the Disability Benefit Panel held on 8th May 2024 at St Bernard's Hospital. Panel does not recommend her case as "her self-assessment does not reflect her medical notes in terms of hypermobility. Her case has instead been deferred to the Mental Health Panel for their assessment."

- 18th June 2024 -Director of DSS (Ag) upholds recommendation of the panel to defer to the mental health panel via signed file note.

- 9th October 2024 – Minutes of the Mental Disability Panel held on the 9th October 2024 at Coaling Island from 9.30 am to 12.30pm. Case not recommended as her ADLs are not "severely impacted by her conditions".

- 13th November 2024 – Director of DSS upholds recommendation of the mental health panel to disallow the complainant's application for disability benefit.

- 18th December 2024 – date of letter to complainant advising her that her claim for Disability Benefit has been disallowed. No reasons given. She is "unable to reapply for the Disability Benefit, unless there is a documented deterioration of [her] medical condition".

The Ombudsman noted that the entire process, from the First Complainant's initial application to the conclusion of her appeal, spanned 4 years, from December 2020 to December 2024. It was clear from the chronology that the longest delays in the application process stemmed from DSS convening the panel of medical professionals. The First Complainant's first application (8th December 2020) was considered by a Panel on the 10th October 2022, one year and ten months after submission. The First Complainant's appeal (which required a resubmission) was submitted on the 15th November 2022, and considered by a panel on the 8th May 2024, one year and six months after submission.

The Ombudsman noted, in particular, the three sets of minutes of the Disability Benefit Panel ("the Panel"), of the 10th October 2022, 8th May 2024 and the 9th October 2024.

It appeared from these minutes that the correct process had been followed, with a Panel making an assessment and making a collective recommendation to the Director of the DSS, as per paragraph 7 of the Administrative Arrangements, whereby the Panel should be composed of "at least 2 health professionals and 1 lay person". It was not possible for the Ombudsman to verify this as "The identity of the individuals comprising the Panel shall remain confidential at all times and shall not be disclosed to any person (including any applicants)". Consequently, the minutes provided to the Ombudsman were redacted - the identity of the individuals forming part of the three Panels were not disclosed to her, so she was unable to conclusively determine if the composition of the Panel's was in accordance with the provisions of the Administrative Arrangements.

Nevertheless, it appeared that all three Panels were convened at GHA premises which suggests that healthcare professionals were involved in the process. At each point when the Panels met, their recommendation was communicated to the Director of the DSS and on all three occasions the Director of the DSS followed the Panel's recommendation.

The Ombudsman noted also the initial Panel's deferral to the Mental Health Panel, which suggested to the Ombudsman that the medical professionals did try to fully explore all the aspects of the First Complainant's application.

<u>The Second Complainant</u>

The Ombudsman obtained a copy of the Second Complainant's file and set out a chronology of the application process, as follows:

- 28th February 2022 – initial application submitted

- 11th January 2023 – Minutes of panel convened at PCC at 10.30am. Decision was deferred as panel "agreed that it does not have enough information to make a qualified decision on this case and that in order to determine a fair outcome, more supporting information and clinical evidence is needed i.e. medical reports, etc."

- 4th May 2023 – letter to complainant informing her that "the Panel are of the view that they need more supporting evidence in order to provide the Director with a qualified recommendation in respect of your child's eligibility to this benefit….The panel have therefore kindly requested you to provide the DSS with supporting evidence in respect of your child's night traumas and anxiety which do not appear to be covered by your son's medical records nor the reports and meeting notes already submitted."

- 13th May 2023 – email from complainant to DSS explaining difficulties in obtaining evidence of the child's anxiety and night trauma.

- 16th May 2023 – email from complainant to DSS stating that "I am unable to provide any medical information on the issues that have been highlighted for clarification by the panel, as I am still waiting for Daniel to be added under the GHA paediatric neurodevelopmental caseload for further consolidated multi-disciplinary assessments, reporting management and guidance for [the child]."

- 11th October 2023 – minutes of the Disability Benefit Panel convened at St Bernard's Hospital. Claim not recommended as "does not meet the criteria".

- 1st November 2023 – Letter to complainant communicating decision to reject her application. The name of the complainant's child was omitted and another child's name included in error.

- 13th November 2023 – Amended and corrected letter communicating decision to reject her application sent to complainant – no reasons for the decision included in the letter.

- 13th November 2023 – DSAR from complainant sent to DSS and request acknowledged by DSS.

- 5th December 2023 – complainant submits letter of appeal (request for reconsideration).

- 8th December 2023- DSS sends information to complaint in accordance with DSAR.

- 22nd January 2024 – letter from TSN to DSS requesting outcome of appeal (reconsideration).

- 25th January 2024 – DSS sends holding reply on reconsideration to complainant.

- 28th October 2025 – Letter to complainant communicating decision to reject her appeal (no reasons given).

The Ombudsman noted that the entire process, from the Second Complainant's initial application to the conclusion of her appeal, spanned three years and nine months, from February 2022 to November 2025. It was clear from the chronology that, once again, the longest delays in the application process stemmed from DSS convening the panel of medical professionals. The Second Complainant's first application (28th February 2022) was considered by a Panel on the 11th January 2023, eleven months after submission.

The Second Complainant's appeal was submitted on the 5th December 2023 and the panel was convened on the 19th June 2025 at St Bernard's Hospital. The decision to dismiss the appeal was communicated to the Second Complainant on the 28th October 2025, a year and 10 months later.

The Ombudsman noted the minutes of the Panels of the 11th January 2023 and the 11th October 2023. In both these meetings, the Panel made an assessment and made a collective recommendation to the Director of the DSS, who followed their recommendation.

The Panels were convened in the PCC Boardroom and the School of Health Studies at St Bernard's Hospital, but the identity of the Panel members was not disclosed to the Ombudsman.

The Ombudsman noted that, following the first Panel meeting, further information on the child's anxiety and night trauma was requested by the Panel, suggesting that the medical professionals did try to fully explore all the aspects of the complainant's application.

The Third Complainant

The Ombudsman obtained a copy of the Third Complainant's file and set out a chronology of the application process, as follows:

- 27th July 2022 – initial application submitted.

- 16th October 2023 – second application submitted (no evidence on file that a panel had considered the complainant's initial application).

- 24th October 2023 – minutes of panel convening at PCC at 9.30am- claim not approved. Panel suggested that the Third Complainant should be referred to Physio and OT and that she should resubmit her application following engagement with the GHA therapy services.

- 20th February 2024 – minutes of panel convening at PCC at 10am – claim not approved, panel's recommendation remained unchanged.

- 19th March 2024 – Adult assessment form stating "[the Third Complainant's case was assessed by the panel on the 24th October 2023 where her case had not been recommended. However, the Director at the time requested for the panel to reassess the case and take into consideration MRI and Lumbar spine results in order to make an

informed decision…. The panel after taking into consideration her MRI results, agreed that their recommendation remained unchanged."

- 26th March 2024 – Letter to the complainant communicating decision to reject her application. No reasons provided.

- 16th April 2024 – complainant communicates decision to appeal decision to DSS via hand-written letter.

- 19nd November 2024 – email from the Third Complainant attaching a letter of appeal.

- 4th March 2025 – letter of complaint from the Third Complainant regarding delay in processing her appeal and the lack of reasons provided for refusal of her initial application.

The Ombudsman noted that the entire (incomplete) process, from the Third Complainant's initial application to the date of writing this report, spanned three years and four months, from July 2022 to November 2025. It was clear from the chronology that, once again, the longest delays in the application process stemmed from DSS convening the panel of medical professionals. The Third Complainant's first application was submitted on 27th July 2022, and although she was asked to submit a second application, this was not considered by a Panel until the 24th October 2023, one year and three months after submission. The Third Complainant's appeal was submitted on the 16th April 2024, and has not yet been considered by a panel, one year and seven months after submission.

The Ombudsman noted the minutes of the Panel of the 24th October 2023. In this meeting, the Panel made an assessment and made a collective recommendation to the Director of the DSS, who considered their recommendation and requested that the Panel reassess the case taking into consideration the MRI and lumbar spine results. The Ombudsman noted the Director of the DSS' intervention to explore all aspects of the complainant's application and to obtain further medical advice.

The Panels was convened in the PCC Boardroom but the identity of the Panel members was not disclosed to the Ombudsman.

The Third Complainant's Complaints on the Requirement for Annual Reapplication for Disability Benefit and on the DSS allowing her to make a verbal application
Via email dated 12th August 2025, the DSS explained that:

"1. Applicants are not required to reapply on a yearly basis. Successful applicants are informed in writing of the period that the Disability Benefit is approved and the Department issues a letter to applicants, three months in advance of the termination date, reminding them that the period of award will be expiring. Notwithstanding the above, due to the extensive backlog generated by COVID-19, which resulted in applications becoming dated, the Department has reached out to applicants inviting them to complete an up-to-date application. This is done in the applicants' interest, in order to present current circumstances to the Disability Board, particularly as chronic illnesses/conditions have a greater probability of deteriorating with time.

There is a specific component, within the disability application process, that does require yearly renewal at present. This is the Consent Form for the disclosure of medical and health records. The timeline for access to this sensitive, personal data is understandably stipulated by the Gibraltar Health Authority. Although, we appreciate that a year should be sufficient time to complete an application and the section has made considerable inroads reducing the backlog and waiting time for applicants, we have made representations to GHA, to discuss whether consent can be extended for the period taken to complete the application and appeal process, when pertinent. Whilst this is not a major hindrance, it does require investment of time, prompting applicants and chasing completion, to ensure that all is in order when the case is presented to the Board for deliberation. I imagine that there is a probability that [the Third Complainant] is referring to the renewal of the Consent Form rather than the entire application process.

2. [The Third Complainant's] assertion is inaccurate. Records indicate that she was exceptionally allowed to submit an appeal past the deadline because she was undergoing rehabilitation at Bruces Farm and had not had sight of the letter issued informing her that her application for Disability Benefit had been unsuccessful and she had twenty-one days to appeal the decision. At her request, this letter was emailed to Bruce's Farm on 16 April 2024 and her appeal letter was submitted electronically on the same day. As regards the telephone conversation highlighted, of 14 November 2024, I regret that I am unable to provide any practical feedback on this matter and whether the advice afforded by [Administrative Officer] was inaccurate or misunderstood. He has since moved on to another department."

The Ombudsman considered it reasonable that the yearly requirement for applicants related to the Consent Form and not to the reapplication for Disability Benefit. The Ombudsman appreciated that the requirement for the submission of the form was from the GHA, for data protection purposes. The Ombudsman also recognised that the DSS had already requested that the GHA extend the validity of the Consent Form beyond the one-year period. As regards the complaint that the Third Complainant had been allowed to submit an appeal verbally, over a phone call, the Ombudsman did not have sufficient evidence on either side to be able to come to a determination on the matter. As the DSS was not able to provide a statement on the content of the telephone call, it was difficult to conclude on the information that was exchanged on the day. There was no audio recording of the telephone conversation that could be accessed by the Ombudsman, nor was there any record on file regarding the telephone conversation. The Ombudsman felt she could not come to a fair and balanced conclusion on this point.

<u>The Fourth Complainant</u>

The Ombudsman obtained a copy of the Fourth Complainant's file and set out a chronology of the application process, as follows:

- 14th January 2020 – initial application submitted.

- 16th December 2020 – Adults Assessment form, recommendation 'not approved'

- 23rd January 2021 – request from DSS to Fourth Complainant for documentation on the surgical interventions reported by the Fourth Complainant.

- 4th May 2021 – Adult Assessment form, recommendation 'No'.

- 15th June 2021 – Adult Assessment form. Recommendation was 'Deferred to next Panel. No notes on medical file."

- 20th September 2021 – Minutes of the Disability Benefit Panel held at PCC at 9.30 am. "This case has been considered previously on 16/12/2020, even though it was not awarded by panel Director highlighted concerns when checking the file. It was brought before the panel of 4/5/2021, again it was not awarded. None the less we were subsequently made aware that on the same day of the panel or shortly after applicant had been operated at Xanit hospital so it was again set down for 15/6/2021. Unfortunately, at the time we were not able to reconsider her case as her medical file had not been updated."

- 20th September 2021 – Adult Assessment form. Recommendation 'not awarded'.

- 18th November 2021 – Letter to the Fourth Complainant communicating decision to reject her application. No reasons provided.

- 18th February 2022- Fourth Complainant submits appeal.

- 10th August 2023 – Email from complainant to DSS making a complaint about delay.

- 24th April 2025 – Adult Assessment Form, recommendation 'not recommended'.

- 4th September 2025 – letter to Fourth Complainant communicating decision to reject her application. No reasons provided. Letter states that: "Please note that you will be unable to reapply for the Disability Benefit, unless there is a documented deterioration of your medical condition which severely impacts on your ability to carry out a range of activities which are fundamental to everyday life. Such deterioration would need to be substantiated with new additional medical evidence."

The Ombudsman noted that the entire process, from the Fourth Complainant's initial application to the conclusion of her appeal, spanned more than 5 years, from January 2020 to September 2025. It was clear from the correspondence on file that the initial delays arose from difficulties obtaining medical records. The Fourth Complainant submitted her initial application in January 2020 and by September 2021, four panels had considered her application. However, it is clear that the delay in processing the Fourth Complainant's appeal lay in convening a Panel – the appeal was submitted on 18th February 2022 and a panel was not convened until 24th April 2025, more than two years later.

The Ombudsman noted the minutes of the Panel of the 20th September 2021. In this meeting, the Panel made an assessment and made a collective recommendation to the Director of the DSS, who followed their recommendation. The Ombudsman noted that the Panel had reassessed the Fourth Complainant's application four times between 2020 and

2021 at the request of the Director of the DSS, who clearly wished for the Panel to consider the Fourth Complainants surgical intervention at Xanit Hospital.

The Ombudsman also noted the numerous emails between the Disability Section and the complainant from March 2021 to September 2021, with the Disability Section seeking medical information from the complainant and making arrangements for scans submitted by the Fourth Complainant in disc format to be transposed into USB format so they could be considered by the panel. Also, the Ombudsman noted the Disability Section facilitating an application for social assistance for the Fourth Complainant, and an email dated 22nd June 2021 to her requesting that she "liaise with [Senior Physiotherapist] in order to arrange a meeting with her. You apparently had a booked appointment on 11/6/2021 that was a no show and I really need an update for the panel." It appeared to the Ombudsman that the Disability Section had made significant efforts to present the Fourth Complainant's case to the panel throughout this period.

The Panel was convened in the PCC Boardroom, but the identity of the Panel members was not disclosed to the Ombudsman.

The Ombudsman also noted that the DSS had informed the Fourth Complainant that she would be "unable to reapply for the Disability Benefit, unless there is a documented deterioration of your medical condition which severely impacts on your ability to carry out a range of activities which are fundamental to everyday life. Such deterioration would need to be substantiated with new additional medical evidence." The Fourth Complainant's application and medical records had been presented to five panels from January 2020 to September 2025. The Ombudsman considered that, following the determination of her initial application and her appeal, it was reasonable for the DSS to require evidence of a deterioration of her medical condition as a precondition to her further application. The Ombudsman concluded that the Fourth Complainant had not been barred from reapplying for Disability Benefit – should she be in a position to provide medical evidence showing a deteriorated medical condition, she would be able to reapply.

Aspects of the Administrative Arrangements that impact on the fairness of the process

The Panel of meetings require at least 2 health professionals and 1 lay person to be present and in agreement. The Health Professionals that can be called upon to form part of a Panel (together with a lay person appointed by the Director of the DSS) can be; physicians, psychologists, physiotherapists, occupational therapists, social workers, speech and language therapists, general practitioners and mental health welfare officers. However, the identity of the members of the Panel "shall remain confidential at all times and shall not be disclosed to any person (including any applicants)" under s7 of the Administrative Arrangements. Indeed, as previously reported, the identity of the Panel members had not even been disclosed to the Ombudsman in the course of this investigation. Due to this, the Ombudsman could not determine if the Panels had been convened correctly, if the Health Professionals making the recommendations had the appropriate specialisms for the medical conditions presented by the applicants, or at worst, if there were Health Professionals in the Panels at all.

When raising the issue with the DSS, the Ombudsman was informed (via email dated 11th April 2025) that "the names of the Board members who participated in Panel meetings have been redacted in accordance with guaranteed anonymity on voluntary participation". In a further email dated 18th July 2025 it was explained that, in response to the Ombudsman's concerns regarding lack of transparency, the professionals' unanimous advice was that "under no circumstances should the identities be disclosed." Indeed, the Health Professionals confirmed that "should they be required to disclose their identities they would immediately cease to form part of the Panels". The DSS explained that "the process of consideration of the DB would immediately collapse should the professionals decline en masse to form part of the panels. Such an action on their part would mean that there would be significant delays whilst HMGOG considers how to address this issue".

Furthermore, the Panel of Health Professionals provides advice and recommendations to the Director of the DSS. However, as per s 11 of the Administrative Arrangements: "The final decision is solely and exclusively for the Director to make in his absolute discretion". The Ombudsman considered it anomalous that the Director of the DSS, a Senior Officer and an Administrator should retain sole discretion over clinical decision-making. The Ombudsman also considered that this absolute discretion also puts the Director of the DSS in a very vulnerable position vis a vis ministerial interference. The Ombudsman reflected on the possibility of the Director of the DSS receiving a positive recommendation from a Panel and then potentially being instructed by the relevant Minister not to award disability benefit in that case. The Ombudsman hoped that that scenario had not come to pass nor that it ever would come to pass in future, but strongly felt that more safeguards were needed to prevent such an unfair situation from ever arising.

Parliamentary Motion on the review of the disability benefit system

The Ombudsman noted the comment from the Director of the DSS set out in page 5 of this report vis a vis a reform process of the disability benefit system : "As can be expected from any major change that impacts diverse scenarios, both management and board members appointed to assess the cases for Disability Panels, highlighted that developments indicated that a reform of the benefit was required and in 2020 H.M. Government of Gibraltar approved this request, however inopportunely, it was also interrupted by the pandemic and the reform continues to this day."

Indeed, on researching Hansard, the Ombudsman was able to verify that on Monday 1st July 2020 a motion was carried in Parliament whereby the Minister with responsibility for Social Security "should report to this House within the next six months with the result of placing on a statutory footing the qualifying test for the award of disability benefit and the review of the disability benefit system which is currently taking place."

The Ombudsman was eager to consider the report as she felt it would shed light on her investigation. To this end, she reviewed the Hansard records from December 2020 and the period before and after December 2020 but was not able to find any debate on the qualifying test or on the review. She also searched through the Reports section of the Gibraltar Parliament website, but no reports on disability benefit were available. Indeed, neither the Ombudsman nor the Gibraltar Parliament team were able to locate the report.

Conclusions

On undertaking this investigation, it was clear to the Ombudsman that the DSS had acknowledged that the eligibility criteria for the award of disability benefit (set out in the Administrative Arrangements) is not made available to applicants or the general public. The DSS also acknowledged that no reasons are given to applicants when their initial applications or their appeals are disallowed. Therefore, the position was clear in relation to the first two complaints presented by the complainants. The Ombudsman was clear that these two aspects of the disability benefit application process were completely lacking in transparency and therefore unfair to the complainants.

As regards delay, Ombudsman considered that an approximate average time span for all four complaints (from the submission of the initial complaint to the determination of an appeal) was four years. The Ombudsman felt that this was an unreasonably long period for the processing of disability benefit applications, taking into account that there could well be applicants suffering from severe disability facing financial hardship. From her consideration of all four of the complainants' files, it seemed clear that the main cause of the delay was difficulty in convening panels of health professionals to assess applications and make a collective recommendation to the Director of the DSS.

The Ombudsman understood that the participation of the health professionals was 'voluntary' and also that, due to the size of our jurisdiction, there could be instances where health professionals would be conflicted when assessing applications from their own patients. Consequently, the Ombudsman understood the health professionals' insistence on anonymity. Nevertheless, the Ombudsman felt that the anonymity of the health professionals who compose the panels was another opaque aspect of the disability benefit application process which was rendered unfair due to a lack of transparency. Indeed, throughout her investigation into all four complaints, the Ombudsman had not had sight of the health professionals who had made recommendations in relation to the complainants' disability benefit applications.

As previously mentioned in this report, she was unable to comment if the Panels had been convened correctly, if the Health Professionals making the recommendations had the appropriate specialisms for the medical conditions presented by the applicants, or at worst, if there were Health Professionals on the Panels at all.

The Ombudsman therefore concluded that the current system of convening panels was both completely lacking in transparency and inefficient, subjecting applicants to unreasonable delays.

The Ombudsman was also of the view that the lack of transparency in respect of eligibility criteria and the failure to give reasons for disallowing initial applications also contributed to the delay in processing disability benefit applications. As applicants do not have sight of the eligibility criteria, they cannot self-assess their condition in reference to (what appeared to the Ombudsman) to be significantly high thresholds of disability. This means that potential applicants who clearly do not meet the threshold and would decide not to go ahead with an application on reviewing the criteria, would submit applications, unaware that they do not meet the criteria and are not eligible for disability benefit.

The Disability Benefit Section then have the duty to process all these applications, with the consequent difficulties in convening panels composed of healthcare professionals acting on a voluntary basis. This is further compounded by the fact that no reasons are provided when applications are disallowed. This means that as applicants are unaware of the reasons why they do not meet the eligibility criteria, they all submit appeals (not all of them would appeal if they understood the reasons behind the disallowance of their applications). It was clear to the Ombudsman that the lack of reasons provided also contributes to the DSS's administrative backlog.

Indeed, the second application is called a 'reconsideration' and not an appeal. This, in the Ombudsman's view, was a fitting nomenclature, as a true appeal would focus on why the reasons to disallow the application were wrong. In the absence of the reasons for the disallowance, the applicants can only resubmit their initial application with limited chances of success. The Ombudsman considered this a largely ineffectual and inefficient process, which is unfair to applicants because they are not given the reasons for the disallowance and have to appeal the decision without this crucial information.

The Ombudsman considered that this 'reconsideration' process in also unfair to the Disability Section and for the panel members, as it is not a purposeful exercise which has the effect of increasing workload with unsatisfactory outcomes for applicants. It felt to the Ombudsman that the Disability Section was being set up to fail. No matter the hard work and effort put in by the administrators, the process is so flawed that they cannot provide an effective or efficient service to applicants. The health professionals were also giving of their time and effort on a voluntary basis in an environment which, the Ombudsman surmised, cannot be comfortable for them given their insistence on complete anonymity. As also previously mentioned, the Ombudsman found it concerning that the Director of the DSS, as a Senior Administrator with no medical expertise, should have "absolute discretion" over the disability application process, albeit with the collective recommendation from a panel composed of healthcare professionals.

The Ombudsman felt that this put the Director of the DSS in a difficult position, as these arrangements open the possibility of ministerial interference. A situation of ministerial interference in this process would place the Director of the DSS in a vulnerable position, and would make the entire process completely unfair, as some applicants would be favoured over others, or prejudiced over others.

The Ombudsman considered that, at this moment in time, applicants submit their applications with no information as to the procedure that is followed for the assessment of their application, no information on the eligibility criteria, and no knowledge of the healthcare professionals that will be deciding on the recommendations to be made to the Director of the DSS.

Indeed, these recommendations are not available to the applicants, who are not able to verify the composition of the panel to determine if the appropriate healthcare professionals are assessing their applications. They also do not receive any information on the recommendations themselves, or on the reasons behind the decision to recommend or not, as communicated to the Director of the DSS. All in all, the Ombudsman considered

that the entire process is completely opaque, with no window of transparency for applicants, or for the taxpayer, who ultimately funds this benefit.

Furthermore, the process is inefficient and creates difficulties for the administrators (who have to convene panels of healthcare professionals acting on a voluntary basis) and uncomfortable for healthcare professionals who act on a voluntary basis and have to take time from their patients to sit on these panels.

The Ombudsman found it regrettable that she had not been able to access the Minister's 2020 report to Parliament on placing the qualifying test on a statutory footing and on the review of the disability benefit system that was undertaken in that year. She felt it could have informed her own investigation and her report. However, she took note that in 2020, Parliament had approved the consideration of placing the qualifying test for disability benefit on a statutory footing, as well as a review of the disability benefit system. The Ombudsman agreed that both were necessary and concluded that an urgent review of the disability benefit application process was desperately needed.

Classification

1) No information was provided in respect of eligibility criteria - Sustained;

2) The responses to their initial applications and/or their appeal decisions provide no reasons for the decision to disallow the complainants' applications - Sustained;

3) The delay in processing the complainants' applications - Sustained.

Recommendations

1. The complainants should be provided with the reasons why their most recent application was not successful. They should then be allowed a six-week window to reapply for disability benefit, which should be assessed within a six-month period.

If their applications are successful, the disability benefit awarded should be back-dated to their initial application date, so that there would be no loss of income arising from the delays in the disability benefit application process.

In the event of a successful reconsideration, the appropriate dates for backdating of disability benefit for each of the complainants would be as follows:

First Complainant – 10th December 2020
Second Complainant – 28th February 2022
Third Complainant – 27th July 2022
Fourth Complainant -14th January 2020

2. An independent external review of the disability benefit system should be commissioned and concluded within 18 months of the date of this report. The review should be undertaken with a view to implementing the following reforms:

- Making the eligibility criteria available to applicants;

- Providing reasons for the dismissal to applicants whose applications are dismissed;

- Creating transparency as regards composition of the panel of healthcare professionals;

- Implementing improved mechanisms for the composition of the panels to increase efficiency;

- Implementing safeguards on the absolute discretion of the Director of the DSS.

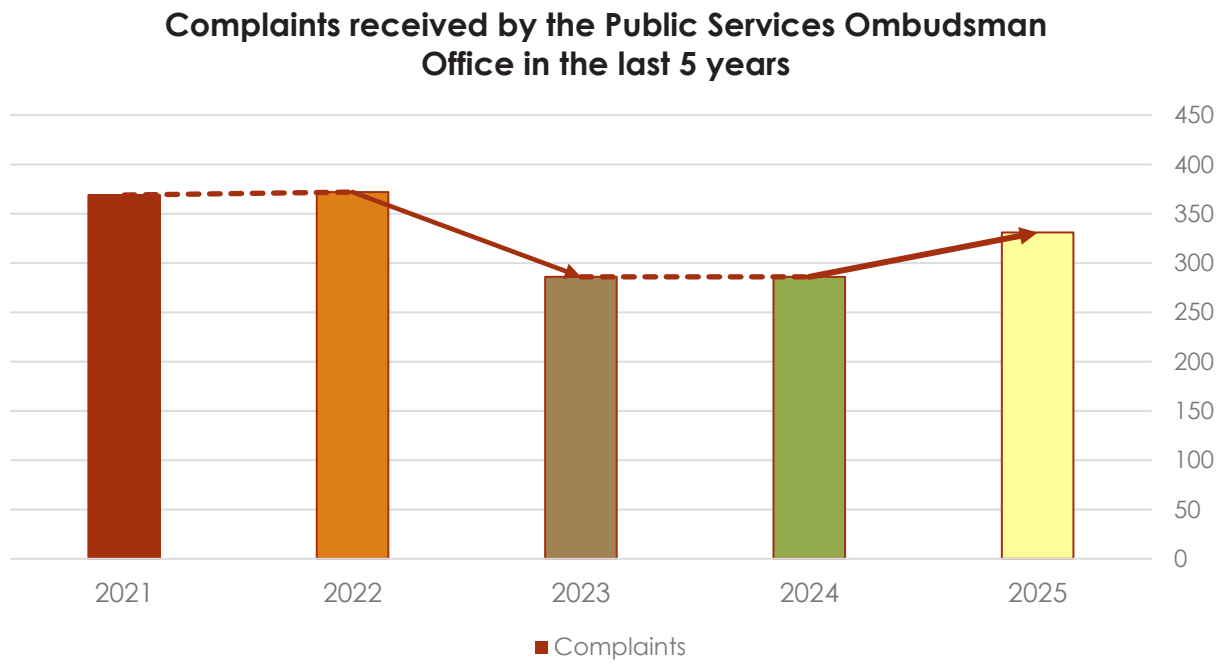
The review should also consider placing on a statutory footing the qualifying test for the award of disability benefit and should be made available to the public.

3

Statistical Information

3.1 Volume of Complaints 2025

This year, we received 331 Complaints in our office. Taking into account the 36 active complaints brought over from the previous year, a total of 329 complaints were completed by the end of this year which left 38 complaints open by the end of 2025.



Year	2021	2022	2023	2024	2025
No Complaints	369	372	286	286	331

Figure 1

The five-year trend in complaints shows an initial rise, followed by a marked decline and a subsequent partial recovery in 2025. Complaints increased from 369 in 2021 to 372 in 2022, representing the highest level recorded during this 5-year period.

This was followed by a significant drop in 2023 to 286 complaints, a level which remained unchanged in 2024. The identical figures for these two consecutive years suggest a period of stability at a lower volume after the earlier peak.

After several years of fluctuation in complaint volumes, 2025 saw the Office receive a total of 331 complaints. an increase of 45 cases compared to 2024. While this represents a notable uptick, the figure remains below the higher levels observed in 2021 and 2022.

Overall, the data indicates a shift from higher complaint volumes in the earlier years to a reduced baseline in 2023 and 2024, followed by a partial rebound in 2025. This pattern suggests that while complaint volumes may fluctuate, they tend to stabilise in phases, with periods of decline followed by moderate increases rather than a sustained return to previous peaks.

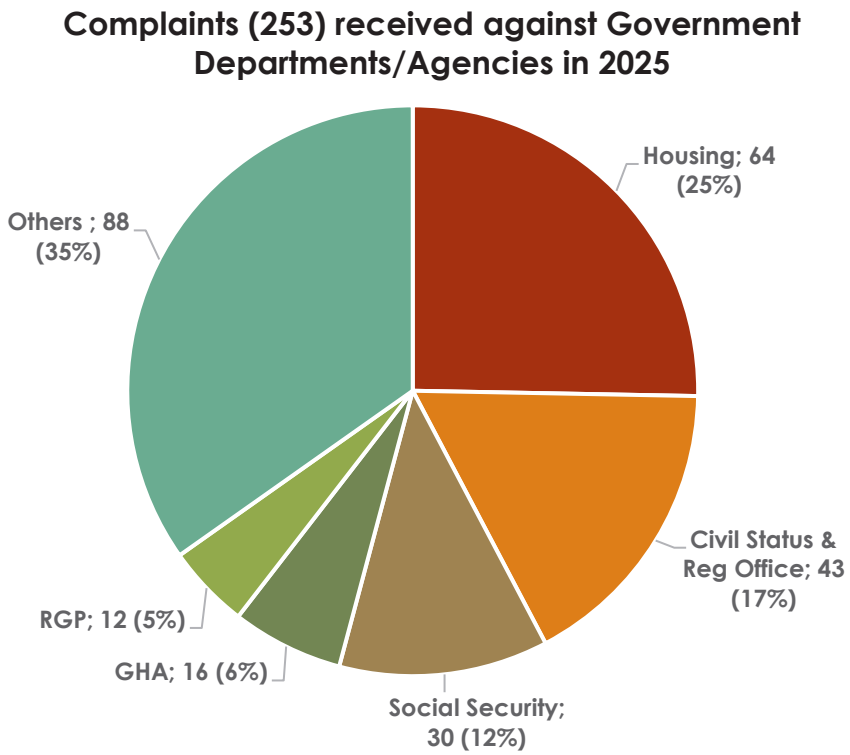
Of the 331 complaints received during the year, 78 related to private entities and were therefore outside the Office's jurisdiction. The majority of these complaints concerned matters arising from interactions with gambling operators, legal service providers, consumer transactions, and financial services. In many instances, complainants sought assistance with disputes or grievances that, while important, fell outside the statutory remit of our Office. Nevertheless, these cases provide useful insight into areas where members of the public may experience difficulty in identifying the appropriate avenue for redress. They also highlight recurring patterns and sectors where public expectations and service delivery often intersect. As in previous years, efforts were made, where possible, to guide individuals towards the relevant regulatory bodies or alternative mechanisms better suited to address their concerns, ensuring that the public receives the support and information needed to resolve their issues effectively.

The remaining 253 complaints fell within the Office's mandate and related to Government Departments, agencies, and other public entities. These complaints covered a broad spectrum of administrative actions and decisions, reflecting the diverse nature of public service delivery. Common themes included delays in administrative processes, dissatisfaction with decisions, perceived lack of communication or transparency, and concerns regarding the fairness or consistency of procedures. Other recurring issues involved inadequate or unclear guidance on procedures, difficulties in accessing services, perceived bureaucratic complexity, inconsistencies in the application of policies, and delays in responding to inquiries or requests.

3.2 Breakdown of Complaints against Government Departments/Agencies

A total of 64 complaints were received in relation to the Housing Authority, representing 25% of all complaints falling within the Ombudsman's jurisdiction. These complaints primarily concerned delays in the allocation of government housing, non-responses to emails and letters, and the refusal of housing applications. This continues to highlight ongoing challenges in housing service delivery and demonstrates the critical importance of timely communication and efficient administrative procedures for members of the public seeking housing support.

Figure 2



The Civil Status and Registration Office (CSRO) received 43 complaints in 2025; an increase of 14 cases compared to the previous year. The complaints largely related to delays in the processing of naturalisation applications, lack of response to correspondence, and matters concerning residency. This increase suggests growing public demand for prompt service and effective communication, and it underscores the need for continued monitoring and improvements in administrative processes within the CSRO.

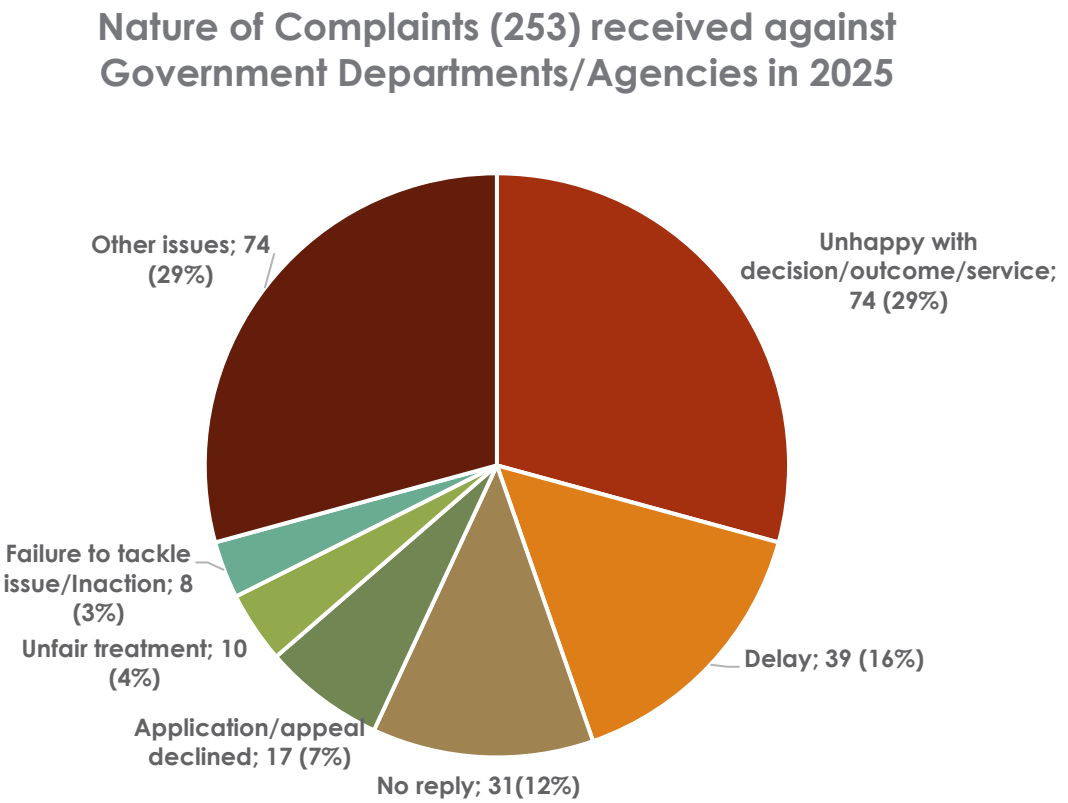
The Department of Social Security and the Gibraltar Health Authority also accounted for a significant portion of complaints received. The Department of Social Security received 30 complaints, up from 20 in the previous year, representing a substantial increase of 50%. This trend indicates emerging challenges in service delivery, accessibility, or public awareness of procedures and highlights the need for focused attention on efficiency and responsiveness in this area. Conversely, the Gibraltar Health Authority received 16 complaints, a decrease from 25 in the previous year. While this reduction is encouraging and may reflect improvements in administrative practices or service provision, continued vigilance is essential to ensure that the positive trend is maintained and further strengthened. Monitoring these patterns over time allows the Office to identify persistent issues and support targeted improvements, reinforcing the public's confidence in these essential services. The Royal Gibraltar Police accounted for 12 complaints this year, representing an increase of 5 compared to the 7 recorded last year, concluding the main departmental breakdown.

The remaining 88 complaints were distributed among a variety of other public entities and departments. Although smaller in number individually, these complaints collectively underscore the wide range of areas in which members of the public experience difficulties and expect effective administrative oversight. They highlight the importance of maintaining high standards of service across all public bodies, not only those receiving the highest number of complaints, and provide valuable insight into less visible areas of public administration where challenges may exist.

Taken together, these figures reveal both the concentration of complaints within certain key public bodies and the broader trends in service performance across the public sector. They emphasize areas where administrative delays, communication gaps, and procedural challenges remain and underscore the ongoing responsibility of public entities to address these concerns effectively. By analysing these trends, the Office can identify systemic issues, encourage best practices, and support public confidence in government services. Furthermore, understanding the distribution and nature of complaints over time allows for strategic interventions, targeted improvements, and the promotion of a culture of responsiveness and transparency throughout the public sector.

3.3 Overall Nature of Complaints

Figure 3



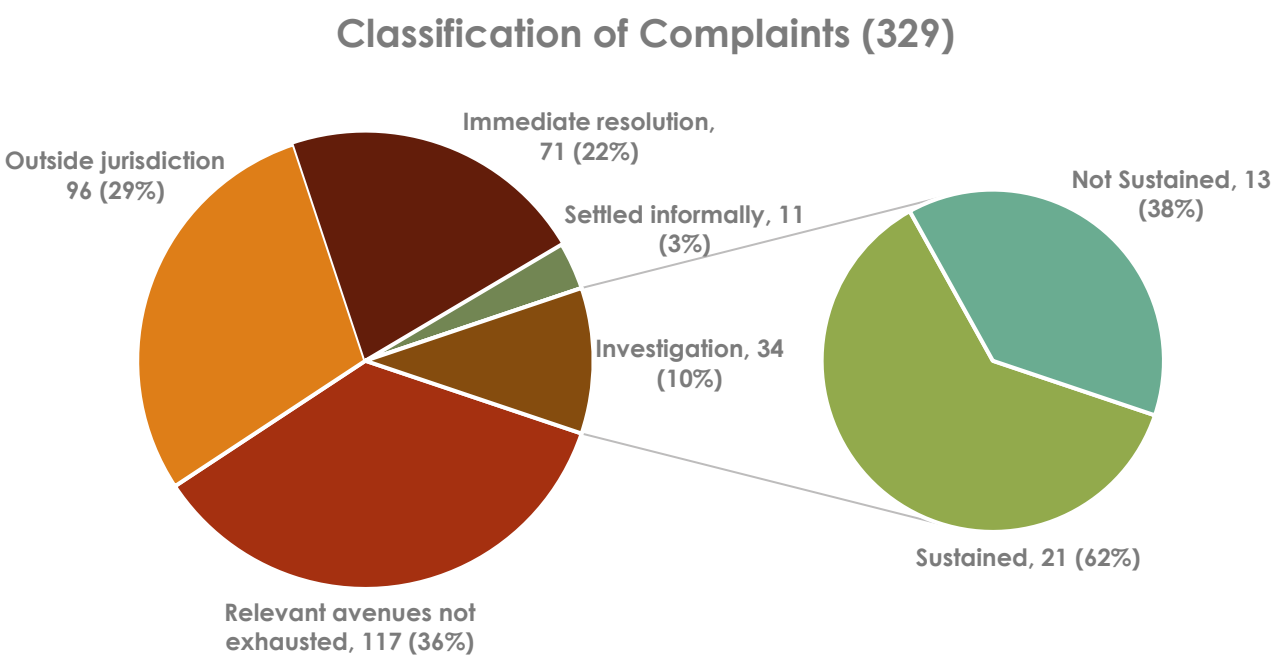
Of the 253 complaints falling within the Office's jurisdiction, analysis by nature of complaint reveals recurring patterns in the issues experienced by members of the public. The most prominent categories included dissatisfaction with decisions, outcomes, or services (74 complaints), delays in administrative processes (39 complaints), non-replies to correspondence (31 complaints), declined applications or appeals (17 complaints), perceived unfair treatment (10 complaints), and failures to tackle issues or inaction (8 complaints). An additional 74 complaints were recorded under "other issues," reflecting a wide range of operational or procedural concerns across public service delivery.

Overall, the analysis of the nature of complaints provides valuable insight into systemic issues affecting service delivery, including areas where administrative processes could be streamlined, decision-making clarified, and staff training strengthened. Addressing these recurring concerns is essential to improve efficiency, transparency, and accountability, and to ensure that public services consistently meet the expectations and needs of the community.

3.4 Classification of Complaints

96 complaints were classified as being 'Outside the Ombudsman's Jurisdiction'. Although 78 complaints were already identified as being against private entities and therefore outside jurisdiction, a further 18 complaints—initially submitted in relation to Government departments, agencies, or other public service bodies—were later reclassified. Following investigation and careful assessment, these were also deemed to fall outside jurisdiction, primarily because they were not administrative in nature. Up to 117 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 71 complaints were classified as dealt with by 'Immediate Resolution', whilst 11 complaints were settled informally.

Figure 4



Finally, 34 complaints were meticulously investigated by the Ombudsman and concluded by the end of the year with 21 of these upheld or partly upheld, whilst 13 of them were not upheld. Detailed reports were written for 22 investigations, see page 27 – Case Reports.

4

Recommendations

4.1 Table of 2025 Recommendations

Case No.	Nature of Complaint	Recommendation(s)	Status
1281	Complaint against the Civil Status and Registration Office ("CSRO") in relation to the Complainant's application for exemption from immigration requirements ("Exemption") which she feels has not been processed as a result of an inefficient system.	1. As recommended by previous Ombudsmen, decisions on Exemption applications should be processed, determined and communicated within a reasonable time frame. If deferred, reasons should be provided in the interest of fairness and administrative justice.	1. Accepted.
1330	Complaint against the Department of Immigration and Home Affairs ("DIHA" formerly known as "CSRO") regarding DIHA's handling of the Complainant's Permanent Residence Application.	1. That the £100 application fee for the complainant's second application for permanent residence to be refunded to the complainant; 2. The 'Managing Vexatious Correspondence' policy should be reviewed with the aim of preventing the misclassification of service users as 'vexatious correspondents' and the DIHA senior management team should receive training on the identification and proper management of vexatious correspondents within six months of the date of this report.	1. Not accepted. 2. Partially accepted.
1290	Complaint against the Gibraltar Health Authority ("GHA") over the delay in arranging for the removal of the Complainant's daughter's (the "Patient") temporary ureteric stent.	1. The Ombudsman recommended that the GHA offer the Patient a sincere apology for their shortcomings in the Complainant's care. 2. The Ombudsman recommended that the GHA improve written patient/carer information provided at stent insertion about expected symptoms, red-flag signs, contact points and anticipated timelines for review.	1. Accepted - awaiting implementation. 2. Accepted - awaiting implementation.
1313	Complaints against the Gibraltar Health Authority's ("GHA") Registration Department ("Registration") over various registration issues relating to the Complainant's representative's healthcare in Gibraltar.	1. The Ombudsman recommends that the GHA Primary Care Centre request that the International Pensions Centre update the address they hold on record, Primary Care Centre, Harbour View Road, Gibraltar, to the complete postal address as follows: GHA Primary Care Centre, Saint Bernards's Hospital, Europort Road, Gibraltar, GX11 1AA	1.Accepted – awaiting implementation.

Case No	Nature of Complaint	Recommendation(s)	Status
1284	Complaint against the Housing Authority ("HA") for having refused to include the Complainant's Son and Daughter in the tenancy; the fact that the Daughter and the Son are not included in the tenancy has deprived the family from obtaining overcrowding points to assist their application in the Government Housing Waiting List for larger accommodation and due to the introduction of the Property Register, the Complainant has been unable to renew his son's Identity Card ("ID") and realized the consequences of not having him included in the tenancy.	1. The Housing Authority should review the Complainant's case and include the daughter in the tenancy, in order that their current living arrangements are accurately reflected and overcrowding points awarded retrospectively. 2. The Housing Authority should establish a policy vis a vis the implementation of the Property Register to cater for individuals who are not included in a Government tenancy but have been allowed the use of the address as a 'Care of Address'	1. Not accepted but would continue to pursue the acceptance of the recommendation. 2. The issue was tackled during the investigation and a policy to assist was implemented.
1289	Complaint against the Housing Authority ("Housing") regarding the Complainant's categorisation on the Housing Waiting List, the absence of a timely social inquiry report, and the lack of explanations provided by the Housing Allocation Committee (HAC) regarding its decisions.	1. Housing consider adopting a practice of providing brief, non-prejudicial explanations for HAC decisions, where appropriate, in the interest of fairness and transparency.	1. Accepted – awaiting implementation.
1294	Complaint against the Housing Department ("Housing") in relation to the state of the flat from Government Housing stock which had been allocated to the Complainant after his release from HM prison.	1. Housing to identify a suitable property and request MAAPA's consideration and approval (taking all relevant safety aspects and other criteria into account). 2. Given the need for "urgency", the reallocation to be completed as soon as reasonably practicable and in any event, no later than sixty (60 days) from the date of this report being made available to Housing (copied to MAAPA).	1.Partially accepted. 2. Partially accepted.
1295 1296	Complaints against the Housing Department ("Housing") for their alleged failure in not categorizing both Complainants on the respective medical and social housing waiting lists.	1. The Government's need to streamline Housing waiting lists in the pursuit of fairness and transparency. 2. The drafting of clear written policies on the eligibility criteria for qualification under the current classification system (Medical or Social), since as confirmed by Housing, no written policies exist.	1.Accepted in principle. 2. Not accepted.

1305	Complaint against the Housing Department ("Housing") in relation to "extraordinary delay" in offering the Complainant a second flat allocation on medical grounds having rejected the first property which had been offered as suitable accommodation.	1. Complainant be offered a suitable flat as soon as possible.	1. Accepted and implemented.
1312	Complaint against the Housing Department ("Housing") in relation to an offer for exclusive use of a storeroom adjacent to the Complainant's flat which he accepted in writing but which was never assigned to him.	Complainant be offered shared use of storage facilities if he wishes to now take up said offer with immediate effect. 2. Steps be taken by Housing against tenants to recover illegally encroached communal areas (within a reasonable time frame). 3. All storerooms recovered and any and all remaining storerooms be converted for multiple use by qualifying tenants so that all tenants have equal access to shared spaces.	1. Accepted – awaiting implementation. 2. Accepted – awaiting implementation. 3. Accepted – awaiting implementation.
1308	Complaint against the Gibraltar Port Authority ("GPA") after the Complainant's vessel ("Vessel") was seized, removed and moored by the GPA on the 2nd July 2024 in an unsafe manner; for the failures from the GPA to communicate the condition of his Vessel since being seized and in finding a resolution regarding his berth; for being treated unfairly by the GPA and for the non-reply to email sent to the Captain of the GPA.	1. Gibraltar Port Authority specify in the berth application form that the LOA of a vessel at MHSBM must not exceed 9.45metres.	1.Accepted and implemented.
1319	Complaint against the Royal Gibraltar Police ("RGP") for the failure to reply to the complainant's emails and for the delay in progressing the investigation.	1. RGP provide the OPCL with all the information required for the issue of a Letter of Request to Spain for evidence for the criminal and civil recovery investigation within six months of the date of this report; 2. RGP provide training on civil litigation to all officers dealing with fraud and white-collar crime; 3. A review of the human resources and training needs of the ECU be carried out within 12 months of the date of this report.	1. Accepted and implemented. 2. Accepted and implemented. 3. Accepted and implemented.

1286 1316	Complaint against the Department of Social Security ("DSS") in relation to an ongoing delay in the Long-Term Benefits Appeals Board ("the Board") convening to consider the Complainant's appeal on the decision not to backdate her old age pension.	1. A Board be convened to determine the first and second complaints as soon as reasonably practicable, and in any event, not later than 28 days from the date of the publication of this report 2. In the event that the Board finds in favour of either or both of the Complainants, that payments to them be backdated to a reasonable time frame from the date of the submission of their respective appeals (payments to commence from six months after the appeals were lodged). 3. Future Boards be convened in a timely manner and as a matter of administrative priority. This will ensure that applicants do not suffer the administrative unfairness and injustices caused by such inordinate delays, which in many cases impact directly on an applicants' physical and/or mental wellbeing. 4. In direct correlation to point 3, it would be an administrative step forwards if HM Government implemented time scales for the convening of Boards by way of an amendment to the Social Security (Closed Long-Term Benefits and Scheme) Act 1996.	1.Accepted but not implemented. 2. Accepted - awaiting implementation. 3. Accepted - awaiting implementation. 4. Accepted - awaiting implementation.
1300 1318 1283 1339	Complaints against the Department of Social Security ("DSS") concerning the Complainants' applications for Disability Benefit. The complaints relate to the failure to provide information regarding the applicable eligibility criteria, the absence of reasons in the responses to the initial applications and/or appeal decisions refusing the claims, and the delay in processing the applications.	1. The complainants should be provided with the reasons why their most recent application was not successful. They should then be allowed a six-week window to reapply for disability benefit, which should be assessed within a six-month period. If their applications are successful, the disability benefit awarded should be back-dated to their initial application date, so that there would be no loss of income arising from the delays in the disability benefit application process. 2. An independent external review of the disability benefit system should be commissioned and concluded within 18 months of the date of this report.	1. Accepted and implemented. 2. Accepted - awaiting implementation.

Public Services Ombudsman

ANNUAL REPORT 2025

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