



PUBLIC SERVICES OMBUDSMAN

ANNUAL REPORT 2023
Presented to the Gibraltar Parliament

CONTENTS

1. INTRODUCTION TO THE 2023 ANNUAL REPORT.....	5
2. SUMMARY OF PRINCIPAL OBSERVATIONS.....	9
3. TRAINING & DEVELOPMENT.....	12
4. HM GOVERNMENT OF GIBRALTAR FEEDBACK.....	15
4.1. Venice Principles.....	15
4.2. Own Motion Resolution.....	15
5. BREAKDOWN OF COMPLAINTS	16
5.1. Performance Review 2023.....	16
5.2. General Synopsis.....	18
5.3. Overall Nature of Complaints.....	23
6. SUMMARY OF INDIVIDUAL INVESTIGATIONS.....	27

7. THE eGov DIGITAL PLATFORM.....	31
7.1. Introduction.....	31
7.2. Why Undertake the Exercise?.....	32
7.3. How will this be concluded?.....	33
7.4. Survey on Young Adults.....	37
7.4.1 Results of Young Adult Survey.....	38
7.4.1.1 Part 1 – Personal Details: Authenticity & Accuracy.....	38
7.4.1.2 Part 2 – Access to Digital Technology.....	38
7.4.1.3 Part 3 –Public Service Engagement via Govt Online Digital Platform (E-Gov).....	38
7.4.2 Commentary on e-Gov Access by Young Adult Citizens.....	40
7.5. Survey of Elderly Citizens.....	41
7.5.1 Results of Elderly Citizens Survey.....	42
7.5.1.1 Part 1 – Personal Details: Authenticity & Accuracy.....	42
7.5.1.2 Part 2 – Access to Digital Technology.....	42
7.5.1.3 Part 3 – Public Service Engagement via Govt Online Digital Platform (E-Gov).....	42
7.5.2 Commentary on eGov Access by Elderly Citizens.....	44
7.6. Discussion.....	46

8. ANNUAL REPORT CONCLUSIONS & RECOMMENDATIONS.....	51
9. BIBLIOGRAPHY.....	54
APPENDIX A1: Quantitative Questionnaire – Deductive Approach.....	56
APPENDIX A2: Summary of Completed Quantitative Questionnaire – Young Adults – University of Gibraltar.....	62
APPENDIX B1: Qualitative Questionnaire – Inductive Approach.....	67
APPENDIX B2: Summary of Completed Qualitative Questionnaire – Senior Citizens – Charles Bruzon House.....	73
APPENDIX C: Individual Investigations – Full Text.....	82



***"We can complain that rose bushes have thorns
or rejoice that thorn bushes have roses."***

Abraham Lincoln

1.0 INTRODUCTION TO THE 2023 ANNUAL REPORT

I am pleased to present this, my final Annual Report to the Gibraltar Parliament as my appointment will end on the 1st May 2024. My first Annual Report in 2020 was effectively a compilation of main complaints received during a period when no Ombudsman was in post. Nevertheless, I took it upon myself to compile a report as the Office of the Ombudsman had continued to listen and attend to complaints by members of the public during the Covid 19 pandemic.

My second Annual Report for 2021 similarly discussed complaints received and focused on administrative problems and issues separately in relation to the Gibraltar Health Authority which had excelled itself during a frightening and tragic period within our history. Indeed, they stood up when countered upon and continued to deliver health services despite the pressure and anxiety resulting from the Covid pandemic. Quite rightly they were given the 'Freedom of the City' which was well deserved.

Later in 2022, in addition to discussing complaints generally received at our office, my Annual Report considered how administrative staff within our Civil Service in many cases appeared to be disproportionately distributed. It is argued that this was the main reason why there is year in, year out, up to around 30% complaints overall related directly to delays, lack of communication and in-action by Government Departments. This stressed the fact that not enough staff were at the front end of public Departments (the doers) and that instead, this appeared to be at the expense of too much managerial layering within Government hierarchies thus creating lengthy delays and additional unnecessary bureaucracy.

Further, in order to speed up communications within notably top heavy organisations, there must be serious consideration towards recalibrating our Civil Service Departments with flatter spans of control similarly to the private sector instead of long managerially dominated hierarchies that are more a reflection of past out of date classical management approaches. I was, therefore, pleased that one of the first issues to be tackled by the new Chief Secretary (CS) was in fact to review the distribution of resources at public points of contact.

In fact a meeting was held on the 8th January 2024 between the CS and myself to precisely discuss this and for the first time in years, consider plans towards introducing quarterly meetings that regrettably had not been prioritised in the past. This indeed was a promising start to the new year and it is hoped that regular consultation will result in forthcoming improvements within domains deemed insufficiently prioritised by Government Departments- essentially to reduce the number of complaints overall. I understand that the CS plans to introduce a specific hub at No. 6 Convent Place that would generally handle complaints forwarded by the Office of the Ombudsman and, therefore, operate hand-in-glove. This is good news and I am grateful to the new CS for his foresight, proactive stance and planned *repoire* that is proposed between both our parties.

This leads me now to this year's 2023 instalment which I hope will be a thorough insight of complaints received and directed at Government organisations though in addition, and as a result of public health advice, counters continued to remain closed long after the grip of the Covid pandemic had run its course. This prioritised the use of online digital technology at the point of interaction between citizen/public services and led to a decisive drive by HM Government of Gibraltar towards reinforcing eGov services. However, this appears to have its fair share of problems and it is because of this that I took the decision to seek greater clarification as to precisely where such challenges were being experienced.

This has led to the compilation and directing of specific surveys targeting opposite ends of the age spectrum namely at (a) young adults and (b) elderly adults. This approach will show that at one end, young adults had difficulties in completing tasks using current eGov platforms. A surprising conclusion as it is generally assumed that young adults are more familiar with the use of digital technology. In contrast, it was suspected that on the opposite end of the spectrum, the elderly would find eGov challenging. This would in fact be true with hardly any elderly residents interviewed wishing to neither engage nor use the digital platform even to access medical appointments. Instead, many refused to use these altogether. Not a satisfactory outcome when these are precisely in place to help and ease access to public services, i.e, there must be greater emphasis and concentration on digital inclusion.

Later, we will look at the issues revolving around this transformational change which has been instrumental when delivering our public services.

Readers will note the opening quotation by Abraham Lincoln that reflects how I see Government Departments delivering public services. Clearly, there is some maladministration where people generally complain because they feel let down. Equally, there will be a sincere desire by public servants to seek ways to improve Government services and we should acknowledge this when it happens. Let's illustrate this further. People make mistakes and errors happen with the digital platform, which dare I say is the result of software design. It is, therefore, easy to point the finger and judge things when they go badly wrong. However, let's not always concentrate on the drawbacks. Consider the fact that we enjoy having a unique public service that stretches into all aspects and needs of our society. It strives to be succinct and modern by embracing innovative ideas during enormously challenging times like the Covid pandemic. This led to developing the digital platform and eGov by default when replacing traditional citizen-public interaction. Without such a transformational step, our public services could have halted altogether creating even more damage and anxiety to the general public. There is much to be positive about our public servants and we should look up to them and also give them praise. They too deserve to be congratulated. So let's, therefore, keep this message firmly in mind and not forget that public servants carry out their role seriously in trying to make our lives collectively better.

I wish to thank the team at the Office of the Ombudsman who include Nicholas Caetano, Karen Calamaro, Nadine Pardo-Zammit, Sarah De Jesus El Haitali and Steffan Sanchez for their unstinting assistance and support throughout the last 3 years.

Finally, my best wishes to the new forthcoming Ombudsman who undoubtedly will continue to follow the footprint and precedent set up by successors, always being impartial, fair and firm when identifying and speaking out against any public maladministration.

A handwritten signature in black ink, appearing to read "Ron Coram", with a long horizontal stroke extending to the right.

William Ronald Coram, BSc, MSc, PhD, Hon. DUniv

Public Services Ombudsman

March 2024

2.0 SUMMARY OF PRINCIPAL OBSERVATIONS

The following are the main highlights of the Annual Report though in order to seek further clarification, the reader is advised to refer to the relevant section.

1. There has been no feedback in relation to (a) wider inclusion of the Venice Principles and (b) whether legislative enactment of the Own Motion Resolution discussed and debated back in December 2019 in the Gibraltar Parliament will proceed as formerly proposed.
2. A total of 286 complaints were received from the general public at the Office of the Ombudsman. Up to a total of 83 of these related to private entities which fell outside the remit of this Office. Therefore, 203 complaints were strictly linked to Government Departments, agencies, and other public bodies. Overall there was a total drop in complaints from 372 (in the year 2022) to 286 (similarly in 2023) which represents a reduction of 23%. This is a significant decline, but the reader should be reminded that the Covid pandemic did directly impact on the number of complaints generated back in 2020, 2021 and 2022. This was the result of various compounding effects whereby complaints were originally held back by citizens in 2020 during the pandemic and subsequently then brought forward as more and more people became more confident pursuing their complaints in 2021 and 2022. It is now concluded that complaints in 2023 have generally fallen to some normality and more realistic levels.
3. It follows that complaints linked to Government Departments, agencies and public bodies have also dropped substantially which is shown in Figures 5 and 6. This includes mainly the traditional larger Departments such as Housing, Social Security, Gibraltar Health Authority, Civil Status & Registration Office, Royal Gibraltar Police and Income Tax Office. This all purports to the conclusion that our public servants have worked very hard over the post Covid pandemic period by tackling operational issues, dealing with enquiries efficiently and generally focusing on matters raised by citizens. This should be highlighted and public servants congratulated on a tremendous achievement.

However, when considering the overall nature of complaints, Figure 8 shows that those linked to (a) communication delays- 13%, (b) non-replies- 9%, and Departmental inaction- 4%, all account for 26% of complaints overall. Again, this communications problem has reappeared as in previous years. In 2022, the Ombudsman's Annual Report went into great detail to argue that this was related to the disproportionate and inadequate number of administrators (the doers) that were dealing with citizen enquiries at their point of contact. Instead, it was proposed that there should be more doers at the expense of managers.

4. To summarise, the Housing authority similarly to previous years attracted the highest number of complaints with 25% overall, but compared to earlier years this had significantly dropped from 107 to 50 complaints- a large reduction of 53%. This is followed by the Department of Social Security with the next largest number of complaints with 12% overall. There is, however, a positive decline from 39 to 24 complaints, which is a downward trend of 38%. The Gibraltar Health Authority also followed suit attracting 10% complaints overall, but similarly a downward trend from 36 to 21- a reduction of 42%. Other Departments including the Civil Status & Registration Office, Income Tax Office and Royal Gibraltar Police also demonstrated a decline in complaints. The main exceptions regrettably have been (a) Department of Education and Training showing an increase to 11 complaints when compared to 8 in the year 2022- an increase of 38%, whilst (b) Gibraltar Car Parks Ltd received 10 in 2023 compared to 2 in 2022- a very big leap of 400% in complaints.
5. A study was undertaken to test how citizens reacted to the use of eGov facilities within the Government public services. This was accommodated correspondingly by applying both quantitative and qualitative surveys to (a) young adults deemed to be more proficient in navigating within the digital platform and (b) elderly adults suspected of being less skilled with the aforementioned technology. It was found that though more familiarised with the digital interface, younger adults, nevertheless, tended to experience major challenges with eGov facilities- a surprising conclusion.

On the other end of the age scale, it was determined that senior citizens felt marginalised when using eGov and all participants in the survey refused to use the digital platform, because they expressed no confidence in the system, did not understand how to navigate the digital platform and found the eGov guidelines and instructions 'non user friendly'. None of the elderly citizens interviewed used eGov, the exception being on very limited occasions, when seeking and accessing support through the aid and intervention of [their] direct family members. It is, therefore, most important to ensure that there is digital inclusion though for all intents and purposes, public counters were opened in October 2023 (HMGoG, 2023).

The following, therefore, comprises observations, details and conclusions in respect of complaints received at the Office of the Ombudsman in 2023.

3.0 TRAINING & DEVELOPMENT

On the 3rd October 2023, our Information Systems Support Executive Officer, Steffan Sanchez attended the AccelerateGOV conference hosted by the Global Government Forum and the Government of Canada. This was based at the Shaw Centre in Ottawa, Canada, bringing together public servants from around the world in realizing the potential of digital technology in the public workplace.

The conference provided insights and ideas for digital and data specialists and those in a range of other public service professions- all with a focus on improved citizen services and equipping public servants to succeed in an increasingly digital world. This involved a series of sessions and discussions focusing on training public servants with a non- digital background in the advantages of digital technology and accessibility within online services. Topics included citizen benefits and user-focused design, effective communications and marketing.

Cyber security was also deliberated at the conference as Governments are experiencing a rapid rise in cyber-attacks. Many being designed to extract money fraudulently either via infesting public systems with ‘ransomware’, or by stealing and selling information. Faced with such a wide range of threats, public servants must be able to respond on an equally broad front. The session explored how staff in all roles and disciplines could act to protect their organizations, colleagues and citizens alike.

In addition, there were in-depth sessions of special interest which involved the deployment of Artificial Intelligence (“AI”) in the public sector. For example, over recent years, public service leaders and technologists have been considering whether and how to deploy and apply AI in policymaking and service delivery, that is wrestling with the challenges it presents around transparency, accountability, equity and ethics. In this context, panellists debated on how best to take advantage of AI technology, both within digital operations and more informally, by non-IT professionals accessing ChatGPT.

This is effectively an AI model that engages in conversational dialogue designed to generate human-like text, it can understand context and intent and is able to have more natural, intuitive conversations, its applications could include customer service bots, the creation of content for social media or blogs, and translation of text from one language to another and similar services. Many of the questions that AI raises pertain to core areas of an Ombudsman's work, like transparency, accountability in decision-making, ethics and fundamental rights.

There was a strong emphasis on the need for tight regulations governing AI to ensure a high level of protection of fundamental rights, including the right to good administration, as well as compliance with principles of good administration.

Digital accessibility, access to connectivity as well as technology, and the knowledge to engage with them are all basic prerequisites that should be truly accessible to everyone although many of those most dependent on the public sector face particular barriers to accessing digital services. This is particularly evident with the older generations, the poorer and more remote communities often lacking the necessary skills, confidence and/or tools to access facilities online.

While digital inclusion has increased substantially over recent years, there is still a sizable minority of older people who are not online, especially amongst those aged 70 & over. People living on low income are far less likely to have access to the online world. In fact, the lower your income, the less likely this will be the case and, therefore, increasingly not having access to fundamental entitlements such as social security, healthcare, education and training, and employment opportunities. So, digital inclusion becomes an ever increasing necessity. The provision of direct support to, therefore, help marginalised communities and those with limited digital skills and tools was the main theme of the conference discussion. Steffan Sanchez commented:

“.....this particular event, with so many interesting topics relating to the digital world, was of immeasurable value for everyone that attended.”



Figure 1: A Heavily Attended Conference



Figure 2: Steffan Sanchez in Attendance

4.0 HM GOVERNMENT OF GIBRALTAR FEEDBACK

There has been little feedback on the main issues raised in the 2022 Annual Report with the exception of an official meeting dated 8th January 2024 held between the Ombudsman and the Chief Secretary (CS). This was arranged to discuss an outline framework into considering recommendations in the aforementioned and a centralised follow-up system to chasing whether such recommendations were indeed being introduced. Let us briefly look at the two matters that remain outstanding.

4.1 Venice Principles

This is a common issue that is raised annually and whether they will be reflected in some form or another within our own relevant legislation. Regrettably, no feedback has been received on whether this will be examined further though some of the Venice Principles have been adopted. In addition, though these have been endorsed by the General Assembly of the United Nations, they are, nevertheless, only guidelines and each jurisdiction is free to implement its own preferences that are in tune and most relevant to them.

4.2 Own Motion Resolution

There has been no feedback as to when the Ombudsman's Act will be amended to reflect and incorporate the Ombudsman's legislative powers to undertake formal investigations on his own initiative. Though a Resolution was passed back in December 2019 in the Gibraltar Parliament, we nevertheless, continue to wait for these amendments to be formally introduced.

Let us now enter the main part of the Annual Report and overall assess the complaints received in 2023.

5.0 BREAKDOWN OF COMPLAINTS

The following generally gives a breakdown of complaints received in 2023 together with comments and illustrations for ease of reference. Let us begin with the Performance Review.

5.1 PERFORMANCE REVIEW 2023

A total of 286 complaints were received by the Office of the Public Services Ombudsman during 2023. Of these, a total of 284 complaints were finalized during the year, as shown below in Figure 3.

Performance Review	
Complaints not yet finalized – brought forward from 2022	39
Complaints received during 2023	286
Complaints finalized during the year 2023	284
Complaints not yet finalized – carried forward to 2024	41

Figure 3: Summary of Performance Review for 2023

Of the 286 Complaints received this year, 83 were related to private entities, including issues regarding private housing rent and repairs, legal issues and financial matters. The remaining 203 complaints were related to Government Departments, agencies and other public entities.

It then follows that over the last 5 years the overall trend in total complaints was declining though understandably, as a result of the Covid 19 pandemic, this rose sharply in 2021 as historical grievances held back in 2020 were pushed forward- please see Figure 4. Similarly, it appears that this continued into 2022 with a slight increase in complaints when compared to 2021. However, during 2023 there is a major reduction down from 369 to 286 complaints. Though this is reflected only over one recent year, it, nevertheless, represents a substantial shift downwards- if we remove the period directly affected by the Covid 19 pandemic, i.e., 2020, 2021 and 2022 the trend of total complaints is declining significantly. This is a more realistic view when compared to recent earlier years which were adversely and directly affected by the Covid 19 pandemic. Any downward trend must indeed be a welcome development.

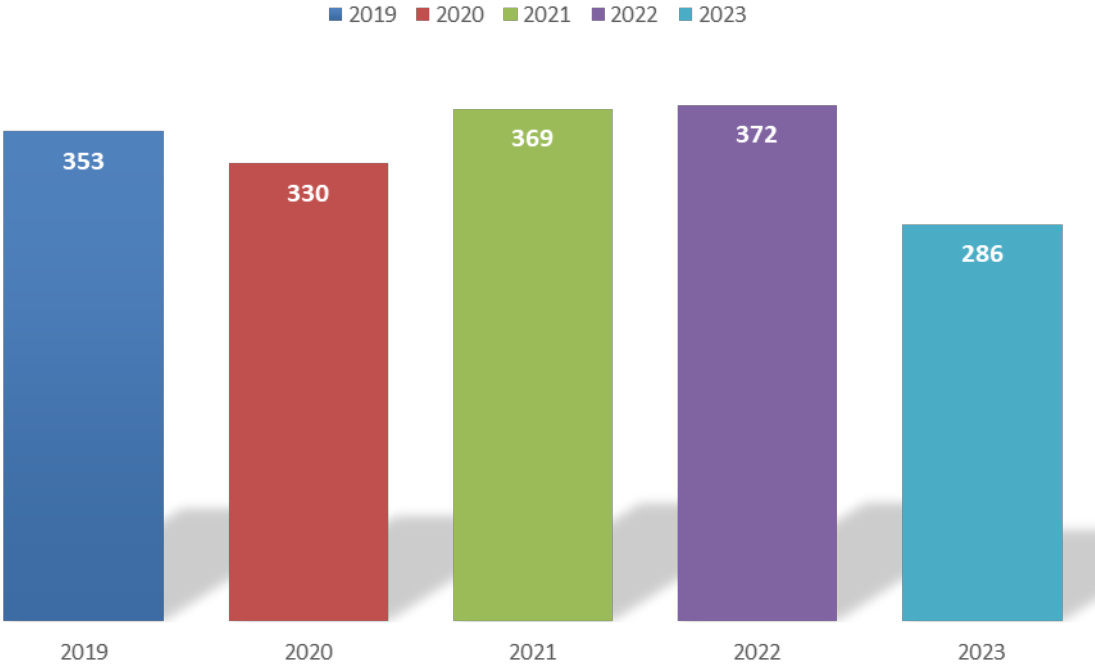
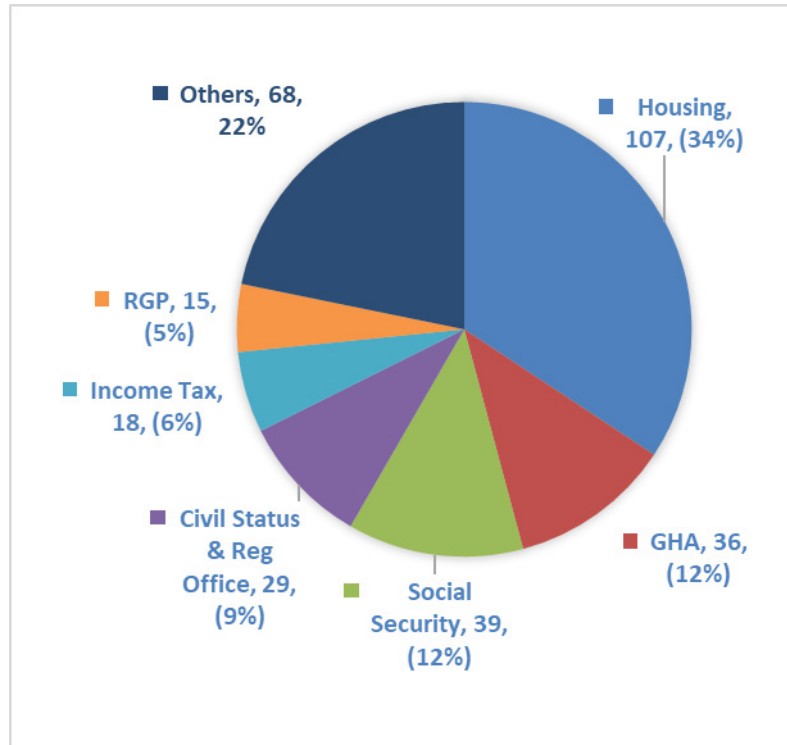


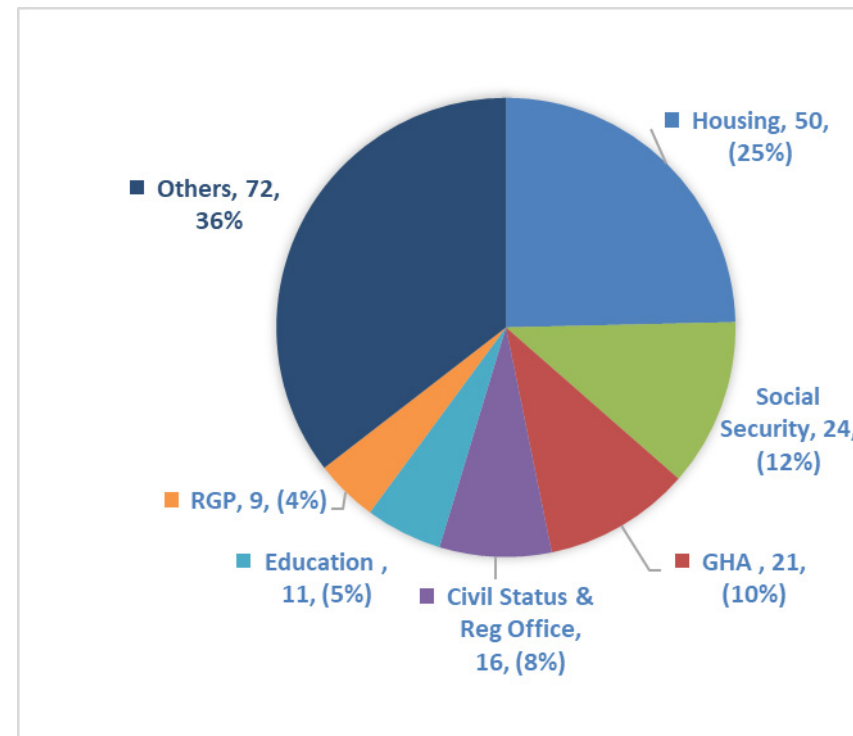
Figure 4: Complaints Received by the Office of the Public Services Ombudsman in the last 5 years

5.2 General Synopsis

Similarly to our past Annual Reports, both sets of data for the last two consecutive years of complaints received at the Office of the Ombudsman are provided so that comparisons can be made at a glance. These are generally illustrated in Figure 5- please see below. In addition, we have inserted all relevant statistical trends in a snapshot chart and this is illustrated in Figure 6.



Analysis of the 312 Complaints in 2022



Analysis of the 203 Complaints in 2023

Figure 5: Representation of Complaints in 2022 & 2023


DEPARTMENT	TREND	DIFFERENCE (%)	REMARKS
Housing		Down 107 to 50 (53%)	Downward trend of 53% which is a remarkable decline considering that housing historically has consistently and always attracted the highest number of complaints.
Social Security		Down 39 to 24 (38%)	Less than Housing above: here we are able to see a major reduction of 38% in complaints in relation to Social Security. An excellent downward trend.
Gibraltar Health Authority		Down 36 to 21 (42%)	Downwards trend continues yet again with the Gibraltar Health Authority demonstrating a decline of 42% which is very good news.
Civil Status & Registration Office		Down 29 to 16 (45%)	Civil Status & Registration Office similarly to the above public bodies has shown a downward trend in complaints by 45%. Quite a remarkable declining shift.
Education and Training		Up 8 to 11 (38%)	Unlike the major other public bodies, Education & Training has shown a proportional upward trend in complaints, increasing by a big margin of 38%.
Royal Gibraltar Police		Down 15 to 9 (40%)	Downward trend of 40% which is a remarkable decline considering that they had a large number of complaints the previous year. Good news.
Income Tax Office		Down 18 to 8 (56%)	Income Tax Office showed a major increase in 2022 though now reduced substantially by around 56%.

Figure 6: Snapshot of Complaint Trends between Years 2022 & 2023

Let us now summarise what the main players attracting the greatest proportion of complaints are by considering the contents shown in the pie charts illustrated in Figure 5. The following, therefore, discusses what appear to be the main proponents attracting most complaints in overall terms by Department, with highest number of complaints numerically in descending order. We begin, therefore, with the Housing authority which yet again tops the list with 25% of overall complaints as historically the case for reasons highlighted in the *Ombudsman's 2022 Annual Report suggesting (Coram 2022:17):

"..... the fact that shelter is an inherent human behavioural priority. It continues to be the most important motivational factor throughout our lives and is why Housing is and will always be the most sensitive of all our public services. The prospect or fear of not having proper shelter and protection will trigger the most prevalent of primeval instincts. So, whilst other public services may be of equal significance, housing will always dominate our statistical reference."

** Ombudsman's 2022 Annual Report recorded in Hansard (2023)*

So, this should be taken into account when considering overall trends, but there is good news as there was a major drop reference complaints linked to the Housing Department in 2023 whereby this declined substantially to 50 from the previous year in 2022 listed at 107. This represents a big reduction of 53% in comparison and though they continue to represent the highest proportion of complaints in 2023 at 25% overall, they have made a big effort in our view, in reducing numbers of complaints. Well done Housing- a magnificent achievement and hopefully this will continue.

Subsequently, it follows that the Department of Social Security attracted the next largest number of complaints with 12% overall. That said, in 2022 they similarly attracted 12% overall but these declined from 39 to 24 in 2023. Again, a downward 38% trend which is a good achievement that could possibly be attributed to better staff morale as the organisation moved location from Governor's Parade to new premises at New Harbours though this should be tested and not taken as word. They should, nevertheless, be congratulated accordingly.

Let's now consider the Gibraltar Health Authority (GHA) which attracted 10% overall. Figure 6 above shows that in 2023, complaints resulted in a total of 21. When this is compared to 2022, this shows a downwards trend from 36 to 21- a reduction of 42%. In addition, when considering overall Departmental complaints, their proportion was 10% which is a reduction from 12% in 2022. It is suspected that this improvement may be the result of the hard and continuous involvement of the Patients Advocacy Liaison Service (PALS) in dealing with complaints. This is good news and well done GHA. The Civil Status & Registration Office (CSRO) then follows overall at 8% with the next highest score of formal complaints with 16 in the year 2023. When compared to 2022, the CSRO has shown a drop from 29 complaints which is a corresponding reduction of 45%. They have obviously worked very hard into focusing on improving with historical delays, etc- well done CSRO.

In 2023, the Income Tax Office is not represented as one of the major sources attracting complaints though it is, nevertheless, listed as one continuing to receive them- see Figure 7 'Departments with fewer complaints categorised separately under Others'. When compared to 2022, they show a decline in complaints from 18 to 8- this is a big reduction. They, therefore, appear to be well on track with fewer complaints which is a fabulous achievement.

Let us now consider the Education and Training Department. In 2022, they were not shown as one of the major organisations attracting most complaints, generally overall. In fact they were included in the section referred under 'Others', which comprised Departments attracting less formal complaints not significantly higher when compared to other traditional entities. This changed in 2023 whereby they have become one of the bigger complaint recipients proportionally comprising 11 in total that is, attracting a total from 8 in 2022 which is accordingly an increase of 38%. This reflects an upward trend.

It follows that again, similarly to other Departments above, that the Royal Gibraltar Police (RGP) has attracted fewer complaints. To illustrate this further, in 2023 they had 9 formal complaints whilst in 2022, this appeared to show a total of 15, i.e., 40% reduction overall. So, accordingly a major decline in complaints, but when considering the overall picture of complaints made by the general public across all sectors, the reduction moved only slightly from 5% to 4%. Though representing a relatively small margin this, nevertheless, is still a very positive drop in trend. Well done RGP.

Department	No. of Complaints (each)
Car Parks Ltd	10
Income Tax Office AND Transport & Licensing.	8
Aqua Gib; Customs AND Land Property Services Ltd; Treasury.	5
Care Agency	4
Gibraltar Electricity Authority AND Gibraltar Court's Service;	3
Employment Services; Trade & Industry; Traffic Commission;	2
Environment; Environmental Agency; Gibraltar Broadcasting Corporation; Gibraltar Airport; Gibraltar Bus Company; Gibraltar Residential Services; Gibraltar Sports & Leisure Authority; Office of Fair Trading; Prison Services; AND Procurement Office.	1

Figure 7: Departments With Fewer Complaints Categorised Separately Under 'Others'.

It should be stressed that although not highlighted in Figure 5 above, there are, nevertheless, other public authorities attracting formal complaints though all with much fewer complaints when compared to the traditional Departments listed earlier and proportionally overall- please see Figure 7. The bold exception being the Gibraltar Car Parks Ltd that has increased complaints correspondingly from 2 in 2022 to 10 in 2023- a staggering increase of 400%. This appears to be quite a leap and reflects an undesirable upward trend which requires further focus and serious attention by its senior management.

Stemming from what are (a) frankly incoherent payment instructions on their often 'out of service' automated machines to (b) poor communication attitudes by staff who fail to take their role with any serious humbling tact. On the latter, there is a need to facilitate better customer service. In addition, many complaints were related to non replies to letters and follow up by the authority on citizen enquiries. It is, therefore, strongly recommended that they setup an internal complaints procedure. This at the very least would involve somebody designated to tackle any forthcoming complaints which appears to be currently lacking.

5.3 Overall Nature of Complaints

Figure 8 below shows generally the main types of complaints received by the Office of the Ombudsman. Similarly to other years, communication problems lie at the heart comprising: delays (at 13%); non-replies (9%); and inaction (4%). This amounts to around 26% which incidentally has dropped from the previous year in 2022 formerly at 33% overall. Though there has been a noticeable decline, it should be reiterated that much greater attention should be focused and considered at the front line of public services in order to reduce what is effectively a repetitive cyclical communication problem that occurs year-after-year.

This was initially raised by the first Public Service Ombudsman back in the early 2000s and it appears that this is still a problem today. For example, a comprehensive study of our front line public services was undertaken by the Ombudsman back in 2022 which incidentally demonstrated that many of our Government front line services had insufficient resources to tackle day to day issues raised by citizens. Instead, there appeared to be too many managerial layers tackling operational and planning issues at the expense of front end staff (the doers).

It has since been learnt that the new Chief Secretary will be reviewing the matter and addressing any alleged staff disproportionate distribution.

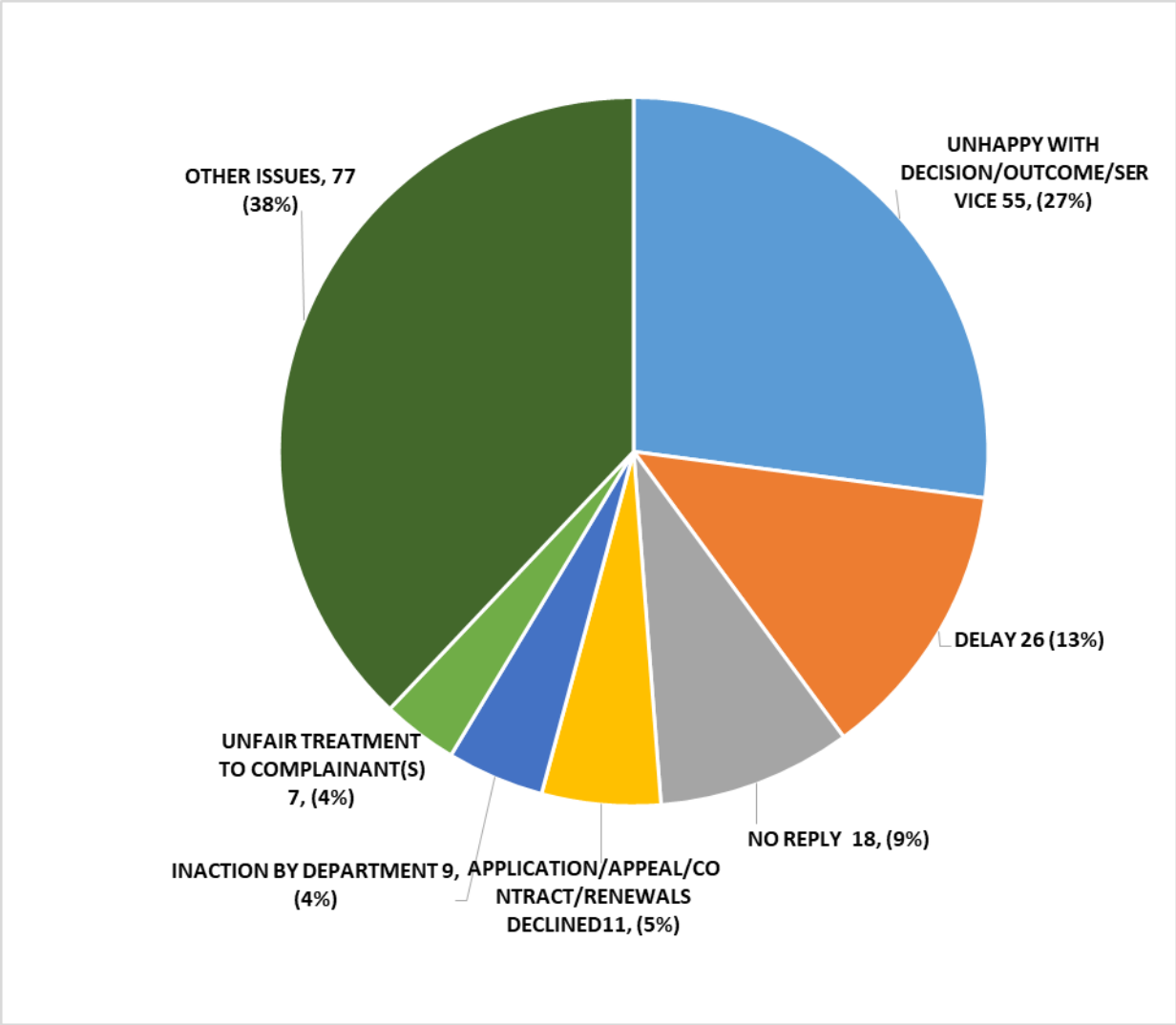


Figure 8: Overall Nature of 203 Government Complaints Received

Let us, therefore, now summarise what is the overall picture in 2023 and give a breakdown of the following 284 complaints that were finalised- please see Figure 9 below.

- There were 96 complaints classified as being 'Outside the Ombudsman's Jurisdiction'. Although there were 83 complaints against private entities which were outside jurisdiction, 13 more complaints have been classified as such, these after having been initially related to Government Departments, agencies or other public service entities, were investigated and after careful consideration were deemed as being 'Outside Jurisdiction' mainly due to them not being administrative in nature.
- Up to 85 complaints were closed as it was considered that the Complainant(s) had not exhausted all their avenues of redress with the Public Service Provider concerned. These 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. Before a complaint is made to the Ombudsman, the Complainant is required to try and resolve any issues directly with the relevant Department concerned under their own internal complaints procedure.
- Note that up to 76 complaints were classified as dealt with by 'Immediate Resolution'.
- Whilst 9 complaints were settled informally.
- Finally, 18 complaints were meticulously investigated by the Ombudsman and concluded by the end of the year with 11 of these upheld or partly upheld, whilst 7 of them were not upheld. Detailed reports have been written for 8 investigations and these are given in Appendix C. For ease of reference, this is illustrated in Figure 9.

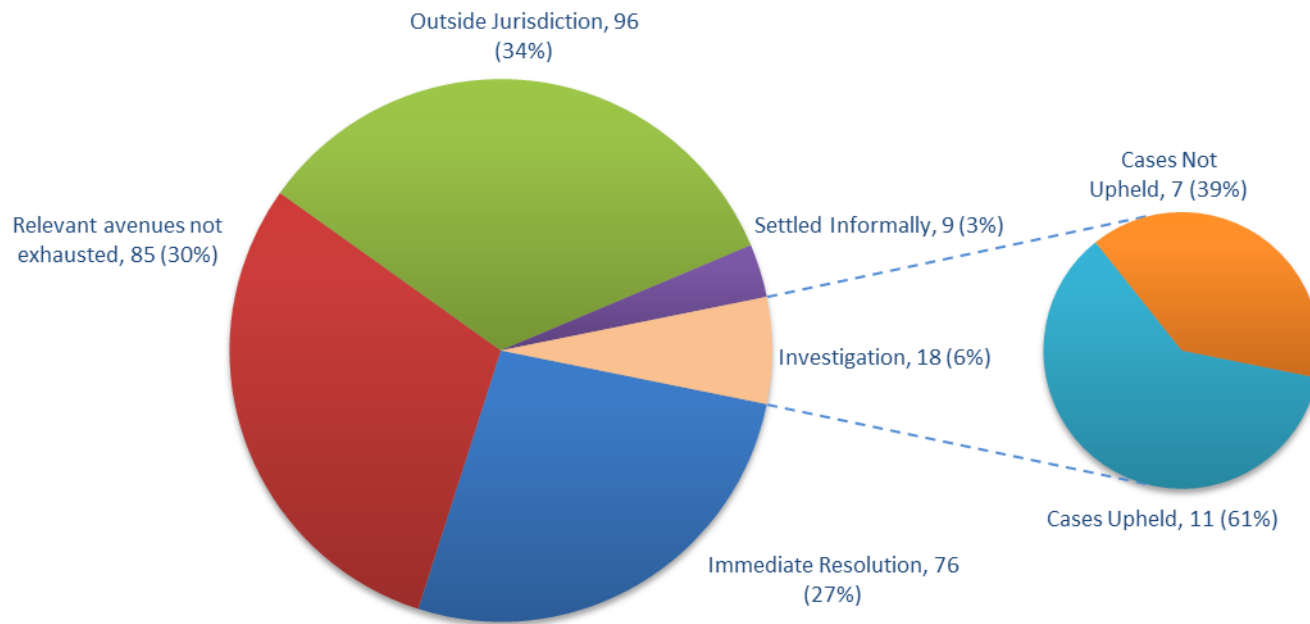


Figure 9: Classification of Complaints in 2023

The following presents a brief summary of the main investigations undertaken by the Office of the Ombudsman. Further details and clarification is supplied under Appendix C herein.

6.0 SUMMARY OF INDIVIDUAL INVESTIGATIONS

REPORT ON CASE NO 1231

Complaint against the Department of Social Security (“DSS”)

In late 2020, the Ombudsman began to receive complaints from Cross-Border workers against the DSS in relation to delays of over five months as well as lack of replies/updates while processing their applications for a U1 which they required further to having become unemployed in Gibraltar. The situation was aggravated by the fact that public counters were closed as a result of the Covid-19 Pandemic and continued closed throughout the year 2021 & 2022. The DSS remedied the U1 backlog with temporary redistribution of resources and relief workers. The Ombudsman sustained the complaints due to failure to provide timely information and extreme delays in providing essential documents required for the receipt of benefits in a foreign jurisdiction.

In early 2022, the Ombudsman once again began to receive complaints of U1 delays of over five months. At this point, the Ombudsman learnt of the DSS’s further struggles which resulted in the DSS’s entire staff being relocated to work from home as their office building was

deemed unsafe due to structural issues. Given that the delays were attributed to the lack of staff within the DSS, the Ombudsman recommended that H.M Government of Gibraltar provide the DSS Director with their full support, namely the additional and competent staff.

REPORT ON CASE NO 1254

Complaint against the Gibraltar Health Authority (“GHA”)

Complainant aggrieved by the lack of diagnosis by the GHA of his Mother’s medical mesenteric angina/ischemia over the period May/June 2020- After various doctors’ appointments and hospital visits at A&E and as an inpatient, the Complainant’s Mothers’ condition deteriorated irreversibly resulting in her death- GHA sought an expert’s opinion who reached the view that they acted appropriately from a medical standpoint and that regrettably, no further action could have been taken- Delays and lack of transparency Sustained by the Ombudsman. Allegations of negligence- Unable to Classify.

REPORT ON CASE NO's 1258 & 1260

Complaints against the Housing Department ("Housing")

The Complainants were dissatisfied that they had been given conflicting information by Housing in relation to the criteria required for applications for Government rental housing- The First Complainant was told that he required proof of continuous residency for one year (if he held Gibraltar status) or ten years (if a British citizen)- he was also informed that there existed a concession for British citizens of Moroccan origin, based on the relationship and historical links that existed between Gibraltar and the Moroccan workforce- the Second Complainant was informed of similar criteria with the added condition that a "Gibraltar status" stamp was required- the Ombudsman expressed concern- It transpired that Housing subsequently stated that ALL applicants required the "Gibraltar" stamp and that consequently, each applicant would be advised on the number of years' proof of continuous residency that would have to be provided depending on each persons' status- the Ombudsman recommended that all Housing staff become familiar with their own policy and criteria to enable them to provide consistent information to service users.

REPORT ON CASE NO 1267

Complaint against the Department of Social Security ("DSS")

The Complainant was aggrieved as a result of the inordinate delay in the Long Term Benefits Appeals Board's ("the Board") failure to meet and reach a decision on the Complainant's appeal- DSS cited Covid as the reason for the Board not meeting- Ombudsman reached the view that there were additional administrative/internal reasons for the failure to meet which the DSS had not been open about and also opined that the Board must not have been deemed a priority by the DSS when Covid measures were put in place, as no remote meeting alternatives had been set up- Complainant mistakenly informed and misled in being told that her case was being considered- in reality that was not the case- Ombudsman sustained the complaint of maladministration.

REPORT ON CASE NO 1270

Complaints against the Civil Status & Registration Office (“CSRO”)

Complainant frustrated by an approximate delay of eighteen months in Civilian Registration Cards (“CRC’s”) being renewed without a refusal or clarification as to the delay- Complainant’s file lost by CSRO hence lack of replies to her- subsequently transpired that CSRO had initially been under ministerial instruction to ignore the fact that applicants had Spanish residency and green light given for CRC’s to be issued to those applicants regardless (this being how the Complainant and her husband first obtained their CRCs)- said Ministerial instruction to CSRO was subsequently withdrawn- no CRC cards to be issued or renewed henceforth unless an applicant relinquished Spanish residency- in addition in this case, CSRO not satisfied that Complainant and husband “resided” in Gibraltar- Ombudsman could not comment on Government policy- nonetheless he expressed the opinion that public bodies should be open, accountable and transparent to service users- Complaints therefore sustained.

REPORT ON CASE NO’s 1271 & 1272

Complaint against the Civil Status and Registration Office (“CSRO”)

Complainants aggrieved and frustrated by the delay in processing their respective applications for Permanent Residence-Vessels permanently moored in Gibraltar-Immigration Asylum and Refugee Act criteria met yet CSRO stated they were awaiting a policy Steer from HM Government in respect of applicants residing on moored vessels- Complainants subjected to delay and anxiety- Sustained on the ground of delay and fulfilment of statutory conditions/criteria- administrative injustice suffered.

REPORT ON CASE NO 1276

Complaints against the Driver & Vehicle Licensing Department (“DVLD”)

The Complainant was aggrieved as a result of the DVLD’s Chief Examiner (“CE”) having cancelled his application to remove his ex-wife from a jointly held taxi licence (“Licence”)- Also complained that he had not received a written response to his repeated requests for written

clarification as to why the application had been cancelled as it had been properly completed and signed by the parties and the relevant fee paid- Subsequent first-hand information had come to light from the ex-wife potentially invalidating the application to remove her- as a result, the CE reached the view that the Traffic Commission (the authority responsible for approving the application), would not have granted the removal from the Licence and on that basis offered the option to the Complainant to withdraw the application and have the fee returned- Ombudsman opined that was the proper course of action- Ombudsman also found that the lack of written replies from the CE to the Complainant were justified as a result of a walk in policy at the CE's office emanating from a fluid and amiable relationship between the parties.

REPORT ON CASE NO 1279

Complaints against the Housing Authority (“Housing”)

The Complainant alleged wrongdoing by Housing in having changed their rules to temporary allocate a Government rented flat- he also alleged discrimination as a result- further complained he had not received a written reply to his complaint- Ombudsman found there had been no maladministration- there existed provision in law (Housing Act) for temporary allocations by the Principal Housing Officer- Complainant had not suffered discrimination; temporary allocations were found to be rare and in this specific case all conditions and criteria had been met by the applicant- Ombudsman found Housing should have addressed Complainants concerns in writing and replied to his complaint- that limb of the Complaint was sustained.

7.0 THE eGov DIGITAL PLATFORM

7.1 Introduction

The development and onset of digital technology together with the application and growth of artificial intelligence (AI) in today's environment is aptly put by the following statement (Daugherty & Wilson, 2018: 1):

“Thanks to recent advances in artificial intelligence (AI), we are now at the cusp of a major transformation in business. It's a new era in which the fundamental rules by which we run our organisations are being re-written daily. AI systems are not just automating many processes, making them more efficient; they are now enabling people and machines to work collaboratively in novel ways. In doing so, they are changing the very nature of work, requiring us to manage our operations and employees in dramatically different ways.”

In the same vein, public services are also having to radically change how they conduct business, process, implement procedures and undertake operations. We are at a pivotal historical juncture similarly to when people accepted the invention of the steam engine, thereafter triggering the industrial revolution. Whether they wish to accept the change or not is really a matter of personal choice but the stark truth is that in order to progress, we must embrace digital technology, or be left behind. The aforementioned within our public services is one such example. Members of the public are essentially being steam rolled into using the eGov platform. This is similarly true with other sectors that have adopted the application of online services such as banking, gaming, purchasing of goods and services, etc. We, therefore, should embrace this opportunity, tackle the challenges that lie ahead and synchronise our habits and culture in unison with the waves of change, and not be tempted to resist and swim against it. However, this may not necessarily be the case for everyone who for whatever reason may find the tidal current to be too strong. It is true that as more and more digital technology is used and learnt by younger generations say in school and at places of work, then over familiarity will inevitably make this the norm, but remember that many may disagree with this argument and may fall aside.

Let's consider those people whose mother tongue is different to the official language spoken on the digital platform, or the elderly, the infirmed, those economically disadvantaged and unable to purchase ICT equipment or afford the cost to link up to the internet? It is, therefore, important to remind ourselves of this, because the aforementioned groups must not be left behind or become marginalised.

The aim of this survey is, therefore, simply to highlight where these challenges may lie, suggest recommendations to help support and ultimately facilitate proper interaction between the citizen and public service provider. It is not a critique but rather a sounding board for further debate and an opportunity to identify what is challenging to citizens. So, with this in mind, let's look at this further under the following context.

7.2 Why Undertake the Exercise?

The onset of using digital technology at the interface between the customer and service provider is not new. For example, this has evolved and increasingly become the norm within the financial sectors, certainly over the past 40 years. In the same vein, the public sector is no different and has also had to take steps towards improving efficiency, seek value for money and for all intents and purposes, re-engineer how services are being delivered. That said, what has taken people by surprise is the accelerated speed of this change which has been virtually instantaneous locally and by default, the result of the recent Covid pandemic.

Based on public health advice, HM Government of Gibraltar prioritised all its efforts and energy into focusing on the safety of citizens, the result of which helped to shape how public services are delivered today. In this context, it is felt useful that we look at the impact of this transformation not solely from the eyes of the public sector, but equally important, from a general public citizens' perspective.

The following framework was, therefore, developed to provide a balanced representation for ascertaining any potential concerns raised by members of the public. Though not extensive in coverage, it, nevertheless, should highlight any issues

emanating from the introduction of eGov within the community. That said, there will understandably be some error of margin within any proposed future hypothesis irrespective of any model pursued. However, for the purposes of this primary exercise, it is reasonable to apply the following approach so that we are able to obtain empirical evidence to trigger the debate.

7.3 How will this be Conducted?

The construction of theories and formulation of laws with adequately tested hypotheses need to be able to demonstrate if issues relating to management are to have any credibility with the public. House (1970) stated that this could be achieved by adopting an approach which includes:

- A prior hypothesis;
- a prior criteria that may be applied to measure the acceptability of the hypotheses;
- isolation and control of the variables; and
- methods of measuring the validity of the variable.

The positivist approach implies that is similar to the natural sciences but this view is challenged by Gill & Johnson (1991) on three main issues:

- That there is no single method that can be applied to all scientific cases;
- that a method appropriate for the natural sciences may be inappropriate for social sciences; and
- that knowledge invented may be influenced by the individual goals of managers and their validation standards.

Nevertheless, it would be wrong to reject the positivist approach, rather we should recognise that research problems come in different shapes and sizes, therefore, these may require different approaches. This may range from theory building to attempting to solve specific problems (Gill & Johnson, 1991). Similarly, research may include rigorous examination under stringent laboratory conditions or involve field research using an ethnographic approach. The former method is dependent on a highly structured framework based on deduction, which is tested by quantitative data. On the other hand, ethnographic approaches are inductive; the researcher is the observer imposing external logic to internal subject matter. This involves 'getting inside' situations and involving the investigator in the everyday flow of life. It focuses on producing theory grounded on empirical observation. This approach uses qualitative data and minimum structure (Burrell & Morgan, 1979; Hammersley & Atkinson, 1983). Somewhere in between these two approaches are the survey and field experiments which test criteria outside laboratory conditions. Sometimes it is necessary to study variables and events that occur naturally in the field which are available without the intervention of the investigator. These are normally known as quasi-experiments (Gill & Johnson, 1991). Another approach known as action research has also been quite powerful in determining variables and involves the intervention of a facilitator. This is similar to quasi-experiments and uses experimentation in the natural setting to determine an outcome and process of research (French & Bell, 1984).

The argument as to whether one method is superior to another has been one of major social science debates but though the choice of methods is often determined by the questions and situations to be examined, it is also the case that the choice may be dependent on individual beliefs and preferences. An old proverb says "for he who has but one tool, the hammer, the whole world looks like a nail" (Hirschheim, 1985:15). Consequently, those wedded to the positivist approach will tend to see research issues in these terms. On the other hand, those who adopt non-positivist approaches will tend to see research issues as much less amenable to quantification and rationality. Nevertheless, most researchers also recognise the influence of the situation, the subject matter, or choice of methods. Therefore, for a variety of reasons, both quantitative and qualitative research methods are used by management researchers. Quantitative research is based on the interpretation of statistical data from a relevant sampled numbers of individuals (Gordon & Langmaid, 1988).

Qualitative methods do not claim any statistical validity but are based on exploring people's views and feelings by interviews and other methods. Though some researchers view these as incompatible, it has been argued that they can complement each other by helping to create a fuller picture (Gordon & Langmaid, 1988).

Accepting that the narrative above is rather academic, it, nevertheless, provides some clarification to the reader as the reasoning behind the following choice of methodologies. So, for the purposes of this exercise, we shall be applying both approaches.

The following table in Figure 10 typically shows the general protocol being considered to obtain realistic data that can later be analysed, assessed and conclusions made on any forthcoming issues and concerns raised. Obviously, given more time and resources, such would generate a much more detailed picture, but for the purpose of this exercise, the following combined approach is a taster and will suffice in gathering sufficient information to develop some reasonable conclusions and recommendations.

Location	Comments	Actions	Type of systematic approach applied
University of Gibraltar	<p>1st Phase: Any specified working day agreed by Vice-chancellor on any large undergraduate class.</p> <p>Target: Focus on a ‘young adults’ sample generally comprising Gibraltarians, UK and EEU nationals.</p>	Permission to be sought beforehand from the University to hand out structured questionnaires either before a normal class session or at completion by the Lecturer concerned. Set Hypothesis and test this through a questionnaire.	Quantitative (deductive)
Elderly Government Estate	<p>2nd Phase: Approach one of the following estates:</p> <ul style="list-style-type: none"> • Albert Risso; • Charles Bruzon; or • Bishop Canilla House. <p>Target: The elderly are suspected to be a marginalised demographic group of citizens as eGov platform has been introduced relatively late in life.</p>	Charles Bruzon House to be selected. Authorisation to be sought beforehand from the ‘Housing Authority’ for access and facilitation. In addition, consultation with [their] Tenants’ Association. Protocol will be to interview elderly tenants strictly on a voluntary basis within location using a semi-structured qualitative questionnaire. Staff will assist and facilitate this protocol on a one-to-one basis. Intention here is to search for patterns and repetitive issues of concern and challenges (if any) that may arise.	Qualitative (inductive)

Figure 10: Framework Applied for Surveys

Figure 10 lists a typical action plan of implementation, but as mentioned earlier, resources and time directly limits the extent and depth of detail that can be sought. For example, ideally, an extensive approach would include questionnaires being posted to every address in Gibraltar- this would help improve the error of margin- that said, for the purpose of this exercise, we are mainly interested in simply identifying and highlighting typical areas of concern and challenges when using eGov. So, at one end of the spectrum, we will be consulting young adults generally deemed to be more familiar and proficient in the use of online digital technology which has been an instrumental tool of current learning practice at schools, colleges, etc. here, we will apply a quantitative approach. Similarly, in the opposite end of the spectrum, it is argued that the elderly have not had the comfort of the aforementioned and, therefore, have had to adapt quickly without necessarily being trained or taught on how to do so. Here, we shall apply a qualitative approach. The whole data obtained will then be used systematically to develop any conclusions that may arise and hopefully considered by public bodies. Let us, therefore, begin by looking at the first of the two approaches that were undertaken by the Office of the Ombudsman.

7.4 Survey on Young Adults

This comprises a survey targeting ‘young adults’ and an assessment of issues and challenges acknowledged by them when using eGov services. In this case, it was appropriate to approach the University of Gibraltar in order to fulfil this objective and, therefore, we are most grateful to them for their support and cooperation in assisting the Office of the Ombudsman in this exercise which included an approach to a large cohort of students. Questionnaires as per Appendix A1 were handed out to all the students whereby they were requested to complete the questionnaire on a voluntary basis. Our approach in this case was to test the following Hypothesis.

The introduction of eGov services is challenging for citizens even for young adults who are generally recognised as being much more familiar with the use and application of digital technology.

Let’s now test this by generally analysing the replies given by the students which are summarised in Appendix A2.

7.4.1 Results of Young Adult Survey

7.4.1.1 Part 1- Personal Details: Authenticity & Accuracy

Firstly, the contribution made was predominantly from English speaking personnel under the age of 25, thereby establishing a young adult composition as a suitable baseline for discussion. Of these, up to 74% use eGov services on a limited basis with only around 26% having often and frequent use.

In the context of having to use public services, it was found that there was a mixed perspective by students whereby 53% preferred face-to-face contact and/or telephone whilst 47% enjoyed a more impersonal approach by adopting the use of email and/or online services. This is an important observation because it was suspected that most young adults tend to favour digital technology and in this case, it is seen that a slight majority continue to enjoy visible face-to-face interaction, or indeed less so, via the telephone.

7.4.1.2 Part 2- Access to Digital Technology

Secondly, all students enjoy daily access to internet facilities predominantly through the use of self-owned smart mobile phones. This effectively reinforces the assumption that most, if not all young adults tend to have their own mobile phones as a means of communication and access to online services including that for the public domain.

7.4.1.3 Part 3- Public Service Engagement via Govt Online Digital Platform (E-Gov)

Thirdly, when wishing to engage a public service through on-line eGov services, a majority of 74% students confirmed that indeed they had with only 26% choosing the contrary.

Of these, 63% said that they had encountered difficulties when using the online eGov platform though 37% had not experienced any issues or problems.

Those experiencing challenges in progressing submissions and/or requests amounted to around 47%. That said, it is not clear why this is the case, because 21% highlighted technical issues whilst completing their submission. This may be the result of challenges when inputting data though there is no evidence to suggest this. Others at 26% had no issues at all whilst only 5% found the guidelines to be unclear and hard to follow.

Inevitably, up to 63% of students managed to successfully complete their submissions online with 37% having not. This shows that citizens deemed to have more familiarity than most with digital technology (i.e., young adults) can and have been able to complete eGov submissions, but there is still an alarming large contingent finding this too challenging and thus regrettably did not complete submissions successfully online. A majority of 79% have, therefore, sought intervention and support from friends to help with their online submission.

When contemplating whether the existing eGov platforms were 'user friendly', the responses were evenly split between those confirming that it was and those stating that it was not. So, there appears to be no majority consensus on this issue.

This leads us to the next question as to whether students preferred either face-to-face or digital platforms when interacting with a public service and overwhelmingly, 68% confirmed that they preferred the availability and use of both public counters and eGov.

Finally, it was suggested that an online 24 hour chat line service be considered, which would help users in many instances to resolve issues whilst simultaneously completing a submission and/or application. This could be accommodated by an AI facilitator, or chat doctor. Let us now discuss the matters raised as follows.

7.4.2 Commentary on eGov Access by Young Adult Citizens

Generally, we are able to make the following observations. The sample tested in this exercise were young adults and it should be highlighted that these consisted of highly educated personnel. Surprisingly the majority do not utilise the digital platform when considering interaction with a public sector service.

Though fairly evenly balanced between those students wishing face-to-face contact and/or using digital platform, there does appear to be a preference for the aforementioned. This is surprising considering that young adults tend to be more familiar and proficient in the use and application of digital technology. Why, is this the case? It also appears in Part 3 of the above, that most students had difficulties when using the digital platform. Most encountered technical problems and although guidelines are often provided, it is suspected that the process of inputting information and/or data is the main culprit here. For example, submissions are designed by software engineers who think and apply logic when developing the digital platform. Their train of thought focuses on an 'either-or' approach. In other words, the algorithms are normally designed to accept a binary response. The system is not necessarily designed to understand a reply in the grey area that lies in-between. It is at this point that most breakdowns occur. Here, the algorithm is unable to understand what is being inputted, the process collapses and the user is unable to progress onto the next step in their submission leaving them none the wiser, perplexed and frustrated. It is also important to emphasise that the majority of users have had to seek help and assistance from colleagues and friends when making online submissions. This clearly indicates that the digital platforms currently in use are not primarily user friendly. Finally, most students demonstrated a preference for the availability of both (i) face-to-face public counters and (ii) eGov. So, reverting back to the hypothesis mentioned earlier:

The introduction of eGov services is challenging for citizens even for young adults who are generally recognised as being much more familiar with the use and application of digital technology.

This is effectively true, consistent with the findings and as a result of this evidence, it is proposed that designers are made aware that the tweaking of existing eGov digital platforms is advisable and recommended so that future users wishing to make submissions online may do so with less difficulty and greater confidence.

Let us now move on to the second phase of the overall exercise by focusing on the opposite end of the age spectrum namely our elderly citizens- in this case, residents of Charles Bruzon House.

7.5 Survey of Elderly Citizens

This approach was quite different from that taken earlier with young adults. In this case, it was decided to deliberately engage with the elderly because many reports had been received from disgruntled senior citizens that had experienced major challenges when accessing and using the eGov digital platform. In order to test this, a qualitative interviewing process was applied by staff from the Office of the Ombudsman who on Monday 22nd January 2024 met with residents from Charles Bruzon House with the assistance and support of their tenants' association.

A semi-structured questionnaire was applied as shown in Appendix B1. In addition, rather than handing these out directly to senior citizens for them to complete, our approach involved completing the questionnaires directly ourselves with face-to-face interviews so that as much detail could be gathered- results are included under Appendix B2. With this in mind, let us now consider these in greater detail.

7.5.1 Results of Elderly Citizens Survey

7.5.1.1 Part 1- Personal Details: Authenticity & Accuracy

The tenants interviewed were all over 70 years of age and residents of Charles Bruzon House.

Generally, they all utilised public services on a monthly basis such as making enquiries, applying for official documentation such as applying for a passport or Identity (ID) card, renewing a driving license, applying for a vehicle MoT, etc. Access to public services is, therefore, a vital source of enquiry and must be easily accessible to all members of the public, irrespective of gender, age and nationality. Users by choice will attend public counters now that these have been reopened. In addition, they will use the telephone mainly for general enquiries.

7.5.1.2 Part 2- Access to Digital Technology

All users have access to internet facilities and most tenants will use their iPad or Smart phones should they wish to access the internet. Very few have Personal Computers (PCs).

All households own either a Smart phone or iPad and users tend to have daily access mainly for keeping in touch with family and friends via social media, entertainment, communications, email, online banking and payment of bills. Very few actually consider using eGov.

7.5.1.3 Part 3- Public Service Engagement via Govt Online Digital Platform (E-Gov)

Most tenants do not use eGov as they have encountered major challenges when trying to access eGov. Some now even refuse to use it altogether as they have no confidence that they will reach a successful conclusion. They also showed no confidence in the workings of the digital system.

The process was found to be confusing irrespective of any guidelines provided leading to the fact that they do not find eGov user friendly or simple to understand and follow.

Most elderly tenants do not use eGov because they find the process complicated. They do not understand how to properly complete sections, input files, which inevitably leads to the whole experience of engagement becoming a frustrating and wasteful exercise.

If push comes to shove, elderly tenants will approach a friend or family member to assist and undertake eGov and do the interaction on their behalf. In absence of this, users simply will not bother engaging with the digital platforms. So, therefore, most if not all users were unable to give a rating of eGov because they simply did not use it.

All elderly tenants wholeheartedly preferred personal face-to-face interaction via public counters. Essentially, and in addition, the following were sentiments they wanted to share.

- Majority not interested at late stage in their life to begin learning something new which is not understood.
- Minority wish to learn, be taught and shown how to access and use eGov.
- Process must be user friendly which all interviewed confirmed was not currently the case.
- eGov has to be 'fool proof' applying layman's language.
- No training has been given centrally in order to help support citizens on how to use eGov, so they are unable to use it.
- Unlike the UK, walking distances locally are in close proximity thus encouraging many elderly tenants to visit public counters directly and, therefore, there is now no need to utilise eGov.

Let us now discuss the matters raised as follows.

7.5.2 Commentary on eGov Access by Elderly Citizens

It is mentioned earlier that many reports have been received from elderly citizens feeling marginalised when having to access public services particularly during the Covid lockdown. This was later compounded further by the fact that the introduction and continuation of online eGov services became the norm by default. Similarly in the UK, a comprehensive study was undertaken on behalf of one of the largest charities supporting senior citizens known as Age UK. This gives an interesting view on the implications of online digital public services and the following is a brief extract named 'Wake-up call' from a recent article published into the issues and challenges being experienced by elderly citizens in the UK:

Caroline Abrahams, charity director at Age UK, said the figures "should be a wake-up call for policymakers because they show the alarming extent to which the rush towards 'digital by default' is excluding our older population". She added: "The fact that so many millions of older people are unable to participate safely and successfully online is an inconvenient truth for governments and other organisations keen to slash costs by moving everything online, but it's one we must confront and act on as a society. "If we don't, we are essentially saying it's okay for legions of older people not to be able to do ordinary things like book a medical appointment, organise a blue badge for their car, or pay to park it, and surely that is totally unacceptable." Age UK, a charity aimed at supporting older people, has called on public services to offer an easy-to-use, offline way of accessing key services. It has also urged the government to publish an updated strategy to support people of all ages in getting online. Ms Abrahams said: "This is not being Luddite, far from it... but rather a recognition that online methods simply are not working for millions of older people now and never will. "They should be able to choose to access public services in more traditional ways - by phone, letter and face to face, as appropriate". (Age UK: 2023)

It was anticipated that replies in the qualitative approach would be much more substantive and detailed. However, this was not necessarily the case whereby the elderly chose to be mainly brief and to the point. The following question, therefore, arises. Will the views highlighted above be similarly reflected by our own Senior Citizens? For example, has

eGov marginalised this demographic group when having to engage public services by default? Firstly, the answer is firmly YES from the replies obtained in our survey though it should be emphasised that this was mainly true during the interim period, i.e., whilst public counters were closed during lockdown resulting from public health advice. Secondly, are Senior Citizens still being marginalised? The answer is clearly NO ever since ALL public counters were reinstated and reopened back in late October 2023 (HMGoG, 2023). It then follows, that people should be able to continue to have the option of choosing whether to access public services in more traditional ways such as by phone, face to face and not solely determined by online eGov.

Bearing all the above factors into account, it is recommended that further intervention be considered by Government Departments towards facilitating the use of their online digital services. This may be accommodated by the provision of centralised workshop classes that are specific to online use and navigation- they should be free of charge. Incidentally, it is recalled that these were once offered for Senior Citizens and led by the late Manolo Ruiz. The location, however, may have proved problematic for some willing participants, but it is understood that these were indeed quite popular. Perhaps other ways of supplying such classes could be helpful like temporarily these being setup in common rooms at Government owned estates that are geared to the elderly, i.e., Albert Risso House, Charles Bruzon House and Bishop Canilla House? Though such a step would not be to everyone's agreement, it, would, nevertheless, demonstrate and inject support for those wishing to learn. In the same vein we must not ignore and forget other senior citizens within public and private estates generally. They equally need to be considered and given suitable opportunities to facilitate online digital access and navigation. With this in mind, the use of Bleak House or the Gibraltar College springs to mind. One-to-one training should create the necessary skills, background and confidence for them to gain greater freedom of control by others such as from family and friends. Admittedly, this may not be the panacea for all Senior Citizens, however, it could be considered for those willing to learn irrespective if numbers maybe low- as suggested in the survey above. Another option would be to consider the publication of brief guidance leaflets on how to access eGov by each Government Department.

In addition, commercial advertisements broadcasted on GBC typically demonstrating how citizens may access eGov by way of illustration, animation, etc, would be very useful and informative.

Other suggestions for consideration could be for Government to lead on the setting up of a small Advisory Steering-Group, comprising members of the general public to help address on issues arising and inject practical ideas on matters relating to eGov from a user's perspective. Typically, its terms of reference could include some of the following.

- Highlighting accessibility problems and concerns related to specific Departmental digital online platforms;
- Giving suggestions to assist and support citizens in understanding how to access and use eGov by way of developing information leaflets, notices, etc;
- Removing unsuspecting barriers and providing a voice for demographic groups such as Senior Citizens that feel marginalised as a result of introducing eGov; and
- Seeking ways in creating and developing greater familiarity in the use and application of eGov.

It must be stressed that the eGov digital platform will not disappear and is here to stay. It will in fact expand further, very much like what happened with the automated teller machine (ATM) - an electronic banking outlet that allows customers to complete basic transactions such as obtaining and depositing cash without the aid of a branch representative or teller.

In conclusion, it is felt that the above could help support senior citizens and others into becoming better versed when accessing eGov and ultimately encourage them to secure greater confidence, online capability and independence.

7.6 Discussion

Readers should realise that the above is not an exhaustive attempt to scrutinise every aspect of eGov; this is not the intention of the exercise. Instead, it simply portrays some of the problems and issues being experienced and frankly the Government should be congratulated for leading and substituting on the delivery of traditional citizen- public counter services with a progressive and alternative digital methodology to maintain delivery of public services. This ensured

continuity during an unpredictable and dangerous episode in Gibraltar which could have resulted in devastating consequences on the socio-economic fabric of our community.

In this case it is argued that the introduction of new online concepts, digital technology and eGov did not run through a properly structured and strategic planned process of change. Instead, it ran its course on an adhoc emergent basis with little consideration on how this would affect both public employees and the general citizen. That said, it is still a strategic framework.

There are multiple approaches towards managerial change which will not be entered and discussed here. Nevertheless, it is useful for the reader to have some understanding on the basic concept. Simply put and though rather outdated in approach, let us consider the classical 3-Step Model (Lewin, 1947) which is simple to understand and apply- please see Figure 11 below.



Figure 11: Lewin's Three-Step Model of Change

To summarise from the diagram above (Burnes, 2014:342), this involves a first planned stage of *Unfreezing* whereby employee and organisational behaviours, goals and norms are directly tackled in order to remove any resistance, inertia and/or psychological traits resulting from insecurity and anxiety towards change. This re-education and realignment process towards converting employees to accept change would be the precursor to the second phase which would involve *Moving* collectively in one unilateral direction thus accelerating beneficiaries from one state to another. The final step known as *Refreezing* seeks to establish a new status quo and stabilise employees and cement the organisation to ensure that behaviours are relatively safe from regression. The absence of this concluding phase would simply allow inherent personal and group dynamics to reverse behaviour thus reverting it back to its original condition. It is interesting that this model continues to be applied even today by many organisations. For example, the Gibraltar Health Authority with its *Reset, Restart and Recover* model is typically a similar process though using different nomenclature.

So by using this illustration, we are able to evaluate how eGov was introduced and delivered. In the first instance, it is seen that the unfreezing stage did involve some limited centralised drive towards introducing greater ICT in internal operations, and the management of public services, eg, eliminating paperwork evolving from past colonial practices and regulations, removal of outdated repetitive approval mechanisms, introduction of multi-skilled administrators as opposed to keeping ring fenced tubing practices (exception being Departments dealing specifically with public accounting) and the list goes on. This emergent process had been gradual and had been progressing steadily over years from around 2012 with greater information being made available on HMGoG websites, etc. However, the concept of online interaction did not really involve any external consideration and consultation with the general public- it was a *fait accompli*.

It is fair to say then that there was online digital interaction in the past particularly before the Covid pandemic period. This was when Government directed public Departments as a matter of policy to place more material, information, guidance, application forms, etc, online, so that the general public could enjoy improved access. Essentially, it is clear that this was a move to seeking greater innovative access to finding efficiencies and value for money which is a good thing. Nonetheless, it is argued that in reality, this did not actually take full shape or become the norm until the onset of the Covid pandemic.

It is here when Government took a decisive unilateral step change in moving to the digital online platforms by default and not by plan. This replaced traditional citizen- public Departmental face to face interaction with a much more arm's length, digital interface. For all intents and purposes, this transition from a traditional customer-public interface to an artificial one has, therefore, come with many concerns and issues which have been highlighted as a result of our two simple surveys described earlier. It is, however, interesting to note that no Refreezing has taken place. Rather, the traditional face to face counter service has been reinstated by public pressure. The difference now is that we have both the aforementioned and digital online platforms working together in parallel. This would have been a great opportunity to eliminate public counters altogether and facilitate more accurate accountability by machine rather than people. But, the reality is that citizens prefer face-to-face interaction to communicate their enquiry, concerns, issues- these human attributes are not reflected when using the artificial platform. Remember the well-known anecdote "... the computer says no...." And it is because of this that many citizens have no confidence in the digital online platform. This is particularly the case if the interaction is not user friendly, nor simple to understand, totally alien from the perspective of the citizen attempting to complete an online Form or process. We have demonstrated that this is a major concern and obstacle for Senior Citizens who are not properly versed in the digital platform and it, therefore, makes great practical sense to supply further education and training on how to access, facilitate and navigate the digital platform. This will give our Senior Citizens greater confidence and independence when accessing public services. Interestingly, this is even highlighted by young adults deemed to be more proficient in the use of digital technology. Many in our survey had to seek help and assistance from friends when similarly attempting to navigate and complete processes online. The system is, therefore, not perfect and some suggestions have been made earlier to try and address these concerns.

In conclusion, the following table in Figure 12 provides a general oversight of what are perceived to be the main benefits and drawbacks of having eGov. It is argued that each and every one of us will have their own specific preference. That said, eGov is here to stay and it is important that citizens from all backgrounds and nationality are able to access eGov confidently and without fear or prejudice.

eGov Benefits	eGov Drawbacks
Quick 24 hour, 7 day a week full access for proficient Users familiar in navigating platforms comprised digital online technology	Frustration and a major 'obstacle' for Users that are untrained and unfamiliar with accessing online digital technology
Greater accuracy when seeking accountability through systematic interpretation	Absence of 'User Friendly' language disables participation
Removal of old fashioned, out of date repetitive administrative practices inherited from the past	No opportunity to communicate issues that are only possible by face to face traditional interaction over the counter
Facilitates the introduction of greater efficiencies and value for money	Artificial and impersonal interaction
Elimination of public counters thus reducing recurrent costs related to premises, operations and human resources	Can be subjected to chaos in the event of shutdown
No need to leave home and visit any Government Department	Not available to citizens unable to afford computers, smart phones
Improved tracking and audit.	Frustration when users input replies (within the so called grey area) that eGov does not recognise thus creating interruptions

Figure 12: General eGov Benefits & Drawbacks

This leads us now to the end of this year's Annual Report whereby the following generally gives an oversight into our overall findings discussed herein.

8.0 ANNUAL REPORT CONCLUSIONS & RECOMMENDATIONS

Similarly to 2022, no feedback has been given with respect to (a) The Venice Principles and (b) Own Motion proposals and indeed this is regrettable. Though it appears that this may have been parked to one side, the Office of the Ombudsman will continue to raise these matters until such times it is supplied with the clarification sought. Though this may sound like a broken record, it is within the remit of this Office to continuously remind the authorities of any outstanding matter until it enjoys a satisfactory response.

A total of 286 complaints were received by the Office of the Public Services Ombudsman during 2023. Of these, a total of 284 complaints were finalised during the year. It follows that over the last 5 years (please see Figure 3) the trend in complaints was generally declining though understandably, as a result of the Covid 19 pandemic, this rose quite sharply in 2021 and 2022 as historical grievances held back in 2020 were being pushed forward into 2021 and similarly, this trend continued into 2022 with a slight negligible increase in complaints when compared to 2021. This has suddenly changed in 2023 whereby this latest trend has now turned and began declining once again. This is very positive news and demonstrates an underlining effort made by our public servants into making real inroads with enquiries and matters of concern generated by members of the general public.

The Office of the Ombudsman has received complaints mainly in connection to the following traditional authorities: Housing; Social Security; Health; Civil Status & Registration; Tax Office; Police; and Education & Training. This has in 2023 included a major 400% increase by the Gibraltar Carparks which historically attracted few complaints in the past. Overall, 26% of complaints received tend to be linked to delays, non-replies and inaction which is a positive and noticeable decrease from 33% in 2022. So, for all intents and purposes our public Departments continue to perform and do what they are supposed to do, but there is always more that can be done to generate improvement. With this in mind, it is reiterated

once again that more should be considered to review the numbers of administrators (the doers) at points of contact between public servants and citizens. It is here whereby it is suggested that more personnel should be posted to tackle general enquiries in an effort to reduce the overall 26% gremlin. This is a thorn that raises its ugly head year-in-year out and though difficult to stamp out, it, nevertheless, can be reduced even further by ensuring adequate numbers of staff are available to undertake day-to-day activities.

The application of Digitalization does help public servants identify and track issues raised by citizens much more quickly, but whether this will help improve our public services is a topic in itself and yet to be investigated over the forthcoming years? It inevitably will speed up with the tackling of citizen enquiries though this may also reinforce approaches reminiscent of the past known as neo-scientific management approaches- principally these are all about determining and improving output efficiency.

Without doubt, the digital interface between the citizen and public employees is more impersonal when compared to the past. So, this may introduce a different trend of complaints more to do with the unfamiliarity of process, frustration, and failure to advance an enquiry. Generally, this is the case from the evidence gathered by undertaking two surveys namely focusing on (a) young adults and (b) elderly citizens- that is targeting opposite ends of the age spectrum.

The following hypothesis applying a quantitative approach was tested against young adults: *“The introduction of eGov services is challenging for citizens even for young adults who are generally recognised as being much more familiar with the use and application of digital technology.”* This indeed was found to be generally correct and much greater focus is recommended on improving eGov platforms and allowing more flexibility when replying to automated questions with an emphasis in that grey area in-between the conventional yes or no answer. Guidelines should be more visible, concise, clearer and user friendly so that service users are confident when completing application forms online, etc. It is suggested that this can be improved with the inclusion of marginal AI chat lines operating in parallel as citizens complete their online task, and/or enquiry.

This becomes ever more prominent when considering senior citizens, the majority of which during a qualitative survey expressed serious disappointment and concerns about online interaction linked to public services. The evidence showed that all the elderly interviewed refused to utilise the online digital platform altogether thereby marginalising them during and in addition, the post Covid pandemic though this had now recently changed as public service counters have been opened since October 2023. All elderly tenants preferred face-to face communication, the human touch and despised the impersonal and artificial platforms.

In this context, it is recommended that further education programmes are considered on GBC television to guide citizens on how to navigate and use online facilities, generally promoting how quickly and effective these can be if used properly. In addition, the introduction of digital training workshops similar to those held in the past would help support the elderly gain greater confidence and familiarity in their use. Let us not forget those people less well off in society who will be unable to afford new technology. The collective emphasis here is to focus on digital inclusion.

With this in mind, it is recommended that Government setup an Advisory Steering Group to precisely look at these issues, give guidance and ideas to promote the application and use of the public services digital platform.

It should be noted that in October 2023 (HMGoG, 2023), public counters were fully opened and, therefore, citizens are now not forced to access public services via Government websites unlike before during and shortly subsequent to the Covid pandemic. Face-to-face contact is now back as traditionally the norm. That said, is it cost effective to run two separate systems in parallel with each other when any one can undertake the role independently- food for thought?

Leading on to a final note, assessing the number and types of complaints received portrays an effective overall methodology on how a public service is performing. According to the evidence obtained, our public services are generally doing what they are supposed to do though they can be done better. Indeed, in 2023 there have been less complaints and this should be emphasised and celebrated. That said, no system is perfect, but looking forward in terms of strategic planning, it is hoped that lessons can be learnt from this Annual Report.

9.0 BIBLIOGRAPHY

Age UK (2023) *Launch of Offline and Overlooked Campaign* webpage article dated 19th September 2023.

Burnes, B. (2014) *Managing Change*, sixth edition, printed by Pearson Education Ltd.

Burrell, G. & Morgan, G. (1979) *Sociological Paradigms and Organisational Analysis*, published by Heinemann, London, UK.

Coram, W.R. (2022) *Public Services Ombudsman Annual Report 2022*, Presented to the Gibraltar Parliament, November 2023.

Daugherty, P.H. & Wilson, H.J. (2018) *Human + Machine, reimagining work in the age of AI*, copyright 2018 Accenture Global Solutions Ltd, published by Harvard Business Review Press, printed in the USA.

French, W.L. & Bell, C.H. (1984) *Organisation Development*, published by Prentice-Hall, Englewood Cliffs, New Jersey, USA.

Gill, J & Johnson, P. (1991) *Research Methods for Managers*, published by Paul Chapman, Liverpool, UK.

Gordon, W. & Langmaid, R. (1988) *Qualitative Market Research: A Practitioners and Buyers Guide*, published by Gower, Aldershot, Hants, UK.

Hammersley, M. & Atkinson, B. (1983) *Ethnography: Principles and Practice*, published by Tavistock, London, UK.

Hansard (2023) *Proceedings of the Gibraltar Parliament, Afternoon session: 3.00pm-6.55pm Gibraltar, Wednesday, 22nd November 2023 (page 5)*

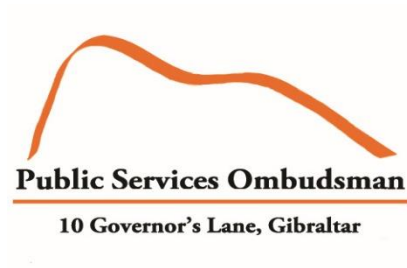
Hirschheim, R.A. (1985) *Information Systems Epistemology: an Historical Perspective in E.E. Munford et al (1985) Research Methods in Information Systems*, Elsevier Science, published by BV, Amsterdam, Netherlands.

House, R. J. (1970) *Scientific Investigation in Management*, published in *Management International Review*, vol 4/5, no 10, pp 139-150.

Lewin, K. (1947) *Frontiers in group dynamics. In D. Cartwright (ed) 1952: Field Theory in Social Sciences*. Social Science Paperbacks: London.

HMGoG (2023) *All HMGoG counters will be opened to the public from Thursday – Press Statement 725/2023, 24th OCTOBER 2023.*

APPENDIX A1:
QUANTITATIVE QUESTIONNAIRE-
DEDUCTIVE APPROACH



Office of the Gibraltar Public Services Ombudsman

A Quantitative Study into the Impact of Digital Technology on Public Services in Gibraltar: Please see overleaf for details of questionnaire which are generally designed to seek further information from a user's perspective.

Thank you.

*Dr Ron Coram
Public Services Ombudsman
10 Governor's Lane
Gibraltar*

Part 1- Personal Details: Authenticity & Accuracy

Age:

Nationality:

(If British then what category? Brit (Gib), Brit (UK), Brit (Moroc), Brit (EU), Brit (other)

(Tick relevant boxes)

1. How often do you use public services?

<i>Limited</i>	<i>Often</i>	<i>Always</i>

2. How would you approach this?

(You can choose more than one option)

<i>Face-to-face (counter)</i>	<i>Telephone</i>	<i>Email</i>	<i>E-GOV (Govt online services)</i>

Part 2- Access to Digital Technology

(Tick relevant boxes)

3. (a) Do you have access to the internet?

No	Yes

(b) If so, how do you gain access?

Smart phone	Laptop	Desktop Computer	Other device

4. Do you own any of the above devices?

No	Yes

5. How often do you use internet and/or use digital technology?

Never	Limited (on a monthly basis)	Often (on a weekly basis)	Always (on a daily basis)

Part 3- Public Service Engagement via Government Online Digital Platform (E-GOV)

(Tick relevant boxes)

6. Have you used government online services (E-GOV) when seeking a public service eg, application for Government Housing, seeking a new Passport, making a health appointment, etc?

No	Yes

7. Have you experienced any difficulties whilst using the E-GOV digital platform?

No	Yes

8. What have been the main problems encountered with E-GOV?

<i>Guidelines are not clear and can't follow</i>	<i>Don't fully understand the technology</i>	<i>Have difficulties in progressing with my request/submission.</i>	<i>Encountering technical problems</i>	<i>N/A</i>

9. Have you still been able to successfully carry out a request/submission whilst having experienced problems using E-GOV?

No	Yes

(Tick relevant boxes)

10. Has a friend or relative had to assist you in order to submit any request?

No	Yes

10. How user-friendly would you rate the digital interaction experience through E-GOV?

1	2	3	4	5	6	7	8	9	10

(1 is exceptionally poor whilst 10 is excellent)

12. Does the Government Online Services digital platform (E- GOV) work for you or would you rather prefer face-to-face public counter service?

E-GOV	Public Counter	Would use both

(Please give further details here if necessary)

13 If E-GOV hasn't worked for you in the past, is there any further help/assistance that you think would be useful to utilise online services? If yes, then please clarify and provide further details.

.....
.....
.....
.....

APPENDIX A2:
SUMMARY OF COMPLETED QUANTITATIVE QUESTIONNAIRE-
YOUNG ADULTS- UNIVERSITY OF GIBRALTAR

Part 1- Personal Details: Authenticity & Accuracy

Age:

Age	Number
15-20	13
20-25	3
30-35	2
40-45	1

Nationality: *(If British then what category ?Brit (Gib),Brit(UK),Brit (Moroc),Brit(EU),Brit(Other)*

Nationality	Number
British (UK)	3
British (Gib)	15
EEU	1

(Tick relevant boxes)

1. How often do you use public services?

<i>Limited</i>	<i>Often</i>	<i>Always</i>
14	4	1

2. How would you approach this?

(You can choose more than one option)

<i>Face-to-face (counter)</i>	<i>Telephone</i>	<i>Email</i>	<i>E-GOV (Govt. online services)</i>
7	3	1	8

Part 2- Access to Digital Technology

(Tick relevant boxes)

3. (a) Do you have access to the internet?

No	Yes
0	19

(b) If so, how do you gain access?

Smart phone	Laptop	Desktop Computer	Other device
17	0	1	1

4. Do you **own** any of the above devices?

No	Yes
0	19

5. How often do you use internet and/or use digital technology?

Never	Limited (on a monthly basis)	Often (on a weekly basis)	Always (on a daily basis)
0	0	0	19

Part 3- Public Service Engagement via Government Online Digital Platform (E-GOV)

(Tick relevant boxes)

6. Have you used government online services (E-GOV) when seeking a public service eg, application for Government Housing, seeking a new Passport, making a health appointment, etc?

No	Yes
5	14

7. Have you experienced any difficulties whilst using the E-GOV digital platform?

No	Yes
7	12

8. What have been the main problems encountered with E-GOV?

<i>Guidelines are not clear and can't follow</i>	<i>Don't fully understand the technology</i>	<i>Have difficulties in progressing with my request/submission.</i>	<i>Encountering technical problems</i>	<i>N/A</i>
1	0	9	4	5

9. Have you still been able to successfully carry out a request/submission whilst having experienced problems using E-GOV?

No	Yes
7	12

(Tick relevant boxes)

10. Has a friend or relative had to assist you in order to submit any request?

No	Yes
4	15

11. How user-friendly would you rate the digital interaction experience through E-GOV?

1	2	3	4	5	6	7	8	9	10
1	0	4	2	2	2	1	5	0	1

(1 is exceptionally poor whilst 10 is excellent)

12. Does the Government Online Services digital platform (E- GOV) work for you or would you rather prefer face-to-face public counter service?

E-GOV	Public Counter	Would use both
2	4	13

(Please give further details here if necessary)

13 If E-GOV hasn't worked for you in the past, is there any further help/assistance that you think would be useful to utilise online services? If yes, then please clarify and provide further details.

1. For example tried to apply to be able to vote before elections various times and didn't work / instructions were unclear, also tried to book vehicle exams various times and is also unclear on times, where exam is and other factors etc
2. 24 hour online chat service (help assistant).

APPENDIX B1:
QUALITATIVE QUESTIONNAIRE-
INDUCTIVE APPROACH



Office of the Gibraltar Public Services Ombudsman

A Qualitative Study into the Impact of Digital Technology on Public Services in Gibraltar: Please see overleaf for details of questionnaire which are generally designed to seek further information from a user's perspective.

*Dr Ron Coram
Public Services Ombudsman
10 Governor's Lane
Gibraltar*

Part 1- Personal Details: Authenticity & Accuracy

Age:

Nationality:

(If British then what category? Brit (Gib), Brit (UK), Brit (Moroc), Brit (EU), Brit (other))

How often do you use public services?

.....
.....
.....

How would you approach this?

.....
.....
.....

Part 2- Access to Digital Technology

Do you have access to the internet?

.....
.....

If so, how do you gain access?

.....
.....

Do you own any Smart devices? If yes, then which one(s)

.....
.....

How often do you use internet and/or use digital technology and why?

.....

Part 3- Public Service Engagement via Government Online Digital Platform (E-GOV)

Have you used government online services (E-GOV) when seeking a public service eg, application for Government Housing, seeking a new Passport, making a health appointment, etc?

.....
.....

Have you experienced any difficulties whilst using the E-GOV digital platform?

.....
.....

What have been the main problems encountered with E-GOV?

.....
.....

Have you still been able to successfully carry out a request/submission whilst having experienced problems using E-GOV?

.....

Has a friend or relative had to assist you in order to submit any request?

.....
.....

How user-friendly would you rate the digital interaction experience through E-GOV?

.....
.....

Does the Government Online Services digital platform (E- GOV) work for you, or would you rather prefer face-to-face public counter service?

.....

If E-GOV hasn't worked for you in the past, is there any further help/assistance that you think would be useful to utilise online services? If yes, can you please clarify further.

.....
.....

APPENDIX B2:

SUMMARY OF COMPLETED QUALITATIVE QUESTIONNAIRE-

SENIOR CITIZENS- CHARLES BRUZON HOUSE

Summary of Part 1- Personal Details: Authenticity & Accuracy

Reply by Tenants >>>>>>	Questions		
	Age & (Nationality)	How often do you use public services?	How would you approach this?
1	81 (British Gibraltarian)	Only once- say monthly.	By telephone should this include a health matter whilst administrative issues such as those related to the replacement of ID Card, then this would be done in person at the respective Departmental counter
2	84 (British Gibraltarian)	Monthly.	Normally in person at the counter, via telephone or even directly by email.
3	76 (British Gibraltarian)	On a monthly basis.	In person or via telephone.
4	72 (British Gibraltarian)	Monthly	In person or via telephone.
5	82 (British Gibraltarian)	When necessary.	In person or via telephone.
6	86 (British Gibraltarian)	Rarely- my wife does it. I have direct debit setup to pay my bills.	In person and by telephone.
7	79 (British Citizen)	Monthly for things like MoT, Income Tax, paying bills.	In person as it keeps my day structured and gives me something to do. Use eGov very rarely.
8	77 (British Citizen)	Not often as I have a direct debit system set in place to pay my bills. License done in person and ID Card.	Telephone and in person sometimes. Never by eGov.
9	71 (British Gibraltarian)	Often	In person and by telephone. I don't use eGov as it doesn't work a lot of the times.

Overall Views >>>>>>	What are the emerging patterns, reoccurring themes and concerns? List these below.		
	<p>Obviously, all Government tenants interviewed were elderly (above 70years of age), which is precisely the purpose of Charles Bruzon House. In addition, as a result of Government policy, all tenants were British citizens.</p>	<p>Generally, users utilise public services on a monthly basis. This is evident as tenants have to make enquiries, or indeed apply for official documentation such as applying for passports or ID Card, renewing a driving license, applying for vehicle MoT, etc. Access to public service is, therefore a vital point and source of enquiry and must be easily accessible for all members of the public, irrespective of gender, age and nationality.</p>	<p>All users will attend to public counters now that they open. In addition, they will use the telephone for general enquiries.</p>

Summary of Part 2- Access to Digital Technology

Reply by Tenants >>>>>>	Questions			
	Do you have access to internet?	If so, how do you gain access?	Do you own any Smart devices? If yes, then which one(s)?	How often do you use internet and/or use digital technology and why?
1	Yes	Through the use of IPad and/or smart mobile phone	Yes- IPad and Smart mobile phone.	Daily for social media.
2	Yes	Through the use of an IPad.	Yes- IPad.	On a daily basis to keep in touch through social media.
3	Yes	Through the use of an IPad.	Yes	I use it every day mainly for social media.
4	Yes	By IPad.	Yes, IPad.	Every day for social media.
5	Yes	Wifi	Yes, IPad and telephone- I have no PC.	Daily for communications and entertainment only.
6	Yes, but I don't use it.	I don't use it.	No, but my wife does.	I don't but my wife does this ion my behalf.
7	Yes	At home and via mobile phone (4G).	Yes. Mobile phone and IPad. I don't have a PC.	Every day, mainly for entertainment, communications, banking, emails but not eGov stuff.
8	Yes	At home and via mobile phone (4G).	Yes. Mobile phone and IPad. I don't have a PC.	Every day whilst I'm awake. Entertainment, communications, online banking, and emailing. I don't use eGov at all.
9	Yes	At home and via mobile phone (4G).	Yes, Smart mobile phone. IPad, but I don't use it. No PC.	I use it everyday for communications, leisure, online banking, emails. I refuse to use eGov as every time I attempt to use it, I have bad luck. It's always going down and never works.

Overall Views >>>>>>	What are the emerging patterns, reoccurring themes and concerns? List these below.			
	All users have access to internet facilities.	Most tenants will use their iPad or Smart phone should they require access to the internet. Very few have Personal Computers (PCs).	All households own either a Smart phone or iPad.	Users tend to have daily access for mainly the following: Keeping in touch with family and friends via social media; entertainment; communications; online banking and payment of bills; email. <u>Very few actually use it for eGov.</u>

Summary of Part 3- Public Service Engagement via Government Online Digital Platform (E-Gov)

Reply by Tenants >>>>>>	Questions							
	Have you used Government online services (E-Gov) when seeking a public service eg, application for Government Housing, seeking a new Passport, making a health appointment, etc?	Have you experienced any difficulties whilst using the E-Gov digital platform?	What have been the main problems encountered with E-Gov?	Have you still been able to successfully carry out a request/submission whilst having experienced problems using E-Gov?	Has a friend or relative had to assist you in order to submit any request?	How user-friendly would you rate the digital interaction experience through E-Gov?	Does the Government Online Services digital platform (E-Gov) work for you, or would you rather prefer face-to-face public counter service?	If E-Gov hasn't worked for you in the past, is there any further help/assistance that you think would be useful to utilise online services? If yes, can you please clarify further.
1	Yes- application for a Passport.	Yes though I was assisted by my son who was able to complete the process.	I found the process confusing and had trouble when attempting to download files, photo, etc.	No- had to ask my son to complete the process on my behalf.	Yes- my son.	Can't rate it as I asked my son to complete the process for me.	No it does not work for me. I prefer face to face interaction.	I don't think so.
2	My granddaughter uses eGov for me unless I can use the service face-to-face at a Departmental counter.	I don't have any confidence in utilising the service directly myself and feel much safer asking my granddaughter to undertake this as she is well versed.	I felt I would make a mistake in the process.	Yes though this was accommodated through by granddaughter.	Yes- my granddaughter.	I cannot rate it because I haven't used it directly myself.	Definitely prefer face-to-face at a public counter.	At my elderly age, it is a waste of time and effort.
3	I have never used eGov. I can reply to emails but am unable to compose them.	Yes, that's why I don't use it.	None- not tried it as I wouldn't know how and where to start the process.	Yes by face-to-face interaction at a public counter.	No	I cannot rate it as I don't use it.	Only face-to-face.	None

Continued Summary of Part 3- Public Service Engagement via Government Online Digital Platform (E-Gov)

Reply by Tenants >>>>>>	Questions							
	Have you used Government online services (E-Gov) when seeking a public service eg, application for Government Housing, seeking a new Passport, making a health appointment, etc?	Have you experienced any difficulties whilst using the E-Gov digital platform?	What have been the main problems encountered with E-Gov?	Have you still been able to successfully carry out a request/submission whilst having experienced problems using E-Gov?	Has a friend or relative had to assist you in order to submit any request?	How user-friendly would you rate the digital interaction experience through E-Gov?	Does the Government Online Services digital platform (E-Gov) work for you, or would you rather prefer face-to-face public counter service?	If E-Gov hasn't worked for you in the past, is there any further help/assistance that you think would be useful to utilise online services? If yes, can you please clarify further.
4	Never	I have never used it so haven't experienced any problems.	I wouldn't have a clue on how to use it.	No	Yes	I cannot rate it as I don't use it.	No. because I've never used it.	I'm not willing to learn at this late stage of my life.
5	No	None because I don't use eGov.	None because I don't use eGov.	No	No, nobody to help.	I don't rate it because I don't use it.	Face-to-face at a public counter or telephone.	I would like to learn and be taught on how to use eGov.
6	No	None because I haven't used it.	No problems because I don't use it.	Not applicable.	Not applicable.	Never used it so I can't rate it.	Face-to-face interaction.	No, as I'm simply not interested in digital technology.
7	No. Have not wanted to go into this as I'm not interested.	None because I haven't used it.	No problems because I don't use it.	Not applicable.	Not applicable.	Never used it so I can't rate it.	Face-to-face interaction.	I wish we had a system that is very User Friendly, fool proof and specifically built for Pensioners.
8	No. Not interested to go into eGov.	None because I haven't used it.	Not applicable.	I don't use it so I don't have any problem.	None	Never used it so I can't rate it.	Face –to-face or telephone.	I wish we had a User Friendly system that works.

Continued Summary of Part 3- Public Service Engagement via Government Online Digital Platform (E-Gov)

Reply by Tenants >>>>>>	Questions							
	Have you used Government online services (E-Gov) when seeking a public service eg, application for Government Housing, seeking a new Passport, making a health appointment, etc?	Have you experienced any difficulties whilst using the E-Gov digital platform?	What have been the main problems encountered with E-Gov?	Have you still been able to successfully carry out a request/submission whilst having experienced problems using E-Gov?	Has a friend or relative had to assist you in order to submit any request?	How user-friendly would you rate the digital interaction experience through E-Gov?	Does the Government Online Services digital platform (E-Gov) work for you, or would you rather prefer face-to-face public counter service?	If E-Gov hasn't worked for you in the past, is there any further help/assistance that you think would be useful to utilise online services? If yes, can you please clarify further.
9	Yes	Always have difficulties and never able to get into it and do what's needed. I refuse to use it. Face-to-face is best. Persons who have attended me at the counter get 10 out of 10.	System goes down many times. Unable to complete tasks I wish to complete. It is not a User Friendly system. I now refuse to use eGov and go to the public counter instead.	Never through eGov.	I haven't bothered to ask.	Not User Friendly at all.	Face-to-face as for me, personally, eGov has not worked. I either call by telephone or email.	eGov system has to be fool proof and working all the time. It should be User Friendly and include layman's language.

Overall Views >>>>>>	What are the emerging patterns, reoccurring themes and concerns? List these below.							
	Most tenants do not use eGov.	All users have encountered issues and challenges when trying to access eGov. Some even refuse to use it altogether as they have no confidence that their efforts will reach a successful conclusion. Also they have no confidence in the system.	Process is confusing irrespective of guidelines provided. Essentially, users do not find eGov User Friendly	Most tenants do not use eGov because they find the process complicated. They do not understand how to properly complete sections and the whole engagement becomes a frustrating exercise	If push comes to shove, tenants will approach a friend or family member to assist and undertake eGov interaction on their behalf. In absence of this, users simply will not bother.	Most if not all users are unable to give a rating of eGov because they simply do not use it.	Definitely not. All tenants prefer face-to-face interaction via the public counter.	Majority not interested at late stage in life to begin learning something new which is not understood. <ul style="list-style-type: none"> - Minority wish to learn, be taught and shown to access/use eGov. - Process must be User Friendly which all confirmed was not the case. - eGov has to be 'fool proof' applying layman's language. - No training given centrally in order to help support citizens on how to use eGov. So they are unable to use it. - Unlike the UK, walking distances locally are in close proximity, encouraging tenants to visit public counters and, therefore, eGov is unnecessary.

APPENDIX C:
INDIVIDUAL INVESTIGATIONS – FULL TEXT

REPORT ON CASE NOs 1231/1232/1233/1234/1238/1239/1240/1242/1243/1245

Complaint(s) against the Department of Social Security (“DSS”) in relation to delays of over five months as well as lack of replies/updates while processing their applications for a U1¹ Certificate (“U1”) which they required further to having become unemployed in Gibraltar

Complaint(s)

In late 2020, the Ombudsman began to receive complaints from Cross-Border workers against the DSS in relation to delays of over five months as well as lack of replies/updates while processing their applications for a U1² Certificate (“U1”) which they required further to having become unemployed in Gibraltar. The situation was aggravated by the fact that public counters were closed as a result of the Covid-19 Pandemic and the relevant section of the DSS was allegedly not answering the telephone numbers provided.

Given the number of complaints received and the factual similarities of these complaints, the Ombudsman considered that the public interest would be best served by way of a systemic report on the matters which gave rise to their grievances.

Background & Summary of Complaints

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

¹ The U1 form certifies an employee’s period of insurance in another EU country that will be taken into account for the calculation of unemployment benefit.

² The U1 form certifies an employee’s period of insurance in another EU country that will be taken into account for the calculation of unemployment benefit.

³ The E108 form is a notification of suspension or withdrawal of the right to sickness and maternity insurance benefits in kind.

Complaint 1

Complainant 1 became unemployed on 1st July 2020 and applied by way of email for a U1 and an E108 form on the 14th July. In the same email, she specifically requested for an acknowledgment/receipt of her application but this request never materialised. She further explained that since she had had no news from the DSS, in early August, she sought help from her previous employer who made enquiries on her behalf. At this point, the DSS advised her previous employer to resend Complainant 1's application and assured him that the E108³ had already been sent to the relevant Spanish authorities.

On the 29th September, given that Complainant 1 continued to find it impossible to establish contact with the relevant section of the DSS via telephone, coupled with the fact that the Spanish Social Security ("SSS") insisted that no E108 had been provided by the DSS, Complainant 1 lodged her complaint with the Ombudsman and urged for his intervention. She highlighted the fact that she had now been unemployed for three months without recourse to unemployment benefits in her country of residence given that the DSS had not provided her or the SSS with the documents she required.

Complaint 2

Complainant 2 had been Complainant 1's colleague and had also become unemployed on the 1st July 2020. Her previous employer had applied for her U1 in early August and given that by the 29th September, almost two months later, neither her previous employer nor Complainant 2 had been contacted by the DSS confirming that her request for a U1 was being processed, she lodged her complaint with the Ombudsman. She explained that without her U1, she was unable to start the process for the claim of unemployment benefit in Spain.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of the first two complaints received in relation to the delay in processing U1's and requested his comments on the 2nd October 2020.*

Complaint 3

Complainant 3 was aggrieved as he had applied for a U1 using the U1 Request Box placed outside the DSS in early June 2020. He explained that the DSS had contacted him via email on the 6th July advising him to obtain some additional information from his previous employer, something which he provided the following day, yet, by October, almost four months later, he had still not received his U1 or replies to his emails requesting updates dated 17th August and 1st September. Complainant 3 informed the Ombudsman that further to his unanswered emails, he tried to contact the DSS via telephone on a weekly basis, yet, his calls were never taken and the answering machine would not allow for him to leave a message but instead advised to “*call later*”. He alleged that after numerous unsuccessful attempts in contacting the DSS with his Spanish telephone number, he used a local telephone number and his call was answered. Complainant 3 was aggrieved by the fact that calls from his Spanish number had not been answered by the DSS together with the delay encountered without the recourse to unemployment benefits in Spain and therefore lodged his complaint with the Ombudsman.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of the third complaint lodged in relation to the delay in processing U1's and requested his comments on the 2nd October 2020.*

Complaint 4

Complainant 4 first applied for a U1 via email dated 3rd June 2020 further to becoming unemployed on the 23rd May. She explained that after a couple of weeks, she followed-up on her request via telephone call and asked that the DSS issue her with a receipt (“Receipt”) confirming that she had indeed applied for a U1. According to her, the DSS issued applicants with an initial Receipt as proof of application prior to the provision of the U1. She believed that the Receipt was only issued by the DSS once they had ascertained that the documents provided for the purpose of the U1 were in order, as possession of said Receipt, qualified applicants to apply for unemployment benefit in Spain albeit at a reduced rate. This, she elaborated, was done on the premise that applicants had to provide the SSS with the U1 within an established period

of time of 4 months from the date of application. By early July, Complainant 4 was provided with a Receipt backdated to the date she initially applied (3rd June). and warned her that the U1 would take around three months.

By late September, seeing as she had still not received her U1, Complainant 4 contacted the DSS via telephone at which point she was allegedly informed that since the reason for her dismissal was due to bad performance at work, she was not entitled to a U1. Aggrieved by these allegations which she denied and described as inaccurate, coupled with the fact that she was already previously given a Receipt to prove that the documents provided to the DSS were in order, for the preparation of a U1, as well as her desperate need to receive said U1 for the continuation of her unemployment benefit which she had been receiving in Spain by providing her previously issued Receipt, Complainant 4 lodged her complaint with the Ombudsman.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of Complainant 4's grievance and requested his comments on the 2nd October 2020.*

Complaint 5

Complainant 5 applied for a U1 via email on the 8th October 2020 and chased the DSS for a Receipt a week later. He had no acknowledgement from the DSS and therefore emailed them again on the 21st October attaching the documents a second time and urging the DSS to confirm that they had the necessary documents to process his request. Seeing as he continued to have no replies from the DSS, he emailed them two more times on the 12th and 16th November and urged them for an update given that he was running out of money and required the Receipt to start the process of receiving unemployment benefits in Spain.

On the 17th November, Complainant 5 contacted the Ombudsman and highlighted that the Christmas period was now approaching and he remained with no recourse to funds in Spain due to the lack of documents required from the DSS in Gibraltar. The Ombudsman empathised with Complainant 5's plight. He immediately added Complainant 5 to the list of U1complaints and corresponded with the DSS on his behalf.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of the 5th complaint lodged in relation to the delay in processing U1's and requested his comments on the 19th November 2020.*

Complaint 6

Complainant 6 applied for a U1 via email dated 24th June 2020. In the same email, he asked that the DSS inform him if the documents contained in his application were in order so that his U1 could be processed. By the 21st August, seeing as he had no reply or acknowledgment from the DSS, Complainant 6 emailed them once again attaching his previous email and asking the DSS *"Please, I need to know if you need any other documents"* and again on the 5th October *"I need the U1, please tell me if I need [to submit] any more documents"*.

Complainant 6 waited a month for a reply to his last email and contacted the Ombudsman's office on the 9th November to lodge his complaint given that he had now been waiting for over four months for his request to be acknowledged and during all that time, he remained without recourse to any benefits in Spain.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of the 6th complaint lodged in relation to the delay in processing U1's and requested his comments on the 20th November.*

Complaint 7

Complainant 7 applied for a U1 for herself and her mother on the 15th September 2020 and contacted the Ombudsman for advice on the 30th October. She claimed that a staff member at the DSS had verbally informed her that her application for a U1 would take up to six months to be processed. Complainant 7 had already begun receiving unemployment benefits in Spain by providing her Receipt from the DSS yet, according to her, after three months of receiving unemployment benefits, the SSS would automatically stop the payments if a U1 form was not provided.

Given that as per established Ombudsman procedure, Complainant 7 had still not formally complained about the expected delay to the DSS, coupled with the fact that she still had until December to obtain her U1 for the SSS, the Ombudsman advised her to make the Director aware of her grievance in the first instance, to set out her complaint regarding the delay envisaged and revert, should a solution not be provided.

[Ombudsman Note]: *The Ombudsman had contacted the Director on the 3rd November to alert him of the fact that he had received recent enquiries from aggrieved service users who had been advised by DSS that U1's would take up to six months to process. He informed the Director that the service users had all been advised to, in the first instance, direct their complaints to the attention of the Director via the Department's generic email dss@gibraltar.gov.gi.*

On the 19th November, Complainant 7 reverted to the Ombudsman and stated that although she had sent her complaint to DSS for the attention of the Director as advised, she had still not had a reply or acknowledgment from the department. The Ombudsman accepted her complaint and advised her that he would now correspond with the DSS on her behalf.

On the 2nd December, Complainant 7 informed the Ombudsman that the DSS had contacted her requesting more documents. Complainant 7 was unhappy with the fact that DSS required more documents two and half months after providing her with a Receipt and verbally informing her over the phone that they had everything required to process her U1.

Complaint 8

Complainant 8 had applied for a U1 via email dated 5th August 2020 and provided further documentation as a result of having chased her request via telephone on the 15th August. She was provided with a Receipt which she collected from the DSS shortly after. She stated that this enabled her to receive unemployment benefit from the SSS for up to three months at which point she needed to provide them with a U1 from the DSS or unemployment benefits would cease.

On the 2nd September, Complainant 9 received what appeared to be an automatic response email acknowledgment from the DSS stating;

"Thank you for your email, the contents of which have been noted. Due to the continuing high volume of queries, it is taking us slightly longer than normal to reply to emails. Unfortunately, we are currently unable to provide you with a time frame as to when it will be processed. However, I can assure you that your application will be dealt with as soon as possible.

We would be grateful for you to please refrain from sending repeat emails as this may cause unnecessary duplication and which can lead to delays to the process in general”.

On the 21st October, seeing as she still had no news regarding her U1, Complainant 8 emailed the DSS once again requesting an update and chased the matter one last time on the 26th October. As a result, she was contacted by the DSS via telephone call on the 27th October where she was informed that she was still missing some paperwork. She scanned and supplied the DSS with the required documents via email on that same day and urged them to confirm that the paperwork was now in order. She urged the DSS to process her request as the SSS had now given her a deadline to provide her U1 by the 17th November, otherwise unemployment benefits would be halted.

By the 16th November, seeing as the DSS had still not provided her with a U1, Complainant 8 lodged her complaint with the Ombudsman, urged him for his intervention and informed him that she did not understand how she had been provided with a Receipt by the DSS, only to be notified almost three months later that some of the documents required to process her U1 remained missing.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of the 8th complaint lodged in relation to the delay in processing U1's and requested his comments on the 19th November.*

Complaint 9

Complainant 9 applied for her U1 via email dated 13th August 2020 and wrote to the DSS complaining about the four months delay she was experiencing further to the advice received from the Ombudsman on 23rd November, in that she needed to share her grievance with the Director in the first instance. On the 3rd December, Complainant 9 lodged her complaint with the Ombudsman as even though she had received an automatic electronic reply dated 23rd November stating that the DSS would reply to her within the next 10 working days, her U1 had still not been issued and she had still not been contacted by the DSS.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of the 9th complaint lodged in relation to the delay in processing U1's and requested his comments on the 6th December. Given that Complaints of this nature continued to be lodged at the Ombudsman's office, a meeting was arranged with the Director and the Ombudsman to further discuss what appeared to be a systemic problem within the DSS. The meeting took place on the 11th December 2020.*

Complaint 10

Complainant 10 applied for a U1 on the 6th March 2020 at DSS counters prior to their closure due to the Covid-19 Pandemic. On the 7th September, he was contacted via email where he was asked for a P7A (he had allegedly previously supplied the DSS with his P7A at the counter together with his termination of employment). Nevertheless, Complainant 10 provided the DSS with a copy of his P7A on the 9th September.

By November (two months later), given that he had still not been contacted by the DSS, he allegedly stopped by the DSS office albeit still remaining closed, and the security guard informed him (after asking the pertinent DSS clerk for information), that the DSS would provide him with a U1 within two weeks. On the 14th December (four weeks later), Complainant 10 lodged his complaint with the Ombudsman given that he had been waiting for his U1 for almost 10 months and he had lost faith in that the DSS would provide him with a U1, if at all.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of the 10th complaint lodged in relation to the delay in processing U1's and requested his comments on the 14th December.*

Complaint 11

Complainant 11 explained that she had applied for a U1 in early August 2020 and begun receiving a small benefit from the SSS sometime in November. She stated that these payments were made pending the provision of the U1, and that her understanding was that the SSS would backdate the remainder of payments she was entitled to, given that the U1 confirmed the dates insured which allowed for an accurate calculation of the monies Complainant 11 should receive.

According to Complainant 11, she had emailed the DSS sometime in November, December and 5th January 2021, but it was not until 21st January 2021, once she lodged her complaint with the Ombudsman, that the DSS contacted her and sent her the U1 she required. According to Complainant 11, the DSS had informed her that they had not received her original application via email as a result of some problems they had encountered with their email server back in August 2020. Complainant 11 accepted the DSS's explanations, yet she expressed her frustrations with the DSS in her email to the Ombudsman. She commented; *"I received a message this morning from the U1 department of the DSS, to whom I have replied this afternoon, resending my original email and attachments... As mentioned in that email, I had sent further messages to them chasing up my application in the intervening months, I am disappointed that these extra emails did not provoke any further action at the time they were sent."*

Complaint 12

Complainant 12 applied for a U1 via email dated 25th August 2020 and was provided with a Receipt via email on the 6th September (backdated to 25th August). He allegedly contacted the staff member who had sent him the Receipt via email on two occasions, sometime in November 2020 and another in January 2021. According to him, he also called the department on several other occasions only to be informed that the person dealing with his request was working from home and a contact number could not be provided. On the 2nd February 2021, Complainant 12 lodged his complaint with the Ombudsman given that he had been waiting over five months for his U1 to be processed and he desperately needed a U1 to submit at the SSS. Complainant 12 urged the Ombudsman to intervene on his behalf as he had now enrolled in university and depended on his monthly payments from the SSS.

[Ombudsman Note]: *The Ombudsman wrote to the Director informing him of the 12th complaint lodged in relation to the delay in processing U1's and requested his comments on 2nd February 2021.*

Complaint 13

Complainant 13 applied for a U1 via email on the 13th August 2020 and chased his request via telephone calls to the DSS. On the 3rd December 2020, he was advised by the Ombudsman to send his formal complaint to the Director and to revert should he have no replies. Complainant 13 contacted the Ombudsman once again on the 2nd February 2021 stating that despite his formal complaint in December, he remained without a U1 and the small subsidy the SSS had been giving him for the four previous months was now coming to an end unless he provided the SSS with a U1. At this point, the Ombudsman agreed to correspond with the DSS on his behalf.

Investigation and Findings

As stated in the above Ombudsman Notes throughout the Summary of Complaints, the Ombudsman contacted the Director requesting his comments for the thirteen individual complaints in the order they were being received.

In his initial reply to the complaints lodged by Complainant's 1 to 4 dated 19th October 2020, the Director empathised with their similar positions experiencing delays in obtaining their U1's. He highlighted that since the closure of DSS counters in March 2020 as a result of the Covid-19 pandemic, the number of telephone calls and emails received daily, *"inundated"* the section responsible for the issuing of U1's. He stated, *"at times, I have a number of officers who are practically answering calls and emails all day to the point where the process can be paralysed by the high volume of calls and emails received leaving little time to process the actual work required to issue these certificates"*.

The Director further explained that as a result of the backlog accumulated due to the closure of the counters, he had redirected some of the DSS resources to tackle the problem of U1's in the short term. He also informed the Ombudsman that the DSS had recently introduced telephone hours for the U1 section from 9am to 1pm, after which an answering machine message advised service users to contact the DSS via email or to call during the stipulated times. *"This should offer some respite and allow us to make some progress with the backlog"* The Director finally explained that although the DSS automated email reply urged applicants to refrain from sending repeat emails as this led to unnecessary duplication and which according to him, added further delays to the process in general, duplicate emails remained common.

At this point, the Director informed the Ombudsman that Complainant's 1 and 2 had already been provided with the outstanding U1 as a result of the Ombudsman's first contact with him on the 2nd October.

In reply to Complainant 3's allegation that the DSS did not answer calls from Spanish numbers, the Director strongly refuted this allegation stating that; *"Given the nature of the U1 request and the purpose of this certificate, most of our calls are in fact from Spanish numbers"*. The Director confirmed that Complainant 3's U1 would be sent to him the following day.

In regard to Complainant 4's position, where she was informed by a member of staff that she was not entitled to a U1 three months after she had been provided with a Receipt which she used to apply for unemployment benefits at the SSS, the Director confirmed that the information she was allegedly provided with verbally, was indeed incorrect and assured the Ombudsman that a U1 would be sent to Complainant 4 imminently. The Director also clarified that contrary to Complainant 4's statement in that Receipts were issued once the DSS ascertained that all paperwork required for a U1 were in order, the actual process is for DSS to provide a Receipt to every individual applicant upon submission of a U1 application form regardless of whether or not all paperwork required for the U1 are available on time application.

On the 3rd November, further to receiving complaints from Complainants 5, 6, and 7, the Ombudsman alerted the Director of the influx of enquiries/complaints received from the individual applicants and the advice given that they should direct their grievances to the attention of the Director in the first instance, the Director agreed to deal with these complaints and informed the Ombudsman that he was taking the necessary measures to alleviate the delays. He stated *"I have also received positive news that further staff will be shortly deployed to the DSS which will certainly help us deliver a more efficient service. I understand the anxiety that this is causing our service users and I am not happy with the lengthy delays being experienced"* The Director assured the Ombudsman that the new measures taken would be noticeable in the upcoming weeks.

Given that by December 2020, the Ombudsman continued to receive enquiries regarding U1 delays from service users and the fact that Complainant 9 had lodged her complaint on the 6th December, a meeting was set up with the Director and the Ombudsman to further discuss the matter on the 11th December. During the meeting, the Ombudsman asked the Director whether unemployment had seen a rise as a result of the Covid-19 Pandemic and whether this had been the cause for the apparent collapse in the U1 process. The Director clarified that this was not the case and the DSS continued to receive the same amount of U1 requests they did pre-Pandemic which amounted to roughly 120 monthly requests. The Director relayed the departmental struggles that the DSS had already been experiencing prior to the start of the Pandemic due to what he described as *“a very high turnover of staff including the most experienced officer in dealing with U1 claims having retired”*. He explained that the DSS was at the time, largely being staffed by new officers particularly in the section that dealt with U1’s and hence his recent diversion of temporary resources and experience which he had advised the Ombudsman Office of earlier that month.

The Director highlighted the difficulties his department had encountered as a result of the Pandemic and described the challenges brought following the sudden closure of their public counters. He stated that at the start of the Pandemic, the DSS paused some of its services and redeployed its staff for the handing out of cash payments to vulnerable service users subsequent to public health advice to stay at home. The Director also explained that additionally, due to service users having to now contact the DSS via other means other than the public counters, the DSS had experienced problems with their email server in August 2020 and according to him, continued to suffer IT related problems whereby they did not receive emails when their dedicated email inbox was full. He commented that on many occasions, service users emailed their original applications containing large files every time they contacted the department and this caused an overload in within their email system. These sudden changes, coupled with the redeployment of other staff members to the Gibraltar Health Authority, the Statistics Office and the Driver & Vehicle Licensing Department as well as the self-isolation rules which his staff members were also subject to as ordinary citizens, together with the initial processing time of 8 weeks that the DSS already had with regard to issuing of U1’s, had according to the Director led to an accumulation of requests and the inevitable backlog.

The Director reassured the Ombudsman that the department had recently been provided three new members of staff which allowed him to redistribute his resources in order to alleviate the U1 delays and furthermore confirmed that all complaints (Complainant's 1 to 9) brought to his attention by the Ombudsman had now been provided with the outstanding U1. The Ombudsman was grateful for the Director's assistance.

On the 14th December, the Ombudsman contacted the Director bringing to his attention Complainant 10's grievance; that he had been waiting almost 10 months for a U1. Without favouring Complainant 10's plight, the Ombudsman urged the Director to prioritise Complainant 10's request in light of the excessive delay experienced. The Director replied on the 21st December informing the Ombudsman that Complainant 10's U1 had been expedited and updated him of the fact that the new members of staff were settling well and clearing the existing U1 backlog. The Ombudsman requested further specific information relating to Complainant 10's ten month wait in an effort to further understand the DSS's position and pursued the matter until March 2021 but this information was not forthcoming. The Ombudsman took into consideration the lockdown imposed by government once again in January 2021 and the impact this must have had on DSS staff as per the previous lockdown, and as such, allowed the matter to rest with regards to Complainant 10 given that he now had the U1 he required.

Notwithstanding the above, complaints of delay in receiving U1's, continued to be common at the Ombudsman's office throughout 2021. During one of his telephone calls with the Ombudsman's office in January 2021, the Director informed the ombudsman that the new members of staff provided which had allowed him to redistribute resources to alleviate the U1 section a month earlier, had now been once again redeployed by government together with a member of staff from his previous compliment. He had now lost 4 members of staff together with a senior member of the team having left the department with various other officers, taking their skills and expertise with them. This, coupled with the January 2021 lockdown had again brought disruption to the DSS, and inevitably affecting the U1 section.

On the 2nd February 2021, the Ombudsman contacted the Director to alert him of Complainant 12's predicament that he had been waiting over five months for his U1. Although a reply was never forthcoming in relation to his specific complaint,

Complainant 12 informed the Ombudsman that he had received the U1 required, on the same day he complained to the Ombudsman.

Furthermore, on the 12th February 2021, Complainant 5 informed the Ombudsman that contrary to the advice given to him in mid-December 2020, that his U1 would be issued shortly, he continued to wait for the U1 to be provided to him by the DSS and assumed that the January 2021 lockdown had caused him a further delay. The Ombudsman corresponded with the Director on this matter which resulted in Complainant 5 being provided with a U1 on the 16th February 2021. At this point, the Director apologised for the confusion and updated the Ombudsman that the U1 backlog had been pushed back four/five weeks. He commented that this was *“the best it had been in several years”*, yet, informed the Ombudsman that this had been achieved at the expense of accumulating backlogs in other areas/benefits as he had anticipated.

With regard to Complainant 13, the office of the Ombudsman liaised with the DSS and he was informed on 3rd February 2021 that DSS required a P7A form before they could process his application. It was again, as a result of the Ombudsman’s intervention, five months after initially applying for his U1 that Complainant 13 became aware of this requirement. He later informed the Ombudsman that he had been provided with a completed U1 on the 3rd February 2021, a day after the Ombudsman’s contact with the DSS.

Conclusions and Outcome

From the documentary evidence provided to the Ombudsman by Complainants 1 to 13, it was clear that as service users requiring a vital piece of documentation for the receipt of benefits in their country of residence, further to becoming unemployed in Gibraltar, the DSS had failed them by subjecting the complainants to extreme delays and lack of information. Although the Ombudsman recognised and accepted that the Covid-19 Pandemic had wholly affected services in Gibraltar, it was clear that, as stressed by the Director, the number of redeployments, reshuffling and the retiring of senior staff members had significantly impacted the DSS section responsible for issuing U1’s, where in some cases, complainants were left with no recourse to benefits whatsoever which added unnecessary stress to the Complainants’ lives during such unsettling times.

As it stood, some complainants were provided with a Receipt as soon as they applied for their U1 and others endured longer delays in having their applications acknowledged and Receipts issued.

Notwithstanding the above, the Ombudsman was grateful for the prompt attention afforded to him by the Director every time he had made him aware of the grievances put to him by Complainants 1 to 13 and thanked the Director and his staff for their assistance in resolving the individual issues faced by them.

Classification: Sustained

The Complaints are sustained due to failure to provide timely information and extreme delays in providing essential documents required for the receipt of benefits in a foreign jurisdiction. Not only did the individuals suffer as a result of such excessive delay at a time of personal need, but consideration should also be given to the fact that such set-backs, tarnish that department with a negative image, both domestically and abroad, an image which would be unjustified given that the DSS is comprised of hard-working staff.

Ombudsman Update 2022

Further to compiling an initial draft of this report, the Ombudsman began receiving complaints of U1 delays in early 2022. Three complaints of delay of over 5 months were received between January and February 2022. At this point, the Ombudsman learnt of the DSS's further struggles which resulted in the DSS's entire staff being relocated to work from home in January 2022 as a result of their office building being deemed unsafe due to structural issues.

They subsequently entered into industrial action from 9th May to 20th June 2022 given that the government had failed to provide them with alternative premises and DSS staff continued to work from home while some employees had been temporarily provided with post office counters and a room from which to deliver social benefits/payments to service users.

During the period of May 2022 to September 2022, the Ombudsman received daily inquiries from service users struggling to contact them and a further two complaints relating to delay in providing U1's. The Ombudsman had been informed by the newly appointed Director that although the DSS was providing payments and recording every email and enquiry sent to the department, industrial action meant that they were not replying to queries and producing U1 certificates. The Ombudsman was sorry to note this stance regarding U1's but accepted that the decision to go into industrial action could not have been taken lightly.

The Ombudsman however wished to write about one of the complaints lodged during the time when the DSS was undergoing industrial action which he considered a perfect example of how failure to provide U1's on time, could have grave consequences for service users. Complainant 14 had applied for a U1 in August 2021 and although he was provided a Receipt with which he used to obtain a reduced SSS subsidy, by June 2022, the SSS had contacted him to recover the monies given that a U1 had never been provided to the SSS. Complainant 14 was eventually furnished with a U1 further to the Ombudsman's intervention in July 2022. He however informed the Ombudsman that the U1 provided stated that he had left his employment in Gibraltar out of his own accord and hence he had been asked by the SSS to repay the subsidy given to him the previous year, regardless. According to Complainant 14, the SSS informed him that leaving employment at an individual's own accord, did not entitle them for the receipt of unemployment benefit under SSS criteria in Spain. He provided the Ombudsman with all the documents from the SSS and urged that the Ombudsman highlight his case, as he believed that the DSS could have advised him of his entitlements when he initially applied for the U1 and was issued a Receipt or failing that, had they provided him with a U1 soon after he had applied, the SSS would have alerted him of the lack of entitlement to unemployment benefit at an earlier stage. As it stood, in August 2022, Complainant 14 had begun repaying the SSS for the subsidy he had received the previous year which had amounted to 4635 Euros.

In late September 2022, the Ombudsman met with the new DSS Director who had been appointed in April 2022 amidst industrial action. In that meeting, various issues were discussed including the systemic U1 problem. The newly appointed Director shared his plans for the restructure of the DSS to improve its service as a whole but also to improve the processing times with regards to U1's. The Ombudsman agreed to include this update regarding the difficulties

encountered by DSS in 2022 and share his findings with regards to U1 requests together with recommendations before publishing this report.

Ombudsman Update 2023

In December 2022, the Ombudsman was informed by the previous Director of the DSS, that the new Director appointed in April 2022 had moved to a different department and that he had now once again returned to the DSS as acting Director. According to him, by December 2022, a number of officers had left DSS, including four from the section that processed U1's UBs, Maternity Allowance, and Maternity Grants. He also highlighted that the Executive Officer of this particular section had been given an internal transfer, and informed the Ombudsman that of the four temporary relief workers received to assist with the U1 backlogs in 2021, one was a supply teacher who left the DSS immediately, the other was incarcerated following charges made by the RGP, and the remaining two had their contracts expire in May 2023. The Director concluded his update dated 2nd May 2023, by stating that it was once again evident that the DSS had *"suffered yet another drain of experience, and continues to carry various vacancies across the board"*.

Recommendations

The Ombudsman recommended that H.M Government of Gibraltar provide the DSS Director with their full support, namely the additional and competent staff necessary and ensure that the department fulfils its function effectively and that current staff is not overwhelmed with the volume of applications and subsequent complaints.

REPORT ON CASE NO 1254

Complaint against the Gibraltar Health Authority (“GHA”) in relation to an investigation the Complainant sought into his elderly late mother’s death (“his Mother”) over which he had received no reply and as a result, no subsequent closure

Complaint

The Complainant was aggrieved because he presented a complaint to the GHA’s Patient Liaison and Advocacy service (“PALS”) subsequent to his Mother’s death and after a year had elapsed, he had still not received any substantive replies.

The Complainant was aware of the fact that PALS was understaffed at the time and that the shortage was affecting the investigation into his mother’s death.

He sought explanations in relation to the alleged poor diagnosis of his Mother’s condition, alleged deficient treatment, delays and lack of communication and transparency.

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 his Mother (Mrs Antonia Ramagge) had passed away on the 18th June 2020 after having suffered from increasing acute epigastric pains over the course of the preceding five weeks.

The Complainant set out the medical history as follows (May-June 2020):

-GHA doctors attended to his Mother between early/mid- May to the 18th June 2020. House calls were also made throughout the period and five different GHA (Primary care) doctors examined her. The Complainant complained that no referrals were made for endoscopic examination nor were any stools/urine samples taken. Prescriptions for *Buscopan*, *Omeprazole*, *Ondansetron* and *Bethahistine* were given.

-On the 4th June, the Complainant took his Mother to Primary Care where she was seen by another GP (again, no referral was made). Subsequently, upon his Mother feeling poorly at home, the Complainant called an ambulance. She was taken to A&E- duty doctor said that the blood test showed no markers. Diagnosed as gastritis and sent home.

-House call on the 11th June. Requested urine and stool samples. The Complainant is of the opinion that this “*was too little too late*”

-On the 12th June, his Mother suffers from acute epigastric pain. Second ambulance was called. Taken to A&E. Another blood test and x-ray were performed. According to doctors there were still no markers present- diagnosed as gastritis- sent home yet again.

-13th June; a third ambulance was called since his Mother was in pain and could not stand up. ECH was taken and pulse was found to be low- taken to A&E in the ambulance. Complainant **insisted** that she be admitted. Doctors said surgeons would see her although it took them 4 hours with which the Complainant expressed dissatisfaction.

-13-15th June admitted to intensive care to monitor pulse but according to the Complainant nothing was done to target the pain.

-15th June Moved to Dudley Toomey Ward. Still felt a lot of pain. Scan taken.

-16th June taken back to ICU because of arrhythmia.

-According to the Complainant the staff at Intensive Care did not know what GP's had seen her, whether action had been taken at A&E etc (ICU nurse allegedly said this was down to parallel computer systems- one at Primary care and the other at the hospital, and that this caused confusion and delays).

-17th June, the Complainant denounced the lack of communication and requested an update. Patient taken to Spain for an MRI and again, the result obtained was not disclosed.

-18th June the Complainant was seen by a specialist at 12pm and informed that his Mother's medical condition was very serious and that she had relapsed overnight. She was taken to the operation theatre for an endoscopy in order to establish the state of her gut. By then, it has been established that she had little hope of survival as they already suspected a blockage of the mesenteric artery (the second major branch of the abdominal aorta) and necrosis of the intestines.

-The Surgeon stated that if there was still blood flow, they could transfer her to a nearby Spanish hospital ("Quiron Salud") for a stent insertion. However, an hour later, he returned to confirm that there was nothing they could do, as the arteries were indeed blocked and the intestines were "dead." He confirmed she would die in a matter of hours, which she did.

The Complainant complains that there was a lack of communication between departments. Additionally, that numerous doctors at primary care and at the hospital failed to diagnose his Mother's symptoms (as set out in her death certificate), which *"had been spotted by me and mentioned to the GP's throughout."*

The Complainant was baffled as to why *"it took a lay person like me just seconds to find out these symptoms on the internet, so why did the GHA staff not diagnose and treat her illness in time for a stent to be implanted, many weeks before she died?"*

The Complainant also stated that on the day his Mother died, he asked a senior doctor why she was not diagnosed or treated earlier, and he replied that tests, x-rays or scans showed no signs of a "cause". The Complainant found it hard to believe that not even an MRI showed signs of a blockage.

As a result of all of the above, culminating in the unfortunate outcome of his Mother's death, the Complainant wrote to PALS setting out his complaint (attaching the chronology and detailed factual background as set out hereinbefore), and requesting that they investigate the following allegations:

- Poor diagnosis and treatment, leading to delays that could have resulted in his Mother's death despite her showing clear symptoms early on?
- Lack of communication between GHA departments/wards regarding treatment and medication which again caused unnecessary delays?
- lack of transparency in relation to tests results which the Complainant would have liked to have had sight of
- Why was a post mortem not carried out despite an initial decision to have done so?
- Whether any negligence contributed to her death?

As a result of fruitless ongoing email chasers to PALS, the Complainant lodged a twofold complaint with the Office of the Ombudsman as follows:

- (1) The unacceptable length of time in receiving a reply from GHA/PALS
- (2) That issues causing the Complainant a grievance had not been addressed, let alone resolved.

Investigation

The Ombudsman wrote to the then GHA Medical Director (Ag) ("AgMD") setting out the Complaint and requesting the GHA's comments. No reply was received by the Ombudsman nor were chasers acknowledged, showing a total disregard for his Office and a lack of understanding and disrespect for the statutory functions the Ombudsman is empowered to perform.

A holding albeit insubstantial reply was eventually received from the AgMD explaining that he had not had sight of the complaint (a year after it had been presented) without any apology being offered to the Complainant or any indication of the particular steps to be taken on the progression of the specific complaint.

The AgMD did state however (as previously confirmed in a particularly useful face to face meeting with the Ombudsman that he was taking all the necessary steps to address and resolve the *“significant loss of staff from PALS, to the point of essentially having no one in the office since the last staff member went off on long term sick leave.”*

Given the *status quo*, the Ombudsman considered it necessary to involve the GHA Director General (“DG”) in order to attempt to resolve the complaint and offer the Complainant explanations, solace and closure.

Suffice to say that some weeks later, a meeting was scheduled by the DG to offer the Ombudsman and the Complainant, the findings of the GHA’s investigation. A *“Case Note Review and Investigation”* (hereinafter “the Case Review”) had been actioned by the head of Clinical Governance in June 2022 (“the Head”) and signed off by the replacement full time Medical Director and “Review of Harm Clinical Lead”, in August 2022.

Based upon the Complainant’s complaint, the “Incident Details” comprised of:

- (1) “Patient presented to GP with gastritis.
- (2) No referral made to endoscopy.
- (3) Presented three times to ED (“A&E”) with abdominal pain, weight loss and generally feeling unwell.
- (4) Four hours for surgeon to review in A&E.
- (5) ICU admission no communication or plan.
- (6) Ward admission then re-admission to ICU.
- (7) MRI completed in Spain- no results communication to family.
- (8) Cause of death- peritonitis and ischemic bowel.”

The Incident had been reviewed by an Investigation Panel comprised of a Consultant Colorectal/ General Surgeon (to review the process and provide a surgical opinion) and the Head (to also review the process and add “learning outcomes” for teams).

The scope of the investigation covered:

- (a) “Reviews of the incident, statements and information provided and to establish the facts
- (b) Reviews of relevant policies and to identify if the practice adopted deviated from the policies
- (c) Establishing the root cause(s)
- (d) Establishing how the risk of re-occurrence may be reduced or eliminated
- (e) Using an incident decision tree where indicated
- (f) Formulating a report with recommendations and an action plan
- (g) Providing a means of learning and sharing from this incident.”

A detailed chronology followed setting out all events and supplementary information, from the 28th May to 18th June 2020.

Despite all the symptoms suffered by the patient such as extreme abdominal pain, nausea and weight loss, from the Ombudsman’s appraisal of the Case Review, it was confirmed in the notes that there were no signs of gastroesophageal reflux disease “(GERD)” on the 28th May (in a conversation review) or on 6th June (at a surgical review) – (signs include but are not limited to chest pain, hoarseness, mouth ulcers ...) An initial CT scan showed no indications requiring surgery. It was not until a second CT scan performed in Spain on the 17th June, which prompted exploratory surgery in Gibraltar the following day, that bowel perforation and peritonitis became visible. The cited changes were unfortunately “inoperable” [by that stage].

The “concerns/issues identified” at the Case Review were:

- (i) Possible delay in diagnosis?
- (ii) Possible failure to rescue?
- (iii) Was there a delay in diagnosis and treatment and if so, would that have altered the outcome?

The GHA sought an opinion from a Consultant Colorectal/General Surgeon (“the Expert”) who stated that upon review of the material and supplementary information, he was of the view that the first phone call to the GP on the 28th May was vague and therefore acted upon appropriately.

From the information the Ombudsman has considered, aside from seeking to offer a medical opinion which he evidently is not qualified to do and with all the added due respect to the Expert, the Ombudsman does not consider the content of the telephone call of the 28th May vague. Those very symptoms communicated were repeated by the Complainant to various doctors on the two consecutive days that followed- on the 29th May in a telephone conversation and on the 30th, at a doctor’s home visit. If there exists the remote possibility that the description was in fact “vague”, it would have been within the medical practitioner’s competence to ask specific questions to obtain a “clearer picture”, whilst carrying out the telephone consultation.

The Expert went on to state in his opinion that admission under the surgeons took place on the 12th June “*just two weeks after the first phone call*”. In fact, the Complainant has started complaining about her symptoms in mid may, some **four** weeks before she died.

It may well be that two weeks was a reasonable lapse of time from the initial call to surgical admission particularly since tests (bloods, initial CT and MRCP) did not appear to show anything sinister or “indication for surgery” but despite that, in the Ombudsman’s mind, a two week window for any patient (least of all an octogenarian lady), whom was in

constant acute pain with no signs of improvement from the prescription medication administered and with no apparent clarity being offered from the tests conducted, was in fact, not a short period of time by any means.

The Expert went on to explain how [whilst hospitalised in the ICU where she was under cardiac monitoring as a result of arrhythmia] she was referred for a second CT scan which suggested bowel ischemia. Further deterioration on the 18th June led to exploratory surgery and given the bowel perforation and peritonitis discovered, surgery was suggested between doctors although after discussion with the family DNACPR (Do Not Attempt) CPR and palliative care were agreed. Her death followed shortly afterwards.

The Expert did add a note at the conclusion of his opinion stating that *“mesenteric ischemia has a vague course, she might have had mesenteric angina and not full blown ischemia to start with. Following the latest CT, a decision to operate for ischemia at that age has a mortality rate exceeding 60% and surviving patients usually have a prolonged recovery and a very poor quality of life.”*

Conclusions

The Ombudsman found that the Expert’s concluding note (which appears to suggest that there was a considered **decision** not to operate), seemed to be somewhat at odds with the Surgeon’s advice to the Complainant on the 18th June, where after the exploratory surgery the Surgeon returned *“to confirm [to the Complainant] that **that there was nothing they could do**, as the arteries were indeed blocked and the intestines were dead...”*

The Expert is unequivocal in his opinion (which incidentally, only consists of four very short paragraphs amounting to twelve lines), that the GHA acted reasonably, speedily and that nothing else could have been done for the patient.

That may very well be the case.

The Ombudsman is not in a position to rebut this opinion but can only provide some input following generic and it must be said, superficial research on the matter.

The Ombudsman found substantial references stating that symptoms of mesenteric angina include but are not limited to weight loss and severe abdominal pain (the Complainants mother suffered sudden weight loss and extreme pain as he repeatedly explained to doctors on the phone and in person). In the telephone consultation of the 11th June for example, the Complainant informed the doctor that his Mothers abdomen was tender (having previously been informed himself by A&E) and that she had suffered a weight loss of 7-8kg. Research also suggests that the condition progresses very rapidly, which may explain the absence of markers showing up on blood tests and lack of symptoms shown in the first CT scan. Indeed, in the absence of an autopsy having been conducted, the Complainant will never know the full extent of his Mother's illness and the speed (or lack of it), of its progression.

The Complainant may remain satisfied that he did everything he reasonably could for his Mother and that as a result of the GHA Case Review, a Recommendation has been made to review (1) General Practitioner and Emergency Department pathways for abdominal pain in the elderly and vulnerable patients and (2) Shared learning for all surgical, Emergency Department, General Practitioner and Medical Director Training fora. The Ombudsman trusts that as a result, similar families will not undergo the uncertainty the Complainant and his entire family have had to endure.

The Ombudsman also found the lack of communication between GHA/PCC departments and the non-disclosure of results to the Complainant unhelpful and detrimental to the GHA as an institution and to the Complainant and his family.

The delay the Complainant was also subjected to from PALS in addressing his complaint (although we understand they were short staffed), which led to him lodging his grievance with the Ombudsman, is nonetheless inexcusable and not in keeping with good administrative practice.

Classification

Poor diagnosis and treatment, leading to delays that could have resulted in her death despite his Mother showing clear symptoms early on? - **Poor diagnosis- Unable to Classify. Delay- Sustained**

Lack of communication between GHA departments/wards regarding treatment and medication which may have caused unnecessary delays? – **Sustained**

Lack of transparency in relation to tests results which the Complainant would have liked to have had sight of? - **Sustained** (although the lack of transparency potentially occurred as a result of disorganisation and the Ombudsman would submit, in the absence of *mala fides*)

Why was a post mortem not carried out despite an initial decision to have done so? - **Unable to Classify**

Whether any negligence contributed to her death? - **Unable to Classify**

REPORT ON CASE NOS 1258 & 1260

Complaints against the Housing Department (“Housing”) in relation to alleged erroneous information been provided in relation to the criteria required in order to apply for Government rented accommodation

First Complainant

The Complainant was aggrieved because he was allegedly told it was a requirement he had to live in Gibraltar for ten years **after** having acquired British Nationality in order to apply for Government Housing

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

The Complainant had lived in Gibraltar for twenty years and acquired British Nationality in September 2021 after which he applied for Government housing. He complained that after submitting his application for housing, he was informed that he was not entitled to apply as it was a condition that he prove continuous residence for ten years, **subsequent** to the date of British naturalisation.

The Complainant was unhappy with the information he had received, stating that he had resided in Gibraltar for twenty years and that he was in need of accommodation. He believed his personal circumstances should be taken into account. The officer dealing with the Complainant advised him that as an alternative, he could apply for “*Gibraltarian*” status upon the grant of which (if awarded), he would only have to reside in Gibraltar for a one continuous year, before being eligible to apply for Government housing.

The Complainant took the advice and applied for Gibraltarian status. He did however consider it unjust that Moroccan nationals were allowed to apply for housing as soon as British Nationality was granted, on account of their invariably long periods of residency in Gibraltar.

The Complainant originally proceeded to lodge a complaint with the Office of the Ombudsman on the ground of unfairness. It will transpire throughout the course of this report that the Complaint was indeed more akin to wrongful information supplied to him by Housing.

The Second Complainant

The second Complainant was also a British Citizen (of Moroccan origin). He submitted his housing application (alongside his wife) with proof of ten years continuous residency by way of utility bills. The application was issued by post. Shortly afterwards, his application was returned to him in full explaining that *“the following documents will be required”*:

-Stamp from Civil Status and Registration Office (CSRO)

-Passport photo

-REGISTERED GIBRALTARIANS must provide one years’ proof of continuous residency

-British nationals who are unable to obtain the Gibraltar status MUST provide proof of ten years’ proof of continuous residency in Gibraltar.

Uncertain on the way ahead and confused by what he considered to be a wrongful rejection and return of his documentation, he lodged a complaint with the office of the Ombudsman.

Investigation

The First Complainant

The Ombudsman reviewed a letter from Housing addressed to the Complainant setting out that *“in order to be eligible for Government rented accommodation, the following criteria regarding civil registration must be met:*

[the applicant must be a holder of either] *Gibraltarian status with one year's proof of continuous residency in Gibraltar or British citizen status with ten years proof of continuous residency in Gibraltar*".

The letter further stated that from previous information provided by the Complainant, it had been noted that he did not meet the requested criteria.

The Ombudsman wrote to Housing informing them of the nature of the complaint- that the Complainant had been advised by them orally and in writing (as had other individuals) that [he] needed to submit an application for Housing with the "Gibraltarian" stamp, with the added criterion of having continuously resided in Gibraltar for the period of one year. In the alternative, he needed to provide proof of British citizenship with a period of ten years continuous residence in Gibraltar.

The Office of the Ombudsman sought clarification on the practice being employed by Housing in this regard.

It appeared to the Ombudsman that Housing was requesting that a British applicant for housing be a continuous resident for a ten year period **or provide** evidence of the Gibraltarian stamp from Civil Status and proof of residence for a year, when in fact, guidance should also have been given to applicants explaining that applications can also be processed by non – Gibraltarian nationals satisfying the continuous residency criterion.

The reply that followed stated that the information provided to applicants by Housing was correct and in line with Government policy. Despite that fact, Housing confirmed to the Ombudsman that the matter had been tabled for discussion at the highest level.

A further letter followed some months later stating that given the Complainant's "*personal and extenuating circumstances*" discretion had been applied in his favour and his application had been reviewed and accepted. It was further confirmed that the "Allocation Section" would be contacting the Complainant shortly, to update him accordingly.

The Complainant was contacted some two weeks later acknowledging receipt of his application and advising of next steps to be taken in order for his then current accommodation to be inspected.

Time elapsed and the Complainant was indeed allocated a property from Government rental stock.

The Second Complainant

The Second Complainant was confused by the fact that his application was returned and as a result visited the Office of the Ombudsman for assistance/clarification.

The Ombudsman advised the Second Complainant to provide Housing with a photocopy of his new identification card as well as a passport photo (as requested). Concern was expressed at Housing's request for "*a stamp from CSRO.*" Consequently, the Ombudsman advised the Second Complainant that insofar as he was aware, this was NOT a requirement and suggested that there is no need for him to comply with this part of Housing's request.

The Second Complainant resubmits his application and yet again, it is returned by Housing with a letter that states:

"Kindly note that upon reviewing your application, the following documents will be required;

-Stamp from civil status department

-REGISTERED GIBRALTARIANS must provide proof of 1 year's continuous residency i.e. payslips, contract of employment, utility bills.....

-Marriage Certificate

Permit of residence for your wife and 1 year's proof of residence".

The Ombudsman was baffled as to why this complainant and others were being asked by Housing to obtain a CSRO stamp. It was his view that Housing staff would be aware of the fact that "*the stamp*" was for those applicants who sought to

apply under the “Gibraltarian status” route. The Ombudsman also queried why a permit of residence and one year’s proof of residence was being requested from the Second Complainant’s wife. She was a British Overseas Territories (“BOT”) National residing with her husband and as such, did not, in his view, require a permit of residence or to submit proof of address.

After exchanges of correspondence between the Ombudsman and Housing, the latter wrote apologising for the error in the information provided. The officer in question had been made aware of the mistake made and an apology was issued for any grievances which may have been caused.

Housing further confirmed that a full investigation into the case had been undertaken with the following **significant** finding and an expression of the true position:

“All applicants (despite nationality) are [requested to attend] CSRO to see if they are Registered Gibraltarians and [obtain] the Gibraltar Registration number and stamp. This is so we can determine whether to ask for one year or ten year’s proof [of continuous residence]...” The letter further stated that “the one year’s proof [of residence] is required for all spouses. In the event of the wife being a BOT Citizen [as in this case], she would still be required to provide the one year’s proof of residence (pending).”

Housing’s letter to the Ombudsman concluded by offering appointments for any applicants that required assistance in completing and submitting their applications. The Ombudsman was grateful for this.

Conclusions

In relation to the First Complainant, Housing had written to the Ombudsman on more general terms, explaining that in order to be eligible for Government rented accommodation, the following criteria needed to be met:

Either Gibraltarian Status (proof of the stamp) with further evidence of one year's continuous residency in Gibraltar **or**, British Citizen status with ten years continuous residency in Gibraltar. There was a concession for naturalised British individuals of Moroccan origin. Those applicants would have to provide ten years proof of residency **prior** to the date of naturalisation, whereas British nationals are required to provide proof of residency **from** the date of naturalisation.

The First Complainant had considered it unfair and unjust, that Moroccan nationals were allowed to apply for Government Housing as soon as they obtained British nationality (on account of that individuals' previous long stay in Gibraltar), whereas he had been asked to satisfy different criteria. It was as a result of the Complainant's length of continuous residence ("extenuating and personal circumstances") that he too had his application accepted and was subsequently housed.

The Ombudsman noted the historical links between the Moroccan workforce and Gibraltar in relation to this specific issue and in that regard, was able to understand the concession for those applicants that met the required criteria. He did not consider in any way that they were allowed to by-pass criteria or "jump any queues" for Government Housing.

It was important however for Housing to make clear what the criteria was and of options or alternatives available to prospective applicants. It may well have been that the Ombudsman's intervention in this case offered some clarification and facilitated the Complainants application (from a practical perspective).

Regarding the Second Complainant, Housing apologised for the erroneous information and the requests that were made. They subsequently set out the true position, particularly in relation to the requirement of the "*Gibraltarian stamp*" which, it was noted, was required of ALL applicants. Housing would then request the continuous residence condition for either one or ten years, depending on the applicants' status.

Despite Housing's apology, their subsequent investigation and correction of the facts, the Ombudsman considered the errors made in relation to the advice given and documentation sought to be serious and grave. He opined that had the

Ombudsman's office not received the First and Second Complaints, the position would have possibly continued to have been erroneously handled by Housing.

Classification

That the First Complainant was treated unfairly by Housing- **Not sustained**

That the First and Second Complainants were mistakenly advised in regard to the eligibility criteria relevant to applications for Government Housing— **Sustained in Part**

Recommendation

That all of Housing's front line staff be fully trained in the criteria and requirements necessary for applications to be accepted and conversant with all conditions which need to be met. This will ensure that the correct information and advice is afforded to future applicants.

REPORT ON CASE NO 1267

Complaint against the Department of Social Security (“DSS”) after the Complainant having appealed to the Closed Long Term Benefits Appeals Board (“Board”) on the 8th December 2020, and in September 2022 was still awaiting a decision

Complaint

The Complainant was aggrieved because she had appealed to the Board on the 8th December 2020, and in September 2022 was still awaiting a 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 explained that in 2017, approximately three years before attaining pensionable age (would be attained in January 2021), she requested an old age pension forecast from the DSS. The Complainant identified from that forecast that she would not receive the maximum rate of old age pension because her records showed that during part of a two-year period she had paid the lower rate of weekly social insurance contributions (“Contributions”) (less than fifteen hours per week Contribution). The Complainant contacted the DSS and asked them to double check their records as she believed they must have made a mistake when recording her Contributions. She told the DSS that there was another person with the same name as her and same year of birth and believed the error could have stemmed from a case of mistaken identity.

According to the Complainant, the DSS insisted that was not the case as the Income Tax Office’s (“ITO”) Contributions Section had informed them that for the period in question there was a letter from her employer stating that she was working less than fifteen hours per week, (hence the reduced Contribution). The Complainant requested a copy of the letter and was told that it could not be produced because all documents were scanned and then destroyed. When she requested a copy of the scanned letter she was told by the Contributions Section that they did not have the letter. There

was a handwritten note on her record stating that she had worked less than fifteen hours per week. The Complainant subsequently met with the Contributions Section Officer (“Officer”) looking into her case. At that meeting, the Officer informed the Complainant that she had retrieved her Contributions record from storage (available at that meeting) to inspect it and it was there that the Complainant was shown the handwritten note but could not recall what it stated. According to the Complainant, at that meeting, the Officer informed her that there was nothing further she could look into and advised the Complainant to lodge an appeal with the Board.

On the 8th December 2020, the Complainant wrote to the Board to appeal the decision to award her a reduced old age pension. In her appeal, the Complainant stated that she had never worked less than fifteen hours a week (therefore not eligible to pay the lower Contribution) and that there must have been some clerical error when recording her Contributions.

On the 10th December 2020 the Complainant received an email from the DSS stating that they had passed her letter to the Secretary of the Board who would respond in due course.

On the 4th January 2021, the Complainant received a letter from the DSS acknowledging her letter to the Board and advising that the matter she had raised was receiving attention and she would shortly be sent a further communication.

On the 22nd February 2021, the Complainant contacted the DSS to ask for an update and was informed that they would contact the Officer and see where the matter was at but that the issue was outside the DSS’ remit and all they could do was to urge the Contributions Section to make a decision and inform them accordingly.

On the 3rd March 2021, the DSS emailed the Complainant and told her they had spoken to the Officer and that she had been unable to find the letter from her employer and that they (DSS) would be contacting the Officer to see how to proceed.

On the 23rd July 2021, the Complainant once again contacted the DSS for an update on her appeal. On this occasion she was informed that they had spoken with the Secretary of the Board and the appeal was 'at hand' but with respect to the Board convening, that 'does take quite a while'. DSS assured the Complainant that once the convening of the Board was confirmed she would receive notice. The DSS could not provide her with a timeframe at that moment and advised that there was a possibility that it could take a few months. Notwithstanding, DSS suggested that the Complainant could enquire with the DSS every once in a while and they would chase the issue up for her.

The Complainant stated that she attended the DSS' offices in person around September 2021 (although not sure about the date) but that the offices were closed and when she contacted them by phone, the call was not answered. The Complainant was aware through local news media reports that DSS staff had raised health and safety issues about the building in which their offices were located and staff had been working from home. She was also aware that DSS staff had gone on industrial action for a time also due to the office conditions.

By September 2022 the Complainant had not received any information regarding the convening of the Board and lodged her complaint with the Ombudsman.

Investigation

The Ombudsman presented the complaint to the Director of the DSS on the 28th September 2022 and chased for a response on the 2nd November and 6th December 2022. In December 2022 the Ombudsman was notified that a new Director (Acting) ("Director Ag") had just been appointed and a short extension for the submission of information was requested and accepted.

The Director (Ag) reverted on the 3rd January 2023. He confirmed that the Complainant's letter to the Board was received at the DSS' offices on the 11th December 2020 and an acknowledgement letter sent on the 4th January 2021 followed by further email correspondence between March and July 2021 (as per the information provided by the Complainant).

The Director (Ag) confirmed that the Board did not meet during the Covid pandemic, approximately a two-year period, and the Board members term ended on the 30th June 2022. In this respect, he stated that the appointment of members for a new Board appeared not to have been followed up by his predecessor and he was currently liaising with relevant bodies to appoint members and commence the convening of the Board as soon as possible but was at present unable to provide a firm date as to when that would be.

In March 2023, the Director (Ag) confirmed that recommendations and draft gazette notices for the appointment of members to the Board had been forwarded to the pertinent Minister for his consideration and he was awaiting confirmation that the Minister was happy to proceed with the recommendations received.

In May 2023, the Director (Ag) confirmed that approval to gazette the appointments had been granted and they were liaising with the Gibraltar Law Offices for that to be undertaken.

The Ombudsman enquired as to how many persons were waiting for their appeal to be considered by the Board. The Director (Ag) informed the Ombudsman that it was six appeals.

Based on the Complainant's information that she had been unable to contact DSS offices on or around September 2021 the Ombudsman sought information on the following:

- Changes in DSS directorship;
- Public counters closed since Covid-19 pandemic;
- Employee health and safety concerns with respect to their place of work;
- Industrial action

The Director (Ag) advised that he initially substituted as the Acting Director from the 5th to 20th September 2019 and between 5th November 2019 to 31st March 2022 up until the appointment of the Director on the 1st April 2022. He returned, following the departure of the Director on the 5th December 2022 and has been acting for the vacant post to date.

Regarding the Complainant's allegation of not having been able to access the DSS' offices in September 2021, the Director (Ag) advised that public counters had not reopened after Covid pandemic closures and that could have been what the Complainant had experienced.

The Director (Ag) stated that the closure of the DSS offices due to health and safety issues occurred in January 2022 and was made public through media and signs posted at their offices. During that time, the DSS had signs informing people on how to contact the relevant sections via email or phone, other than for a period of industrial action between the 9th May and 20th June 2022. He added that for approximately seven months of 2022, operations were fully remote. Telephone lines were diverted to mobile numbers until the new telephone system was functioning on the 15th September 2022 but the Director (Ag) noted that by January 2023, the system was still experiencing problems. He cited shortage of personnel issues as being one of the reasons as to why the high volume of calls could not all be answered. He also pointed out that there was an issue with the telephone lines that had been reported to the telecommunications provider which was that when lines were busy, the caller did not get the 'line busy tone' but rather the normal ringing tone which led the caller to believe that calls were not being answered.

The Director (Ag) advised that the DSS had introduced an appointments system in order to support service users and to date continue to offer that service.

Based on the substantive issues raised by the Complainant, the Ombudsman presented the complaint to the Commissioner of Income Tax ("Commissioner") under whose remit, the Contributions Section came under. The Ombudsman raised with the Commissioner the Complainant's concern that there was no way that without an official letter from her or her employer the Contributions should have changed, and requested information from the

Commissioner as to what would have been required for that change to have been effected. The Ombudsman informed the Commissioner that the Complainant had stated that her employer was willing to sign a letter attesting to the fact that at no time would she have worked part time as her employer had a strict policy of no part timers.

In his initial response the Commissioner stated that it was his view that subject to the Complainant's allegations, her pension should be corrected and adjusted so that the relevant shortfall be awarded to her but noted that would have to be cleared with the Director (Ag) given that was the post that had competence over those matters. The Commissioner explained that he was responsible for the collection, administration and assessment of Contributions under delegated authority of the Director (Ag) and so eligibility to a pension remained expressly within the remit of the Director (Ag). The Commissioner felt that the Ombudsman might wish to redirect the complaint to the Director (Ag) for his consideration.

Further to the above response, the Ombudsman asked the Commissioner to corroborate with the Contributions Section the information provided by the Complainant.

The Commissioner reverted on the 1st February 2023 and advised that it was not possible to provide an accurate recollection of events as the Officer who had attended to the Complainant's case had retired and none of the present staff at the Contributions Section would have had the involvement necessary to provide the evidence required now. He added that they had reviewed their records and been unable to locate any evidence as suggested in the Complainant's statement of a scanned letter or a handwritten note.

Notwithstanding, the Commissioner advised that the current Head of the Contributions Section had confirmed that the process followed by the Officer, would be the typical course of action for such an enquiry. The Commissioner clarified that as there was no evidence to support why the decision to adjust the Complainant's pension was made, he sought to focus his response on trying to resolve the issue in the manner stated.

The Commissioner pointed out that it was important to consider that the Complainant appeared to have accepted the position as advised by the Contributions Section despite being aware that no supporting evidence was presented by them and noted that no challenge or appeal was subsequently lodged although the Complainant appeared to have available a

firm commitment from her employer to provide evidence attesting to her claim as a full-time employee. The Ombudsman referred the Commissioner to the information provided in the initial presentation of the complaint whereby the Complainant had appealed to the Board and was presently waiting for her case to be considered.

On the 7th February 2023, the Ombudsman wrote to the Commissioner asking if the Complainant's Contributions for the pertinent years could be contrasted against the employer's tax and social insurance contributions submissions for those years.

The Commissioner responded and advised that on the 12th September 2017 the Complainant was issued with a pension forecast and was advised of the shortfall on eligibility to a full old age pension and the option of funding the shortfall through voluntary Contributions. The Commissioner attached a copy of the letter sent to the Complainant as well as a copy of the DSS' ledger card entries of the Complainant's Contributions for the years 1977 to 1999 (inclusive). **[Ombudsman Note: The Ombudsman identified that in 1987 there were thirty four social insurance contributions recorded as having been paid at the lower rate and eighteen at the full rate. He also identified that in 1988 there were thirty five social insurance contributions recorded as having been paid at the lower rate and seventeen at the full rate].** He stated that the Complainant terminated her employment on the 31st December 2017 and that the defined period of time available to her to apply to become a voluntary contributor should have been deposited with the Contributions Section by the 31st December 2018. The Commissioner stated that the total number of Contributions recorded in their system was 1881 whereas the total number of Contributions necessary to obtain eligibility for a full pension is 2000. He further stated that the declaration made by the employer for those years was not available, given the period of time elapsed which exceeded the document retention period and noted that at the time, the administrative practice imposed vigorous checks on those submissions, both at the time of receipt and input. The Commissioner further explained that since 2007, tax and social insurance records are effectively combined for reporting purposes but in relation to the periods being considered with respect to the Complainant's case, that was not so. Therefore, whilst tax records may have indicated remuneration commensurate with full time employment, given that tax and social insurance contributions were not jointly reported, that was not indicative of the type of Contribution paid. On the basis of the aforementioned, the Commissioner stated that there did not appear to be sufficient evidence to suggest that the records were at variance with

the award of a reduced pension and he failed to understand why the Complainant did not address the shortfall and receipt of a reduced pension immediately and waited almost three years after receipt of the pension forecast. In terms of moving forward, the Commissioner stated that whilst *prima facie* the records appeared to justify the award of a reduced pension there was some uncertainty, including whether the social insurance returns filed by the employer at the time were correct, the evidence the Complainant has from her employer confirming full time employment and the reasons why the Complainant did not pursue the matter sooner. Under those circumstances, the Commissioner stated that is why he initially advised that a pragmatic solution may be to adjust the pension and award the Complainant full pension rights which remained very much within the scope of the Director (Ag).

The Ombudsman met with the Complainant to further understand what action she had had taken since she received the pension forecast in 2017. The Complainant explained that subsequent to receiving the forecast, she retired at the end of 2017 and due to a medical condition underwent treatment. Notwithstanding, the Complainant explained that she did pursue the matter via the DSS and met with the Officer from the Contributions Section during the three years thereafter, prior to the awarding of the pension, after which she appealed to the Board as suggested by the Officer and to date was still waiting for their decision.

To further substantiate her position of never having paid the lower Contribution and being cognisant of the consequences, the Complainant informed the Ombudsman that her employment was in the accounts/salaries department and she had always advised employees against payment of the lower contribution because it would reduce the rate of old age pension they would receive when they retired. In order to exhaust possibilities as to the recording of reduced contributions, the Ombudsman asked the Complainant if she had taken any maternity leave in the years in which the lower Contributions were recorded which could have impacted the Contributions. The Complainant responded that one of her children was born in 1987 and stated that she took twelve weeks off maternity leave, the time stipulated by law at that time, immediately returning to work full time after that period. She pointed out that it saddened her to know that she had made sacrifices to always do the right thing (regarding maternity leave taken as stipulated by law at the time so that her future benefits would not be affected). Referring to the Complainant's suggestion of submitting a letter from her previous employer attesting to the fact that the company had a strict policy of no part timers, the Complainant informed the

Ombudsman that her previous employer had now passed away and that was no longer an option. The Complainant reiterated that should not be required as the DSS and Contributions Section had failed to produce evidence of any instruction received either from her or her employer, requesting that she be 'switched' from the full Contribution to the lower one and stated that was a requirement for the change to have been effected.

The Ombudsman contacted the Commissioner and requested to view the Complainant's records in order to see the handwritten note referred by the Complainant. The Commissioner advised that those records were held by the DSS and the request should be put to them. The Ombudsman also enquired as to whether the Officer had made any notes with respect to the investigation she had undertaken into the Complainant's case and the Commissioner responded that there had been no investigation but rather a pension query and that it was not customary to record a file note on a routine enquiry by a member of the public. On the issue raised by the Complainant that there could have been a case of mistaken identity when recording her Contributions, the Commissioner stated that the Contributions Section had reviewed the other person's record and could confirm that no clerical error had been made.

On the 21st March 2023 the Ombudsman put the following to the Director (Ag):

1. In 1987 and 1988, what would the DSS have required from an employer/employee in order to change an employee from the full Contribution to the lower one?
2. Request to view the Complainant's records;
3. Information on whether the change in recent years with respect to social insurance contributions accruing towards old age pension as from the age of 18 instead of age 21 is being applied retrospectively as the Complainant stated that she had been contributing since she was 16 years old.

The Director (Ag) responded on the 24th March 2023 and advised that he would look into the queries raised and revert.

On the 25th May 2023, the Director (Ag) reverted as follows:

1. The DSS would have been informed in writing by an employer when an employee's working conditions changed from full to part time. That would then be recorded on a Ledger, checked by an Executive Officer and the letter placed in an INS (Insurance) File. In the Complainant's Ledger there is a note which states: Less than 15 hrs wef 11.5.87 and the Director (Ag) states that the Complainant has a total of 69 contributions at that rate between the 11.05.87 and 04.09.88.
2. They tried to locate the Complainant's INS file (Insurance file) which should hold a copy of the employer's letter notifying of the change in working hours to corroborate the Ledger note, but the file was not found. The Director (Ag) stated that the Ledger would have been checked and verified and the Executive Officer tasked with that job would have seen the letter at that time.

The Director (Ag) noted that the file dated back to 1988 and believed that it had been misplaced or lost during one of the relocations of the Contributions Section offices (from the Haven to Governor's Parade in 2000, from the latter to the Income Tax Office and Leanse Place) and added that was not the response he would have liked to have given us.

The Director (Ag) advised that they had spoken to the Officer (now retired who used to lead the Contributions Section) who recalled a red note recorded on the Ledger which they had now verified. For completeness of records, the Ombudsman requested a copy of the Ledger records and this was duly provided. The note stated:

'EII (ONLY) (Employment Injuries Insurance) Less than 15hrs INS 67/VOL7 R4 wef 11.5.87'.

[Ombudsman Note: The Ombudsman sought clarification from the Director regarding the abbreviation EII (ONLY). The Director advised that EII stood for Employment Injuries Insurance and 'only' meant that the Complainant was only paying social insurance towards health (GPMS Scheme) not pension contributions].

3. Whilst the legislation changed, it does not apply to those contributors born after the 2nd July 1997. In the Complainant's case, her record sheet shows that she commenced employment at the age of 16 but contributions

valid for pension purposes commenced at the age of 20, up until the year before attainable pensionable age (59 years old as pensionable age for women in Gibraltar is 60).

For completeness of records, the Ombudsman asked the Director for information on what instruction was given to the DSS by the Complainant's employer for the Contribution to have reverted to full in September 1988. The Director responded that this was not clear to him but referred to another red note on the Ledger, the date '15-3-89' from which he could only assume that the employer must have written in again on or around that date to advise of the change from part time to full time employment. He believed that the letter would have been in the missing file.

Conclusions

The Ombudsman sustained the complaint of maladministration against the DSS, the entity tasked with responsibility for presenting to the Board appeals made by service users.

The Complainant lodged her appeal in December 2020. The term of appointment of the Board members ended in June 2022. A period of eighteen months during which the Director (Ag) stated that the Board did not meet and pointed to the Covid pandemic as the reason for this.

The Covid pandemic hit Gibraltar in March 2020 as a result of which, remote set ups had to be put in place, as was done in most jurisdictions, for public services to continue to be provided. It is clear that at that time the Board must not have been deemed to be a vital entity as no remote set up was put in place in order that appeals could continue to be considered by them during that period. Notwithstanding, Covid cannot be the sole reason or justification as to why the Board did not meet throughout a two-year period up until the termination of the Board members appointment in June 2022.

In the course of the investigation, the Ombudsman found that the following must have been contributory reasons as to why the Board did not meet:

- Changes at Director level experienced at the DSS in 2022;
- Health and safety issues in the DSS offices which led to staff working remotely for over seven months and industrial action;
- Staff shortages.

Regarding the updates provided by the DSS to the Complainant when she enquired as to when the Board would meet, the Ombudsman notes that this contrasts sharply with the information obtained by the Ombudsman in the course of the investigation. At no point was the Complainant informed that the Board would not meet because of the Covid pandemic. Rather the opposite. After having been initially told by the DSS that her case was receiving attention, she was informed in July 2021 upon subsequent enquiries, that although a timeframe as to when the Board would meet could not be provided, the possibility existed that it could take a few months. The Ombudsman's investigation has established the reality of the situation.

Regarding the substantive issue, the Ombudsman identified that in her initial communications with the Contributions Section via the DSS, further to having received the pension forecast, the Complainant had also been provided with misleading/distorted information. She was initially informed that the reduced Contribution had been applied as a result of a letter by her employer but the letter could not be found. She was also told that documents were destroyed once scanned but the DSS were unable to provide a scanned copy of said letter. Therefore there is no evidence to substantiate the request for a change from the full Contribution to the lower Contribution other than the handwritten note on the Complainant's Ledger, information which the Director (Ag) states would have been checked by an Executive Officer at that time. The evidence in this case will therefore have to be scrutinized by the Board in the appeal process and a decision made.

With respect to the proof on which the DSS based themselves on, for the Contributions to have reverted to full in September 1988, this was unavailable. The reference made by the Director to the red date on the Ledger, 15-3-89, does not correspond with the date on which the Contributions reverted. Once again there is no supporting evidence to substantiate the note.

The Complainant is short of 119 contributions in order to obtain a full old age pension. In the event that the Board ruled in her favour it would still leave her 50 contributions short of obtaining a full old age pension due to having retired two years early and not having made voluntary contributions.

Although it can at times be inevitable for documentation to be lost or misplaced, the Ombudsman needs to highlight the importance of the safekeeping of those key records on which public services need to rely on or refer back to. In the Complainant's case, at the time when she was nearing pensionable age and was going to transition from being a contributor for nearly forty years to becoming a pensioner and therefore reaping the benefits of those contributions, that essential documentation was not available to substantiate the DSS' information and is the reason for the Complainant's current predicament.

Classification

Sustained

Update

The Ombudsman sent a copy of the final draft report to both the Commissioner and the Director. The latter reverted with numerous comments and suggested a meeting with the Commissioner and the Ombudsman which was held on the 7th July 2023. The outcome of that meeting was that the Director and the Commissioner agreed that there was no substantive evidence for the Appeals Board to consider in their favour and in the interests of concluding the matter decided that the Director would send a letter to the Commissioner authorising him to update the records on the Social Insurance Contributions platform to reflect the period as having been the regular full Contributions. That would result in the Complainant's pension being corrected and adjusted so that the relevant shortfall be awarded to her inclusive of any arrears due.

The Director cited the following reasons for the decision:

- The Complainant's Insurance File which should have contained a copy of the employer's letter notifying of the change in working hours to corroborate the ledger note cannot be located;
- The evidence on which the pension calculations are based with regards to the lower Contributions having been paid is solely the handwritten note on the Complainant's ledger;
- Whilst the above information would have been checked by an Executive Officer at the time, the Director is of the view that they could not rely solely on that, given the Complainant's insistence that she never worked part time and that other than during that period in question she paid the full Contribution;
- No supporting evidence regarding the note on the ledger dated 15/3/89 regarding reverting to paying the full Contribution, and the fact that the date does not correspond with the date on which the Contribution actually reverted (last quarter of 1988);
- The fact that they had to consider that there was another person with the same name and same year of birth and that there was the possibility that the record could stem from a case of mistaken identity;
- The declaration made by the employer for those years is not available given the period of time elapsed which exceeded the document retention period.

The Director asked the Commissioner to notify him when the change was effected so that his team could proceed to recalculate the Complainant's entitlement and amend her pension accordingly.

REPORT ON CASE NO 1270

Complaints against the Civil Status & Registration Office (“CSRO”) for the (i) the delay in processing the Complainant’s husband’s application for the renewal of his Civilian Registration Card (“CRC”) and not having received an official refusal or clarification on why it was taking so long (ii) for the non-reply from the Head of CSRO (“Head”) to the Complainant’s email of the 13th January 2022; and (iii) non-reply from the Head to the Complainant’s lawyer’s (“Lawyer”) letters to the Head dated 12th May 2022 and 21st June 2022.

Complaint

The Complainant was aggrieved because she and her Husband had applied for the renewal of their CRC on the 12th November 2021 but by October 2022 had not received either an official refusal or clarification as to why it was taking so long to process. She was further aggrieved because she had not received a reply from the Head to her email communication of the 13th January 2022 nor had her Lawyer to his letter dated 12th May 2022 and a chaser on the 21st June 2022.

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

On the 12th November 2021, the Complainant and her husband (“Husband”) applied for the renewal of their CRCs (first issued in January 2021) which were due to expire in December 2021. A few weeks after submitting the application, they contacted CSRO and enquired as to how long it would take to process. CSRO responded that it would take between five to eight working weeks and the Husband asked if they could at least get the permit so that they could cross the land border from Gibraltar into Spain (“Border”) to be with family over the festive season. CSRO advised that the matter should be referred to a manager and provided them with a contact number. According to the

Complainant, they were told that as long as they showed proof of payment for the CRC renewal and confirmation that it was being processed, they should be allowed to cross.

The Complainant had encountered issues throughout 2021 when crossing through the Border on her own and raised this with the Borders & Coastguards Agency (“BCA”) who requested that she provide a copy of her passport and visa waiver which should be affixed to the passport. The Complainant informed them she did not have a visa waiver and had not been informed she was required to have one when she first applied for residence. She stated that she had only recently been told that she may need one and advised by CSRO that she needed to apply for it and would be given it in accordance with her current residence permit. Subsequent to providing the copy of the passport, on the 15th December 2021 BCA emailed the Complainant with an entry clearance letter which she was told would need to be produced along with her passport when she crossed the border. The Complainant was extremely grateful to BCA for this as her residence permit had expired the previous day.

On the 10th January 2022 the Husband emailed CSRO for an update on the CRC renewal application. CSRO responded on the 12th January 2022 and advised him that BCA had informed them that the Complainant held residency in Spain and that it appeared that he did too. They advised that they were unable to issue residency documentation to applicants who resided in another country and therefore, if they were residing in Gibraltar, CSRO required documentary evidence that they had both relinquished their residence in Spain.

The Complainant responded to CSRO on the 13th January 2022 and stated that she was quite shocked at their decision. She referred CSRO to the documentation she had submitted when she first applied for a CRC in December 2020 where she had provided a copy of her Spanish residence card and stated that she was not informed at that time that she could not be in possession of two residence cards; in fact they obtained their CRCs and residence permits. As such, she questioned the CSRO on whether new regulations had come into force since then.

The Complainant told CSRO that the person who reported her for holding two residency cards was a BCA officer who had gotten angry with her when she questioned his competence. She referred CSRO to the incident with the BCA officer having wanted to report her for holding two residence cards (one for Spain and one for Gibraltar) which he stated was illegal but the Complainant asserts that further to that incident a BCA supervisor as well as her Lawyer had confirmed that she could hold dual residency.

By way of further clarification, the Complainant advised that they had been residing in Gibraltar in order that she could work without having to go through the rigorous process of applying for a work permit and explained that she had been unemployed for two years before becoming a Gibraltar resident, because she could not find a company that would agree to apply for a work permit. She stated that whilst her Husband was employed throughout that time it was unfair that she could not exercise the same rights.

Regarding the Spanish residency card the Complainant said that she had to have this in order to be allowed to stay in Spain for more than three months a year and pointed out that if she chose to stay in Spain every weekend it would add up to 102 days in the year. She referred CSRO to the EU Citizen's Rights Directive article 9:

'Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice.'

On the basis of the explanation provided, the Complainant asked CSRO to reconsider their decision.

CSRO reverted on the 14th January 2022 and advised that they had passed her email to the Head for his consideration and would revert with his comments once these were received.

In February 2022, the Complainant chased for a response which was not forthcoming and so in May 2022 engaged the services of a Lawyer who wrote to CSRO. He too did not receive a reply from CSRO and chased the matter in June 2022.

In October 2022, the Complainant lodged her complaint with the Ombudsman.

Investigation

The Ombudsman requested further information from the Complainant and on the 23rd November 2022 presented the complaint to the Head. He responded on the 5th December 2022 and advised that both the Complainant's and her Husband's files had been inadvertently misplaced and remained as such until shortly after receipt of the Ombudsman's email. The Head noted that as a result, correspondence from them had remained unanswered throughout that period. He advised that he would write to the Complainant and her lawyer addressing their enquiries (the Head pointed out that they had not received the lawyer's chaser June 2022 email) and offering an apology, and would provide the Ombudsman with copies of his response.

The Head proceeded to provide the Ombudsman with the information requested. He confirmed that the Complainant had submitted an application form for Renewal of the CRCs and permits of residence on the 12th November 2021 and payment was made on the 16th November 2021. A number of checks were undertaken by CSRO and it was noted that both the Complainant, a non-EU national and her Husband, an EU national, held residency in Spain. The Head added that shortly before the expiration of the CRCs, issues on the Complainant and her Husband's dual residency had been picked up by the Spanish Authorities and communicated to CSRO via BCA. The Head stated that although dual residency was the basis for the refusal outlined in CSRO's email in January 2022 to the Complainant, it was the inconsistency on the data available with regards to their living arrangements in Gibraltar that gave rise to concern on whether they were indeed residing herein. The Head stated that that information should have been highlighted in the email and not dual residency, given that it is possible to be resident in Gibraltar and an EU state at the same time

although that is not automatically allowed. The inconsistencies identified by the Head were that in the Income Tax Office (“ITO”) records, the Husband’s address was registered as being a Spanish one which would appear to indicate that the Husband spent more than six months in Spain thereby making it his primary country of residence. He pointed out that that had implications on the Complainant’s residency in Gibraltar as she had been issued with the CRC and permit on the basis of being a family member of an EU national working and residing in Gibraltar.

Regarding the Gibraltar living arrangements, the Head stated that the rental agreement submitted with the application expired in May 2022 (did not cover the one year CRC period) and was in respect of ‘one room’ within a flat which led him to believe that this was a base rather than a primary residence. In addition, he highlighted that neither the Complainant nor her Husband held Gibraltar Health Authority (“GHA”) medical cards (“Cards”) and recent checks with the GHA found that they had registered with the GHA for Covid vaccines with their residential address shown as being an address in Spain for the Husband and the Complainant’s employer’s address shown as a care of (c/o) address.

The Head’s letter to the Complainant contained similar information to that provided to the Ombudsman as well as an apology for the belated response which he stated had been due to an internal filing error and the file having inadvertently been misplaced until end of November 2022. He informed the Complainant that they had reviewed the information on file and whilst it appeared that they held residency in Spain, which they were entitled to as she had claimed, the refusal to process their renewal application was based on inconsistencies with respect to data available on her and her Husband’s declared living arrangements in Gibraltar (amongst which were the addresses on record at ITO and GHA). The Head referred to information available to CSRO from various quarters which had given rise to concern on whether they were in fact residing in Gibraltar.

The Head referred the Complainant to Section 55J (2) (b) of the Immigration, Asylum and Refugee Act whereby a non-EEA national shall be allowed to enter Gibraltar if he/she is the family member of an EEA national, etc. and he/she produces on arrival an EEA family permit, a residence card or a permanent residence card. The Head stated that documentation appeared to have been produced at the time of the Complainant’s entry into Gibraltar exempting

her from requiring a visa to enter the jurisdiction as well as exempting her from requiring a work permit as her Husband was an EU national exercising his EU rights as a worker in Gibraltar prior to Gibraltar's exit from the EU.

The Head referred the Complainant to inconsistencies in the addresses both she and her Husband had provided to the GHA during the recent Covid pandemic. The Head pointed out to the Complainant that the rental agreement on file had expired in May 2022 and was in respect of one room within a flat [address provided] which led him to believe that the room was only a base rather than a primary residence. He concluded his letter by requesting that the Complainant provide clarification of the inconsistencies raised.

In late December 2022, the Complainant contacted the Ombudsman to inform him that she had received the Head's letter. She stated that they were aggrieved by the fact that their files had been misplaced and they had not been informed of this despite their many requests for a response throughout the year. Notwithstanding, they were happy that the situation had changed and were very grateful for the Ombudsman's input.

The Complainant advised that their lawyer had not yet received any communication from CSRO but stated that they had discussed their situation with him and he would be writing to CSRO on their behalf as soon as he reviewed the documentation. The Complainant highlighted that they were not aware of the inconsistencies pointed out by the Head and stated that they could have been clarified a year ago if CSRO had contacted them.

On the 14th February 2023 the lawyer emailed CSRO and addressed the 'inconsistencies' raised by the Head. Regarding the addresses held on record by the GHA, the lawyer stated that the Complainant and her Husband only used private insurance and had not registered with the GHA. They were not aware of the necessity to provide their Gibraltar address to the GHA during Covid and are not sure if that was provided by their respective employers. The lawyer highlighted that being registered with the GHA did not appear to be a legal requirement in order to be a Gibraltar resident. In relation to the address held on record by the ITO, the lawyer stated that both the Complainant and her Husband assumed that further to having submitted to the Employment Service a 'Notice of Variation of Terms

of Engagement' which included their new Gibraltar address, the Employment Service would have updated the ITO accordingly. They were not aware that they had to inform the ITO separately of changes but confirmed that further to the Head's December 2022 communication they had informed the ITO accordingly.

The lawyer advised the Head that the Complainant and her husband had signed a new rental agreement in May 2022 and continued to reside at the same address. The agreement would be extended as agreed with the landlady and the lawyer explained that it granted them exclusive use of an ensuite bedroom as well as access and use of all other areas of the large apartment with a private terrace which was much more than what they would have enjoyed if they had rented a studio flat.

On a final note, the lawyer referred to the Head having invited the Complainant and her husband to clarify the inconsistencies and noted that it did not appear to have been a refusal to accede to the Complainant's and her Husband's application. He informed the Head that they would welcome the opportunity to clarify any aspect of the letter or any other matter arising from it.

On the 25th February 2023, in response to the Lawyer's letter, the Head requested copies of the rental agreements for 2022 and 2023 for the purpose of re-evaluating the Complainant's application. The Lawyer conveyed the request to the Complainant who sent the tenancy contracts. On the 1st March 2023 the Head reverted to the Complainant requesting that she submit the new tenancy agreement as the one she had sent had terminated on the 28th February 2023.

The Ombudsman's investigation into the complaints lodged had concluded, but the substantive issue remained unresolved; i.e. no decision by CSRO on the Complainant and her Husband's application for the renewal of their CRCs. In May 2023 the Ombudsman requested an update from the Complainant and she advised that the situation had been devastating to her family in many ways and caused a lot of anxiety and depression to her personally. She was critical about a number of things with regards their lawyer:

- (i) That it had taken two months for him to respond to the Head's letter (received in December 2022);
- (ii) That he was aware that their rental contract was expiring on the 28th February 2023 and there was no option to extend and that based on the development of the situation (whether they got the CRC renewed) they would rent a different place in Gibraltar or move to Spain;
- (iii) That he had written to the Head two weeks before the rental contract expired and that the response was not what they had agreed.

The Complainant stated that they had submitted to the Head all previous rental contracts covering 2022 thereby clarifying the discrepancies raised by him but noted that the Head wanted a 'future contract', from March 2023 onwards. The Complainant's view was that their application was being treated as a new application and did not qualify previously. She explained that they had not secured a new rental contract due to the delay on the part of their lawyer and the lack of trust that the issue would be resolved by CSRO. She added that a new rental contract would have kept them in Gibraltar for at least another six months with the lack of prospect of obtaining the residence cards. The Complainant was very aggrieved at the treatment they had received from CSRO with respect to the renewal of their CRCs and informed the Ombudsman that they had taken the decision to move to Spain in March 2023 where they felt they would be treated fairly and in accordance with the law.

For completeness of records and to clarify a number of queries, the Ombudsman met with the Head in September 2023.

At the outset of the meeting, the Head informed the Ombudsman that they had been unable to find the file in preparation for the meeting but that they would be able to respond to his queries.

The Ombudsman enquired if all pertinent checks had been carried out by CSRO when the Complainant and her husband initially applied for the CRCs in January 2020. The Head stated that when persons first apply for a CRC it can be under 'job seeker' status, worker status, etc. In those instances, CSRO are provided with a job contract and rental contract which is the address that appears on the CRC. When the Complainant and her Husband applied to renew the CRCs, CSRO exercised their discretion to check and verify if the couple were indeed residing in Gibraltar and found the inconsistencies. The Ombudsman enquired whether the CSRO check if applicants hold Spanish residency at the time of applying for a CRC, the Head stated that they do not approach Spanish officials to enquire if persons have Spanish residency. What they do is they scrutinize documentation submitted by applicants.

The Ombudsman raised with the Head, the problems encountered by the Complainant when going through the Gibraltar/Spain border on her own. The Head explained that the Complainant had to be accompanied by her husband when she went through the land border because she had obtained her CRC through her husband as a family member of an EU national.

On the matter of not having replied to the Complainant's emails and that of her lawyer's, the Ombudsman enquired about the process in place at CSRO with regards to dealing with correspondence. The Head explained that what would have ordinarily happened is that the printed file with the email attached on the outside would have been passed on to him. The only explanation that the Head could provide as to why the emails were not responded to was that the email must have been put inside the file instead of being left attached outside the file for actioning and the file subsequently having been taken by a member of staff requiring it.

Regarding dual residency, the Head stated that there were conflicting views on what was allowed but stated that in Gibraltar, dual residency is not allowed therefore a person with Spanish residency applying to reside in Gibraltar would have to show proof of having relinquished residency in Spain.

The Ombudsman contacted CSRO prior to the completion of this report, November 2023, to establish whether the Complainant had in fact provided a copy of the Spanish residency when she first applied for a CRC. CSRO were going

to try to locate the file but advised that there had been a time where they had received instructions from Government to ignore the fact that a person had Spanish residency but stated that instruction had at a later stage been withdrawn

Conclusions

Complaint(i):AppliedfortherenewalofherCRCOnthe12thNovember2021 butbyOctober2022hadneitherreceivedanofficial refusalorclarificationon why it was taking so long to process the application – Sustained

Complaint (ii): Non-reply from the Head to the Complainant’s email of the 13th January2022-Sustained

Complaint (iii) Non-reply from the Head to the Lawyer’s letters to the Head dated 12th May 2022 and 21st June 2022 - Sustained

The CSRO’s 12th January 2022 email to the Complainant set out the reason why they were unable to issue the CRCs. The Complainant responded to that email in effect appealing the decision and on the 14th January 2022, CSRO informed her that her email had been forwarded to the Head for his consideration and that they would revert with his comments. Due to the file having been inadvertently misplaced, and to date continues, the Head did not respond to the Complainant until December 2022 and only as a result of the complaints having been lodged with the Ombudsman. The Ombudsman sustains these complaints.

The Ombudsman is critical of the fact that the Complainant’s hard copy file was lost and that no electronic copies of the documents submitted by the Complainant with respect to her applications for CRCs were available. The Ombudsman suggests that in order to prevent a recurrence of this situation, CSRO should review their internal filing procedure and implement a file tracking system.

In relation to the substantive matter and based on the findings of the investigation, the Ombudsman can only but conclude that at the time of the Complainant and her Husband's original application for a CRC in December 2020 the CSRO were under instruction from Government to ignore that a person had Spanish residency. It was under that criteria, that the Complainant and her Husband obtained the CRCs. It was as a result of that instruction having been withdrawn at a certain point during 2021 that CSRO were unable to renew the CRCs until the Complainant and her Husband relinquished their Spanish residency. In parallel to the aforementioned, the Head was not satisfied that the Complainant and her Husband's living arrangements in Gibraltar were other than a base in Gibraltar and requested the current rental agreement (March 2023) be provided.

As per the Ombudsman's 'Update', by March 2023 the Complainant and her Husband had made the decision to move to Spain and they were therefore not able to provide a new rental agreement to CSRO.

The Ombudsman cannot comment on the merits of Government policy but Principles of Good Administration advocate for public bodies to be open and accountable to service users. In this case, the CSRO failed to inform the Complainant and her Husband of the Government's change in policy during 2022 which caused them hardship due to the uncertainty of their residency situation in Gibraltar due to not having CRCs.

Classification

Complaint (i): Applied for the renewal of her CRC on the 12th November 2021 but by October 2022 had neither received an official refusal or clarification on why it was taking so long to process the application – Sustained

Complaint (ii): Non-reply from the Head to the Complainant's email of the 13th January2022-Sustained

Complaint (iii) Non-reply from the Head to the Lawyer's letters to the Head dated 12th May 2022 and 21st June 2022 - Sustained

Update

Subsequent to reading this report, the new Head informed the Ombudsman that it was apparent that there were some valid concerns that needed attention. He advised that they had initiated changes to outdated policies and commenced a transformative period for CSRO, aligning with their approaching move to their new offices.

REPORT ON CASE NO's 1271 & 1272

Complaints against the Civil Status and Registration Office (“CSRO”) in relation to delay and a lack of decisions reached on the complainants’ respective applications for permanent residence as “persons living aboard motor yachts”

Complaint(s)

The First Complainant was aggrieved because he applied for permanent residence on the 19th January 2022 and to the date of filing his complaint with the office of the Ombudsman, no decision had been reached or communicated by CSRO on the ground that they were awaiting a “*policy steer*” (“Steer”) from the Gibraltar Government on the specific issue of applications from residents of motor vessels.

The Second complaint applied for permanent residence in March 2022, with no decision having been received to date, for the same reason.

The Second Complainant alleged that a request for a Steer by CSRO was unreasonable since there continues to exist legislation in force which explicitly sets out his entitlement to permanent residence.

Given the identical nature of the complaints received, the Ombudsman took the view that he would treat the complainant as “systemic” and draft a joint report on that basis.

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.*

Additional Note:- The First and Second Complainants had both submitted their applications for permanent residence via respective law firms which they had instructed for that purpose.. Despite the Ombudsman not ordinarily accepting complaints where lawyers had been involved or where the complainants had or have the opportunity to channel their grievance via an alternative route, the Ombudsman saw fit to investigate these complaints on the ground of potential administrative injustice and the public interest.

The First Complainant was an octogenarian British national unfortunately suffering ill health. He had initially relocated to Gibraltar as a high net worth individual (“HINWI”) and had owned two properties in Gibraltar but was now permanently residing aboard his vessel, out of personal choice. He had been in Gibraltar since 2006 with the vessel moored in Gibraltar since that date. He was already in possession of a blue identity card and a GHA health card issued under his motor vessel. As mentioned, he had previously been registered within our jurisdiction for taxation purposes.

In his application for permanent residence dated 19th January 2022 he declared himself an “*economic self-sufficient person*” effective from the date of his retirement in 2007 (when he took residency in Gibraltar). It was now his desire (and he would argue, **entitlement**) to become a “*permanent resident*” and for his blue id card to be replaced by a red one.

Upon chasing the status of his application, the First Complainant was informed that CSRO was waiting for a Steer from the Government on these type of applications from owner/occupiers of vessels.

Given the lack of consideration of the application which the First Complainant considered grossly unreasonable and unjust, coupled with the fact that the Complainant could indeed prove that he had been resident in Gibraltar for the continuous period as stated and therefore met the criteria, he lodged his complaint with the Office of the Ombudsman.

The Second Complainant was also a British National. He was in his sixties and living on his vessel berthed at a Marina. He had been continuously living in Gibraltar since 2012 and having established roots here and exceeded the statutory five years continuous residency threshold, he submitted his application for permanent residence with the CSRO on 9th March 2022.

The Second Complainant ran a yacht chartering business from his vessel, employed staff and met all his tax and social insurance obligations. Again, on paper, the Second Complainant appeared to meet all the criteria to be granted a successful application and indeed submitted all the relevant documentation in order for his application to be considered and for him to be subsequently accepted as a “*permanent resident*” of Gibraltar.

As with the First Complainant, CSRO replied to chasers explaining that they were awaiting a Steer from Government and that they would revert as soon as they were in a position to do so.

It is important to point out that both complainants met the criteria to apply for permanent residence and affirmed that they had no intentions of leaving Gibraltar. The First Complainant was an elderly gentleman in poor health whom had only left sporadically for medical appointments but intended (and intends) to spend the remainder of his life living on board and enjoying his vessel. The Second Complainant had made a considerable investment on his motor vessel which he runs as a successful charter and as a result has established roots within the jurisdiction with no intention of departing.

Frustrated and baffled by the state of affairs, the Second Complainant also filed a complaint with the Office of the Ombudsman for his subsequent investigation and determination on the issue.

Both complainants were aggrieved by the fact that their applications had not even been considered, let alone granted, this determined exclusively by an apparent Steer which in practical terms, took priority over the legislation in place under which, both the First and Second Complainants argued they qualified for the granting of permanent residence. On the face of it, the Ombudsman shared their view.

Investigation

First Complainant

The Ombudsman examined the fully completed application form dated 19th January 2022, together with associated documents which included:-

- Two certified copy passport photos
- Certified copies of current identity card and passport
- Original (cancelled) identity card from 2014-2018
- Original letter from the Marina providing proof of domicile on his vessel
- Police report as evidence of good conduct
- Original permits of residence for the period 01/02/2007- 06/03/2023- (“self-sufficient pensioner”)
- Copy of private healthcare policy, GHA Cards and certificate of residence
- Original “Category 2” certificate issued 30/06/2006
- Certified copy of MV ownership documentation
- Certified copy of GHA Health Card

Numerous exchanges in correspondence via emails ensued over the subsequent months from the First Complainants solicitor, seeking clarification/ updates on the status of the application, culminating with an email to the head of CSRO (“the Head”) on the 8th November 2022, “*pleading*” for the application to be finalised given the length of time that had elapsed.

The solicitor’s email stated that although the First Complainant understood the potential concern of a motor vessel being approved for permanent residence, he had been in Gibraltar since 2006 with an identity card already having been issued by CSRO under his vessel. The argument was put forward that “*it was no different to someone renting a property and leaving Gibraltar at any point of the tenancy, if indeed, they did decide to leave.*” However, it was re-iterated that the First

Complainant had no intention of leaving Gibraltar. He was an elderly gentleman whom was unwell and although in possession of a valid GHA card, he did leave occasionally for private medical treatment (but not aboard his vessel), which was “*permanently moored*” at the Marina.

Given that matters did not progress and that it was conveyed that CSRO were awaiting a Steer, a complaint was lodged with the Office of the Ombudsman on behalf of the First Complainant.

The Ombudsman subsequently wrote to the Head at the beginning of January 2023, setting out the background to the complaint and confirming his perception of injustice in the application being left unresolved for such an extended period without a decision being taken. On the matter of the Steer, the Ombudsman posed the following questions:

(1) Whether this was the first instance where CSRO had received this type of application (from a person residing aboard a motor vessel) and if not, had permits of permanent residence been successful in the past?

(2) When did CSRO first write to Government on this matter and when was the issue followed up if at all?

In reply, CSRO stated that current legislation (the Immigration Asylum and Refugee Act 1962) (“IARA”) remained in full force, but that the request for a Steer arose as a result of an instruction at ministerial level for CSRO not to process applications for exemption from immigration control (namely, for permanent residence) from persons whose resided on motor vessels.

The CSRO also stated that “*this [was] the first permanent residence application from a person living on board a motor yacht*” and that “[*they*] originally wrote to Government on 26th January 2022 with the last written chaser dated 21st September 2022.”

Second Complainant

The Second Complainant also made his application for permanent residence via a law firm. The form was dated 9th March 2022.

All the relevant and correct additional/supporting information was submitted with the application. Said documents (which the Ombudsman closely reviewed) included:

- Passport photographs
- Certified copy of passport and Gibraltar identification card (blue)
- Certified copy GHA card
- Certified copy of permit of residence (valid from 13/09/2019 to 13/09/2024)
- Certified copies of numerous berthing receipts from the Marina relating to his motor vessel
- Certified copies of “good conduct police report and certificate of good standing” in relation to his M/V
- Certified copies of bank statements and income tax correspondence confirming the nature of the Second Complainant’s business as a “self-employed” and “self-sufficient” individual.

The Second Complainant’s complaint was addressed to the Ombudsman as constituting “*unnecessary delay being suffered regarding [his] application for permanent residency.*”

The Ombudsman also reviewed numerous email exchanges between solicitors for the Second Complainant and the CSRO in relation to the complaint and the delays being suffered, and the explanation provided to them with regard to the Steer. The Ombudsman wrote to CSRO on similar lines he had done in relation to the First Complainant and an almost identical reply was also received. Legislation remained in force but Steer was being sought from HM Government of Gibraltar as a result of the instruction not to process/issue grants of permanent residence for yacht owners/occupiers.

Both complainant's representatives expressed the view that their clients satisfied all the necessary criteria imposed by law in order for the applications to be properly considered and granted. From the review of the forms, correspondence and all the documentation made available to him, the Ombudsman concurred with that view.

The Law

The relevant legislation governing the applications forming the crux of this complaint (applications for Permanent Residence) is the IARA 1962.

Section 55N IARA provides at subsection (1) 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;

(b) a non-EEA family member of an EEA national, who has resided in Gibraltar with the EEA national in accordance with this part for a continuous period of five years;

(c) a person who-

i. has resided in Gibraltar in accordance with this Part for a continuous period of five years; and

ii. was, at the end of that period, a family member who has retained the right of residence."

The Ombudsman has accepted numerous complaints over the years relating to applications for permanent residence, where the IARA has been at the centre of his investigation and subsequent findings. None of the complaints received however have related to residents of vessels. Irrespective of that, (since the IARA does not differentiate between being a resident on land or sea, but merely to having *"resided in Gibraltar for a continuous period of five years"*); it would then follow that if an applicant meets the statutory requirements imposed by s 55N and has resided for *"a continuous period..."*, the application should be granted and there is no room for discretion.

Conclusions

The Ombudsman understands that the Government may seek to exercise caution in relation to granting applications for permanent residence, whether the applicants reside on land or motor vessels, post Brexit.

The Ombudsman has taken numerous complaints of inordinate delay and lack of decision making by CSRO relating to applications for permanent residence from qualifying individuals in the past and has repeatedly found that those individuals have suffered anxiety, stress and inexcusable administrative injustice as a result of delays, with their entire lives being kept on hold whilst they wait (in some instances for many years after the application was made). As mentioned above, the complaints being the subject of this report however, are the first we have received from individuals residing on motor vessels, berthed at marinas within jurisdictional waters.

As far as the Ombudsman has been able to ascertain, the law (IARA) does not differentiate between accepted modes of residence and for that reason alone, an application from a person permanently residing on a motor vessel (and who meets all the necessary conditions and criteria imposed by statute), should not be discriminated against.

There is no practical difference in a vessel owner permanently leaving berth as there is in a tenant vacating an apartment prior to the expiration of a tenancy or selling that property and moving abroad.

Insofar as the Steer is concerned, the Ombudsman does not grasp its necessity. Said policy steer would be more understandable or justifiable in the event of potential or previously undetermined/untested rights not governed by statute but in this instance, we have the IARA. Section 55N (1) is explicit as to whom rights of permanent residence apply, should they wish to exercise that right. The law does not provide any element of discretion in that regard- *“the following persons **are** entitled”* as opposed to *“the following “persons **may** be entitled.”*

From an Ombudsman perspective, both the First and Second Complainant's have suffered injustice as a result of delays in their applications being processed and in the subsequent denial of their rights to "permanently reside" in Gibraltar as imposed by legislation (which we repeat, continues to remain in force).

Although the Ombudsman has no authority to Order that the Government grant the applications which are the subject of this report, he would do so if he had the power to.

It should also be highlighted in defence of the Head and staff at the CSRO, that if they receive a general "instruction," it is their duty to fulfil it. It is also they who are faced with the consequences of dealing with dissatisfied or disgruntled service users, to their detriment.

Although until recently there had been no Government public announcements as to any substantive changes in the law or the communication of any policy steer, (despite what the First and Second complainants were told in private), the matter of permanent residence for "*people living on boats*" was very recently discussed at Chief Ministers Questions in Parliament.

At the last sitting of Parliament on Thursday 25th May 2023, the Honourable the Chief Minister, in response to an Opposition MP's question, stated that "*... People living on boats are no longer being issued residence or ID cards based on the Register of Occupation Act 2021. This follows concerns that the system was being abused.*"

It is to be determined how the matter will be resolved, whether the existing IARA section(s) will be repealed or amended and/or whether additional legislation will be enacted.

Although far from the Ombudsman's place to seek to address the Government on law or comment over policy, (nor would he wish to be seen to be attempting to do so), it would seem fair and just in his view and in the interest of good administrative practice, (at least in relation to the First and Second Complainants whom appear to be the only applicant owner/occupiers of motor vessels waiting for determination on their Permanent Residence applications, with applications

made well before any public announcements/change of policy have been made), that their applications be considered on their respective merits and granted without further delay. On the papers, it appears that all IARA criteria are met and that the reasons for the applications are genuine and bona fide.

Though the Ombudsman fully accepts and understands that matters of this nature should be subjected to thorough examination and consideration and indeed, decisions in some circumstances may not be accommodated in haste, it is nevertheless, unacceptable for the Policy Steer to have taken so long. During what appears to the Ombudsman to be some procrastination, the Complainants have accordingly had to suffer great frustration and anxiety, as to their future residential status.

Classification

Delays and lack of decisions reached on applications for permanent residence in respect of complainant's living on motor vessels, in accordance with the provisions of IARA

First Complainant – Sustained

Second Complainant- Sustained

Recommendations

Cases to be considered on their own merits. The Ombudsman recommended that the applications be granted whilst HM Government decides on the way forward for future applications from applicants living aboard motor vessels.

REPORT ON CASE NO 1276

Complaints against the Driver & Vehicle Licensing Department (“DVLD”) as a result of the DVLD’s Chief Examiner’s (“CE”) action of cancelling an application the Complainant had submitted four days earlier; and for no written reply from the CE to emails he sent on the 25th and 28th November 2022

Complaint

The Complainant was aggrieved at the CE’s action of cancelling the application he had submitted four days earlier. He was further aggrieved because he had not received a written response from the CE to emails he had sent to him on the 25th and 28th November 2022.

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

The Complainant and his ex-wife (“A”) were joint holders of a ‘Road Service Licence’ (colloquially known as a taxi licence) (“Licence”). The Complainant explained that they had divorced over eighteen years earlier but continued to hold the Licence jointly.

In August 2022 the Complainant contacted A (according to the Complainant they had not had any contact since the divorce), as the opportunity of selling the Licence had arisen. According to the Complainant she was very agreeable to the idea, to the point that she gave him her passport and Identity Card for him to take copies which were required to be submitted to the DVLD with the application. The Complainant explained that in the end the sale fell through but in his view, in order to avoid complications, from a legal standpoint on a future sale (due to the joint holding of the Licence) he suggested to A that it would be best if her name was removed from the Licence. The Complainant claimed that A acceded to the proposal and on the 23rd September 2022 he submitted and paid the DVLD £250- for the application to amend the Licence.

On the 29th September 2022, four working days after having submitted and paid for the application, the Complainant was shocked to be contacted by the CE and told that the application was being cancelled and offered a refund. The reason given for the cancellation was that A had attended DVLD offices in person accompanied by their son (“Son”) and informed the CE that she had changed her mind and wanted to withdraw the application.

The Complainant was very unhappy at the situation as he believed that if the officer in charge of processing the request had done so immediately upon submission of the application, the amendment would have been made and the DVLD would not have been able to cancel the application. In light of the circumstances, the Complainant felt that A had been favoured over him. Furthermore, he had been told unofficially that the DVLD may have been coerced by their Son into making the decision.

The Complainant emailed the CE on the 25th and twice on the 28th November 2022. In the 25th November 2022 email, the Complainant asked the CE to give him copies of all the signed documents submitted, including those signed by A making him sole owner of the Licence. In the first email of the 28th November 2022 he asked the CE to find out from the Transport Commission (“Commission”) if such documentation could be cancelled four days after being signed and submitted. In the second email of the 28th November 2022 to the CE, the Complainant acknowledged and understood that the CE had a job to do but he could not understand how A could go to DVLD offices and verbally request that everything be cancelled and the decision to do so taken on the spot, despite the fact that the Licence was held jointly. The Complainant asked the CE to reconsider the aforementioned, and referred to the fact that the application should have gone through the Commission before any decision was made to cancel. The Complainant asked the CE to assist him in submitting all the documents to the Commission in order that they could make a rightful decision.

The Complainant stated that he did not receive a response to his emails other than a verbal refusal from the CE not to provide him with the copies he had requested for the time being because A’s name was on it (Data Protection issues). According to the Complainant, the CE had stated that he would make enquiries on that matter but had advised the Complainant to engage the services of a lawyer who could contact him on the issue.

On the 18th January 2023 the Complainant lodged his complaints with the Ombudsman.

Investigation

The Ombudsman presented the complaints to the CE and made pertinent enquiries.

No written reply from the CE to emails he sent on the 25th and 28th November 2022.

On the matter of the non-written response to the Complainant's emails, the CE stated that he had not answered via email, partially due to being inundated with emails he receives but also because he was a 'hands on' person and had discussed the matter with the Complainant over the phone and in person at his office on numerous occasions. The CE noted that he had always made himself available to the Complainant and never turned him down when he had contacted him and listened to all his concerns dutifully.

Referring to the 25th November 2022 email sent by the Complainant, the CE stated that he spoke to the Complainant and explained that he could only give him information that pertained to him and not to A. The CE highlighted that the Complainant was already aware of that as he had made an application back in 2018 asking for similar copies.

Regarding the 28th of November 2022 email, the CE advised the Ombudsman that he again spoke to the Complainant and reminded him that further to a lengthy meeting in his office he (the Complainant) had decided to 'withdraw' the application and understood that he could submit a new application when both he and A were in a position to do so once they had come to an agreement with respect to a civil issue they had to resolve. The CE pointed out that in an effort to assist with the civil issue which related to financial matters stemming from the Licence rental, he had organised a meeting in his office with both parties and their Son as adviser to A. The CE stated that although no agreement was reached at that meeting, the Complainant had contacted him a few days later to inform him that they had agreed to share the Licence rental and had signed an amendment to the Licence to be able to renew it. The CE was delighted with that outcome as the Licence renewal meant that the taxi was finally back on the road.

The CE stated that although he did not provide written replies to the emails of the 25th and 28th November 2022 he had frequent conversations and continued to meet with the Complainant, A and their Son as well as replied to subsequent emails from them, up to May 2023.

(i) Aggrieved as a result of the DVLD’s Chief Examiner’s (“CE”) action of cancelling an application he had submitted four days earlier;

Regarding the decision to return the documents to A four days after the documents were submitted to the DVLD, the CE explained that the Complainant had applied to the Commission to request that A be removed from the joint ownership of the Licence because he believed it would be more complicated from a legal point of view to sell the Licence with a joint ownership. Prior to the application being presented to the Commission, A and their son attended the CE’s offices. A informed the CE that she suffered from visual impairment and claimed not to know what she had signed and therefore wanted to retract the application to be removed as joint owner of the Licence. The CE stated he felt it was his obligation to hold the application but did not return any documents to A. He confirmed that all the original documents were with the Permits Section of the DVLD.

The Ombudsman had enquired on what the DVLD’s general policy was regarding the cancellation of applications when payment had been made for the delivery of a service. The CE referred the Ombudsman to Section 23 (1) of the Transport Act 1998 which reads as follows:

Transfer of licences

23. (1) A road service licence issued after the coming into force of this Act shall not be transferable and shall not be transferred to any person unless the licence was issued or renewed, subject to a condition that it may, with the consent of the Commission, be so transferred.

The CE stated that as per the above, the DVLD is to process the application via the Commission and although there is no written policy, a refund of the £250- fee is not normally issued. In this particular case, as the application had still not reached the Commission (they meet once or twice a month) and after consideration, the CE decided to grant the refund to the Complainant.

The CE pointed out that the decisions he took on this matter were never influenced by any comments made by the Son. All his decisions had been based on his willingness to help all parties and in considering the information he received from A, the Complainant and their Son on the occasions in which they visited him in his office. The CE concluded by stating that his door was always open and he was always available to listen and help anyone that needed his assistance.

Apart from the Section referred to by the CE above which points to the Commission as being the entity which has to consent to the transfer of a Licence, the Ombudsman identified Section 24. (2) (as per below) with respect to amendments to road service licences which was what the Complainant required:

Amendment of Licences

24. (1)
- (2) An application for the amendment of a road service licence shall be made in the prescribed form and forwarded to the Commission accompanied by the prescribed fee.
- (3)

Section 24 (2) is clear in that an application for an amendment should be forwarded to the Commission accompanied by the prescribed fee. It is the Commission who then consider the application and make a decision.

The Ombudsman met with the CE on the 6th July 2023 to clarify a number of issues, further to the CE having read the first draft of the Ombudsman's report into the investigation. The CE explained at this late stage that there had not been a cancellation of the application by the DVLD but rather that after their meeting, the Complainant had taken the decision to withdraw the application (which at that point had not yet been presented to the Commission due to them not having met) and obtain a refund. The CE provided the Ombudsman with a copy of the DVLD form requesting the refund and stating the reason as being that the application was being withdrawn.

The CE clarified that the application was signed and the fee paid but that did not trigger the transfer of ownership of the Licence; that was the initial administrative step required for the application to be processed and it was then up to the Commission to consider the application and make a decision. The CE had informed the Complainant that under the circumstances of this case, he would not be able to recommend to the Commission that the application be accepted, although it was the Commission who ultimately made the decision. The CE stated that until an application is submitted to the Commission and considered, any applicant has the right to withdraw an application and that up to that stage there is a possibility of a refund.

Conclusions

Complaint (i): Aggrieved as a result of the CE's action of cancelling an application he had submitted four days earlier – Not Sustained

The Ombudsman did not sustain this complaint.

The findings of this investigation have established that the application was withdrawn by the Complainant and the application fee of £250- refunded.

The CE had advised that if the application had reached the Commission the possibility of a refund would not have been an option, even in the event that the application had been refused.

Complaint (ii): Has not received a written reply from the CE to emails he sent on the 25th and 28th November 2022 – Not Sustained

Although the Ombudsman's initial view would have been to sustain this part of the complaint, it was not possible to do so in this specific case considering that the Complainant enjoys a long standing, personal and fluid relationship with the DVLD, as a result of the nature of his business.

The information provided by the CE supports the existence of said relationship and further demonstrates that meetings, telephone communications and emails were held between the Complainant and CE on the salient issue throughout the period being investigated and also subsequent to the 25th and 28th November 2022 emails, which the Complainant complained remained unanswered.

In effect, as far the Ombudsman has been able to determine, although the CE may not have specifically provided a written answer to those emails, he remained in constant communication with the Complainant throughout.

Classification

Complaint (i): Aggrieved as a result of the CE's action of cancelling an application he had submitted four days earlier – Not Sustained

Complaint (ii): Has not received a written reply from the CE to emails he sent on the 25th and 28th November 2022 – Not Sustained

REPORT ON CASE NO 1279

Complaint against the Housing Authority for (i) alleged wrongdoing by them in having changed their rules to temporarily allocate a Government rented flat; (ii) having treated the Complainant unfairly compared to other persons in his situation; and for (iii) no reply to email of the 18th January 2023 setting out his complaint.

Complaint

The Complainant alleged wrongdoing by the Housing Authority because they had changed their rules to be able to temporarily allocate a Government rented flat. He was further aggrieved because he believed he had been treated unfairly compared to other persons in his situation and because he had not received a reply to his complaint email of the 18th January 2023.

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 allocated an apartment in one of the co-ownership estates (affordable housing built by HM Government of Gibraltar) but until such time as the property (“Property”) was constructed and completed, the Complainant and his family resided in privately rented accommodation at a monthly cost of £1,300-. The Complainant was concerned that the monthly instalments of £850- towards the Property would soon commence and that would have a big impact on his financial situation.

On the 20th December 2022, in an effort to seek assistance from the Housing Authority for temporary accommodation until the Property was ready to move into (it was envisaged that completion would take a few years) the Complainant sent them an email requesting a meeting and explained that for a number of years he had been having serious financial issues due to the high rental outgoings. The Housing Authority responded on the 16th January 2023 and advised that although they sympathised with his predicament, when a Government housing applicant purchased a property in one of the co-

ownership estates, their application was automatically suspended unless they rescinded to purchase, at which point they would return to the Government Housing List to await their turn to be allocated a flat.

The Complainant responded and stated that under normal circumstances he would have accepted their reply but he found it difficult to do so as he had a close relative in his same situation (purchased co-ownership property in another estate which would be completed in summer 2023) who had been allowed accommodation in a Government rented property. The Complainant asked the Housing Authority to explain why some individuals merited special treatment compared to others.

In their response of the 17th January 2023, the Housing Authority informed the Complainant that their position remained the same and thanked him for his patience and cooperation.

On the 18th January 2023 the Complainant emailed the Housing Authority to lodge a complaint to their published email address housing@gibraltar.gov.gi with the subject title being '*Lodge a Complaint*'. In that email he set out that paying in excess of £2,000 per month for monthly rent and instalments was a bit harsh, especially with two young children, and highlighted that he would not be lodging a complaint if the Housing Authority treated everyone the same instead of breaking the rules when it suited them to cater for an individual, as was done in his relative's case. The Complainant stated that he was aware that rules had been changed because when his relative contacted the Housing Authority he was immediately temporarily allocated a Government flat until July 2023 when it was envisaged that the property he had purchased would be completed. The Complainant pointed out that a contract had been drawn up.

According to the Complainant, the tenancy of that Government flat was held by a person who had been away from Gibraltar for over a year due to work related matters and instead of the Housing Authority allocating the flat to the next person on the list he had been allowed to keep it. The Complainant asked the Housing Authority why some people were quickly assisted whilst others were pushed aside.

The Housing Authority's response to the Complainant on the 18th January 2023 was that his issue was 'an Allocations (Section) matter' and he should email them directly. The Housing Authority provided the Complainant with the Allocations email address and at the same time, forwarded his email to the section.

By the 9th February 2023, not having received a reply, the Complainant telephoned the Housing Authority with regards his issue and followed this up with an email (to allocations as directed) in which he stated that he was being unfairly treated compared to other members of the public. He then contacted the Ombudsman's Office for advice on the Housing Authority's complaints procedure and timeframes and was duly provided with the information. The Complainant emailed the Housing Authority again on the 13th February 2023 and received an automated reply stating that he would get a reply within five days. The Complainant did not, so on the 21st February 2023 he lodged his complaints with the Ombudsman's Office.

Investigation

On the 7th March 2023 the Ombudsman requested the Housing Authority's comments with regards to not having responded to the Complainant's email of complaint dated 18th January 2023, seven weeks earlier. The Ombudsman enquired whether it was normal practice for a complaint to be dealt with by advising the Complainant to forward the enquiry to another email address within the Housing Authority (allocations). The Housing Authority responded that:

'...the formal complaint route is not for general concerns by merely mentioning the word 'complaint' in their correspondence. If applicants/tenants wish to make a 'formal complaint' they should address this as such to the department.'

The Ombudsman responded and referred the Housing Authority to the subject on the Complainant's email which was 'Lodge a Complaint' and the fact that a number of references within the content of the email denoted that this was in fact a complaint. The Ombudsman therefore expressed concern that the Housing Authority had taken the contents of the email as being of 'general concern' and directed the Complainant to forward it to the Allocations Section instead of

through the formal complaint route. The Ombudsman suggested that the Housing Authority might want to consider a dedicated email address for complaints in order to avoid a similar situation arising in future. Notwithstanding the aforementioned, the Ombudsman pointed out that the Complainant had waited over 31 working days for a reply (which to date, 14th March 2023 had not materialised) where Principles of Good Administration advocated that replies from public bodies should be provided within 21 working days.

The Housing Authority responded on the 23rd March 2023 that they had taken the Ombudsman's suggestion on board regarding introducing a specific email for formal complaints and had already requested a new email address.

In relation to the Ombudsman's comments referring to the Principles of Good Administration whereby replies from public services should be provided within 21 working days, the Housing Authority explained that the delay in responding was due to staff shortages within the Department, a matter which was actively being addressed by the Principal Housing Officer with the pertinent entities.

Regarding the substantive complaints, on the 14th March 2023 the Ombudsman requested comments from the Housing Authority on the following:

- (i) The Complainant's allegation that a close relative (the Complainant subsequently informed the Housing Authority on the 5th May 2023 that the relative was his son ("Son")) had been allowed to rent a Government flat even though he was not eligible for Government housing due to having purchased a co-ownership property;
- (ii) Other persons in the same situation and renting in the open market were not offered assistance;
- (iii) The Complainant's assertion that the tenant of the Government rented flat was known to the Housing Authority to be living and working in another country for over a year and was still allowed to retain the rental, in contravention of social housing policy.

On the 27th March 2023, the Complainant forwarded to the Ombudsman an email he had just received from the Ministry for Housing. It referred to a meeting the Complainant had with the Minister for Housing on the 2nd July 2020 as a result of

which he was allowed to become an applicant for Government housing and informed that he would need to provide a copy of the 'Deed of Release' over his private property [Ombudsman Note: A deed of release is a title document showing that any mortgages over a property have been satisfied and allows the buyer to purchase the property free and clear of debt. The Complainant had been married previously but that marriage had broken down and resulted in the Complainant's ex-wife becoming the sole owner of the property which had been the matrimonial home]. The email referred to subsequent correspondence regarding the latter and noted that to date that had not been submitted. They requested that the Deed of Release be provided by the 11th April 2023 and that failure to do so would result in his housing application being cancelled. The Complainant was aggrieved that he had yet to receive a reply to his complaint but had received a threat to take him off the list for the purchase of a property in a co-ownership estate.

On the 3rd May 2023 the Ombudsman chased a response to his email of the 14th March 2023. In that email he highlighted that the Complainant had advised that he had submitted the copy of the 'Deed of Release' within the required timeframe. The Housing Authority confirmed in their reply that the dedicated complaints email, formalcomplaintshousing@gibraltar.gov.gi had been activated. They also advised that they had made several attempts to contact the Complainant but had not been successful and would be sending him an email to request that he contact them. The Complainant confirmed that on the 5th May 2023 the Housing Authority emailed him requesting the details of the individual he alleged had been provided with temporary accommodation until the new developments were built so that they could investigate the matter accordingly. The Complainant complied and on the 15th May 2023 forwarded the Housing Authority's response to him which was that the matter had been investigated accordingly and his complaint had not been sustained. The Complainant sought information as to how they had arrived at that conclusion and was told that they were unable to disclose information on third parties due to GDPR (General Data Protection Regulations).

Regarding the Complainant's allegation that the tenancy of the Government flat, which he claimed his Son had been temporarily allocated, was held by a person who had been away from Gibraltar for over a year due to work related matters, and contravened rules, the Ombudsman reviewed the Housing Act 2007. Section 6 stated the following:

Occupation of Premises

Personal Occupation Essential

6.(1) Subject to subsection (3), it shall be a condition of possession of any public housing that the tenant shall be entitled to such possession so long as he is in personal occupation of the public housing for not less than 270 days in the aggregate in every year.

(2) A tenant shall not be deemed to be in personal occupation for the purposes of subsection (1) on any day in which he does not sleep in such premises.

(3) The Principal Housing Officer may authorise, in the particular case of any tenant, a reduction of the 270 days stipulated by subsection (1).

(4) A tenant shall be deemed to be in personal occupation of the public housing, notwithstanding that he does not sleep in such public housing on such day, provided that the reason for his not so sleeping is that he is prevented from personal occupation by circumstances beyond his control, save that to meet the requirements of this section, any period exceeding 28 days must be approved in writing by the Principal Housing Officer.

(5) Where a tenant is not in personal occupation of his public housing and his absence does not render him liable to have his tenancy terminated under section 8 by reason of such non-occupation, the premises may be occupied by a person approved in writing by the Principal Housing Officer when there is a period of absence by the tenant exceeding 28 days.

The Ombudsman identified under 6(1) that a tenant in possession of social housing would be entitled to such possession as long as he/she was in personal occupation for not less than 270 days in the aggregate in every year. Section 6(3) stipulated that the Principal Housing Officer could authorise, in the particular case of any tenant who was not in personal occupation and whereby his/her absence did not render him/her liable to have the tenancy terminated due to non-

occupation, a reduction of those 270 days. Additionally, Section 6(5) made provision so that the premises could be occupied by a person approved in writing by the Principal Housing Officer when there was a period of absence by the tenant exceeding 28 days.

The Ombudsman met with the Principal Housing Officer to discuss the above powers and enquire on the criteria that had to be met for the above to be accepted. The Principal Housing Officer explained that for the above to be acted upon was very rare and that applications for this would be considered on a case by case basis. She confirmed that was what had happened in this instance. Without divulging the precise details in this report which the Ombudsman was made privy to, the Principal Housing Officer confirmed that she had under Section 6(3) approved the reduction of the 270 days occupation of the tenancy holder and under Section 6(5) approved the temporary accommodation of the Son's partner, a relative of the tenancy holder. The Principal Housing Officer stated that the Son's partner had been given a letter (not a contract) by the Ministry for Housing informing her that whilst they were aware that she was residing in the property that did not grant her any rights or created any legal rights. The Principal Housing Officer reiterated that cases of temporary occupation had been very rare and would have to meet specific conditions which were that the temporary occupant would have to be a close relative of the tenancy holder and also have alternative accommodation in the pipeline which would ensure that the property would revert to the tenant.

Regarding the request made by the Ministry for Housing for the Complainant to submit the Deed of Release further to having lodged his complaint, the Principal Housing Officer clarified that the Housing Authority when looking into the Complainant's file had identified that the pertinent document had never been provided and took the opportunity to request this. The request was not a threat but rather a call to attention.

Conclusions

Complaint (i)

Alleged wrongdoing by the Housing Authority in having changed their rules to temporarily allocate a Government rented flat – Not Sustained

The Ombudsman's investigation has established that there was no maladministration on the part of the Housing Authority in having temporarily allocated a Government flat. The Housing Act 2007 under Section 6 (3) authorises the Principal Housing Officer to reduce the 270 days that a tenant has to be in personal occupation of the property. The Housing Act 2007 under Section 6 (5) also authorises the Principal Housing Officer to allow that a tenancy be occupied by a person approved by her in writing, when there is a period of absence by the tenant exceeding 28 days, i.e. temporary accommodation of the property. Consequently, the Ombudsman does not sustain this complaint.

Complaint (ii)

Treated unfairly compared to other persons in his same situation – Not Sustained

The investigation has found that cases of temporary occupation are very rare and would have to meet specific conditions as detailed in the 'Investigation' Section above. The Ombudsman is therefore of the view that the Complainant was not treated unfairly compared to 'other persons' as the circumstances of the temporary allocation meet the requirements. The Ombudsman does not sustain this complaint.

Complaint (iii)

Non-reply to email of the 18th January 2023 setting out his complaint – Sustained

The Ombudsman sustains this complaint. The Complainant lodged a complaint with the Housing Authority on the 18th January 2023 setting out his complaint and stating as the subject matter 'Lodge a Complaint'. Despite this, instead of investigating the complaint, the Housing Authority deemed the matter to be one of general concern and advised the Complainant to address the issue to the Allocations Section. The Housing Authority forwarded the original email to the Allocations Section. The Complainant chased a response on the 13th February 2023 and due to not having received a response, lodged his complaint with the Ombudsman on the 21st February 2023.

The response received from the Housing Authority to the Ombudsman's enquiries was illogical in that as per above, the Complainant had clearly entitled the email sent to them as being 'Lodge a Complaint'. This seems to not have been adequate for the Housing Authority who informed the Ombudsman that if the Complainant wished to make a formal complaint he should address this as such to the department, something which the Ombudsman informed the Housing Authority the Complainant had done. For the avoidance of doubt going forward, the Ombudsman suggested that the Housing Authority should have a dedicated complaints email address, a suggestion which the Housing Authority took on board and which the Ombudsman welcomes. Notwithstanding, the Ombudsman is of the opinion that when setting up the complaints procedure, the Housing Authority should have as a matter of fact set up a dedicated email address for this purpose.

The Ombudsman took account of the Housing Authority's statement of not having been able to provide a response to the Complainant within 21 working days due to staff shortages but noted the statement that this was being actively addressed by the Principal Housing Officer with the pertinent entities.

Classification

Complaint (i) - Alleged wrongdoing by the Housing Authority in having changed their rules to temporarily allocate a Government rented flat – Not Sustained

Complaint (ii) - Treated unfairly compared to other persons in his same situation – Not Sustained

Complaint (iii) - Non-reply to email of the 18th January 2023 setting out his complaint – Sustained



Public Services Ombudsman

10 Governor's Lane, Gibraltar

Tel: (+350) 20046001 • Email: info@ombudsman.gi

Web: www.ombudsman.org.gi