



Annual Report 2021



FRONT COVER

The theme of this year's Annual Report is 'Transitions'. Our front cover features a moon gate which symbolises luck and new beginnings— a fitting image, as 2021 marked Ms. Victoria Pearman's last full calendar year in office.

The team wishes Ms. Pearman good luck as she embarks on new beginnings and transitions to the next chapter in her journey.



Photo By Mark Bean







OMBUDSMAN FOR BERMUDA

24th June 2022

The Hon. Dennis Lister, JP, MP
The Speaker, The House of Assembly
Sessions House
21 Parliament Street
Hamilton HM 12

Dear Honourable Speaker:

I have the honour of presenting my Annual Report which covers the period 1st January to 31st December 2021.

This Report is submitted in accordance with section 24(1) and (3) of the Ombudsman Act 2004 which provides:

Annual and Special Reports

- 24 (1) The Ombudsman shall, as soon as practicable and in any case within six months after the end of each year, prepare a report on the performance of his function under the Act during that year.
- 24 (3) The Ombudsman shall address and deliver his annual report and any special report made under this section to the Speaker of the House of Assembly, and send a copy of the report to the Governor and the President of the Senate.

Sincerely,

Michael A. DeSilva
Ombudsman

CONTENTS

INTRODUCTION

Ombudsman’s Message	9
Eight Years of Service - Photo Collage.....	13
Ombudsman’s Office Staff	15
<i>Summer Intern Profile</i>	16
Mission and Values	18
Overview	19

STRATEGIC AIM I: GREATER PUBLIC ACCESS

How to Make a Complaint	20
Ombudsman ‘Out and About’.....	22
PATI Update	22

STRATEGIC AIM II: GREATER PUBLIC AWARENESS

Casework in 2021	25
Casework in Context	26
Outstanding Complaints	29
Selected Case Summaries, Did You Knows and Commentaries.....	30
<i>Case Summary: Accommodating Authority</i>	30
<i>Did You Know?: Your Social Insurance Contributions</i>	30
<i>Case Summary: Contention Alley</i>	30
<i>Case Summary: Disremembered Reimbursement</i>	31
<i>Did You Know?: Registration of Punts</i>	31
<i>Case Summary: Suspended Appeal</i>	31
<i>Case Summary: Eligibility Error</i>	32
<i>Case Summary: Paused Pardon</i>	33
<i>Commentary: LOP Anomaly</i>	33
<i>Case Summary: The Right to Refuse</i>	34
<i>Commentary: Beginner’s Guide to Public Sector Complaints</i>	34

Systemic Updates 37

Bus Cancellations Communications Investigation 37

Criminal Injuries Compensation Board Investigation 38

STRATEGIC AIM III: CHAMPIONING BEST PRACTICE

Assessing Good Administration 39

Demonstrating Accountability..... 41

Our Performance..... 41

Our Spending..... 41

Staff Training 46

Affiliations..... 47

SUPPLEMENTARY RESOURCES

Complaint Process FAQs 48

Complaint Dispositions 53

Feedback Surveys 54

FIGURES

Figure A: How we received cases in 2020 vs. 2021..... 21

Figure B: Complaints 2005 – 2021..... 23

Figure C: Cases worked on in 2021 25

Figure D: Cases received in 2021 by Authority 27

Figure E: Cases received in 2021 by Ministry..... 28

Figure F: Complaints carried into 2021 29

Figure G: Cases opened per month: 5-year glance..... 42

Figure H: Cases closed per month: 5-year glance 43

Figure I: Outstanding complaints carried into each year: 5-year glance 45

Figure J: Percentage of complaints open after the year in which they were received 45

Figure K: Spending for fiscal period ending 31 March 2021 45



OMBUDSMAN'S MESSAGE

As in previous years, fairness in the treatment of persons is a priority the Office has worked diligently to advocate for and oversee. This work is of great importance as sometimes public administration can be unfair and result in administrative injustice. It is unacceptable and especially wrong when vulnerable and disadvantaged people are adversely affected. All persons accessing public services should be treated fairly with respect and courtesy.

The Ombudsman's Office is here to listen and help when people are looking for answers and do not know where to turn. Where an authority is unable to or does not resolve issues, our Office gives careful consideration to possible actions that may provide some form of resolution. We address any unfairness causing injustice using ombudsman principles. During this reporting year, 2021, principles of fairness were more critical than ever. At this time, the public administration system was under stress and the people it serves were affected, with many distressed and in crisis. An ombudsman's guiding principles on the importance of good communications caused us to ensure that we were accessible by email and telephone so that people could talk with us directly and we could meet essential needs.

Government officials' responsiveness to the public's questions and concerns was essential to our Office. Where appropriate, we intervened to ensure government officials answered people's questions. We provided information and facilitated communication between authorities and service users. Some of the issues we addressed were: entitlement to Covid-19 emergency unemployment benefits and payments; guidance on patient access to medical treatment when consulting private physicians, through the Bermuda Medical Council (BMC), the medical regulator; legal safeguards for incarcerated persons; concerns about a fee for customers to attend their bank through the Bermuda Monetary Authority (BMA), the bank and financial services regulator. Some of these issues involved areas of



concern already under review. These interventions again illustrated the importance of the ombudsman's guiding principles of fairness, good communication, and being public service user-focused. They also emphasised the significance of the obligation to follow these principles in service to the public. People thanked us for answering and assisting during this difficult time when making contact was challenging. During a crisis, it is increasingly important that public services be responsive. Responsiveness provides increased protection of the public's right to be treated fairly and improves confidence in public services.

Based on these guiding principles, we advocated for the Government and the public service to take necessary steps to be responsive where offices were operating remotely with staff working from home. Actions taken by the Government in response had some limitations. The public encountered difficulties in accessing government departments and receiving responses. In too many instances, members of the public contacted our Office about communication deficiencies. In these cases, we informed government offices that phone calls and emails were going unanswered. While our interventions assisted with individual cases, an improvement on a broader, substantive level was slow, even when restrictions ceased and

buildings reopened. Given this responsibility to the public, this crucial area required immediate improvement. The emergency required flexibility in approach and how service delivery to the public had to be carried out.

We were cognisant of the adjustments that government departments were required to make to operations and planning. The demands for meeting the Office's commitments and dealing with the unforeseen events and other issues deprived us of two years—a critical time we could not make up for. It was a tremendous strain on the team. We were forced to limit some projects we could not complete without compromising ombudsman practices and processes. At the same time, we made sure the public was served.

Work in progress in which significant improvement was made included: our work on coordination and communication with parents of students requiring special education; communications and administrative systems at the King Edward Memorial VII Hospital, including for the indigent; and guidance on complaint handling and strengthening complaint handling for persons incarcerated by the Treatment of Offenders Board (TOOB). As an Ombudsman, I am unaccustomed to leaving matters incomplete since we seek to carry on until matters are concluded. We had some operational issues and lost time, mainly in the emergency. However, we carried out our work throughout and recommendations for improvements were made and accepted.

We completed systemic investigations previously commenced into bus service communications, a future for criminal injuries compensation and the management and coordination for the prevention of senior abuse in Bermuda. We also completed work over an extended period to press for action resulting in progress and improvement with a government internal complaint handling system.

Fairness requires implementing procedures to make the service user's experience easier rather than to make it easier for the service provider. Navigating the public administration system is increasingly complex. Putting the customer and their needs front and center results in better



Photo by: E. Michael Jones

**Every new beginning
comes from some
other beginning's end.**

- Seneca

service and response. As it relates to accessibility and being customer-focused, there are lessons to be learned. We have identified that fair access requires making reasonable accommodations and providing support for service users who have physical, mental or other challenges, such as those experienced by some seniors, for whom special support concierge service would be helpful and should be considered.

The concept of being customer-focused does not only apply to service delivery. It should also be a consideration for the layout and design of buildings where public services are provided. The Dame Lois Browne-Evans Building has modern courtrooms with several advances. However, consideration was not given to providing space for persons to be heard in private chambers for sensitive, embarrassing matters. Additionally, even though the King Edward VII Memorial Hospital has big open spaces, the building has fewer beds, with patients habitually waiting in emergency room corridors to be seen. Also, the new, modern building does not include a children's ward. When public funds are expended, all members of the public must be taken into account. It seems so obvious and straightforward to ensure that such grand projects and ordinary public facilities take account of the needs of all members of the public.

Ombudsmen do not advocate on behalf of individual interests but rather for the good of the public as it relates to fairness. They champion best practices and adherence to principles while making interventions for change. Sometimes this takes longer than anticipated for various reasons. The key is not to give up on championing what is right.

Technology has been an extraordinary advance in many areas. It has permitted access to information around the clock and a public ability to retrieve it if they have the resources to do so. The advances help but government services must not overlook shortcomings for the user in communications or make assumptions. This is of considerable concern, which fairness requires to be acknowledged.

Advances in technology have transformed many different areas of our lives. With technology enabling greater access to public services, members of the public must have the knowledge, tools and means to use the twenty-four-hour information and technology systems and obtain the benefits of these services. The Office has seen that greater care is essential to avoid overlooking communications shortcomings for users and the public. Public service providers must not assume that one size in technology fits all communications and information needs for public access in Bermuda. Fairness requires that these major concerns be taken into account and acted on.

I am privileged to have been entrusted with this challenging and immensely important work. It has been an honour to serve this community which I care deeply about and advocate, protect and contribute to fairness in public administration. As I pass on the torch (which was handed to me by Arlene Brock, Bermuda's first Ombudsman), I know of the serious work ahead.

The new Ombudsman, Michael A. DeSilva, was appointed by the Governor after an open and competitive application process. He has a long career in public service in the administration of justice and an understanding of the complexities of this community. I know the serious challenges he faces and wish Ombudsman DeSilva and his team wisdom and much success in improving the Office for the people of Bermuda.

My sincere thanks go to members of the public for the trust and confidence they placed in the Office. Thank you to those who brought their matters for resolution. As an office of last resort, we thoughtfully and carefully considered complaints and sought the best outcomes. Complaints are valuable as they alert the Office to challenges that may affect the wider community, especially during this period, a period like none our country has had to survive in 100 years. The Office is here to help.

To those who work in all sectors of the public service, thank you for having faith in this Office and for believing its commitment to fairness

includes fairness to the public service. The strong professional relationships developed an understanding of our constitutional role and responsibilities. It increased the number of complaints we could informally resolve over the years. Public service is demanding, consuming work, and sometimes thankless. It is a misconception held by some that it is a simpler work option. It is not. During the public health emergency, as members of the public service, you also had to contend with the same challenges while continuing to serve. Your assistance and efforts are appreciated.

I express a special thank you to the team at the Office of the Ombudsman, who are intelligent, principled and caring Bermudians, committed to helping those the Office serves, all of whom I am extremely proud. In this reporting year, the team rose to the challenge and remained focused while surmounting challenges. The current team and those who, over the years, transitioned to other positions of service fortified me. I extend my heartfelt gratitude to each of them for their assistance to me and their invaluable contributions to the successes of the Office. I also wish to thank Taznae Fubler, our Summer Intern, for her contribution and cheerful work style. I wish her much success while pursuing a Graduate Diploma in Law at the BPP University Law School.

Thanks to all colleagues at home and internationally for their time and support. The Office's international standing has continued to grow. The people of Bermuda have benefited from the wealth of international resources the Office had access to, especially during the global crisis. As the Ombudsman for Bermuda, it was an honor and pleasure to have been elected to serve the members of the Caribbean and Ombudsman Association (CAROA) as its President and elected to represent the Caribbean and Latin American region as Regional President of the International Ombudsman Institute (IOI).

I thank everyone who has played a part and shared in the Office's growth, success and accomplishments. Adherence to the principles of fairness, access, good communication and being user-focused is essential to taking care of the people and their best interests. The people of Bermuda deserve that we take good care of them.



Victoria Pearman
Ombudsman for Bermuda

**Fight for the
things you care
about but do it in a
way that will lead
others to join you.**

- Ruth Bader Ginsburg





OMBUDSMAN'S OFFICE STAFF



Victoria Pearman
Ombudsman



Junior Watts
Deputy Ombudsman



Aquilah Fleming
Investigations Officer



Kristen Augustus
Investigations Officer



Shaun Dill
Manager, Finance & Admin.



Tanya Jones
**Executive Assistant
(Temporary)**

Farwell and Special Thanks to:



Robyn Eve
Executive Assistant



Howard Ebbin
**Investigations
Officer (Temporary)**



Charleda Mahon Gibbons
**Executive Assistant
(Temporary)**

for their dedicated service, commitment to the work of the Office
and for the valuable contributions they have made.



SUMMER INTERN PROFILE

Over the summer months, we were pleased to have Ms. Taznae Fubler join us for a summer internship organised by the Department of Workforce Development. Ms. Fubler is currently pursuing her Graduate Diploma in Law at the BPP University Law School. She is interested in a career as a litigation attorney. Below, Ms. Fubler shares a summary of her internship experience at our Office.

ON THE JOB

“During my time as an intern at the Ombudsman’s Office, my duties included but were not limited to providing administrative and research support in investigations and completing administrative projects as requested by members of the Complaint Team. I worked closely with the Ombudsman and I also had an opportunity to be involved in the process of compiling the Ombudsman’s Annual Report 2020.”

PERSPECTIVES

“This internship was an amazing opportunity. The Ombudsman’s Office has a small team of dynamic and dedicated professionals who welcomed me with open arms. Working with the team helped me to expand my knowledge about the public service and the work of the Office. I enjoyed sitting in on the Complaint Team meetings where the team discussed complex complaint issues. I will take this experience with me as I further my studies and I intend to apply what I have learned when I launch my career.”

**Whatever you choose to do, leave tracks.
That means don’t do it just for yourself.
You will want to leave the world a little
better for your having lived.**

- Ruth Bader Ginsburg



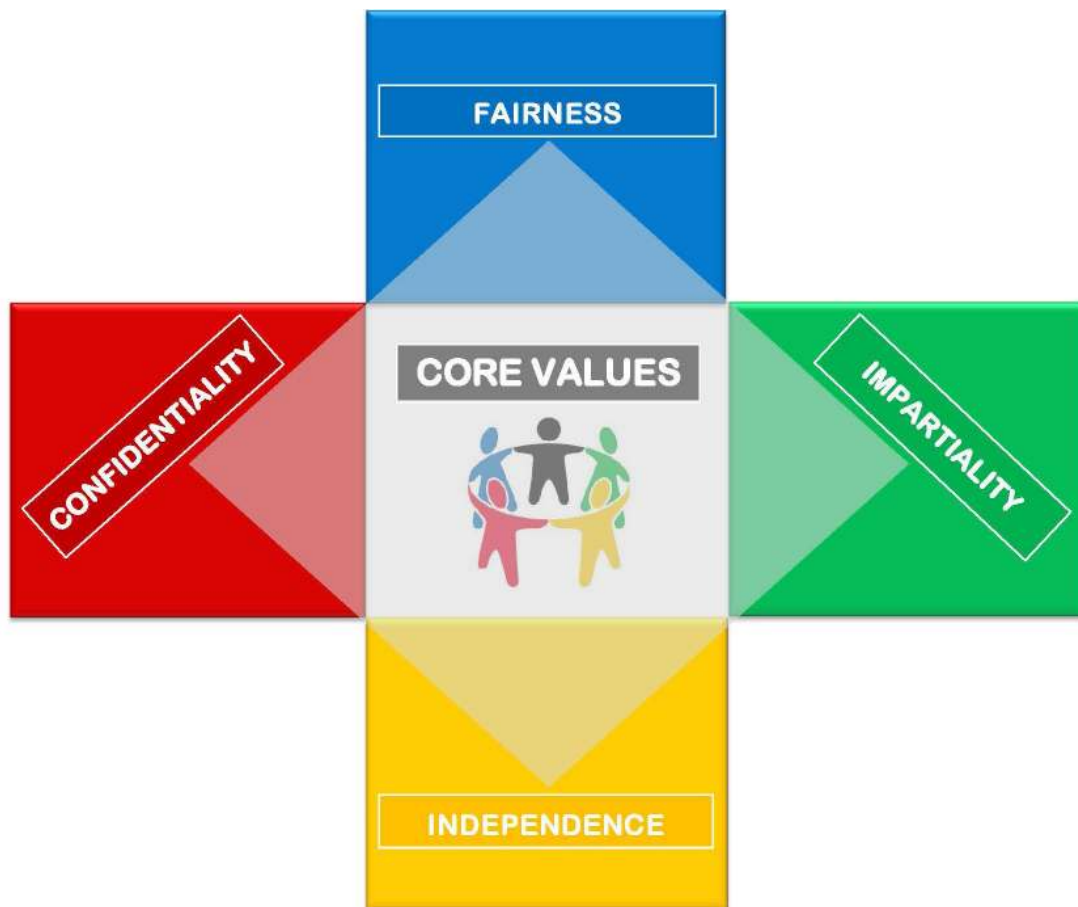
MISSION AND VALUES

We protect the interest of the public by providing independent resources and interventions for individuals with complaints about public services, while influencing improvement in standards of those services to ensure people are treated fairly.

To achieve our mission, we aim to:

1. Deliver a more efficient, accessible and responsive service that effectively resolves complainants' concerns.
2. Inform the Public Service of developments in principles and practices of good administration and facilitate improvement of public authorities' complaint handling processes.
3. Improve stakeholder satisfaction about the quality and impact of our service.
4. Remain aware of administrative best practices, emerging trends and issues both locally and in our international networks.
5. Strengthen best practices and internal processes for enhanced team performance and development.

Our core values include:



OVERVIEW

The Ombudsman's strategic aims from 2014 to 2021 were:

- greater public access,
- greater public awareness, and
- championing best practice.

Over the past eight years, our team worked diligently to achieve these aims as we strive for greater accountability to the public, the Legislature, the Government and the Public Service – all of whom have a vested interest in the success of this Office.

In our Annual Report 2021, we report on these efforts and our progress during this Office's 16th year in service, using the Ombudsman's strategic aims for its structure.

- The first section on 'Greater public access' describes how the public can reach us and our outreach activities. It also includes updates on how various public authorities have made information held by these authorities more accessible.
- The second section on 'Greater public awareness' reviews our complaint handling through summaries of cases and statistics, to help show how we do what we do. It also highlights information we learn about public authorities and their processes as we carry out our work.
- The third section on 'Championing best practice' identifies useful resources on what good administration means and our recent activities to improve our case management practices and outreach efforts to public authorities.

We welcome your feedback about our services and this publication. Return the surveys enclosed or visit us online.



Photo By Mark Bean

STRATEGIC AIM I: GREATER PUBLIC ACCESS

During the year, which was punctuated by shelter at home and other public health measures, we ensured the public could consistently access our Office. We remained open to the public except when the island was under orders to shelter. During those times we forwarded all incoming calls to a single point of contact who ensured all queries were relayed to the appropriate staff member.

HOW TO MAKE A COMPLAINT

Anyone can make a complaint to the Ombudsman about public services. You do not have to be a Bermudian or a resident of Bermuda. Should you have questions about whether or not we can address your complaint please contact us.

Before coming to our Office, you should make a complaint to the relevant authority at your earliest opportunity. It is better to seek assistance quickly than to remain in a quandary on your own. If you have not done so, we may refer you back to the authority.

Even if a complaint is outside of our jurisdiction, we can assist you by providing information or by referring you to another body that may be able to look into the issues you raise.

If you are dissatisfied with how your complaint to a government authority was addressed, or feel you were mistreated, we encourage you to reach out to our Office. You can contact us in various ways: by telephone; in person as a walk-in or by appointment; by email or online through our website; or by letter or fax.

Remember we are here to assist **you**.



Dundonald Place, Suite 102
14 Dundonald Street West
Hamilton HM 09 • Bermuda

Monday to Thursday 9:00a.m. – 5:30p.m.
Friday 9:00a.m. – 5:00p.m.

TEL **296-6541**

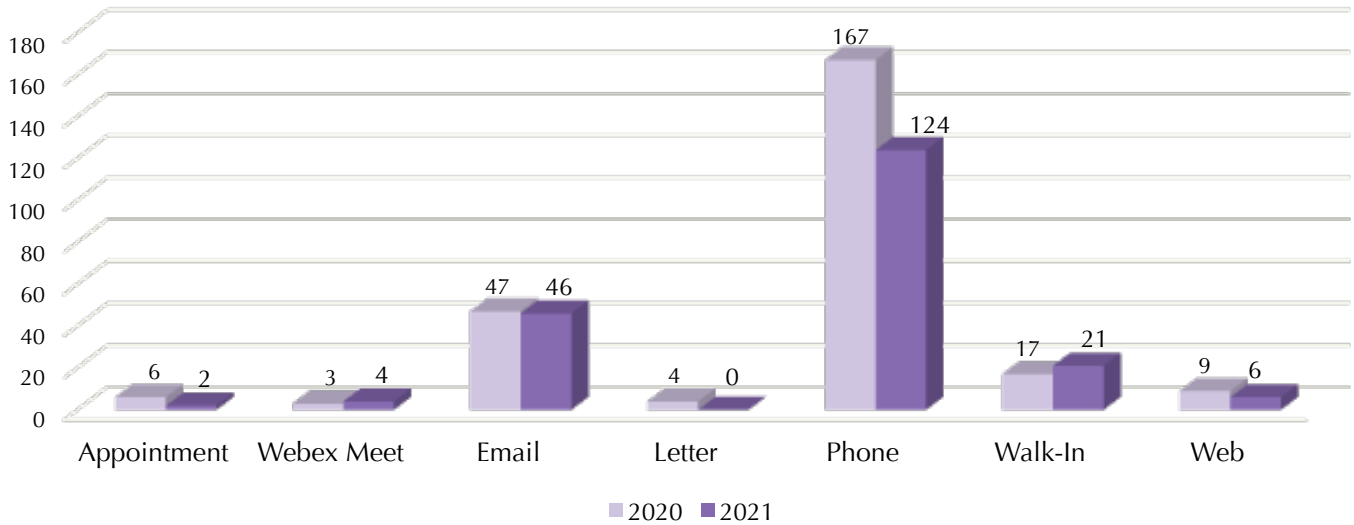
FAX **296-7734**

www.ombudsman.bm

info@ombudsman.bm

facebook.com/bermudaombudsman

Figure A: How we received cases in 2020 vs. 2021



Prior to 2020, it had been a consistent trend that most people who used our service contacted us by calling or visiting us. Since then, most people have contacted us by telephone and email and there has been a significant decrease in walk-ins. In 2020, we saw 17 walk-ins, the lowest number in recent years and 167 telephone contacts which was the highest number. Comparatively, in 2021 we saw 21 walk-ins and 124 telephone contacts. See Figure A for a comparison of how we received cases in each year. This reflects a continuation of a trend that emerged in 2020 as a result of the pandemic which limited in-person contacts.



OMBUDSMAN ‘OUT AND ABOUT’

2021 was a busy year for the Ombudsman and her team with several opportunities to engage with international colleagues through virtual training, conferences, workshops, etc. Through the year, the Ombudsman maintained her involvement in regional and international ombudsman affairs.

In March, the Ombudsman attended the presentation of the “Comparative Study of Ombudsperson Institutions Throughout the American Continent” undertaken by the Defensoría del Pueblo de la Ciudad Autónoma de Buenos Aires (DPCABA). The study focused on differences and commonalities in their regulatory frameworks, appointment procedures, structure & functions, jurisdiction, public relations, and strategic alliances.

The Ombudsman also participated in “The Concept of the Ombudsman”, a facilitated discussion, hosted by the African Ombudsman Research Centre. The discussion focused on understanding the concept of the ombudsman and how the ombudsman institution can be used as a tool to strengthen government institutions to be an efficient service that is responsible and responsive to the needs of the citizens.

In May, the Ombudsman and Investigations Officer, Aquilah Fleming, attended the International Ombudsman Institute (IOI) 12th World Conference & General Assembly which was held virtually. The conference theme was “Giving Voice to the Voiceless”.

There were two days of workshops covering a wide range of topics including but not limited to “Challenges to Ombudsman Institutions”, “Defending Human Rights in a Pandemic”, and “Protecting Human Rights and Vulnerable People”. The Ombudsman also concluded her term as IOI Regional President for the Caribbean and Latin America, having served in the role since February 2019.

PATI UPDATE

The Public Access to Information Act 2010 (PATI), which took effect on 1 April 2015, ushered in a new era of transparency for the Government. By making PATI requests, members of the public exercise the right of access to records held by Bermuda’s public authorities, which can help to improve administrative practices in the Government.

The Office’s Information Statement aims to make it easy to access key information about the Ombudsman’s activities, including:

- who we are and what we do;
- what we spend and how we spend it;
- what our priorities are and how we are doing;
- how we make our decisions;
- our policies and procedures; and
- lists and registers.

Some information is restricted by PATI. Records obtained or created by the Office in the course of carrying out our functions are not accessible to the public under section 4(1)(b) of PATI. In 2021 we did not receive any PATI requests from the public. To obtain a copy of our PATI Information Statement (last updated January 2022) and learn about records that can be made available to the public, stop by our Office or visit our website to download it.

Congratulations to our Information Officer, Mr. Shaun Dill, who received the 2021 Information Commissioner’s Award for his work done in 2020. In awarding Mr. Dill the Information Commissioner highlighted “the professional and effective manner in which he fulfilled his obligations under the PATI Act. In carrying out his role, Mr. Dill embodies the integrity, courage and commitment to service that the Information Commissioner hopes to find in all Information Officers. His leadership inspires his colleagues to learn more about the rights and obligations under the PATI Act. Mr. Dill’s selection for the Information Commissioner’s Award reflect his commitment to the PATI Act and good governance on behalf of the Office of the Ombudsman.”

STRATEGIC AIM II: GREATER PUBLIC AWARENESS

Our casework encompasses both complaints and enquiries. The distinction between a complaint and an enquiry is based on the complainant's intention when contacting our Office. A complaint is a case where the complainant seeks our services with the intention that our Office will pursue inquiries into the complaint. Whereas an enquiry is a case where the complainant seeks our services to ask our Office for guidance or assistance in determining the best next step.

Since opening our doors in 2005, we have handled over 2,695 individual complaints. Over the years, we have done considerable work to educate the community about the work of our Office. This is reflected in the increase of the average complaints we have received over

five-year periods. In the first five years, on average we received 136 complaints, in the next five year period the average was 159 and in the last 169.

Our complaint handling is divided into four basic categories:

- open – at year-end we were still working to address the complaints;
- declined – for complaints outside our jurisdiction;
- disposed of – closed complaints that were addressed through inquiries or investigations, informally resolved between the complainant and the authority, or withdrawn or abandoned by the complainant; and
- referred – where it was more appropriate for the complainant to raise the issue with another body.

Figure B: Complaints 2005 – 2021

**The numbers in blue represent the highest value per category.*

Year	Start	End	Open	Disposed Of	Referred	Declined	Total per year
1	2005 Aug	2006 Jul	22	57	47	11	137
2	2006 Aug	2007 Jul	29	44	44	17	134
3	2007 Aug	2008 Jul	35	53	20	21	129
4	2008 Aug	2009 Jul	35	29	53	26	143
5	2009 Aug	2010 Jul	58	44	80	66	248
5 Interim	2010 Aug	2010 Dec	21	5	30	34	90
6	2011 Jan	2011 Dec	48	23	54	78	203
7	2012 Jan	2012 Dec	47	30	57	32	166
8	2013 Jan	2013 Dec	45	26	38	36	145
9	2014 Jan	2014 Dec	55	11	42	20	128
10	2015 Jan	2015 Dec	32	21	61	47	161
11	2016 Jan	2016 Dec	53	65	24	15	157
12	2017 Jan	2017 Dec	32	43	23	28	126
13	2018 Jan	2018 Dec	30	57	31	48	166
14	2019 Jan	2019 Dec	25	59	26	104	214
15	2020 Jan	2020 Dec	30	97	20	45	192
16	2021 Jan	2021 Dec	41	43	19	53	156
Total per category			638	707	669	681	2,695
Average per category			43	47	45	45	180

CASEWORK IN 2021

To summarise new cases opened in 2021:

- We received 205 cases. 156 were complaints and 49 were enquiries.
- Of the 156 complaints, 103 were in our jurisdiction and 53 were not.
- We referred 19 of the complaints within our jurisdiction to other authorities where there was a more suitable remedy.
- We disposed of 43 complaints:
 - 13 complaints were abandoned or withdrawn by the complainant.
 - 9 complaints were resolved between the complainant and the authority with informal and limited intervention by us.
 - 21 were closed after our Office made inquiries into the complaint.
- 41 complaints remained open at the year's end.
- 24 people came back to us within the same reporting year, either raising separate issues or the same issue later, accounting for 57 cases and thus around 28% of 2021 cases. We do not always record a caller's name if the initial call addresses the questions completely and the caller asks to remain anonymous. These numbers do not indicate whether an anonymous person complained more than once.

From 1 January to 31 December 2021, we worked to address a total of 261 cases. This included:

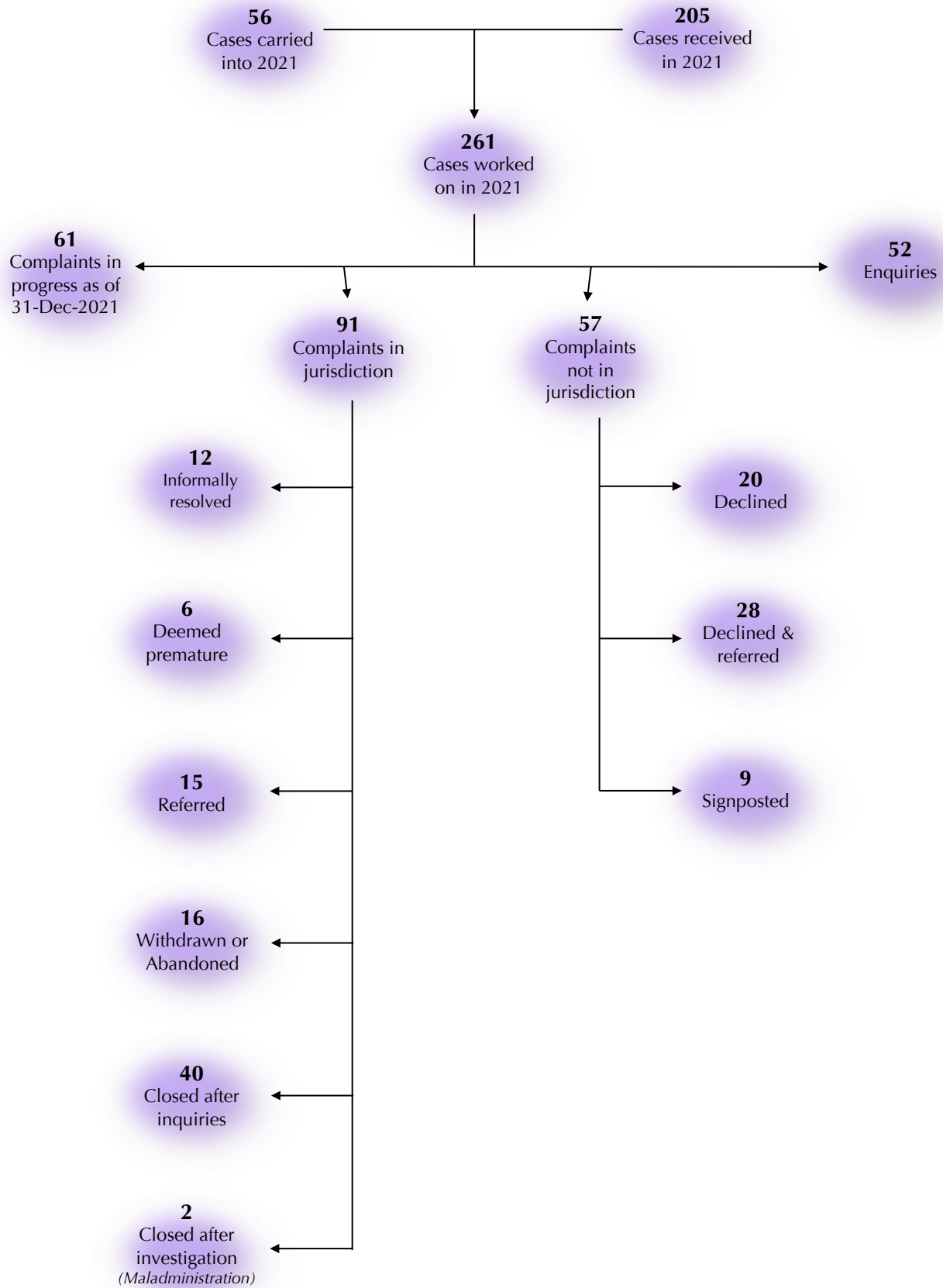
- enquiries people made to us - 52 (including 3 carried over from previous years)
- new complaints opened in 2021 - 156
- outstanding complaints we carried into 2021 from previous years - 53

To summarise casework (cases worked on) in 2021:

- Of the 261 cases worked on in 2021, 61 complaints were in progress as of 31 December 2021. 148 complaints were disposed of: 91 of which were in our jurisdiction, 57 of which were not.
- Of the 91 complaints in our jurisdiction:
 - 12 were Informally Resolved;
 - 6 were Deemed Premature;
 - 13 were Referred;
 - 16 were Withdrawn or Abandoned;
 - 40 were Closed After Inquiries;
 - and 2 were Closed After Investigation (Maladministration)
- Of the 57 complaints outside of our jurisdiction: 20 were Declined because they were not in our jurisdiction and we did not provide additional resource information; 28 were Declined and Referred and eight were Signposted.
- Of the 52 enquiries worked on in 2021: 3 enquiries were carried over from the previous reporting year; and 49 new enquiries were received in 2021, comprising 24% of our total cases received in that year.
- For the 261 cases worked on in 2021, we closed 200 by year-end and the remaining 61 were open as of 1 January 2022.

For a full description of our complaint process and dispositions, see pages 48 - 53.

Figure C: Cases worked on in 2021





CASEWORK IN CONTEXT

Figure D shows the total for new cases in 2021 by each authority, excluding bodies that are not in the Ombudsman's jurisdiction (Not-in-Jurisdiction). These numbers represent complaints and enquiries made, not the Ombudsman's findings concerning those cases. Counts also do not indicate whether the complaints were substantiated. Authorities with a higher volume of public interaction have a higher volume of service users and, consequently, tend to have a high volume of complaints and enquiries made to the Ombudsman. For example, it has been a consistent trend over the years that we receive a high volume of Department of Corrections cases. See pg. 31 of our 2019 Annual Report for a commentary on the relationship between prison complaints and the Parliamentary Ombudsman, internationally. While case trends are not an automatic indicator of systemic issues, our Office continuously monitors such trends to determine whether they warrant discussion with relevant authorities.

*If you can't fly, then
run, If you can't
run, then walk, If
you can't walk, then
crawl, but whatever
you do, you have to
keep moving forward.*

- Dr. Martin Luther King Jr.

Figure D: Cases received in 2021 by Authority

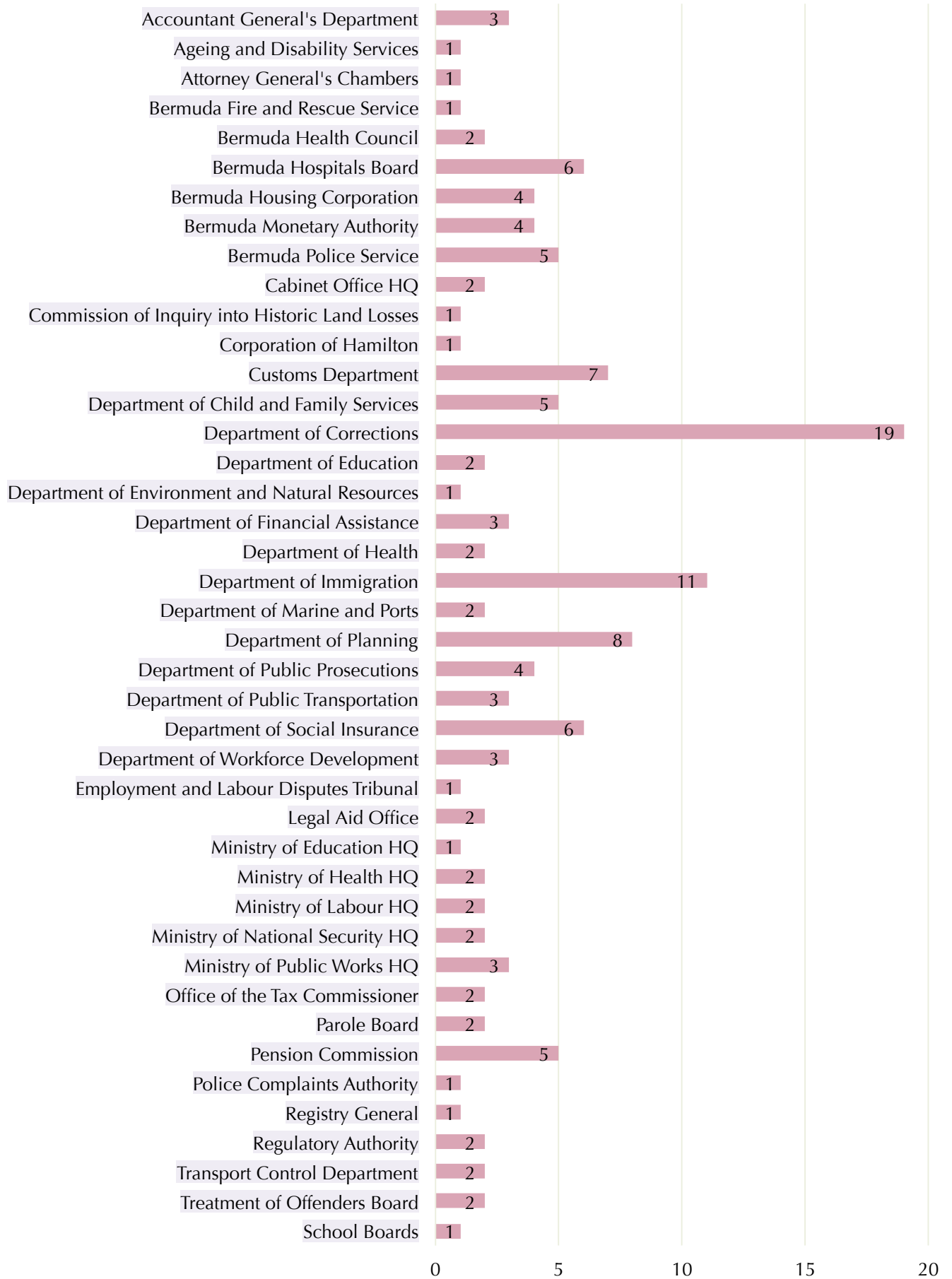


Figure E: Cases received in 2021 by Ministry

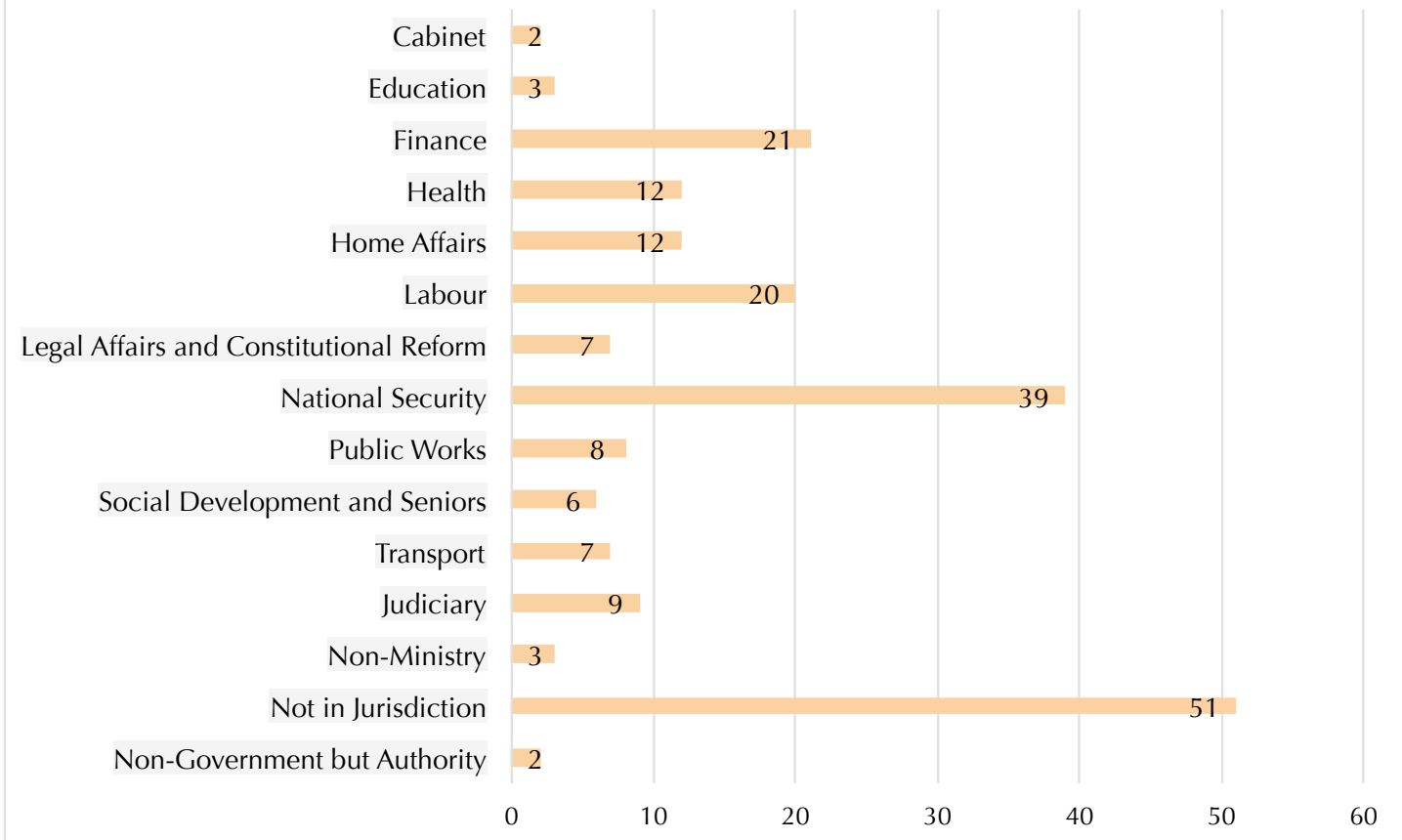
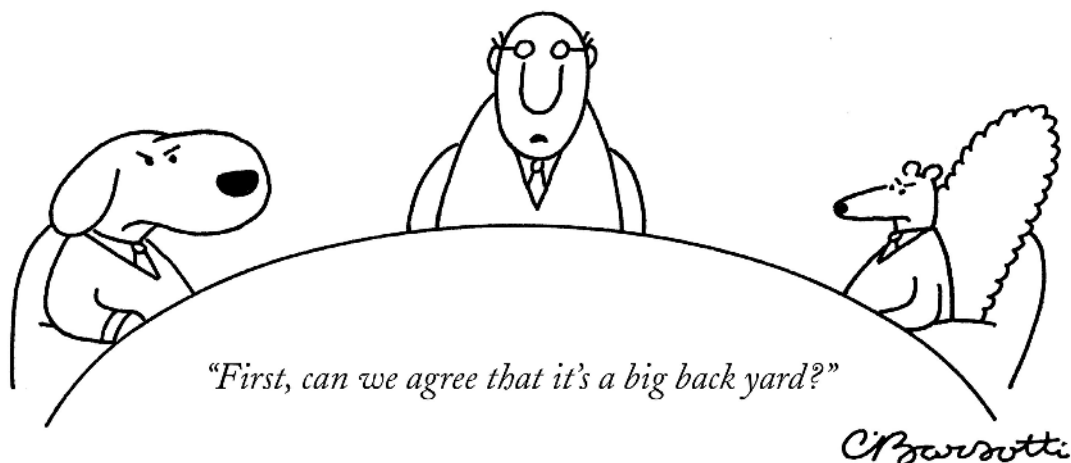


Figure E summarises the new cases received in 2021 by the relevant Ministry according to the Government’s organisational chart at year-end. (As of August 2021, the Government made changes to the organisation of Ministries, departments, and other bodies under its responsibility.) The graph also includes three additional categories: ‘Non-Ministry’, which are government-funded bodies that are not part of a Ministry; ‘Non-Government but Authority’ which are public bodies that are not within the organisational structure of the Government but may have been created by an enactment of the Legislature or are, in part, funded by the Government; and ‘Not-in-Jurisdiction’ which are bodies not subject to the Ombudsman Act.



OUTSTANDING COMPLAINTS

In 2021, we successfully addressed and closed 36 of the 55 cases that were opened in prior years. Of these 36 closed cases, we resolved 36% after inquiries that we considered to have reasonably satisfied the issues. We carried 61 cases into 2021: 1 from 2017, 7 from 2018, 3 from 2019, 9 from 2020 and 41 from 2021.

Figure F: Complaints carried into 2022

Complaint Status as at 31-Dec-21	Year opened					TOTAL
	2017	2018	2019	2020	2021	
Intake	0	0	0	0	21	21
Facilitated resolution	0	0	0	6	18	24
Pre-investigation	0	5	1	0	2	45
Investigation	1	2	2	3	0	8
Total complaints carried into 2022	1	7	3	9	41	61



SELECTED CASE SUMMARIES, DID YOU KNOWS AND COMMENTARIES

Each case our Office receives represents an opportunity for learning and improvement. Our process requires all parties to reflect on their roles in the matter. We have chosen to share a selection of anonymised cases that were closed by our Office in 2021. Some details have been altered to protect the confidentiality of those who use our service. We have also included useful 'Did You Know?' information and commentaries.

CASE SUMMARY:

Accommodating Authority

ISSUES: We received an enquiry from a man who had concerns about his outstanding social insurance contributions. As he was approaching his 65th birthday, he wanted to confirm the amount he owed and find out how to make a payment. The man explained that he had significant hearing loss and needed to meet with someone at the Department of Social Insurance (DOSI) in person. At the time, DOSI was closed to walk-ins and he had encountered some difficulties when he asked to speak with someone face-to-face. The man sought our advice on how to proceed.

INTERVENTION: Our Office made inquiries with DOSI to get some answers for the man and connect him with the right person. A DOSI official explained that the man would first need to complete an application for voluntary contributions before DOSI could calculate the amount owing. They also said that DOSI would be able to arrange a special appointment to see the man in person. We relayed this information to the man and put him in touch with the DOSI official.

INSIGHTS: This case highlights the importance of public authorities providing services that are easily accessible to their customers and making reasonable adjustments. Public authorities have taken necessary measures during the Covid-19 pandemic to observe public health guidance and minimise face-to-face meetings through remote contact.

While this is important, it is also essential to ensure that such measures account for those unable to handle their affairs by telephone or email. We were pleased that DOSI could accommodate the man by offering a special appointment.

DID YOU KNOW?:

Your Social Insurance Contributions

Did you know that you can find out how much you have contributed to your social insurance? You can request a record of your contributions by completing a Record of Contribution Request and submitting it to the Department of Social Insurance.

Contact:

Department of Social Insurance
Government Administration Building
30 Parliament Street, Hamilton HM 12
Bermuda
(441) 294-9242

CASE SUMMARY:

Contention Alley

ISSUES: A homeowner complained that there was no development number displayed at a development site adjacent to his home. The development site belongs to the Government and involved widening the road. He was visibly distressed at the prospect that he would not be able to access his property through the adjacent lot as he had done for years. He explained he parks his work vehicle on the lot because there is only enough space for his family car on his property which compounded his stress. He was also unsure whether there was a right of way to his property. The homeowner attempted to resolve this issue with the Department of Planning but he was unable to find out with whom he should speak.

INTERVENTION: Our Office contacted the Department of Planning and as a result of our enquiries the homeowner was able to speak with the appropriate person who informed the homeowner that the developer was making provisions for him to park his work vehicle on the government lot.

The homeowner was further informed that he could appeal his concerns about the development to the Minister of Home Affairs. After the call, our Office advised him to seek legal advice on whether there is a right of way from the adjacent property.

INSIGHTS: This complaint was a great example of how immediate intervention from our Office prevented furthering the Complainant's grievance. It is clear from our inquiries that the Department of Planning had considered and addressed the Complainant's concerns. Unfortunately, this was not communicated to the Complainant because he was unsuccessful in his attempts to contact the appropriate person in the Department. Once the Complainant made the appropriate contact, his grievance of unresponsiveness and his concern of not having a place to park his work vehicle was rectified and he was informed of how to appeal his concerns about the development.

CASE SUMMARY: Disremembered Reimbursement

ISSUES: A litigant complained to our Office that a Government Department did not reimburse him for legal fees after they agreed to do so. He followed up with the Department several times but he was unable to resolve the issue. He asked for us to inquire about the reimbursement.

INTERVENTION: In response to our inquiries, the Department informed our Office that the litigant was not reimbursed because of an oversight. They immediately provided a form for the litigant to complete in order for the reimbursement to be processed. Our Office provided the litigant with the form on the same day.

INSIGHTS: Putting mistakes right effectively and quickly is a well-established principle of good administration. While the oversight was unfortunate, the Government Department quickly responded to our inquiries and the issue was able to be resolved within a few days.

DID YOU KNOW?: Registration of Punts

Did You Know that punts are required to be registered with the Department of Marine and Port Services? There are several legislative provisions that give the Department the authority to charge a fee for the registration of punts. Section 5 of the Marine Board Act 1962 gives the Minister of Transport general management, control and supervision of maritime matters. Sections 6, 7 and 8 of the Registration of Boats Regulations 1990 gives the Minister of Transport the authority to require registration. The Minister of Finance authorises the fee under the Government Fees Act 1965, which is currently set at \$14.00.

CASE SUMMARY: Suspended Appeal

ISSUES: We received a complaint from a mother of a school-aged child who attends a local government-aided school. The school had given the child an out-of-school suspension and the mother wished to appeal it. The suspension notice stated that appeals must be made within 24 hours to the Department of Education (DoE).

The mother contacted a DoE official to submit her appeal within the same day. They informed her that the school's respective board (the Board) was the appropriate body to hear her suspension appeal. At the time, she expected the DoE would forward her appeal documents to the Board. However, a week later, the mother contacted our Office to inform us that she had not received any response from the Board. Given the time that had passed, she was concerned that the Board would not consider the appeal.

INTERVENTION: Our Office made inquiries and established that the Board was in fact the appropriate body to hear the mother's appeal. However, the Chairperson of the Board confirmed they had not received any documents from the DoE. In the meantime, the mother had subsequently reached out to them. The Chairperson asked her to email the documents but they had not received any further contact from her.

We discussed the matter further with the mother who informed us she had made several attempts to email the documents to the Board but there appeared to be some issues with the email correspondence. We explained this to the Chairperson and asked that they give the mother an extension to allow her to submit her documents. In the end, we arranged to receive the documents from the mother, forwarded them directly to the Chairperson, and the appeal was able to be considered.

INSIGHTS: Some individuals may experience challenges that hinder their use of an administrative procedure within the time prescribed by a public authority. As stated in the Principles of Good Administration, public bodies should treat people with sensitivity, bearing in mind their individual needs, and respond flexibly to the circumstances of the case. While public authorities must observe established timeframes, they should use discretion where it is reasonable to do so. We commend the Board for being flexible.



CASE SUMMARY: Eligibility Error

ISSUES: Our Office received a complaint from a woman who applied for a government benefit in 2020. Later that year, the Government Department requested a supporting document from the woman. She provided the document and assumed that the process was moving forward normally. However, about five months later, in 2021, the Department requested additional information. When the woman provided this information, the Department informed her that she was not eligible for the benefit.

The woman explained to our Office that an official had previously informed her that she would be eligible for the benefit. She was aware of other persons in her circumstances who had been given the same information and their applications for the benefit were approved.

INTERVENTION: Our Office made inquiries with the Department about the issue of eligibility. We spoke with an official who informed us of the eligibility requirements for the benefit. They explained further, however, that officials had misinformed some individuals several years ago about their eligibility for the benefit. The Department had subsequently sought advice from the Attorney General's Chambers (AG Chambers) who advised that, although the information given to those individuals was incorrect, the information must be honoured. The official confirmed that the woman was one of those individuals who had been misinformed. On that basis, the Department approved her application. They added that there were only a handful of individuals in these circumstances since most misinformed persons had aged out of the application process.

We also asked an official from the Department why they did not detect the woman's ineligibility sooner. They explained they did not anticipate that the woman might not be eligible as most applicants are. However, the official acknowledged that the Department should not have assumed. They noted that staffing issues during the Covid-19 pandemic resulted in disjointed communications with the woman,

further delaying detection of the eligibility issue. As a result of this complaint, the Department made improvements to its application screening process by adding targeted upfront questions to identify any problems with eligibility.

INSIGHTS: This case highlights the legal principle of legitimate expectation. Legitimate expectation relates to the way that a person might reasonably expect to be treated by a public authority. This expectation is based on a public authority's explicit promise or past consistent practices. If an administrative action by a public authority is contrary to a legitimate expectation, it may be subject to review. We commend the Department for being guided by this principle and putting things right in this case.

CASE SUMMARY:

Paused Pardon

ISSUES: On 7th October 2020, the then Governor of Bermuda pardoned a foreign national inmate on compassionate grounds. The pardon was conditional upon such date that deportation could be arranged. On 16th February 2021, the inmate complained to our Office that he had still not been deported although he had been pardoned. He was concerned that the Department of Immigration, which was responsible for facilitating his deportation, was unaware that he was awaiting deportation. The inmate had not spoken directly with anyone at the Department of Immigration.

INTERVENTION: Our Office made inquiries about the delay with the Department of Immigration. We were informed that the reason for the delay was that there were no jurisdictions with direct flights to Bermuda that would allow the inmate to spend the night. All of the flights to the inmate's home country had an overnight component. The Department of Immigration had engaged the services of a local travel agent to assist in finding a suitable flight. Flight arrangements were subsequently made soon after, and the inmate was deported a little less than six weeks after he came to our Office.

INSIGHTS: Many decisions have administrative variables that are not within the control of a public authority. While the Governor pardoned the inmate in October 2020, the inmate could not be released until March 2021 because the deportation could not be facilitated until that time. This may have seemed unfair to the inmate who, understandably, was eager to be released. However, our inquiries found there was no evidence of unfairness as the reason for the delay was not the fault of the Department of Immigration. In fact, the Department was diligently seeking ways for the inmate to be deported. In cases where the public authority is restricted by circumstances it does not control, it is important that the public authority continues to monitor the issue, consider ways to resolve it with the resources it has, and keep everyone informed.

COMMENTARY:

LOP Anomaly

An inmate highlighted an inherent flaw with the allotment of loss of privileges (LOP) punishments by the Treatment of Offenders Board (TOOB). The punishments were implemented immediately and usually ran its course before the appeal was heard by the Minister for National Security. If LOP was overturned on appeal, the inmate would have served the allotted punishment and there would be no recourse or remedy available to them.

Our Office met with the Department of Corrections and the Ministry of National Security to discuss a remedy. It was agreed that the Department of Corrections would amend its current policy to allow inmates seven days to appeal an LOP punishment and send the appeal to the Ministry no more than seven days after the punishment is imposed.

During the meeting, the Department of Corrections highlighted the risk of inmates abusing this process by electing to appeal LOP punishments in order to benefit from the delay. In light of this, the Department of Corrections decided that if an inmate does not appeal within seven days the LOP punishment will be executed and their policy will be changed to reflect this.

At the time of publishing, the Ministry of National Security had not yet confirmed the changes it intends to make to address the issue, although the Permanent Secretary has agreed to review the response time to LOP appeals.

CASE SUMMARY:

The Right to Refuse

ISSUES: Several inmates housed at the Westgate Correctional Facility (Westgate) complained that they were punished for refusing the nasopharynx Covid-19 test. The punishment consisted of loss of earnings and a transfer to the Segregation Unit. The inmates informed our Office that they were willing to self-administer the nasopharynx test or use the saliva test, but they complained that these alternative testing methods were unavailable.

INTERVENTION: We made inquiries with the Department of Corrections (Corrections) and established that an outbreak of Covid-19 at Westgate had prompted the testing regime. The Department of Health had advised Westgate on the establishment of their Covid-19 protocols, and they informed Corrections that the nasopharynx test was the only suitable test during an outbreak at a facility. This is why alternative testing was not available to the inmates at that time.

Corrections further informed us that the Segregation Unit was being used as the quarantine unit during the outbreak. The decision to transfer inmates who refused testing to this unit was a safety measure since there was no way to confirm whether they were positive for Covid-19. As such, they had to be isolated from the general population as a precaution. Corrections maintained they had the legal authority to punish an inmate for refusing to take the nasopharynx test as per section 22 of the Prison Act 1979 and section 32 of the Prison Rules 1980.

As the Department's decision to punish inmates falls within the remit of their prescribed legal authority, we did not find the decision to be unfair. However, we were sensitive to the inmates' decision not to participate in the nasopharynx test. After a conversation with our Office and the Administration at Corrections, it was agreed that

the safety protocols could be adequately met by way of transferring the inmate to the Segregation Unit, without any requirement to further punish inmates who refused testing.

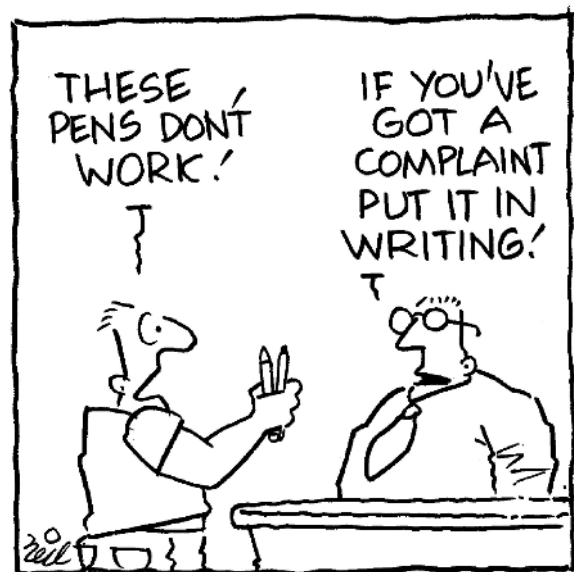
INSIGHTS: Many organisations have had to balance the personal nature of medical decisions with the requirement to implement Covid-19 safety measures. While Corrections had the authority to punish inmates for refusing to get tested, the punishment could be seen in these circumstances as an encroachment on a person's right to make their own medical decisions. Corrections demonstrated that they were responsive to the inmates' concerns by agreeing not to punish inmates for refusing testing in the future. Focusing on what would be accepted by both Corrections and the inmates provided an effective and balanced solution.

COMMENTARY:

Beginner's Guide to Public Sector Complaints

What is a complaint?

Generally speaking, a complaint is an 'expression of grief, pain, or dissatisfaction.' In the context of our work as an ombudsman's office, a complaint is a person's expression of dissatisfaction with a public service combined with a desire to see the issue resolved. As an office of last resort, we expect people to first complain directly to the relevant public authority and give it an opportunity to address the issue.



What can I complain about?

If you use a public service and feel that something has gone wrong, you should raise your concerns with the authority. The most common complaints our Office sees are as follows:

- An authority is not being responsive.

Example: “I sent an email to an official at the Department of Social Insurance but did not receive a response.”

- A process is taking longer than usual.

Example: “I made a financial hardship application to the Pension Commission a year ago. I followed up with them and they could not tell me how long I would have to wait for the application to be processed.”

- An authority made a mistake/error.

Example: “I received my June statement from the Ministry of Public Works but the payment I made in May is not reflected in the outstanding balance.”

- An authority did not follow law or policy.

Example: “The authority’s legislation says the Director may suspend a person’s benefits for up to three months. The Director suspended my benefits for nine months.”

- A decision-maker is biased.

Example: “The Development Applications Board denied my development application. A member of the Board is my neighbour and shares a boundary with me. They were involved in the decision-making process.”

While these complaints are the most common, this is not an exhaustive list. For guidance on assessing whether your concerns warrant making a complaint about a public service, see our commentary, ‘Hey Ombudsman! What is Fairness?’, on pgs. 52 - 55 of our 2020 Annual Report.

How can I make an effective complaint?

Do your research: Most public authorities have a complaint-handling process. Find out how to make a complaint and the best person with whom to raise your concerns. If you are not sure, ask the public authority or ask us.

Define the problem and identify possible

solutions: Be clear about the issue and how you expect the authority to resolve your complaint. Try to be concise. When defining the problem, ask yourself, “What? Who? When? Where? Why?” and lastly, “How has this impacted me?” This approach can help the authority to address your concerns quicker and more effectively.

Raise your concerns: Notify the authority of your complaint as soon as possible and let it know if your matter is time-sensitive or urgent. Ask for a response and how long it will take. If necessary, ask for it in writing.

Ask about review and appeal options: If you are concerned that a decision or the process by which an authority reached a decision is unfair, ask if it can be reviewed or appealed. Make sure you are aware of any deadlines or specific criteria.

Document: Try to make notes and keep relevant documents. Take note of the names and positions of the officials involved in the matter and those handling your complaint. This information might come in handy if you are dissatisfied with the outcome.

What should I say?

If you are not quite sure how to frame your complaint, try following these steps:

1. Open with a positive statement.

Example: “I understand you are busy and appreciate the work you and your staff are doing.”

2. Explain what you think went wrong and provide supporting documents.

Example: "However, I believe the Department charged me twice for my food vendor license. Your website lists the license fee as \$100 but my receipt is for \$200.00. Copies of my license and receipt are attached."

3. Conclude with a call to action.

Example: "I would appreciate a review of my information which shows that the Department charged me twice in error. Please let me know the result of your review."

Is complaining worthwhile?

While the general concept of complaining tends to get a bad rep, complaining can be constructive. Making complaints about public services is an opportunity for the government to receive free feedback and make improvements. Even the most minor complaint can lead to changes that impact the wider public. Simply put, complaining can help you and, sometimes, it even helps others.

I complained to a public authority but I am not satisfied with the outcome. What now?

If you have reached the end of an authority's complaint-handling process and remain aggrieved, you can bring your complaint to us. We take an inquisitorial, solution-oriented approach to determine what went wrong and help public authorities to get it right.

For information about our complaint-handling and investigation process, see page 48.

REFERENCES

"complaint." Merriam-Webster.com. Merriam-Webster, 2022. Web. 07 May 2022.

Hunt, Lindsay. Chalke, Jay. Complaining 101: How to complain effectively to get results. British Columbia Ombudsperson, 21 Oct 2021.

www.youtube.com/watch?v=rsf7wb66Grs.

"Tips on Making a Complaint about UK Government Services | Parliamentary and Health Service Ombudsman (PHSO)."

www.ombudsman.org.uk/making-complaint/before-you-come-to-us/complain-change/tips-making-complaint-about-uk-government-services.



SYSTEMIC UPDATES

BUS CANCELLATIONS COMMUNICATIONS INVESTIGATION

Bermuda's public transportation provides a vital service that contributes to the quality of people's lives by enabling them to get to work, school, medical and other appointments, and leisure destinations. Unfortunately, however, the routine of frequently occurring bus cancellations can equally disrupt and frustrate everyday life. The bus service has been under some pressure in recent years as economic conditions have affected the maintenance and replacement rate for the buses. The resulting bus cancellations have reduced the service available to the public and its effectiveness, particularly with the reliance bus users place on the system, as demonstrated during the Covid-19 public health emergency. In 2020, our Office commenced an own motion investigation into how the Department of Public Transportation (the Authority) communicates bus cancellations. The investigation concluded at the end of 2021, and a report entitled "Bus Service – Communications" was tabled in the House of Assembly on 18th February 2022.

The investigation focused on the Authority's communication of bus cancellations as a public service delivery issue. The report did not explore issues about resource allocation, reduced bus fleet, or other areas outside of our remit. The investigation found that there was maladministration on the part of the Authority. The communication process was inadequate in providing information about bus cancellations as widely as needed. The investigation identified gaps in the Authority's communication. It highlighted the impact of these gaps on vulnerable persons, including the elderly, physically challenged and lone individuals travelling by bus at night. The Department did not appear to have sufficient knowledge of the make-up of the commuter population or how best to facilitate communication within that population. The decision to eliminate the use of broadcast media (radio) appeared to be a miscalculation on the part of the Department. There is enough anecdotal evidence that suggests many bus users rely mainly

on this method of communication.

Our recommendations are limited to improving communications regarding cancellations so that commuters might receive early notice and make alternate transport arrangements in good time. Our conclusions concerning this communication issue do not constitute an assessment of how the Authority should more generally manage bus cancellations. The report recommended the following:

- The Authority should consider those commuters who do not have access to, or proficiency with, technology and provide alternative means of communication. These persons may also be the most disadvantaged and vulnerable in our society, and they are often older.
- The Authority should develop a communications plan for the Department of Public Transportation to set out the policies, procedures, actions and responsibilities for the communication with bus users and the general public.
- The communications plan should be reviewed and updated twice in each year.
- The Department should review its disproportionate reliance on electronic communications and it should ensure that all available communication methods and platforms are used, including radio, in order to reach the widest possible audience.
- The Department should carry out a short-term review of existing bus users to confirm the most effective means of communication to provide information to this population group.

Clear, effective and wide-ranging public communication is one of the underlying principles of the Office of the Ombudsman. In the modern communications age, there is an even greater need to utilise the full range of communication methods and platforms to reach the widest number of users and the public. Our report intends to help bring about improved communications by the Authority.

Some improvements have been made already, including updates on cancellations that members of the public can access using a designated telephone information system. We are encouraged by the initial response from the Authority, which accepted all of the recommendations. This response is both helpful and constructive and will significantly benefit the public.

CRIMINAL INJURIES COMPENSATION BOARD INVESTIGATION

Victims of crime often experience physical and psychological pain and losses of finances, resources and time. The Criminal Injuries (Compensation) Act 1973 (the Act) established the Criminal Injuries Compensation Board (CICB) to provide an avenue for such victims to receive compensation for their injuries. The Ministry of Legal Affairs and Constitutional Reform is responsible for the CICB. In 2019, the Legislature amended the Act by giving the Minister the authority to appoint members to the Board. Previously, the Governor appointed the Board members on the advice of the Minister. The amendment also provides that the Chair and Vice-Chair are to be experienced lawyers (ten and eight years of experience, respectively). Previously, the Act required the Chair to be a judge of the Supreme Court. The intention behind these amendments was to help streamline the appointment process, minimize delays, and ease the strain on judicial resources. On 17th May 2021, the Minister appointed a new Board.

In 2018, our Office initiated an own motion investigation concerning the significant delays that claimants were experiencing in having their claims processed by the CICB. Our report, entitled “A Future for Criminal Injuries Compensation,” was completed in December 2021 and tabled in the House of Assembly on 4th February 2022.

Our investigation found that the functioning of the Board, specifically its processing of applications for compensation, had not been efficient or adequate. Applicants had to endure an excessively long processing time. Delays were compounded by some claimants not having full access to the correct information and, as a result, presenting

incomplete or inaccurate applications. The Board’s practice of accepting an application without vetting exacerbated the delays. Further, there was a general lack of infrastructure for a modern administrative tribunal. There was no dedicated hearing room; proceedings were generally not recorded and the Tariff used by the Board required updating.

The findings of our investigation led to the following recommendations:

- The Ministry should look to achieve economies of scale and cost savings for existing administrative tribunals and bodies by sharing personnel, meeting space, infrastructure, policies and procedures.
- The Ministry should provide to the Board a permanent staff member for administrative support.
- The Authority should update policies and procedures, and facilitate a further review of the Board’s legislation to keep it current.
- The Authority should establish a website, and for those with limited access or ability to use the internet, a telephone contact including a recorded message with basic information and educational material to assist applicants.
- The Authority should conduct preliminary reviews of applications to assist claimants in providing the best possible evidence to the Board for their deliberations.

It is a testament to the generous nature of the people of Bermuda that there exists a regime for compensating those who suffer as victims of crime. That testament needs to be nurtured by providing the Board with administrative support consistent with the proper functioning of any modern administrative tribunal. Our Office hopes that our report will facilitate this outcome and bring about necessary improvements to the processes of this important body which has been given such a vital role in the criminal justice system. We acknowledge the Authority’s cooperation throughout this investigation and

the positive manner in which the Ministry has accepted our report.

STRATEGIC AIM III: CHAMPIONING BEST PRACTICE

ASSESSING GOOD ADMINISTRATION

Ombuds offices worldwide benefit from shared tools and guidance on assessing public bodies' actions. In our complaint handling and investigation work, we routinely refer to the "Principles of Good Administration" published by the UK Parliamentary and Health Service Ombudsman in 2007. These guiding principles provide clear and succinct language for defining good administrative practices. We also routinely describe those principles in our presentations and correspondence to authorities regarding their complaint handling.

There are other useful resources for guidance on what administrative fairness means. These publications are based on decades of experience investigating complaints. We share this information to promote an understanding of how our Office will consider cases and how we will assess the authorities' delivery of service to the public. Here is our updated list of resources for exploring what good administration means:

- "Fairness by Design: An Administrative Fairness Self-Assessment Guide" from various Canadian Ombudsman offices in collaboration (2019)
- "Good Conduct and Administrative Practice: Guidelines for State and Local Government" from Australia's New South Wales Ombudsman (2017)
- "Principles of Good Administration and Good Records Management" from Wales' Public Services Ombudsman and Information Commissioner's Office in collaboration (2016)
- "Administrative Fairness Guidebook" from Canada's Alberta Ombudsman (2013)
- "Defining Fairness in Local Government" from the Ombudsman Toronto (2013)
- "Principles of Good Complaint Handling" from the UK Parliamentary and Health Service Ombudsman (2008)
- "Principles for Remedy" from the UK Parliamentary and Health Service Ombudsman (2007)
- "A Guide to Principles of Good Complaint Handling" from the Ombudsman Association (2007)
- "Code of Administrative Justice" from the British Columbia Office of the Ombudsman (2003)
- Also, for structured guidance to reflect on other complaint handling practices, we refer you to:
 - "Good Practice Guide to Dealing with Challenging Behaviour" from Australia's Victorian Ombudsman (2018)
 - "Managing Unreasonable Complainant Conduct Practice Manual" from Australia's New South Wales Ombudsman (2012)
 - "Being Complained About – Good Practice Guidelines" from the University of Glasgow and Hirstworks (with input from the Scottish Public Services Ombudsman) (2019)
 - "Complaints: Good Practice Guide for Public Sector Agencies" from Australia's Victorian Ombudsman (2016)
 - "Complaints Improvement Framework" from the Scottish Public Services Ombudsman (2017)
 - "Effective Complaint Handling Guidelines" from Australia's New South Wales Ombudsman (2017)
 - "Effective Complaints Management Self Audit Checklist" from Australia's Queensland Ombudsman (2006)

If you are unable to locate any of these resources online, please contact our Office for a copy.





DEMONSTRATING ACCOUNTABILITY

Accountability requires us to continually assess how and why we do what we do. Primarily, we demonstrate our accountability through our reports to Parliament and by adhering to standards set by the Ministry of Finance for all bodies in receipt of public funds. As required by the Ombudsman Act, this includes an annual report of our activities and an annual independent audit. All documents may be downloaded from www.ombudsman.bm.

Our Performance

Based on the past five reporting years, we can report that:

- Between 2017 and 2021, on average, we received 20 new cases and 20 cases were closed monthly.
- The fewest new cases opened in a month were 6 in December 2021 and the most were 39 in January 2018.
- The fewest cases closed in a month were 5 in April 2020 and the most were 37 in September 2020.
- Between 2017 and 2021, on average, our busiest months for receiving new cases were January and February and for closing cases was December.

As stated in last year's report, we believe our ideal carry-over count, from month to month, will be about 20 cases. We base this number on the trends shown in Figures G and H.

**The best apology is
changed behaviour.**

- Unknown

Figure G: Cases opened per month: 5-year glance

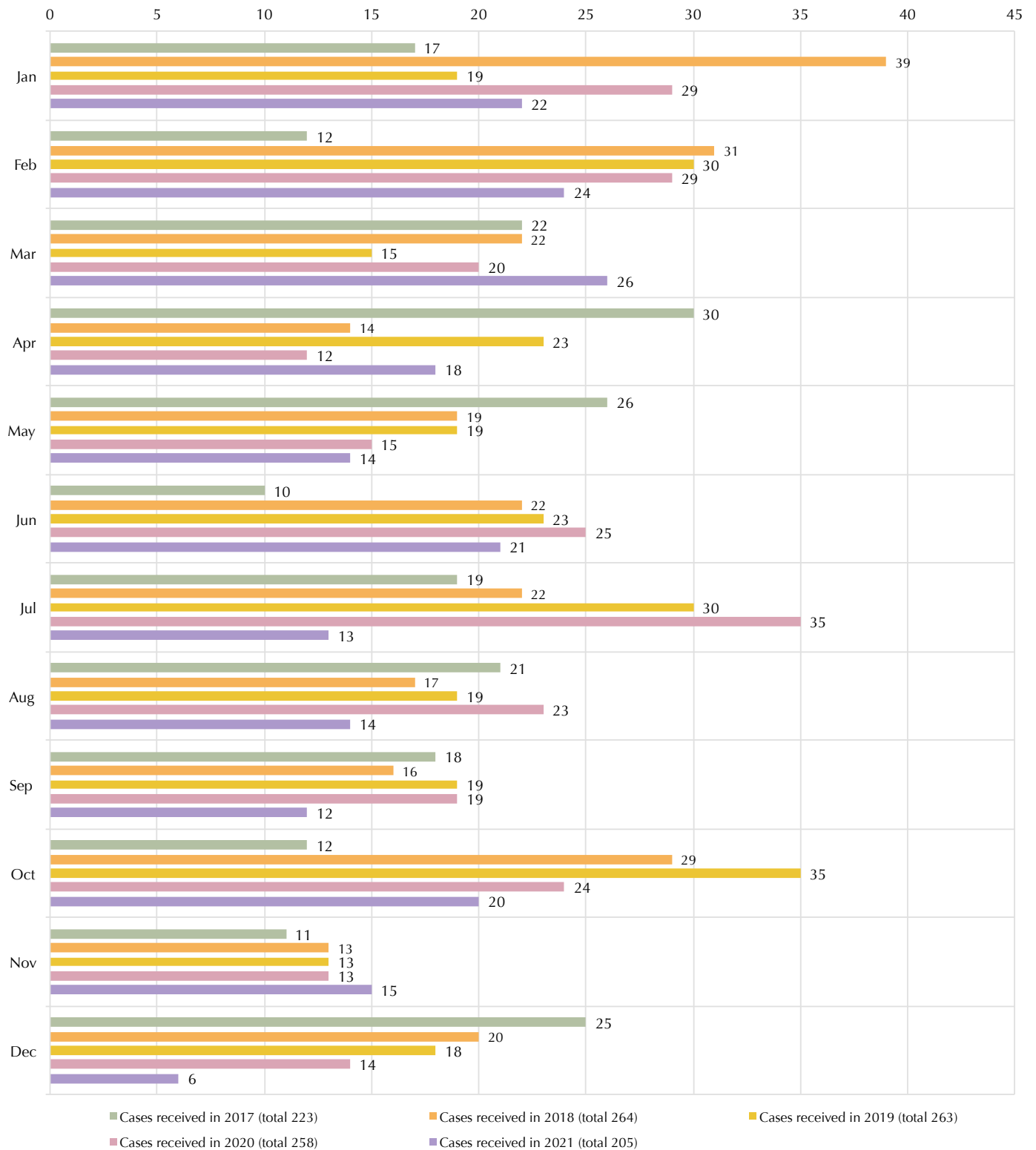
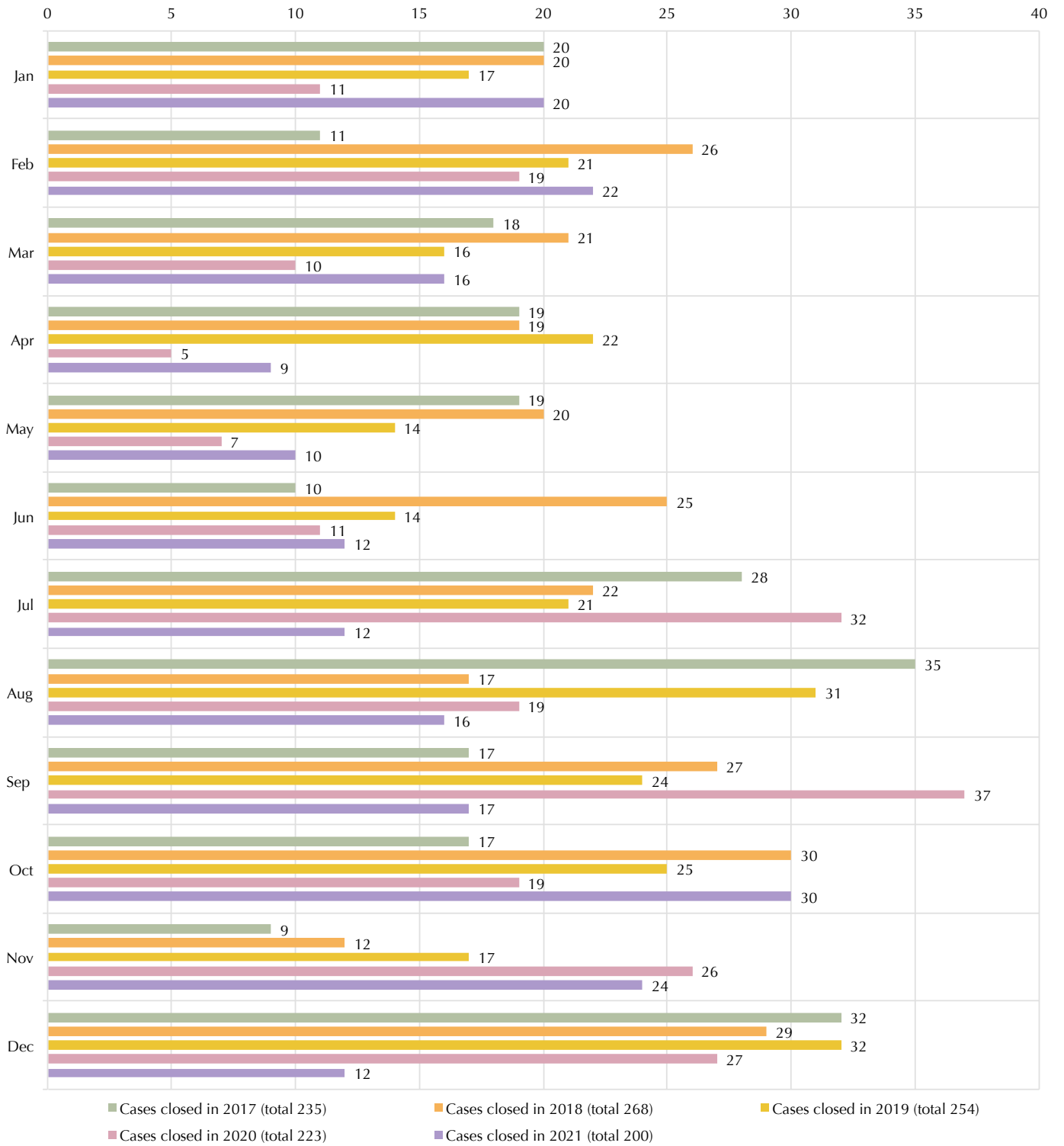


Figure H: Cases closed per month: 5-year glance





All transitions are
composed of an ending,
a neutral zone and
a new beginning.

- Wilson Mizner

Figure I: Outstanding complaints carried into each year: 5-year glance



We continue working towards carrying over fewer outstanding complaints at the end of each calendar year. For complaints carried into the next year from all prior years, we did not meet this standard in 2019, 2020 and 2021, as outlined in Figure I. We are assessing how we can return to this standard in the future.

Figure J: Percentage of complaints open after the year in which they were received

Year	Open	Total	Portion
2021	41	205	20%
2020	11	192	5.73%
2019	25	214	12%
2018	30	166	18%
2017	32	126	25%
Average	27.8	180.6	16%

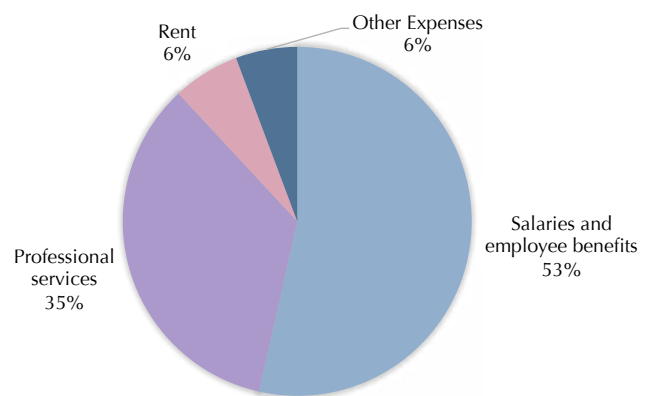
We continue working on improving our complaint performance for new complaints received in its reporting year alone (excluding the outstanding complaint balance from the prior year). Our steady success with having a lower percentage of open complaints compared with the year's total received complaints was interrupted in 2021 (see Figure J). In 2021, we carried over the highest percentage since 2017 – a 15 percent increase from the previous year.

Our Spending

Below is a breakdown of how we spent the funds allocated to our office budget for the fiscal year of 1st April 2020 to 31st March 2021 (see Figure K):

- 53% was spent on employee salaries and benefits
- 35% was spent on professional services
- 6% was spent on rent
- 6% was spent on other expenses including material and supplies, repairs and maintenance, communications, amortization of tangible capital assets, office supplies, advertising and promotion and miscellaneous expenses.

Figure K: Spending for fiscal period ending 31 March 2021



STAFF TRAINING

The nature of ombudsman work is unique and specialised. Ombuds training is designed to share practices, standards, research, and strategies at regional and international conferences and during specially designed professional development programmes. International events provide excellent opportunities to network with colleagues from other ombuds offices and complaint handling bodies. Local training offers insights into positive developments and challenges at home. It also allows us to engage with staff from other public offices with which we work. These experiences often prove to be as valuable as the training sessions themselves.

The year's highlight was in August and September when our whole team attended the "Ombudsman Executive Training Programme" facilitated by Dr. Victor Ayeni of Governance and Management Services International (GMSI) UK. The programme familiarised participants with key principles and practical and imaginative approaches to running an Ombudsman office effectively.

The team also participated in training sessions for Workpro, our case management system. Kenny Beaton, Implementation Team Leader and Jenny Taylor, Business Analyst of Computer Application Services Ltd., facilitated the training sessions. They focused on user training, administrator training and reports training.

In January, the Ombudsman attended a Chartered Institute of Arbitrators (CI Arb) virtual training course "Introduction to International Arbitration" facilitated by Jeffrey Elkinson. The course provided participants with an introduction to the legal framework of, and good practice and procedure in, international arbitration in their jurisdiction. The key takeaway for the Ombudsman was an understanding of international arbitration in the context of other forms of dispute resolution.

In February, the Ombudsman and [former] Executive Assistant, Robyn Eve, participated in a training course hosted by Ontru entitled "Unapologetic Time Optimisation". The course shared practical tips, illustrations and language

to help participants learn to break the cycle of "busyness" to lead a more conscious, productive and rewarding work day. Participants were encouraged to be honest about what can realistically be accomplished in a given day, be OK with the knowledge that not everything will get done and celebrate what does. Key takeaways for the Ombudsman and Ms. Eve included setting boundaries, improving time management and limiting daily task lists.

In February, Manager – Finance & Administration, Shaun Dill, completed a Department of Employee & Organizational Development (DE&OD) course on "Financial Instructions", facilitated by Dionne Shakir-Morrison at the Accountant General's Department. The purpose of this course was to help participants achieve greater awareness and understanding of the Financial Instructions, which outline the minimum standards for financial controls in the Government for financial reporting.

Investigations Officer, Aquilah Fleming, participated in two trainings in 2021. In February, she participated in a virtual two day training entitled "Advanced Issues in Ombuds Practice" facilitated by Osgoode Hall Law School. This training covered managing complex investigations and the Venice Principles. In November, she attended the "Manchester Memorandum", a virtual international conference for Ombudsman institutions to discuss topical issues such as how to reach vulnerable persons, developing competency frameworks and whether Ombudsman is a gender biased term.

In June, Investigations Officer, Kristen Augustus, attended a webinar hosted by the African Ombudsman Research Centre entitled "Systemic Investigations". The webinar unpacked various facets of systemic investigations to empower ombudsman offices in the furtherance of good governance, the rule of law, and human rights. Panelists included former Ombudsman for Bermuda, Arlene Brock; Deputy Ombudsman for Ontario; Barbara Finlay and former Ombudsman for Malawi, Hon. Martha Chizuma.

Key takeaways for Ms. Augustus included the value of systemic investigations and the importance of following a structured investigation process while remaining adaptable.

In December, Investigations Officer, Kristen Augustus, attended the “Common Ground”, virtual conference, which Windreach holds annually. The conference focused on encouraging advocacy, including self-advocacy, being an ally and reducing ableism. The conference was facilitated and moderated by Occupational Therapist, Alyssa Frick and Paralympian, Jessica Lewis. Guest speakers included the Minister of Social Development and Seniors, the Hon. Tinee Furbert JP MP; Clinical Psychologist at Bermuda Hospitals Board, Dr. Alick Bush; Social Worker and Owner of *I Am Me, More Than a Disability* blog, Ashlee Brady-Kelly and Speech-Language Pathologist and Founder of *Disability Reframed*, Ashely Harris Whaley. A key takeaway for Ms. Augustus included various strategies for cultivating anti-ableist environments.

AFFILIATIONS

Our Office continues to be an affiliate of these ombuds organisations.



CAROA
Caribbean Ombudsman Association
www.caribbeanombudsman.com



International Ombudsman Institute
Institut International de l'Ombudsman
Instituto Internacional del Ombudsman

IOI – International Ombudsman Institute
www.theioi.org

OMBUDSMAN
ASSOCIATION

OA – Ombudsman Association (formerly British and Irish Ombudsman Association)
www.ombudsmanassociation.org



USOA – United States
Ombudsman Association
www.usombudsman.org

Transition periods
are great times to look
at what you no longer need,
and let go of the clutter.

- Angela Ploete



SUPPLEMENTARY RESOURCES

COMPLAINT PROCESS FAQ'S

What can you do once I make a complaint?

After you make a complaint, our Office may do any of the following.

- Refer you to a more appropriate authority, if there is a more appropriate remedy still available to you.
- Make preliminary inquiries with the authority you complain about. We will seek to clarify the issues of your complaint and, if possible, assist in resolving it without an investigation.
- Conduct a full, confidential investigation, by reviewing all relevant documentation and gathering evidence (under oath if necessary). We may investigate if the complaint subject is complex, facts are in dispute, or the Ombudsman determines she must decide whether or not an authority's action constitutes maladministration.
- Mediate a complaint if we decide this is appropriate.
- Decline your complaint as being outside of our jurisdiction because either:
 - the action complained about is something we cannot investigate; or
 - the authority you have complained about is not one we can investigate.
- We may also decline your complaint if it is lodged with our Office over a year after you became aware of the issue you are complaining about or the Ombudsman has determined that your complaint is frivolous. If we decline your complaint, we may refer you to another body which may be able to assist you.

What happens if you investigate my complaint?

If we investigate a complaint, the Ombudsman will make findings based on the evidence she has reviewed. She may determine the evidence she has reviewed does not support a finding of maladministration on the part of an authority. If she does so, she is not likely to take any further action.

The Ombudsman may determine the evidence reviewed supports a finding of maladministration. If she finds that there was wrongdoing by the authority, she may make recommendations as she sees fit. Recommendations may include that:

- an omission or a delay be rectified.
- a decision or recommendation be cancelled or altered.
- reasons be given for actions and decisions.
- a practice, procedure or course of conduct should be altered.
- a statute or regulation should be reviewed.
- improvements be made to practices, procedures and policies.
- a financial payment be made.

It is also possible that even if the Ombudsman makes a finding of maladministration, she does not make any recommendations.

What kind of financial payments can the Ombudsman recommend?

The Ombudsman can recommend financial consolation and financial compensation payments.

- A financial consolatory payment is an ex-gratia payment that signifies the Ombudsman's conclusion that an apology does not sufficiently address the maladministration found. The aim of a consolation payment is to console a complainant and not to compensate a complainant for a financial loss.

- A financial compensation payment is used to restore the complainant to the position they were in before the maladministration occurred.

Both forms of financial remedy are rarely recommended and can only be recommended after a finding of maladministration. Unlike the Courts, the Ombudsman's recommendations are not binding or enforceable.

Can I complain to the Ombudsman instead of taking an authority to Court to receive payment?

In most cases when complainants are seeking a financial payment from an authority, the complainant can pursue this payment in the Courts or with a tribunal. We cannot investigate complaints until either: a) the Court or tribunal's process the complainant has the right to pursue is complete; or b) the time limit for exercising that right has expired. We will usually decline these complaints and suggest that the complainant speak with a lawyer.

The Ombudsman does have the discretion to investigate a complaint which otherwise would have to be pursued with a tribunal or in the Courts. However, this discretion is only exercised when it would not be reasonable to expect the complainant to pursue their claim in the Courts or with a tribunal.

What does the Ombudsman consider when deciding to recommend a financial remedy?

Each recommendation is decided on a case-by-case basis. The Ombudsman is unlikely to recommend financial compensation for unquantifiable or intangible losses. For example, it is unlikely the Ombudsman will award financial compensation for distress or for pain and suffering.

A consolation payment can range from \$50 – \$5,000, depending on the severity of the maladministration found; the amount of the payment is determined at the Ombudsman's discretion. When deciding whether a complainant should be financially compensated, the Ombudsman considers questions such as: Has the complainant suffered a financial loss as a result of maladministration? Is the loss quantifiable?



Photo By: Mark Bean

What are the Office's target timelines for handling complaints?

Stage	Purpose	Target to complete
Intake	Receive and record cases as well as assess our jurisdiction to assist	Up to 5 days
Facilitated Resolution	Resolve the issues identified by (re-) establishing direct and clear communication between the complainant and the authority, along with potential solutions, as soon after when the administrative action took place	Up to another 4 weeks
Pre-Investigation	Assess whether the matter should be investigated and further review any potential challenges our Office may face in carrying out an investigation. Also carry out initial planning (investigation sub-stage 1)	Up to another 2.5 weeks
Investigation	Gather and assess the evidence necessary to determine whether or not to uphold a complaint of maladministration, through formal and informal means of evidence gathering (investigation sub-stage 2)	Up to another 2.5 months
Post-Investigation	Issue Draft Investigation Report to parties for their input, before finalisation (investigation sub-stage 3)	Up to another 5.5 weeks
Investigation Conclusion	Receive and assess Authority's statutory response to Final Investigation Report (investigation sub-stage 4)	Up to another 7 weeks
Review	Assess whether to uphold the complainant's request for a decision related to a concluded investigation, if made	Up to another 4 weeks







COMPLAINT DISPOSITIONS

Dispositions help explain why and at what point in our process we have closed a case. Here is a description of each category with reference to the relevant sections of the Ombudsman Act for guidance on our definitions. In 2018, we introduced two new categories (*), considering internal reporting needs and prior feedback from public servants.

Disposition	What It Means
Abandoned	Complainant did not provide sufficient contact information or respond to our attempts to make contact (see s.9(2)(a) re decision not to investigate).
Closed After Inquiries	We decided not to proceed with the complaint after making inquiries or based on an initial assessment because: (a) the issues within jurisdiction were adequately addressed; or (b) the questions we raised to the authority were sufficiently answered (see s.8 re preliminary inquiries). We may have used alternative resolution techniques (see s.10 re mediation; and s.8 re preliminary inquiries). We also may have made general suggestions to assist the authority in improving its processes.
Closed Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of maladministration, and the authority provided its statutory response (see s.15(3) re procedure after investigation; and s.16 re authority to notify Ombudsman of steps taken).
Closed Mixed Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of maladministration and no maladministration, and the authority provided its statutory response (see s.15(3) re procedure after investigation; and s.16 re authority to notify Ombudsman of steps taken).
Closed No Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of no maladministration (see s.15(1) re procedure after investigation).
Declined	Issues raised were outside of our jurisdiction because of the subject matter and/or body complained of (see s.6(1)(3) and the Schedule re actions not subject to investigation). Or, issues raised may have been within jurisdiction but were out-of-time (see s.9(1)(a) re decision not to investigate) or determined to be frivolous (see s.9(1)(c) re decision not to investigate). In these cases, we may have declined outright or made inquiries to establish jurisdiction (see s.8 re preliminary inquiries). We make no suggestion as to potential redress because there likely is none at present.
Declined and Referred	Issues raised were outside of our jurisdiction because of the subject matter and/or body complained of (see s.6(1)(3) and the Schedule re actions not subject to investigation). Or, issues raised may have been within jurisdiction but were out-of-time (see s.9(1)(a) re decision not to investigate). We may have made inquiries to establish jurisdiction and/or determine whether there were other forms of redress available (see s.8 re preliminary inquiries). These inquiries may have included general or specific questions about the issues. We determined that there were other ways for the complainant to seek redress and provided information to the individual on possible next steps (see s.9(1)(b) re decision not to investigate – alternative remedies).
Deemed Premature	Complaint subject matter and authority were in jurisdiction, but the person had not yet complained to that authority or had not yet exhausted that authority's existing complaint handling procedure. In these cases, we could have made inquiries, but it probably meant getting ahead of ourselves. The authority complained of was always the authority that the complaint should have been raised with.
Enquiry	Person contacted us to seek information, not necessarily to complain, with questions about an authority's processes and/or our services. Person may have been aware that there were other steps to pursue before complaining to us. This may have included complaint letters addressed to authorities or other bodies that were copied to us.
Informally Resolved	Complaint was resolved between the authority and the complainant with informal intervention from us. We may have facilitated resolution by making brief, informal enquiries that prompted the authority's action and/or by coaching the complainant on how to approach the authority (see s.9(2)(c) re decision not to investigate – settled; and s.8 re preliminary inquiries).
Referred	Complaint subject matter and authority were in jurisdiction, but there was a more appropriate remedy still available to the complainant (see s.6(1) and (2) re restrictions on jurisdiction to investigate). Complainant had not raised the issue with the correct authority or had not yet exhausted the authority's complaint handling procedure, and we determined that it was necessary and fair for the complainant to give the authority adequate opportunity to address the issues raised (see s.9(1)(b) re decision not to investigate – alternative remedies).
Signposted	Complaint subject matter and/or body complained of fall were not within our jurisdiction, and we suggested the complainant contact a body not within our jurisdiction.
Withdrawn	Complainant requested that we take no further action on the complaint. This may have been done at any stage during the process (see s.9(2)(b) re decision not to investigate).

iv) I am in this age bracket: teens 20s 30s 40s 50s 60s 70s 80s +

Extra lines: _____

ABOUT OUR SERVICES

1. I received a customer-focused service from the Ombudsman's Office.

Agree Neither agree nor disagree Disagree I do not know

2. Staff supported me to access the Office's service or offered reasons why the Office could not provide the service I needed.

Agree Neither agree nor disagree Disagree I do not know

3. Staff listened to me and understood my complaint.

Agree Neither agree nor disagree Disagree I do not know

4. Staff asked me what outcome I wanted as a result of my complaint.

Agree Neither agree nor disagree Disagree I do not know

5. Staff treated me with courtesy and respect.

Agree Neither agree nor disagree Disagree I do not know

6. Staff contacted me in the way I preferred, if I specified a method of communication.

Agree Neither agree nor disagree Disagree I do not know

7. Staff explained to me the Office's role and what it can and cannot do.

Agree Neither agree nor disagree Disagree I do not know

8. Staff explained to me how my complaint would be handled and the timescales for their processes.

Agree Neither agree nor disagree Disagree I do not know

9. I was regularly updated on my complaint's progress.

Agree Neither agree nor disagree Disagree I do not know

10. I was told at each stage of the process which staff member I could contact if I had any questions about my complaint and how I could contact them.

Agree Neither agree nor disagree Disagree I do not know

11. Staff communicated with me using plain and clear language.

- Agree Neither agree nor disagree Disagree I do not know

12. The Office's communication with me was accurate.

- Agree Neither agree nor disagree Disagree I do not know

13. The Office dealt with my complaint in a timely manner given the complexity of my case.

- Agree Neither agree nor disagree Disagree I do not know

14. Staff treated me without discrimination and prejudice.

- Agree Neither agree nor disagree Disagree I do not know

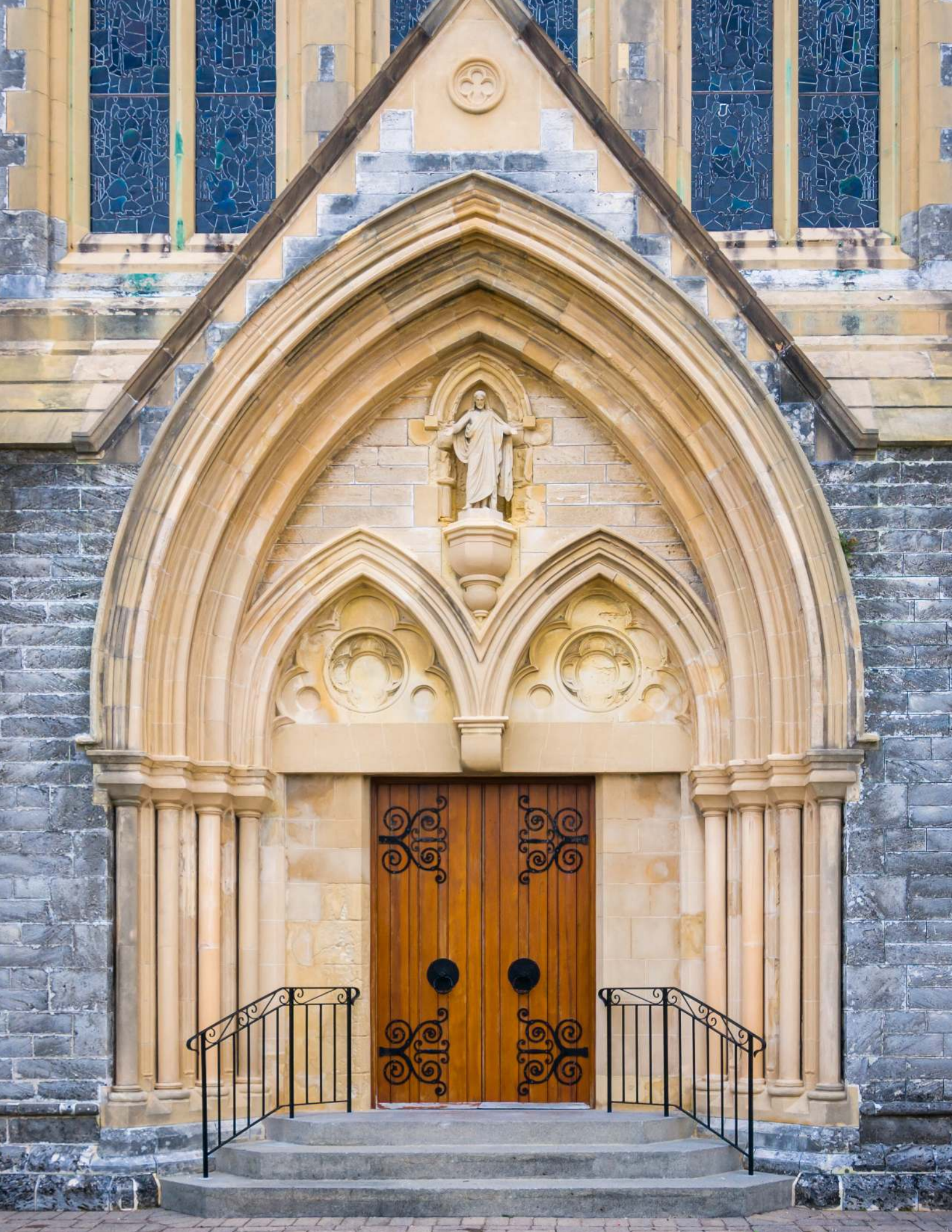
15. I am satisfied with how the Office handled my complaint.

- Agree Neither agree nor disagree Disagree I do not know

16. I am likely to recommend the Office's services to a friend or colleague.

- Agree Neither agree nor disagree Disagree I do not know

17. What can the Office do differently to provide greater quality service?



*For The
Good Of
The Public*



*And Those
Who Serve
The Public.*

Photo credit *pg 1, 17, 47*: Mark Bean
Photo credit *pg 8*: E. Michael Jones

Bermuda Ombudsman
Annual Report 2021
designed by

GDESIGNS
Christine Jones
E. christinejones3086@gmail.com