

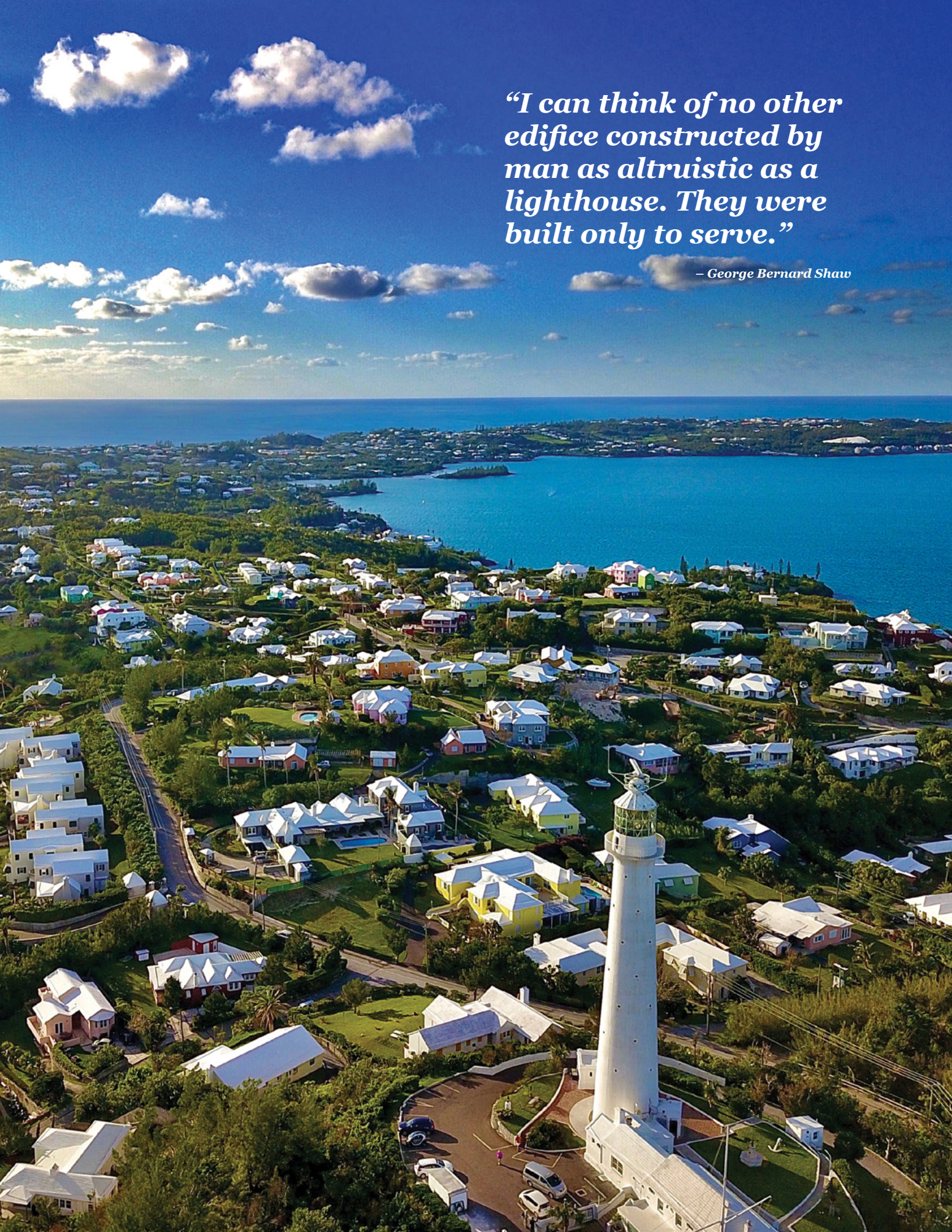


 *Bermuda
Umbudsman*

Annual Report 2022

“I can think of no other edifice constructed by man as altruistic as a lighthouse. They were built only to serve.”

— George Bernard Shaw





OMBUDSMAN FOR BERMUDA

26th June 2023

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 2022.

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



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OMBUDSMAN'S MESSAGE

On 28th March 2022, for only the second time in our Office's 17-year history, the torch was passed from the outgoing Ombudsman for Bermuda to the incoming one.

Ms. Victoria Pearman served as Ombudsman from 2014 to 2022, and before her, Ms. Arlene Brock was Bermuda's first Ombudsman from 2005 to 2014. Both women served our community with skill and personal commitment, establishing the Office as an independent and highly competent complaint handling body. They shined lights that uncovered big cases and sometimes caused discomfort, and they assisted individuals who had been treated unfairly. It is now an honour and a privilege for me to hold the post of Ombudsman, having been appointed by Her Excellency the Governor, Ms. Rena Lalgie.

I bring over three decades of public service to the table, along with a law enforcement and investigative background. I have pledged to carry on the legacies of my accomplished predecessors and continue fulfilling our mission to protect the public interest, address complaints about public services, and drive greater accountability across the public sector.

My first year in the Office has been challenging, exciting, informative, and rewarding, and a year of great learning. At the Office of the Ombudsman, we uphold the highest standards of systems, procedures, case management, and reporting, ensuring that we adhere to best practices in every aspect of our work. Our Office plays a vital role in good governance and public administration in Bermuda.

The Office of the Ombudsman is not a court or a tribunal; it does not make legal rulings, impose punishments, or enforce decisions. Instead, the Ombudsman's remit is to



“Without our Office, hundreds of people each year would not have access to a free, fair, and independent resource to seek redress from public authorities when unfairness has occurred.”

Sometimes, for example, we find that giving a simple, straightforward apology is the right thing to do. Another difference is that the Ombudsman can influence changes and improvements in public sector standards through his reporting function to the House of Assembly, and by providing feedback to public authorities themselves.

It is humbling to acknowledge that without our Office, hundreds of people each year would not have access to a free, fair, and independent resource to seek redress from public authorities when unfairness has occurred. It is this sober responsibility that motivates everyone in this Office to give their very best. Each complaint represents

investigate complaints of maladministration and unfair treatment on the part of a public authority, and then make findings and recommendations to “put things right” for the person who was affected or, alternatively, to confirm that an authority's actions were fit and proper.

An important difference is the inquisitorial approach taken by the Office. This means that, unlike the Court, we are not restricted to examining only the evidence presented to us. We can ask questions and seek out any missing information in order to best assist all the parties involved. This is especially important when investigating complaints from vulnerable people, where the complainant may not be able to provide all of the relevant information by themselves. In this way, our Office establishes all the facts – without taking sides – and presents a candid, unrestricted account of the truth. And, unlike the Court, our remedies are not limited to the scope of what is prescribed in law.

We follow a number of internationally established principles to ensure that outcomes are not just lawful, but they are also fair, reasonable, and proportionate.

a person who has equal rights to be treated fairly, with dignity and respect. Our job is to protect those rights on behalf of the individual. Occasionally, the issues affect the broader community, and there is no single complaint. Our job in those circumstances is to conduct our Own Motion Investigations on behalf of the public and hold an authority to account.

Much of our time last year was spent reviewing how we do our job and considering the improvements that could be made. Our team took a hard, honest look at our strengths and weaknesses. We developed a Strategic Plan for 2023 – 2026 that will speed up the pace of our casework, provide training and development opportunities for staff, increase our accessibility to members of the public, expand our community outreach through social media and public appearances, and modernise our Office with improved technology. We expect these strategies will enhance the impact of our work and continue to make real differences in people’s lives.

Finally, I would like to personally thank each member of our team as it is their efforts that are reflected in the report. This talented and hardworking group of Bermudian staff delivers a high standard of service to the public, and they are a joy to work with. I would also like to acknowledge the public authorities that continue to engage fully with our Office, responding promptly to our requests for information and cooperating with our efforts to resolve complaints effectively.

On behalf of the Office of the Ombudsman for Bermuda, I cordially invite you to review our work in the Annual Report for 2022.



Michael A. DeSilva
Ombudsman for Bermuda



“Leadership should be like a lighthouse: unwavering, assuring, constant and most of all, a bearer of light to show the way, come rain or shine.”

– Dr. Moses Simuyemba

OMBUDSMAN'S OFFICE STAFF



Michael A. DeSilva
Ombudsman



Junior Watts
Deputy Ombudsman



Aquilah Fleming
Investigations Officer



Kristen Augustus
Investigations Officer



Shaun Dill
Manager – Finance /
Administration



Gainelle Simons
Executive Assistant

SUMMER INTERN PROFILE

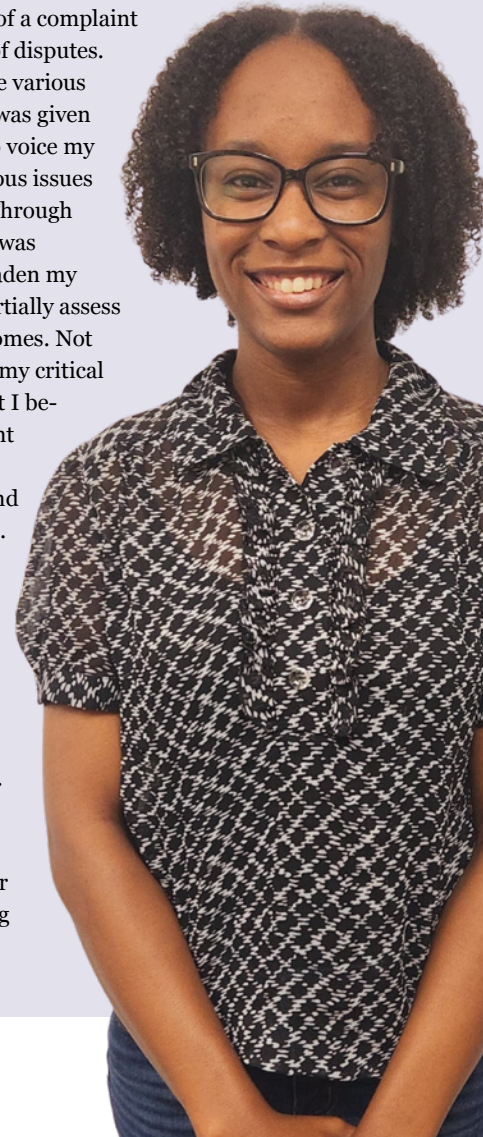
Over the summer months, we were pleased to have Ms. Trinity Wilson join us for a summer internship organised by the Department of Workforce Development. Ms. Wilson is pursuing a Master's degree in Social Work from Carleton University. Below, Ms. Wilson shares a summary of her internship experience at our Office.

ON THE JOB

“During the summer of 2022, I had the privilege of working as an intern in the Bermuda Ombudsman’s Office. My main duties included completing various projects requested by team members, attending team meetings and ad-hoc administrative tasks. I also had the opportunity to participate in ongoing inquiries and investigations by shadowing officers, assisting with evidence gathering, transcribing interview recordings, and providing other administrative support when required.”

PERSPECTIVES

“During my time at the Ombudsman’s Office, I gained in-depth knowledge about the Office’s service and its impact on the community, from the initial receipt of a complaint to the resolution of disputes. Working alongside various team members, I was given the opportunity to voice my viewpoint on various issues when discussed. Through those moments, I was challenged to broaden my outlook and impartially assess all sides and outcomes. Not only did I expand my critical thinking skills, but I became more efficient in active listening, communication and conflict resolution. My time with the Ombudsman’s Office was an enjoyable experience because of the team members’ willingness to share their knowledge and expertise. Thank you to the team for a very enlightening summer.”



FAREWELL AND SPECIAL THANKS TO:



Victoria Pearman
Former Ombudsman

for her eight year tenure of dedicated and committed service to the public, and her invaluable contributions to the work of the Office.



Tanya Jones
Former Executive Assistant (Temporary)

for her valuable assistance to the Office as the first point of contact for the public.

On 17th March 2022, we celebrated Ms. Victoria Pearman's service as Ombudsman for Bermuda which concluded on 16th March 2022.



MISSION AND VALUES



Our main purpose is to protect the public interest by providing a free, fair and independent resource to address complaints about public services.

Our goal is to drive greater accountability and help improve standards across the public sector.

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



Overview

In our Annual Report 2022, we report on our efforts and progress during this Office's 17th year in service.

- The first section on 'Accessibility' describes how the public can reach us and our outreach activities.
- The second section on 'Our Work' 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 '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. Please visit our website and contact us at 296-6541 or complaint@ombudsman.bm.





Accessibility

Anyone can complain to the Ombudsman about services provided by public bodies. You do not have to be a Bermudian or a resident of Bermuda. Please contact us if you have questions about whether or not we can address your complaint.

HOW TO MAKE A COMPLAINT

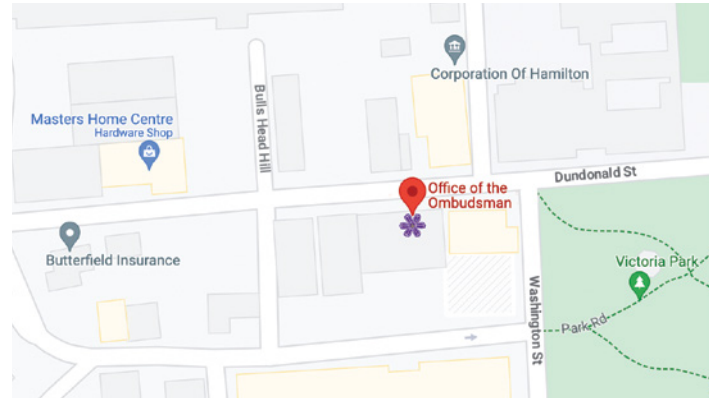
Before coming to our Office, you should make a complaint to the relevant authority at your earliest opportunity.

Our policy is to allow the authority to address your issue before we get involved. We may refer you back to the authority if you have yet to avail yourself of the authority's complaint-handling process.

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 the handling of your complaint by the authority, we encourage you to contact 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.

We are here to assist you.



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

HOURS: Monday to Friday from 8:45 a.m. to 5:00 p.m.

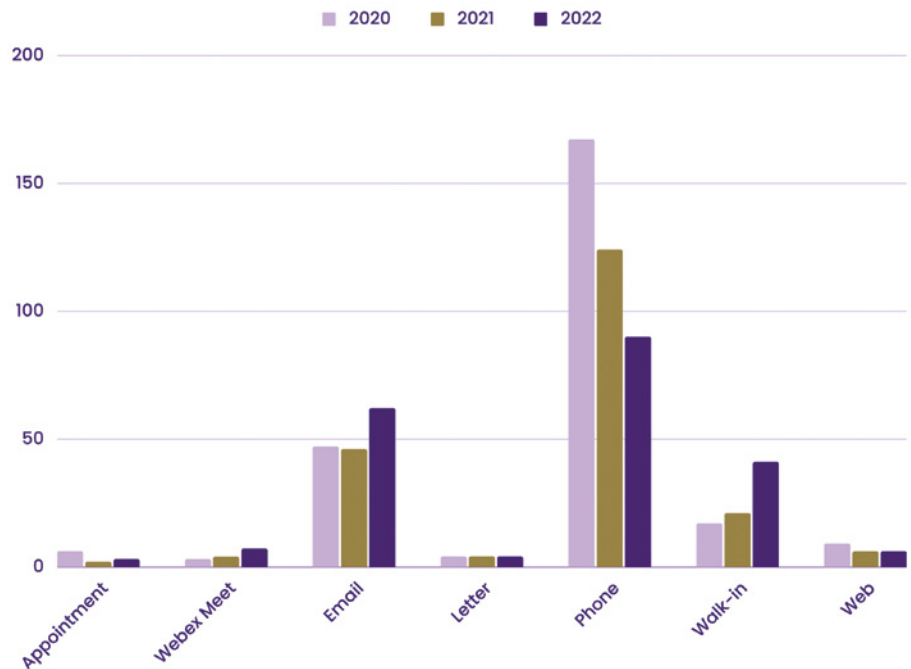
CONTACT: Tel: (441) 296-6541 | Fax: (441) 296-7734
 complaint@ombudsman.bm
 www.ombudsman.bm
 facebook.com/bermudaombudsman

RECEIVING COMPLAINTS

Prior to the pandemic, it had been a consistent trend that most people who used our service contacted us by calling or visiting us. During the pandemic, there was a significant decrease in walk-ins: in 2020, there were 17 walk-ins in total, the lowest number in recent years, and 167 telephone contacts, the highest number. In 2021, the number of walk-ins increased to 21 while the number of telephone contacts decreased to 124. This trend continued in 2022 with 41 walk-ins, while telephone contacts decreased to 94.

As accessibility is one of our values, our Office takes particular interest in how the public contacts us. The comparison of how the public contacted us in 2020, 2021 and 2022 reflects a continuing rebound from the noticeable decline in walk-ins caused by the pandemic, which limited in-person contacts. It illustrates the need for accommodating walk-ins. See Figure A for a comparison of how we received cases in 2020, 2021 and 2022.

Figure A: How we received complaints in 2020, 2021 and 2022



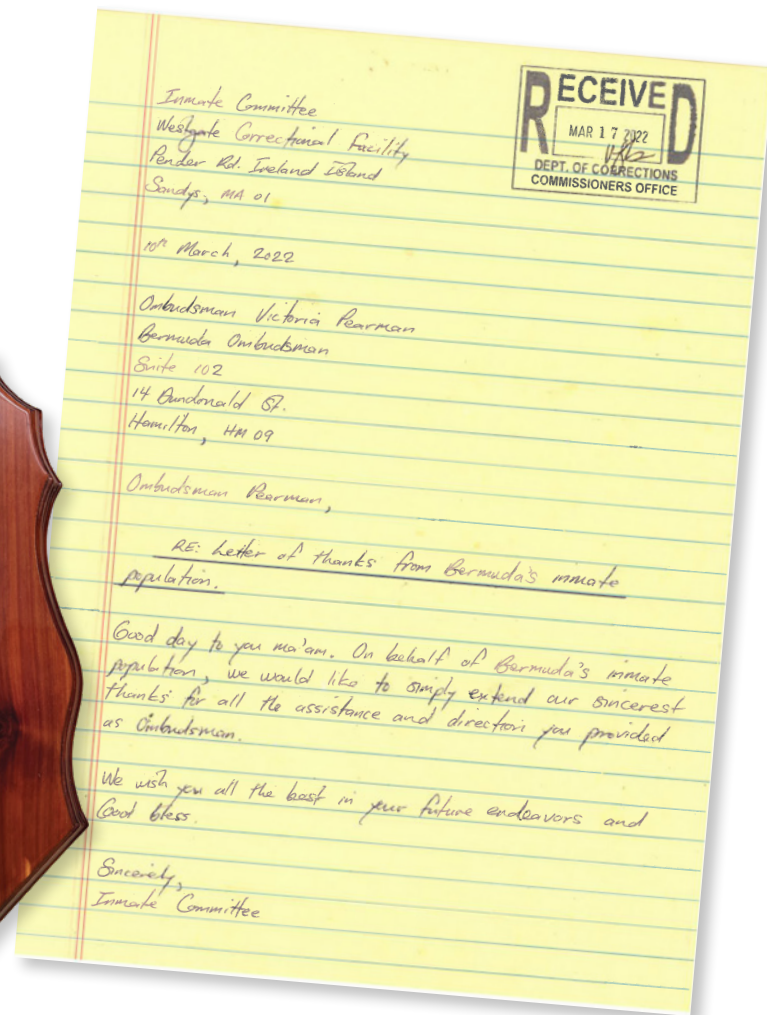
OMBUDSMAN 'OUT AND ABOUT'

THE INMATE COMMITTEE'S COMMEMORATIVE PLAQUE TO VICTORIA PEARMAN

On **10th March 2022**, the Inmate Committee, comprised of inmates at the Westgate Correctional Facility, wrote to Ms. Victoria Pearman to thank her for the work done for inmates during her time as the Ombudsman.

During Ms. Pearman's tenure, our Office received more than 200 inmate complaints. Ms. Pearman visited all of the local prisons, informing inmates about the services provided by our Office and how to make confidential complaints. Ms. Pearman also spent considerable time speaking with the Administration of the prison and establishing protocols for effective communication between our Office and the Department of Corrections and inmates.

We join the Inmate Committee in thanking Ms. Pearman for her dedication to inmate complaints and our Office's relationship with the Department of Corrections during her tenure.



DEPARTMENT OF CORRECTIONS NEW RECRUITS PRESENTATION

On **14th June 2022**, Michael DeSilva, Ombudsman for Bermuda and Aquilah Fleming, Investigations Officer, presented to the Department of Corrections' 2022 class of new recruits. The presentation focused on the work of the Ombudsman's Office and the role and legislative duties of prison officers when inmates wish to make complaints with our Office. This presentation is essential as inmates are the only group of complainants mentioned explicitly in the Ombudsman Act 2004. This Act places a duty on prison officers to supply inmates with the necessary items to make a confidential complaint to our Office. Our Office wishes the 2022 new recruits well in what we hope will be a fulfilling career within the Department of Corrections.

CAROA CONFERENCE

Four members of our team attended the biennial Caribbean Ombudsman Association (CAROA) Conference, which was held virtually on **21st November 2022**. The theme of the conference was "The Importance of the Ombudsman in Building Resilience in Governance". The conference included opening remarks by the Prime Minister of St. Lucia and a training session hosted by the Inter-American Commission on Human Rights.

The General Meeting and elections for the 2022-24 CAROA Council were held after the conference.

OMBUDSMAN 'OUT AND ABOUT'



AUTHORITY STAKEHOLDER MEETING

On **3rd October 2022**, our Office invited several public authorities to participate in an interactive focus group. We used this session to gather information about public authorities' understanding of our Office's role. We used the collected data to form strategies on how to strengthen our relationship with public authorities and to improve the understanding of the role and work of our Office by focusing on the areas highlighted.



Participants completing a Slido survey



COMMUNITY POP-UPS

On **7th and 8th October 2022**, our Office set up pop-up stalls in the Washington Mall and Bermuda College to share information about the work of our Office and conduct surveys with the public. This public engagement aimed to promote awareness of our Office and inspire public confidence. We will continue to use this method of community engagement to increase visibility and access in the community.



PATI UPDATE

The Public Access to Information Act 2010 (PATI), which took effect on 1st 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 while carrying out our functions are not accessible to the public under section 4(1)(b) of PATI.

In 2022 we did not receive any PATI requests from the public.

To obtain a copy of our PATI Information Statement (last updated January 2023) and learn about records that can be made available to the public, stop by our Office or visit our website to download it.





Our Work

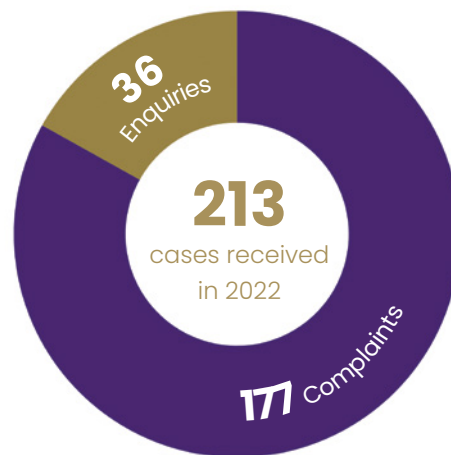
Our casework encompasses both complaints and enquiries. The distinction between a complaint and an enquiry is based on the complainant's intention when contacting our Office. A complaint is a case where the complainant seeks our services with the intention that our Office will pursue inquiries into the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

Since opening our doors in 2005, we have handled over 2,900 individual complaints. Over the years, we have made considerable efforts to educate the community about the work of our Office. The increase in the average number of complaints we have received over successive five-year periods is the fruit of our labour. 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.

CASEWORK IN 2022

To summarise new cases opened in 2022:

- We received 213 cases. 177 were complaints, and 36 were enquiries.
- Of the 177 complaints, 118 were in our jurisdiction, and 59 were not.
- We referred 26 of the complaints within our jurisdiction to other authorities where there was a more suitable remedy.
- We disposed of 54 complaints:
 - 8 complaints were abandoned or withdrawn by the complainant.
 - 7 complaints were resolved between the complainant and the authority with informal and limited intervention by us.
 - 39 were closed after our Office made inquiries into the complaint.
- Of the 177 complaints received, 59 remained open at the year's end. A further 37 complaints from previous years (mostly 2021) also remained open.
- 27 people came back to us within the same reporting year, raising separate issues or the same issue later, accounting for 78 cases and thus around 36.6% of 2022 cases. We do not always record a caller's name if the initial call fully addresses the person's questions or concerns and the caller asks to remain anonymous. These numbers do not indicate whether an anonymous person complained more than once.



From 1st January to 31st December 2022, we worked to address a total of 274 cases (see Figure B on following page). This number included:

- enquiries people made to us - 36
- new complaints opened in 2021 - 177
- outstanding cases we carried into 2022 from previous years - 61

To summarise casework (cases worked on) in 2022:

Of the 274 cases worked on in 2022, 96 were in progress as of 31st December 2022. 175 cases were disposed of: 102 of which were in our jurisdiction, 76 of which were not. 141 of these cases were complaints, 82 of which were within our jurisdiction and 59 of which were not.

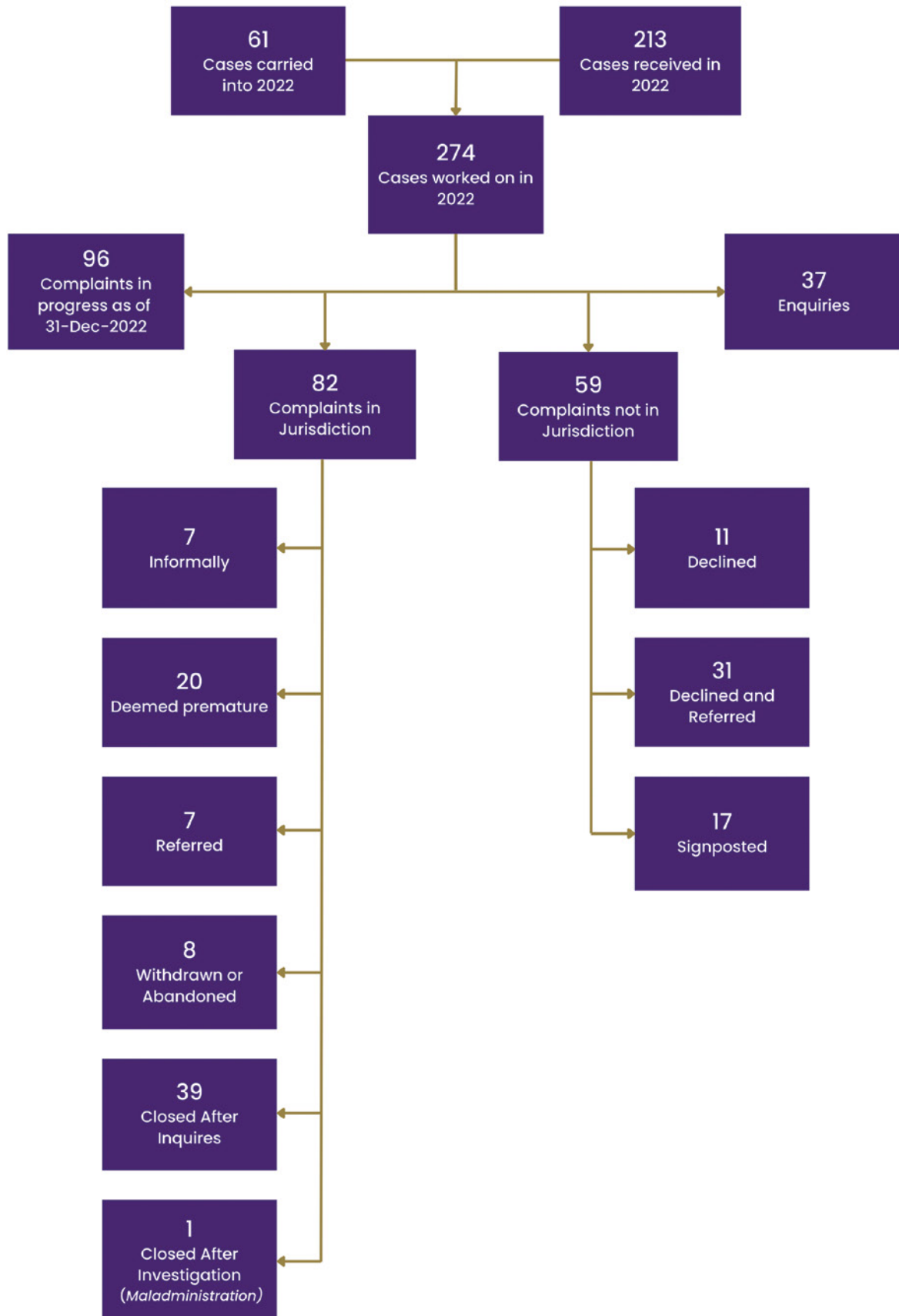
Of the 82 complaints within our jurisdiction: 7 were Informally Resolved; 20 were 'Deemed Premature'; 7 were 'Referred'; 8 were 'Withdrawn' or 'Abandoned'; 39 were Closed After Inquiries; and one was Closed After Investigation (Maladministration).

Of the 59 complaints outside of our jurisdiction: 11 were Declined because they were not in our jurisdiction and we did not provide additional resource information; 31 were Declined and Referred, i.e. we did provide additional resource information, and 17 were Signposted.

Of the 37 enquiries worked on in 2022: one enquiry was carried over from the previous reporting year; and 36 new enquiries were received in 2022, comprising 17% of our total cases received in that year. All enquiries received in 2022 were closed by 31st December 2022.

For a full description of our complaint process and dispositions, see pages 31 to 35.

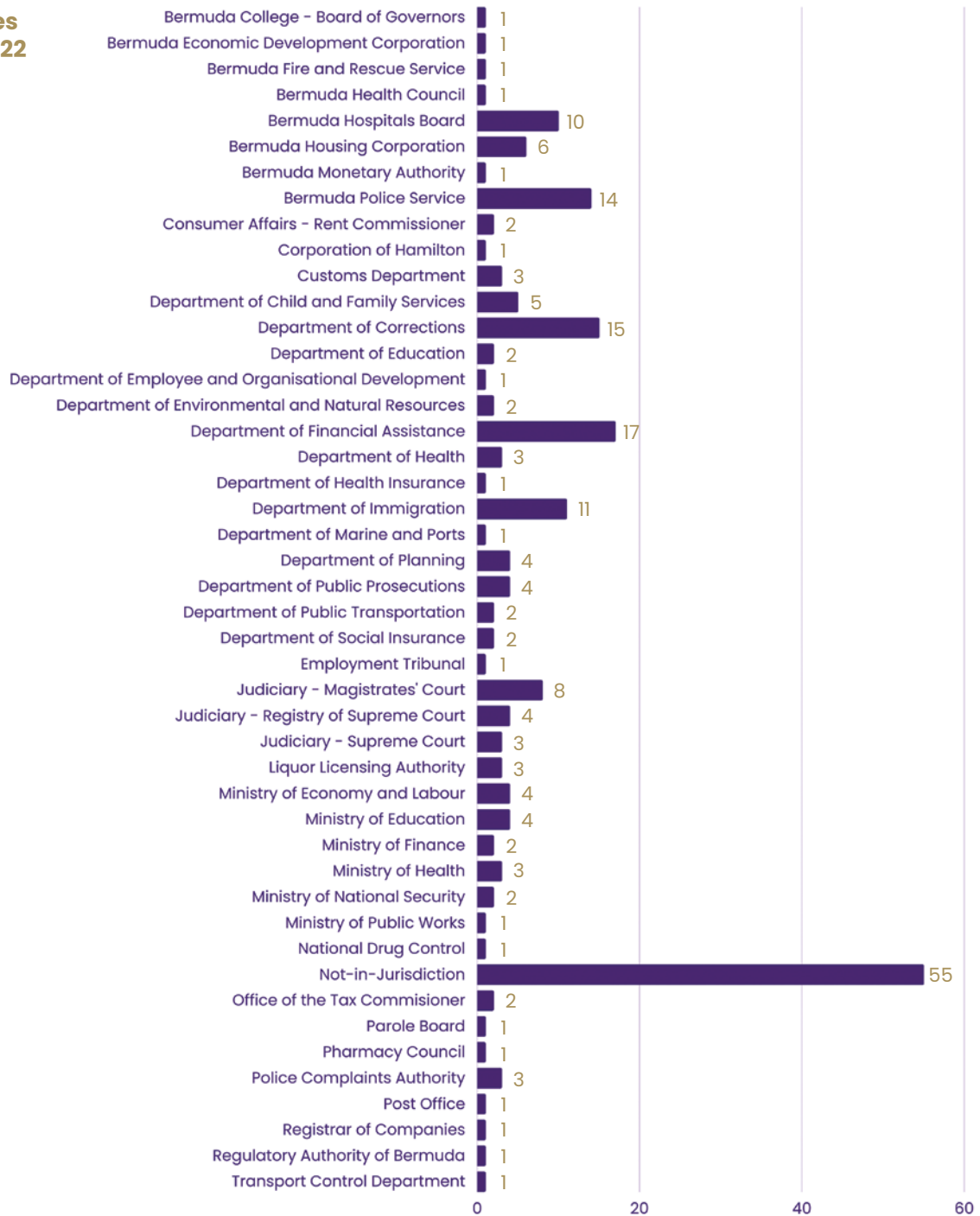
Figure B: Cases worked on in 2022



CASEWORK IN CONTEXT

Figure C below shows the total for new cases in 2022 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 them to determine whether they warrant discussion with relevant authorities.

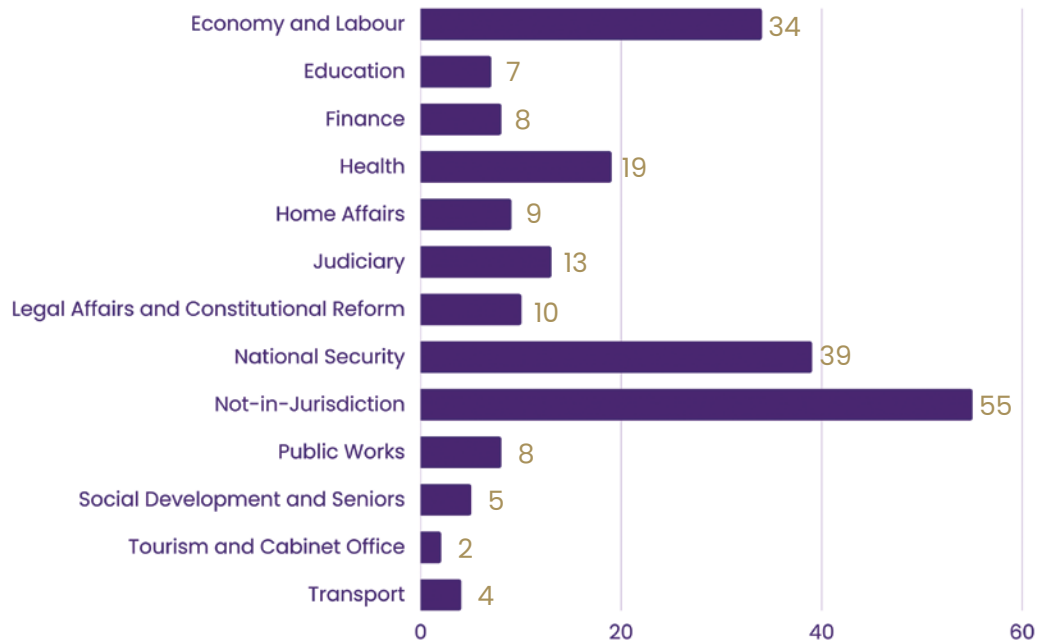
Figure C: Cases received in 2022 by Authority



CASEWORK IN CONTEXT

Figure D summarises the new cases received in 2022 by the relevant Ministry according to the Government’s organisational chart at year-end. (As of November 2022, the Government made changes to the organisation of Ministries, departments, and other bodies under its responsibility.) The graph also includes two additional categories: ‘Non-Ministry’, which are government-funded bodies that are not part of a Ministry and ‘Not-in-Jurisdiction’ which are bodies not subject to the Ombudsman Act.

Figure D: Cases received in 2022 by Ministry



OUTSTANDING COMPLAINTS

In 2022, we successfully addressed and closed 23 of the 61 cases that were opened in prior years. Of these 23 closed cases, we resolved 22% after inquiries that we considered to have reasonably satisfied the issues and 1 case was closed after an investigation. We carried 96 cases into 2023: 1 from 2017, 4 from 2018, 2 from 2019, 5 from 2020, 24 from 2021 and 60 from 2022.

Figure E: Complaints carried into 2023

Complaint Status as at 31-Dec-22	2017	2018	2019	2020	2021	2022
Intake					10	32
Preliminary Inquiry				4	6	25
Early Resolution*					3	1
Pre-investigation		1			3	1
Investigation	1	1	2	1	3	
Implementation Review*		2				
Total Complaints carried into 2023	1	4	2	5	25	59

*Note: In 2022, we updated our Complaint Stages and Dispositions. For more information, see pages 35 to 37.

We continue to work towards carrying over the fewest number of outstanding complaints possible at the end of each calendar year. We carried 96 cases into 2023, which is higher than normal and about half as many more than the previous year. Our Office has developed a plan to address this backlog and reduce that number by the end of 2023. As of 24th May 2023, 25 of the 96 carried over cases have been closed. We will continue to monitor and address the backlog with intention of decreasing this number in the next reporting year.

Figure F: Outstanding cases carried into each year: 5-year glance



SELECTED CASE SUMMARIES

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 2022. 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: **WARY GODMOTHER**

ISSUES

The complainant contacted our Office after she was unable to track a package she posted to her godson in Europe using the Bermuda Post Office’s (“BPO”) services. When she inquired about the package’s status with BPO, she was told the tracking number generated by the BPO could not be used to track the package’s current location because a different tracking number was generated after the package left Bermuda. She complained to our Office that this was not explained to her when she sent the package.

INTERVENTION

Our Office made inquiries with BPO to find out the status of the package and to gather more details on the BPO’s tracking system. Our inquiries revealed that when a package is sent overseas through the BPO, it is handled by the public postal services of that jurisdiction. The overseas postal service generates its own tracking number for the parcel, so the complainant could not use the BPO tracking number to track the package. However, the BPO was still able to track the package using an electronic system that facilitates communication between BPO and their overseas counterparts.

In this case, the BPO used the electronic system to contact their overseas counterpart to ask for the package’s location. Their overseas counterpart responded to them by referring them to a different electronic system used throughout Europe. Unfortunately, the BPO did not have access to this system. The response did not include any answer on the status or location of the package. The BPO sent a follow-up message to their overseas counterpart asking for these details, but they did not respond until over two weeks later. During that time, the package was returned to Bermuda because it had not been claimed.

Our inquiries found that the BPO is able to communicate with its overseas counterparts to determine the status and location of a package. Unfortunately, in this instance, their overseas counterpart assumed they had access to a larger system and did not respond with details concerning the location of the package in a timely manner.

As a result of these inquiries, the BPO applied for access to an electronic system that would allow for improved communication between the BPO and its overseas counterparts. Additionally, the BPO can now advise European entities that they may require a more detailed response, including the status and location, when making inquiries about packages. In this case, although the package was returned due to the failure of the overseas counterpart, the BPO acknowledged that the complainant was inconvenienced and apologised to her for the experience. Our Office thanks the BPO for handling this complaint in line with the Principles of Good Administration.

INSIGHTS

Interdependent procedures, particularly those in different countries, can sometimes increase the risk of things going wrong. If a negative outcome happens, it is important for public authorities to adhere to the Principles of Good Administration and the Principles of Remedy, as the BPO did in the case above.

Principle 6 of the Principles of Good Administration states that public authorities should seek continuous improvement. Continuous improvement includes ensuring that the public body learns from complaints and uses these to improve services and performance. In the above case, the BPO used this complaint as an opportunity to increase its ability to communicate with its overseas counterparts by applying for access to another electronic communication system used to track overseas packages. This improvement should limit or even prevent similar complaints from being raised in the future.

Principle 2 of the Principles of Remedy states that public authorities should be customer-focused, which includes acknowledging when things have gone wrong and apologising for any negative experiences. In this case, although the package was returned due to the overseas counterpart failing to respond, the BPO acknowledged that the complainant was inconvenienced and apologised to her for the experience.

CASE SUMMARY: PARDONED PRISONER'S PROPERTY

ISSUES

An inmate who was a foreign national complained that he had personal belongings confiscated at the time of his arrest that had yet to be returned to him. The inmate explained that the Governor had recently pardoned his prison sentence, and he was due to be deported to his home country soon. He wanted to receive his personal belongings before the deportation.

The inmate had attempted to retrieve the items on several occasions and was informed they were in the custody of the Department of Public Prosecutions ("DPP"). He could not reach the Department directly, so he asked our Office to inquire whether the DPP would return his belongings.

INTERVENTION

Our Office made inquiries with the DPP, who immediately agreed to investigate whether the inmate's items could be returned. Exactly two weeks later, the DPP contacted our Office to inform us that the items would be returned to the inmate, which fortunately happened before he was deported to his home country.

INSIGHTS

This complaint was a great example of how the flexible nature of our approach enables our Office to reach a quick resolution. Our Office facilitated a resolution in this case with just two emails to the DPP. It is ideal when a resolution that is satisfactory for the authority, the complainant and our Office can be reached within a few contacts. It saves our Office and the authority from using time and resources that could be used for other work.

Commentary: Memorandum of Understanding with the Department of Corrections

Our Office regularly communicates with the Department of Corrections to facilitate inmates making complaints. Inmates are the only group of complainants explicitly mentioned in the Ombudsman Act 2004. Section 7 (3) of the Act provides that where an inmate informs a person in charge of the facility that they wish to make a complaint to the Ombudsman, that person must take all steps necessary to facilitate the making of the complaint without delay and that the envelope in which a complaint letter is contained should be sealed. This provision places a statutory obligation on both our Office and the Department of Corrections to ensure both confidentiality and timeliness for inmates when making complaints to our Office.

In the autumn of 2022, our Office engaged with the Department to review our communication practices related to inmates, and to formalise our agreed procedures with a memorandum of understanding ("MOU"). The MOU was finalised in 2023, before the printing of this report. The primary aims of the MOU are to ensure that inmates have unrestricted access to our services, that all communications with us in person, in writing and electronically remain private and confidential, and that envelopes used by our Office are designed in a way that cannot be misused for unauthorised purposes.

Our Office thanks the Commissioner of Corrections and her Department for their continued commitment to assisting inmates in making confidential complaints to our Office.

Did You Know? GEHI & Retired Public Officers

All public officers are automatically enrolled in the Government Employee Health Insurance (GEHI) programme while employed in the public service. Retired public officers are eligible to continue enrolment with GEHI during retirement under the provisions of Section 22 of the Government Employees (Health Insurance) Act 1986. If, however, they take other employment with a non-government organisation during retirement, they must join that organisation's compulsory health insurance programme in accordance with Section 20 of the Health Insurance Act 1970. When they no longer work for another company (or if they are self-employed), they are eligible once again to re-join GEHI as a retired government employee.

CASE SUMMARY: SUM SOLUTION

ISSUES

In August 2022, we received a complaint from a woman who had been a client of the Department of Financial Assistance (“the Department”). She complained that the Department had suspended her financial assistance award (“the award”) despite completing the requisite precondition of completing a job search. She claimed that the Department informed her that she would need to complete a mental health assessment to receive a financial assistance award, which she refused.

The woman was also a Bermuda Housing Corporation (“BHC”) tenant. She explained that due to her award suspension, her rent was in arrears at upwards of \$10,000, and BHC had given her notice to quit. She complained that the Department’s unfair suspension of her award resulted in the accumulation of the rental arrears.

INTERVENTION

Our Office made inquiries with the Financial Assistance Manager at the Department. Our inquiries revealed that although the Department and BHC were working to encourage the woman to go to MWI for a mental health assessment, neither authority had informed her that the job search form would not suffice. The Department explained that the woman had refused to complete the job search form and encouraged her to complete the medical form in its place.

Our Office relayed this information to the woman. We then connected her with a local charity that offers financial hardship assistance. The woman visited our Office a few days later with an update. She explained that the charity had offered to arrange for her to see a private physician to assist her in completing the required medical form in place of the job search form. Our Office encouraged the woman to contact the charity and the Financial Assistance Manager for future assistance.

INSIGHTS

In this case, our Office determined that the Department was not at fault for how it handled the complainant’s matter. We found that the Department had demonstrated flexibility and sensitivity in a challenging situation. Our Office recognised that the woman would likely benefit from mental health intervention. However, as she did not desire to do so, we could only point the woman to useful resources and inform her of the financial assistance award application requirements.

This case highlights the challenges our Office occasionally faces when complainants cannot access social assistance programmes that provide them with food and shelter due to unaddressed mental health challenges. In these instances, we have connected complainants with local charities and public bodies that can assist them in accessing services that provide support and interventions necessary for them to navigate administrative processes successfully.

Did You Know? Special Persons Card

Special Persons Cards are available to persons with disabilities (physical or otherwise) for access to free public transportation. Applications can be made to the Transport Control Department. Applicants must provide the following:

- A valid form of identification (birth certificate or passport)
- A letter from your doctor stating the disability
- \$8.00 fee

Contact Information: Transport Control Department, 11 North Street, Hamilton HM 17 . Phone: 292-1271

Did You Know? Re-Employed Government Employee Pensioners

Government employees who leave the public service may be re-hired if they have not reached the compulsory retirement age. However, unlike deferred pensioners (persons who left the public service and deferred collection of their pension), pensioners (persons who retired from the public service and are receiving a pension) cannot contribute toward their existing pension, nor does their re-employment count as separate pensionable service. Under section 25(1) of the Public Service Superannuation Act 1981 (“the Act”), if a pensioner is re-hired in the public service, their pension cannot be suspended. Additionally, under section 14 of the Act, a pensioner cannot contribute further to the Public Service Superannuation Fund.



Best Practice

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.

ASSESSING GOOD ADMINISTRATION

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)

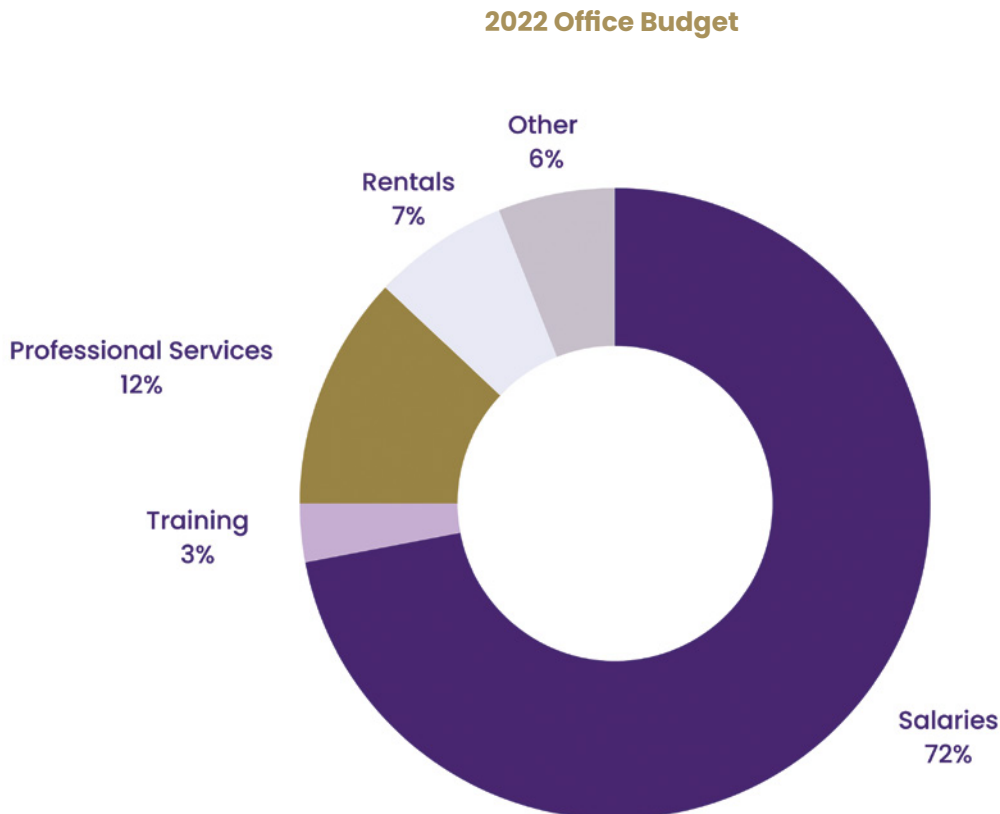
If you are unable to locate any of these resources online, please contact our Office for a copy.

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 ombudsman.bm.

Below is a breakdown of how we spent the funds allocated to our office budget in 2022:

- 72% was spent on employee salaries and benefits
- 12% was spent on professional services
- 7% was spent on rent
- 3% was spent on training
- 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.



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. Below is a summary of the training and conferences attended by our Office in 2022.

2022 OMBUDSMAN ASSOCIATION (“OA”) CONFERENCE

Michael DeSilva and Aquilah Fleming attended the 2022 OA Conference. The conference, with the theme “Delivering in a New World”, was held at the Royal Holloway, University of London campus between 20th and 22nd June. Both Mr. DeSilva and Ms. Fleming attended the following lectures:

- Why motivation matters more than talent
- Carbon literacy
- Artificial intelligence in complaint handling
- Managing change
- Changing the public perception

Mr. DeSilva also attended the Senior Leaders Network meeting and a workshop entitled Motivation: Identifying your team’s profile.

In addition to the above-listed lectures, Ms. Fleming attended the Caseworker Competency Framework and Setting the Standard workshops.

The conference served as a hub for many Ombudsman offices to share experiences and learnings from their work. It created a space to hold insightful discussions and gain new perspectives with industry leaders on the latest happenings in the field. It also provided an opportunity to network with other Ombudsman offices and establish international relationships. We remain in contact with our overseas counterparts and have committed to knowledge-sharing meetings in the future.

While we were in England for the OA Conference, we took the opportunity to visit the Parliamentary and Health Services Ombudsman (“PHSO”). PHSO provides an independent complaint handling service for complaints that have not been resolved by UK government departments and the National Health Service (“NHS”) in England.

We met with Ombudsman, Rob Behrens, who gave us a tour of their offices and updated us on PHSO’s initiatives. At right is a photo of Mr. DeSilva and Ms. Fleming with Mr. Behrens which, when posted on PHSO’s Instagram, received the highest engagement to date.



Michael DeSilva, Ombudsman Association Chief Executive Donal Galligan and Aquilah Fleming



Rob Behrens, Aquilah Fleming and Michael DeSilva

STAFF TRAINING

41ST ANNUAL UNITED STATES OMBUDSMAN ASSOCIATION (“USOA”) CONFERENCE

The Ombudsman attended the 41st Annual USOA Conference held between 12th and 16th September 2022 in Portsmouth, New Hampshire. The conference’s theme was “Granite Strong Ombudsman: Solid Work in Uncertain Times.” The first two days consisted of a workshop for new Ombudsmen. Mr. DeSilva met a number of ombuds persons from the United States and Canada who, like him, were relatively new to the role of government ombudsman. The instructors were a seasoned group of legislative and executive branch/agency Ombudsmen, each with many years of experience in their respective offices. The workshop covered the full range of standards in an Ombudsman’s Office, including intake, interviewing techniques, investigation strategies, and report writing. Students also discussed best practices, time-saving tips, and tools of the trade.

The remainder of the conference focused on critical issues such as diversity, equality, and inclusion. Presenters from several North American ombuds offices shared their experiences about building rapport with government agencies and individuals, ensuring fairness for vulnerable communities, and effective approaches when working with the media. The subject of impact – making a difference through the work of the Ombudsman – featured prominently in the discussions. The conference presented a very timely – and extremely useful – opportunity for the new Ombudsman to meet other ombuds colleagues and establish contacts for future support and information sharing.

PRIVACY TRAINING

Our Office participated in four training sessions with the Privacy Commissioner’s Office between 8th September and 21st October 2022. Cha’Von Clarke-Joell, Assistant Commissioner of Policy and Engagement, facilitated the sessions. They covered the purpose and implications of the Personal Information Protection Act 2016 (“PIPA”), the jurisdiction of the Privacy Commissioner’s Office, our rights under PIPA and best practices on data retention and disposal. Our Office is reviewing and strengthening our current policies and procedures to ensure they align with PIPA.

WORKPLACE INSTITUTE TRAININGS

Investigations Officers, Aquilah Fleming and Kristen Augustus, attended investigations training courses offered by the Workplace Institute, which were held virtually.

Both officers attended:

- *How to Investigate: Fundamentals of Effective Fact-finding*, facilitated by Gareth Jones. The course provided the tools required to ensure thorough investigations or fact-finding of any kind; and
- *Report Writing for Investigators*, facilitated by Sousana S. Karas. This course offered a strategic approach to report writing to help investigators write effectively and convincingly and present information logically and coherently.

Additionally, Ms. Augustus attended *Investigative Interviewing*, facilitated by Gareth Jones. The course outlined methodologies to ensure that one obtains all the information that any party has that is relevant to an investigation, including from reluctant and evasive witnesses. She also attended *The P.E.A.C.E. Interview Framework*, facilitated by Bruce Pitt-Payne. This course provided an introduction to the P.E.A.C.E. Interview Framework, an ethical, efficient, and effective investigative interviewing framework that has been adopted by investigators across the globe.

Ms. Fleming attended *Investigator’s Guide to Preparing for the Hearing, Adjudication or Trial* facilitated by Ian Scott. This course provided investigators with guidance on presenting the best case possible and being effective witnesses if and when they are called upon to testify in a hearing, adjudication or trial.

DEPARTMENT OF EMPLOYEE AND ORGANISATIONAL DEVELOPMENT (“DEOD”) COURSES

Our Office also took advantage of the DEOD course offerings. Investigations Officer, Kristen Augustus attended *Conflict Resolution*, facilitated by Dr. Crystal Clay. This course provided participants with conflict resolution tools and techniques to enhance team effectiveness in the workplace, creating a positive and productive environment for all employees. Ms. Augustus also attended *Report Writing*, facilitated by Terri Herbert-Trott. This course provided participants with a general overview and general guidelines on writing reports.

AFFILIATIONS

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



**CAROA – Caribbean
Ombudsman Association**
caribbeanombudsman.com



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

**IOI – International
Ombudsman Institute**
theioi.org

**OMBUDSMAN
ASSOCIATION**

Ombudsman Association
*(formerly British and Irish Ombudsman
Association)*
ombudsmanassociation.org



**USOA – United States Ombudsman
Association**
usombudsman.org





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 he 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 he has reviewed. He may determine the evidence he has reviewed does not support a finding of maladministration on the part of an authority. If he does so, he is not likely to take any further action.

The Ombudsman may determine the evidence reviewed supports a finding of maladministration. If he finds that there was wrongdoing by the authority, he may make recommendations as he 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, he 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.

Continued on next page

COMPLAINT PROCESS FAQ'S



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?

COMPLAINT STAGES

STAGE	PURPOSE
Intake	Receive and record cases as well as assess our jurisdiction to assist
Preliminary Inquiry	Gather and assess information and documents to determine whether or not to investigate a complaint of maladministration
Early Resolution	Promote resolution of the issues identified by (re-) establishing direct and clear communication between the complainant and the authority, along with potential solutions, as soon as possible after receipt of the complaint
Mediation	Promote resolution of the issues identified by facilitating a formal meeting (or series of meetings) between the complainant and the authority
Outcome Review	Assess whether to uphold the complainant's request for a review of a decision not to investigate
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)
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)
Post-Investigation	Issue Draft Investigation Report to parties for their input, before finalisation (investigation sub-stage 3)
Investigation Conclusion	Receive and assess Authority's statutory response to Final Investigation Report (investigation sub-stage 4)
Implementation Review	Follow up on the Authority's implementation of recommendations in Final Investigation Report (investigation sub-stage 5)

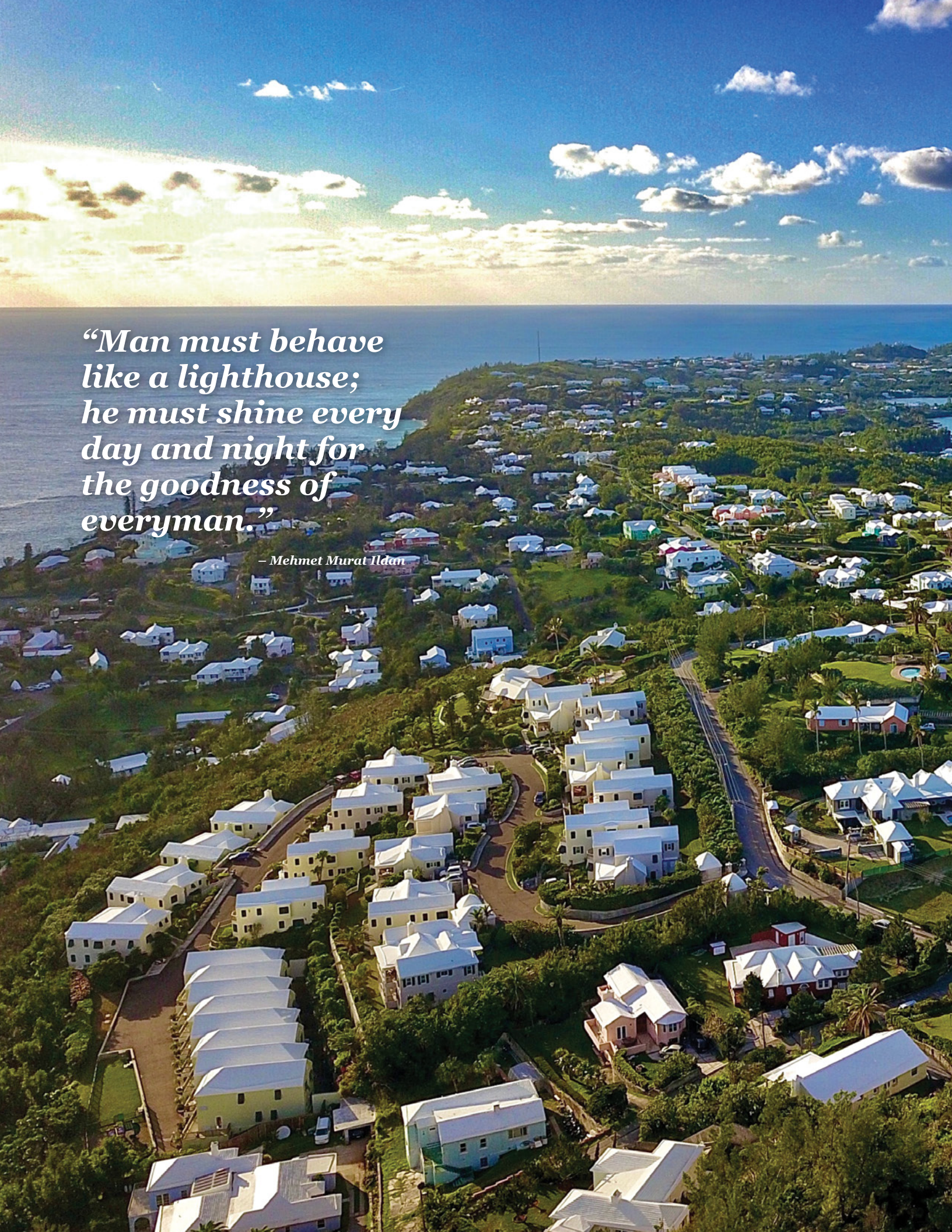
COMPLAINT DISPOSITIONS

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.

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).

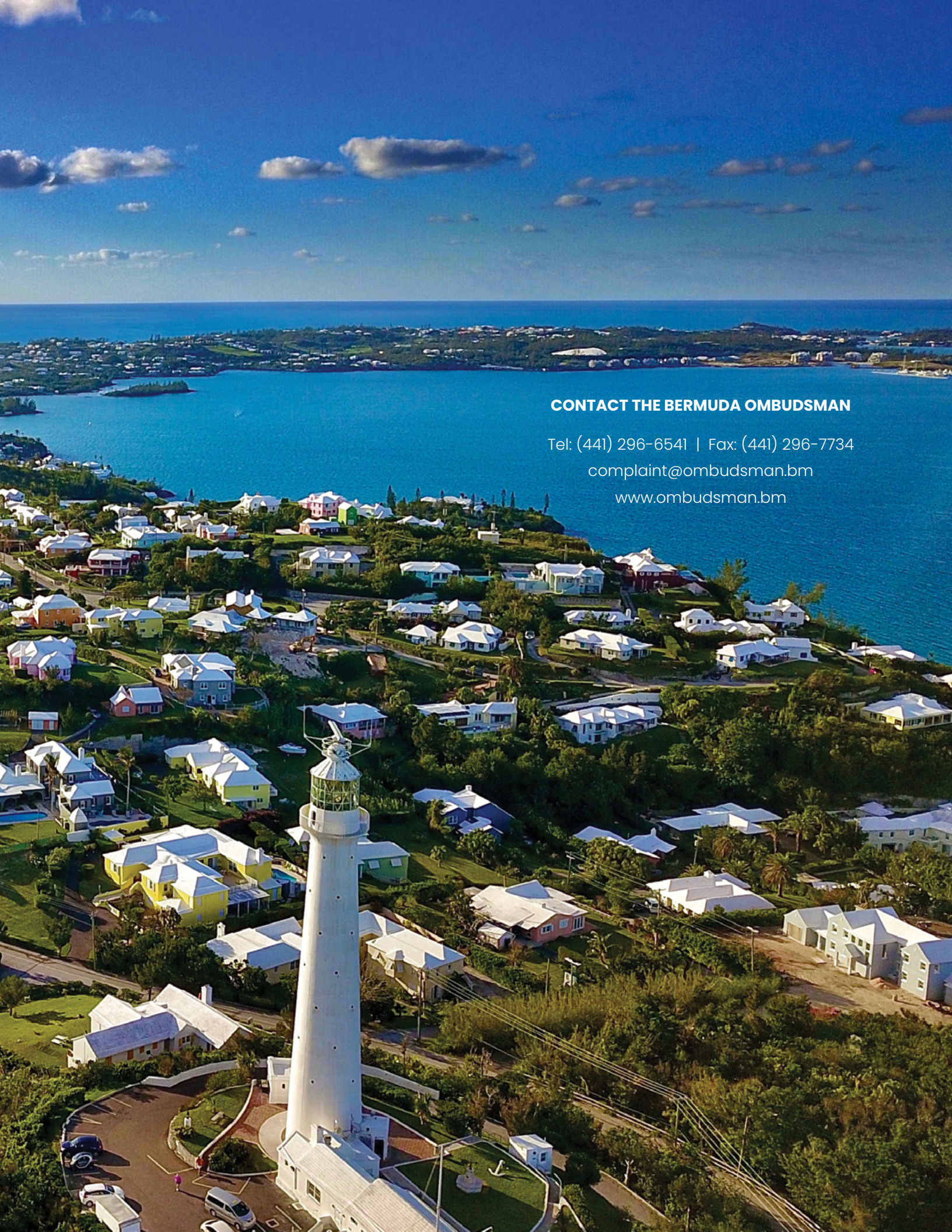
COMPLAINT DISPOSITIONS

DISPOSITION	WHAT IT MEANS
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).

An aerial photograph of a coastal town during sunset. The sun is low on the horizon, casting a warm glow over the scene. The town is built on a hillside, with numerous houses featuring white roofs and light-colored walls. The houses are interspersed with lush green trees and vegetation. In the background, the ocean stretches to the horizon under a sky filled with scattered white clouds. The overall atmosphere is peaceful and scenic.

“Man must behave like a lighthouse; he must shine every day and night for the goodness of everyman.”

– Mehmet Murat Ildan



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*For the Good
of the Public*



*and Those Who
Serve the Public*

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