



Ombudsman for Bermuda

ANNUAL
REPORT
2017



FRONT COVER

Our cover features the aptly named Swing Bridge in St. George's. It was opened for public use in 1871 and connects St. George's Island to St. David's Island.

Metaphorically, the cover illustrates how the Ombudsman, Parliament and public authorities work together to ensure efficient public service.

- Parliament can be seen as the engineer of the bridge, since the Ombudsman and public authorities under her jurisdiction were created by the enactment of legislation.
- The stationary part of the bridge is symbolic of public authorities. Both were created to address an area of concern for their service users.
- Members of the public are symbolised by the vehicles. They are the service users of the bridge as well as the persons the structure should benefit.
- The Office of the Ombudsman is symbolised by the circular pier that moves the bridge. It is independent of public authorities and members of the public and depicts the principles of flexibility and accessibility.



Swing Bridge, St. George's Parish

Gavin Howarth | www.bermudascenics.com



OMBUDSMAN FOR BERMUDA

14th June 2018

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

Dear Honourable Speaker:

I have the honour of presenting my Annual Report which covers 1st January to 31st December 2017.

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.

Yours Sincerely,

Victoria Pearman
Ombudsman for Bermuda

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OMBUDSMAN'S MESSAGE

I am pleased to present the Annual Report 2017 on the work of this Office for the period 1st January through 31st December 2017.

In 2017, we were contacted about 126 complaints and 97 enquiries by over 150 people, and overall we handled 283 cases.

We inquired into matters such as the Department of Financial Assistance's policies and procedures, communication of bus cancellation information by the Department of Public Transportation, and the Department of Education's coordination of school learning support services. We also continued to prioritise senior abuse complaint oversight and follow-up on complaint handling oversight of financial institutions. With fingers crossed, we hope to see the Land Title Registry finally open to the public this summer. We report on this on page 10.

The much-heralded initiative with the Ministry of National Security and the Department of Corrections which we highlighted in our Annual Report 2016 has not progressed as expected. We continue to push for strengthening the role of the Treatment of Offenders Board in complaint handling for persons incarcerated as was agreed by all sides. We learned belatedly the Ministry is re-considering its position. This does not explain why little was done to progress the initiative as an agreement was reached to do so in 2016, and no progress was made.

This highlights the need to follow-up and assess progress and the importance of keeping authorities accountable when they have agreed to take action.

Consistent application of rules and policies of a public office is efficient, predictable and fair – until it is not. In some instances, applying the same approach can result in unreasonable outcomes. In those cases, applications of the rules of different authorities have to be considered and balanced to achieve the best outcome. An example can be found at page 29. While rule based application and decision making is the norm, it can result in decision making that is impersonal. Sometimes treating everyone the



same is unfair and leads to an unjust outcome, and we help to mitigate against this.

Ombudsmen protect people from unfair administrative actions and decisions. Our work is to provide redress to members of the public, promote and recommend improvements in the way Government services are provided, and investigate whether those entrusted with management functions do so properly and fairly. Receiving complaints is an important aspect of our work, but the Ombudsman's role is not limited to investigation and alternative dispute resolution. She is also an educator, ambassador, guide, advisor in the public interest, and bridge builder.

This year's Annual Report 2017 continues our theme of bridges from last year's report. We have selected the Swing Bridge in the parish of St. George's for our cover, to highlight this important and unique structure. It was overdue that the cover features an image not so close to Somerset this year and closer to Wellington Oval.

The cover shows the Swing Bridge accommodating two-way land and marine traffic, completely open to allow boats and their masts to pass through it. Fully open, the mechanical part of

the bridge creates a two-way channel for marine traffic. The Swing Bridge has an important and practical feature designed to accommodate both land and water traffic. The mechanical apparatus of the Swing Bridge allows it to pivot horizontally at a 90 degree angle, which is possible because the apparatus is built structurally independent of its stationary component.

Bridges should be reliable with structural integrity, strong but not overly rigid. Without a measure of flexibility, they are weakened. They provide safe passage allowing us to traverse obstacles. They are impartial and accessible to anyone who wants to get across a divide to the other side. These comparisons of our Office to bridges serving the public and authorities are apt descriptions.

Even so, bridges do not create themselves. They are created through purposeful, intentional and deliberate work. They do not simply appear; they must be carefully built and properly maintained. As members of the public, we all have a part in building these bridges that connect us.

In addition to receiving complaints and providing alternative dispute resolution, the Ombudsman listens and assists people to navigate administrative systems which can feel overwhelming and uncaring. Where we identify deficiencies or unfair decisions, we address this by making recommendations to put it right as well as suggesting improvements in an authority's decision making process. Listening, being receptive to alternative dispute resolution, and building trust in the process demonstrate bridge building.

At the Office of the Ombudsman, our focus is people. We assist members of the public who can get lost in the extensive structure and complex system that is the Government. People can be disadvantaged in obtaining services which may be cut back in difficult economic times or where services are backlogged and lengthy delays result. They should be told what to expect when this happens and not left wondering.

Officials who provide and manage public goods and services are also members of the public. They too are recipients of goods and services. Looking beyond divisions to improve understanding on all sides for better communication is bridge building.

On this small island, we are all neighbours and share things in common. Good administration requires focus on customer service and efficiency. The Ombudsman's role includes reminding public officials to be customer-focused, holding them to account so that the principles of 'seeking continuous improvement' and 'being open and accountable' are more than mere platitudes. They must be a part of the culture and what is expected by all.

Promoting best practice in administration includes educating people that the principles of good administration are for all our benefit. It must be easy to ask questions, obtain answers, and make complaints to the authorities. Members of the public should not be shy about doing so. I commend the initiative taken by the Collector of Customs to inform members of the public on Customs' process. This can be found at page 24.

Provisions for redress of official actions are neither new nor discovered in Europe. The concept of redress is an aged one. Official decisions have a real impact on people's lives. Recognition of the imbalance of power between members of the public and public officers led to the creation of the institution, demonstrated by its unparalleled growth globally. The need for a complaint handling system for the Government is important. This was raised in my 2014 and 2015 annual messages. This must be addressed in the most efficient way. We accept that in challenging economic times, public services are affected. We have heard that refrain; more needs to be done. It is time for managed solutions.

We must make certain the bridges we build connect and protect the public's right to complain, to seek redress, and for there to be effective change in the interest of all of us as members of the public. No matter our roles or position today, we all have to do our part to build the bridges we and others will need to cross tomorrow.

Our Office takes seriously its role to bridge gaps as a bridge builder. My deepest thanks to all those who came to us seeking assistance. Bringing complaints to us is a valuable public service that alerts us to challenges which otherwise might not come to our attention. We do not take your trust for granted.

My thanks to the unheralded, hardworking and knowledgeable officials who understand the importance of us fulfilling our duties to ensure accountability. My appreciation to my colleagues, local and overseas, for generously sharing experiences, suggestions and support.

I especially thank my team, all of whom are skilled and committed to the challenging work of the Office. This work is not for the faint of heart. Thank you for your dedication, courage and support. Thanks also to our summer intern, Dee-Neishae Zuill, a law student at London Metropolitan University, for the assistance she provided.

My sincere appreciation to everyone who has assisted me and added to the success of this Office.

A large, stylized handwritten signature in black ink, appearing to be 'VP', with a long horizontal line extending to the right.

Victoria Pearman
Ombudsman for Bermuda





OMBUDSMAN'S OFFICE STAFF



Victoria Pearman
Ombudsman for Bermuda

Appointed March 2014



Catherine Hay
Deputy Ombudsman

Joined October 2011



Lamumba Tucker
Manager – Finance & Administration

Joined September 2012



Robyn Eve
Executive Assistant

Joined January 2016



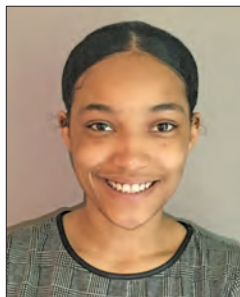
LaKai Dill
Investigations Officer

Joined December 2014



Aquilah Fleming
Investigations Officer
(Complaint Intake Officer before April 2018)

Joined March 2014



Dee-Neishae Zuill
Summer Intern 2017

MISSION

To investigate administrative actions of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority; and Pursuant to an investigation, to make recommendations to an authority concerning administrative action that formed the subject of the investigation and, generally, about ways of improving its administrative practices and procedures.

VALUES

The core values of the Office of the Ombudsman are:



OVERVIEW

The Ombudsman first set out her strategic aims for her term, which commenced on 17 March 2014, in our Annual Report 2013. These strategic aims were:

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

Our team has continued to work 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 2017, we report on these efforts and our progress during this Office’s 12th year in service, using the Ombudsman’s strategic aims for its structure.

- The second 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 third section on “**Greater Public Awareness**” begins with the ‘why’ of the Ombudsman. It reviews our complaint handling in 2017 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 fourth section on “**Championing Best Practice**” reviews useful resources on what good administration means and highlights practical suggestions on managing difficult behaviours in complaint handling. It also describes activities we took, and continue to take, to build upon our strengths and improve our processes.

We hope you find our Office’s publications to be an interesting and informative insight into our progress toward improved performance and greater accountability to Bermuda. We welcome your feedback

Readers are encouraged to send us back the survey on page 40; or visit www.ombudsman.bm or www.facebook.com/bermudaombudsman to submit an online survey.

STRATEGIC AIM I: GREATER PUBLIC ACCESS

HOW TO MAKE A COMPLAINT

Anyone can make a complaint to the Ombudsman about Government's 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, 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 which 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.



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

HOURS: Monday to Thursday 9:00 am – 5:30 pm
Friday 9:00 am – 5:00 pm

CONTACT: Tel: (441) 296-6541 | Fax: 296-7734

complaint@ombudsman.bm

info@ombudsman.bm

www.ombudsman.bm

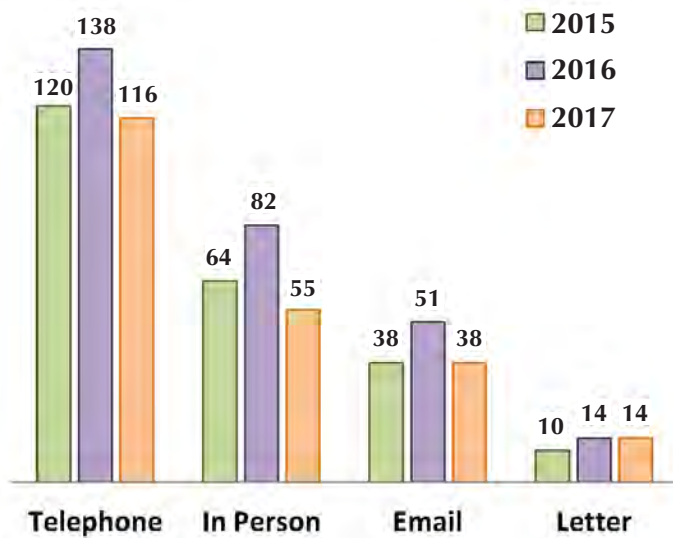
www.facebook.com/bermudaombudsman

The majority of complainants – 77% in total – contacted us either by telephone or by visiting our Office in person. This is a consistent trend. Complainants want to be heard. Contacting us by telephone or speaking in person means that questions can be more quickly acknowledged, and we can clarify what we can or cannot do for the complainant. This direct interaction also allows us to gather the information we need to assess the complaint and determine what further information we may still need.

Figure A: How People Contacted Us in 2017

	<p>Telephone 52% 116 by phone</p>
	<p>In Person 25% 55 by walk-in or appointment</p>
	<p>Email 17% 38 by email or website</p>
	<p>Letter 6% 14 by mail, hand delivery or fax</p>
Total Contacts in 2017	223

**Figure B: How People Contacted Us:
3-Year Glance**



OMBUDSMAN ‘OUT AND ABOUT’

2017 was a busy year for the Ombudsman and her staff as we gave orientation presentations, participated in special events and attended overseas conferences which provided valuable opportunities to meet and network with colleagues.

In March, the Ombudsman spoke before students at Paget Primary. It has become an annual enjoyable tradition. Our team gave separate presentations to inmates at Westgate Correctional Facility and the Department of Corrections’ officers about our role and relevant aspects of our complaint process.

In April, the Ombudsman attended the Bermuda National Team Debate, hosted by the Information Commissioner, on the motion: “This House believes that individuals should be able to make a request for access to public records anonymously”. Later in the year, the Ombudsman also attended the Opening of Parliament and the Convening of Youth Parliament.



Ms. Pearman with 2017 Youth Parliament members

In June, the Ombudsman attended the 9th Biennial Conference of the Caribbean Ombudsman Association (CAROA) in Bonaire. The Ombudsman met with regional and international colleagues and discussed matters of mutual importance related to challenges and non-traditional issues facing Ombudsmen. The Ombudsman also chaired a panel discussion on “Networking”. During the General Membership Meeting, the Ombudsman was elected President of CAROA for a two-year term from 1 July 2017 to 30 June 2019.



CAROA Council 2017-2019: Raymond Mathilda, Marion Blair, Arlene Harrison Henry, Nilda Arduin, Victoria Pearman, Keursly Concincion. *Missing:* Sheila Brathwaite

In October, the Ombudsman and team members attended two overseas training conferences. At the United States Ombudsman Association’s 38th Annual Conference in Texas, the Ombudsman and Deputy Ombudsman, Catherine Hay, participated in workshops that offered ideas and tools for making changes, addressing difficulties and capitalising on opportunities. They networked, shared information and exchanged ideas with colleagues. The Ombudsman also addressed the membership on challenges faced by sister offices damaged by recent hurricanes.



“Every individual is equal, before and under the law, and has the right to the equal protection and equal benefit of the law without discrimination.”
– Ms. Eve and Ms. Pearman in the area near the Ontario Ombudsman’s office

Following an investigations training in Toronto, Ontario, the Ombudsman and our Executive Assistant, Robyn Eve, arranged to meet with colleagues in the city. At the Ontario Ombudsman's office, we received a guided tour to view first-hand how their operations and procedures are performed from intake to investigation. At Ombudsman Toronto, which is comparative in size to ours, we sat down with their Ombudsman, Susan Opler, and the Ombudsman Investigator, Adam Orfanakos, to discuss the structure of their office and share experiences and best practices.



Toronto Ombudsman, Susan Opler, with Ms. Pearman

ACCESSING PUBLIC INFORMATION

We continue to learn about the Government's efforts to inform the community about its services and processes and how public authorities are working to streamline their services. Here are useful topics of public interest that we learned about in 2017.

COMMENTARY:

UPDATE ON OPENING LAND TITLE REGISTRY

In our past three annual reports, we wrote about the Government's slow progress in opening the Land Title Registry Office ("LTRO") to the public. A title-based land registration system will significantly change property law in Bermuda.

The Ombudsman has remained very concerned that, while its establishment started in 2005, 11 years later the LTRO has not yet been fully operational. In 2016, the Government explained

the delay had resulted mostly from prolonged consultation with one of its primary stakeholders – attorneys. By that time, the total cost of running and setting up the LTRO had reached over \$11 million. If the LTRO were fully operational, its minimum annual income is projected to be \$1.1 million.

The Ombudsman is encouraged by the Government's renewed call to progress land title registration. Assent was given to the Land Title Registration Amendment Act 2017 ("the Amendment Act") in December 2017. The Amendment Act served to amend the Land Title Registration Act 2011 ("the Act") but did not provide all the changes that the attorneys advocated be included in the Act. The Act, which will come into force with the Minister of Public Works' notice, is therefore by and large the same legislation which was passed in 2011. This includes the Government guarantee of title along with the originally planned adjudication system.

We expect the LTRO to be open to the public this summer. In February 2018, the Minister of Public Works, responsible for the LTRO, publicly announced its opening will be on 2 July 2018.

DEEDS REGISTRY: The passage of the Land Title Registrar (Recording of Documents) Act 2017 in February 2017 paved the way for the Deeds Registry to merge with the LTRO as of 1 April 2017. The LTRO assumed responsibility for public searches of property, land transfer notices, and registering deeds, mortgages and voluntary conveyances. Digitising the Deeds Registry was initially delayed due to health and safety challenges posed by the physical state of the records. This resulted in a temporary closure soon after the merger. This is one example of the various challenges in making the LTRO fully operational.

In practical terms, this transfer of responsibility means all property transactions are now recorded by the LTRO in its electronic system. This will make searches of these records much easier for the public in the future.

BLOCKCHAIN AND LAND TITLES: A statement regarding blockchain technology was made in February 2018 by the Minister of National Security, who is responsible for e-commerce and information communication technology. This statement

mentioned consideration of the LTRO possibly having its own blockchain network.

The Ombudsman hopes any further consideration will not delay the long-awaited opening of the LTRO to the public this summer.

**“We may encounter many defeats
but we must not be defeated.”**

— Maya Angelou, American poet
and civil rights activist (1928 – 2014)

Did You Know:

SENIORS AND LAND TAX EXEMPTION

Do you own the home you are living in? Or if renting, do you hold a lease for three years or more?

Once Bermudians turn 65 years of age, they can be exempt from paying all or a portion of land tax annually if:

- they both own and live in the home, or
- they have a rental lease for three years or more.

The exemption applies to a home’s annual rental value (“ARV”) up to \$45,500. Land tax will be payable on any portion of the ARV that exceeds \$45,500.

Seniors who believe they are eligible should submit to the Office of the Tax Commissioner (“the OTC”):

- a one-page application,
- proof of citizenship (e.g. birth certificate, passport, status certificate),
- proof of current address (e.g. utility bill, lease agreement), and
- a land tax demand notice.

A form may be collected from the OTC or downloaded from www.gov.bm.

When considering making this application, you should also understand your type of property ownership. For instance, if relationships are severed, or an owner or trustee dies, the type of ownership will affect what can be done – including for land tax exemption.

For questions about:

- land tax exemption – call the OTC on 297-7537,
- property ownership – call the Land Title Registry Office on 294-9261, or
- annual rental value – call the Department of Land Valuation on 297-7964.

Did You Know:

SENIORS AND FINANCIAL ASSISTANCE

Certain exceptions exist for seniors to qualify for financial assistance. For instance, a senior may have no more than \$5,000 in savings (e.g. cash and investments), whereas other applicants must have less than \$500 to be eligible.

Over the last decade, the law for financial assistance has been amended to reduce the Government’s spending. This includes how a senior’s pension and property ownership are considered.

- A 2012 amendment allowed the Department of Financial Assistance to include a senior’s pension as income in the eligibility assessment. Any amount over \$500 is counted.
- Seniors who are homeowners may be eligible, in contrast to a homeowner who is able-bodied and unemployed. After a 2013 amendment, seniors’ homeownership was limited to interest in one property only, in or outside of Bermuda.

To learn more, contact the Department of Financial Assistance at 297-7600. Walk-ins are encouraged. Staff also offer home visits for seniors and persons with disabilities when needed.



CartoonStock.com

Did You Know:

HELP WITH RODENTS

Did you know the Vector Control Section of the Department of Health can help to resolve pest infestation issues?

If you open a case with Vector Control:

- You will be given a tracking slip with an identifying number, so you can check on its status.
- If needed, the Vector Control inspector will place bait boxes around the perimeter of your property.
- There is a charge of \$15 per box. The assessment, installation and monitoring are free. Bait boxes are not available for general use, and only an inspector can install them. You can also purchase snap traps from their office (\$2 for mice and \$5 for rats).

Do what you can to help yourself and Vector Control:

- If you are renting a property, discuss any issues with your landlord prior to contacting Vector Control for service.
- If you were not home when an inspector installed bait boxes on your property, a notice with the inspector's contact information will be left in your mailbox.
- If you think bait boxes are already installed on your property, call Vector Control and ask. If you know your tracking number, let the inspector know when you call.
- Once a case is opened, an inspector visits your property until he determines the pest control has been effective and the job can be closed.
- Document any sightings or what you believe may be evidence of pests.
- If you compost, ensure your bin remains properly enclosed.
- Store garbage in sealed bags inside sealed bins.
- Prevent foliage from accumulating in piles.

For further assistance, contact Vector Control at:
Tel: (441) 278-5397 or 278-5333

Email: envhealth@gov.bm

Location: 6 Hermitage Road, Devonshire FL 01

Did You Know:

U.S. VISA FOR BERMUDA PASSPORT

Only Bermudians can travel to the U.S. as visa exempt on a British Overseas Territories Citizen ("BOTC") (Bermuda) passport. Bermuda passport holders who do not have Bermudian status are not exempt from the U.S. visa requirements.

Having a Bermuda passport means you may enter Bermuda as a resident. The Government of Bermuda is responsible for setting the requirements for entering Bermuda. Each country determines how it will treat travellers entering its jurisdiction who travel on Bermuda passports.

Whether or not you require a U.S. visa for travelling to the U.S. on a particular passport is a matter only for U.S. offices, not Bermuda's Department of Immigration. Under U.S. law, the American Consulate has different requirements for a Bermuda passport holder who possesses Bermudian status compared to a Bermuda passport holder who does not. Other jurisdictions may not make this same distinction.



Former US Consul General for Bermuda, Mary Ellen Noonan Koenig, with Ms. Pearman

According to the U.S. Customs and Border Protection and the American Consulate, anyone who does not have Bermudian status, no matter if she has a Bermuda passport, must have a passport from her country of citizenship for travel to the U.S.

In essence, when you have a Bermuda passport but do not have Bermudian status, you cannot be classified as a 'citizen of the British Overseas Territory of Bermuda' per U.S. law (8 CFR 212.1 and 8 CFR 212) – even though your passport under nationality reads 'British Overseas Territories'.

To learn more, visit <https://bm.usconsulate.gov>. Also see *Did You Know: Bermudian Status vs. BOT Citizenship* in our Annual Report 2016 page 30.

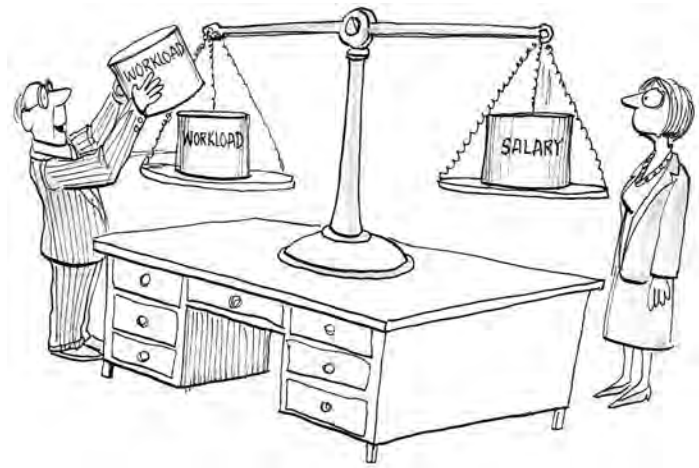
Did You Know:

ORGANISATIONAL CHANGES

Sometimes the Government decides the best way to continue delivering a public service is by changing a department into another organisational entity, or merging departments. Did you know that in 2017:

- the former Department of Maritime Administration became the Bermuda Shipping and Maritime Authority?
- the Bermuda Airport Authority was established, taking over responsibilities of the former Department of Airport Operations? The Bermuda Civil Aviation Authority took effect several months prior in late 2016, dissolving the former Department of Civil Aviation.
- the former Department of E-Government transferred a share of its responsibilities to already existing bodies, now called the Department of Information and Digital Technologies and the Department of Communication?

An authority like the Bermuda Monetary Authority, compared to a department, is an alternative body that is governed by a board of appointed members and established by an Act of Parliament. It exercises greater independence from strategic direction of political leaders. Funding is intended to be sourced mainly from the private sector industry regulated by the authority.



“Now that we’ve hired you, we would like to restructure the position.”

Did You Know:

MAKING OPINIONS COUNT

Public consultations can happen in different ways, but the goal is for residents to express their opinions to the Government about a proposed action. The Government may invite public opinion through discussion papers, town hall meetings, roundtables discussions, surveys, referenda and draft legislation usually along with defined feedback periods. Best practice encourages the Government to follow-up by providing a summary of the feedback received within a reasonable time.

In 2012, as a result of an own motion investigation into a special development order, we published some guidance for authorities on public consultation standards. See our 2012 special report, *Today's Choices Tomorrow's Costs* pages 15-20.

In 2017, topics of national interest open for public feedback included:

- immigration reform (Ministry of Home Affairs),
- sustainable water and wastewater in St. George's (Department of Works and Engineering),
- domestic partnerships (Ministry of Home Affairs),
- national fuels policy (Department of Energy),
- public education strategic planning (Ministry of Education),
- health professionals' regulation (Ministry of Health),
- airport redevelopment (Ministry of Finance), and

- solar energy metering (Regulatory Authority),
- We encourage all residents to make their opinions count towards bettering Bermuda's public services and government policies.

“May we keep our eyes open for those who might need our help as we walk together in this journey of life.”

— Amy Boucher Pye, American author and speaker, *Our Daily Bread* devotional “Faith In Action”, 29 June 2017

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. It is the mandate of the Information Commissioner's Office (ICO) to promote and oversee the use of PATI. For the ICO's advice on how to make a PATI request, see our Annual Report 2014 pages 14-16.

Since its opening, the ICO has published various guidance notes to help explain practical aspects of public authorities' responsibilities under PATI. Members of the public can benefit from reviewing what the ICO considers to be best practice for public authorities' decision-making on PATI requests. These guidance documents and its anonymised decision notices, published at the outcome of an ICO review of an authority's decision, are available at www.ico.bm.

From 1 January to 31 December 2017, the Office of the Ombudsman did not receive any PATI requests from the public. Likewise no requests were received in 2016 and 2015. To obtain a copy of our PATI Information Statement (last updated June 2018) and learn about records that can be made available to the public, stop by our Office or visit our website to download it.



STRATEGIC AIM II: GREATER PUBLIC AWARENESS

OVER A DECADE OF COMPLAINTS

Since opening our doors in 2005, we have handled approximately 2,000 individual complaints. This does not include enquiries, which we commenced recording in 2015. We can break down our handling of complaints into four basic categories:

- *open* – by year-end, we were still working to address the complaints,

- *declined* – for complaints outside our jurisdiction,
- *disposed of* – complaints addressed through inquiries or investigations, then closed by year-end, and
- *referred* – where it was more appropriate for the complainant to raise the issue with another body.

Below summarises our reporting on complaint categories historically, by the date the complaint was opened.

Figure C: Complaints 2005 – 2017

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
Total per category			512	451	573	431	1,967
Average per category			43	38	48	36	164

* Complaints 'disposed of' were within our jurisdiction, addressed and then closed during the complaint year received. Numbers in green represent the highest value per category.

CASEWORK IN 2017

From 1 January to 31 December 2017, we worked to address a total of 283 cases (see Figure E). This included:

- *enquiries* people made to us – 97,
- *new complaints* opened in 2017 – 126, and
- *outstanding* complaints we carried into 2017 from previous years – 60.

To summarise new cases opened in 2017:

- We received 223 new cases: 126 complaints + 97 enquiries.
- Of the 126 complaints, 98 were in our jurisdiction and 28 were not.
- We assisted 16 of the 28 that were Declined with additional resources, plus 23 of those 98 within jurisdiction – giving a total of 39 that were Referred. *We helped them raise their*

issues with the right entity or directed them back to the authority complained of.

a caller's name if the initial call addresses the question completely and we close it as an 'enquiry'.

- 11 complaints were Abandoned or Withdrawn by the complainant.
- 10 complaints were resolved between the complainant and the authority with informal and limited intervention by us.
- 22 were Closed After Inquiries.
- 18 people came back to us again, either raising separate issues or bringing up the same issue at a later time, accounting for 46 cases and thus 20% of 2017 cases. *We do not always record*

See page 40 for an explanation of how we categorise closed complaints.

For the 283 cases worked on in 2017, we closed 238 by year's end and carried over into the next year the remaining 45 cases (see Figure H). Of those 45 cases carried over into 2018, 11 were closed by 13 April 2018, leaving a total of 34 cases open that had been received either in 2017 or years prior. Also of those 45 cases carried over into 2018, 10 were from 2016, 1 was from 2015, and 2 were from 2014.

Figure D: Cases Worked On in 2017

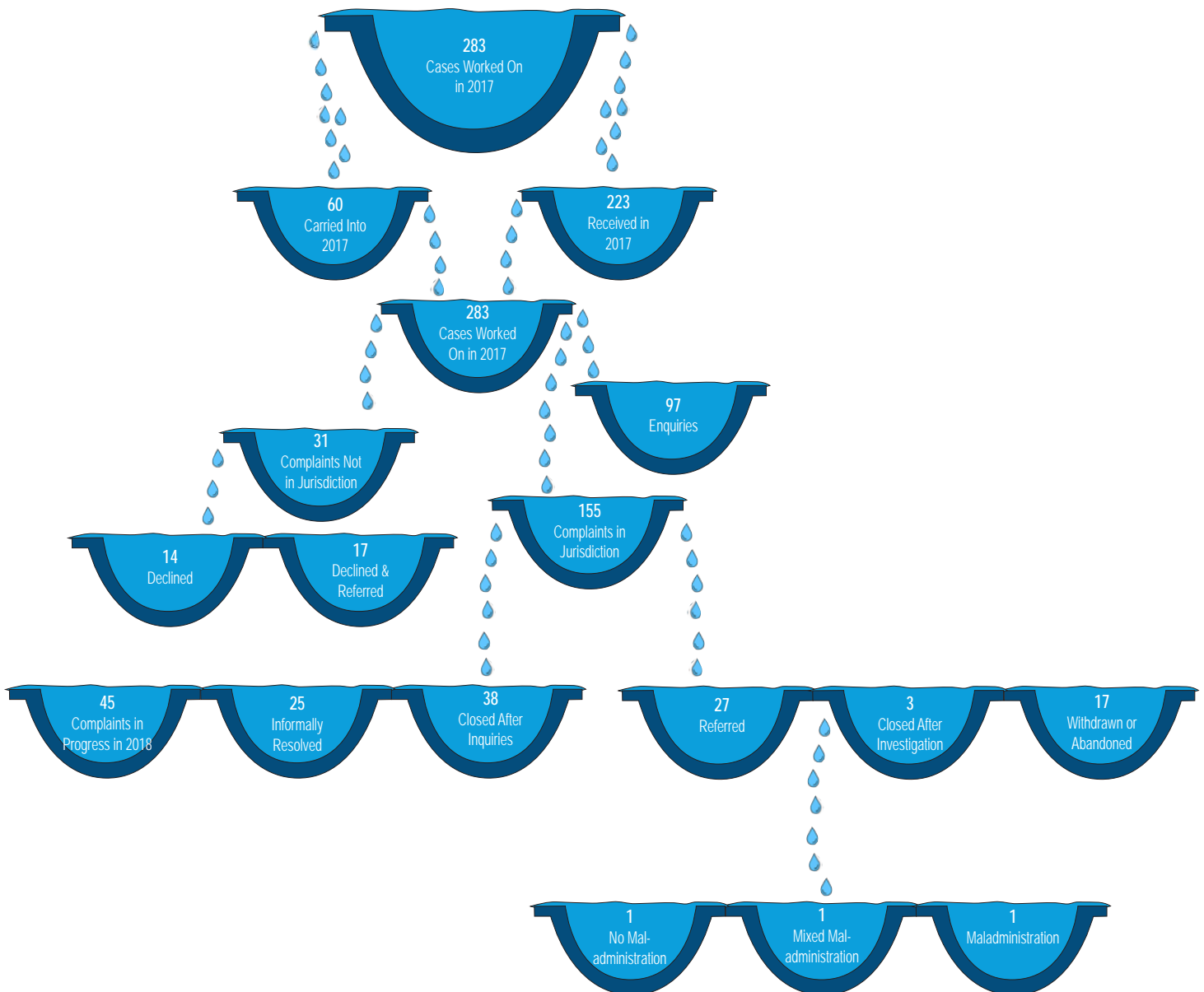


Figure E: Cases Worked On in 2017 – Detailed

Disposition	2017	2016	2015	2014	TOTAL
Abandoned	5	3	1	0	9
Closed After Inquiries	22	15	1	0	38
Closed Maladministration	0	0	0	1	1
Closed Mixed Maladministration	0	1	0	0	1
Closed No Maladministration	0	0	1	0	1
Declined	12	2	0	0	14
Declined and Referred	16	1	0	0	17
Enquiry	97	n/a	n/a	n/a	97
Informally Resolved	10	15	0	0	25
Referred	23	4	0	0	27
Withdrawn	6	2	0	0	8
TOTAL CLOSED IN 2017	191	43	3	1	238
Carried Into 2018	32	10	1	2	45
TOTAL WORKED ON IN 2017	223	53	4	3	283

Figure F: Cases Received in 2017 by Ministry

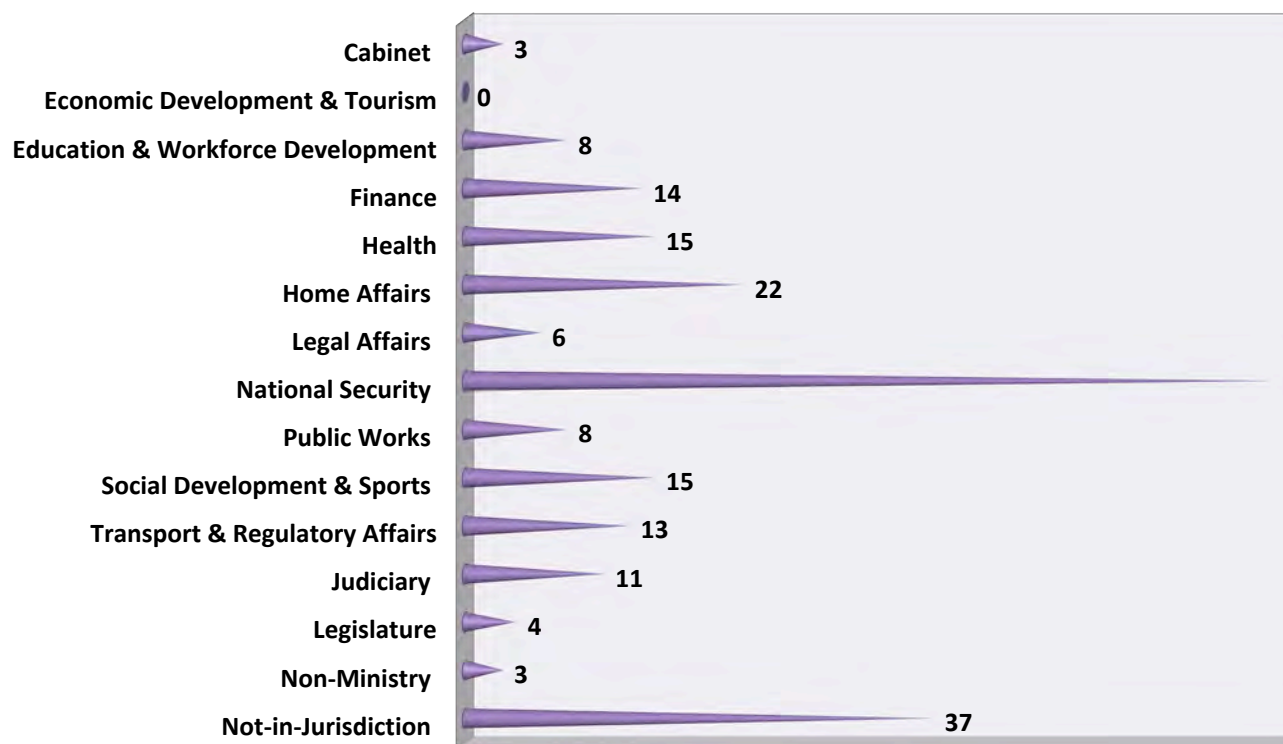


Figure F shows a breakdown of the cases we received in 2017 by the relevant Ministry according to the Government’s organisational chart at year-end. (As of April 2018, several changes were made to the organisation of Ministries, departments and other bodies under the Government’s

responsibility.) The graph also includes two other 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 G: Cases Received in 2017 by Authority

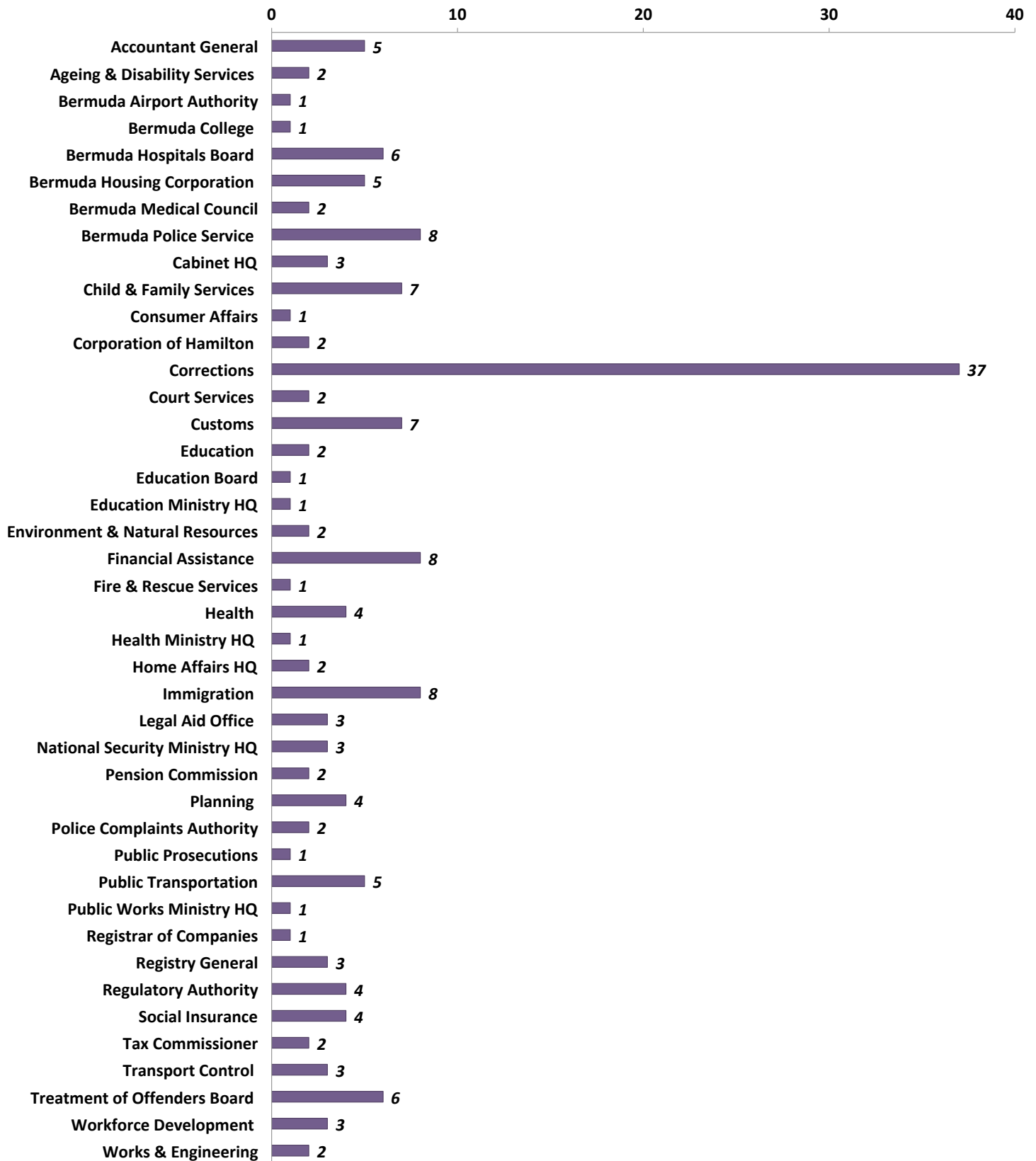


Figure G shows the total for new cases in 2017 for all authorities except those which are considered Non-Ministry, other bodies Not-in-Jurisdiction as well as under the Judiciary or Legislature.

OUTSTANDING COMPLAINTS

During 2017, we succeeded in addressing and closing 47 of the 60 cases that were opened in prior years. Out of these 47 cases, we closed:

- 3 investigations resulting in findings and 9 general recommendations.
- 15 cases as Informally Resolved, where the specific issues were linked to general complaint issues previously raised in an outstanding investigation. Since the investigation focused primarily on systemic issues that caused the specific issues, we closed these related individual cases as Informally Resolved – to prevent overstating the number of investigations we worked on in 2017.

- 15 cases after inquiries that we considered to have reasonably satisfied the complaints.

In 2017, the Ombudsman also launched one systemic investigation arising from issues investigated for an outstanding individual case. It was initiated on the Ombudsman’s own motion and accounts for one of the two 2014 cases that remained open. The systemic investigation has focused on the adequacy of a ministry’s administration of services for persons at-risk of abuse and its investigations into claims of abuse. The Ombudsman will consider publishing an anonymised decision report once the systemic investigation has been concluded.

Figure H: Complaints Carried Into 2018

Status as at 31-Dec-17	2017	2016	2015	2014	TOTAL
Intake*	22	4	0	0	26
Preliminary Inquiries	10	6	1	0	17
Investigation	0	0	0	2	2
Total Complaints Carried Into 2018	32	10	1	2	45
Complaints Carried Into 2018 Then Closed by 13-Apr-18	10	1	0	0	11
Total Complaints Carried Into 2018 & Open as at 14-Apr-18	22	9	1	2	34

**54% were less than 1 month old, 12% between 1 and 2 months old, and 34% more than 2 months old.*

CASEWORK IN CONTEXT

There are notable peaks in complaints that can be observed for certain Ministries and authorities in 2017. These numbers represent complaints and enquiries made, not findings of the Ombudsman in relation to the cases. These numbers alone do not indicate whether the complaints were upheld by the Ombudsman through our inquiries.

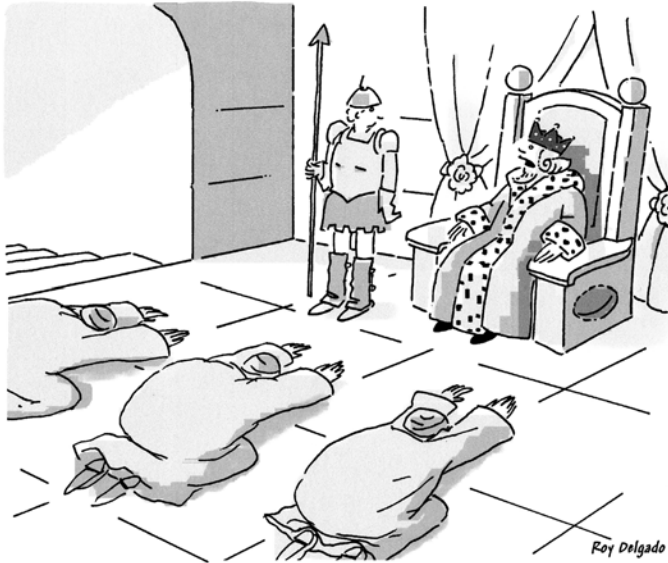
Some of these departments have a higher volume of public interaction than others and thus may have a higher volume of service users. One particular spike was shown in the complaints we received about the Department of Corrections – a total of 37.

CORRECTIONS: Did you know 17% of complaints we received last year were from inmates? This is up from 10% in 2016 and 5% in 2015. This was

a result of an increase in interaction between our Office and inmates. In 2016, our Office gave a presentation about our jurisdiction and our complaint handling processes to inmates at all local prisons. In 2017, our Office scheduled two days to meet with inmates in all facilities in all units to discuss a new way to contact our Office (see *Did You Know: Increasing Accessibility* on page 20). After each of these presentations, we received an influx of complaints from inmates – over 60 in total.

ENQUIRIES: In 2015, our Office began to record contacts we received from persons seeking information without making a complaint. We refer to these cases as “enquiries”. Enquiries made up 30%, 45% and 42% of our caseload in 2015, 2016, and 2017 respectively.

The nature of our work has allowed our Office to collect information on the mandates, processes and services of public authorities and some private organisations in the community. Our enquiry process translates this information into a resource for members of the public who may need assistance on where to go to address their issues. The enquiry process seeks to add value to all persons who come to our Office for assistance.



“They’re all involved in the decision-making process.”

SELECTED COMPLAINT SUMMARIES AND DID YOU KNOWS

Complaints are opportunities for improvement. The public may think that only authorities have something to learn. Addressing complaints requires all parties to reflect on their roles in the matter. When the Ombudsman becomes involved, complaints also act as tests for how effective we are in our function of bringing about resolution. All complaints, no matter their size or scope, are opportunities for learning for complainants, authorities and our Office.

Here is a selection of anonymised complaints that were closed by our Office in 2017. These complaints resulted in information that we have chosen to share for its public benefit, including reflections on each case. Complainant details have been altered to protect confidentiality. We also include useful ‘did you know’ information that may relate to the summaries.

SUMMARY:

INCREASING ACCESSIBILITY DEPARTMENT OF CORRECTIONS

ISSUES: An inmate complained an officer denied his request to make a complaint to our Office by telephone. He claimed the Department of Corrections (“Corrections”) decided inmates can make complaints to our Office by letter only, which he complained was unfair as some have literacy or time-sensitive issues.

INTERVENTION: In 2014, our Office and Corrections agreed on communication methods between our staff and inmates. The agreement provided Corrections will allow inmates to phone our Office in the event of an urgent complaint. Corrections would allow inmates to make phone calls in private to respect the confidential nature of complaints. In this instance, if the complainant’s claim were true, Corrections’ decision was contrary to agreed procedures.

Corrections confirmed this decision had been made, but it only applied to one facility. Corrections explained this facility did not have appropriate space for private phone calls with our Office, as the only room with phone access contained sensitive and confidential information. Corrections decided it was a security risk to allow any inmate to use the room in the absence of an officer’s supervision.

As accessibility is a core Ombudsman principle, the Ombudsman was deeply concerned that Corrections would indefinitely provide inmates only one way to access our Office. She decided to facilitate a long-term solution, but in the interim we took complaints from inmates at this facility in person.

A senior officer suggested inmates could use Corrections’ pin phone system to contact our Office privately. This option would be convenient as inmates have access to the pin phone during recreation hours. It would also be discreet as inmates would not have to ask an officer to call us, especially if the inmate wished to make a complaint about that officer.

The senior officer put us in contact with the service provider of Corrections’ pin phone system. We

learned that the inmates knew the pin phone system records all calls, which presented a challenge as our Office has a statutory duty to maintain secrecy. The service provider suggested the system could provide inmates with confidential access to our Office by placing our number in a special category, as the system does not record these calls. This category includes those that cannot be lawfully recorded, such as calls with attorneys and doctors. Further, the pin phone system can detect if calls are monitored by a Corrections officer, offering an additional level of security. Although there is a charge to use the service, the service provider agreed to offer access to our Office free to inmates.

INSIGHT: This complaint demonstrates how our Office upholds Ombudsman principles of accessibility and flexibility and how these principles can be used for efficient complaint handling. Ombudsmen must make their services easily available to the public, especially for persons who may have obstacles accessing our services. Ombudsmen must also adopt a flexible approach to resolving complaints by providing a wide range

of remedies and ensuring complaints are handled in a timely manner.

The Ombudsman has previously reported she has adopted flexible approaches to complaint resolution. In this case, the Ombudsman was able to use the power of persuasion to reach a practical solution without resorting to an investigation. The Ombudsman could have investigated the complaint as the actions of Corrections were clearly contrary to the prior agreement with our Office. Corrections' decision was also contrary to the Ombudsman Act, which provides an officer must take all steps to facilitate an inmate making a complaint.

In this case, it was much more efficient to facilitate a resolution. The complaint was resolved quickly and without making a finding of maladministration. Investigations can be resource intensive and may discourage authorities which have acted reasonably. Less formal approaches have helped our Office to build better working relationships with organisations under our jurisdiction.



Ms. Pearman and the Director of Public Prosecutions, Larry Mussenden (far left) with participants at the Bar Council's Hector Barcelon Memorial Moot in August 2017



Ms. Pearman at the Opening of Parliament in September 2017

SHB Services. Items include support foot wear and eye glasses. Services include chiropody treatments and some dental surgeries.

The inmate is asked to make a contribution to the total cost. However, each case is considered on its own merit, and inmates who have concerns about paying a portion of the medical costs may be asked to contribute a lesser amount if any.

Additionally, inmates at the Prison Farm and the Co-Ed Facilities are permitted to visit their own dentist in the community, although they are responsible for the costs of the visit.

Corrections is currently reviewing its health coverage for inmates, including pursuing the option of insuring inmates.

Did You Know:

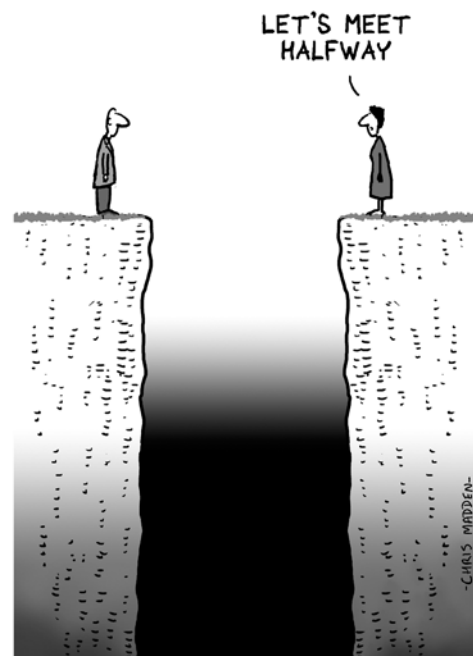
HEALTH COVERAGE FOR INMATES

Prior to 2012, all inmates in Bermuda were covered under the Government's Health Insurance Plan ("HIP") which is administered by the Health Insurance Department. As with all other individuals enrolled under HIP, inmates would receive coverage for the schedule of Standard Health Benefit services ("SHB Services") – such as hospital inpatient and outpatient care. Any health costs incurred by inmates that were not covered by HIP were absorbed by the Department of Corrections ("Corrections").

As of 2013, the Health Insurance Department withdrew its coverage of inmates, leaving Corrections responsible for all inmate health care costs. Corrections paid for HIP insurance coverage for each inmate out of its own budget.

Corrections has continued to pay for all health costs for all SHB Services. In addition, Corrections has its own team of medical personnel who provide services to inmates in its facilities.

Corrections has implemented a contribution scheme for certain medical items and non-urgent or elective medical treatments that do not fall under



CartoonStock.com

SUMMARY:

STUDENT ANOMALY

DEPARTMENT OF EDUCATION

DEPARTMENT OF IMMIGRATION

MINISTRY OF HOME AFFAIRS

ISSUES: A father complained of a delay in the process to enrol his son into public school. His son was not Bermudian and recently began living with him in Bermuda. As a result, the father had to make applications to both the Department of Immigration (“Immigration”) and the Department of Education (“Education”). The delay of both applications was caused by an administrative error on a document provided by the father in support of the Immigration application. This document was created by an overseas agency, and the error could only be corrected by that organisation.

The father complained he was not given a practical solution on how to enrol his son into public school. He claimed he was told the Education application would not be approved until the error on the overseas agency’s document was corrected. The father was determined an interim solution was needed, as he was concerned the school year had already begun. He contacted our Office to see if we could assist to resolve it urgently.

INTERVENTION: Our Office contacted the Permanent Secretary of the Ministry of Home Affairs. She agreed to check on the Immigration application. Later that day, the Permanent Secretary informed us the Minister of Home Affairs agreed to approve the Immigration application on condition the father provided proof that he had applied to correct the administrative error causing the delay. The father agreed to this.

INSIGHT: Understandably, Immigration requires all applicants to provide accurate documentation. Immigration has a duty not to act on inaccurate information. In this case, Immigration did not act unfairly. The unfair result was caused by the error made by the overseas agency.

Sometimes fair and objective procedures produce an unfair result. This complaint was such an example. Complainants in similar circumstances particularly benefit from the services of our Office. Complainants can feel powerless if a mistake by a third party is responsible for hampering the processing of their Government applications. The

father did not know how to achieve his need to enrol his son in school. Through our facilitative approach and good working relationship with the Ministry of Home Affairs, we were able to help the parties address the substantive issues making it possible for the child to enrol in school within a week of coming to our Office.

“The question is not whether we can afford to invest in every child; it is whether we can afford not to.”

— Marian Wright Edelman, American activist (b. 1939)

SUMMARY:

DEFINITIONS MATTER

DEPARTMENT OF SOCIAL INSURANCE

PENSION COMMISSION

ISSUES: After working for two years at a company, a worker’s contract was terminated. The worker’s contract had specified that he had been working as an agent of the company and he was told by the company that he was not an employee but a casual worker.

The worker had initiated legal action against his former employer on several grounds, including challenging his status as an agent instead of a full-time employee, but his legal action was not concluded.

The worker, however, wished to challenge the company’s failure to make either social insurance or pension contributions during the period he had worked for the company. He made contact with the Department of Social Insurance (“DOSI”) who told him that DOSI would not be able to investigate the company for failure to make contributions unless there was a court or tribunal determination that the worker was an employee. DOSI advised that it does not determine a worker’s employment status.

The worker contacted our Office to see if we could assist him in clarifying his employment status for the purposes of social insurance and pension contributions.

INTERVENTION: As our Office does not have jurisdiction over private businesses or legal matters that fall under the Courts’ jurisdiction, we reached

out to DOSI and the Pension Commission (“the Commission”) to clarify whether there were options available for the worker to challenge the company’s non-payment of social insurance or pension contributions.

DOSI informed our Office that as the worker had signed a contract with the company as a ‘casual worker’, he was to take care of his own deductions and not the company. On DOSI’s advice, we referred the worker to the Department of Workforce Development where he could potentially challenge the company’s actions before an employment tribunal.

On the other hand, the Commission advised us the worker could consult with its officers regarding his concerns. The Commission is governed by the National Pension Scheme (Occupational Pensions) Act 1998 (“the Act”) and its respective amendments and regulations. The Act requires employers in Bermuda to enrol eligible employees in a pension plan and make the required contributions.

Eligible employees are Bermudians and the spouses of Bermudians who are over the age of 23 and work more than 720 hours in a calendar year. Under the Act, the Commission advised there is no such thing as a casual or part-time employee.

We advised the worker that the Commission has a formal complaint process, and he could complete an official complaint form at its office which the Commission would investigate.

INSIGHT: This case highlights the importance of consulting with each Government department or agency which may have oversight of your particular issue. As was the case here, Government departments and agencies are often governed by different legislative regimes, which means terms such as employee or employer may be defined differently under each Act of Parliament. The best way to clarify whether or not a department or agency can assist you is to contact it directly with your questions.



Did You Know:

HEMP SEEDS IN BERMUDA

All hemp products are, strictly speaking, prohibited from importation under the Misuse of Drugs Act 1972. Nevertheless, in light of the great increase in availability and popularity of non-narcotic hemp products, H. M. Customs (“Customs”) has adopted an interim policy of releasing imported hemp products to the importer where a Customs officer, upon inspection, is satisfied the product in question:

- has been purchased in the United States, Canada or the European Union, and
- contains less than 1% tetrahydrocannabinol (THC).

Where a Customs officer has reason to suspect that any hemp product was purchased elsewhere, or contains 1% THC or more, the product in question will be turned over to the Bermuda Police Service for investigation, analysis and possible prosecution. While this does not definitively answer whether someone will be prosecuted, it provides guidance for the importation of specific categories of hemp seeds.



GOVERNMENT OF BERMUDA
Ministry of Finance

COMPLAINTS AGAINST CUSTOMS

4 How we handle complaints

4.1 Who will deal with my complaint?

- **Oral complaints**
If you complain in person to an officer, he or she will try to resolve the matter with you right away.
- **Written complaints**
If you complain in writing, your letter will be acknowledged and the matter investigated. You may be asked to give more information.

4.2 How will my complaint be dealt with?

We will carry out a thorough investigation of your complaint. At all times we will be honest and fair in our dealings with you and ask you, in return, to do the same for us.

If you complain we will:

- treat you with tact, courtesy and fairness at all times;
- not treat you any differently because you have complained;
- not discriminate against you because of your colour, race, religion, age, sex or sexual orientation or because of any disability;
- acknowledge receipt of your complaint within two working days and tell you who is dealing with it or if it has been passed to another officer;
- aim to respond within 10 working days and, if we can't, tell you who and let you know when we will reply in full; and
- if the complaint is upheld, apologise, tell you what went wrong and what we will do to put things right.

5 Taking the matter further

5.1 What if I am not satisfied?

If you are not satisfied with the decision reached by the Customs Department you can ask for it to be reconsidered.

Please write to the Collector of Customs:

H.M. Customs
P.O. Box HM2084
Hamilton HM 10,
Bermuda

5.2 The Ombudsman

You can, at any time make your complaint to the Ombudsman. The Ombudsman is independent of Government and can consider complaints about any administrative action of the Customs Department. For further information about the Ombudsman, please contact:

The Office of the Ombudsman
Suite 3177
14 Dundonald Street West
Hamilton, HM 99
Tel: (441) 296-6541
Fax: (441) 296-7751
ombuds@gober.bm
complaints@ombudsman.bm
info@ombudsman.bm

SUMMARY:

A MATTER OF INTERPRETATION

MINISTRY OF LEGAL AFFAIRS

OFFICE OF THE SOLICITOR GENERAL

DEPARTMENT OF PUBLIC PROSECUTIONS

ISSUES: A member of the public sought guidance from the Government on whether the possession and sale of hemp seeds is a criminal offence and would be prosecuted. She reached out to several Government authorities to ask this question, however, she did not receive a conclusive answer.

Finally, she reached out to the Solicitor General and the Ministry of Legal Affairs (“the Ministry”) asking for a definitive interpretation of the current legislation and whether possession and sale of the item would be a criminal offence.

After several months, she lodged a complaint with our Office claiming that the Ministry had refused to respond to her questions.

INTERVENTION: We made preliminary inquiries with the Ministry. The Permanent Secretary clarified she had not sent an email to the complainant but had spoken to her to explain that the Ministry is not the appropriate authority to provide her with a response.

Following our inquiries, the Ministry emailed the complainant that it was not the responsibility of the Ministry to provide legal advice on the interpretation of Bermuda laws. The Ministry advised her to seek independent legal advice on her question.

Subsequently, the complainant came back to our Office to complain that the Ministry’s written response to her question was inadequate. Further to this new complaint, we made inquiries with the Ministry as well as the Office of the Solicitor General and the Department of Public Prosecutions (DPP). We sought clarity on whether these offices respond to questions from the public on the interpretation of legislation, particularly in relation to whether or not certain acts will be prosecuted.

The Ministry, the Office of the Solicitor General and the DPP all confirmed that they do not provide guidance to members of the public on the

interpretation of legislation and advised that the complainant should seek independent legal advice. The Ministry further advised that the Attorney General’s Chambers only provides legal advice to the Government – not to members of the public.

We shared these responses with the complainant and declined to further investigate her complaint.

INSIGHT: The challenge the complainant faced, and the reason why the various authorities could not provide her with a definitive answer, was that the final word on statutory interpretation belongs to the Courts and not to public officers. The Government’s interpretation of legislation can and has been overturned by the Courts by way of the judicial review process, in civil suits in which the Government is a party as well as criminal trials in which the DPP advocates for a particular interpretation of Bermuda legislation. It was for this reason that the Ministry, the DPP and the Office of the Solicitor General advised that they cannot definitively answer such questions and that individuals should seek independent advice from lawyers.

SUMMARY:

CONCILIATION DELAY

HUMAN RIGHTS COMMISSION

ISSUES: An employee complained to the Human Rights Commission (HRC), alleging that his boss discriminated against him. The employee agreed the HRC could try to resolve his case through conciliation.

Once the HRC made the initial arrangement, the selected conciliator took over the process. This included the employee and employer agreeing to a meeting date.

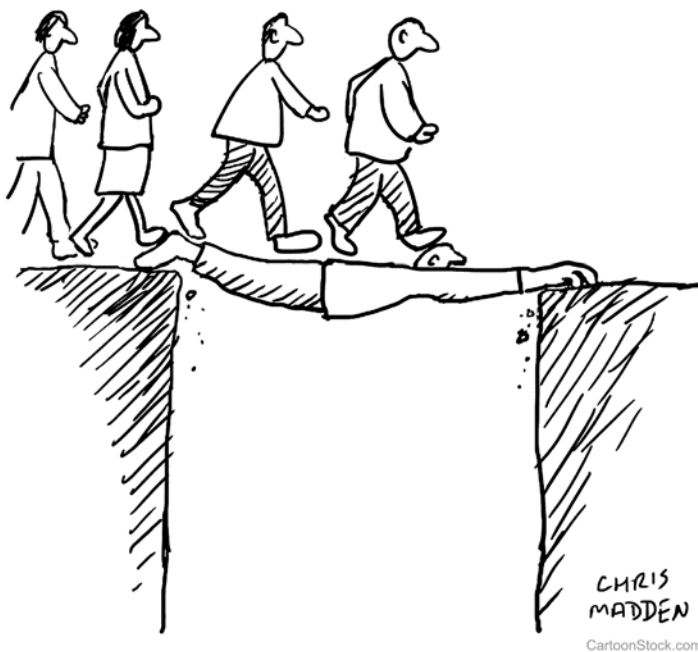
After several exchanges, the employee became frustrated with the scheduling efforts – suspecting the employer was deliberately delaying so the employee would give up. The employee also questioned why he did not see the HRC exerting its power to ensure the employer met deadlines. In his view, the employer had been allowed to control the process.

INTERVENTION: We listened to the employee’s claims, including what he believed the HRC

should have been doing to move along his case. We spoke with the HRC staff members involved and the conciliator. Based on her experience, the conciliator did not share the employee's suspicions and instead affirmed that the employer was not evading the conciliator's contacts.

We helped to talk through the employee's suspicions about the employer's alleged delaying tactic. We also discussed how confidentiality might limit the level of detail and assurances the HRC or its conciliator could provide to him. A month after we closed the case, the HRC updated us that the employee's complaint had been settled by conciliation.

INSIGHT: Dispute resolution bodies around the world confront the challenge of ensuring their services remain flexible and responsive to client needs. This authority took proactive steps to push conciliation as a quicker alternative to a formal investigation to resolve complaints. By having this approach available, the employee's case was settled within a year of the alleged discrimination.



VOCAB ALERT:

At the Human Rights Commission (HRC), conciliation is where an independent professional helps a complainant and respondent to negotiate a settlement. It is entirely voluntary. The HRC offers this service at no cost to the public.

Did You Know:

SMOKING IN PRISON

The Department of Corrections ("Corrections") implemented a smoking ban in all of its facilities in April 2009, which applies to inmates, staff and visitors.

- Before Corrections implemented this policy, its medical team and other staff did months of research on the adverse effects of smoking in a closed environment such as a prison.
- Corrections' facilities are not exempt from the Government-wide smoking ban that is in place for all Government buildings, effective 1 August 2016.
- Corrections, in deciding on whether to implement a smoking ban, noted that there were many inmates and staff who live and work in Corrections' facilities who are non-smokers but were subjected to dangerous second-hand smoke when smoking was allowed.
- To prepare inmates for this change, Corrections sent notices offering educational and medical support for inmates if necessary, which included smoking cessation classes and nicotine patches for those who needed them.

SUMMARY:

NO SMOKING?

DEPARTMENT OF CORRECTIONS

ISSUES: An inmate wrote to our Office complaining that the Department of Corrections ("Corrections") had unfairly implemented a ban on smoking within 'the prison walls'. He claimed that Corrections had implemented this policy suddenly without adequate support for the inmates in coping with their addiction to nicotine.

INTERVENTION: Our Office made enquiries with

Corrections to understand its smoking policy and how and why it was implemented. Corrections provided us with a comprehensive response (see *Did You Know: Smoking in Prison* page 26), which clarified that the smoking ban had been implemented nearly seven years before the inmate lodged his complaint.

Our Office declines complaints where the administrative action happened more than one year before the date of the complaint, unless there are special circumstances. Before declining this complaint, we considered the views of international colleagues on smoking bans in prisons. This included New Zealand's Office of the Ombudsman, which noted in its 2012 report on inmate health services that a smoking ban similar to Bermuda's "from a general health perspective...would appear to be a positive initiative" (see *Investigation of the Department of Corrections in relation to the Provision, Access and Availability of Prisoner Health Services*, www.ombudsman.parliament.nz).

INSIGHT: The Ombudsman has discretion to pursue a complaint even where a complainant was aware of the actions more than a year before contacting us. In this case, we confirmed Bermuda's prisons were implementing a policy that was consistent with the best practices of other jurisdictions.

SUMMARY:

BACKLOGGED APPLICATION

OFFICE OF THE TAX COMMISSIONER

ISSUES: After a divorce, a homeowner had to renegotiate the mortgage and ownership of her home to remove her former husband, increase her share and add her children as joint owners. As part of the property conveyance process, her attorney applied to the Office of the Tax Commissioner ("the OTC") for a stamp duty adjudication. This had to be completed before she could apply to remove her former husband's name from the land tax notices.

Three years later, the OTC still had not adjudicated the transaction. The homeowner's attorney repeatedly told her that there was little more to do besides wait because the OTC was understaffed and its work backlogged. Dissatisfied with the

attorney's response, the homeowner raised her concerns with our Office.

INTERVENTION: We reached out to the OTC, wanting to learn of their current challenges and to ask for a status check on the homeowner's file. The OTC referred to the responsible minister's recent statements where an explanation was given to the public about how a specific programme was the cause of jamming the OTC's application processing queue.

The OTC also checked the homeowner's file and identified an oversight. The file had not yet been passed onto the Department of Land Valuation for an opinion on the property's market value – a step required for the adjudication. Once this was done, the OTC was able to complete the application, acknowledging it had been delayed beyond its current processing timeframes.

INSIGHT: This was not a simple matter of unreasonable delay by an authority. We knew resource constraints place a heavy burden on authority staff members who are duly responsible for doing the work and communicating with clients about delays. The OTC's explanation of the cause of its backlog was similar to what we uncovered during a past investigation into another department's application processing delays.

We decided finding maladministration for obvious and acknowledged errors would not lead to positive change. The OTC was not burdened with additional work required for responding to an investigation. The homeowner appreciated that, even though we did not demand the immediate completion of the application, it was resolved within months – not years – of calling the Ombudsman.

“Patience is the key which solves all problems.”

— *African Proverb*



is a formal assessment by the Office of the Tax Commissioner (“the OTC”) as to whether stamp duty is payable on a particular document and, if so, how much. A person who is dissatisfied with the OTC’s assessment may make an appeal to the Supreme Court, pursuant to section 23 of the Stamp Duties Act 1976.

SUMMARY:

COMMUNICATION GAP

DEPARTMENT OF FINANCIAL ASSISTANCE

ISSUES: We received several complaints from landlords who rent to clients of the Department of Financial Assistance (“DFA”). They said it was hard to confirm details of rental payments made to them on behalf of DFA tenants. As a result, they were less motivated to continue renting to tenants who relied on financial assistance.

INTERVENTION: Our Office had previously inquired with DFA on this issue. DFA explained its rationale was based on the facts that: tenants, not landlords, are considered DFA clients; DFA is not a party to the rental lease agreement, signed between a tenant and landlord; and DFA must honour the confidentiality of its clients. Ultimately, DFA believed it must take all measures available to encourage its clients to be responsible for themselves and their rental arrangements.

We decided to continue discussions. Senior management agreed DFA needed a clear policy to address this communication gap. DFA consulted with the Attorney General’s Chambers about any potential legal implications for the proposed change. A few months later, DFA introduced an amended procedure. Now DFA requires written consent from all clients and their vendors (namely, landlords and care givers), allowing DFA to discuss payment queries with the vendors and to ensure vendors are emailed confirmations as payments are made.

INSIGHT: DFA manages a high volume of cases and, by the nature of its work, is exposed to high stress situations. The financial assistance programme has changed significantly from when it was setup in 2001. Closing this communication gap was one of many revisions to DFA’s processes

VOCAB ALERT:

Property conveyance is a legal process for transferring ownership of land.

- Types of ownership include: sole proprietors; joint owners; tenants in common; and trusts. The type of ownership affects what must be done for changes to property ownership if relationships are severed, or an owner or trustee dies.
- Ownership can transfer through gift, inheritance or sale, and interests in land can be created either by deed or informally.
- To evidence ownership or legal rights in land, we use deeds and documents of conveyance, agreements, and mortgages, which are created when parties agree to buy, sell, borrow or enter into some other mutually binding arrangement.
- Bermuda is introducing a new system for recording land and property ownership, rights and interests that is maintained in a register by the Land Title Registry Office. See page 10 for an update on this new process.

Stamp duty is a tax that is chargeable on certain legal documents. A stamp duty adjudication

that have been underway since the 2008 legislative amendments.

We encourage the Government's efforts to review the existing welfare system. The responsible ministry announced the formation of the Financial Assistance Reform Group in November 2017.



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SUMMARY:

INCORRECT CALCULATION

DEPARTMENT OF CORRECTIONS

ISSUES: An inmate complained the Department of Corrections ("Corrections") incorrectly calculated his release date. He stated Corrections recently informed him his release date was in 2020. However, he remembered an earlier record noted a 2019 release date.

INTERVENTION: Our Office spoke with a senior official at Corrections to understand its sentencing calculation methodology. We learned an inmate's earliest release date is two-thirds of an inmate's sentence, and his latest release date is at the end of the entire sentence. The period of time between an inmate's earliest and latest release dates is called remission. An inmate can lose remission if found guilty of a disciplinary offence after an internal adjudication. If an inmate is punished with loss of remission, the length of the punishment will be added to the inmate's earliest release date.

Our Office requested the inmate's file from Corrections. The file showed the calculation of the inmate's sentence was not straightforward but correctly stated the earliest release date. The challenge was the inmate served some of his current sentence while on remand a few years previously. Also while on remand, the inmate

had served separate periods of incarceration for unrelated offences. This made the inmate's sentence calculation unusually challenging.

The adjudication documentation indicated the inmate had lost all of his remission over the course of several internal adjudications. It also listed all of the inmate's loss of remission punishments. It showed the inmate was given a punishment of loss of remission which exceeded the remission he had available by two months and 10 days. As the latest release date is determined by the Courts, Corrections does not have the authority to increase an inmate's sentence. As a result, the inmate's earliest release date was recorded incorrectly on this document. We alerted the Department to this error, and they agreed to correct it immediately.

INSIGHT: Often individuals are dismissed by authorities if they do not provide evidence to support their allegations. This case evidences the importance of listening to the complainant. The inmate provided only verbal information to support his complaint, relying on his confidence in his memory. Given the complaint concerned the inmate's liberty, it was important for our Office to take a detailed look.

The resolution of this complaint shows the benefits of a healthy working relationship between our Office and Corrections. While there was evidence Corrections had made an error, given the unusual circumstances, our Office did not need to make a finding of maladministration for it to be corrected. Instead, Corrections agreed to correct it themselves after the miscalculation had been highlighted.

SUMMARY:

MEDIATION AND INVESTIGATION

DEPARTMENT OF PUBLIC LANDS AND BUILDINGS

ISSUES: A business owner's rented storage unit had been emptied at the direction of the lessor, the Department of Public Lands and Buildings ("PLB"), without his prior knowledge. The owner had several discussions with PLB senior staff about how to reclaim his belongings. Months later, the owner came to us distraught that his retrieval efforts had not resulted in recovering much of his property.

INTERVENTION: First we made inquiries to

confirm the facts of what happened with the storage unit. Then we considered what approaches we could take to help resolve the complaint. This included acknowledging the limits to our powers to make determinations on claims of lost goods and issues arising from landlord and tenant agreements.

After the parties consented, the Ombudsman mediated the complaint, with a goal to help the parties reach an agreement. PLB considered but could not pursue a financial agreement in the absence of certain evidence required to meet the Government's accounting standards. On that basis, the Ombudsman cancelled the mediation. As a final option, she offered for the Deputy Ombudsman, who had no involvement in the mediation, to review the case.

After the parties agreed to the change, the Deputy Ombudsman took over the case. On weighing whether the issues could be settled by a formal investigation, the Deputy declined to investigate the matter on the basis that only the Courts could make a binding order, including for recovery of goods or compensation. While the complainant remained aggrieved, we assured him we had tried our best to resolve the matter given the limits of our jurisdiction.

INSIGHT: By statute our Office has the flexibility to use formal and informal approaches to resolve a complaint. We can attempt to resolve a complaint by facilitated resolution, mediation and investigation. If an investigation follows a mediation that did not succeed, the staff involved in the mediation must be excluded from the investigation. The separation in our process protects objectivity and preserves a fresh start when a new approach is warranted.



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SUMMARY:

NOTIFYING THE RIGHT PEOPLE

DEPARTMENT OF PLANNING

ISSUES: Years after a small residential development had been completed, an individual purchased the remainder of a long lease for one of the units ("Unit Owner"). The land on which the development was built was retained by the developer. The development had never been incorporated as a condominium development under the Condominium Act 1986 ("the Act") which would have required the developer to register the development with the Government and transfer the title of the land to a condominium corporation. The unit owners would have been the shareholders in the condominium corporation and together owned the land on which their units were built.

Unit Owner used the land outside his unit which he had believed belonged to the development property. However, unbeknownst to him, when the developer built the development, she had encroached upon neighbours' land when creating some of the outdoor spaces. This aspect of the development had deviated significantly from the final plans that had been approved by the Department of Planning ("Planning").

The encroachment went undetected for several years after the development's completion and the units had been sold. Once it was discovered, a complaint was made to Planning alleging the developer's encroaching works were contrary to the approved plans and unlawful.

After Planning completed a thorough review of the matter, the then minister issued an enforcement order to the developer under section 62 of the Development and Planning Act 1974. This order was issued to the developer requiring him to remedy the encroachment, as he retained ownership of the property.

Unit Owner was not notified by Planning that an enforcement order had been issued and was taken by surprise when the developer commenced significant remedial works outside his unit.

INTERVENTION: Unit Owner raised several issues with our Office regarding Planning's handling of this matter. We made preliminary inquiries with

Planning and ultimately pursued an investigation. Upon conclusion, we established that, had the title of the property been transferred as part of registering a condominium development, Planning would have communicated with the secretary of the condominium development. The secretary would have been responsible to advise all affected parties of Planning's enforcement actions. In most instances, this would provide the notification expected. However, as the developer retained the title for the development property, there was no statutory obligation for Planning to consult with the long-term leaseholders, such as Unit Owner, or notify them that an enforcement order had been issued.

Planning accepted the Ombudsman's recommendation that, in fairness to long-term leaseholders, it will inform them of enforcement actions when and where possible to do so. Planning agreed to communicate and reinforce to all staff that, wherever practical and reasonable to do so, in any matter arising at a development site that will affect the immediate occupants, every effort will be made to establish the occupants' interest and communicate the development intentions of the land owner with them.

Additionally, Planning notified our Office that it will introduce a new online application and processing system. As part of the submission process, an applicant for planning or building permission will be required to identify whether the development is a condominium complex or specify the nature of the development. Planning stated that it believed this checkpoint in the application process will flag units that may be occupied by someone other than the land owner or applicant.

With this information, Planning believes that it will be able to make a more informed decision on who to include in consultations.

INSIGHT: Much like other complaints received by our Office, this investigation revealed a specific policy area that had not been contemplated by the authority. One of the challenges that authorities face when drafting policies and procedures is that they deal with the common scenarios that service users encounter. The harder cases arise when a service user presents an unforeseen issue to an authority. In these cases, there is limited guidance on how best to address the issue.

Ombudsman offices around the world recognise that their work often focuses on these hard cases. The value an Ombudsman brings to both the service user and the authority is that she can dive into the facts of the situation to answer the key question: what does fairness demand in this particular situation.



**“There is a crack in everything.
That’s how the light gets in.”**

— Leonard Cohen, Canadian writer
(1934 – 2016), Selected Poems 1956-1968

STRATEGIC AIM III:

CHAMPIONING BEST PRACTICE

ASSESSING GOOD ADMINISTRATION

Ombudsmen worldwide benefit from shared tools and guidance on how to assess the actions of public bodies. In our work of investigating the conduct of authorities in Bermuda, 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 on how to define good administrative practices. We also routinely describe them 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. They are intended to promote a shared understanding of how the Ombudsman will consider the cases of complainants and how we will assess the authorities’ delivery of service to the public.

We refer you to:

- “Good Conduct and Administrative Practice: Guidelines for State and Local Government” from Australia’s New South Wales Ombudsman (2017)
- “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)

The “Principles of Good Administration” are:

1. Getting it right
2. Being customer focused
3. Being open and accountable
4. Acting fairly and proportionately
5. Putting things right
6. Seeking continuous improvement

For structured guidance on how to reflect on complaint handling practices, we refer you to:

- “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 unable to locate above resources online, contact our Office.



Ms. Hay delivering presentation
Credit to Karli J Smith, www.thatsnotsharp.com

STAFF TRAINING

The nature of Ombudsman work is unique and specialised. Ombudsman training is designed to share practices, standards, research and strategies at regional and international conferences as well as during specially designed professional development programmes. International events provide excellent opportunities to network and engage with

colleagues from other Ombudsman offices and complaint handling bodies. Local trainings provide insights into positive developments and challenges at home and allow us to meet staff from offices with which we work. These types of experiences often prove to be as valuable as the training sessions themselves. Our team took part in local and international training throughout 2017. Here are some highlights.

JANUARY: Our Complaint Intake Officer attended the Department of Human Resources course entitled “Customer Service over the Phone”. This training was helpful to the Complaint Intake Officer’s role as she was the first point of contact for complainants, and most complaints are made by phone.

FEBRUARY: The Ombudsman attended “Leading Change in the Public Sector”. This was one of two Department of Human Resources managerial courses she attended in 2017. The other course, “Shaping and Managing Culture in the Public Sector”, was held in October. These courses highlighted the importance of managers planning and preparing themselves and their teams for effective change in the public service through communication, guidance and setting an example. They also highlighted the culture, established through an organisation’s practices, principles, commonly held beliefs and behaviours, determines the direction we take and results achieved.

MARCH: We attended a local two-and-a-half day investigations training, hosted by the Information Commissioner’s Office and facilitated by Gareth Jones of Vancouver’s Workplace Institute. It was open to interested persons conducting investigations in the public service. The course used real-life examples to illustrate the principles for conducting a thorough investigation. We learned the skills for good report writing and tips on practical challenges, such as on transcribing interviews and how to maintain objectivity while investigating.

APRIL: Our Executive Assistant marked Administrative Professionals Day by attending a local conference hosted by IAAP Bermuda. She learned how the role of the modern administrative professionals has evolved and about the skills required to meet the demands of today’s workplace. It was a day full of insight

and encouragement as the organisers took the time to recognise and celebrate administrative professionals for the work that they do.

JUNE: Following the Caribbean Ombudsman Association’s conference in Bonaire, the Ombudsman attended a workshop on planning investigations, improving communication with interviewees, and improving investigation report writing and recommendations, hosted by the International Ombudsman Institute through Scotland’s Queen Margaret University.



Ms. Pearman with the Botswana Ombudsman, Augustine Makgonatsotlhe, at training hosted by the Ontario Ombudsman’s office

OCTOBER: The Ombudsman and our Executive Assistant attended “Sharpening Your Teeth” in Toronto, Canada. The three-day course was a valuable opportunity to hear from a variety of speakers and meet colleagues from around the

world who work in all aspects of complaint handling. Hosted by the Ontario Ombudsman, Paul Dubé, and his team, the training focused on conducting a major systemic investigation, including strategies for proper planning and outcomes once reports were published.



Ms. Eve and Ms. Pearman with the Ontario Ombudsman's Director of the Special Ombudsman Response Team, Gareth Jones, and Ombudsman, Paul Dubé. *Missing:* Communications Manager, Ashley Burse

Our Executive Assistant also attended the Mental Health First Aid Training course facilitated by Drs. Shawnee Basden and Cherita Rayner of the Bermuda Hospitals Board ("the BHB"). This programme is part of the BHB's initiative to educate members of the community about mental health in order to help decrease the stigma associated with mental illness. This course was beneficial as it taught participants how to recognise, interact with and assist members of the community who may experience a crisis.

The Ombudsman and Deputy Ombudsman attended the U.S. Ombudsman Association's annual conference in San Antonio, Texas. As part of this conference, Don Sword, a senior trainer at the New South Wales Ombudsman, led a workshop on "Dealing with Unreasonable Complainant Conduct". The Deputy Ombudsman learned strategies and techniques that can be used to coach both complainants and authorities on how to focus on resolving conflicts successfully.

Complaint handling bodies sometimes encounter complainants who insist they should be reheard

multiple times. All service users are entitled to be treated respectfully and fairly. This training offered strategies to manage behaviours of service users that are demoralising for staff, are disruptive, and disproportionately utilise the office's resources. It also reinforced that we label the behaviour as unreasonable rather than the individual. This course provided invaluable insights on how to assist individuals whose conduct make addressing their complaints challenging. The strategies taught in this course were developed as part of a joint project by all Australian Parliamentary Ombudsman offices.



Ms. Pearman chairing a CAROA Conference session, pictured with Donal Galligan, Director of the Ombudsman Association, Arlene Brock, Director of the African Ombudsman Research Centre (also former Ombudsman for Bermuda), and Günther Kräuter, IOI Secretary General

MANAGING DIFFICULT BEHAVIOURS

In 2017, our Office noticed instances of unresponsiveness with the following pattern:

- A complainant would contact our Office to complain that an authority failed to respond to his correspondence. The complainant would explain he was disputing a decision of the authority and the authority had failed to respond to his request for review.
- Our Office would then make inquiries with the authority who would inform our Office the complainant had refused to accept a fair and reasonable decision made by the authority because it was unfavourable to him.
- The authority would usually explain that the decision and reasons for the decision were

in line with its policies and procedures and this had been explained to the complainant on several occasions. The authority would go on to explain the complainant displayed unreasonable and disrespectful behaviours towards staff.

- As a result of the complainant's continued unreasonable conduct and failure to accept the authority's decision as final, the authority had decided not to respond to any of the complainant's subsequent correspondence. It had not informed the complainant of its decision to end communication between them.
- The authority maintained it was justified in its decision not to communicate with someone who had not listened to reason and had been disrespectful to staff.

Ending communication with any service user could prove problematic. Customers are entitled to clear and express communication with authorities. The "Principles of Good Administration" outline that public authorities should inform customers what they can expect and respond to customers' needs flexibly. On the other hand, authorities must manage unreasonable conduct from its services users, and ending communication with an unreasonable person is an effective way of doing so. So how does our Office handle such complaints?

In all complaints of unresponsiveness, our Office's first step is to contact the authority to attempt to facilitate a response. Some authorities have expressed disappointment that our Office would act on a complaint made by a person who may have behaved unreasonably and disrespectfully. Authorities may also perceive that any intervention from our Office can validate the complainants' behaviours and invalidate their experiences with the complainants.

However, our inquiries do not amount to a finding of unfairness or maladministration. Our Office is independent and impartial and does not act as an advocate for either the complainant or the authority. While our inquiries are pursuant to an individual's complaint, our role is to ensure the authority has acted fairly – not to validate the complainant or authority. Where an authority has



By Frits Ahlefeldt

acted fairly, our Office will inform the complainant and the authority and close the complaint.

Unfortunately, there is no specific way to prevent unreasonable behaviour or to prevent the complaint from escalating to our Office. However, authorities can take measures to manage unreasonable behaviour.

Here are three ways an authority can manage the unreasonable behaviour of its service users:

1. Be proactive: manage expectations from the beginning.

Unrealistic expectations are one of the main causes of miscommunication. Authorities should clearly inform service users what they can expect from the process from the onset. This can be done by explaining the process, the role of the authority, and any limitations the authority may have. It is best practice to ask service users what they wish to achieve at the initial contact. Any unrealistic expectations held by a service user can be identified, balanced and recorded at this point.

2. Implement a review procedure.

Some authorities have internal review processes. This is yet another proactive measure that can be used to manage unreasonable behaviour. Have you ever heard the saying, "a broken clock is right twice a day"? This quote is a common saying of the Ombudsman. This speaks to the approach and belief that rarely is an authority or complainant completely wrong. There have been instances where persons who behave unreasonably have a legitimate grievance. A review process ensures the

authority has given due consideration to the complainant's request for a review. The review process can include safeguards to protect the integrity of the process. For example, the complainant could be required to outline the reason for the request, or the merit of the review request could be considered before a review is conducted. The process can also outline that where no reason has been given or it has been determined the review request is without merit, the request will be declined.

3. Limit communication.

The last line of defence for an authority in managing difficult behaviours is to limit communication. This is usually done by informing service users that the authority will only correspond with them in writing. As a final measure, authorities can end communication with a person altogether. As service users are entitled to open and clear communication with authorities, any decision to limit service users' communication with authorities must be done in writing, with caution, and should only be used as a last resort in exceptional cases. When doing this, an authority should ensure it has reviewed any request made by the service user and made reasonable attempts to explain its position to the service user. It should also ensure service users will have access to its services in the future should they have a separate and unrelated issue.

For more information on how to manage unreasonable behaviours, refer to the "Managing Unreasonable Complainant Conduct Practice Manual" (2012), published by the New South Wales Ombudsman.

**“Hopefully, we can build bridges,
but we also have to draw lines.”**

— Fred Thompson, American
politician and actor (1942 – 2015)



Ms. Eve, Ms. Pearman and Ms. Fleming at Parliament's tabling of our Annual Report 2016

DEMONSTRATING ACCOUNTABILITY

Accountability requires us to continually assess how and why we do what we do. We demonstrate our accountability primarily 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.

In late 2017, we began re-validating membership with one of our affiliate Ombudsman organisations. This process, led by our Deputy Ombudsman, has required more rigour in our approach to evaluating and improving on our work. The public will benefit from updates to our website soon. For the first round of updates, we intend to publish information about our governance, our service standards, how to request an internal review of a complaint decision, and how to make a complaint about our services.

We are also pleased to report that our new electronic complaint management system went live in the 2017/18 budget year. Our team continues to work to make the system fully operational in our current IT environment. The public may expect in our next annual report more details about our complaint handling and performance measures.

AFFILIATIONS

Our Office continues to be an affiliate of these Ombudsman organisations:



CAROA – Caribbean Ombudsman Association
www.caribbeanombudsman.com



FCO – Forum of Canadian Ombudsman
www.ombudsmanforum.ca/en



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



Causeway, St. George's Parish
Credit to Gavin Howarth,
www.bermudascenics.com

SUPPLEMENTARY RESOURCES

OMBUDSMAN ACT 2004 – IN A NUTSHELL

CHAPTER VI A, SECTION 93A OF THE BERMUDA CONSTITUTION 1968 PROVIDES THAT:

- The Ombudsman is appointed by the Governor, after discussion with the Premier who will first consult with the Opposition Leader.
- The Governor can remove the Ombudsman from office for inability to perform the functions of the office, misbehaviour, or engaging in any other unapproved job.
- In the exercise of her functions, the Ombudsman shall not be subject to the direction or control of any other person or authority.

THE OMBUDSMAN ACT 2004 PROVIDES THAT:

- The Ombudsman may investigate, among other matters, administrative decisions, acts, recommendations; failure to perform an act or make a decision or recommendation; and failure to provide reasons for a decision or action. (Section 2)
- The Ombudsman determines if there is evidence of “maladministration” which includes, but not limited to, actions which are inefficient, bad, improper, unreasonable delay, abuse of power (including discretionary), contrary to or mistake of law, mistake of facts, irrelevant grounds, unfair, oppressive, improperly discriminatory, arbitrary procedures, and negligent. (Section 2)
- The Ombudsman reviews administrative actions of all Government departments and boards, public authorities, other bodies established by Parliament or a Minister, or other bodies whose revenues or fees derive from money provided or authorised by Parliament. (Section 3)
- The Ombudsman investigates administrative action of an authority:
 - further to a specific complaint; or
 - on the Ombudsman’s own motion – notwithstanding that no complaint has

been made – where there are reasonable grounds to carry out an investigation in the public interest. (Section 5)

- At the conclusion of her investigation, the Ombudsman may make recommendations about the specific complaint and generally about ways of improving administrative practices and procedures. (Section 5)
- The Ombudsman may not investigate:
 - until existing procedures or appeals have been exhausted unless the Ombudsman determines that it was not reasonable for the complainant to have resorted to such procedures; or
 - those matters listed in the Schedule to the Act, including:
 - administrative actions that may not be looked into by the Courts;
 - actions taken by Cabinet, Ministers or Junior Ministers;
 - pardon power of the Governor;
 - action taken for investigation of crime or for protecting the security of Bermuda;
 - conduct of proceedings before the Courts or a tribunal; and
 - personnel and employment matters. (Section 6)
- Complaints may be made in person (by walk-in or appointment), by telephone, by email (or website) or in writing by a person who is dissatisfied (or other suitable person) about actions within the last 12 months. (Section 7)
- Individuals who are detained or confined are entitled to be given a sealed envelope to write to the Ombudsman. (Section 7)
- The Ombudsman may make preliminary inquiries before launching a formal investigation or mediation. (Sections 8 & 10)
- The Ombudsman may decide not to investigate if:

- the complainant knew of the administrative action more than one year prior to the Ombudsman receiving the complaint;
 - existing law or administrative procedure provide adequate remedy and there is no reasonable justification for the complainant not to have availed himself of that procedure; or
 - the complaint is frivolous, vexatious or not made in good faith, or has been settled. (Section 9)
- After notifying the authority of the intent to investigate, the Ombudsman may obtain information from such persons and in such manner as she considers appropriate, including inspecting premises, summoning persons and examining them under oath. (Sections 11–13)
- All information given to the Ombudsman is privileged. It is not a violation of any relevant obligation of secrecy to provide information to the Ombudsman. No person may be penalised or discriminated against in the course of their employment for complaining, giving information or otherwise assisting the Ombudsman. (Section 14)
 - Such employees may be protected as whistle-blowers under the Good Governance Act 2011.
- The Ombudsman makes recommendations as she sees fit including that an omission be corrected, decision be cancelled or altered, reasons be given, practice or course of conduct be altered, and enactment be reviewed. (Section 15)
 - Within 20 days of receiving the Ombudsman’s recommendation, authorities must notify her of action taken or action proposed to give effect to the recommendation or reasons for failure to implement. She may submit a special report to Parliament if she deems the response inadequate or inappropriate. (Section 16)
- The Ombudsman submits an annual report and any special reports to the Speaker of the House of Assembly with a copy to the Governor and a copy to the President of the Senate. The Ombudsman may not make any adverse statements in reports before giving the authority an opportunity to be heard. (Sections 17 & 24)
 - The Ombudsman and staff must maintain secrecy and cannot be compelled in Court proceedings to give as evidence information received in the course of their work. (Sections 20 & 21)
 - Any person who obstructs the Ombudsman in the performance of her functions commits the offence of Contempt of Court. Deliberately misleading or making false statements are summary offences. (Sections 25 & 26)

**Visit www.ombudsman.bm
or www.bermulaws.bm
to download a copy of our
governing legislation**



COMPLAINT DISPOSITIONS

Here is a description of each disposition category for closed cases, with reference to the relevant sections of the Ombudsman Act that provide 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 <i>decision not to investigate</i>).
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 <i>preliminary inquiries</i>). We may have used alternative resolution techniques (see s.10 re <i>mediation</i> ; and s.8 re <i>preliminary inquiries</i>). 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 <i>procedure after investigation</i> ; and s.16 re <i>authority to notify Ombudsman of steps taken</i>).
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 <i>procedure after investigation</i> ; and s.16 re <i>authority to notify Ombudsman of steps taken</i>).
Closed No Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of no maladministration (see s.15(1) re <i>procedure after investigation</i>).
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 <i>actions not subject to investigation</i>). Or, issues raised may have been within jurisdiction but were out-of-time (see s.9(1)(a) re <i>decision not to investigate</i>) or determined to be frivolous (see s.9(1)(c) re <i>decision not to investigate</i>). In these cases, we may have declined outright or made inquiries to establish jurisdiction and/or determine whether there might be other forms of redress available for the complainant (see s.8 re <i>preliminary inquiries</i>).
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 <i>actions not subject to investigation</i>). Or, issues raised may have been within jurisdiction but were out-of-time (see s.9(1)(a) re <i>decision not to investigate</i>). We may have made inquiries to establish jurisdiction and/or determine whether there were other forms of redress available (see s.8 re <i>preliminary inquiries</i>). 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 <i>decision not to investigate – alternative remedies</i>).
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 <i>decision not to investigate – settled</i> ; and s.8 re <i>preliminary inquiries</i>).
Referred	Complaint subject matter and/or body complained of fall within our jurisdiction, but there was a more appropriate remedy still available to the complainant (see s.6(1) and (2) re <i>restrictions on jurisdiction to investigate</i>). 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 <i>decision not to investigate – alternative remedies</i>).
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 <i>decision not to investigate</i>).



OFFICE OF THE OMBUDSMAN FOR BERMUDA

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