

# Annual Report 2020



## FRONT COVER

Our cover features the Bermudiana, the island's national flower. This small hardy plant, with its brilliant purple flower featuring a bright yellow centre, blooms in the spring. From

March through May, it can be found in gardens and in harsher habitats such as beach dunes, rocky shorelines and coastal forest floors. The eyeglasses superimposed over the image of the Bermudiana depict our aspiration for clear vision; 20/20 vision, following a year of extraordinary challenges.

### SOURCE:

Bermuda Department of Environment and Natural Resources,  
[environment.bm/bermudiana](http://environment.bm/bermudiana)





OMBUDSMAN FOR BERMUDA

25<sup>th</sup> June 2021

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 1<sup>st</sup> January to 31<sup>st</sup> December 2020.

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

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A photograph of a residential street. In the foreground, there is a stone wall with a green street sign that reads "Shinbone". To the left of the wall, there is a large, vibrant red flowering tree and a bush with yellow and orange flowers. In the background, a two-story house with white walls and dark shutters is visible. A palm tree stands in front of the house. The sky is blue with some white clouds.

Real change,  
enduring change,  
happens one step at a time.

- Ruth Bader Ginsburg



## OMBUDSMAN'S MESSAGE

I am proud to present the Annual Report of the work of the Office of the Ombudsman for 2020. In this reporting year our Office received 258 cases (192 new complaints and 66 enquiries) and handled 302 cases overall, including those carried over from previous years. The number of cases handled was consistent with case numbers in recent years – 299 in 2019 and 309 in 2018. Overall, our team was able to work effectively in a responsive way to address these cases during an extraordinary time period. By the end of 2020, we were also able to make considerable progress with our systemic investigation work which we report on at page 50.

In addition to our normal casework, during the COVID-19 public health emergency, we dealt with unexpected COVID-19 matters, which involved consulting with a wide range of authorities and public officials to ask questions on specific topics and share helpful information. We advised on matters brought to us and also those we became aware of. This work facilitated improved communication ensuring access and delivery of service to the public who rely on these more than ever.

As is the case in Bermuda, ombudsman offices established by the state are an acknowledgement of the importance for accountability in the administration and provision of public services. Such commitment to accountability leads a jurisdiction to provide for an independent constitutional office where members of the public can confidentially bring their complaints, issues or concerns to be addressed.

An ombudsman office makes a promise to be accessible and responsive to address and resolve complaints that public services are not being administered properly or in a fair way. This also requires work to address fairness and other administrative matters. Where things have gone wrong, we carry out the work to have them put right. Our important work in this reporting year was carried out by a small dedicated team, with reduced staff numbers.



As in past years, our Office entered January 2020 with a sense of purpose and focus. Effective complaint handling and protecting people's right to fair treatment in accessing public services requires this Office to maintain good professional relationships for alternative dispute resolution. In spite of staff resource challenges, we set timelines to progress individual complaints and complete ongoing systemic investigations, given the considerable resources such investigations require. Other priority tasks included staff recruitment to fill two vacant positions as we continued to engage temporary assistance the Office needed. Challenges notwithstanding, we were ready for a year of advancements.

Everything changed in March with the advent of COVID-19 to the island. Stay-at-home orders and other restrictions required everyone but essential workers to leave their places of work and remain at home to reduce transmission of the virus. As a matter of public health and safety a state of emergency was declared in April 2020 with periods of 24-hour curfew. In order to adjust to these unexpected and drastic changes, most organisations had to adopt new or different procedures in order to accomplish their objectives; this Office included.

As a people-facing office, we understood the necessity of remaining as accessible as possible and prioritised this aspect of our function. We developed a virtual workplace so we could continue to function, communicate, work together and service the public while required to work from home. We made arrangements for persons of diverse means and backgrounds to be able to contact and communicate with our Office. Our flexibility as an institution is an asset that allows us to adapt and adjust as circumstances require us to deal with unintended consequences when policies and procedures disadvantage people.

Our close contact with people allows us to see when systems are working well and by listening we learn when they are not. Looking out for how rigid procedures may disadvantage those who are vulnerable and being mindful of existing inequalities is also a commitment by an ombudsman's office. We immediately adjusted our means of communication to ensure communications were accessible and responsive. We circulated a media notice using traditional and social media so people knew how to reach us and knew we continued to be available to assist them.

Our media release included a thought from Rabbi Yosef Kanefsky's, *A Reflection On Social Distancing*. We encouraged ourselves, our leaders, public service officers and members of our community to rethink use of the term social-distancing:

*Every embrace that we avoid must become a verbal expression of warmth. Every inch and every foot that we physically place between ourselves and another, must become a thought as to how we might be of help to that other, should the need arise. It is obvious that "distancing", if misplaced or misunderstood, will take its toll not only upon our community's strength and resiliency, but upon the very integrity and meaning of our spiritual commitment.*

As more scientific information became available it was clear that the virus presented increased risk and dangers bringing continued stress on individuals and on the working environment.

Established contacts with international ombudsman institutions and individual ombudsman contacts in the region were vital in responding to these difficulties. It provided collective support and cooperation for our work locally and as the International Ombudsman Institute Regional President for the Caribbean and Latin America.

As a team we stayed connected working together in the virtual workplace scheduling our weekly team meetings and supervisory check-ins via Webex. We added bi-weekly virtual social meetings which helped to maintain morale and support to our hard working group.

Part of our promise to be accessible to receive complaints requires us to be vigilant on behalf of vulnerable populations. Since 2018, we have advocated against unwarranted assumptions about people's abilities and access to obtain public information and public services by digital means. During the public health emergency we renewed our calls, encouraged the Government, the public service, government offices, the Courts, and our fellow Non-Ministry independent offices to take the actions necessary to significantly adjust their communications methods.

We also let these colleagues know we were available to their Offices. Government responded by ensuring all press briefings were available on television. While that was a welcome first step, sustained improvements are still needed for assistance to access services by other means of contact especially for vulnerable populations. It is important that people who may not know how to navigate the bureaucratic process digitally or otherwise are not disregarded or underserved.

Ombudsmen are accustomed to listening to people due to the nature of their work. This time, we had to listen not only to what was being said but also to listen for when we did not hear from certain groups. Persons who were normally able to access our services on a walk-in basis were unable to do so. We reached out for information on seniors in care homes, the unsheltered, the indigent, those with mental health challenges and other vulnerable groups.



While we were evaluating priorities we continued to focus on responding to new challenges. Flexible methods of communication became even more important and vulnerable groups were of greater concern. We looked to see how we could assist the Government and people who required information and services.

It was July before we were able return to the physical office. We were back but in no way near what might be referred to as normal as all that had happened had a profound effect on how we worked and the way we adapted. We had to think and rethink our approach to what could be achieved within our planned timeframes beyond complaint handling and advisory work with authorities. In our complaint handling and other work we identified complaints and relevant issues directly and indirectly related to COVID-19. We were careful to take extra precautions to comply with the Government's requirements and limited in-person services to those who had no other way to contact us and those with particularly sensitive cases.

In the latter part of 2020, it became clearer that most of what we were trying to achieve with our long-term objectives to review procedures and recruit to fill vacancies was affected as continued adjustments were required due to the COVID-19 public health emergency. The very nature of the services we provide to people required careful

attention. This was difficult in the face of what has been referred to as 'pandemic fatigue' as concerns persisted about a second and third outbreak of infection. As we approached the end of the year there were increased cases and losses. In some ways it could be said that keeping some promises was not without consequences in other areas.

Even in such unprecedented times, we stressed the importance of public authorities taking a balanced and flexible approach to complaint handling. Public authorities were focused on providing the most essential of services. They were receptive to our discussions despite the demands they faced. Even in difficult circumstances, it was necessary for authorities to address oversights and mistakes in light of new restrictions, new rules, new procedures, new social and working environments. In some ways, it was even more important in these times.

As a country, we have shown remarkable resilience. There are many highlights and I wish to identify a few of the services and individuals that adapted and were responsive directly to the needs of people: Dr. Carika Weldon and all laboratory and testing teams; staff at the Epidemiology and Surveillance Unit; all our front-line essential workers; healthcare workers attending to our physical and mental health at KEMH and MWI; all of those who answer the phones at the COVID-19 Hotline Centre, the Emotional Wellbeing



Hotline and all helping telephone services for a much-needed human touch; and Chaplain Kevin Santucci for providing pastoral care and counselling to our community including many of our essential workers in various public authorities.

Each year, I thank the team of bright, skilled Bermudians who pursue high standards of good administration and fairness for the people who bring their matters to us for our Office to address. In this reporting year, their commitment to our work in the face of adversity was honourable service for which I extend my sincere, heartfelt thanks. I cannot say enough about your dedication and perseverance. Thank you for everything you have done.

When people raise issues and bring them to the attention of this Office we are alerted to potential challenges which we might otherwise not learn of. In this reporting year, with challenges on all sides, we thank you for entrusting us with these concerns which allow us to assist the wider public. We want you to know we never take your trust for granted.

My sincere thanks to the knowledgeable members of the public service who have endured a difficult reporting year and been responsive to the Office's requests and concerns. They understand not only the importance of accountability but that we are here to assist both the public and those who serve the public. A special thank you to my colleagues both local and overseas for our shared experiences, encouragement and support. Finally, I extend my heartfelt appreciation to everyone who has assisted with the work of this Office in a year unlike any we have ever experienced.



Victoria Pearman  
Ombudsman for Bermuda

Kanefsky, Rabbi Yosef. "A Reflection on Social Distancing."  
Catholic Health Association of the United States.  
[www.chausa.org/prayers/cha-prayer-library/prayer/a-reflection-on-social-distancing](http://www.chausa.org/prayers/cha-prayer-library/prayer/a-reflection-on-social-distancing). Accessed 18 June 2021.





# OMBUDSMAN OFFICE STAFF

Zoom Meeting

**Victoria Fearman**  
Ombudsman

**Aqilah Fleming**  
Investigations Officer

**Robyn Eya**  
Executive Assistant


**Kristen Augustine**  
Investigations Officer


**Shawn Dill**  
Manager, Finance & Admin

**Barry Fleming**  
Temp. Senior Ombudsman Specialist

**Howard Esbin**  
Investigations Officer

**SPECIAL THANKS TO**

  
**LaKai Dill**  
former Investigations Officer who left our Office in March 2020 for her commitment and dedication to the work of this Office. The service, support and insight she has provided over the years have been invaluable.

  
**Barry Fleming**  
former Temporary Senior Ombudsman Specialist who left our Office in November 2020. We are extremely grateful to him for the knowledge, experience and expertise he shared during his time with us.

To: Everyone 📎 🗑️

Type message here...

Mute Start Video Security Participants Chat Share Screen Record Reactions End



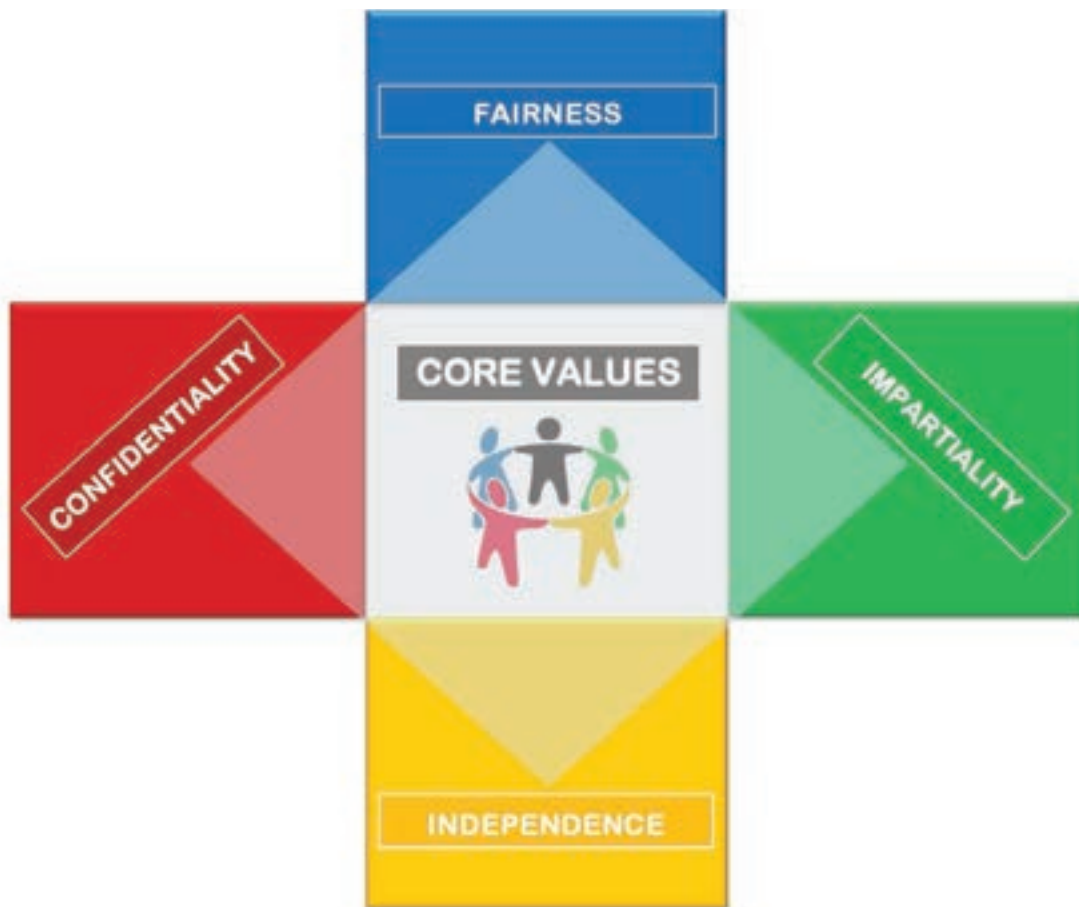
## MISSION AND VALUES

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

To achieve our mission, we aim to:

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

**Our core values include:**





## OVERVIEW

The Ombudsman's strategic aims for her term are:

- 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 2020, we report on these efforts and our progress during this Office's 15th 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' reviews our complaint handling through summaries of cases and statistics, to help show how we do what we do. It also highlights information we learn about public authorities and their processes as we carry out our work.
- The fourth section on 'Championing best practice' identifies useful resources on what good administration means and our recent activities to improve our case management practices and outreach efforts to public authorities.

We welcome your feedback about our services and this publication. Return the surveys enclosed or visit us online. We include a postage-free envelope in case you want to mail it to us.





## 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.

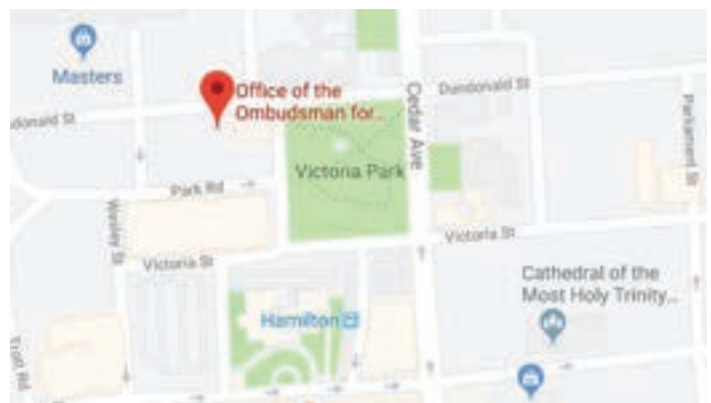
Before coming to our Office, you should make a complaint to the relevant authority at your earliest opportunity. It is better to seek assistance quickly than to remain in a quandary on your own. If you have not done so, we may refer you back to the authority.

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.

It is a consistent trend that most complainants call or visit us, except in this reporting year where in-person visits were limited. People want to be heard. Contacting us by telephone or in person usually means that questions can be acknowledged more quickly, 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.



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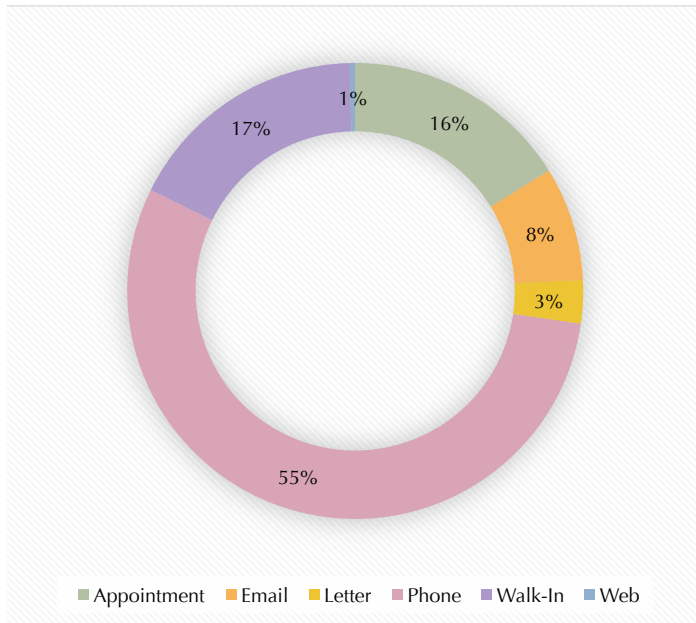
**[facebook.com/bermudaombudsman](https://facebook.com/bermudaombudsman)**





# HOW WE RECEIVED CASES: 2019 VS. 2020

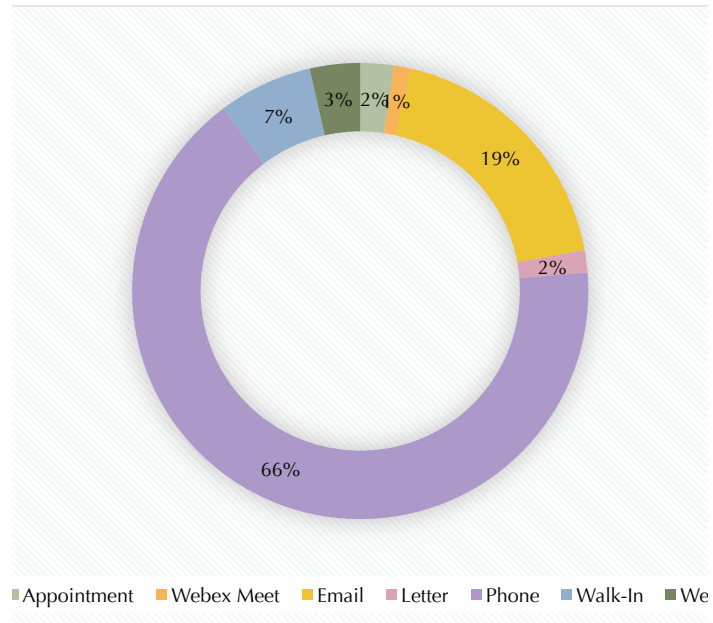
Figure A: How we received cases in 2019



Source	Number of cases
Appointment	42
Email	21
Letter	8
Phone	143
Walk-In	45
Web	1
<b>TOTAL</b>	<b>260*</b>

*\*This total excludes 3 cases opened using the Ombudsman's own motion powers*

Figure B: How we received cases in 2020



Source	Number of cases
Appointment	6
Webex Meet	3
Email	47
Letter	4
Phone	167
Walk-In	17
Web	9
<b>TOTAL</b>	<b>253*</b>

*\*This total excludes 5 cases opened using the Ombudsman's own motion powers*



## OMBUDSMAN ‘OUT AND ABOUT’, HERE, THERE AND (VIRTUALLY) EVERYWHERE

It goes without saying that connecting with others was different in 2020 than in previous years but also more important to do than ever. This was certainly true for the way our Office reached out to members of the public, participated in meetings and engaged with colleagues.

Many of the meetings and events the Ombudsman was scheduled to attend were cancelled or postponed. Most took place virtually. While we missed out on the face-to-face and personal interaction, it was very important that such events still took place in order to remain connected to share, network and engage with one another while navigating these difficult times.

In February 2020, the Ombudsman was a speaker at the International Seminar organised by Ombudsman Thailand. The theme was “Ombudsman in a Changing World: Resilience Amidst Challenges”. That same month Ms. Pearman visited P3 Liverpool at Paget Primary for what has become an annual tradition. The class created an impressive display as part of the school’s Black History Museum which featured the late L. Frederick Wade and included a transformation of their classroom to depict our airport.

In March 2020, the Ombudsman and the complaint team participated in a presentation to Youth Parliament’s Youth Summit.

Ms. Pearman and other IOI Regional Presidents remained in their roles for an additional year until May 2021 in light of the global pandemic and the cancellation of the IOI World Conference, which is normally held every four years.

In July 2020, the Ombudsman arranged a joint virtual meeting between members of the Institute of Latin American Ombudsman (ILO) and the Caribbean Ombudsman Association (CAROA). Establishing a stronger connection and collegial relationship between these and other regional ombudsman organisations is something Ms. Pearman has advocated for years noting that different languages should not be a barrier to this.

In December 2020, the Ombudsman participated in a series of interviews for the Coepio Foundation in Latin America on the topic of Female Leadership. This interview was recorded and shared over Zoom and Facebook Live platforms.

**CICLO DE ENTREVISTAS LIDERAZGOS ENTRANABLES**

**09/12**

19 HS ARGENTINA  
18 HS BERMUDAS  
17 HS PANAMÁ

ENTREVISTADORA:  
**ANAHI QUINTERO BELDA**

**VICTORIA PEARMAN** | OMBUDSMAN DE BERMUDAS

**EVENTO EN INGLÉS**

Miralo por  
**ZOOM Y FACEBOOK LIVE de FUNDACIÓN**



## 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 2015 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](http://www.ico.bm).

From 1 January to 31 December 2020, our Office received one PATI request from the public. This was our first PATI request. To obtain a copy of our PATI Information Statement (last updated January 2021) and learn about records that can be made available to the public, contact our Office or visit our website to download it.

## ACCESSING PUBLIC INFORMATION

The Ombudsman advocates for authorities to produce information for the public to learn about their services and processes. One such area is having an internal complaint handling process which includes ensuring that such information is accessible to everyone with signposting to our Office for matters which are unresolved. We believe that the authorities' effective complaint handling will allow them to resolve complaints quicker and provide them with useful lessons on how to improve, even before reaching our Office.

Various authorities have taken the lead to ensure their publications, including pages on the Government's website, describe how service-users may submit feedback or raise concerns about their experiences. Our recommendation that Government implement an internal complaint system to receive complaints and feedback was accepted. We received an update that the forms are being reviewed, tested and are close to completion. We welcome this development which will provide the public with a direct method of raising their concerns, especially during these critical periods.



## STRATEGIC AIM II: GREATER PUBLIC AWARENESS

### 15 YEARS IN COMPLAINTS

Since opening our doors in 2005, we have handled over 2,530 individual cases. This does not include enquiries prior to 1 January 2015 when we began to record enquiries. Our complaint handling is divided into four basic categories:

- open – at year-end we were still working to address the complaints,
- declined – for complaints outside our jurisdiction,
- disposed of – 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.

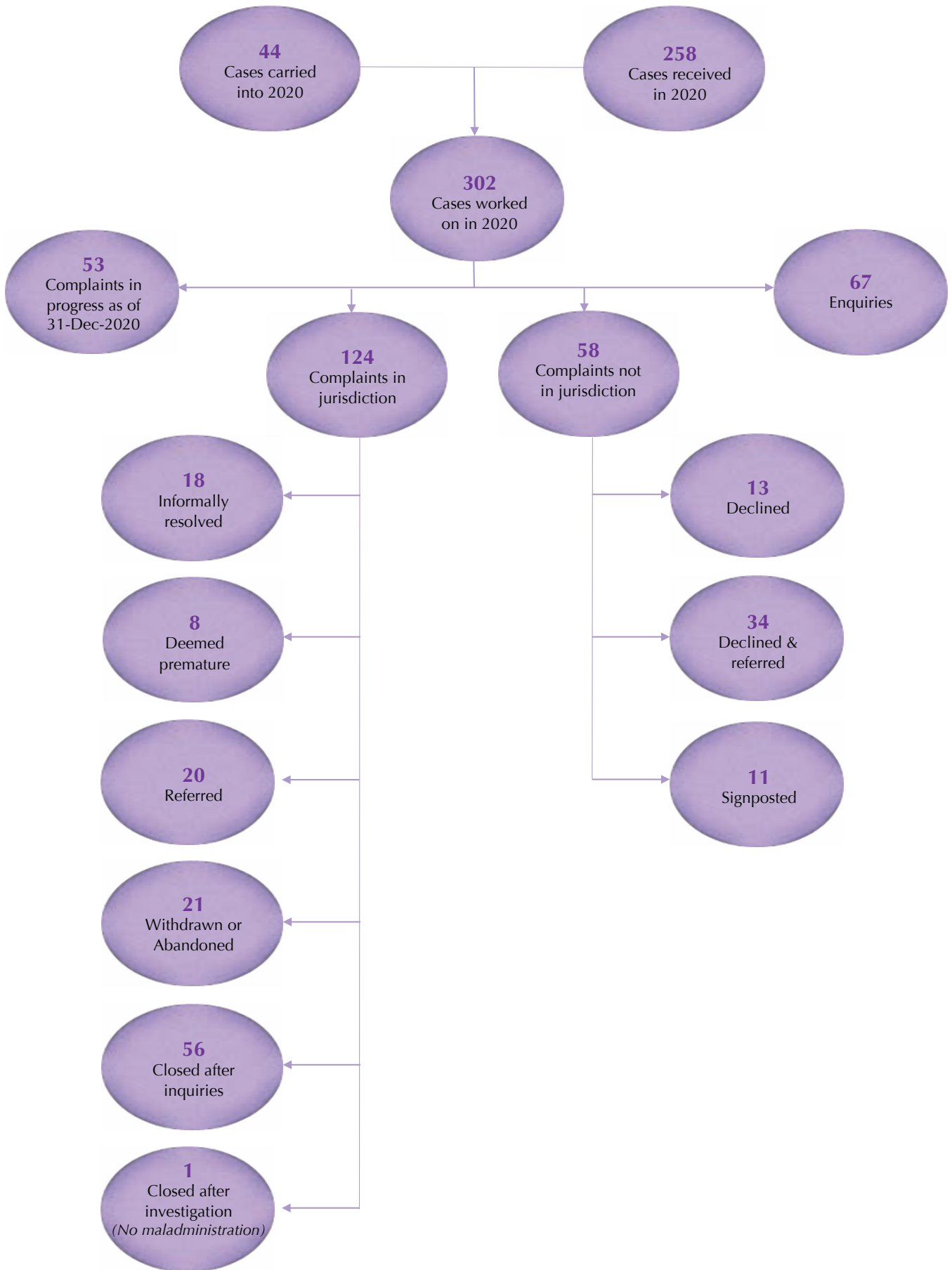


Figure C: Complaints 2005 – 2020

Year	Start	End	Open	Disposed Of	Referred	Declined	Total per year
1	2005 Aug	2006 Jul	22	57	47	11	137
2	2006 Aug	2007 Jul	29	44	44	17	134
3	2007 Aug	2008 Jul	35	53	20	21	129
4	2008 Aug	2009 Jul	35	29	53	26	143
5	2009 Aug	2010 Jul	58	44	80	66	248
5 Interim	2010 Aug	2010 Dec	21	5	30	34	90
6	2011 Jan	2011 Dec	48	23	54	78	203
7	2012 Jan	2012 Dec	47	30	57	32	166
8	2013 Jan	2013 Dec	45	26	38	36	145
9	2014 Jan	2014 Dec	55	11	42	20	128
10	2015 Jan	2015 Dec	32	21	61	47	161
11	2016 Jan	2016 Dec	53	65	24	15	157
12	2017 Jan	2017 Dec	32	43	23	28	126
13	2018 Jan	2018 Dec	30	57	31	48	166
14	2019 Jan	2019 Dec	25	59	26	104	214
15	2020 Jan	2020 Dec	30	97	20	45	192
<b>Total per category</b>			<b>597</b>	<b>664</b>	<b>650</b>	<b>628</b>	<b>2,539</b>
<b>Average per category</b>			<b>40</b>	<b>44</b>	<b>43</b>	<b>42</b>	<b>169</b>



Figure D: Casework in 2020



## CASEWORK IN 2020

To summarise our casework in 2020:

- Between 1 January to 31 December 2020, we worked to address a total of 302 cases (see Figure D). This included:
  - enquiries people made to us in 2020 – 66,
  - new complaints opened in 2020 – 192,
  - outstanding complaints we carried into 2020 from previous years – 43, and
  - outstanding enquiries we carried into 2020 from previous years – 1.
- Of the 192 complaints received in 2020, we determined that 136 were in our jurisdiction and 56 were not. Two of the complaints received prior to 2020 were outside of our jurisdiction. We closed a total of 124 complaints within our jurisdiction in 2020.
- We declined 45 complaints because they were not in our jurisdiction, 36 of which we assisted by providing additional resource information.
- We referred 20 complaints within our jurisdiction to an existing administrative procedure the complainant had not yet used.
- 21 complaints were abandoned or withdrawn by the complainant.
- 18 complaints were resolved between the complainant and the authority with informal and limited intervention by us.
- 56 complaints were closed after our Office made inquiries into the issues raised by the complainant with the authority.
- 17 people came back to us again, either raising separate issues or bringing up the same issue later, accounting for 52 cases and thus around 20% of 2020 cases. We do not always record a caller's name if the initial call addresses the questions completely and the caller asks to remain anonymous. These numbers do not indicate

whether an anonymous person complained more than once.

- 66 new enquiries were made in 2020 comprising 26% of our total cases received in that year. These are cases where people contacted us seeking information, without making a complaint. Due to the nature of our work, we are routinely learning more about the services of public authorities and some private organisations in the community. Our enquiry process compiles 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.

For the 302 cases worked on in 2020, we closed 249 by year-end and the remaining 53 were open as of 1 January 2021 (see Figure G:).





Figure E: Cases received in 2020 by Authority

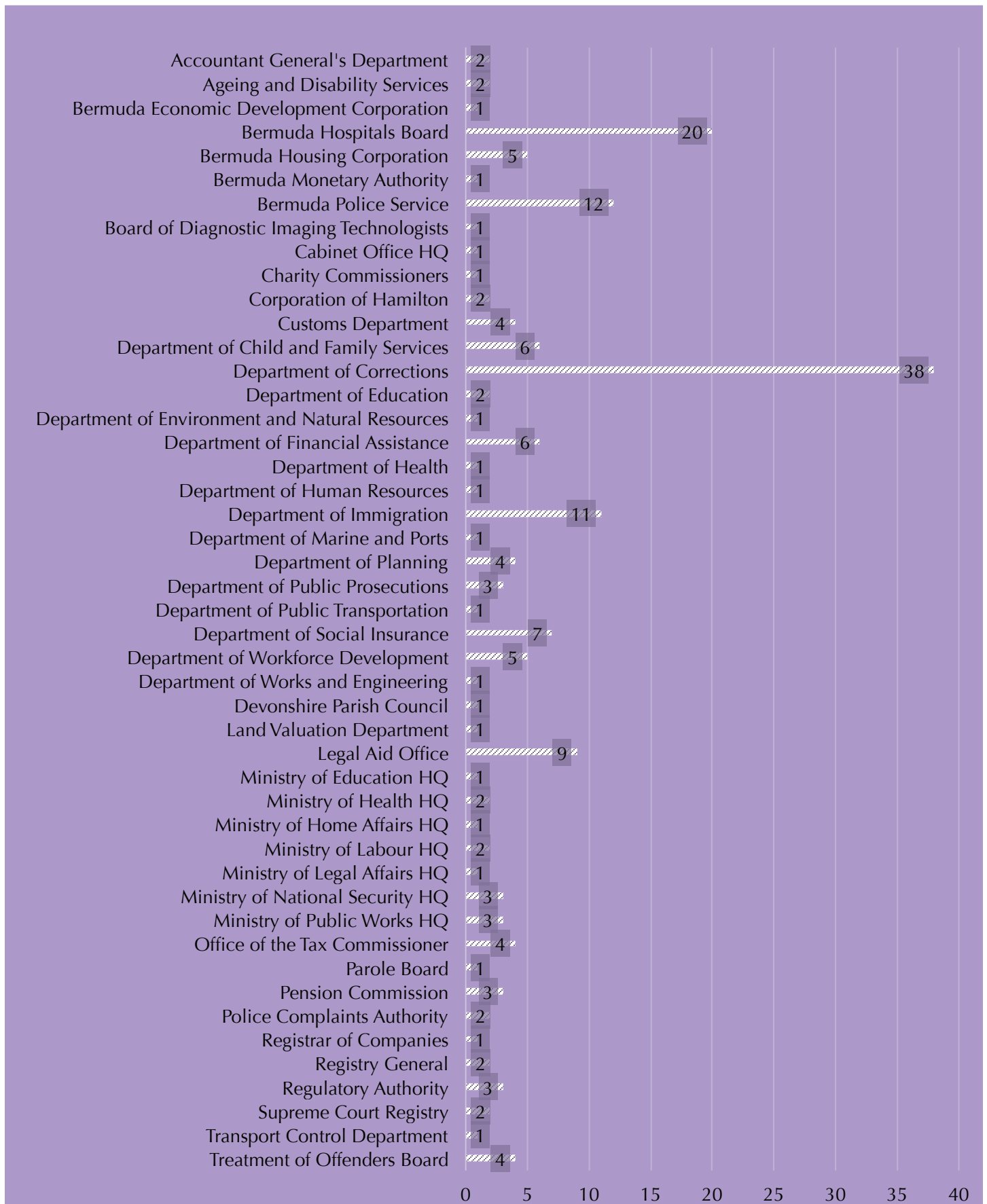
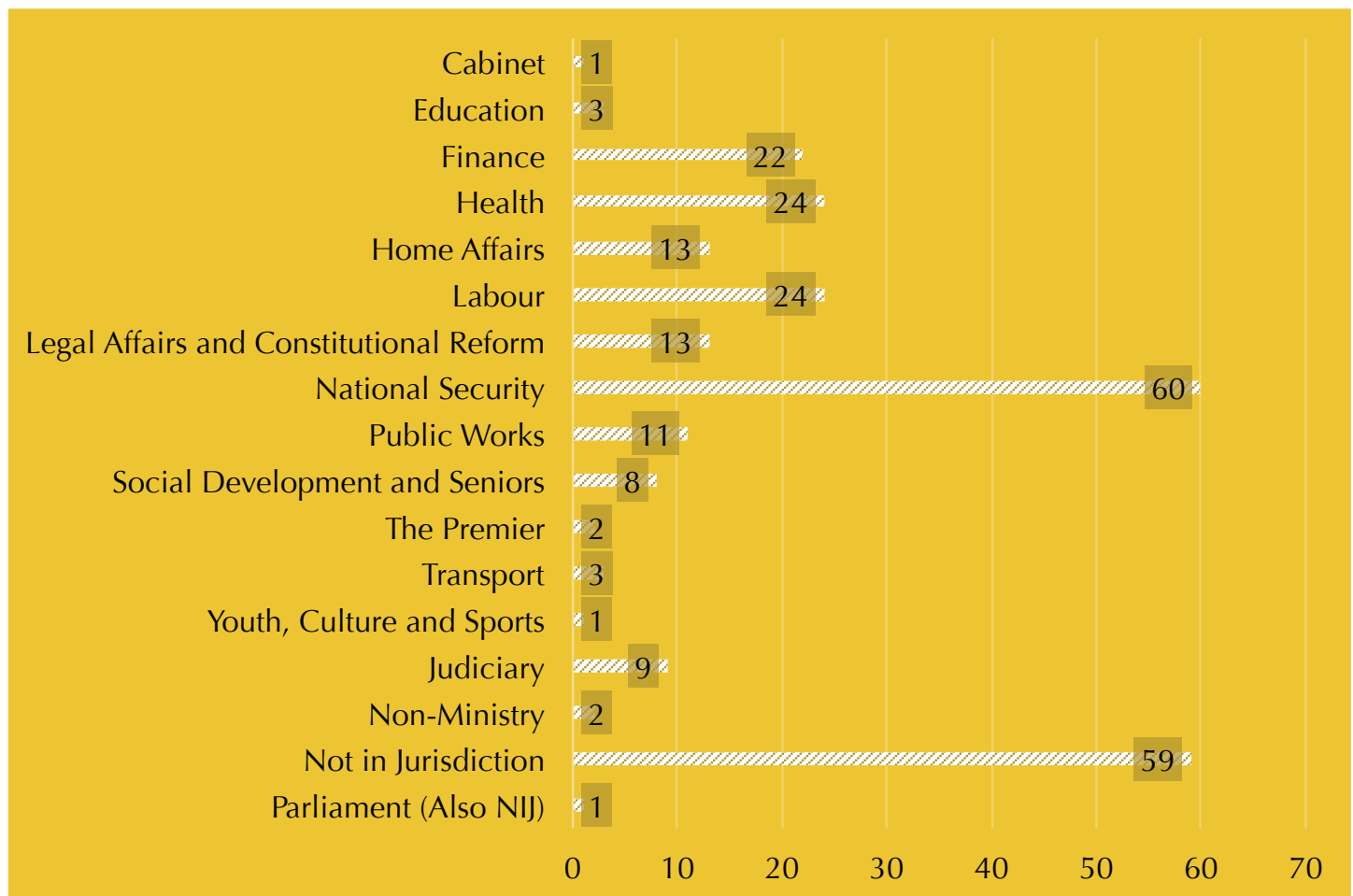


Figure F: Cases received in 2020 by Ministry



## OUTSTANDING COMPLAINTS

During 2020, we successfully addressed and closed 21 of the 44 cases that were opened in prior years. Of these 21 closed cases, we resolved 30% after inquiries that we considered to have reasonably satisfied the issues. We carried 53 cases into 2021: three from 2017, 10 from 2018, 10 from 2019 and 30 from 2020.

Figure G: Complaints carried into 2021

Complaint Status as at 31-Dec-20	Year opened				TOTAL
	2017	2018	2019	2020	
Intake*				15	15
Facilitated resolution			6	12	18
Pre-investigation		6	3	1	10
Investigation	3	4	1	2	10
<b>Total complaints carried into 2021</b>	<b>3</b>	<b>10</b>	<b>10</b>	<b>30</b>	<b>53</b>





## SELECTED CASE SUMMARIES, DID YOU KNOWS AND COMMENTARIES

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 learning opportunities for complainants, authorities and our Office.

What follows is a selection of anonymised complaints that were closed by our Office in 2020. 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, some of which may relate to the summaries, as well as commentaries and updates on the Ombudsman's systemic investigations.

## SHORT AND SWEET, (LIKE THE OMBUDSMAN!)

Our Office, like ombudsman offices around the world, is contacted by people who present with a wide variety of complaints and concerns. Some of these complaints and concerns are outside of our jurisdiction, which refers to our authority under the Ombudsman Act 2004 to investigate complaints. Although these complaints are considered non-jurisdictional, we view them as a sign that people need assistance. In those cases, we listen to the individual's concerns, assess what avenues are available to assist, and provide required help. What follows are some "short and sweet" examples where our Office assisted individuals with problems that were not strictly within the provisions of the Ombudsman Act.

**If you want happiness for an hour, take a nap. If you want happiness for a day, go fishing. If you want happiness for a year, inherit a fortune. If you want happiness for a lifetime, help somebody.**

- Unknown

## A CASE OF CABIN FEVER

During the pandemic, we held virtual coffee breaks every Tuesday morning to provide an opportunity for our team to stay connected, check on each other and to promote camaraderie during difficult times. During one such meeting, a member of staff received a phone call from an elderly woman who wished to make complaint about the quality of home care her private caregivers were providing. She said she was confined to her apartment and not permitted outside. As her care was provided by employees of a private company, we did not have the legal right to take a formal complaint. The member of staff shared the details of the phone call with the team.

Another staff member lived near the woman and was familiar with her living arrangement. He arranged a socially distant visit. During the visit he noticed the woman was in a wheelchair, in relatively good shape, clean, well-groomed and was pallor free. Her apartment was also clean and well maintained. After a short discussion, she indicated that she phoned after being frustrated with her inability to get out of her apartment.

This had occurred after the island had experienced about two or three days of rain. Her caregivers advised that they were instructed to avoid excursions with the woman outside the apartment on rainy days. They also advised that the woman sometimes experiences “bad days” and cannot understand the limitations on her mobility.

## FAMILY MATTERS

Our Office was contacted by a man who alleged he had not been permitted to see or visit his mother for over a year. He had contacted various authorities to check on her. There was no suggestion of neglect or mistreatment.

Issues with visitation and communication came about when his sister, with whom their mother resided, had a disagreement with him that did not involve their mother. He was clearly distressed by this as he claimed he had always enjoyed a close relationship with his mother and missed her. We suggested that he try to arrange a family meeting with his siblings and also suggested various

helping agencies that might assist him to facilitate this if needed.

The gentleman telephoned us a short time later to let us know that he had taken our suggestion and a family meeting was held. He had been able to see his mother and arrangements were agreed for regular communication.

## SAY OUR NAME

A woman contacted our Office to make a complaint of unresponsiveness by two authorities. She explained that she had received a utility bill of almost \$3,000 which she maintained was an error. After initially speaking to two different representatives to query the bill, the woman said she had not received an adequate response back from either for months. Although the service by one authority was interrupted due to a maintenance issue, she was advised by the other that she should still pay on her bill despite having to reach out to a private company to receive services in the interim. After she paid what she could towards the bill, the second authority became unresponsive as well. The woman contacted our Office to see if we could assist her to get the error on her bill corrected because she tried once again to follow-up with the authorities to no avail.

A few weeks later, the woman called back and provided us with an update. She reported that although the issue was not resolved as yet, progress was being made. It seemed to her that once the authorities became aware that she had contacted our Office they had become more proactive and responsive to her complaint.

Sometimes members of the public will advise an authority that they have reached out to us or copy us in on correspondence to the authority regarding their concerns. They find that the weight of the Office makes a difference even if the intervention on our part was limited at the outset.

We hope these examples of assistance provided to the people of Bermuda and the authorities that serve them demonstrate our Office’s significant value beyond the formal interventions or the execution of our mandated duties under our governing legislation.



## GENERAL CASE SUMMARIES

### VISITATION DENIED

ISSUES: A visitor of an inmate at the Westgate Correctional Facility was denied entry into the facility. The inmate was informed the visitor was denied because he should not have been allowed to enter the premises. The inmate complained to our Office of arbitrary procedures, especially considering the visit was approved by the Department of Corrections (“Corrections”) prior to it being scheduled and the visitor had previously visited the complainant and other inmates regularly over the years.

INTERVENTION: Our Office made inquiries with Corrections. We confirmed the Department approved several visits for the visitor over the years. Corrections informed our Office the visitor should have been banned some time ago because he was a former inmate and had spent a brief period on remand. It is Corrections’ policy that former inmates cannot visit the facility without express written permission from the Commissioner of Corrections. The Department informed the visitor he must write to the Commissioner for permission if he wished to continue visiting the facility.

INSIGHTS: Administrative oversights will happen. It is important to right the wrong, as stated in the Principles of Good Administration. While it was unfortunate that Corrections had overlooked the visitor’s eligibility to enter the facility, our focus was the Department reconsidering its decision and informing the visitor how he could apply to be approved for future visits.

**It’s easy to judge. It’s more difficult to understand. Understanding requires compassion, patience and a willingness to believe that good hearts sometimes choose poor methods. Through judging we separate. Through understanding we grow.**

**- Doe Zantamata**

## SICK AND SHUT-IN

ISSUES: The grandmother of an inmate serving a 14 year sentence was suffering from an illness that caused progressive blindness. She was unable to visit the prison for health reasons. The inmate was concerned his grandmother would go completely blind before he was released from prison. He wanted to arrange an in-person visit to see each other before she lost her sight. The inmate made an application to visit his grandmother but it was denied. He made a complaint to our Office in late 2019 about the denial of his application.

INTERVENTION: Corrections informed our Office the original request was denied for security reasons. The inmate applied for a home visit to be arranged at his family home, which raised additional security issues. Corrections informed our Office it only facilitates inmate visits outside of the facility under special circumstances and agreed this matter would fall under that category. It was amenable to arrange a visit between the inmate and his grandmother at her care facility. Unfortunately, the visit could not be accommodated before restrictive pandemic measures were implemented and the Department had been unable to arrange the visit since.

INSIGHTS: One can only imagine the heartache caused by the thought that your grandmother may not be able to see you again. Section 60 of the Prison Rules 1980 provides that the Department must encourage, assist and maintain relationships between inmates and loved ones outside of the facility, specifically those relationships that promote the best interests of the inmate’s family. Visiting an ill grandmother seemed to meet this criteria. The home visit could not be practically accommodated by Corrections, however after further consideration, a visit to the care facility could be.

Corrections may not be able to facilitate outside visits for all inmates. What may be suitable for one inmate may not be suitable for another. There are considerations that must be made on a case-by-case basis. For example, an inmate may pose a greater security risk in certain areas because of gang affiliations or an inmate may have

committed previous infractions, such as smuggling contraband into the facility while on work release. It may not be practical to accommodate inmates in such circumstances.

## WHO PAYS?

ISSUES: The Government Employee Health Insurance (“GEHI”) section of the Accountant General’s Office (“the Authority”) has the difficult task of funding overseas medical treatment for Government employees and their dependents while balancing their duties as stewards of scarce public resources. Our Office received a complaint from a senior who alleged that after undergoing three surgeries off-island, the doctor who performed them had contacted her to say there was a substantial amount left to be paid on her statement of account. Due to her illness she had been incapacitated for several years and worried she would be unable to pay. She felt responsible for this balance even though she could ill afford it. She also thought the Authority had paid the full amount owing.

INTERVENTION: We facilitated communication between the senior and an official of the Authority. We also spoke with the accounts payable department of the doctor’s consultancy. The doctor’s staff held the position that the operations performed were allowed under the payment scheme established by the Authority. The doctor’s practice was not a “preferred provider” which would accept previously negotiated reduced rates.

We subsequently contacted the Authority to ascertain its position with respect to this complaint. The official informed us that the rates charged by the doctor were at the 50th percentile of the established column for this type of medical work. Further, this doctor, it was suggested, charged rates significantly higher than their peers. If the doctor expected to charge patients the balance of accounts, then his office would have to function differently, for example, by requiring patients to present a payment security before carrying out the procedures. A benefits letter would have also been provided to the doctor’s office confirming the approved coverage being disputed.

The Ombudsman’s Office can only make formal recommendations to address a person’s concerns if maladministration has occurred. Maladministration means:

- unreasonable delay in dealing with the subject matter of an investigation;
- abuse of any power, including any discretionary power; and
- any administrative action that was contrary to law, unfair, oppressive or improperly discriminatory, based wholly or partly on a mistake of fact or law or irrelevant grounds, was arbitrary, or negligent.

We thoroughly reviewed all file materials and conducted research on tariffs generally applied to doctors contracted by health providers. The scheme utilised by the Authority was consistent with similar ones employed by other healthcare providers. Considering the information on file, and the definition of maladministration, we were unable to make any formal recommendations to the Authority regarding its dealings with the senior or the doctor.

INSIGHTS: Regrettably, this complaint could have been avoided if better communication had existed between the senior, the Authority and the doctor. It is a reminder that all authorities need to reflect upon the policies and procedures in place and how best to communicate with the people they serve, so that all aspects of services are apparent and easily understood.





## RECORD TIME

**ISSUES:** A man complained to our Office the day before Good Friday. He said he was unable to obtain his disability benefit through the Department of Financial Assistance (“DFA”). He was told by DFA the payment had been processed for deposit into his bank account. He could not understand why his bank account did not reflect the deposit.

**INTERVENTION:** We contacted DFA when the COVID-19 Shelter in Place restrictions were in effect. Fortunately, the Director of DFA addressed the complaint as a matter of priority and it was resolved within 25 minutes of our contact. Inquiries revealed the complainant had supplied DFA with the wrong bank account number. DFA had sent the request for payment on time to the Accountant General’s Office but the bank had rejected the deposit because of the incorrect bank account number. Once the correct details were provided, the complainant received his disability benefit in order to meet his obligations — and just in time to get a few hot cross buns.

**INSIGHTS:** While it may have appeared to the complainant that DFA had been slow in processing his disability benefit, the mistake was his. Had the Director not quickly intervened, the complainant would have waited much longer for resolution, especially since Government offices would have been closed the following day. Even where a mistake is made by the service user, the Principles of Good Administration require public authorities to be customer-focused and provide assistance where needed.

## THE BETTER BENEFIT

**ISSUES:** A mother who had worked hard for many years to care for her family suffered a life-threatening disease which resulted in an amputation. She settled her affairs and made her children executors of her estate shortly before she was entitled to collect her pension. This change in her health caused increased medical expenses for which she applied for a disability benefit under the Contributory Pensions Act 1970 (“the Act”). Before she signed the disability benefit application, the family queried whether receiving the benefit would prevent her from collecting her pension when she reached 65 years of age. A Department of Social Insurance (“DOSI”) official told them it would not. The application would not have been made if they were informed otherwise.

Unfortunately, two months after receiving the disability benefit and seven months shy of her 65th birthday, the mother succumbed to her illness. A pension becomes payable to named beneficiaries if the applicant passes away before their 65th birthday. This payment is called the survivors benefit. The executors enquired into their mother’s pension. They were informed the Act does not include a survivors benefit distribution for recipients of a disability benefit. Further, the executors were informed by letter their mother had received a disability benefit overpayment in the amount of \$137.31 and a reimbursement was due to the Accountant General’s Office.

**INTERVENTION:** The executors made a complaint of misinformation and unfairness with our Office. Our inquiries found the staff member who informed the children about the difference between the survivors benefit and disability benefit was not qualified to provide such information nor were they as informed as their colleagues. The mother was entitled to over \$37,000 in pension contributions. She had only received \$3,500 in disability benefits over a two-month period. This raised certain issues which required further clarity. From this, we asked whether a final decision had been made. DOSI explained the Act does not have provisions that allow payment of other gratuities to the beneficiaries of a person who received a disability

benefit. DOSI informed us the executors could appeal their decision to the Contributory Pensions Appeals Tribunal as set out in section 26 of the Act. The Contributory Pensions Appeals Tribunal convened and referred the appeal to the Attorney General for a precise interpretation of the Act.

The Attorney General considered the intent of the Act in order to make a determination. She considered the following sections:

- Section 15A(1b) – Where a person dies before becoming entitled to a pension under this Act and leaves no widow or no child under the age of 18, an amount equal to the total of all contributions paid by or in respect of that person shall be paid to the contributor’s estate representative; and
- Section 17A(1)(a) and (b) – An insured person over 18 years of age and under pension age who is incapacitated for gainful employment by reason of any physical or mental disability or any terminal illness, shall be entitled to a contributory disability benefit.

Therefore, according to the provisions in the Act, the executors were not eligible for the survivors benefit. Despite this, the Attorney General decided in favour of the children, recognising there needed to be a more precise provision in the Act.

INSIGHTS: DOSI was bound by the provisions of the Act and therefore could not award the survivor’s benefit to the executors. Because there is no provision in the Act to award a person’s estate on disability benefits, the mother’s estate did not qualify for the survivors benefit, which seemed unfair.

A similar case was previously heard by the Contributory Pensions Appeal Tribunal. The ruling in the prior case differed from the Attorney General’s decision. When the Attorney General’s decision was presented to the Tribunal by DOSI, they convened a special meeting to overturn their prior ruling. A refund was made in the other case to maintain consistency. The Authority informed us the executor’s appeal had resulted in Cabinet considering possible amendment to the Act. Our Office was pleased that this complaint could result in fairer outcomes for others in the future.

## **THE HEART OF THE MATTER**

ISSUES: A senior complained to our Office about her employer’s failure to pay into her health insurance policy. On a recent visit to the emergency department at KEMH, the examining doctor determined she needed heart bypass surgery. She was informed she would have to travel abroad and asked how she planned to pay for the procedure. She shared the details of her health insurance plan only to discover she did not have health insurance coverage. She learned her employers were deducting the employee portion for health insurance from her pay but had not paid their portion into her health plan. She approached her employers and called upon them to pay for her travel expenses to receive medical treatment. In response, they claimed they were unable to due to financial restraints.

INTERVENTION: The employers were private business owners and therefore outside of our jurisdiction. We contacted the Bermuda Health Council (“BHeC”) and referred the complaint. The Authority made contact with her employers. We learned this was not the first complaint against the employer. The Authority informed the employer they were responsible for the complainant’s health insurance coverage and expenses associated with her surgery. This would include airfare and accommodation for herself and her travel companion. Weeks later, after returning from overseas treatment, she returned to our Office to share good news: she was being treated with medication and it was determined there was no longer an immediate need for surgery.



**INSIGHTS:** Delinquent employers cause a great deal of distress and put their employees at risk when they do not have valid health insurance because of their failure to pay into the policy. Employers have a legal obligation to pay 50% of their employee's medical insurance in accordance with section 24A(2) of the Bermuda Health Insurance Act 1970. Employers also risk being criminally charged, fined or imprisoned for failing to meet this obligation. Fortunately, BHeC is mandated to handle complaints about health insurance for at risk employees.

### **NO RIGHT TO APPEAL**

**ISSUES:** The parents of an 11 year old student with autism complained to us about the Ministry of Education ("MOED"). They claimed that MOED had registered their child to be transferred from the Primary School Autism Spectrum Disorder ("ASD") programme to the Middle School ASD programme without discussing it with them. The parents disagreed with the required transfer. It seemed their child had not been adequately prepared during the pandemic to transition into a new environment, which was necessary for him to avoid undue anxiety and stress.

**When a flower doesn't bloom, you fix  
the environment in which it grows,  
not the flower.**

**- Alexander den Heijer**



**INTERVENTION:** Inquiries revealed the parents had contacted the Commissioner of Education to share their concerns. The parents felt MOED had not administered the transitional process and educational strategies to introduce a student with autism to a new school environment. It was not that the parents did not want their child to develop. They feared the transition at this time would be detrimental to him without adequate preparation, a chance they did not want to take.

The parents said they were told by MOED that their concerns were under consideration. In the meantime, they received the package for his transition. That same month they were asked to attend a Zoom meeting so MOED could explain the ASD transition process to Middle School. They felt offended and opted not to participate in the discussion, as their voices as parents were not being heard. The parents obtained a letter from Tomorrow's Voices which shared their concerns. By August 2020, they were informed by the Department of Education's Director of Student Services and other professional advisors that their son qualified for the transition and was accepted for enrollment at the Middle School in September 2020. The parents believed MOED had violated their parental rights. They appealed to the Minister, who denied their application. The parents wished to appeal administratively but were told there was no scope for them to do so.

A letter from MOED to the parents stated the decision for their child to be enrolled at the Middle School and not retained at the Primary School cannot be appealed. As per section 58 of the Education Act 1996, persons have the right to appeal where:

- a child is refused admission to an aided or maintained school;
- a child is required to transfer because the child has moved to another parish, zone or area; or
- a child is expelled for particular reasons as set out in the Education Act 1996.

While our Office was conducting preliminary inquiries, the parents withdrew their complaint. They felt so strongly about the potential psychological effect on their child that they considered alternative means of education, including home schooling. Ultimately, they decided the risk was too great and removed their child from the public education system.

Our Office considered the complaint and MOED's response. We asked ourselves if there was another way to address the parents' concerns and whether MOED was correct in their assessment that there was no provision for an appeal. Administrative decisions by Ministers are not subject to investigation by our Office. A Minister's decision can be reviewed only by the Court and where leave is granted for judicial review. We were concerned that parents did not appear to have a right to appeal the decision. An alternative to the Court for aggrieved parents should be considered.

INSIGHTS: The parents' right of appeal would be an opportunity to have their case heard by other professionals outside MOED, providing additional insight into the transitional process for students with special needs. At present, the Ministry determines by their expertise what would be best for special needs children's development. If a parent disagrees they can only ask those who made the decision to reconsider it. This is an inadequate remedy.

In our Annual Report 2019 we highlighted the need for the Department of Education to review how its compliance with the Government's 2007 National Policy for Disabilities aligns with Plan 2022. Considering the Ombudsman's recommendations, MOED could benefit from utilising independent expertise to inform their decisions concerning students with special needs



Photo credit  
Gavin Howarth

## HOW THE PANDEMIC IMPACTED COMPLAINANTS

Our Office received 23 complaints directly related to the pandemic, 21 of which were closed as of 31 December 2020. This made up 11% of all cases received by our Office in 2020. The complaints covered a range of issues which included:

- six complaints related to employment matters — four about the unemployment benefit (which were within our jurisdiction) and two about layoffs from private employers (which were outside of our jurisdiction and were referred);
- eight inmate complaints — five of which related to Corrections and three complaints about the delayed release of foreign nationals from incarceration;
- mental health considerations concerning the lockdown regulations; and
- housing considerations for the unsheltered.

Below are summaries of some cases we received in 2020 related to the COVID-19 pandemic.

**Hindsight is always 20/20 but you can't have all the information to make a decision in the time of a crisis. The more important thing is to make a good decision.**

**- Aditi Chopra**

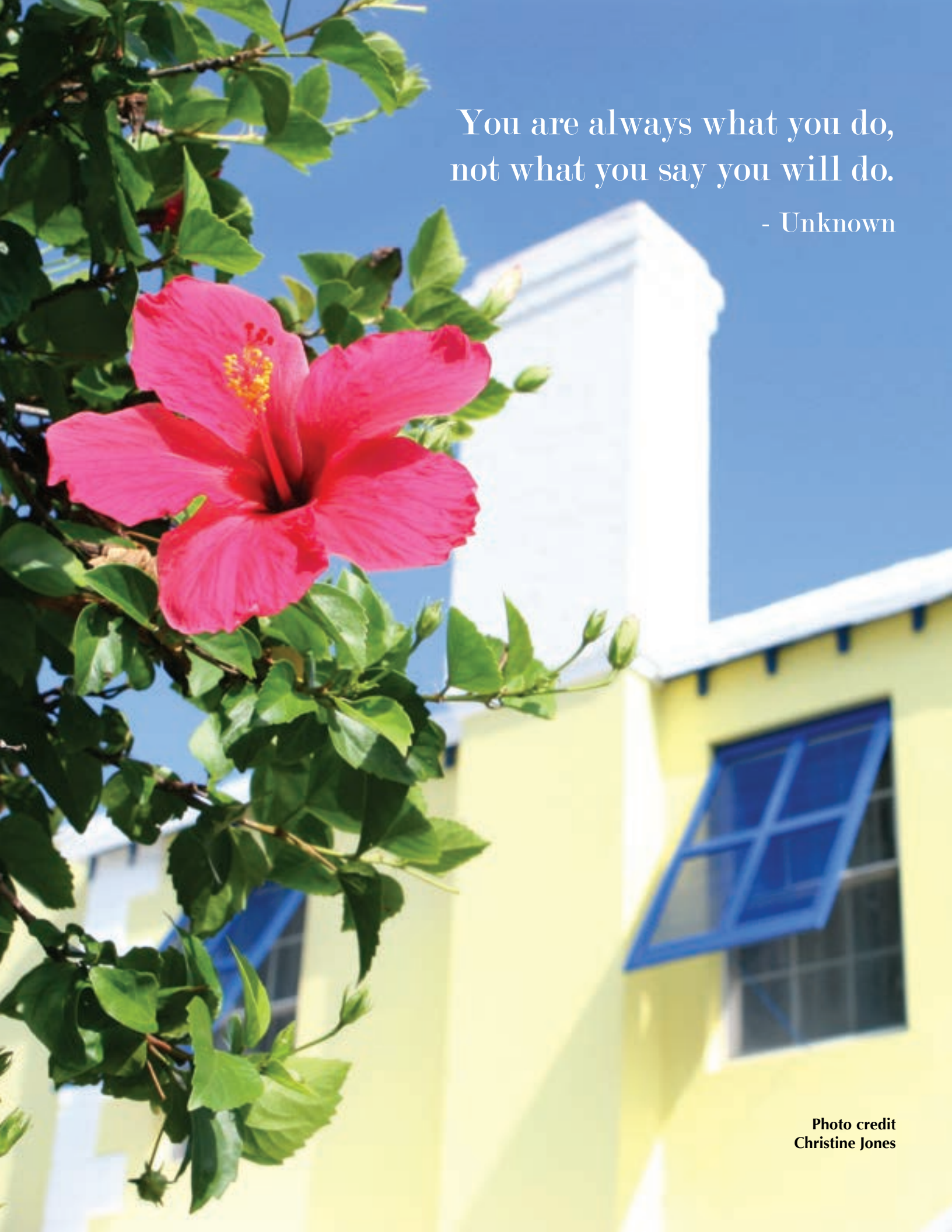
## END OF LIFE VISITATION AT KEMH

**ISSUES:** An elderly patient receiving treatment at King Edward Memorial VII Memorial Hospital (“KEMH”) was in grave condition. The family arranged to visit the patient to say their goodbyes, however, upon arrival they were denied access. They were informed they could not enter the premises because of coronavirus restrictions. Immediately, the family made a complaint to the Ombudsman outside of office hours.

**INTERVENTION:** Given the time-sensitive nature of the complaint, the Ombudsman immediately contacted an executive at the Bermuda Hospitals Board. The executive confirmed the restrictions allowed for family visits to patients near the end of their life. The executive stated based on their current policies, the family’s visit should have been accommodated. Thereafter, the Ombudsman alerted the evening Nursing Supervisor, who is contactable after hours, of the family’s intention to visit to ensure they would not be denied again. The visit was accommodated later that night.

**INSIGHTS:** Flexibility is a cornerstone principle of ombudsmanship. The flexibility of the Ombudsman’s approach to be able to immediately contact the executive proved successful. In the midst of a global pandemic, with new emerging issues, it is more important than ever for public authorities to adopt a balanced and flexible approach to complaint handling to address oversights and mistakes. All of us are dealing with new rules, new regulations, new policies, new procedures and new social and working environments. To ensure structure in this pandemic, we must continue to be aware of unintended negative outcomes of these changes and address them efficiently as a matter of priority.



A vibrant pink hibiscus flower is in sharp focus in the foreground, its five petals fully open and showing a bright yellow center. The flower is surrounded by lush green leaves. In the background, a yellow building with a white roof and a blue window frame is visible against a clear blue sky. The scene is brightly lit, suggesting a sunny day.

You are always what you do,  
not what you say you will do.

- Unknown

Photo credit  
Christine Jones

## MENTAL HEALTH CARE

**ISSUES:** An advocate for increasing awareness of mental health care in Bermuda wrote to the Minister of National Security shortly after the start of the March 2020 lockdown regulations. He also published an advocacy piece. The correspondence highlighted the various needs of persons with mental health and socio-economic challenges and how the restrictions may affect them.

The complainant, who manages his own mental health challenges, asked the Minister for an exemption to ride his bicycle and attend the grocery shop on Sundays. Such an exemption would allow the complainant to adjust to the current restrictions while also managing his mental health.

**INTERVENTION:** The Minister had already granted the complainant permission to ride his bicycle and attend the grocery store on Sunday before we made inquiries. The complainant was able to successfully advocate for his own needs without our intervention. He wanted us to be aware of the challenges he believed were not given sufficient consideration and felt were unfair.

**INSIGHTS:** With the great economic and social changes brought on by the pandemic, many people are finding it difficult to adjust. It is important that governments continue to accommodate persons, where possible, to ensure each citizen is given the opportunity to maintain their mental health during the pandemic. It is equally important that persons are aware they can seek an exemption, provided they meet the legislated criteria.

If you are in need outside of emotional support during the pandemic, you can call the Emotional Wellbeing Support Hotline: **543-1111** Monday to Saturday, 5:00 p.m. to 9:00 p.m. For support outside of those hours, you can call the Mid-Atlantic Wellness Institute's 24-hour Mental Health Crisis Hotline on **239-1111**.



**"A mediator hasn't worked, so I brought in everyone's moms."**

## IT WASN'T ME

**ISSUES:** A business owner contacted us about his complaint to the Department of Workforce Development ("DWD") during the 2020 Shelter in Place. He had applied on behalf of himself and two employees for the unemployment benefit. The employees had received their benefit but he had not. Two months later, restrictions were lifted and his business went back into operation. He notified DWD that the unemployment benefit was no longer required for his employees. One month later, funds were still being deposited into his employees' accounts. They had received an additional three payments each. However, the employer had not received his initial benefit. The employer believed DWD had taken too long to start payments to him and requested our intervention.

**INTERVENTION:** Our inquiries found DWD paid the benefit intended for the employer into one of the employee's bank accounts. DWD mistakenly confused the employer's corresponding bank account with one of the employees because the submitted application included both employees as well as the employer. The application was designed to be completed by each individual applicant. DWD thought the employer was not being forthright and looked further into the employer's application, which caused a delay.



Our inquiries also found DWD was no longer responsible for unemployment benefit payments as the responsibility had been transferred to the Ministry of Finance (“MOF”).

Once the error was identified, DWD and MOF asked the employees to return the payments made in error. The employer attempted to return the funds on his own but had difficulty contacting them in order to do so. He later found his initial contact on the unemployment benefit team no longer worked there. The employer reached out to MOF who informed him he would not receive the benefit until the payments made in error were returned.

Our Office intervened. We advised MOF it was unfair to withhold the benefit from the employer because of a deposit made by DWD considering the circumstances. Further, MOF should have addressed the employees, not the employer. Thereafter, MOF contacted the employer, deposited the unemployment benefit into his account and provided instructions to the employees to return the funds paid in error.

INSIGHTS: The complaint highlighted two issues: communication and good faith. A thorough review of this matter led us to strongly reiterate that these two issues were valid and they remain valid.

*Communication* – The first miscommunication was the employer’s assumption that one application could be used for all three applicants. It is unclear whether the need for separate forms was clearly communicated to the employer.

The second miscommunication occurred when the transfer of the management of the employment benefit had a breakdown in passing on information for case handling, causing a long delay. It took several attempts for the employer and our Office to discover who was responsible for the distribution of funds.

*Good faith* – Mistakes can appear suspicious. As with all Government benefits, public authorities must be diligent in ensuring funds are not misused or abused. Questionable applications should be looked into further. Public authorities have a duty

to ensure funds are being used and distributed as intended. In this case, it would have been equally unfair if the employer did not receive the benefit as he was unemployed as a result of the pandemic restrictions and was therefore the intended recipient of the unemployment benefit.



## INMATE VISITATION

**ISSUES:** We received complaints from inmates that in-person visitation had been suspended. The inmates understood it was a measure put in place to manage the coronavirus but they felt it impeded on their right to one visit per month and that the restriction impacted their ability to maintain relationships outside of the facility.

**INTERVENTION:** Our Office made inquiries with the Department of Corrections. The Department confirmed they suspended in-person visits until further notice to reduce the risks of coronavirus entering the facility. To accommodate visits, the Department began facilitating virtual visits through WhatsApp, Zoom and Webex Meet.

**INSIGHTS:** The Department of Corrections is responsible for creating its own policies and procedures to manage the coronavirus as well as following the guidance provided by the Government. The policy complained of was one of many measures taken by the Department of Corrections to address the current pandemic. Corrections is responsible for taking measures to manage the risks associated with COVID-19. This includes restricting access to its facilities. Inmates are entitled to one visit per month, as per section 64 of the Prison Rules 1980. The Department met this provision through the facilitation of virtual visits. Unless the Department falls below this statutory requirement, there would have to be compelling circumstances in order for our Office to find unfairness.



## FULL-TIME WORK, PART-TIME BENEFIT

**ISSUES:** A tearful and desperate woman complained to the Ombudsman that her unemployment benefit application was denied. She wanted to know why she did not qualify. She reported having tried unsuccessfully for over a month to contact the Department of Workforce Development (“DWD”). The designated phone lines were backlogged for an extended period due to the high volume of calls.

**INTERVENTION:** Inquiries revealed she had been working for five months, when 2020 Shelter in Place restrictions suspended hotel operations. She applied and presented the required documentation for the unemployment benefit. She was denied because part-time workers are not recognised as full-time employees according to the Employment Act 2000 and are therefore unable to qualify for the unemployment benefit.

A part-time worker is one who does not exceed 15 hours a week of labour. A full-time employee according to section 4(1)(b) of the Employment Act 2000 is identified as:

- any other person who performs services wholly or mainly in Bermuda for another person for remuneration on such terms and conditions that his relationship with that person more closely resembles that of an employee than an independent contractor.

Our inquiries revealed the complainant had asked her employer to inform DWD that she had worked over 20 - 30 hours per week regularly. Our Office examined her pay stubs and confirmed this was correct. Her employer refused to send a letter confirming her employment status. She believed this was because a letter would reveal the employer was not following the legal requirements to pay their portion of her health insurance, social insurance benefits and employee tax.

We learned the Government had put in place a relief plan for self-employed workers to receive unemployment benefits. We informed her that self-employed workers can obtain confirmation of their status through the Office of the Tax Commissioner and can apply to DWD to receive

\$300 a week in unemployment relief. The complainant received a benefit and as a result went from feeling desperate to supported.

**INSIGHTS:** Complaints to the Ombudsman may allege employers are being unscrupulous with their employees or treating self-employed contractors like full-time employees without benefits. Our Office receives complaints about employers who have acted unfairly towards employees. We do not have jurisdiction over employment issues and refer such complaints to the appropriate authorities such as the Department of Workforce Development, the Office of the Tax Commissioner or the Pension Commission. Our Office can review complaints against those decisions if the complainant remains aggrieved.

The late Honourable Walton Brown, JP MP advocated for redress of this issue he dubbed “problematic employment contracts”. He said:

*Workers within various industries have voiced concerns that employers have found ways to deny their rights under the current legislation. Many employers are offering employment contracts that do not cover the basic benefits such as health insurance, social insurance and payroll tax. Contractor and consultant contracts are typically used for persons who provide expert advice professionally and should not be used to replace or impose an unnecessary burden on your typical worker, forcing them to fall outside of the benefits and protections of the labor legislation. By working together with the unions and employer groups, Government is proposing to amend the current labour legislation: the Employment Act 2000, the Labour Relations Act 1975, the Labour Disputes Act 1992 and the Trade Union Act 1965—to include provisions that clearly outline the various types of employment relationships within Bermuda, thus limiting the ability of employers to create subsets of workers that fall outside of the protection afforded under the labour legislation. The proposal also allows for the investigation of complaints of unfair treatment of persons who are employed on a temporary, part-time or casual basis, or the like, and who are not defined as employees under the current legislation, thus limiting their protection.*

Brown, JP MP, The Hon. Walton. “Problematic Employment Contracts.” Government of Bermuda, 18 October 2018, <https://www.gov.bm/articles/problematic-employment-contracts>. Accessed 30 April 2021.

## DELAYED RELEASE OF INMATES

**ISSUES:** Four foreign national inmates who remained incarcerated after their terms of imprisonment had ended, made complaints with our Office. Our research found this issue affected at least one other foreign national inmate due to be released during the lockdown period between March and June 2020.

Each complainant provided a copy of a deportation order signed by the Governor of Bermuda. Each order named the complainant and gave authority for the complainant to be detained until their deportation could be facilitated. Some of the inmates had secured legal representation, others had not.

**INTERVENTION:** Administrative actions by the Department of Immigration are a matter within our jurisdiction. However, the matter also involved a detention order by the Governor and eventually consideration by the Court. We, therefore, could only provide limited assistance. Our Office referred those inmates who did not have legal representation to the Legal Aid Office. The inmates who took the matter before the Courts were recipients of legal aid. We wanted to ensure every complainant had access to any legal remedies available.

Our inquiries found the complainant’s deportation were delayed because of international restrictions due to COVID-19. Additionally each complainant would have required an escort by local Immigration officers through several borders, some of which were closed or had limited access. This would have put the officers at greater risk of contracting COVID-19 and place them at risk of being unable to return home safely. The Department of Immigration was diligently reviewing how to accommodate the complainants’ deportations, including making provisions for the inmates to travel with an escort.

All of the complainants were released and deported by 24 September 2020.



**INSIGHTS:** This case illustrated a unique way the pandemic affected this small demographic. The indirect result of new international jurisdictional and border restrictions was that the release of inmates from other countries would be delayed. This was because a foreign national inmate's release is dependent upon deportation. Therefore, it became difficult, and at times impossible when our borders were closed, to facilitate release. The Governor's deportation order was required as a security measure. The order ensured the inmates were detained until the correct deportation procedure could be followed.



## **DID YOU KNOW?**

We continue to learn about the Government's efforts to inform the community about its work. We also observe how public authorities are working to streamline their work, especially the work relating to the coronavirus pandemic. The following is information we have gathered about some of the services provided by public authorities and other organisations outside of Government

## **RESPONDING TO COVID-19 WITH MENTAL HEALTH SERVICES**

2020 was an extraordinary year for the Bermuda Hospitals Board's Mental Health Services. It provided an opportunity to enhance service delivery by responding to the COVID-19 pandemic.

Mental Health Services provides mental health support for inpatients at the Mid-Atlantic Wellness Institute ("MWI") and its clients in the community aged from 5 years to over 65. There are 60 beds spread across five inpatient units, including rehabilitation, long-term care, and services for children and adolescents. Care is provided to 60 inpatients and over 700 clients in the community.

MWI promotes a multidisciplinary approach under the recovery model of care, which emphasises patient involvement in treatment. This means patients have greater input into services, changes and their care. For example, in 2020 patients decided they did not wish to be referred to as "service users". As a result, MWI changed the term to "patients" or "clients" across all services.

During its 2021 financial year (1 April 2020 – 31 March 2021), MWI had 28,492 contacts with clients, including new referrals, follow-up visits, home visits and day services. This is compared with FY2020 (1 April 2019 – 31 March 2020), when MWI had 39,097 contacts. The reduction in FY2021 was directly related to suspension of some services due to the pandemic.

MWI responded to pandemic stressors and mental health needs by using telemedicine, increasing home assessments and visits, providing medication to patients in their homes or in the community, supporting Government quarantine and emergency shelter facilities, and strengthening partnerships with other agencies to provide support to vulnerable members of the community.

Inpatient programming was enhanced to enable patients who could not leave MWI due to COVID-19 regulations to be more involved in the arts, including music, movement and dance. Several patients successfully transitioned to group home living or were discharged to a care home. A special preadmission unit was established in collaboration with BHB's Substance Abuse Services to support new Mental Health Services inpatients until their COVID-19 test results arrived.

During the pandemic, MWI extended outpatient clinic hours until 8:00 p.m., established 24-hour crisis lines for adults (**239-1111**) and children (**249-3370**), adjusted staff shifts to 12 hours, provided a dedicated COVID-19 crisis line for BHB staff, administered medication on behalf of Substance Abuse Services, and provided mental health support to clients of Bermuda Housing Corporation, Salvation Army, Department of Corrections and Mental Health Treatment Court.

MWI staff led the Decider Skills Group to boost distress tolerance, emotional regulation, interpersonal effectiveness and mindfulness. Family support groups and a virtual meeting space for adolescents were also provided. To educate the public, MWI participated in radio programmes through the year and for Mental Health Awareness Week, promoting the theme of "kindness".

With the enactment of the Amendments to the Mental Health Act 1968 in November 2020, MWI partnered with the Ministry of Health to compile Bermuda's Mental Health Act Code of Practice, which advises practitioners and clients about their rights and responsibilities, as well as what to expect when seeking mental healthcare.

BHB extends their thanks and gratitude to its team of trained mental health professionals, who selflessly and unreservedly provided quality care to patients during 2020, a year marked by challenges and changes due to COVID-19.

## **BERMUDA ECONOMIC DEVELOPMENT CORPORATION**

As the primary authority for entrepreneurs and local businesses, the Bermuda Economic Development Corporation ("BEDC") assists the Government in developing home-grown talent through entrepreneurship advisory services, education, financing, policy and legislation, economic empowerment and youth entrepreneurship development. The organisation's key objective remains to assist the Government in encouraging economic growth for Bermuda's local small and medium sized businesses.

Due to the unexpected and devastating impact of the coronavirus, both internationally and locally, the Ministry of Finance provided BEDC with a supplementary grant of twelve million dollars (\$12M) during fiscal year 2020-2021 to directly support local small and medium sized businesses impacted by COVID-19. The additional funding allowed BEDC to provide much needed relief to businesses during that fiscal year including approval of 158 funding applications from April 2020 through March 2021. Twenty-eight percent (28%) or \$3.4M in funding had been disbursed to local small and medium sized enterprises, tripling the amount of direct funding BEDC provides to businesses in an average year pre COVID-19.

Major achievements over the past year included:

1. Entrepreneurship Advisory Services – In 2020 BEDC held 1,309 one-on-one advisory meetings with entrepreneurs, a 51% increase over 2019.
2. Entrepreneurship Education –
  - a. 93 entrepreneurs graduated from BEDC's 5 multi-week entrepreneurship education courses. BEDC reduced the cost of courses by 50% to allow more accessibility to the courses.

- b. 90% of webinars covering a variety of topics aimed at assisting entrepreneurs during COVID-19 were offered complementary.
  - c. From April 2020 to November 2020, 1,091 business owners attended 23 webinars, doubling the 2019 numbers for quarterly seminars held in person.
3. Entrepreneurship Financing – As a direct result of supplementary grant funds in the fiscal year’s budget, 158 businesses have been supported during COVID-19. Multiple applications are still actively being processed by BEDC officers for all funding types.
4. Entrepreneurship Catalyser – Six BEDC programmes supported 165 businesses in 2020 bringing 150 jobs to the market.
- a. New Start-ups Payroll Tax Relief - 32 new businesses took advantage of this relief resulting in 45 new jobs brought to the market.
  - b. Economic Empowerment Zone (EEZ) Payroll Tax Relief - 18 businesses formed in the EEZs and took advantage of this Tax Relief bringing 26 new jobs to the Zones.
  - c. The Enterprise Bermuda Incubator - 8 new startups completed this 12-month intensive programme.
  - d. Vending Licenses - 97 licenses were approved during this year with 61 of them being new.
  - e. The Summer Student Entrepreneurship Programme - student entrepreneurs shifted to online and e-commerce businessmodels, where:
    - i. 10 new jobs were created.
    - ii. students were seeded loan funds, training, and mentorship to establish businesses that earned a total of \$12,347 in revenues over an 8-week period during COVID-19.

In the fiscal year 2021-2022, BEDC will continue to enhance its products and services to provide further opportunities for Bermuda’s local micro, small and medium sized businesses with the goal of facilitating economic growth and empowerment in this sector. BEDC will continue to provide advisory services, financial support, entrepreneurship education and continue to develop a thriving entrepreneurial ecosystem in Bermuda.

To find out more about BEDC and how their team may be able to assist you, visit their website at [www.bedc.bm](http://www.bedc.bm), email [info@bedc.bm](mailto:info@bedc.bm) or call **292-5570**.

### EMPLOYEE ASSISTANCE PROGRAMME

The Employee Assistance Programme Bermuda (“EAPB”) is recognised throughout Bermuda as a leader in providing employer/employee assistance services for organisations. Since 1987, EAPB has represented over 200 organisations in a variety of industries. EAPB is the only accredited Employee Assistance provider in Bermuda, having been initially accredited in 2013, and re-accredited in 2017.

EAPB’s vision statement is to “create an emotionally healthy community by empowering employees to address personal issues that may be impacting work performance.” As such, EAPB continue to offer a range of services for their member companies which include the following:

#### Direct Services

- Assessment
- Short-term counseling
- Case management and follow-up
- Referrals to community resources
- Management consultations
- Mediation



## Organisational Services

- Organisational change initiatives
- Crisis intervention/Critical Incident Stress Management (CISM) and response
- Drug Free Workplace policy and programs
- Policy Development

## Training

- Employee training programs and promotion
- Supervisory/Management training and promotion
- Mental Health training programs
- Customised training programs/offering

As a result of the pandemic, EAPB evolved from an in-person model to offering counseling, training and management consultations via telephone, video conferencing and internet-based services. This allowed EAPB services to continue during the Stay at Home orders over the past year and has offered increased flexibility to clients in accessing services.

In April 2020, EAPB partnered with The Argus Group to provide free psycho-educational seminars to the Bermuda community to address personal, professional, and mental health topics. The Wellness Wednesday Webinar Series held during April, May and June were well-attended and addressed a wide range of timely topics including “Developing a Mental Health Plan”, “Conflict Resolution Skills” and “Anxiety & What It Costs Us”, to “Self-Care at No Cost”, “Navigating Change with Emotional Intelligence (EQ)”, “Improving Couples Dynamics” and “Improving Child Dynamics” to name a few.

EAPB also offered “Friday Focus Groups” which provided a confidential space to address family issues in a closed-group setting. Approximately seventy people attended these support groups which covered topics including “Dealing with Grief & Loss”, “Managing Addictions”, “Single Parenting: & Co-Parenting” and “Preventing Compassion Fatigue for Professional & the Everyday Caregiver”.

In total, the Wellness Wednesday Webinars and Friday Focus Groups had 1,181 participants in a 3-month period. As a result of the positive response by the community, the decision was made to continue to provide the Wellness Wednesday Webinars and The Argus Group generously sponsored the 2021 series so that it remains free to the public.

## CONTACT:

22 Church Street, Fourth Floor, Unit 410,  
Hamilton, HM11  
Email: [info@eap.bm](mailto:info@eap.bm)  
Web: [www.eap.bm](http://www.eap.bm)  
Tel: **292-9000**

## UNEMPLOYMENT BENEFIT APPLICATION TIPS

Unemployment benefits have been made available for:

- People unable to work due to the Public Health (COVID-19 Emergency Powers) (Stay at Home) Regulations 2021
- People placed under mandatory medical quarantine per the Public Health (COVID-19 Emergency Powers) (No. 3) Amendment (No. 3)
- People affected by bar, restaurant, members club and night club closures per the Public Health (COVID-19 Emergency Powers) (No. 3) Amendment (No. 3)
- People affected by the mandatory business closures per the Public Health (COVID-19 Emergency Powers) Amendment (No. 6) Regulations 2021

- 8E (1) The following shall remain closed at all times
- indoor places of public entertainment including bowling alleys, cinemas, concert halls, church halls, auditoriums and theatres;
- gyms and other sports clubs.

If an application has incorrect, incomplete or insufficient information or documentation, this will delay the processing of the application. When submitting an application, please pay close attention to the following details:

- Bank verifications need to show the employee's complete bank account number and the employee's name. If submitting an HSBC Bermuda bank statement, do not simply send the top portion with the box on the right hand side if it does not have the account number in it. The full account number should be 12 digits long. Applicants can redact account balances for privacy.

- The name on the bank account must match the name on the applicant's ID and their application.
- If approved for the benefit, funds can only be deposited into an account that has the applicant's name on it. The funds will not be deposited into an account that does not have the applicant's name on it.
- Any letter submitted from employers must be signed by the person providing the letter.
- Make sure the employer's email address field on the application is complete with the employer's email address and not the employee's.
- Carefully review the application before clicking the 'Submit' button.

If a person has submitted an application and has not received an email confirming it has been approved or has not received payments, it is likely the application is waiting for action. Below are helpful tips for ensuring an application is complete:



- Check emails to see if the Ministry of Finance has requested documentation, i.e. bank verification, government issued ID, work permit card, etc.
- Check with your employer or human resources department to confirm they have received an email with a link to the application. This email is essential as the employer must verify the employment information the applicant has submitted. If they have received this email, they must complete it and send it back to the Ministry.
- If the employer has not received an email link to the application, the applicant should contact the Ministry. It is possible the employer's email address was entered incorrectly in the online application form.

Unemployment benefit recipients should receive an email from the Ministry with a link requesting their employment information. In order to receive their remaining benefits, they must click the link and provide the information. If an unemployment benefit recipient has not received an email, they should contact the Ministry of Finance to provide them with their current employment status (i.e. still laid off due to COVID-19 restrictions or returned back to work). Outstanding payments will not be released until the Ministry has confirmed a person's current employment status. This is a measure the Ministry is taking to avoid overpayments of the benefit.

Online applications for the unemployment benefit can be made by visiting [www.uba.gov.bm](http://www.uba.gov.bm). If you have any questions or concerns about your unemployment benefit application, please email [unemploymentbenefitsteam@gov.bm](mailto:unemploymentbenefitsteam@gov.bm).

## THIRD SECTOR COORDINATED CRISIS RESPONSE EFFORT

The Coordinated Crisis Response Effort, which had coordinated the availability of essential services and prepared a list of service providers to assist the public in getting access to them, brought its work to a close in May 2021 — over a year after the start of the pandemic.

The Bermuda Community Foundation (“BCF”) has continued to manage the Bermuda Emergency Fund and a Phase II “Hardship Fund” to date, to provide funding support to essential service providers. Nonprofits who receive support from the two emergency funds have reported that people who have been the hardest hit by the pandemic are still in need of meals and grocery provisions as well as other hardships (e.g. subsidised prescription medication, small stipends to meet basic expenses like utilities, access to Wi-Fi, electricity subsidies, water. An updated list of where the public can go for needed hardship support services has been published by the Inter- Agency Committee on the BCF website, at [www.bermudacommunityfoundation.org/COVID-19ampOther/BermudaEmergencyFund/COVID-19EmergencyFundDisbursements.aspx](http://www.bermudacommunityfoundation.org/COVID-19ampOther/BermudaEmergencyFund/COVID-19EmergencyFundDisbursements.aspx)

With support from the Bermuda Health Council, the BCF continues to fund the “Mental Health Hotline 543-1111”, which has been faithfully staffed by the Bermuda Psychology Association, under the leadership of Dr. Alison Daniels. Resources and tips for emotional wellbeing can be found at their new website: [www.bermudapsychology.com](http://www.bermudapsychology.com).

The community has been very generous in providing support to ensure the essential and emergency services get funded through BCF and directly to the leading service providers, particularly in the area of food provision. However, in acknowledgement that the nonprofits themselves were dealt a heavy blow in terms of disrupted programming and fundraising, BCF established the Nonprofit Stabilisation Fund with its annual grants budget.



The Nonprofit Stabilisation Fund provided core support for the operational costs of local nonprofits working across the whole spectrum of quality of life programmes and services. The grant funding was made possible by additional contributions from several generous donors such as the Centennial Bermuda Foundation, Allan & Gill Gray Foundation, Renaissance Re, Freemasons Fund for Bermuda, Third Point Re and TGF Charitable Trust. Updates on this and other work can be found at [www.bcf.bm](http://www.bcf.bm).

## PRICE PROTECTION FOR CONSUMERS

It is common for consumers to notice an increase in the price of a product. Price fluctuation is a normal occurrence dictated by world events such as natural disasters, gas shortages, companies going out of business and war. "Price gouging" is a term referring to when a seller increases the prices of goods, services or commodities to a level much higher than is considered reasonable or fair. It is considered exploitative during a period of emergency. Common examples include price increases of basic necessities after hurricanes and other natural disasters, major disease outbreaks and pandemics. Under section 11(b)(ii) of the Consumer Protection Act 1999, unreasonably high pricing is an unfair business practice and an unconscionable act.

Inversely, when the supply of the good increases, the price usually falls. A similar relationship exists between price and demand. When the demand for the good increases, the price of the good also increases. When costs rise excessively due to a lack of supply or boost in demand, it is often referred erroneously to as "price gouging", however this may be a natural characteristic of the competitive free market.

Before concluding a retailer is engaging in price gouging, consider these questions:

1. Is this product the same as you usually buy? Compare it to the price of the same brand at another store. Also note if there were any weight or title changes.
2. Where is this product or its components manufactured? Remember some product

parts come from different countries and assembled elsewhere. Consider whether there has been any material shortages or natural disasters in that country that would affect the price.

3. Does this product price grossly exceed the price at which similar goods are readily available to consumers on island?

If a consumer has concerns about price gouging, they should speak with the business in order to give them an opportunity to give an explanation or check if it is mispriced. The Ministry of Home Affairs, in conjunction with the Cost of Living Commission, is managing allegations of price gouging in Bermuda. Any price irregularities in the Bermuda marketplace can be raised with the Cost of Living Commission for review by completing the Price Gouging Complaint Form at [www.forms.gov.bm](http://www.forms.gov.bm). This is an anonymous form and will be used to inform the chairman of the Commission for further investigation under his authority. It is not within the Commission's remit to issue refunds but to regulate business practices and protect consumers from such practices.

If a consumer is satisfied the pricing in question meets the criteria of "price gouging", they can make a complaint with Consumer Affairs who can be contacted by email at [consumers@gov.bm](mailto:consumers@gov.bm) or by phone at **297-7627**.



## EPIDEMIOLOGY AND SURVEILLANCE UNIT

Recently, more people have become aware of the Epidemiology and Surveillance Unit (“The ESU”) given their pivotal role in the pandemic response, but this Unit also does much more.

The ESU is positioned within the Office of the Chief Medical Officer, Ministry of Health. The ESU has four full-time employees, who work under the direction of the Chief Medical Officer to carry out core public health functions for Bermuda.

The full-time staff include the Surveillance Officer, Surveillance Nurse, Nurse Epidemiologist and Epidemiologist. The Surveillance Officer is responsible for collection and collation of health data (cases of select diseases and syndromes) through the sentinel surveillance network of 41 reporting sites, including physician offices, laboratories and the hospital, and for the coding of mortality data to determine underlying cause of death for all deaths occurring in Bermuda. The Surveillance Nurse uses the information collected to conduct any necessary investigations to prevent further spread of these diseases or syndromes. This includes conducting contact tracing and putting in place any other preventive public health measures. This is overseen by the Nurse Epidemiologist, who is more involved in complex cases, outbreak investigations, policy setting and preparation of disease-specific response plans. The Epidemiologist analyses data and is responsible for most local and regional health data reporting.

All of this work is done in collaboration with local partners, such as different sections within the Department of Health (including but not limited to Environmental Health, Health Promotion, and Community Health Nursing), and regional and international public health agencies: Caribbean Public Health Agency (CARPHA), Pan-American Health Organization (PAHO) and Public Health England (PHE).

During the pandemic, the routine work must continue to be done to prevent outbreaks of other diseases and to maintain existing gains in public health. As an example, the Surveillance Officer was instrumental in the management of

the COVID-19 call centre while the Surveillance Nurse now has a lead role in the investigation of adverse events following immunizations. Also, the ESU, having the key role in Bermuda’s Public Health Emergency Response Team, can engage additional resources as needed. The Nurse Epidemiologist has led a strong team of case managers, contact tracers and persons involved in traveller and school surveillance. The Epidemiologist leads the Health Data team to ensure that COVID-19 statistics are provided in a timely manner as this data is used to inform decision-making and policy.

Over the past year, over 2,000 cases of COVID-19 have been reported and Bermuda has experienced three periods of increased COVID-19 transmission. Under the guidance of the Chief Medical Officer, the ESU has and continues to provide evidence-based guidance for managing a pandemic, ensuring that data and information is used for effective public health action and delivering on the actions needed to manage this pandemic.

More information on the activities and reports of the Epidemiology and Surveillance Unit can be found at [www.gov.bm/health-information](http://www.gov.bm/health-information) or by email at [epidemiology@gov.bm](mailto:epidemiology@gov.bm). COVID-19 specific information can be found at [www.gov.bm/coronavirus](http://www.gov.bm/coronavirus) and [www.gov.bm/coronavirus-covid19-update](http://www.gov.bm/coronavirus-covid19-update).

## THE COST OF FORGETTING

Did you know it costs \$65 an hour to search archived files containing information on child support payments if one cannot provide a case reference number? This only applies to archived cases. In order to request a search for a file, you must write to the intake office who would give the request to the Magistrate to be approved. If you have questions about this service, you can contact the Magistrate’s Court at **295-5151 ext. 1230**.



## THE DEPARTMENT OF PLANNING

The Department of Planning (“the Department”) operates in accordance with the Development and Planning Act 1974 and the Building Act 1988.

The Department of Planning comprises the following sections:

- Forward Planning – prepares development plans (involving planning policy and zonings for the island. This involves research of development trends, analysis of demographic information, preparation of special studies, etc. The current operative development plans for the island include the Bermuda Plan 2018 which covers the island except for the City of Hamilton, and the City of Hamilton Plan 2015. The Department anticipates releasing a draft North East Hamilton Plan in July 2021; this is a local plan specifically covering the area of North East Hamilton.
- Development Management – implements the development plans through the assessment of planning applications and subdivision applications. The team also provides preconsultation advice for proposals prior to submission.
- Building Control – is responsible for issuing building permits for construction and also performing both building and electrical inspections during the course of construction operations.
- Enforcement – responds to and investigates complaints of unauthorised development. This section also responds to planning searches for property that is in the process of being sold.

**Be careful not to dehumanise those you disagree with. In our self-righteousness we can become the very things we criticise in others... and not even know it.**

**- Unknown**





In August 2019, the Department went 'live' with a new paperless system 'EnerGov'. This system allows for online submissions of all applications. The direct URL for the system is [www.planningenergov.gov.bm/EnerGov\\_Prod/selfservice/BermudaProd#/home](http://www.planningenergov.gov.bm/EnerGov_Prod/selfservice/BermudaProd#/home). The site can also be accessed from the Department's main website. Although the Department has moved to a paperless system, members of the public who do not have access to a computer or internet access can use one of the computer consoles in reception where assistance can be provided. The Department also assists those who only have a paper set of drawings by scanning the documents and entering the application into the online system for them.

The process for members of the public to submit complaints and objections is as follows:

#### **Complaints - to report unauthorised development:**

- Complaints can be submitted anonymously. If complainants include their name, it is kept confidential by the Department.
- The Enforcement section will first review the details and determine if it is a valid planning issue. The Department receives many complaints regarding boundary disputes. The Department does not adjudicate in these matters.
- In accordance with the Development & Planning Act, they ascertain if what has occurred meets the definition of development. If so, the system is checked to verify if planning permission and a building permit is in place for the works.
- If it is deemed as development and no permissions exist, then the Enforcement section proceeds to contact the landowner to acquire more information. This may require a retroactive planning application being submitted by the landowner to the Department for review.

#### **Objections - to planning applications:**

- Planning applications are advertised in the Government's Official Gazette which allows for a 14-day statutory objection period.
- Persons can object to the proposal in writing and any such objection forms part of the file record which is publicly accessible. The objection is assessed by technical officers during their review of the application. The applicant can provide a response to the objection which also forms part of the file record.
- Ultimately, when the application is ready to go before the Development Applications Board for a decision, the Board may consider the submitted objections during their deliberations.

#### **CONTACT:**

Dame Lois Browne-Evans Building, 5th Floor, 58 Court Street, Hamilton HM12  
Email: [planning2@gov.bm](mailto:planning2@gov.bm)  
Website: [www.planning.gov.bm](http://www.planning.gov.bm)  
Phone: 297-7756

#### **THE OFFICE OF THE PRIVACY COMMISSIONER**

The Personal Information Protection Act 2016 ("PIPA") was passed to ensure that individual rights to privacy are protected.

PIPA also created the Office of the Privacy Commissioner for Bermuda as an independent public office. The mandate of the Privacy Commissioner is to regulate the use of personal information by organisations in a manner which recognises both the need to protect the rights of individuals in relation to their personal information and the need for organisations to use personal information for legitimate purposes, among other duties.

PIPA gives individuals the power to say whether an organisation can use their personal information. The Act helps people stay in control of their own lives, but it is up to individuals to hold organisations accountable for their actions

by asking questions and taking action if needed. Privacy Commissioner Alexander White and the Privacy Commissioner team are there to help you in that regard.

To learn more about the Privacy Commissioner and privacy issues, visit the office's website at [www.privacy.bm](http://www.privacy.bm). The website includes resources such as Frequently Asked Questions (FAQs) and a free video training, both available at [www.privacy.bm/legislation-guidance](http://www.privacy.bm/legislation-guidance).

If you have questions, you can reach out directly by calling **543-7748** [-PRIV] or emailing [PrivCom@privacy.bm](mailto:PrivCom@privacy.bm).

### AREAS OF CONCERN

The Ombudsman has noted areas of concern, some of which are detailed below. We would like to make clear that the mentioning of these concerns are not indicative of maladministration by any of the authorities mentioned. In some cases, investigations have commenced. As with any investigation, we cannot prejudge the issue or disclose additional details until it has concluded.

### UNEMPLOYMENT BENEFIT

It was known and acknowledged by the Government that members of the public experienced difficulties attempting to contact the unemployment benefit hotline due, in part, to technical challenges with the phone system. There were also publicly expressed complaints about delays in payments and other payment-related issues.

We appreciate the unemployment benefit programme was implemented in response to an unexpected crisis; difficulties and delays were to be expected. However, we do have concerns about how those difficulties and delays impact persons who are dependent on those practical support services. In light of recent public complaints of delay, we are interested to know how the unemployment benefit application process has improved over the past year and what further improvements are required for the programme to run efficiently. (See page 36 and 37 for useful information about unemployment benefit applications.)

**We repeat what we don't repair.**

**- Christine Langley Obaugh**



## UNRESPONSIVENESS

We are aware of concerns that telephone calls from members of the public to various departments or authorities are frequently going unanswered during business hours and their voice messages not being returned. We remind managers it is important that every effort is made for telephones to be answered. Where this is not feasible, processes should be implemented to compensate for unanswered phone calls and callers should be encouraged to leave messages with assurance they will be checked and responded to promptly. Department heads are reminded to ensure information is provided to the public so that they are informed and know how their queries can be addressed. Where physical offices are closed to walk-ins, this information should be made known and notices should be posted clearly with detailed information so that members of the public know how they can contact a member of staff or leave a message which will be answered. Unresponsiveness can be remedied by communicating with the public to manage expectations of service delivery and putting systems in place to ensure contact from the public is captured and responded to in a timely fashion.

## COVID-19 OVERSIGHT

Our Office began an investigation into the usage and wearing of masks by staff and the supervision of this at the Westgate Correctional Facility. The issue came to our attention after our Office received several complaints. The investigation will carefully consider the safety of the inmates, consistency of the implementation of policies and procedures and any fairness issues raised. We have also raised separate concerns about the provision of alternatives to the nasopharyngeal test. Despite these concerns, we commend the Department of Corrections for its efforts thus far in managing its facilities throughout the pandemic.

## SPECIAL EDUCATION

As part of our complaint handling work, we have received individual complaints from parents of students with special needs in the public education system. Given similar issues were identified during the course of our investigations into these matters, the Ombudsman recommended the Department of Education (“DOE”) improve its record-keeping practices for complaints and concerns raised about students’ education and monitor how information is recorded in school files for students receiving special education services. She has also recommended the DOE review its compliance with the Government’s 2007 National Policy for Disabilities to ensure it is in alignment with Plan 2022 and any other more recent guidance. We are continuing our work in this area including follow-up with DOE to ensure the implementation of the Ombudsman’s recommendations.

## REGULATORY BODIES AND CONSUMER CONCERNS

We continue to be aware of consumer complaints about banks and cellular service providers. As matters concerning private businesses are not within our Office’s remit, we have referred members of the public to raise their unresolved complaints with the business and, failing that, to raise their concerns with Consumer Affairs and with the relevant regulatory body such as the Regulatory Authority (“RA”) or the Bermuda Monetary Authority (“BMA”).

In the course of our inquiries, we learned the RA has a Consumer Advocate who receives individual complaints from consumers, although there are limitations to what they are able to address and how. Information on how to submit a complaint can be found on the RA’s website at [www.ra.bm/frequentlyasked-questions/](http://www.ra.bm/frequentlyasked-questions/).



The BMA does not provide an integrated process for addressing consumer issues directly even where such issues are known to the Authority. The BMA is undergoing further regulatory changes which involve changes to carry out its regulatory role to better address issues consumers may face with financial institutions in Bermuda. The BMA does have some limitations in the actions it can take within the existing framework. There is significant progress in these developments to adjust the regulatory regime which this Office has expressed concerns about and pursued in previous reports. The consultation paper on market conduct December 2020 is available on the BMA website at [www.bma.bm/document-centre/discussions-consultationpapers-market-conduct](http://www.bma.bm/document-centre/discussions-consultationpapers-market-conduct).

We continue to encourage regulators to be aware of consumer complaints and provide assistance where they are able to do so within their regulatory frameworks.



## LEGAL AND ADMINISTRATIVE REGIME AROUND MEDICAL CANNABIS

Our Office is aware of an instance where a member of the public was granted a medical cannabis licence issued by a former Minister under section 4(2)(b) of the Misuse of Drugs Act 1972. The cannabis was prescribed by their physician. Although the person was granted a licence, it was not clear how they would be able to use it to acquire the prescription. The legislation under which the licence was granted would allow them to import cannabis for medical use but there was no administrative process to facilitate this. When we became aware of the matter, the person affected expected the necessary legislative and administrative changes were imminent to progress cannabis licensing legislation. However, legal and administrative mechanisms for medical cannabis licensing has remained unchanged. If legalisation of cannabis for medical use is permitted for patients, the public must be properly informed and educated as to how they can apply for a licence and how they can use it to acquire medical cannabis.

## LOCKDOWN AND RECREATION CONDITIONS

We are investigating concerns about whether the lockdown and recreation conditions of the housing units at the Westgate Correctional Facility are in line with local legislation as well as international best practice standards as outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners, also referred to as the Nelson Mandela Rules. We were made aware of concerns that persons who have lost their liberty had limited access to recreation (specifically open-air), were not enjoying the minimum daily recreation hours, were locked down in their cell longer than the maximum legislated and international standard and were required to have recreation alone, denying them meaningful human contact.

United Nations. Resolution adopted by the General Assembly on 17 December 2015. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 8 January 2016, <https://undocs.org/A/RES/70/175>. Accessed 28 June 2021.

## SYSTEMIC INVESTIGATION UPDATES

### CRIMINAL INJURIES COMPENSATION BOARD

Crime does not pay but it sure does cost. In addition to the significant public funds required to operate our criminal justice, police and penal systems, victims pay in terms of physical and psychological pain, financial loss, resources and time. The people of Bermuda, through their Legislature, have indicated a desire for victims of crime to receive some compensation for their injuries. This desire is manifest in the provisions of the Criminal Injuries (Compensation) Act 1973 which establishes the Criminal Injuries Compensation Board (“CICB”).

We have had concerns about the well documented delay claimants have experienced in having their claims processed by the CICB. In our Annual Report 2019, we advised that the Board did not have a dedicated budget for administrative infrastructure that one might expect of a modern administrative tribunal. We also noted that the Board’s constituting legislation was amended which gave the Minister of Legal Affairs the authority to appoint members to the Board. Previously, Board members were appointed by the Governor on the advice of the Minister. This amendment, we understood, was to help to streamline the appointment process and minimise delays in having members commence their important work.

The amended legislation also now prescribes that the Chair and Vice Chair are to be experienced lawyers; in the case of the Chair, ten years’ experience and the Vice Chair, eight years’ experience. Previously the Chair was required to be a judge of the Supreme Court. This change, we understood, would ease demand on judicial resources. We understand on 17 May 2021, a new Board was appointed with effect from 1 January 2021.

During the 2020 reporting period, we were able to progress our investigation. We conducted research on best practices for administrative tribunals and looked to other jurisdictions for context.

Our fact-finding phase in this investigation is complete and a formal report will be released once we have concluded the discussion on our findings with the CICB.

## BUS CANCELLATIONS

### COMMUNICATION INVESTIGATION

Bermuda’s public transportation service provides an integral tool for maintaining and improving the quality of life. It enables individuals to attend work, thereby enhancing commerce. Students use the bus to attend school and acquire an education. Some people use the bus to get to important appointments and for leisure activities which fosters better mental health and improved productivity. Unfortunately, frequently occurring bus cancellations disrupts and frustrates everyday life.

Our Office commenced an own motion investigation into how the Department of Public Transportation (“the Authority”) communicates bus cancellations. This investigation focused solely on how bus cancellations were communicated and did not delve into the fact there were bus cancellations. Bus cancellations are the result of several factors associated with how the Government allocates scarce public resources. How the Authority communicates bus cancellations is a service delivery issue which is appropriate for ombudsman review.

During the fact-finding phase of our investigation, we requested from the Authority information on a variety of issues including but not limited to:

- the current internal process for informing the public on how bus cancellations are communicated;
- the personnel responsible for communicating bus cancellations and how they are deployed;
- the process by which schools and students are informed of bus cancellations;
- the technology used to ascertain when cancellations are required and how they are communicated to the public;



- how the email subscription service works and how many people use the service; and
- what progress had been made in finding a real time passenger information system.

During 2020 we conducted research which gave context to the Authority’s approach to this issue. We canvassed some other jurisdictions to determine how other bus services inform people about cancellations. More generally, we researched best practices on how governments communicate with the people they serve. Our fact-finding in this investigation has concluded and we will provide our conclusions to the Authority before our investigation report is issued.

### AGEING AND DISABILITY SERVICES

Our own motion investigation into how the Department of Ageing and Disability Services (“ADS”) meets its important mandate progressed during the reporting period. For the purposes of our investigation, we also included the Ministry of Health and the Office of the Chief Medical Officer.

Our investigation has evolved into two phases. The first dealt with the effective management of ADS files on seniors who may be at risk of harm or neglect. This entailed a physical review of individual files. For the purposes of determining whether progress in managing files was attained, we reviewed files at various points in time. We also interviewed the staff of ADS. We noted that ADS has made improvements in effectively managing files and dealing with them in a timelier manner. There were staffing developments and progress had been made in policy development. As with initiatives generally, vigilance is required to maintain improvements.

The second phase inquired into what relationships and organisational design would permit ADS to optimally meet its mandate. Our work on this phase involved interviews with senior public servants, the former Chief Medical Officer, policy analysts and members of the community who have an interest in seniors’ issues and ageing. In 2020, ADS’s reporting structure changed. While it formally reported to the Ministry of Health, it now

reports to the newly established Ministry of Social Development and Seniors. Our work now requires that we understand the benefits and drawbacks of any of the new reporting relationship.

Our work continues and includes contacting witnesses for updates. Research and file analysis is underway. While this investigation represents a significant undertaking for our Office, we are determined to conclude this matter with salient observations and recommendations to enhance protections for some of our most vulnerable family, friends and neighbours.

**Everything negative – pressure, challenges – is all an opportunity for me to rise.**

**- Kobe Bryant**





## STRATEGIC AIM III: CHAMPIONING BEST PRACTICE

### HEY OMBUDSMAN! WHAT IS FAIRNESS?

Fairness is the touchstone of the work of an ombudsman. We assess the decisions, actions and interventions of public authorities to determine whether individuals are being treated fairly. This is very different from the legal process where an individual's legal rights are determined by the Courts and tribunals. We are often asked by individuals and the people who work in public authorities, "What exactly is fairness?" This is a legitimate question as we all have varying and sometimes vague notions of fairness.

Ombudsman often call out public authorities for arbitrary behavior. Therefore, ombudsman offices are required to have a consistent and predictable approach for applying the concept of fairness during the investigations we conduct. Ombudsman often use the "fairness triangle" to explain and apply the concept of fairness. It considers the three different aspects of fairness. The three sides of the triangle examine the process, the decision and the relationship between the individual and the public authority. It can be used by individuals to help them determine whether they have been treated fairly. It can also be used by public authorities to assess how their actions relate to various fairness principles.

The fairness triangle is adapted from "The Fine Art of Fairness: A Guide for Fair Practice," by Ombudsman Saskatchewan, and "The Mediation Process: Strategies for Resolving Conflict," by Christopher W. Moore.



### The Process

The process by which a decision is made has to be fair. As in sports, the main focus in determining a fair call is whether the rules have been followed. The first "rule" requires persons affected by a decision be given advance notice that the decision will be made. The notice gives the affected person time to decide whether they wish to make a submission to the decision-maker.

The notice period should be reasonable, and if the person is expected to attend, they should be provided adequate details of where and when the decision will be made.

The person affected by a decision should be given the information that will be considered when a decision is made. This helps to provide people with accurate information they can use to determine the impact of the decision on them and to devise a course of action.

The person affected by a decision must be given a meaningful opportunity to present his or her case. Depending on what is at stake, this may entail a right to be heard in person. Decisions that are less impactful may only require the affected person to have the opportunity to attend a telephone meeting or to provide a written document outlining their concerns.

The person affected by the decision must be given an opportunity to challenge or dispute any evidence that undermines his or her position. This issue more often arises when a hearing is held to reach a decision. Ultimately, the decision-maker wants to make the best decision and that requires having the best evidence.

The person making the decision has to be thorough and diligent when reviewing all information and evidence. This means reading all written submissions, and if a hearing is held, taking the time to ask necessary questions so as to understand all parties' positions.

The decision-maker must be unbiased and not in a conflict of interest. A conflict of interest will arise if the decision-maker's personal interest could be affected by the decision. Even the perception of

conflict of interest can undermine the legitimacy of the decision-making process.

Finally, the decision-maker must give meaningful reasons for the decision. Best practice requires the reasons be given in writing. If this is not possible, some form of notation is required to record the decision. The decision must be understandable to the people affected by it. This requires using clear language and avoiding technical jargon. The reasons for a decision are critical not only to the parties but also for any other entity that must review the decision, whether a manager, a tribunal, or the Courts.

### **The Decision**

A decision must be substantively fair. It must hold up to scrutiny and meet several standards. The first is that the person making the decision must have the authority to do so. Sometimes with the implementation of new programmes there can be confusion as to precisely who the decision-maker is. The preference for expediency may result in an employee signing off on a decision without the permission of a manager or without the authority to do so.

The decision must be well-reasoned and understood by the persons affected by it. Decision-makers often think that because they have discretion as to how a decision is made, discretion cannot be exercised arbitrarily. The exercise of discretion requires that some indication be given as to how the discretion was applied.

The decision must not be contrary to human rights legislation and constitutional provisions. This means that the decision must not unfairly differentiate between persons based on characteristics outlined in section 2 of the Human Rights Act 1981. People making such decisions should receive basic training in human rights law.

The decision should not be oppressive. This means it should not place unnecessary obstacles or burdens on the persons affected by it. For example, requiring an individual to retain a lawyer when one is not required by governing law, would be considered oppressive.

The period of time in which the decision is to be complied with can be a factor in determining whether it is oppressive. For example, requiring someone to attend in person at an office within 24 hours during a pandemic could be considered oppressive. An oppressive decision is a form of maladministration.

### **The Relationship**

Relationships matter. Research has shown that people negatively affected by professional malpractice are less likely to sue their lawyer or doctor if they had an open and healthy relationship with them prior to the event deemed to be malpractice. The rules for maintaining a healthy relationship between individuals and public authorities are basically the same we all learn from our parents, clergy and teachers. The first is to take the time to listen to what the person has to say who will be affected by the decision. Training in “active listening” is helpful in providing best practices for not only hearing but listening to other people when they speak.

Decision-makers should have discretion in their approach and regard for the context in which decisions are made. For example, it would be inappropriate for the chairperson of a tribunal to approach a person affected by his or her decision prior to it being made. Where conflict of interest is not present, the decision-maker should return phone calls and correspondence in a timely fashion and address reasonable enquiries.

The decision-maker must respect confidentiality. This requirement is also prescribed by ethical considerations and legal protections of information and privacy legislation. Additionally, decision-makers have a statutory duty to maintain confidentiality. The Ombudsman Act 2004 requires that the Ombudsman keep all matters disclosed to her during her work confidential.

When required, decision-makers should apologise when necessary. Decision-makers are human and as such cannot be right all the time. There should be mechanisms such as reviews and appeals which can rectify wrong decisions. Unfortunately

slights and unsuitable behavior cannot be addressed through oversight, so the importance of a heartfelt apology by the decision-maker cannot be taken for granted. We highlighted apology legislation in last year's Annual Report.

## Conclusion

The principles outlined above are not meant to be exhaustive or rigidly applied. They represent, however, a guide for understanding whether an individual has been treated unfairly. They are useful for decision-makers in public authorities when assessing their policies and procedures for making decisions. What follows next is a list of questions that individuals and decision-makers can use when reviewing the three aspects of fairness as contained in the fairness triangle.

Ombudsman Saskatchewan. What is Fairness?, January 2019, <https://ombudsman.sk.ca/app/uploads/2020/01/What-is-Fairness-Jan-2019.pdf>. Accessed 28 June 2021

## FAIRNESS QUESTIONS

Based on the fairness triangle discussed in the previous section of this Report, we have developed a series of questions which can help individuals assess whether they have been treated fairly. These questions will also assist public authorities when they review their policies and procedures to ensure they are compliant with fairness principles. These questions are listed in three sections, each comprising one side of the fairness triangle.

### The Process

- Have I been given reasonable notice that a decision affecting my rights is being made? If I have been given notice that such a decision is being made, is the length of the notice reasonable?
- Have I been given the information that is being used to make the decision? If not, how can I respond to or comment on that information?
- Have I been given an opportunity to challenge the information or evidence that I disagree with that will be used to make the decision?

- Have I been given the opportunity to present new information to the decision-maker? Have I been given an opportunity to state my position, and if so, by what means?
- Do I think the person or persons who made the decision carefully considered all the information provided by me?
- Do I think the decision-maker was impartial and unbiased?
- Have I received reasons for the decision in a format that is clear and easily understood?
- Can I appeal the decision? If so, have I been given sufficient information to start a meaningful appeal?

### The Decision

- Was the decision made within the authority of the decision-maker?
- What was the source of authority, for the decision-maker when the decision was made? Was it legislation, regulation or policy?
- Did the decision-maker use all relevant measures when making the decision?
- Was the decision onerous? That is, can I reasonably comply with it?
- Was the decision reasonable and can I, and all others, readily understand how it was reached?
- Do I feel that I was discriminated against on the grounds prohibited by law?

### The Relationship

- Was the decision-maker accessible? Could I, using reasonable efforts, contact him or her?
- Do I feel that the decision-maker listened carefully to what I had to say and thoroughly reviewed any documents I provided?
- Did I understand the language used in the decision?



- If the decision-maker made a mistake, did he or she acknowledge or apologise?
- If the decision was not in my favor, did the decision-maker provide me with alternate ways to resolve my issue?
- Was I made aware that an appeal or review is available to me if I am dissatisfied with the decision?

## ASSESSING GOOD ADMINISTRATION

Ombudsman offices 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 our Office will consider the cases of complainants and how we will assess the authorities’ delivery of service to the public.

Here is our updated list of resources for exploring what good administration means:

- “Fairness by Design: An Administrative Fairness Self-Assessment Guide” from various Canadian Ombudsman offices in collaboration (2019)
- “Good Conduct and Administrative Practice: Guidelines for State and Local Government” from Australia’s New South Wales Ombudsman (2017)
- “Principles of Good Administration and Good Records Management” from Wales’ Public Services Ombudsman and Information

Commissioner’s Office in collaboration (2016)

- “Administrative Fairness Guidebook” from Canada’s Alberta Ombudsman (2013)
- “Defining Fairness in Local Government” from the Ombudsman Toronto (2013)
- “Principles of Good Complaint Handling” from the UK Parliamentary and Health Service Ombudsman (2008)
- “Principles for Remedy” from the UK Parliamentary and Health Service Ombudsman (2007)
- “A Guide to Principles of Good Complaint Handling” from the Ombudsman Association (2007)
- “Code of Administrative Justice” from the British Columbia Office of the Ombudsman (2003)

Also, for structured guidance to reflect on other complaint handling practices, we refer you to:

- “Being Complained About – Good Practice Guidelines” from the University of Glasgow and Hirstworks (with input from the Scottish Public Services Ombudsman) (2019)
- “Good Practice Guide to Dealing with Challenging Behaviour” from Australia’s Victorian Ombudsman (2018)
- “Complaints Improvement Framework” from the Scottish Public Services Ombudsman (2017)
- “Effective Complaint Handling Guidelines” from Australia’s New South Wales Ombudsman (2017)
- “Complaints: Good Practice Guide for Public Sector Agencies” from Australia’s Victorian Ombudsman (2016)
- “Managing Unreasonable Complainant Conduct Practice Manual” from Australia’s New South Wales Ombudsman (2012)

- “Effective Complaints Management Self Audit Checklist” from Australia’s Queensland Ombudsman (2006)

If unable to locate any of these resources online, contact our Office for an electronic copy.

## **DEMONSTRATING ACCOUNTABILITY**

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

Our progress with closing cases, while receiving new cases, has remained steady. Based on the past five reporting years, we can report that:

- Between 2016 and 2020, on average, 21 new cases were received and 21 cases were closed every month.
- The fewest new cases opened in a month was 10, in June 2017, and the most was 49, in August 2016.
- The fewest cases closed in a month was 5, in April 2020 and November 2017, and the most was 45, in December 2015.
- Between 2016 and 2020, on average our busiest month for receiving new cases is July and for closing cases December.



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

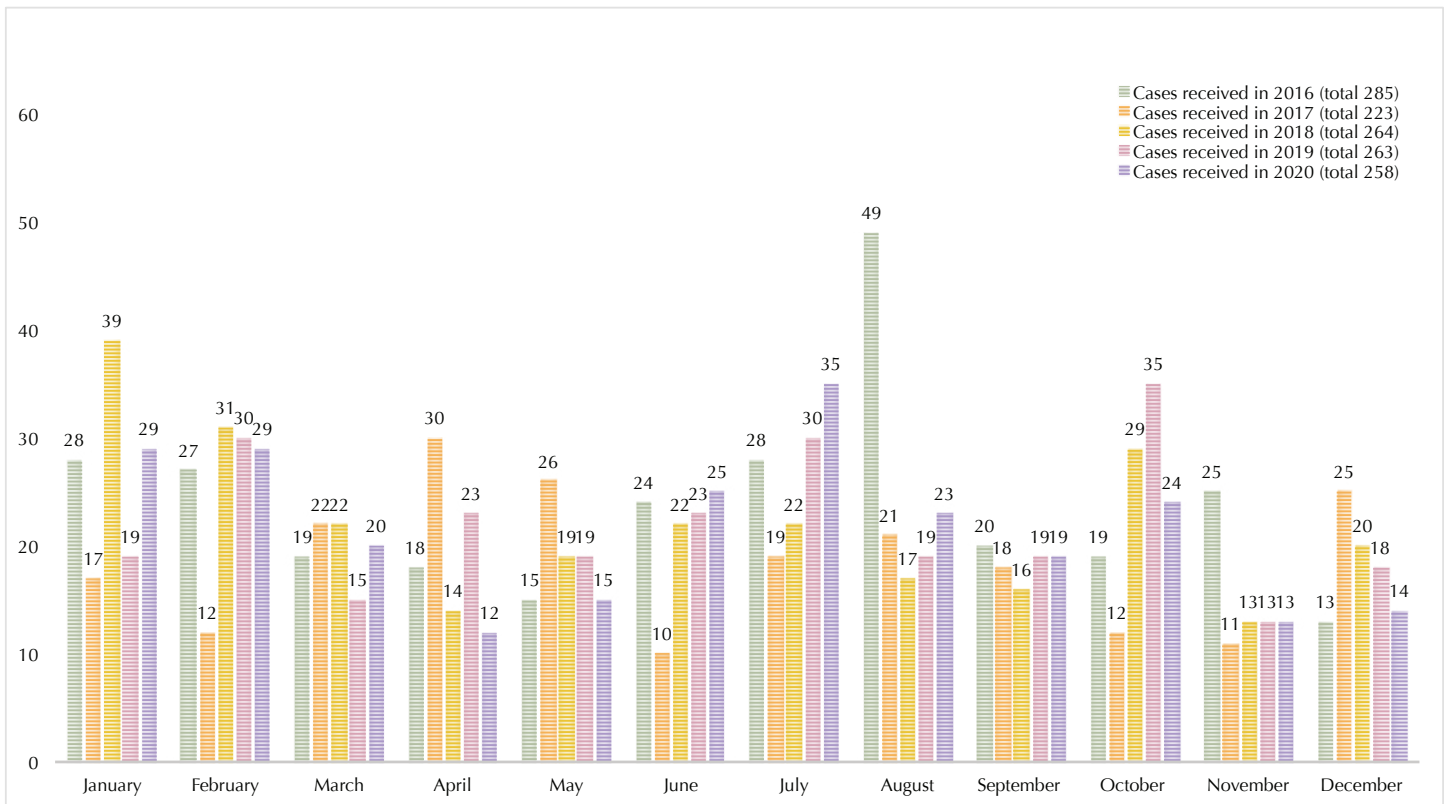
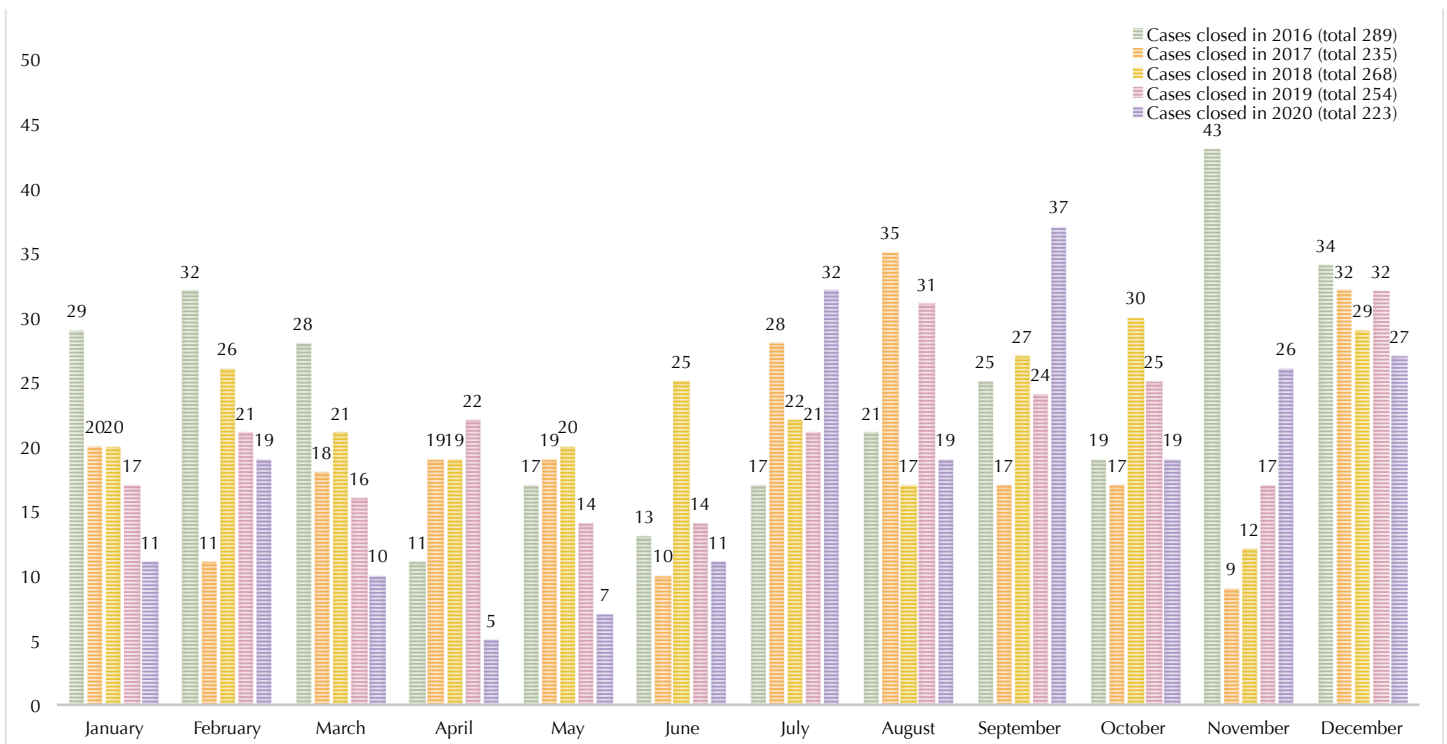


Figure I: Cases closed per month: 5-year glance





**Figure J: Outstanding complaints carried into each year: 5-year glance**



We continue working towards carrying over fewer outstanding complaints at the end of each calendar year. For complaints carried into the next year from all prior years, our steady success with having a lower count was interrupted in 2019 and 2020, as outlined in Figure J.

However, when we focus on our complaint performance for new complaints received in its reporting year alone (excluding the outstanding complaint balance from the prior year), our trend remains steady. For the past 4 years, we have reduced the percentage of open complaints compared with the year’s total received complaints (see Figure K). In 2020, we carried over the lowest percentage – a 6 percent decrease from the previous year.

**Figure K: Percentage of complaints that remained open after the year they were received**

Year	Open	Total	Portion
2020	11	192	<b>6.00%</b>
2019	25	214	12%
2018	30	166	18%
2017	32	126	25%
2016	53	157	34%
<b>Average</b>	32	170	19%



As stated in last year’s report, we believe our ideal carry-over count, from month-to-month, will be approximately 20 cases. This is based on the data as shown in Figures H and I.

## STAFF TRAINING

A defining characteristic of an ombudsman and their teams is that they are specially trained for the unique and specialised nature of the work. We are specialists in dispute resolution. Ombudsman training is designed to share practices, standards, research and strategies at international conferences and specially designed professional development programmes. Local trainings provide insight into positive developments and challenges at home and allow us to meet others from offices with which we work. Such opportunities also help us to establish relationships which become as valuable as the training sessions themselves.

Our team was unable to participate in many training opportunities in 2020 due to the pandemic. Here is a summary of those we were able to take advantage of.

In February Investigations Officer, Howard Ebbin, and Investigations Officer, Kristen Augustus, attended the Mental Health First Aide Training course facilitated by Psychologist, Dr. Shawnee Basden and Physiotherapist, Shanay Scott of the Bermuda Hospitals Board (“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 be in crisis.

The Ombudsman, Victoria Pearman, Investigations Officer, Howard Ebbin and Investigations Officer Kristen Augustus attended a JustisOne ‘Optimising Your Research Experience’ training webinar in October facilitated by Mary Ibrahim of Vlex. This webinar was beneficial as it taught participants how to use the JustisOne platform to enhance their legal research.

In November Ms. Pearman attended a virtual seminar hosted by the Institute of Latin American Ombudsman on “Human Rights in the Framework of Exceptional Situations and the Role of Human Rights Institutions”. Later that month the Ombudsman also participated in a webinar organised jointly by the IOI, the Israeli Ombudsman and the Association of Mediterranean Ombudsman (AOM). The theme of the webinar was “COVID-19 and the Ombudsman” and Ms. Pearman spoke on “Rising to the Challenge of a Pandemic”.

Virtual trainings and webinars have become practically commonplace over the past year as a safe and preferred way to facilitate learning opportunities. Collectively our team have participated in 20 trainings so far in 2021 already and we look forward to providing a full report on them in our Annual Report 2021.





## AFFILIATIONS

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



CAROA – Caribbean Ombudsman Association

[www.caribbeanombudsman.com](http://www.caribbeanombudsman.com)

The Ombudsman continued to advocate for greater collaboration and stronger collegial relationships between CAROA and other regional organisations such as the Institute for Latin American Ombudsman (ILO)



FCO – Forum of Canadian Ombudsman  
[www.ombudsmanforum.ca](http://www.ombudsmanforum.ca)



IOI – International Ombudsman Institute  
[www.theioi.org](http://www.theioi.org)

In 2020, the Ombudsman continued to serve as the Caribbean Director and Regional President of Caribbean and Latin American Region of the IOI for an additional year due to the pandemic until May 2021.

## OMBUDSMAN ASSOCIATION

OA – Ombudsman Association  
*(formerly British and Irish Ombudsman Association)*  
[www.ombudsmanassociation.org](http://www.ombudsmanassociation.org)



USOA – United States Ombudsman Association  
[www.usombudsman.org](http://www.usombudsman.org)





## SUPPLEMENTARY RESOURCES

### COMPLAINT PROCESS FAQ'S

#### What can you do once I make a complaint?

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

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

#### What happens if you investigate my complaint?

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

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

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

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

## **What kind of financial payments can the Ombudsman recommend?**

The Ombudsman can recommend financial consolation and financial compensation payments.

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

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

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

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

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

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

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

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



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

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





## COMPLAINT DISPOSITIONS

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

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



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

Extra lines: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ABOUT OUR SERVICES

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

Agree  Neither agree nor disagree  Disagree  I do not know

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

Agree  Neither agree nor disagree  Disagree  I do not know

3. Staff listened to me and understood my complaint.

Agree  Neither agree nor disagree  Disagree  I do not know

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

Agree  Neither agree nor disagree  Disagree  I do not know

5. Staff treated me with courtesy and respect.

Agree  Neither agree nor disagree  Disagree  I do not know

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

Agree  Neither agree nor disagree  Disagree  I do not know

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

Agree  Neither agree nor disagree  Disagree  I do not know

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

Agree  Neither agree nor disagree  Disagree  I do not know

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

Agree  Neither agree nor disagree  Disagree  I do not know

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

Agree  Neither agree nor disagree  Disagree  I do not know



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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

14. Staff treated me without discrimination and prejudice.

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

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**Is that your final answer?**

**- Regis Philbin**



*For The  
Good Of  
The Public*



*And Those  
Who Serve  
The Public.*

GAVIN  HOWARTH

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Annual Report 2020  
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