

# Ombudsman for Bermuda



**ANNUAL  
REPORT  
2018**

### **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.

Our Office logo uses the Bermudiana to represent the island's nine parishes.

### **SOURCE:**

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



**Front cover photograph credit:**

**Bermudiana Cluster**

Gavin Howarth | [bermudascenics.com](http://bermudascenics.com)



## OMBUDSMAN FOR BERMUDA

18<sup>th</sup> June 2019

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 2018.

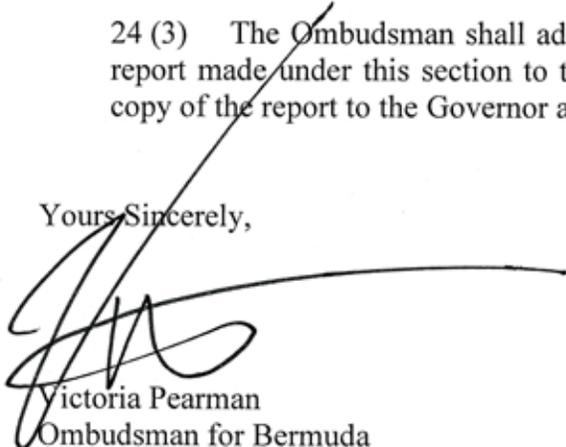
This Report is submitted in accordance with section 24(1) and (3) of the Ombudsman Act 2004 which provides:

### **Annual and Special Reports**

24 (1) The Ombudsman shall, as soon as practicable and in any case within six months after the end of each year, prepare a report on the performance of his function under the Act during that year.

24 (3) The Ombudsman shall address and deliver his annual report and any special report made under this section to the Speaker of the House of Assembly, and send a copy of the report to the Governor and the President of the Senate.

Yours Sincerely,



Victoria Pearman  
Ombudsman for Bermuda

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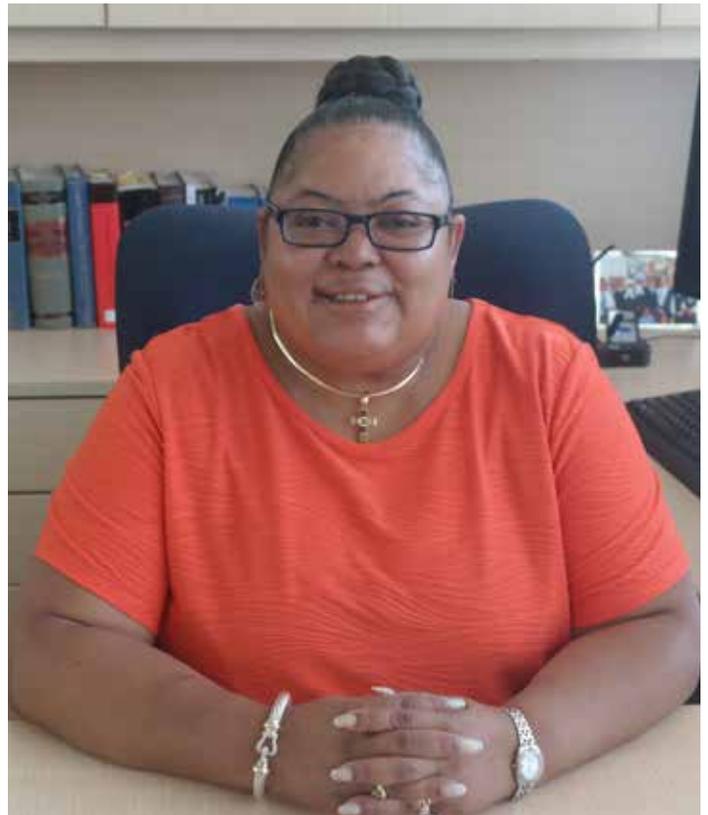
## OMBUDSMAN'S MESSAGE

As I begin my sixth year as Ombudsman for Bermuda, I am pleased to present the Annual Report 2018 on the work of this Office for the period 1st January through 31st December 2018.

In 2018, we were contacted about 166 complaints and 98 enquiries by over 230 people, and overall we handled 309 cases. This number includes 13 cases which were initiated by my own motion, including three systemic investigations. It is important that an ombudsman can initiate an own motion investigation even where there is no complaint.

'Own motion' means the complaint starts with a decision by the Ombudsman and may not be initiated in direct response to a complainant. Individuals may be unable or reluctant to pursue a complaint with the Ombudsman for various reasons. The Ombudsman may also learn of possible maladministration other than through a complaint. 'Systemic' refers to something affecting a group or a whole system, which goes beyond individual circumstances and requires a broader view to help bring about wider improvements. I aim to update you on these systemic investigations, which relate to senior abuse reporting, public bus cancellations and delayed criminal injuries compensation applications, in my next annual report. These investigations require careful consideration and take time and resources to conclude.

During this reporting year, we took action and investigated concerns raised in the public domain, which we determined were matters in the public interest. This was warranted due to the potentially severe impact on certain sectors of the island's population. Issues included delays in hearing applications by the Criminal Injuries Compensation Board and the Government's communication about public bus cancellations and delays. We highlighted the latter in a media



release on 9th September 2018. See pages 37 and 40 for brief commentaries on those cases.

We continued to prioritise senior abuse complaint oversight and in this report share my Office's first detailed update, on page 38. We also continued to follow-up with the Bermuda Monetary Authority on consumer banking issues oversight and provide another update on those ongoing efforts, on page 40. We continued to discuss with the Bermuda Hospitals Board (BHB) its progress on implementing recommendations I made in 2015, stemming from an investigation into an individual complaint; see page 19. Some recommendations required significant time and resources and have been substantially implemented by the BHB. The implementation of a centralised BHB e-mail system to include community physicians was completed in 2018. With oversight by the Bermuda Medical Council and cooperation by community physicians, this initiative will benefit users of King Edward VII Memorial Hospital's emergency department.

Our ongoing focus with the Ministry of National Security and the Department of Corrections yielded more results during 2018 than previously reported on, as highlighted on page 20. In this matter, staying the course was necessary. For instance, cases about the Department of Corrections under the Ministry of National Security occupied almost a third of our 2018 caseload. The number of complaints increased due to our outreach and greater access. The Ombudsman Act 2004 expressly mentions complaints by persons in custody. It is important that they are not deprived access to this Office because they are incarcerated. We have advocated for greater access to our Office and for strengthening complaint handling by the Treatment of Offenders Board for persons in custody who live behind facilities' walls and may be out of sight and out of mind. Their rights may not be seen as important by the community. The increased number of complaints being made does not mean they are all upheld or that the Ombudsman favours these complainants. Fairness requires these complaints not be ignored.

This Office must consider measures to assist authorities to improve their public service delivery – an exercise which appears to me to be rooted in time. As I reflect on the work achieved during my five years as the Ombudsman for Bermuda, I see how certain matters which were raised early on are only now coming to fruition in any measurable sense. Good examples relate to the BHB's efforts to improve and streamline its communication with community physicians and an initiative to encourage all public authorities to implement an internal complaint handling process. The fact that things take time is less useful of an observation than exploring why, in what ways and with what effects the passage of time has on matters of public importance and on what is reasonable and what is too long.

We have many competing priorities and limited resources which must be apportioned to carry

out our work. I have seen that certain issues inherently require time to be resolved due to complexities, such as an authority having to allocate considerable public funds to make it happen. Other ideas may take time to develop because they are more conceptual than practical at first glance. Change often elicits resistance, and some people will not even consider new approaches until they are trendy – and only then are they acceptable. In limited cases, certain sensitive issues feel as if they drag on for unreasonable durations despite the best will in the world, without change or with change at a pace which is barely discernible. It must be noted that some things will happen in their own time rather than what we might think is the right time. Bermuda Easter lilies typically make a very brief appearance in the early spring. This year, they are in full bloom in the middle of June.

People are also affected in different ways depending on their relationship with time as a natural part of life's journey. There will be matters more relevant to young people being served by the public education system and to seniors depending on benefits, for instance, than would be for other demographics. But the mere fact that a gap between the generations exists, which colours our perspectives, should not lead us as a community to regard all that is old as passé and all that is new as progress. This would be an error, which may be somewhat naturally corrected by the passage of time.

This gap in the uses and application of technology exists even amongst my own team at times, which means that in my daily work I am not immune to the challenges this may bring. I am a member of the working population which holds fast to print and for practical reasons am sometimes wary of reliance on the electronic record. This may mean less risk because I am not betrayed by physical files, including notes scribed by hand.

I admit to feeling as if I am a voice in the

wilderness when raising concerns in discussing the important matter of how information is communicated by authorities to the public. Good communication is a guiding principle for an ombudsman. As a way to reduce costs and also improve efficiency, the Government introduced an electronic version of the Official Gazette on 1st November 2018. Some would argue that: the world changes and people have to adapt; people are responsible for their learning; and progress cannot be slowed for those who are resistant or slow to change.

The challenge is the unstated assumption that electronic communication is superior and is progress which justifies its prominence and advancement. But is it truly progress if we know that a sector of the public, which used to have access to information through a wider communications platform including radio and newspapers, no longer can obtain necessary public information through those mediums? Is more information and less communication really progress? As members of the public, don't they have a right to know also? We cannot disregard parts of our community in the means of communication we use. Important issues must be analysed and incorporated into changes that are made in the means of communication.

If we are not careful, there is the potential to disenfranchise those who rely on traditional, non-digital methods of communication. Progress does not mean leaving many of the Bermuda public behind. Believing that 'electronic' means progress – and when introducing it we should discontinue using established methods which restrict, we might think, such 'progress' – is a path leading us to potential disenfranchisement. If the new way of communication reaches less people, by concrete measure, how could we be satisfied to call that 'progress'? We must protect our efforts to improve accessibility and awareness of public information and, at the same time, prevent ourselves from becoming 'technochauvinists' [note 1] – an

intriguing concept being explored by researcher Meredith Broussard. Good communication is using the widest means, properly and effectively. This is a position I will continue to advocate for.

There should be no artificial limits on the means of communication or discrimination in the forms of communication. Progress does not mean leaving parts of our community behind as we increase communication systems and methods. It must mean communication of information to people who get it now will continue to get it going forward.

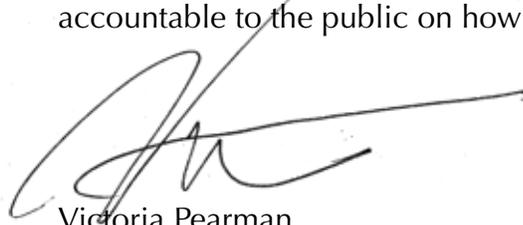
I am pleased with the progress of this Office even in the face of some internal challenges. Notably, our team was short-staffed for half of the 2018 reporting year. We buckled down to identify areas requiring us to innovate and accommodate these changes. We reviewed our organisational structure. We promoted our Complaint Intake Officer, who joined us in 2014, to an Investigations Officer. At the same time, we developed new internal policies and guidance as part of a membership re-validation process with the UK's Ombudsman Association. We share more about these efforts on page 42.

My deepest thanks to all those who bring their complaints and enquiries to this Office. When people raise issues, this is a valuable public service. By bringing matters to our attention, it alerts us to challenges, some of which otherwise might not come to our attention. It also may lead to improvements for the wider community. We do not take your trust for granted. My thanks to the hardworking, knowledgeable members of the Public Service who understand the importance of us fulfilling our duties to ensure accountability and work with us toward this end. My appreciation to my colleagues, local and overseas, for generously sharing experiences, suggestions and support.

I especially thank my team of skilled, bright,

young Bermudians who are committed to the challenging work of the Office. Our work is not always easy but is immensely rewarding. We have stretched and grown individually, collectively and as an institution, in the pursuit of high standards of good administration for those we assist, those we oversee and for ourselves. I extend my deepest appreciations to team members who are now preparing to undertake new journeys, for their dedicated efforts. Thanks also to our summer intern, CarlaRita Tucker, a law graduate, for the assistance she provided at a time when our team was short-staffed.

My sincere appreciation to everyone who has assisted me and added to the success of this Office. This concept, this system of sequences that we call time, requires appreciation of its precious value as an unrenowable resource and how we use it. My hope is to continue to act with good judgement and improved efficiency, and to be accountable to the public on how I have done so.



Victoria Pearman  
Ombudsman for Bermuda



**Note:**

1. Sharma, Sanjay. Review of Artificial Unintelligence: How Computers Misunderstand the World, by Meredith Broussard, Labour & Industry: A Journal of the Social and Economic Relations of Work, 17 Feb. 2019, doi.org/10.1080/10301763.2019.1578096.



## OMBUDSMAN'S OFFICE STAFF



**Victoria Pearman**  
*Ombudsman for Bermuda*

Appointed March 2014



**Catherine Hay**  
*Deputy Ombudsman*

Joined October 2011



**Lamumba Tucker**  
*Manager – Finance & Administration*

Joined September 2012



**Robyn Eve**  
*Executive Assistant*

Joined January 2016



**LaKai Dill**  
*Investigations Officer*

Joined December 2014



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

Joined March 2014



**CarlaRita Tucker**  
*Summer Intern & Investigations Support*  
July to November 2018

## MISSION AND VALUES

To investigate administrative actions of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority; and

Pursuant to an investigation, to make recommendations to an authority concerning administrative action that formed the subject of the investigation and, generally, about ways of improving its administrative practices and procedures.

The core values of the Office of the Ombudsman are:



## 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 2018, we report on these efforts and our progress during this Office's 13th 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, visit us online, or stop by to pick up a copy.  
We include a postage-free envelope for your convenience.**

**STRATEGIC AIM I:  
GREATER PUBLIC ACCESS**

**HOW TO MAKE A COMPLAINT**

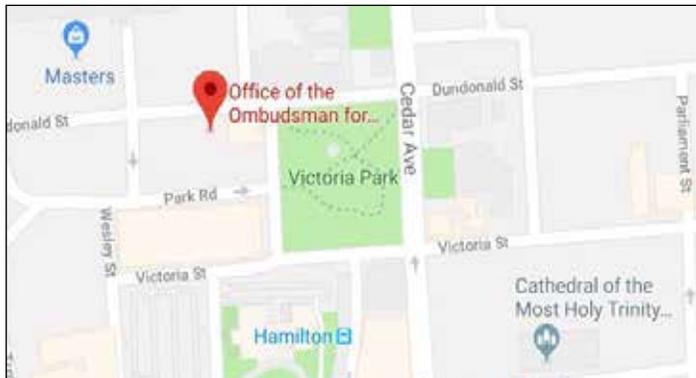
Anyone can make a complaint to the Ombudsman about government’s services. You do not have to be a Bermudian or a resident of Bermuda. Should you have questions about whether or not we can address your complaint, contact us.

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

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

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

Remember we are here to assist you.



**ADDRESS:**

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

**HOURS:**

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

**CONTACT:**

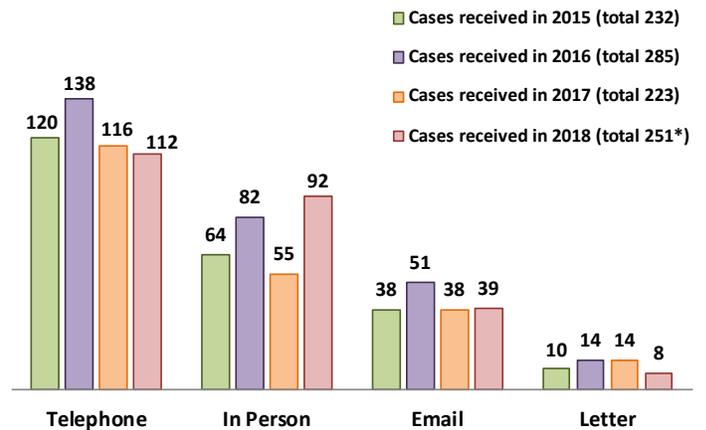
Tel: (441) 296-6541

Fax: (441) 296-7734

Emails: [complaint@ombudsman.bm](mailto:complaint@ombudsman.bm)  
[info@ombudsman.bm](mailto:info@ombudsman.bm)

Online: [ombudsman.bm](http://ombudsman.bm)  
[facebook.com/bermudaombudsman](https://facebook.com/bermudaombudsman)

*Figure A: How people contacted us: 4-year glance*

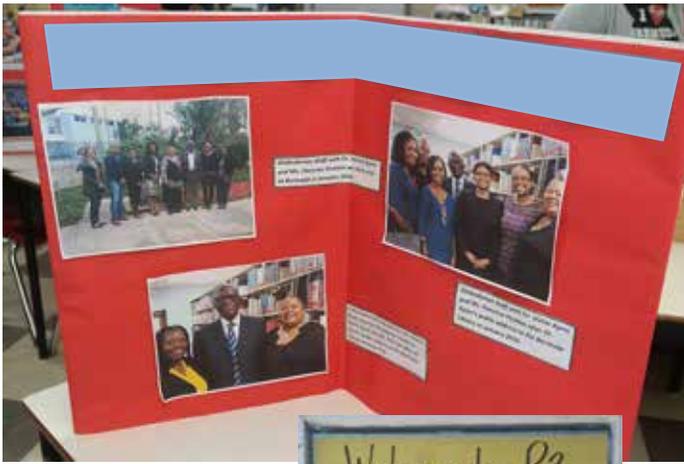


*\*This total excludes 13 complaints we opened by the Ombudsman’s ‘own motion’ power.*

It is a consistent trend that the majority of complainants call or visit us. Complainants want to be heard. Contacting us by telephone or in person means that questions can be more quickly acknowledged, and we can clarify what we can or cannot do for the complainant. This direct interaction also allows us to gather the information we need to assess the complaint and determine what further information we may still need.

**OMBUDSMAN ‘OUT AND ABOUT’**

The Ombudsman and her team participated in about 15 key events during 2018, including delivering three presentations. These provided valuable opportunities to meet and network with colleagues as well as to share useful information about the Ombudsman’s work.



*Paget Primary School P3 Liverpool's 'Black history museum' display about the Ombudsman*



*Ms. Pearman with Paget Primary School's P3 Liverpool at their 'Black history museum'*

In February, the Ombudsman was invited by the P3 class to Paget Primary School's 'Black history museum' as covered in the media. The next month, the complaint team made their annual presentation to the Youth Parliament. In June, the Ombudsman presented at the Centre for Justice's local conference on the "50th Anniversary of the Bermuda Constitution: Reflections on its Past and Future". In July, our Executive Assistant made a courtesy visit to the Siint Maarten Ombudsman's Office to exchange annual reports, during a family trip – while the Ombudsman spoke at the retirement ceremony in honour of former Chief Justice Kawaley.

Then from August to October, the Ombudsman and Investigations Officer, Aquilah Fleming, presented to the Department of Corrections, in addition to witnessing the new recruits 'passing out parade' which was notably well-attended by public servants and community representatives. In addition to attending forums, the Ombudsman wrapped up her year of local events at the Convening of Parliament to the Throne Speech in November. While on personal travel in Turks & Caicos Islands in December, she made a courtesy call to an

ombuds office and met with the newly appointed Complaints Commissioner, Paul Harvey. She also visited the outgoing Commissioner, Cynthia Astwood, along with the Executive Director of the Deputy Governor's office, James Astwood, and the Integrity Commission's Director, Eugene Otuonye.

Through 2018, the Ombudsman increased her involvement in regional and international ombuds affairs. She continued her term as President of the Caribbean Ombudsman Association (CAROA), and her team has worked hard to prepare for hosting CAROA's 10th 'Biennial Conference and Training' in Bermuda this past May. These engagements have presented rewarding opportunities for us.



*Ms. Pearman visiting with colleagues in Turks & Caicos Islands*



*Ms. Eve with Dr. Rachnilda Arduin, former Ombudsman for Sint Maarten*

## PATI UPDATE

The Public Access to Information Act 2010 (PATI), which came into force on 1 April 2015, ushered in a new era of transparency for the Government. By making PATI requests, members of the public exercise the right of access to records held by Bermuda's public authorities, which can help to improve administrative practices in the Government. It is the mandate of the Information Commissioner's Office (ICO) to promote and oversee the use of PATI. For the ICO's advice on how to make a PATI request, see our Annual Report 2014 pages 14-16.

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

From 1 January to 31 December 2018, our Office did not receive any PATI requests from the public. Likewise no requests were received in previous years. To obtain a copy of our PATI Information Statement (last updated January 2019) and learn about records that can be made available to the public, stop by our Office or visit our website to download it.

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“Until the lions have their own historians,  
the history of the hunt will glorify  
the hunter.”

– African proverb

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## ACCESSING PUBLIC INFORMATION

We continue to learn about the Government's efforts to inform the community about its services and processes and how public authorities are working to streamline their services. Here are useful topics of public interest that we learned about in 2018.

### **Commentary: LTRO UP AND RUNNING**

We are pleased to report that on 28 August 2018 – nearly 13 years after its establishment – the Land Title Registry Office (LTRO) opened its door to the public and is accepting applications for registration.

In every annual report for the past four years, we have updated the public on the Government's slow progress towards opening the LTRO. A title-based land registration system will significantly change property law in Bermuda, offering property owners greater peace of mind and the Government greater clarity on property holding in Bermuda. We reported last year that, while its establishment started in 2005, the LTRO was not yet fully operational.

As of March 2019, the LTRO had registered approximately 350 properties of which about one third were voluntary applications. The LTRO reported to the Ombudsman that the number of registration increases every week and that it has received many applications to register the larger properties and hotels on the island.

The LTRO can register properties in one of two ways – compulsory or voluntary registration.

**COMPULSORY REGISTRATION:** Compulsory applications currently are only made in three specific instances, when:

- parties to a transaction enter into a conveyance for value;
- a purchaser takes out a first mortgage; and
- a party enters into a lease for value with a term (i.e. length) of more than 21 years.

The LTRO refers to these events as triggers. If an

attorney is acting in a transaction in which one of these triggers occurs, then the attorney must lodge an application to register the property with the LTRO within two months of the closing date.

The Land Title Registration Act 2011, the LTRO's governing legislation, lists more trigger events which have not yet been activated.

**VOLUNTARY REGISTRATION:** Any land or property owner can also lodge a voluntary application directly with the LTRO, if the owner wishes to do so. In this case, there is no involvement from a lawyer, and the LTRO will check the title to the property before completing the registration – assuming there are no issues with the title.

**PROGRESS:** As we reported in our Annual Report 2017, the LTRO merged with the Deeds Registry in April 2017. The LTRO assumed responsibility for public searches of property, land transfer notices, and registering deeds, mortgages and voluntary conveyances. The LTRO digitised the Deeds Registry which means all property transactions are now recorded by the LTRO in its electronic system.

The LTRO continues to receive and process applications to register deeds under the old Deeds Registry system. In 2018, the LTRO received 1,859 such applications. Eventually more of the triggers contained in the Land Title Registration Act 2011 will be activated so the number of land registration applications will increase and the number of deeds registration applications will fall.

The LTRO plans to embark on a publicity campaign to advertise its services and encourage more property owners to register their properties so that they can enjoy all of the benefits which the Land Registration system has to offer. These benefits include:

- online access to the title report for a registered property and to electronic copies of the deeds which still affect it. This will be crucial if the original copies of the deeds have been destroyed, for example by fire or storm damage.
- a guarantee from the Government that the person named on the report owns the property. This does not apply in cases of fraudulent registration.
- for individuals to remain the legal owner of

registered mortgaged properties, rather than having to transfer the title of the property into their mortgage lender's name. Such mortgages are called mortgage 'by way of legal charge' as opposed to the old style 'mortgage by way of conveyance'.

For more information about how our Office has referred complainants to the LTRO's services, see page 26.

### ***Did you know:* LAND TITLE REGISTRATION**

**WHAT IS LAND TITLE REGISTRATION?** This is an administrative procedure backed by statutory provision, through which a guaranteed record of rights and interests based upon the land parcel is created and maintained by a nominated authority, the LTRO. This means that deeds will no longer need to be held in private custody. It also eliminates the trouble and expense of repeated investigations of title. The Land Title Register will be an up-to-date, accessible and comprehensive record of all registrable rights in land in Bermuda. Once registration has taken place, there will be no need to search behind the Register to establish a chain of title, since the Register itself will provide conclusive evidence.

**CAN I MAKE APPLICATIONS MYSELF?** It depends. To complete a voluntary registration, you do not need to appoint an attorney because the LTRO staff will assist. If the registration is compulsory, the application will need to be made by your attorney because your attorney must legally certify that the information provided to the LTRO is complete and accurate. If there is a mistake regarding your title and you suffer financial loss due to their error, depending on the exact circumstances of your case, you may be able to make a claim against your attorney's professional indemnity insurance policy. As a member of the public, you will be able to make requests for plans and title information about other properties which have been already registered by visiting [norwood.gov.bm](http://norwood.gov.bm) or in person at the LTRO. There will be a small fee for each request made.

**WHAT HAPPENS IF I HAVE LOST MY DEEDS OR THEY HAVE BEEN SEVERELY DAMAGED OR DESTROYED?** The LTRO staff will liaise with your attorney as to what is the best way to proceed. Even when original title documents have been lost, stolen or destroyed, often it is possible to show that a person or family has owned a property or land

for a considerable amount of time. Such evidence might include land tax records, copies (rather than originals) of deeds and mortgages which may have been registered at the Registry General, mortgage statements, planning documents, Court records, entries from Church records, old utility invoices and family photos that clearly show the property. In all cases, where the original deeds are missing – and no matter the reason – the LTRO will grant a provisional title as opposed to an absolute title.

*Our complaint team with 2018 Youth Parliament members*



**Did you know: GOVERNMENT’S ONLINE CONSULTATION PLATFORM**

Last year in our Annual Report 2017, we highlighted the importance of effectively consulting the public on proposed initiatives of national significance. We also listed some topics on which the Government had sought feedback from the public in 2017.

Effectively consulting the public is a pillar of good governance and an important part of a strong and robust democracy. Citizens are more likely to support decisions and policies that have incorporated their feedback. Policies and decisions are usually improved when refined by public feedback.

We were encouraged to see that, in October 2018, the Minister for the Cabinet Office announced that the Government had launched its online Bermuda Citizens Forum. Designed to be an online consultation hub, the forum allows residents to discuss and comment on proposed Government policies and initiatives. The Ombudsman applauds this effort and believes it important that the Government expand ways to consult with the public on policies of national importance.

The forum features on its home page proposed policies on which the Government is seeking public feedback. Before commenting new users must create an account by providing an e-mail address or signing up via their Facebook or Google profiles.

The site also provides details of related events, such as town hall meetings or other consultative forums.

You can visit the online Bermuda Citizens Forum at [forum.gov.bm](http://forum.gov.bm).

**Did you know: ANONYMOUS IMMIGRATION VIOLATION TIPS**

Did you know that you can anonymously report suspected immigration violations to the Department of Immigration?

Under the Bermuda Immigration and Protection Act 1956, you must hold a valid work permit to work in Bermuda if you are not a Bermudian, married to a Bermudian or a permanent resident’s certificate holder.

Members of the public who wish to report violations of immigration law can call the

Department at 296-5202 or use the Department's online form at [doiapps.gov.bm/immigrationtips/](http://doiapps.gov.bm/immigrationtips/). When submitting your tip, you can provide your name and contact information, or you can choose to remain anonymous.

The Department requests that when making a violation report, you provide as much information as possible. This will support the Department's efforts to conduct a thorough investigation. The Department also assures members of the public that if you choose to provide your details, and not make an anonymous report, the Department will not disclose any information about your involvement. However, the Department is under no legal obligation to follow-up and update you on the substantive outcome of its work.

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**“Ignorance, allied with power, is the most ferocious enemy justice can have.”**

– James A. Baldwin (1924 – 1987),  
*No Name in the Street* (1972)

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### **Did you know: PURCHASING MISTAKES TO AVOID**

Here are tips that Consumer Affairs provides to help consumers avoid making purchases that may be regretted later. Awareness is crucial.

1. **FAILING TO ASK QUESTIONS:** You do not have to become well-informed before arriving at the store. You may get a crash course in all available brands of the item you are looking for from a knowledgeable salesperson. But you must ask questions. Be confident enough to walk away from any salesperson that is too pushy or does not know enough about the product to help you decide.
2. **ASKING DISCUSSION-KILLING QUESTIONS:** Avoid asking questions along the lines of, 'does this look cute on me?' or 'is this something my mom would use?' Instead, ask questions such as, 'how does this product compare with its competitors?' or 'which brands have people had problems with in the past, and what were those issues?'
3. **ASKING TOO FEW QUESTIONS:** If you stopped asking questions after your main concern was addressed, you stopped too soon. Keep asking questions. Remember that you are digging for information.
4. **NOT ASKING YOURSELF QUESTIONS:** You should clarify your purpose and prioritise your needs. Familiarise yourself with the features or accessories that go with any major purchase, and then ask yourself questions such as, 'what do I need this item to do? what is my budget? which features are necessities? what are wish-list features worth to me?'
5. **NOT DOING ANY RESEARCH:** An uninformed shopper is an impulsive shopper and vulnerable to a salesperson whose sole concern may be making the sale.
6. **PAYING FOR IMPROVED OR NEW TECHNOLOGY:** While bragging rights for buying the latest smartphone or TV may give temporary pleasure, remember that the next new product is already being developed.
7. **NEGLECTING TO READ OR UNDERSTAND WARRANTIES:** Read the coverage that comes with the vendor's or manufacturer's warranty so that you can avoid purchasing unnecessary service contracts or extended warranties.
8. **NEGLECTING TO THOROUGHLY READ OR UNDERSTAND CONTRACTS BEFORE SIGNING:** Never put your signature to anything unless you have read it and had the opportunity to ask questions before you sign.
9. **BUYING UNDER PRESSURE:** Often you may need a product which is the last one and not in stock for another four weeks. Or the contractor or plumber you want is not available at the time you want to hire them, so you hire someone else whose quality of work and ethics you are not familiar with.
10. **'HELPING A BROTHER OUT' SYNDROME:** In these economic times, you may feel more compassion to hire someone to do a home improvement job, such as painting the roof or tiling a room, because they need work. But sometimes you get overcharged and still receive a poor service. Before committing, be clear about your expectations of what a good job will look like.

**STRATEGIC AIM II:  
GREATER PUBLIC AWARENESS  
OVER A DECADE OF COMPLAINTS**

Since opening our doors in 2005, we have handled over 2,000 individual complaints. We can break down our handling of complaints into four basic categories:

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

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

Below summarises our reporting on complaint categories historically, by year in which the complaint was opened.

Figure B: Complaints 2005 – 2018

*Numbers in orange represent the highest value per category.*

Year	Start	End	Open	Disposed Of*	Referred	Declined	Total per year
1	2005 Aug	2006 Jul	22	57	47	11	137
2	2006 Aug	2007 Jul	29	44	44	17	134
3	2007 Aug	2008 Jul	35	53	20	21	129
4	2008 Aug	2009 Jul	35	29	53	26	143
5	2009 Aug	2010 Jul	58	44	80	66	248
5 Interim	2010 Aug	2010 Dec	21	5	30	34	90
6	2011 Jan	2011 Dec	48	23	54	78	203
7	2012 Jan	2012 Dec	47	30	57	32	166
8	2013 Jan	2013 Dec	45	26	38	36	145
9	2014 Jan	2014 Dec	55	11	42	20	128
10	2015 Jan	2015 Dec	32	21	61	47	161
11	2016 Jan	2016 Dec	53	65	24	15	157
12	2017 Jan	2017 Dec	32	43	23	28	126
13	2018 Jan	2018 Dec	30	57	31	48	166
<b>Total per category</b>			<b>542</b>	<b>508</b>	<b>604</b>	<b>479</b>	<b>2,133</b>
<b>Average per category</b>			<b>42</b>	<b>39</b>	<b>46</b>	<b>37</b>	<b>164</b>

\* Complaints ‘disposed of’ were within our jurisdiction, addressed and then closed during the complaint year received.

**CASEWORK IN 2018**

From 1 January to 31 December 2018, we worked to address a total of 309 cases (see Figure C). This included:

- *enquiries* people made to us – 98,
- *new complaints* opened in 2018 – 166, and
- *outstanding* complaints we carried into 2018 from previous years – 45.

To summarise new cases opened in 2018:

- We received 264 new cases: 166 complaints + 98 enquiries.
- Of the 166 complaints, 118 were in our jurisdiction and 48 were not.
- We assisted 24 of the 48 that were Declined with additional resources, plus 31 of those 120 within jurisdiction – giving a total of 55 that were Referred. *We helped them raise*

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

- 7 complaints were Abandoned or Withdrawn by the complainant.
- 8 complaints were resolved between the complainant and the authority with informal and limited intervention by us.
- 42 were Closed After Inquiries.
- 21 people came back to us again, either raising separate issues or bringing up the same issue at a later time, accounting for 57 cases and thus 21% of 2018 cases. *We do not always record a caller's name if the initial call addresses the question completely and we close it as an 'enquiry'.*

See page 48 for an explanation of how we categorise closed complaints.

For the 309 cases worked on in 2018, we closed 273 by year's end and carried over into the next year the remaining 36 cases (see Figure F). Of those 36 cases carried over into 2019, 6 were closed by 30 April 2019, leaving a total of 30 cases open that had been received either in 2018 or years prior. Also of those 36 cases carried over into 2019, 5 were from 2017 and 1 was from 2016.

For a description of our complaint process and dispositions, see pages 47 and 48.

Figure C: Cases worked on in 2018

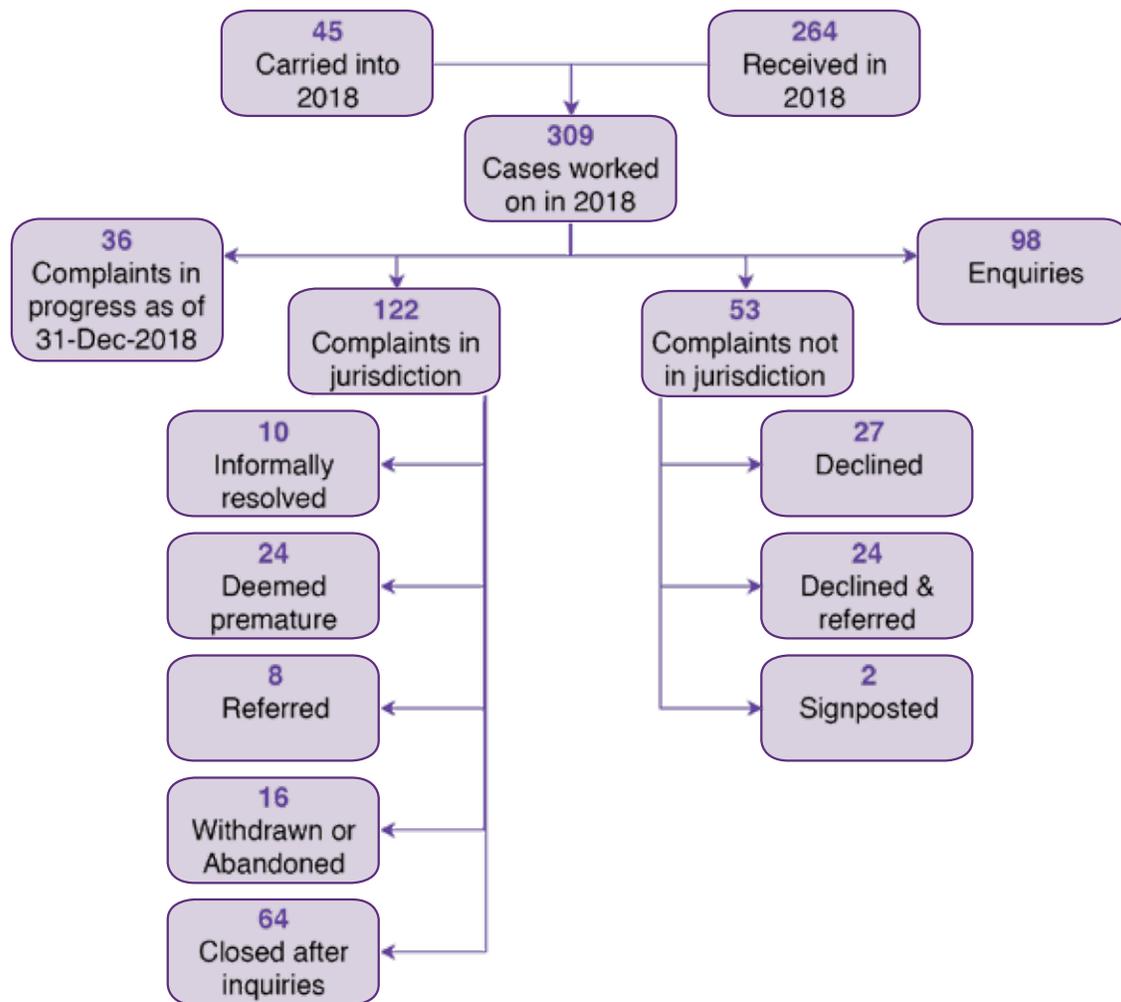


Figure D: Cases received in 2018 by Authority

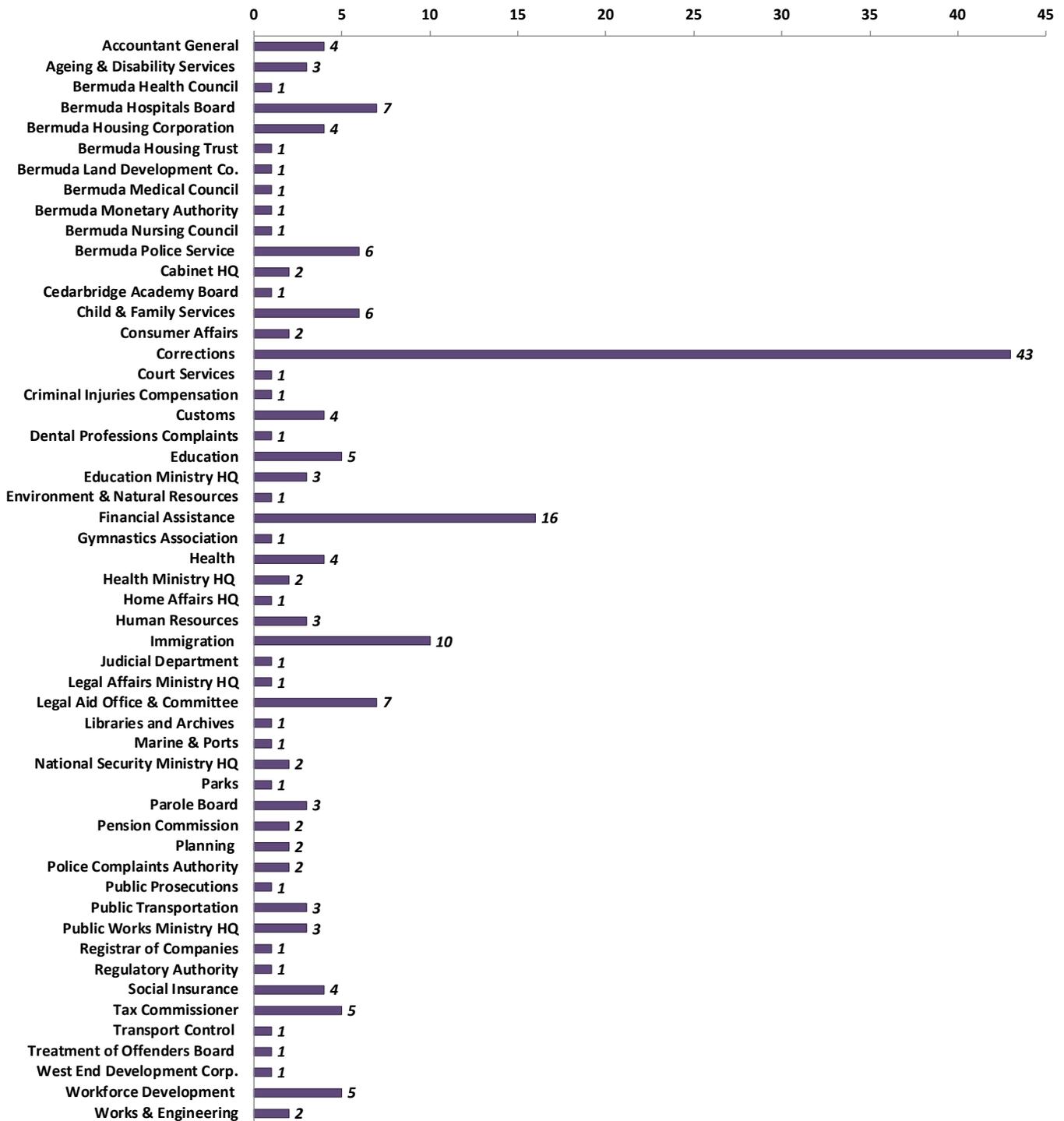
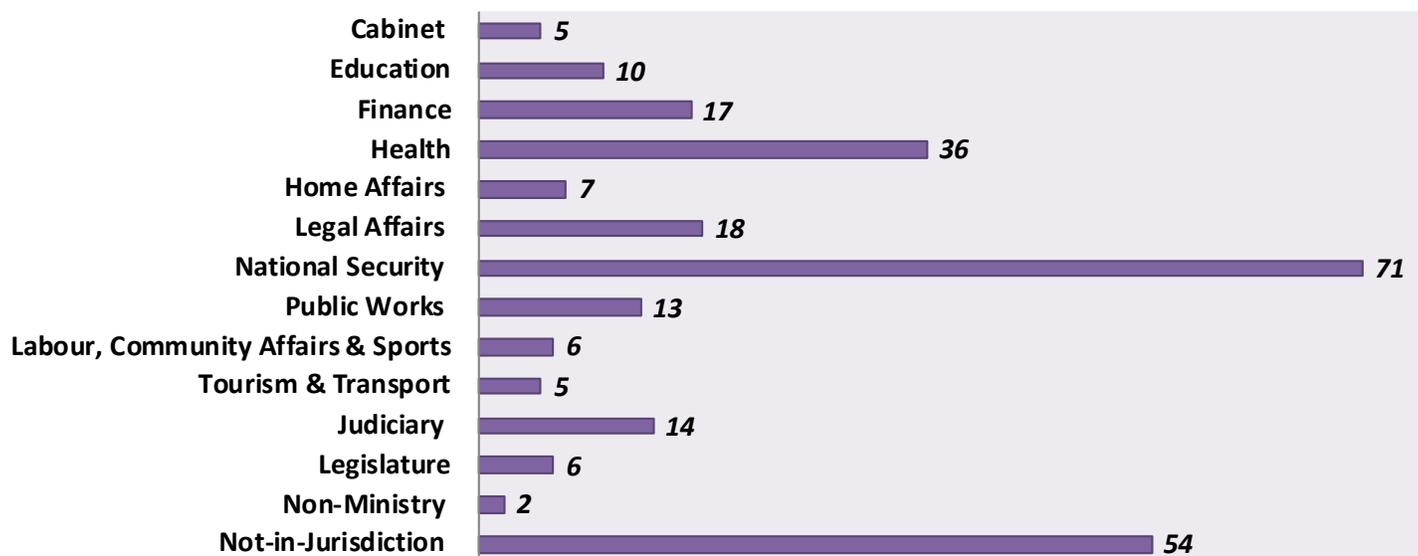


Figure D shows the total for new cases in 2018 for all authorities that are not considered Non-Ministry or other bodies. ‘Non-Ministry’ refers to government-funded bodies that are not part of a Ministry, and ‘Not-in-Jurisdiction’ are bodies not subject to the Ombudsman Act.

Figure E (on the next page) shows a breakdown

of the cases we received in 2018 by the relevant Ministry according to the Government’s organisational chart at year-end. (As of March 2019, changes were made to the organisation of Ministries, departments and other bodies under the Government’s responsibility.) Below graph also includes the totals for ‘Non-Ministry’ and ‘Not-in-Jurisdiction’ based on the authority alone.

Figure E: Cases received in 2018 by Ministry



## OUTSTANDING COMPLAINTS

During 2018, we succeeded in addressing and closing 39 of the 45 cases that were opened in prior years. Out of these 39 cases, we closed more than half of them after inquiries that we

considered to have reasonably satisfied the complaints. Out of the 23 cases being prepared to be investigated or being progressed through an investigation, 5 were opened in 2016 or 2017.

Figure F: Complaints carried into 2019

Complaint Status as at 31-Dec-18	Year opened			TOTAL
	2018	2017	2016	
Intake*	7			7
Facilitated resolution	7	1		8
Pre-investigation	13	1		14
Investigation	3	3	1	7
<b>Total complaints carried into 2019</b>	<b>30</b>	<b>5</b>	<b>1</b>	<b>36</b>
Complaints carried into 2019 then closed by 30-Apr-19	6			6
<b>Total complaints carried into 2018 &amp; open as at 1-May-19</b>	<b>24</b>	<b>5</b>	<b>1</b>	<b>30</b>

\* For cases carried into 2019 at the intake stage, 43% were less than 1 month old, and 57% between 1 and 2 months old.

Even after we close cases which have been investigated, our work may continue. We follow-up with authorities about progress with implementing the Ombudsman's formal recommendations and others suggestions, which were made to improve the delivery of public services. Here is an update on continued follow-up with the Bermuda Hospitals Board (BHB).

**STREAMLINED COMMUNICATION:** In 2018, the BHB implemented a new centralised email system for community physicians, pursuant to the Ombudsman's recommendation made in a 2015 investigation. This email system allows the BHB to directly and securely communicate clinical information to community physicians about patients' visits to the BHB's hospitals. This

method of communication is meant to replace the unreliable practice of communicating clinical information by fax. As King Edward VII Memorial Hospital and Mid-Atlantic Wellness Institute are the only hospitals in Bermuda, streamlined communication between the BHB and community physicians benefits everyone.

We commend the BHB for its investment and commitment to bringing this important recommendation into effect. This project is in its early implementation stages. Our Office will continue discussions with the relevant stakeholders to encourage that this method of communication is fully utilised and monitored.

### **CASEWORK IN CONTEXT**

There are notable peaks in complaints that can be observed for certain ministries and authorities in 2018. These numbers represent complaints and enquiries made, not findings of the Ombudsman in relation to the cases. These numbers alone do not indicate whether the complaints were upheld by the Ombudsman through our inquiries.

Some of these departments have a higher volume of public interaction than others and thus may have a higher volume of service users. One particular spike was shown in the complaints we received about the Department of Corrections – a total of 43.

**CORRECTIONS:** The number of complaints and enquiries we receive from inmates has steadily increased in the past four years. We believe this is a direct result of an increase in interaction between our Office and inmates. Since 2016, our Office has presented annually about our jurisdiction and our complaint handling processes to inmates and staff at all local prisons. We also continued to check on how the Corrections' pin phone system was functioning, since it provided greater access for inmates to call our Office at no charge to them. In 2018, we started general inquiries and initiated investigations into systemic issues relating to the fair treatment of inmates, based on complaint trends we had been observing in prior years. Some of these matters are ongoing. One important component, the role of the Treatment of Offenders Board (TOOB), is described here.

**TOOB UPDATE:** In our Annual Report 2016, we noted gaps in complaint handling procedures for inmates. Our research showed that Parliament intended for TOOB to have a robust role within Corrections. Parliament also envisioned that TOOB, Corrections and the Ministry of National Security would have a close working relationship. We were concerned that TOOB's structure did not support Parliament's aims. After sharing our research with TOOB and the Ministry, the Ministry agreed to strengthen TOOB's functions by drafting a policy and procedure manual. In our Annual Report 2017, we reported that the project had not progressed as expected.

In 2018, our Office continued discussions with TOOB and the Ministry. We are pleased to report progress. A draft policy and procedure manual for inmate complaint handling was completed and reviewed by our Office. It remains under review at the Ministry but should be finalised by the end of 2019.

The Ministry is also drafting a manual for internal disciplinary adjudications for inmates. The purpose of the manual is to ensure fair and consistent results in TOOB adjudications. Together, the two will provide a solid structure for TOOB's role as an adjudicator, improve its functions as a complaint handling body for inmates, and strengthen the relationship between Corrections and the Ministry.

**ENQUIRIES:** In 2015, our Office began to record contacts we received from persons seeking information without making a complaint. We refer to these cases as "enquiries", which on average make up 39% of our caseload. One person, for instance, called us because he had come across the term and was curious what it meant; we named our Office as the authority when logging this enquiry.

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

all persons who come to our Office for assistance. Here is a highlight on a political matter several people contacted us about in 2018.

**SAME-SEX MARRIAGE:** In early 2018, the Bermuda Government implemented the Domestic Partnership Act (DPA). It repealed the Supreme Court's decision that effectively legalised same-sex marriage by defining marriage between a man and a woman and giving same-sex and opposite-sex couples the choice of domestic partnerships. This legislation was repealed in late 2018.

The weeks after Parliament passed the DPA, our Office received six enquiries from international persons expressing their opinion of this decision. Five expressed opposition to the DPA. All five stated they cancelled 2018 visits to Bermuda in light of the decision. One person was for the decision and promised to visit Bermuda soon.

**CHARITIES:** The Ombudsman's jurisdiction is wider than government departments, public authorities and government boards. It also extends to authorities whose revenues derive directly from money provided by the Legislature or a fee or charge of any description authorised by the Legislature. This can extend to some local charities who receive government grants.

For the first time in the Office's existence, we received a complaint about the Bermuda Gymnastics Association (BGA) and made inquiries with them. We closed the complaint without the need for an investigation and without making adverse findings. The BGA receives annual government grants from the Ministry of Labour, Community Affairs and Sports.



*Ms. Pearman speaking at the Department of Corrections' new recruits 'passing out parade'*

## **SELECTED CASE SUMMARIES AND DID YOU KNOWS**

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

Here is a selection of anonymised complaints that were closed by our Office in 2018. These complaints resulted in information that we have chosen to share for its public benefit, including reflections on each case. Complainant details have been altered to protect confidentiality. We also include useful 'did you know' information that may relate to the summaries.

### **Summary: ADOPTIONS AND BERMUDIAN STATUS**

#### **Department of Immigration**

**ISSUES:** In April 2018, we received a complaint of unreasonable delay from a Bermudian mother about her 16 year-old adopted son's eligibility to apply for Bermudian status. The mother had adopted her son when he was a newborn, and he had lived in Bermuda since he was just a week old.

The mother had made an inquiry with the Department of Immigration in early 2017 regarding her son's eligibility for Bermudian status and had not received any clear guidance from the Department despite following up every few months. In January 2018, she was told that the Department was seeking a legal opinion from the Attorney General's Chambers on her son's matter and, despite following up in March 2018, she had not received any further updates from the Department.

**INTERVENTION:** Our Office contacted the Department and established that the Department had overlooked responding to the mother's March 2018 email. Though the Department was still awaiting a legal opinion from the Attorney General's Chambers, we learned more details on

her son's matter which we provided to the mother. We could also assure the mother that while the Department had not responded to her latest email, her son's application had not been overlooked.

We were able to tell the mother that her son's status application would be assessed under new legislation, the Bermuda Immigration and Protection Amendment (Adoption) Act 2016. As the Department had not handled many applications similar to the son's, the Department had to seek legal advice to assist with its decision. When processing these applications, the Department said it must consider certain factors, for instance the child's Commonwealth or British Overseas Territories citizenship and the place of adoption, which depending on the circumstances may make the assessment more complex. There were some details that made the son's application more complex than others compared with applications the Department had assessed before.

After providing this information in writing, the mother said she understood better why there had been the delay. She later wrote to update us that not only had her son been granted Bermudian status but that his case would be used as a precedent for other adopted children.

**INSIGHT:** When the Legislature passes a new piece of legislation, we often believe that it will be put into practice right away. However, for authorities there is often a period of adjustment in which they determine how to apply new laws.

At our Office, we have to assess whether or not the authority's delays are reasonable. In cases of implementing new legislation, that can be challenging. However, as in this case, it is important that if there are delays – even when there are good reasons for the delay – that an authority communicates the reasons to service users and regularly updates them.

### **Commentary: APPEALING IMMIGRATION DECISIONS**

An applicant can challenge certain ministerial decisions made under the Bermuda Immigration and Protection Act 1956 (BIPA) by appeal to the Immigration Appeal Tribunal (IAT). Such decisions include the Minister's refusal of an application for Bermudian status or a permanent resident's certificate or for permission to reside and seek

employment. An applicant who disagrees with the IAT's decision can appeal to the Supreme Court within 21 days of the date of the IAT's decision (see BIPA section 13G).

The principles of good administration require that decision-makers provide reasons and factual considerations along with their determinations. Failing to set out clear reasons can hinder the aim of an appeal process. Reasons are of practical value not only to applicants but for all parties. Clearly, applicants need to know the Minister's reasons so they can put forward a coherent explanation of why they disagree on specific points. Writing out reasons also helps authorities to monitor how they apply their decision-making powers in different situations – an exercise required to prevent inconsistent, arbitrary or unfair decisions.

We are aware that the IAT has not met since early 2018, due to the role of the deputy chair being vacant and subsequent administrative difficulties with transferring the Department of Immigration from the Ministry of Home Affairs to the Ministry of National Security. Good administration requires that authorities proactively and immediately update the affected applicants and/or the public when there is a backlog. This update should include a description of all practical steps available to affected applicants to learn of the current status of an outstanding application, current revised processing timeframes, and any other relevant information about the application process that may have been changed since the application's submission.

The Ombudsman does not have powers to review either the IAT's or the Courts' processes and decisions (see paragraph 5 of the Schedule to the Ombudsman Act). The Ombudsman can assist with an applicant's concerns about information provided and actions taken by the Department of Immigration.

Members of the public can find 2013-2015 rulings of the IAT online at [gov.bm/immigration-appeal-tribunal-iat](http://gov.bm/immigration-appeal-tribunal-iat), and the Courts' judgements at [gov.bm/court-judgments](http://gov.bm/court-judgments).

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“There are things known and there are things unknown, and in between are the doors of perception.”

– Aldous Huxley (1894 – 1963),  
The Doors of Perception (1954)

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**Summary: WARNING TO MORTGAGEES WITH INFORMAL AGREEMENTS**

**Pension Commission**

**ISSUES:** A member of the public complained that the Pension Commission declined her application for payments from her pension account due to financial hardship under the National Pension Scheme (Financial Hardship) Regulations 2010. If approved, the Commission would have made payments to the complainant from her pension account. She explained she recently lost her job and was unable to pay her mortgage. She further explained that she entered into an informal mortgage with her aunt, as opposed to a traditional mortgage agreement with a bank. The complainant did not have a mortgage agreement from the date of the transaction but did have some documentation to evidence the mortgage. The complainant prepared a retroactive mortgage agreement in support of her financial hardship application.

The complainant felt it was unfair that her application was denied. She did not want to reapply without knowing the requirements as there was a mandatory application fee of \$100. She wanted our Office to make inquiries with the Commission to determine what she would need to make a successful application.

**INTERVENTION:** Our Office inquired with the Commission. We were informed that the complainant did not meet the legislative requirements for an application of financial hardship. The Regulations state that an applicant must be in imminent threat of being evicted from her home and this must be supported in writing. The complainant had not provided such documentation. Further, the Commission was not willing to accept a retroactive mortgage agreement. The Commission explained that it was bound by the legislative requirements and,

although it sympathised with the complainant, the application must be declined.

The complainant confirmed that while her mortgage was in arrears, she had not been threatened with eviction in writing. The complainant also confirmed that the mortgage agreement was not signed on the date of the agreement. Our Office informed the complainant that we would take no further action as the Commission had acted within its legislated mandate.

**INSIGHT:** This complaint evidences the importance of ensuring that appropriate documentation is prepared when making informal transactions. The complainant’s circumstances are unfortunate and because of the lack of documentation, she cannot avail herself of a statutory remedy. It also evidences our role in complaint handling. Our Office is impartial. When there is no evidence of unfairness or unreasonableness, we will inform the complainant and the authority accordingly.

**Did you know: ADVICE FOR TENANTS**

People contact Consumer Affairs frequently for advice about rental matters. Some questions reflect typical situations. Other questions speak to unusual cases. Here is some important information highlighted by Consumer Affairs for tenants and landlords.

**SUBLETTING:** A tenant cannot sublet their rental unit to another person without having the landlord’s permission. The law also does not allow any landlord to rent out a rental unit, or a room within in, to both a tourist and a resident at the same time. And by extension, because a person cannot profit from an asset that is not theirs, a tenant cannot rent out their rental unit, or a room within it, to a tourist.

**ARREARS:** There is no law that requires a grace period within which tenants can pay their rent. In other words, if the rent is due on the first day of each month and a tenant does not pay it on (or before) that date, then the tenant is in ‘arrears of rent’ as of the second day of the month.

**EVICTION:** Situations dealing with continuing and ending tenancies are heard and adjudicated by Magistrates’ Court. A landlord cannot evict a

tenant unless he gets a possession order from the Court.

For units under rent control, a notice-to-quit can be given only under these grounds, where:

- a tenant is in breach of the tenancy agreement (*ground 1*);
- the landlord specifies that a tenant is undesirable (*ground 2*);
- the landlord requires possession of the rental premises for himself, his parent or any of his children or grandchildren who is over the age of eighteen years or married (*ground 3*); or
- the landlord requires possession of the rental premises for rebuilding or carrying out major renovations to them (*ground 4*).

If the notice-to-quit is served for grounds 3 and 4 above, it is not valid unless it specifies that the tenant has the right to serve a counter-notice, disputing the right of the landlord to serve the notice, within 14 days. If the notice does not contain this required information, then the notice-to-quit is void.

Under the current law, a tenant does not have a right to dispute the landlord's right to serve a notice-to-quit for grounds 1 and 2 above. The tenant can, however, dispute the evidence presented to the Courts by the landlord in support of such a notice-to-quit – which is not the same as having a right to serve a counter-notice.

**ILLEGAL DWELLING:** When preparing to pay someone rent for a space to live in, the renter must take care to understand whether this space is registered to be a legal dwelling. If the space is considered to be an illegal development, there would be no legal tenancy. If there is no legal tenancy, the renter would not have the same rights, responsibilities and protection under law as a tenant. This would include the right to continue residing in the space, even if the renter had signed an agreement and was making payments as agreed to live there.

If you have any concerns that the space you are paying rent for might be an illegal dwelling, you can take certain actions:

- Confirm whether the space has its own

assessment number and an assigned annual rental value, required for all rental units which are legally registered, by visiting [landvaluation.bm](http://landvaluation.bm) or contacting the Land Valuation Department.

- Contact the Department of Planning to request that an Enforcement Officer check into whether you are living in an illegal dwelling. An Enforcement Officer has the authority to deal directly with a landlord about any potential issues with illegal developments.
- Get familiar with how the small claims procedure works at Magistrates' Court by reviewing the booklet published by Consumer Affairs. Also consider referring to the 'Handbook for Civil Litigants in Person', with information about preparing to represent oneself before the Supreme Court, which was published in 2017 by the former Chief Justice (download from [gov.bm/articles/handbook-civil-litigants-person](http://gov.bm/articles/handbook-civil-litigants-person)).
- Visit any free legal advice clinic for general guidance on your situation.

### **Summary: ARRIVAL DIVERTED**

#### **Department of Immigration**

**ISSUES:** We received an urgent call from a grandmother. She told us her teenage grandson was graduating from high school in five days. Her grandson lived with his mother and adopted father in Bermuda. His biological father lived overseas and had travelled here to attend the graduation. The father had arrived but was not being permitted to enter Bermuda while the family and the distraught student waited for the father at the airport. According to the grandmother, neither the father nor the family was aware of any issues which would prevent the father coming to Bermuda. He was being told he was on the Bermuda stop list, but he had no previous knowledge of this. Having been denied entry to Bermuda, the father was *en route* home.

**INTERVENTION:** Complaints to our Office are required to be made by the person aggrieved but may be made on their behalf by a family member or other suitable person if they are unable to act for themselves. We confirmed with the

family they wanted our assistance to contact the Department of Immigration. As an office of last resort, usually complainants are first required to raise their complaints with an authority before we intervene. In this complaint, given the urgency, the Ombudsman agreed to intervene immediately by contacting the Authority to clarify its position. Our Office inquired whether there were any options for obtaining permission to enter within the short time period before graduation day.

We learned the father had been placed on the stop list for previously overstaying a visit to Bermuda, albeit by a number of days. He had addressed the matter by attending the Department of Immigration to explain and had voluntarily left the country as agreed. As a matter of law, the Minister responsible for Immigration (now the Minister of National Security) can place a person on the stop list whenever they have overstayed, even for a short time. Notably, a person cannot be placed on the stop list until they have left Bermuda, which means they may have no knowledge of it. Once on the stop list, officials have no discretion and the only administrative recourse is an application to the Minister for consideration for permission to enter, which can be made on an urgent basis.

An urgent application for a waiver for the father to visit was successfully granted. The student and family were relieved that the father was able to be part of his son's milestone achievement. The father was also provided information on making an application to be removed from the stop list.

**INSIGHT:** This case demonstrated the value of flexibility. The Minister granted the waiver in less than 24-hours, allowing the father to return within two days of his original arrival date.

Travellers are responsible for knowing what is required of them to legally enter another jurisdiction. However, a person may not know they have been entered on the Bermuda stop list until they have attempted to enter Bermuda. Ignorance of the law does not mitigate personal responsibility. Yet the onus also lies with public authorities to make available as much information as possible in as many easily accessible ways for service users. This is particularly important when information is held by the authority alone, as in this case where the person was unaware he was

on the Bermuda stop list until he arrived. Such cases raise fairness issues.

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## VOCAB ALERT

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- The Bermuda stop list exists by law, under section 31(5) of the Bermuda Immigration and Protection Act 1956. The power to maintain the list is delegated by the Governor to the Minister responsible for Immigration. This list applies only to people who do not hold Bermudian status.
- The Bermuda stop list should not be confused with what may be incorrectly called the 'stop list' for travelling to the United States. When people speak of the 'U.S. stop list', they are usually referencing U.S. immigration law which identifies certain persons that are ineligible to travel to the U.S., even if in transit to another country. For guidance, see *Title 8 U.S.C. 1182* and *section 212 of the Immigration and Nationality Act (INA)*.
- U.S. immigration law allows inadmissible persons to travel to the U.S. under certain circumstances, which includes being qualified and approved for a waiver. Affected Bermudians who are ineligible to travel to the U.S. under U.S. immigration law may apply to the U.S. Consulate General for a waiver.

### ***Did you know:* HELPING AGEING RESIDENTS UNABLE TO HELP THEMSELVES**

From time to time, we are contacted by family members of Bermuda's elderly who are no longer able to handle their own affairs. These concerned family members allege persons acting as receivers are not doing all they should under the receivership arrangement. For instance, the receiver should submit annual reports to the Court as evidence that they are properly handling the elderly's affairs and also considering the family's input on decisions.

Some family members believed that the Government should be able to require receivers to demonstrate accountability in response to a complaint. They had already called Ageing & Disability Services (ADS) for help. Under the

existing laws, the Government has no power to compel a receiver to demonstrate accountability about the elderly's private affairs as defined in an order of the Court. ADS can look into quality of care issues as well as alleged abuse about a senior's physical, psychological and financial health. Since they were not alleging abuse, these family members were encouraged to 'chase' the receivers with their concerns and otherwise were referred to the Court for any request to enforce action. We reiterated the message provided by ADS.

In 2018 the Ministry of Health shared publicly its intention to "explore the implementation of an adult protection framework embedded with a public guardian role. This implementation will ensure more effective management of our most vulnerable, and assist with the management of our complex care cases" [note 1]. Note that 'adult protection' expands the Government's focus on mental health to include all persons who are without capacity due to a disability or illness – meaning it would not be limited to our population 65 years and over.

Note: 1. Bermuda House of Assembly, Official Hansard Report 28 Feb. 2018 (Sitting Number 17 of the 2017/18 Session), p. 1245, [parliament.bm/admin/uploads/hansards/a6ea52544117200be6bf75dabaa33f7d.pdf](http://parliament.bm/admin/uploads/hansards/a6ea52544117200be6bf75dabaa33f7d.pdf).

## **Summary: TAXING PROPERTIES WITH MULTIPLE OWNERS**

### **Office of the Tax Commissioner**

**ISSUES:** A senior complained to our office that the Office of the Tax Commissioner (OTC) had been billing him in error for land tax on one of two units of a property he owned with members of his family. The senior lived in the upper unit of the property and claimed that the OTC had been billing him for the land tax for the lower unit since one of his relatives, who occupied the lower unit and also owned a share in the property, had passed away. The senior believed that he was the legal owner and occupier of the upper unit only. Since he did not occupy the lower unit, he claimed the OTC should not have made him responsible for the lower unit's land tax.

**INTERVENTION:** Our Office made inquiries with the OTC. The OTC explained that the former

occupier of the lower unit, the senior's relative, had applied for and was granted a senior land tax exemption before he passed away. However, after the relative's passing, the OTC ended the land tax exemption.

The OTC told our Office that its records on the property did not distinguish separate ownership of the two units. The OTC considered the senior as holding a share in the property as a whole – and not as owning only the upper unit.

To qualify for land tax exemption, a senior citizen must both own and occupy the unit for which the exemption is being sought. When a senior owns a share in a property with multiple units, for tax purposes they will only receive an exemption for the unit they occupy.

Starting in 2016, the OTC began to list on its demand notices all of the property owners on its files. In this case, the senior living in the upper unit and his relative in the lower unit would have been listed together on the land tax notices had the lower unit occupier lived into 2016.

The OTC told our Office that it is not responsible for interpreting legal documents, such as wills, and must rely on what clients present to support claims of property ownership. However, the Land Title Registry Office (LTRO) can provide more guidance on what evidence is required to confirm property ownership. LTRO's staff review legal documents and can assist with technical questions about property ownership. The OTC can change its records regarding property ownership once documents have been vetted by the LTRO.

In this case, we were able to explain to the senior why he had been issued land tax notices for both the upper and lower units and why the OTC's communication with him was reasonable. We also communicated with the LTRO and arranged for the senior to meet with a Land Title Legal Officer at the LTRO.

**INSIGHT:** This case highlights the practical support that the LTRO can offer the public. As we reported in our Annual Report 2014, Bermuda was one of the last countries in the developed world to rely exclusively on a deed-based property transaction system. This case shows that Bermuda's transition to a title-based system not only will make property

transactions more efficient but assist individuals to provide evidence of property ownership for other purposes as well, including government land taxes.

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**“The only justification for ever looking down on somebody is to pick them up.”**

– Rev. Jesse Jackson, American civil rights activist (b. 1941)

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## **Summary: BACKDATING SENIORS’ LAND TAX EXEMPTION**

### **Office of the Tax Commissioner**

**ISSUES:** In October 2017, a property owner complained to our Office that she had been waiting over two years for the Office of the Tax Commissioner (OTC) to complete its stamp duty adjudication. In January 2015, the property owner had submitted an application to the OTC to convey ownership of her home to joint ownership with her husband.

The property owner claimed that the OTC’s delay had several consequences, including preventing the property owner from finalising her will and incurring further legal fees. Significantly, in 2017, the property owner’s husband had turned 65 which meant that he had become eligible to apply for a land tax exemption; however, as the OTC had not completed its adjudication, the property owner’s husband had not become a joint owner, and the couple could not benefit from an exemption.

**INTERVENTION:** As reported in our Annual Report 2017, the OTC had been dealing with a significant backlog. Applications increased while the OTC’s Stamp Duty Section remained under-resourced and continued to operate without an adequate plan on how to manage the backlog with incoming applications. Importantly, there was only one senior officer trained and available to carry out the final vetting on most applications processed by the Stamp Duty Section. This was not a simple matter of unreasonable delay by the OTC.

Considering this background, our Office decided not to investigate the cause of the delay in this complaint but pressed the importance of having

a plan to address the backlog with the OTC. This followed on from the Ombudsman’s previous decision in a similar complaint, that finding maladministration for obvious and acknowledged errors would not lead to meaningful change. We understood the OTC would continue to be challenged to provide regular, timely updates on its backlogged applications while it worked to process them. In this case, we decided to keep the property owner’s complaint opened to track status updates.

In April 2018, the OTC implemented a more rigorous plan to reduce the Stamp Duty Section’s backlog of applications, including temporary assistance. The OTC confirmed the property owner’s application was completed in August 2018, and one day later the property owner confirmed she had received the OTC’s adjudication letter.

The property owner remained concerned that the delayed adjudication meant that her husband had not been a joint owner for a period when he had been eligible for a land tax exemption. We confirmed the Tax Commissioner’s willingness to backdate the land tax exemption to the date of her husband’s 65th birthday, once her husband had made this formal request.

**INSIGHT:** In this case, the OTC was sensitive to the fact that it was causing a delay in the conveyance of a property which meant that a couple would not benefit from the exemption. This is an instance in which our Office was able to address not only an authority’s delay but address the unfairness that resulted from the delay.

Seniors may obtain an exemption from paying land tax on properties they occupy with an annual rental value (ARV) up to \$45,500. It applies not only to homeowners but also seniors who hold a rental lease for three years or more. Land tax will be payable on any portion of the ARV that exceeds \$45,500. In February 2019, the Minister of Finance confirmed this exemption for seniors would continue in the same way.

To benefit from the land tax exemption, a senior must submit an application upon reaching 65 years old. The exemption is not automatically applied by the OTC. Seniors who believe they are eligible should submit to OTC:

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

A form may be collected from the OTC or downloaded from [gov.bm](http://gov.bm).

In addition to land tax, seniors in Bermuda are eligible for a number of other exemptions and discounts from public authorities, including:

- free bus and ferry travel via a special person's card. This benefit is for local residents only. Seniors from abroad without such a card must pay full price. Seniors, and people with qualifying disabilities, must apply for a special person's card at the Transportation Control Department (TCD).
- a discount of over 50% for annual motor vehicle licensing, if they qualify. Seniors can call TCD or go to [gov.bm](http://gov.bm) for the fees. TCD also has a seniors' priority counter.

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## VOCAB ALERT

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- Annual rental values (ARVs) represent the Government's mass assessment of current rental values, comparing properties across the island, as of a specific valuation date. The ARV is a value that helps to identify which properties fall under rent control as well as the property's land tax bracket – among other important uses. But an ARV is not the same as the rent that can be charged lawfully for the rental unit. The Consumer Affairs' Rental Unit may approve rents for properties under rent control to be greater or lower than their ARV under specific circumstances.
- The Land Valuation Department carries out a mass assessment every five years by law and publishes ARVs for all registered units in a document called the Land Valuation List, which is also maintained online at [landvaluation.bm](http://landvaluation.bm). To calculate ARVs, the Department considers each

property's location, type, size, amenities and characteristics. The next valuation is due to be completed in 2020.

## ***Did you know:* PROTECTING WISHES TO DONATE ORGANS**

There is a common misconception that it is sufficient to confirm your desire to be an organ donor by indicating it on your driver's licence. However, this is not enough if the next-of-kin does not give consent at the time of death. For anyone willing to be an organ donor, the best way to ensure your wishes are carried out is to inform family members and have a living will.

According to the Bermuda Organ Donor Association, organs can only be taken after an individual, usually in the intensive care unit, has been declared brain dead and absolutely nothing more can be done to save them. This is a traumatic time for a family, but the patient can only be kept on a ventilator for a short time before organs deteriorate. People who die outside of the hospital or in the emergency department are not candidates for organ donation.

If the person is a potential donor, the family will be approached. Should the family or next-of-kin refuse consent for any reason, then the organs will not be taken no matter what the deceased's wishes may have been. However, if the family agrees to donate their loved one's organs, a team from New England Donor Services will fly in to talk to them so that an informed decision can be made. All organs are transplanted in the United States, not in Bermuda, so patients fly overseas to receive their transplant.

Currently, there is no organ donation register on the island, but the Association is working to change that. In the meantime, it encourages members of the public to express their wishes to be organ donors on their driver's licences.

One organ donor can save up to eight lives. The reality is that in the past four years only one person's organs have been donated. When approached, many families have said no or been unsure of their loved one's wishes. Therefore, the Association says the most important thing everyone can do is to have the conversation over and over to ensure their family and next-of-kin know what their final wishes are.

## CONTACT:

Ms. Jean van der Merwe, President, Bermuda Organ Donor Association

Tel: 239-1282 | Cell: 599-2836 | Email: jemvan10@gmail.com

Facebook: Bermuda Organ Donor Association

## **Summary: VECTOR CONTROL AND INTERVENTION**

### **Department of Health**

**ISSUES:** In early 2017, a resident contacted us about a vector control issue, which she had been discussing with the Vector Control Section of the Department of Health since late 2016. She complained that the Department had not taken all action within its powers to ensure the source of the nuisance, which she believed was attracting rodents, was eliminated. She claimed her neighbour was responsible for maintaining the property in question and that the Department's Director had the authority to compel her neighbour to properly address the source of the nuisance but was refusing to do so.

**INTERVENTION:** After reviewing the resident's latest emails with the Department, we asked for the Director's preliminary response. It included his view on the adequacy of actions that the Department's staff had taken to address the resident's concerns, such as site visits and an assessment that there was no visible sign of excessive rat infestation, which they had put in writing. We learned that the Department also had exercised caution due to an existing legal dispute between the neighbours, which directly impacted the Director's capacity to intervene and that the neighbour may have decided not to remove the piled foliage because of a Court injunction.

Our initial assessment was that the complaint required us to weigh the reasonableness of the Director's responses to the resident, to determine whether the Department could take further action at that point. We thought it was not a matter of re-establishing communication between the parties because the appropriate resolution seemed to be more about determining the facts rather than helping to address relational issues. We decided the most relevant factors were: the Ministry of Health's complaint handling policy, which



provided a standard supporting the Director's response that no action would be taken by the Department while Court cases regarding property rights were underway; the legislation setting out actions which the Department could take, for instance under section 3 of the Public Health (Rodent Control) Regulations 1951 and sections 45-54 of the Public Health Act 1949; and the Court case involving the neighbours and whether the subject matter limited what the Department could do prior to the judge making any ruling.

To the resident's dissatisfaction, some months passed before we took further action after our initial inquiry and assessment. The Ombudsman took over to progress the complaint, with the goal of spurring the Department's immediate action without requiring an Ombudsman investigation. The Ombudsman clarified with the Director how the pending Court action related to the primary complaint issue. Two weeks later, the Department updated us that the piled foliage had been removed, more inspections had been made, and more bait boxes had been set up which the Department would continue to monitor. They believed the situation was being managed adequately. When we followed up with the resident, however, she indicated the piled foliage

she had pointed out for the Department's attention in her initial contact with Vector Control was still there.

To address this new misunderstanding, the Ombudsman led a series of follow-up discussions with the resident and the Department. The resident shared photos with us as well as a video taken after seeing rodents around her house, which we then passed to the Department. We understood the property in question was large and while the Department's actions had remediated the situation, they were not directed at the originally complained of piles. Shortly after those exchanges, the Department updated us that their staff had assisted to remove piled foliage from the property in question and again had inspected the area with no sightings. The resident repeated that the relevant piles remained on the property. It was proving difficult to rely on electronic means of getting on the same page. The Ombudsman decided a joint site visit with the resident and the Department's staff was required immediately.

The site visit, which took place in early 2018, involved the Ombudsman clarifying points of misunderstanding with direct reference to physical objects, reality-checking the parties' views about their actions and communication, and negotiating a resolution with agreed next steps for both parties. Soon after, it was confirmed that the foliage pile originally complained of had been removed at last through the Department's efforts – without the Director having to use his statutory powers to compel the neighbour to do so. Once the resident had purchased the number of bait boxes suggested, Vector Control could place them on the resident's property boundary. The Department would then be able to carry on periodically monitoring rodent activity in the area. The Ombudsman declined to further investigate the complaint and concluded the final resolution was adequate – also without having to make a finding of maladministration for some already acknowledged mistakes.

**INSIGHT:** The substantive issue in this case on its face was straightforward. Yet resolving it took about 14 months – from the resident's initial contact with the authority to our confirmation that the real issue had been directly addressed. This was the case despite the fact that senior officials led the way.

Sometimes even matters that seem simple can be complicated to resolve despite good intentions. Tense relationships between neighbours provided a complex backdrop to what the resident presented to our Office as a simple complaint of inaction by the authority. Doing away with the cause of the nuisance and continuing to take reasonable action to prevent further occurrences ultimately lay with private individuals, not the authority. It took considerable effort to persuade the parties to take reasonable action, without impact on any pending legal action which in the early stage had caused the Department's Director to pause. The nuances in this case made it necessary for our Office to rely on the Ombudsman's powers of persuasion.

We encourage all residents to do what you can to help yourself and Vector Control, by:

- Preventing foliage from accumulating in piles on your property.
- Storing garbage in sealed bags inside sealed bins.
- Ensuring your composting bin remains properly enclosed.
- Documenting any sightings or evidence of pests.
- Following any recommendations made to purchase bait boxes for your property, which a Vector Control inspector must install. The assessment, installation and monitoring are free services provided by Health.

#### CONTACT:

Address: 6 Hermitage Road, Devonshire FL 01  
Tel: 278-5397 or 278-5333  
Email: envhealth@gov.bm

#### ***Did you know:* ILLEGAL ADVERTISING ON PUBLIC ROADS**

It is a common to see signs of upcoming events advertised on public roads, particularly around the holidays. For years, one of the most popular locations was near the roundabout on Kindley Field Road. It may come as a surprise that such advertising has been illegal for many years.

**LEGAL:** The Advertisements Regulations 1911 allows advertisements in the following locations:

- on land relating to any meeting, auction or sale to be held on or in relationship to that land;
- on land announcing the sale or letting of that land;
- on land which is licensed for the exhibition of advertisements by either the Corporation of Hamilton or St. George;
- on land or a building giving only the business name of the company, firm or person and general character of the business being carried out;
- inside the display window of an agent's business premises in respect of a business for which the agent acts; and
- inside a place of business.

The Regulations also include provisions that specify the size, content and location of legal advertisements and announcement signs.

**ILLEGAL:** The following characteristics are prohibited under the Regulations:

- advertisements visible above the roof-line or sky-line of any property;
- advertisements on a kite or a balloon;
- flashing or illuminated signs visible from any street or public way;
- sandwich men;
- vehicles used solely for advertising purposes;
- use of the national flag;
- portraits of living or deceased members of the UK's royal family; and
- brand names, emblems or logos.

The Department of Planning is responsible for receiving complaints about illegal signs. Members of the public can make complaints about illegal sign postings to Planning. The prompt for removing such signs is largely dependent upon the public making Planning aware that illegal signs have been posted. Once notified, Planning liaises with the Highways Section of the Department of Works and Engineering to have the sign physically removed.

To report an illegal sign, contact Planning, located at 58 Court Street, Hamilton HM 12, at 297-7756,

planning2@gov.bm, or by submitting a message on their website at [planning.gov.bm](http://planning.gov.bm).



*Public notice posted along Kindley Field*

**Summary: PAPERWORK MISSED**

**ISSUES:** A previous complainant contacted us for more help. She was finding it difficult to get answers in writing about why one of her benefits had been cancelled. She was behind on paying her expenses so asked for our immediate intervention. She wanted our help to find out the reasons for the cancellation so she could then write a reasonable appeal. The primary point of contention was that the client insisted on dealing with the authority by email alone, while as a policy the authority would discuss the client's concerns by telephone or at in-person appointments only.

**INTERVENTION:** We agreed to follow-up with the manager who we had spoken with a few months before about the same client's benefit applications. Based on previous experience, we set out a written summary for the authority including our understanding of what had happened, what may have gone wrong, and what the client was expecting. That same day the manager agreed to check into the file status, in light of our contact,

and within hours had followed up with some initial information. This allowed us to update the complainant with a complete response in less than 24-hours.

We learned the authority had been in the midst of preparing the client's file for closure, which would include a letter to confirm the reason her benefit had been cancelled. The file closure had been underway because they determined that the client had failed to make any contact in response to the authority's information request.

When we first contacted the manager, we had set out details of the client's view on how she had responded to the authority's information request. In checking their records after our initial contact, the manager located an important document that had been placed on the client's file but not brought to the assigned worker's attention. This oversight had led the authority to believe the client had not responded at all to its request, when in reality the located document was evidence that the client had responded at least in part. The authority's mistake was compounded by the fact that the file was not in its usual location because another staff member was also in the midst of preparing a separate response to the client about another application.

In response to our Office's contact, the manager acknowledged that the client's partial response should have triggered a follow-up by the authority and agreed to reconsider the benefit which she conceded may have been cancelled prematurely. The manager also urged that the client submit the required information for the current period, as it was not yet too late, and she did not wish for the client to lose out on an existing opportunity for financing.

We relayed this information to the client, explained what was believed to have been an oversight, and encouraged her to contact the manager as soon as possible about reinstating the cancelled benefit as well as a new benefit for the current period. Understandably, the client was upset and claimed the authority had dealt casually with an important application. She also expressed gratitude that there was scope to reconsider her cancelled application without needing a full appeal. She agreed to phone the manager and

accepted that speaking verbally would be more expedient than continuing to insist on using email, which the authority already resisted engaging in as a matter of internal policy.

**INSIGHT:** In this case, a simple administrative error caused significant interruption to a client's livelihood. We appreciate that staff at authorities who handle sensitive applications take care to prevent such mistakes. When an authority relies entirely on a manual filing system, such errors are likely to occur more often than desired. While a manual filing system is not necessarily inferior to an electronic system, quality control measures must be in place and monitored stringently. We encourage all authorities to reflect on their existing quality control practices.

### ***Did you know:* REOPENING COMPLAINTS AFTER WITHDRAWING**

Occasionally complainants decide to withdraw their complaint with our Office before we conclude our process. In such cases our team first confirms that a complainant understands that his complaint will be closed. Depending on how far the complaint has reached in our process, we may also send the complainant a written acknowledgement of the complaint closure.

If a complainant changes his mind, he can request that we reopen his complaint. In most cases, we can simply reopen the same complaint; however, the Ombudsman Act limits our ability to address actions about which the complainant has known for over a year.

Other government complaint handling bodies may also allow you to reopen a withdrawn case. For example, in most instances Consumer Affairs, under which falls the Rent Commission, will allow people to reopen a case after withdrawing it. But it is very important to ask before you withdraw a case whether you will be able to reopen it if you change your mind. There may be circumstances in which a case cannot be reopened.

### ***Summary:* SUPPORTING SPECIAL NEEDS STUDENT**

#### **Bermuda College**

**ISSUES:** A college student with a learning disability contacted us for help. He believed he was not being accommodated as much as he

needed, particularly when preparing for exams. If he was having trouble during class at the Bermuda College, he said he was allowed to leave and visit the resource centre. He complained that this accommodation, while helpful at times, mostly left him feeling disappointed because there was no guarantee that a tutor would be available to go back with him to provide in-class support. Leaving class could also make it difficult for him to catch up with his work.

**INTERVENTION:** After several discussions with the student, we contacted the College. We explained our usual approach in the first instance was to attempt to resolve complaints through informal means, rather than assume that all complaints required a full investigation. The College preferred to respond to our inquiries in-person.

We met with faculty members who were familiar with the student. We discussed the College's services for accommodating students with learning disabilities, in greater detail than what we knew from reading the policy statement posted on their website. All students were encouraged to use the resource centre. The College explained some fundamental differences between its approach and what the student would have experienced at previous school levels as well as the practical impact of these different approaches. We also discussed the specific plan in place for assisting the student, including the College's view on why he may have been concerned about his learning experience.

After the meeting, we spoke with the student again to clarify his concerns. This was important because we had learned new information, including that the student had access to more frequent one-on-one support than we initially understood. The student acknowledged this support and described a number of strategies in place which he believed were working well for him.

After carefully considering information from the student, his family and the school, we found a misunderstanding of expectations had played a greater role in this case than the adequacy of the College's support for the student. We understood why students and their families might ask the College to provide a level of support similar to

their previous experience or requests. However, this expectation did not align with how colleges and universities provide disability support services. We ultimately decided further inquiries into the complaint would have limited specific gain for the student, who was due to graduate soon.

**INSIGHT:** In assessing this complaint, it was important to understand that the student's family had long-standing feelings of dissatisfaction with his learning experiences in the public school system. Our work was less focused on substantiating specific concerns about current services in place for the student and more focused on addressing the student's expectations.

Our Office knows there are ongoing challenges with how special education works in the public system. Some were outlined in the Ministry of Education's 2013 discussion paper. The general approach – that the higher the school level, the more the school relies on the student to advocate for their learning needs – seems reasonable on its face. Yet, in the existing public education context, it is problematic to rely on young people to self-advocate when their previous experiences might have been less than adequate to prepare them to meet such an expectation.

While the College is governed separately from the Ministry of Education, a high degree of collaboration is required for supporting our youth in their growth as independent learners. What happens in the lower schools directly impacts students arriving at the College. This complaint helped us to identify issues to follow-up on, including the transition process between levels in the public system.

### **Summary: PAYMENT FOR PERSONAL CAREGIVER**

#### **Department of Financial Assistance Health Insurance Department**

**ISSUES:** A caregiver complained to us that the Department of Financial Assistance (DFA) had not paid him fully for personal caregiving services he had provided for his father. The caregiver insisted a document existed to prove he should have been paid for a total of 80 caregiving hours per week for his father, who was a client of DFA and

insured with FutureCare, a medical insurance plan for seniors administered by the Health Insurance Department (HID). The caregiver's brother was responsible for handling their parent's affairs, including signing off on the insurance claim forms which recorded the hours the caregiver actually worked.

By the time he contacted our Office, about three months after his last caregiving day when his father had passed, the caregiver had already spoken with DFA and HID several times. He believed he was still owed about a month's worth of claims payments and thus was unable to settle a handful of outstanding bills, which made him anxious for the issue to be resolved quickly. The caregiver also was dealing with the loss of a parent.

**INTERVENTION:** Our initial assessment was that the caregiver needed to be put in contact with the right staff at DFA so he could discuss full details about the claim and payment process, including getting answers to questions he still had. DFA responded at first that it seemed to be a matter of the caregiver misunderstanding the policies which guided how the payment partnership between DFA and HID worked. We were prepared to help by clarifying information between the caregiver and the authorities.

After further discussions with the caregiver, however, it became clear to us that the complaint would need to be resolved by our Office reviewing DFA and HID's paperwork and policies more thoroughly. The caregiver remained adamant that all paperwork had been submitted by his family as required to support the payment he was expecting to receive for his caregiving services. He was convinced of certain key details, including that he was told he would be paid for 80 hours per week at \$15 per hour, which originally made him confident enough to quit his night job to help out the family by caring for their father until he passed. We decided these points could be addressed only by comparing the records.

We reviewed: an 'explanation of payments', generated by HID and addressed to the caregiver, which included the dates he worked, the amount he claimed for each day worked, the amount HID paid for each day worked, and any amount

HID excluded to be paid for each day worked; 'personal home care service claim forms', which were date stamped by HID; the approved care plan, noting the father had been approved to receive 80 hours per week of personal caregiving services; and relevant DFA and HID policy documents.

We also matched the caregiver's dates and times on the claim forms with HID's explanation of payments and allowed the caregiver to confirm that the claim forms matched his records or recollection of when he had worked. He reiterated to our Office on several occasions that he had submitted all paperwork for his hours to HID. Given that he had completed the claim forms by hand, which were signed by his sibling, we accepted that the authorities' documents were an accurate representation of his personal caregiving services for his father for the relevant two-month period.

Through our inquiries, we concluded that:

- HID's policy was for personal caregivers to receive a maximum of \$15 per hour for a maximum of 40 hours per week. In our discussions, the caregiver accepted this had been explained to him before he started providing his services. DFA's policy was that personal caregivers would be paid first by HID and then any amounts excluded by HID might be paid by DFA, according to a care plan that must have been pre-approved. The maximum amount of \$2,000 per month was set by law.
- The caregiver believed he was approved to receive payment of fees from HID and DFA in equal amounts, at a maximum of 80 hours per week at \$15 per hour. His understanding that his parent was approved for 80 hours of personal caregiving was correct.
- Of these 80 hours, a total of 40 hours would be covered by HID, and the remaining 40 hours would be excluded from being covered by HID. Of those excluded 40 hours, DFA would pay up to a maximum of \$2,000 per month. In other words, DFA was approved to have paid the caregiver any balance of hours excluded by HID up to its maximum of \$2,000 per month, which

was on average 33.33 hours per week. Any remaining hours not covered by the authorities would need to be paid by the policyholder, who was the caregiver's father.

- The documents we reviewed did not show that the caregiver had worked or had claimed to have worked 80 hours per week, which for instance would have been 16 hours per weekday from 7am to 11pm. Instead, they showed he had worked on average 10 to 13 hours per weekday for a total of 29 days. Based on HID's record, the caregiver claimed a total of \$6,315 for the relevant 2-month period. Of this total, HID paid him \$6,225 and DFA paid him the balance of \$90. In other words, the total of the amount excluded by HID was then paid by DFA. Between HID and DFA, the caregiver received payment for the total number of hours noted on the two claim forms.
- HID's policy allowed for caregivers to receive fees for services provided up to a maximum of 90 days before the caregiver's registration approval date. Even though he had registered as a caregiver, through Ageing and Disability Services, after he had started to provide services for his parent, indeed he had received payment for the whole 2-month period he worked based on HID's record of the hours he claimed.

To assist the caregiver in following our assessment of what happened with his claims and payments, we summarised it in a letter along with a spreadsheet showing his total hours and fees with the running balances. We understood that, in addition to talking it through, the caregiver needed complete information in writing to help him work through his original understanding and what we were able to clarify through our inquiries.

INSIGHT: This case highlighted the key roles of memory, record-keeping and policy

documentation in complaint handling. Though a person's recollection can be accurate on some points, it is important to remember that their memory can be inaccurate on other points. This is why we suggest that service-users take notes at the time.

Unfortunately, the caregiver could not produce any records he had been relying on. In the process of complaining to us, he lost access to his email accounts and accidentally ruined the only print version he had of the relevant documents. The caregiver also did not have consistent access to a phone and worked long hours, which led to frequent delays in our contacts. So we used an office cell phone app to share documents with the caregiver. We ultimately relied on the authorities' documentary evidence when it contrasted with the caregiver's recollection.

Even though we did not uphold the caregiver's complaint, we hoped our discussions provided closure on a matter that had been causing him considerable stress. The level of attention, required to identify where the caregiver's view coincided with and diverged from the authorities' records, went beyond what the Ombudsman could reasonably expect DFA and HID to have provided for the complainant, considering the high volume of their client work.

Despite the repeated delays, we were able to close the complaint within four months.



## STRATEGIC AIM III: CHAMPIONING BEST PRACTICE

### ASSESSING GOOD ADMINISTRATION

Ombuds 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.

We refer you to:

- “Good Conduct and Administrative Practice: Guidelines for State and Local Government” from Australia’s New South Wales Ombudsman (2017)
- “Administrative Fairness Guidebook” from Canada’s Alberta Ombudsman (2013)
- “Defining Fairness in Local Government” from the Ombudsman Toronto (2013)
- “Principles of Good Complaint Handling” from the UK Parliamentary and Health Service Ombudsman (2008)
- “Principles for Remedy” from the UK Parliamentary and Health Service Ombudsman (2007)
- “A Guide to Principles of Good Complaint Handling” from the Ombudsman Association (2007)
- “Code of Administrative Justice” from the British Columbia Office of the Ombudsman (2003)

### The “Principles of Good Administration” are:

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
  - Putting things right
- Seeking continuous improvement

For structured guidance on how to reflect on 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)
- “Complaints: Good Practice Guide for Public Sector Agencies” from Australia’s Victorian Ombudsman (2016)
- “Complaints Improvement Framework” from the Scottish Public Services Ombudsman (2017)
- “Effective Complaint Handling Guidelines” from Australia’s New South Wales Ombudsman (2017)
- “Effective Complaints Management Self Audit Checklist” from Australia’s Queensland Ombudsman (2006)
- “Managing Unreasonable Complainant Conduct Practice Manual” from Australia’s New South Wales Ombudsman (2012)

If unable to locate above resources online, contact our Office.



*Greek Ombudsman, Andreas Pottakis, with Ms. Pearman at the Ombudsman Association’s conference during a session she chaired*

## BEST PRACTICE IN OMBUDSMANSHIP

Our Office is affiliated with various international associations; see page 45. In 2018, we successfully renewed our membership of the UK's Ombudsman Association (OA). While we have been a member for 13 years, the OA requires all of its members to go through a rigorous re-validation process to confirm that its member organisations continue to meet membership requirements and Ombudsman best practice.

We are always seeking to improve and welcomed feedback from the OA's Validation Committee on ways we can update our processes and practices. In 2018, we pursued a number of initiatives that will ensure we continue to serve the Bermuda public at a high standard.

Many of the initiatives have been or will be implemented in 2019, and accordingly we will be reporting on them in next year's annual report.

In 2018, we advocated for important improvements to public service delivery to ensure all public authorities:

- have internal complaint handling policies and procedures; and
- direct their service users to our Office if they have unresolved complaints.

Members of the public should have their complaints quickly and efficiently addressed by a public authority without the need to come to our Office. We believe that effective complaint handling will allow authorities to resolve complaints more quickly and provide them with useful lessons on how to improve.

Additionally, by providing information on how to contact our Office, authorities are ensuring that all people who use public services will know how to have their concerns addressed.

In 2018, the Ombudsman met with the Head of the Public Service to discuss the importance of these two improvements. We are pleased that the leaders of the Public Service enthusiastically welcomed these suggestions. In 2019, all government departments will be implementing internal complaint handling processes and will also be adding information to their websites on how to contact us.

We thank the Head of the Public Service, the Civil Service Executive and the Public Service as a whole for supporting these important improvements.

## INVESTIGATING WITHOUT A COMPLAINT

An important power for the Ombudsman – and one not every Parliamentary ombuds possesses – is the ability to launch an investigation on her 'own motion'. In practical terms, this means that she can investigate an issue even where there is no complaint from a member of the public. To exercise this power, which is set out in s.5(3) of the Ombudsman Act, the Ombudsman must be satisfied that there are reasonable grounds to carry out an investigation in the public interest. In the past, own motion investigations the former Ombudsman conducted have covered high profile issues such as the Corporation of Hamilton's request for proposal process for its waterfront development, the demolition of tombs at the Tucker's Town cemetery and the process leading to the grant of special development orders.

Though they covered a diverse range of issues, the unifying feature of all these investigations was the Ombudsman's decision that the public interest required her to investigate. In assessing whether it is in the public interest to conduct an investigation, the Ombudsman will consider a number of factors including the gravity of the potential harm posed by maladministration as well as the number of people who may be impacted.

In 2018, the Ombudsman launched two own motion investigations into the actions of public authorities to determine whether there is evidence of maladministration. These investigations are still ongoing, along with a systemic investigation formally launched in 2017 related to senior abuse and other cases being prepared for investigation.

Visit [ombudsman.bm](http://ombudsman.bm) to download all available reports about our Office's systemic investigations.

## **Commentary:** COMMUNICATION OF BUS DELAYS AND CANCELLATIONS

In September 2018, the Ombudsman publicly expressed her concerns about the Department of Public Transportation's communication of an interim bus schedule with the public. The Ombudsman's public statement came after a long period of monitoring the daily bus cancellations

and delays and consultation with the Department on how it communicated with its stakeholders.

After extensive consultation with the Department and the Ministry of Tourism and Transport, in November 2018 the Ombudsman launched an investigation into whether the Government effectively and sufficiently communicated bus cancellations to the public.

Some of Bermuda's most vulnerable people depend on the bus service, including seniors, children and those who cannot afford private transport. We believe these groups are less likely to complain about the impact of daily bus delays and cancellations. The Department has provided information that it had been struggling with a smaller fleet of buses than is required to fully serve its schedule. Primary efforts to reduce cancellations have focused on replenishing the available fleet, including new bus purchases, out-of-service repairs and mid-life refurbishments.

We were aware that the Department had been actively working on implementing a new schedule. We were hopeful that the new schedule announced on 12 March 2019 would provide a more consistent and predictable service for Bermuda. A month later, the Ministry announced that the interim schedule introduced on 18 March 2019 was withdrawn due to feedback from the public and bus operators. The 2018 schedule was reinstated effective 29 April 2019 with some changes, including that it no longer listed those trips which had been routinely cancelled.

By relying on an online platform, the Department may not have been effectively communicating with its users. It should not be assumed that all bus users can access the Department's online updates. Some bus users do not have a smart phone with data access or have internet access in their homes. The Department has responded to our representations. It is making some changes to its communication process. It is now working to notify the public about cancellations through CITV announcements and a phone-in recording, which would be updated multiple times per day.

The Ombudsman decided an investigation was in the public interest given the number of people impacted and the cumulative effects for the most vulnerable members of our society. The investigation remains in the fact-finding stage.

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“Once thoroughly broken down, who is he that can repair the damage?”

– Frederick Douglass (1818 – 1895),  
*My Bondage and My Freedom* (1855)

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### **Commentary: SENIOR ABUSE COMPLAINT OVERSIGHT**

In May 2017, the Ombudsman formally launched an own motion systemic investigation into the adequacy of the Government's system for administering and coordinating public services for seniors at risk of abuse and for the handling of such complaints by the authorities responsible – these being the Ministry of Health, the Office of the Chief Medical Officer, and Ageing and Disability Services (together referred to as the Authority). The Ombudsman's own motion systemic investigation remains underway and must be conducted in private. We provide this brief update on progress made during 2018 to encourage the public's interest in advocating for the well-being of our seniors.

The first phase focused on a review of the context. This included collating policies, procedures, standards, protocols and current proposals related to the Government's structural supports for adequate services for seniors at risk of abuse/neglect, irrespective of where the senior resides. Notably, in April 2017 the Authority had published guidance documents for ADS's handling of cases for seniors or vulnerable persons at risk of harm. These included the *Senior Abuse: General Policies and Procedures* along with an *Emergency Response Protocol*, *Senior Abuse Registry and Bermuda Police Service Protocol*, a *KEMH Admission Request Form* and an updated *Senior Abuse Reporting Form*. (These are available at [gov.bm](http://gov.bm).)

The second phase involved a review of ADS's case management practices in handling reports of senior abuse made under the Senior Abuse Registrar Act 2008. We reviewed a selection of case files and produced a summary report of the preliminary findings. The primary goal of the report was to identify specific examples of issues that the Authority would need to be aware of in aid of its

ongoing, multi-layered efforts to improve its case management practices. In addition to identifying issues and challenges, we provided specific suggestions for the implementation in practice of ADS's newly written policies and protocols. All suggestions were accepted.

The third phase involved a systems review. This required assessing the system-level coordination between ADS and other agencies for senior abuse reporting. We reviewed how ADS coordinated with other agencies about individual allegations of senior abuse. These bodies include the Bermuda Hospitals Board, Bermuda Police Service, Department of Financial Assistance, and Department of Public Prosecutions. We also assessed the legislative and policy framework in place as well as how agencies fit within that framework to provide services for seniors at risk of abuse/neglect.

Our guiding principle throughout this process has been not just to identify if things have gone wrong but to be as useful as possible and make suggestions aimed at getting things right. It is the Ombudsman's view that we have maintained the attention and cooperation of the Authority. We have met individually with ADS's staff to discuss on-the-ground challenges with senior abuse case management. We have maintained communication with the Permanent Secretary of the Ministry of Health and have stayed abreast of ADS's efforts to create a more robust case management structure. We have taken some unusual measures to assist with finalising ADS's case management policies, procedures and system development. We felt this was warranted as the ultimate goal is improvement for our senior population.

We acknowledge that it has taken far longer than anticipated to progress and conclude this systemic investigation, which was launched in May 2017 as a follow-up on prior individual complaints. We made some missteps which required reassessing our approach and realigning our focus and actions. We are proceeding deliberately in efforts to get it right and to ensure a positive impact at the community level. We must have the strongest possible safeguards in place to protect our seniors.

Without question, offices like ours must exemplify good administration and be accountable. This

includes acknowledging mistakes when they occur, saying sorry, and adjusting for the way forward. Feedback remains an invaluable part of how we learn and improve. We encourage community stakeholders to share with us when they have criticisms about our work and its impact.

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## VOCAB ALERT

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- 'Systemic' refers to something affecting a group or a system which goes beyond the particulars of an individual's complaint.
- 'Own motion' refers to how the investigation is initiated, i.e. by the Ombudsman or as a result of people complaining to us. An 'own motion' gives the Ombudsman more room to define what will be reviewed, as the issues do not need to directly relate to any particular individual's experience. Some jurisdictions do not allow Ombudsmen to investigate unless the process starts with an individual complainant.

### ***Did you know:* SENIOR ABUSE REPORTING**

It is mandatory for any person who knows or has reasonable grounds to suspect a senior is being abused, or is at significant risk of abuse, to make a report to Ageing and Disability Services (ADS), the Manager of which is the Senior Abuse Registrar under the Senior Abuse Register Act 2008.

The following professionals must report all suspected and known cases of abuse, whether or not the information is confidential or privileged: healthcare professionals, counsellors, social workers, care workers, clergy, police officers, as well as management of a hospital, a home or other facility that provides care to seniors.

**WHO IS A SENIOR?** A senior is any person who is 65 years or older.

**WHAT IS SENIOR ABUSE?** Under the Senior Abuse Register Act 2008, senior abuse includes physical, sexual and psychological abuse as well as financial exploitation. Physical and psychological abuse may also include neglect when the alleged abuser has a duty to care for the senior.

**HOW DO I REPORT SENIOR ABUSE?**

- Call ADS directly to report known or suspected abuse at 292-7802; or

- Complete the Senior Abuse Reporting Form, then email it to [ads@gov.bm](mailto:ads@gov.bm), or send it by mail or deliver it in person to ADS, located at the Ministry of Health in the Continental Building at 25 Church Street, Hamilton HM 12.

#### WHO IS THE SENIOR ABUSE REGISTRAR?

The Manager of ADS is appointed to be the Senior Abuse Registrar. The Manager is responsible for:

- investigating, or ensuring an investigation is carried out, into any senior abuse report;
- intervening to protect the safety and well-being of persons about whom a report is made under the senior abuse process; and
- maintaining the Senior Abuse Register.

#### WHAT IS THE REGISTER?

A person found guilty of senior abuse by the Court under the Senior Abuse Register Act 2008 has their name entered onto the Senior Abuse Register. Once on the Register, the person is not allowed to be employed as a care provider nor be involved in the management of or have any financial interest in any senior's care.

A person's name can be removed from the Register if:

- their court conviction is quashed on appeal; or
- three years after their conviction, they apply to have their name removed. The Senior Abuse Registrar will consider applications based mainly on the nature and gravity of the offence for which the person was convicted as well as whether seniors would be at serious risk of being abused by the person.

For any questions or concerns about reporting senior abuse or neglect, call ADS at 292-7802 or visit [gov.bm/health](http://gov.bm/health).

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**“Not everything that is faced can be changed; but nothing can be changed until it is faced.”**

– James Baldwin (1924 – 1987),  
New York Times Book Review's  
“As Much Truth as One Can Bear” (1962)

#### **Commentary: VICTIMS OF CRIMES FACING DELAYS IN COMPENSATION**

In October 2018, the Ombudsman was alerted by a news story in the Royal Gazette that victims of crimes were facing long delays before the Criminal Injuries Compensation Board addressed their applications. The Board was established by the Criminal Injuries (Compensation) Act 1973 which handles claims for financial compensation from those injured by crimes of violence or family members of those killed in crimes of violence. Using public funds, the Board can award payments to victims or the victims' families to compensate them for financial losses or expenses incurred due to injuries or deaths (see s.3(1) of the Act).

The Ombudsman grew concerned that the victims of crimes and their families were facing long periods – sometimes years – of uncertainty waiting for the Board to make determinations on their applications. Some victims had suffered injuries that prevented them from working on a full-time or part-time basis. For Ombudsman it is in the public's interest to investigate possible maladministration that impacts vulnerable members of our society, such as the victims of crime. The Ombudsman determined that the potential harm of maladministration was grave enough for her to pursue inquiries with the Ministry of Legal Affairs on the Board's administration.

Having made preliminary inquiries, the Ombudsman notified the Ministry of Legal Affairs in December 2018 that she was launching an investigation into the administration of the Board. The Ombudsman will not be in the position to decide whether or not to make her findings public until she has concluded this investigation. The investigation remains in the fact-finding stage.

#### **Commentary: UPDATE ON OVERSIGHT OF CONSUMER BANKING ISSUES**

The Ombudsman has continued discussions with the Bermuda Monetary Authority (BMA) about the policies and practices of local banks. These were initiated early in her term. Private sector entities are not within the Ombudsman's jurisdiction, but fairness in consumer banking issues are matters of significant public concern. The BMA is the



"I'll ask someone else. Didn't realize you were still dealing with that backlog."

regulator and exercises supervisory oversight of the financial institutions involved.

Under the BMA's existing process, if customers have a matter they cannot resolve with the institution, the BMA refers them to Consumer Affairs. One of the issues the Ombudsman identified was how this could lead to the BMA, as Bermuda's financial sector regulator, being unaware of consumer banking or consumer-related issues within its jurisdiction which would also include potential unfairness that may have a far-reaching impact on the BMA's ability to carry out its regulatory supervisory functions.

The Ombudsman wishes to report on ongoing efforts in this important matter.

The Ombudsman is aware that the BMA is working diligently to meet Bermuda's obligations within a changing international regulatory framework. We wish the BMA's CEO, Mr. Jeremy Cox, success as he takes on the additional role of Chairman. The BMA's work as the regulator of the financial services sector is vital to our economic well-being.

However, adequate protection and response to issues in the financial services sector for individual customers and small Bermuda businesses is also

essential to Bermuda's economic well-being. Improvements are needed for the BMA to protect the public and hold institutions to account.

The BMA's responsibilities for supervision and regulation include oversight to provide that financial institutions have fair and appropriate contracts with their customers and other issues such as reasonableness and fairness in the introduction of bank fees of all types. The BMA has told our Office it is considering ways to assist financial institutions through outreach and training related to further protection of potentially vulnerable groups, including seniors.

We understand that changes in this area take work and time. We will continue our dialogue with the BMA and our advocacy on this important area of oversight. We will also continue to report to the public on further progress.

Increased protection for customers using banking and insurance services was announced in the November 2018 Government Throne Speech. Consumer protection legislation requiring transparency and equitable treatment is welcomed. This is to include provisions to protect people from being unfairly displaced from their homes, also for borrowers and account holders with issues and complaints generally to be provided redress.

We look forward to receiving further information from the Government on proposed legislative changes. We are aware of the existing high demand placed on the small, dedicated department of Consumer Affairs. It is essential that the Government ensure Consumer Affairs is sufficiently resourced to carry out these proposed greater responsibilities.

An enhanced Consumer Affairs with expanded powers for consumer protection cannot be expected to perform the responsibilities and functions of a financial services regulator and supervisor. The BMA, to the extent required, should use the appropriate expertise and its greater resources to identify specific ways it is able to cooperate with Consumer Affairs. This should also include a process for communication of information, concerns and trends in this important area.



*Ms. Pearman presenting at the Centre for Justice's conference*

## DEMONSTRATING ACCOUNTABILITY

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

In late 2017, we began re-validating membership with one of our affiliate ombuds organisations. This process, led by our Deputy Ombudsman, has required more rigour in our approach to evaluating and improving on our work.

To date, we have introduced and made available to the public new written guidance on these topics:

- making reasonable adjustments to accommodate persons with disabilities or other challenges,
- dealing with unacceptable behaviour,
- how to request an internal review of a complaint decision (note: in 2018 we received 1 request),
- how to make a complaint about our services (note: in 2018 we received no complaints), and
- how staff declare and record potential conflicts of interest.

You are encouraged to explore our website or stop for a print copy.

We also updated information about potential complaint outcomes and posted a searchable list of public authorities on our website. (Note that our jurisdiction is based on both the body and the subject being complained of.)

In prior reports, we encouraged the public to await more details about our complaint handling performance. We described how it was difficult to report on our caseload progression in real-time when we relied on a manual system. We are steadily inputting cases for the 2018 and 2019 reporting years into Workpro, our new electronic system, even while facing more IT-related challenges than anticipated. We now hope to fully transition to managing our caseloads using the electronic system, from the complainant's initial contact to resolution, starting in the 2020 reporting year. In the meantime, we have continued to tighten up our practices for manually tracking cases.

Here we provide new information for the public about the number of cases opened and closed per month, including enquiries. Over the past four years, from January 2015 to December 2018:

- on average we opened 21 new cases and closed 22 cases each 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 9, in January 2015 and November 2017, and the most was 45, in December 2015.
- on average our busiest month was August for receiving new cases and December for closing cases.

Recently we posted on our website details about our target timeframes for handling complaints, including target working days for them through the different stages in our process.

- We aim to complete **intake** for incoming cases within 7 working days. We met our target for 48% of new complaints received in 2018 (not counting in enquiries).
- For 88% of **enquiries** dealt with in 2018,

Figure G: Cases opened per month: 4-year glance

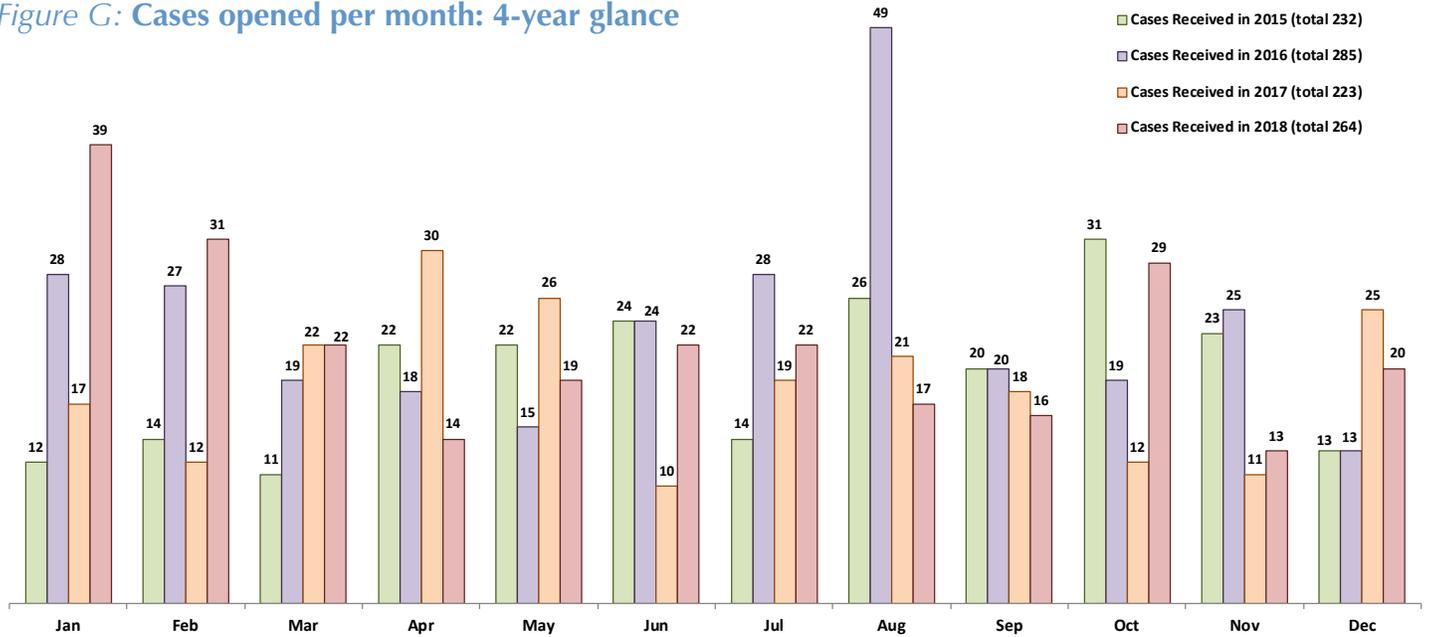
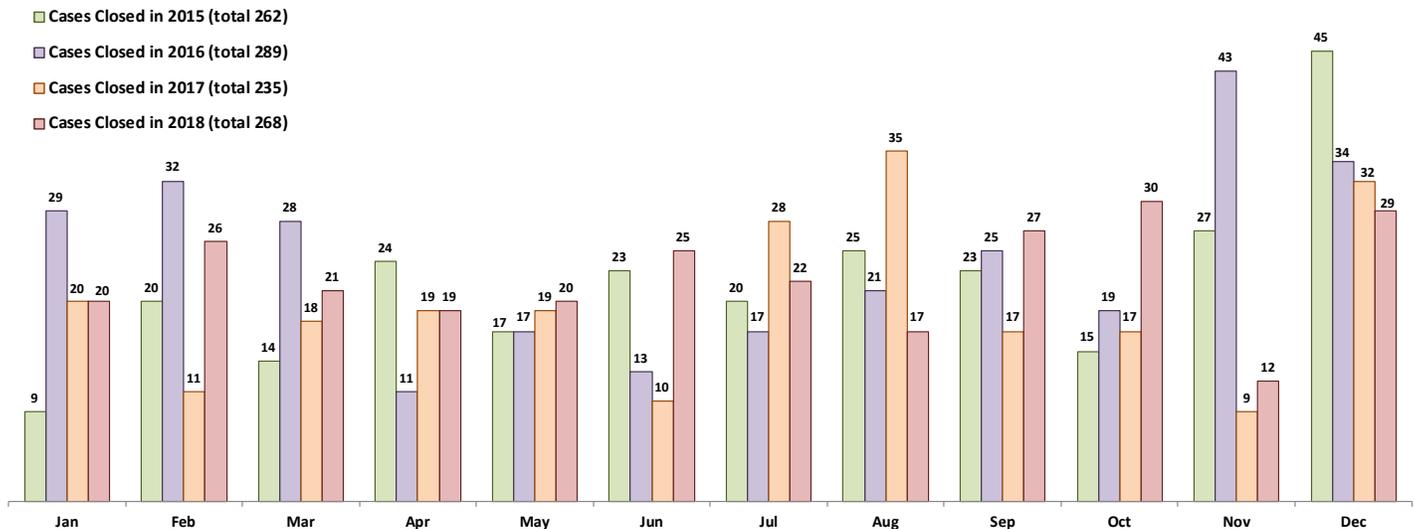


Figure H: Cases closed per month: 4-year glance

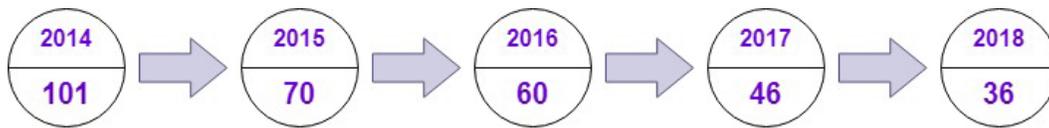


we met our target to quickly assist the caller, in less than 7 working days.

- We also aim to address any complaint that we think does not require a full investigation within 30 working days (i.e. no more than six weeks). In 2018, we met our target for 36% of complaints in the **facilitated resolution** stage.
- The time spent on formal **investigations** remains an area to improve, as we met our target in less than a quarter of cases.

Considering we were short-staffed for half of the reporting year, we are pleased overall with these data.

In the latest budget book, we introduced new performance measures. One was a commitment to compile internal progress reports on our caseloads at the start of each quarter – an important tool for monitoring progress at the team level and by officer. Our team has succeeded in carrying over fewer and fewer outstanding complaints at each year’s end:



For 2019, our goal is to close-out the year having no more than 31 complaints which remain open; this would be 5 less than we had on 31 December 2018. Based on our average new opened and closed cases, as shown in Figures G and H, we project that our ideal year-end carryover count will be about 20 cases. We hope our upcoming statistics show steady improvement in reduced turn-around times.

“Sometimes you win, sometimes you learn.”

– John C. Maxwell, 2013 book title

## STAFF TRAINING

The nature of ombuds work is unique and specialised. Ombuds training is designed to share practices, standards, research and strategies at regional and international conferences as well as during specially designed professional development programmes. International events provide excellent opportunities to network and engage with colleagues from other ombuds offices and complaint handling bodies. Local trainings provide insights into positive developments and challenges at home and allow us to meet staff from offices with which we work. These types of experiences often prove to be as valuable as the training sessions themselves. Our team took part in local and international training throughout 2018. Here are some highlights.

### The Ombudsman:

- attended a four-day African regional conference themed “Role of Ombudsman institutions” hosted by the Malawi Office of the Ombudsman (February);
- attended a two-day bespoke media training in Baltimore, Maryland, USA (February);
- attended a two-day Ombudsman Association’s conference, including chairing a session on “Speaking truth to power” in Edinburgh, Scotland (May); and
- presented the keynote address at the 15th anniversary celebration for Curaçao’s Office of the Ombudsman, on the “Role of the Ombudsman in promoting good governance”, then hosted a membership meeting as the President of CAROA (May).

Other staff members completed the following training:

- Investigations Officer, Aquilah Fleming, visited three ombuds offices in Toronto, Ontario, Canada to learn about their complaint resolution approaches and internal operations (January) and completed a two-day certificate course on “Ombuds and complaint handling practice” facilitated by Scotland’s Queen Margaret University in Edinburgh. She later returned to Toronto to complete a three-day investigations training.
- Investigations Officer, LaKai Dill, completed a three-month postgraduate module on “Communication in dispute settings”,



*Ms. Pearman participating in a session discussion at the conference in Malawi*



*Ms. Fleming visiting at Ontario Ombudsman's Office*

delivered online through Scotland's Queen Margaret University (January to April). She also attended the two-day Ombudsman Association's conference along with the Ombudsman (May) and spent several hours at the Scottish Public Services Office discussing topics relevant to her current projects, including their experience with Workpro, the electronic case management system.

- Executive Assistant, Robyn Eve, participated locally in the "3rd Annual Administrative Professionals Development Conference" hosted by Admin Excellence (April).

### AFFILIATIONS

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



**CAROA – Caribbean Ombudsman Association**  
[caribbeanombudsman.com](http://caribbeanombudsman.com)  
[caroaconference2019.com](http://caroaconference2019.com)

The Ombudsman continued to serve as President of CAROA, concluding a two-year term from

1 July 2017 to 30 June 2019, and prepared to handover to the new Council elected during the 2019 General Membership Meeting, which was held in Bermuda at CAROA's 10th Biennial Conference and Training.



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



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

In February 2019, the Ombudsman also began to serve as the Caribbean Director and Regional President of Caribbean and Latin American Region for the IOI.



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



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

## 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 Courts or tribunal's process, which 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 recommended **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
<b>Intake</b>	Receive and record cases as well as assess our jurisdiction to assist	Up to 5 days
<b>Facilitated Resolution</b>	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
<b>Pre-Investigation</b>	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 ( <i>investigation sub-stage 1</i> )	Up to another 2.5 weeks
<b>Investigation</b>	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 ( <i>investigation sub-stage 2</i> )	Up to another 2.5 months
<b>Post-Investigation</b>	Issue Draft Investigation Report to parties for their input, before finalisation ( <i>investigation sub-stage 3</i> )	Up to another 5.5 weeks
<b>Investigation Conclusion</b>	Receive and assess Authority’s statutory response to Final Investigation Report ( <i>investigation sub-stage 4</i> )	Up to another 7 weeks
<b>Review</b>	Assess whether to uphold the complainant’s request for a decision related to a concluded investigation, if made	Up to another 4 weeks

## COMPLAINT DISPOSITIONS

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

Disposition	What It Means
Abandoned	Complainant did not provide sufficient contact information or respond to our attempts to make contact (see s.9(2)(a) re decision not to investigate).
Closed After Inquiries	We decided not to proceed with the complaint after making inquiries or based on an initial assessment because: (a) the issues within jurisdiction were adequately addressed; or (b) the questions we raised to the authority were sufficiently answered (see s.8 re preliminary inquiries). We may have used alternative resolution techniques (see s.10 re mediation; and s.8 re preliminary inquiries). We also may have made general suggestions to assist the authority in improving its processes.
Closed Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of maladministration, and the authority provided its statutory response (see s.15(3) re procedure after investigation; and s.16 re authority to notify Ombudsman of steps taken).
Closed Mixed Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of maladministration and no maladministration, and the authority provided its statutory response (see s.15(3) re procedure after investigation; and s.16 re authority to notify Ombudsman of steps taken).
Closed No Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of no maladministration (see s.15(1) re procedure after investigation).
Declined	Issues raised were outside of our jurisdiction because of the subject matter and/or body complained of (see s.6(1)(3) and the Schedule re actions not subject to investigation). Or, issues raised may have been within jurisdiction but were out-of-time (see s.9(1)(a) re decision not to investigate) or determined to be frivolous (see s.9(1)(c) re decision not to investigate). In these cases, we may have declined outright or made inquiries to establish jurisdiction (see s.8 re preliminary inquiries). We make no suggestion as to potential redress because there likely is none at present.
Declined and Referred	Issues raised were outside of our jurisdiction because of the subject matter and/or body complained of (see s.6(1)(3) and the Schedule re actions not subject to investigation). Or, issues raised may have been within jurisdiction but were out-of-time (see s.9(1)(a) re decision not to investigate). We may have made inquiries to establish jurisdiction and/or determine whether there were other forms of redress available (see s.8 re preliminary inquiries). These inquiries may have included general or specific questions about the issues. We determined that there were other ways for the complainant to seek redress and provided information to the individual on possible next steps (see s.9(1)(b) re decision not to investigate – alternative remedies).
Deemed Premature*	Complaint subject matter and authority were in jurisdiction, but the person had not yet complained to that authority or had not yet exhausted that authority's existing complaint handling procedure. In these cases, we could have made inquiries but only to determine whether the person had used the existing process. The authority complained of was always the authority that the complaint should have been raised with. This is a new subcategory under 'referred'.
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 were not within our jurisdiction, and we suggested the complainant contact a body outside of our jurisdiction. This is a new subcategory under 'declined and referred'.
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).



## 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?  
.....  
.....  
.....

**Thank you for your time and honesty.**

**Office of the Ombudsman for Bermuda**

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Bermuda

**HOURS:**

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Friday 9:00am – 5:00pm

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