



**Annual Report
Of
Office of the Complaints Commissioner
For the 2011/2012 Financial Year**

Annual Report 2011–2012

Sixth Annual Report of the Office of the Complaints
Commissioner of the Cayman Islands addressing the Fiscal Year
July 2011–June 2012



Office of the Complaints Commissioner



Office of the Complaints Commissioner

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Aim of the Office: To investigate in a fair and independent manner complaints against government to ascertain whether injustice has been caused by improper, unreasonable, or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.



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15 August 2013

By Hand

The Honourable Julianna O'Connor-Connolly
Speaker of the Legislative Assembly
Legislative Assembly
George Town
Grand Cayman.

Dear Madam Speaker,

Re: Annual Report 2011-12

I am pleased to submit my Annual Report for the period of 1 July 2011 to 30 June 2012, pursuant to section 20 (1) of the Complaints Commissioner Law (2006 Revision).

Additional copies have been delivered to the Clerk of our Financial Oversight Committee, Ms. LeSanneo McLaughlin for distribution.

The Chairman of our Financial Oversight Committee, Mr. Ezzard Miller, has been asked to introduce the Annual Report.

Yours sincerely,

Nicola Williams (Ms.)
Complaints Commissioner

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1. Executive Summary

The fiscal year 2011/2012 has shown increased awareness by the community of the presence of the Office of the Complaints Commissioner (OCC). The complainants are now even more aware of the future implementation of human rights under the Constitution and are seeking redress for injustice, maladministration, bias, and perversity.

Most Government Ombudsman worldwide regularly use human rights standards to assess complaints that they receive from the members of the public about treatment that they have received by government entities. The human rights standards not only help the Ombudsman or Commissioner to make fair and balanced recommendations that take the needs of all stakeholders into consideration, but also add moral weight and authority to the Commissioner's decision.

The Complaints Commissioner wanted to ensure that her staff were prepared to deal with complaints related to human rights issues, and are familiar with these human rights standards therefore all members of staff of the Complaints Commission attended Human Rights Sensitization Training in September and October 2012, also additionally, the staff of the OCC participated in a second series of developmental training conducted by Mr. Jorrit De Jong (Director of Research and Education of the Innovations in Government Program at Harvard University's Kennedy School of Government), focused on organizational development with special emphasis placed on the OCC's role in relation to social justice, Human Rights and problem solving.

The OCC also continues to monitor the work of the Internal Complaints Processes of each government entity in order to encourage better public service.

We considered 146 enquiries, 44 complaints were received, and 39 investigations were completed with findings by the year end. The drop in enquires and complaints was attributed to the fact that almost all government entities have Internal Complaints Processes [ICPs] which are working fairly well, therefore many issues are now being resolved by the ICPs, and there is no need for them to be addressed to the OCC. If a complainant feels that their complaint has not handled been handled in a fair manner by the ICP Manager, then the OCC will conduct an investigation into the matter.

There were 29 recommendations brought forward from 2010-11, along with 8 recommendations made during the fiscal year which were monitored. A total of 7 recommendations were complied with during the year. One (1) recommendation was withdrawn by Special Report.

We are happy to note that local confidence in the work of the office continues to grow, and during the 2011-12 Fiscal Year, 75% of the complaints were received from Caymanians and Caymanian companies.

As usual George Town residents filed more complaints than residents in the other districts, and more complaints were filed by men than by women. Our Investigators continued to visit the Brac and Little Cayman each year to address complaints from the sister islands ensuring that they were not overlooked.

In June 2012, the Office of the Complaints Commission completed an Own Motions Investigation entitled, "Danger: Construction at Work" and submitted it to the Legislative Assembly for tabling. It was an investigation into the ability of the Department of Labour and Pensions (DLP), formerly the Department of Employment Relations (DER) – to effectively and properly oversee, inspect and ensure Health and Safety at work for those involved in the construction industry, as mandated under the Law and Regulations.

Based on the findings, recommendations were made so that corrective action could be taken by the Entity. The objective of the Office of the Complaints Commissioner is to foster good public administration within Cayman government agencies, ensuring that the principles and practices of public administration are sensitive and responsive to the interests of members of the public. The recommendations may address a specific action causing an injustice and may address laws, regulations or rules that lead to an unjust result.

The recommendations were monitored in accordance with the parameters established by the Complaints Commissioner Law (2006 Revision).

The OCC's budget for the year 2011/12 \$753,184.00 was reduced from the previous years budgets, so we were even more prudent in our spending.

2. Commissioner's Message



Complaints Commissioner
Ms. Nicola Williams

This is the third Annual Report published since my appointment as Complaints Commissioner.

OCC efforts to establish credibility within the community continued to show positive results. We continued to improve our presence on the internet and to register complaints on line. We also made greater use of social media. This assisted the members of the community who were reluctant to come into the office or persons who wanted to know whether the OCC could assist them with complaints.

During this fiscal year, with regard to increasing public awareness through media interviews, the OCC newsletter, advertising, public education and outreach, and in keeping with our stated aims in the 2011 Throne Speech, our efforts to establish credibility within all sections of the community continues to show positive results. During the 10/11 Fiscal year, as a result of our efforts, for the first time in the history of the OCC, more than half the total number of complainants were Caymanian. **During this 11/12 Fiscal year, that figure rose to 75%, with no reduction in the number of complaints from non-Caymanians, in keeping with our stated aim that the OCC will be accessible to all residents of the Cayman Islands. This indicates an overwhelming improvement in the level of local public trust and confidence in the integrity, independence and confidentiality of the OCC, its staff and its work.** Indeed these words "Confidentiality, Integrity, Independence" formed the core of the OCC Mission Statement as part of a major rebranding to underscore our mandate and ethos.

On 18 August 2011, the OCC launched an investigation of the Commissioner's Own Motion into Health and Safety in the Construction Industry in the Cayman Islands. This Report was completed in June 2012, but was not made available to the public until August 2012, in the following Fiscal year. In April 2012, the OCC also completed a Special Report, pursuant to the Commissioners powers under S.18 of the Complaints Commissioners Law 2006, into the failure of the Ministry of Health to provide adequate facilities for the mentally ill. I was interviewed across all Cayman media – print, television, radio and by online publications - with regard to this, and as to the work of the OCC generally. **Sadly, however, despite overwhelming public interest both in the Cayman Islands and internationally, neither these Reports nor the Annual Report were debated in the Legislative Assembly upon being tabled, or at all.**

From the date of my appointment as Commissioner, I have been, and continue to be, committed to ongoing, world class training for my staff, and this year was no exception. During 2011/12 every member of OCC staff benefitted from training in a variety of areas, both specific to their particular roles within the Commission and generally with regard to the OCC as an organization. Staff received training in Human Rights, on immigration law with particular emphasis on the rights of children, on administrative areas, on computer forensics (by Deloitte) and training on the better conduct of investigations. This was conducted by trainers from the United States, the Netherlands and the UK, as well as from the Cayman Islands. The Commissioner and Mrs. Netha Ebanks, the then Administrative and Investigative Officer, were also both certified as trained mediators by the London School of Mediation, in addition to the two OCC investigators who undertook similar training the previous year; indeed, in December 2011 Investigator Julie Faulknor-Grant, assisted by Investigator Sonji Myles, successfully conducted the first formal OCC mediation since my appointment in 2009. Mr. Myles, who joined our Office in December 2011, was also sent to Toronto Canada for intensive investigative training.

In the third year of my term as Commissioner, I have raised the international profile of the OCC so that it is now the leading Ombudsman's Office in the Caribbean region. As testament to this, we were visited by representatives of the Montserrat Constitutional Office in order to observe OCC operations so that they could adopt a similar oversight model in Montserrat. I continued to serve as Vice-President of the Caribbean Ombudsman Association (CAROA). Due to the British Overseas Territory status of the Cayman Islands, the OCC is also a member of the British and Irish Ombudsman Association, as well as the world governing body, the International Ombudsman Institute. Meetings and open dialogue have taken place with my international colleagues by way of mutual peer review. These organizations also play close attention to the effectiveness of the OCC in carrying out its mandate.

I was invited to present papers at conferences both in Cayman and abroad. In March 2012 I was invited by the Centre for Justice in Bermuda to present a paper on human rights – a trip entirely funded by Bermuda and therefore of no cost to the OCC. Later that same month I also presented a paper at the UCCI Conference on "Ombudsman confidentiality in a small state jurisdiction".

However, public outreach within the Cayman Islands, both to members of the public and to members of the civil service, remains central to the role of the OCC. As Commissioner, I actively participated in the Future of Cayman Forum sponsored by the Cayman Chamber of Commerce in October 2011. As a Commission, we continued to have a strong presence at Heritage Week in November 2011, covering all the districts. The OCC also had a strong presence at the Cayman Brac Agricultural Show in February 2012. In March 2012, we held our second seminar on the Internal Complaints Process which had been established by the OCC within all government departments, and which the OCC continues to monitor – this time with a training component provided by an internationally respected expert in the field, Jorrit de Jong. This continues to be an annual event.

We have a very good working relationship with the overwhelming majority of government departments, and the inevitable disagreements are conducted in a respectful and professional manner. There has been more dialogue between the OCC and Entities regarding complaints.

The OCC is a small organization. We started the fiscal year with 6 staff but at the end this was reduced to 5, with responsibility for dealing with complaints from 93 government entities. However, the OCC punches well above its weight not only in terms of the amount of work undertaken but the quality of both our investigations and the stellar level of customer service. I am both enormously proud of, and grateful to, my staff, without whom none of this could have been achieved. Although Investigator Deborah Musson left in July 2011 and Mrs. Netha Ebanks retired on 29 February 2012, on 1 December 2011 we were pleased to welcome Sonji Myles, formerly of the ICO, to the OCC team as Investigator. Since February 2012, Ms. Kim France, with the kind permission of the Attorney-General, has been assisting us with the preparation of our accounts, taking over from Mr. John Regan who also retired that month.

3. The Oversight Committee of the Legislative Assembly

The Office of the Complaints Commissioner is an independent office.

The Cayman Islands (Constitution) (Amendment) Order 1993 amended the Constitution of the Cayman Islands to establish the Office of the Complaints Commissioner. The Constitution, in section 49(N)(5), states, "In the exercise of his functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority."

While the OCC is independent, it must also account for the manner in which it uses public funds. Section 45 (2) of the Public Finance and Management Law provides for the appointment of a financial oversight committee:

"45 (2) Unless the context otherwise required, Part IV shall apply in respect of the Office of the Complaints Commissioner as if –

(a) every reference to the Governor in Cabinet or a minister were a reference to the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Complaints Commissioner, or if no such committee exists, the Speaker; and

(b) every reference to a ministry were a reference to the Office of the Complaints Commissioner."

The members of the committee are Mr. Cline Glidden, Jr. (Chairman), Mr. Alden McLaughlin, Jr. (Deputy Chairman), Mr. Ezzard Miller, Mr. Arden McLean and Mr. Dwayne Seymour.

4. Introduction of Staff

The Office of the Complaints Commissioner is a challenging work place, and due to the unique impact the office makes in the community, it is a very rewarding place to work.

Shortly after the Fiscal Year 2011-12 began one of our investigators, Ms. Deborah Musson left the OCC to join the staff of the Cayman Islands Monetary Authority and in December 2011 we were joined by a new investigator, Mr. Sonji Myles. Later on in February 2012, the OCC said goodbye to our Administrative and Investigative Officer, Mrs. Netha Ebanks who retired after serving for over 27 years in the Civil Service.

During the months that the OCC was short of an investigator, all members of staff pitched in, took on extra duties and ensured that the work was carried out in a timely manner.



Complaints Commissioner

Ms. Nicola Williams

Administrative and Investigative Officer

Ms. Netha Ebanks

Investigator

Ms. Julie Faulknor-Grant

Investigator

Mr. Sonji Myles

Executive Assistant to the Commissioner

Mrs. Bridgette Lazzari-von Gerhardt

Intake Officer

Mrs. Claudine Simons

5. Training

The Commissioner strongly believes that it is vital for the OCC to have well-trained staff, particularly in light of the specialized work the office carries out, and she ensures that her staff receive training on a regular basis in order to provide the best service to the community.

In September 2011 Mrs. Bridgette Lazzari-von Gerhardt began a Legal Secretary course at the University College of the Cayman Islands. The Course is offered through the Chartered Institute of Legal Executives in the United Kingdom. This Course is the first stage, towards her qualifying as a Paralegal.

On 30 September 2011 Mrs. Netha Ebanks attended the Right to Know Week presentation for FOI Managers.

All members of staff of the Complaints Commission attended Human Rights Sensitization Training in September and October 2012.

Commissioner Williams attended the "Sharpen Your Teeth" (SYT) investigative course in Toronto Canada in November 2011. The 3 day course, which is internationally respected and has been taught across the globe, was organized by the Office of the Ombudsman of Ontario.

On 6 December 2011 the OCC staff attended a presentation by Deloitte and Touche on data analytic and computer forensic technology, with a view to maybe using this technology in future investigations.

In January 2012 the OCC's newest member of staff, Mr. Sonji Myles completed a training course on "Effective Investigations" under the auspices of the Forum of Canadian Ombudsman. The course focused on the foundation of ombudsman work, accountability, managing stages of systemic and individual investigations, reporting; recommendations, implementation and monitoring.

Staff of the OCC also participated in a second series of developmental training conducted by Mr. Jorrit De Jong (Director of Research and Education of the Innovations in Government Program at Harvard University's Kennedy School of Government). The Training focused on organizational development with special emphasis placed on the OCC's role in relation to social justice, Human Rights and problem solving.

In March 2012 Commissioner Williams completed mediation training and was certified as an accredited mediator. The course was conducted by the London School of Mediation in conjunction with the Cayman Islands Association of Mediators and Arbitrators.

6. Translation Services

On the basis of the broad cultural diversity in the Cayman Islands, it was anticipated that the OCC would better serve the public by being able to assist in languages other than English. Currently the Executive Assistant, Mrs. Lazzari-von Gerhardt, is fluent in Spanish and is able to assist people in that language.

For services in 50 other languages, the OCC has contracted for translation services with All Languages Ltd.

7. Role and Function of the Office of the Complaints Commissioner

7.1 ROLE

The Office of the Complaints Commissioner exists to safeguard the community in its dealings with government agencies. The Office has three major statutory roles:

- *Complaint investigation:* the investigation and review of the administrative actions of Cayman government officials and agencies, upon receipt of complaints from members of the public, groups, and organisations.
- *Own motion investigation:* the investigation, on the initiative or “own motion” of the Commissioner (ombudsman), of the administrative actions of Cayman government agencies – often arising from insights gained from handling individual complaints.
- *Complaint monitoring:* the monitoring of the administrative actions of Cayman government officials and agencies, upon receipt of our recommendations.

The complaint and own motion investigation roles of the OCC are the more traditional roles that constitute the bulk of the work of the office. The guiding principle in an investigation is whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient or otherwise wrong. At the conclusion of the investigation, we can recommend that corrective action be taken by an agency. This occurs either specifically in an individual case or generally by a change to relevant legislation, administrative policies or procedures.

A key objective of the OCC is to foster good public administration within Cayman government agencies, ensuring that the principles and practices of public administration are sensitive and responsive to the interests of members of the public.

The OCC does not represent the complainant or the government administration. It conducts an independent review and makes objective reports to the parties or the Legislative Assembly. It can address complaints that occurred within the past 12 months if the subject of the complaint is a government entity and if the complaint is not excluded by schedule 2 of the 2006 Complaints Commissioner Law (CCL).

The OCC has jurisdiction to consider decisions taken in the course of “maladministration” by a government entity. Government entities include a ministry, company, department, portfolio, statutory board or authority. Maladministration is defined in the CCL as “inefficient, bad or improper administration.” This includes unreasonable conduct (for example, delay) or abuse of power or authority. Abuse of power or authority may include an action based on a mistake of law or fact; an action which is unreasonable, unjust, oppressive, or improperly discriminatory; or an action based on *practices or procedures* which are unreasonable, unjust, oppressive or improperly discriminatory.

Examples of maladministration taken from the reports of the Parliamentary Ombudsman of the United Kingdom include bias, partiality, neglect, inattention, delay, abuse of power, incompetence, ineptitude, perversity, rudeness, unwillingness to treat the resident as a person with rights, refusal to answer reasonable questions, neglecting to inform a complainant about rights or entitlement including appeal routes, knowingly giving misleading or inadequate advice, offering no redress, faulty procedures, failure by management to adequately monitor compliance with procedures and failure to reduce the effects of rigid adherence to the letter of the law where that produces inequitable results.

The OCC also has jurisdiction to consider the inequitable or unreasonable nature or operation of any enactment or rule of law.

7.2 PRIMARY FUNCTIONS

The primary functions of the OCC are to investigate; to recommend; to report; and to monitor.

7.2.1 Investigate

A key objective of the OCC is to contribute to public discussion on administrative law and public administration and to foster good public administration that is accountable, lawful, fair, transparent and responsive. We pursue this objective in different ways – by looking in depth at an issue arising in a particular ministry/department/portfolio; drawing attention to problem areas across government administration; conducting own motion investigations; working jointly with ministries/departments/portfolios to devise solutions to the administrative problems that arise within government; and making submissions to external reviews and enquiries that are examining issues in public administration.

The OCC will investigate complaints made in writing that fall within the scope of the CCL, and matters directed to it for investigation by resolution of the Legislative Assembly. The OCC may also, on its own initiative, investigate matters which, in the Commissioner's opinion, must be investigated in the public interest.

The purpose of the investigation is to ascertain whether "injustice" occurred as a result of maladministration.

The powers of investigation are the same as those of a Grand Court Judge, although the Commissioner is not bound by the rules of court and can set his/her own procedure within the confines of natural justice. These powers include the power to summon witnesses and receive confidential documents. Also, the Commissioner may order re-entry of a person removed from the Islands by the Immigration Department who is important to an ongoing investigation.

7.2.2 Recommend

The OCC may recommend action to be taken by an administrator when maladministration is found. The recommendations may address a specific action causing an injustice and may address laws, regulations or rules that lead to an unjust result. The OCC may recommend payment of compensation for the complainant who was wronged. In addition, the Commissioner may make such comments in relation to a case as she thinks fit, whether or not an injustice has occurred.

7.2.3 Report

The OCC must inform the head of a government entity of the result of an investigation if injustice is sustained as a result of actions taken by the entity, or serious misconduct is discovered. If there is no compliance by an administrator on a recommendation made by the OCC, the OCC must report this

failure to the Legislative Assembly in the form of a Special Report. A Special Report must first go to the Governor, before being presented to the Legislative Assembly.

7.2.4 Monitor compliance

The OCC must monitor compliance by government entities regarding recommendations made by the Office.

7.3 ADDITIONAL FUNCTIONS

The CCL authorises the OCC to organise the mediation of a complaint that is minor in nature, where the parties are willing to meet to attempt to resolve the problem. This can be an effective route where, for example, the member of the public must often interact with the same government officer. Mediation can help defuse tension or frustration and serve to begin a dialogue and open lines of communication.

To better perform the role and function stated in the CCL, the OCC, by implication, must inform the public service and the residents of the Islands of all aspects of the Office. Under the new Complaints Commissioner the OCC now has an active programme of public education and outreach to both public servants and members of the public, cutting across all socio-economic groups.

7.4 AREAS OUTSIDE THE JURISDICTION OF THE OCC (SCHEDULE 2)

1. International affairs – matters certified by the Governor to affect relations between the government and another country's government (or its international organisations).
2. Matters of national defence, external affairs and internal security (e.g., Emergency Powers Law).
3. Investigation of crime, or protection of the security of the Islands, by Police, Customs or Immigration.
4. The Governor's power of pardon.
5. Court proceedings, whether civil or criminal in nature.
6. Issues concerning the employment (e.g., hiring, promotion or firing) of government employees.
7. The Attorney General's powers of prosecution (e.g., beginning, overtaking or ending).
8. Legal advice given by the Attorney General to the government.
9. The Auditor General's actions (e.g., reviewing the government's accounts).
10. Matters under the Mutual Legal Assistance Treaties.
11. Contracts for services for government (but can investigate purchases of land).
12. Matters defined by the Constitution as outside of the authority of the court.
13. Any judicial function.

7.5 SCOPE OF ACTIVITIES

Receiving written complaints from the public and determining if they should be investigated.

Appointing mediators to resolve complaints regarding minor matters of maladministration.

Investigating written complaints from the public and reporting to the complainant and government entity on the results of the investigation.

Making recommendations for actions to be taken where injustice has occurred as a result of maladministration, monitoring compliance with these recommendations and, where adequate action is not taken, preparing a special report to the Legislative Assembly.

Referring to the relevant person or entity for their action any evidence of breach of duty, misconduct or criminal offence;

Ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.

Providing an Annual Report to the Legislative Assembly on the performance of his/her functions.

7.6 STRATEGIC OWNERSHIP GOALS

The key strategic ownership goals for the Office of the Complaints Commissioner in 2011-12 were as follows:

- The OCC will carry out fair, thorough and independent Investigations, where necessary
- The OCC will conduct Own Motion Investigations on matters of special public importance
- The OCC will set standards for, and monitor the effectiveness of internal complaints processes throughout the government

The OCC achieved all goals outlined in the 2011-12 Budget. There were no amendments to the Complaints Commissioner Law.

The OCC completed 39 complaint investigations in the fiscal year 2011-12.

An Own Motion Investigation was launched by the OCC into the ability of the Department of Labour and Pensions (DLP) formerly the Department of Employment Relations (DER) to effectively and properly oversee, inspect and ensure Health and Safety at work for those involved in the construction industry, as mandated under the applicable Law and regulations. The Commissioner attended interviews on the radio to provide information to the community on the investigation and the recommendations, and newspaper interviews were also published on the investigation and its findings.

The Annual report for 2010-2011 was completed and tabled in the Legislative Assembly during this period.

The Commissioner and her staff met with persons in districts on Grand Cayman, Cayman Brac and Little Cayman during each district's Heritage Day to increase public awareness. The Newsletter also increased public awareness of the role of the Office of the Complaints Commissioner.

In house training is conducted annually for the staff at OCC. A specialist trainer from Harvard University, Mr. Jorritt de Jong trained the staff in February 2012. The Training focused on organizational development with special emphasis placed on the OCC's role in relation to social justice, Human Rights and problem solving.

The Commissioner was elected as Vice-President of the Caribbean Ombudsman Association (CAROA) 2010-2012 on 4 November 2010 and continues to represent the Complaints Commission at the Ombudsmen Association meetings to enhance the OCC's visibility internationally.

The Commissioner is a member of the Anti-Corruption Task Force and she attended meetings during the year.

8. Demographics

Attached as Appendix B is an indication of the demographics of the people served by the Office of the Complaints Commission. These are based on our investigations conducted during the 2011-12 Fiscal Year. The largest number of complaints investigated was from the district of George Town (15). Complainants are mostly male (25) and females (17). Two (2) companies filed complaints. The number of complaints filed (44) by persons seeking assistance from the OCC demonstrates the credibility of the office within the community. This office is committed to continuing to increase the visibility of the OCC to all socioeconomic groups in the Cayman Islands.

9. Intake and Case Flow Process

The basic intake process is depicted in a flow chart found below at appendix C.

Appendix A

COMPLAINT RECEIVED

Is the Complaint within jurisdiction?

No-- Complainant advised where assistance may be obtained

Yes—

Attempts made by complainant to resolve complaint in other ways, including appeals?

No Complainant referred to appeal process

Yes—

Has informal review determined if evidence is sufficient for informal resolution or investigation?

No—Complaint closed by letter

Yes—

What happens when informal resolution is attempted with officer?

Successful ---Closed file by letter

Not successful—investigation

INVESTIGATION

Maladministration identified?

No –Complaint closed by letter

Yes – Consider alternative Dispute Resolution? Yes or no.

Formal discussions, resolution?

No—Discussion with section head or head of department

Yes –Resolution and/or Report

RESOLUTION AND/OR REPORT

May include recommendations or comment.

10. Case Examples

The OCC deals with a diverse range of complex complaints where the results can differ widely. Below, we present a number of case studies reflecting that diversity and the very different outcomes that can occur. Other cases are discussed later in this report. Sometimes, government entities are found wanting and the OCC will offer recommendations to rectify the circumstances giving rise to the complaints and help to avoid a repeat in future. The OCC often finds that entities in question are not at fault but that the law or regulations are inadequate. And in many cases, neither the office in question nor the procedures are at fault and the OCC will find no maladministration. Investigations can involve a number of different entities and require the analysis of expert opinion and special reports. Names and some details of the selected complainants have been omitted owing to issues of confidentiality.

Case No. 1: General Registry Accused of Refusing to Provide "Correct" Birth Certificate

The Complainant alleged that he was born out of wedlock and was concerned that he would not have a right to inheritance from his deceased biological father. He went to the General Registry to get the "correct" birth certificate to prove that he was the son of the alleged biological father.

The General Registry conducted several searches but was unable to find any record which proved that the complainant was the son of the man he claimed was his biological father.

Upon making his complaint to the Office of the Complaints Commissioner (OCC), the complainant alleged that the General Registry "refused" to provide him with a correct birth certificate. After reviewing all the documentation and evidence provided, the complaint was dismissed. The General Registry had carried out multiple independent searches and the complainant was provided with timely responses each time he requested information from the General Registry.

Case No. 2: Immigration Department not Guilty of Circumventing the Law in allowing her Employer to Grant Permanent Residency to a Non-Caymanian

A complaint was filed against the Immigration Department for circumventing the Law in granting permanent residence to a worker of a local company, whose employer ignored the directive which stipulated that a Caymanian be trained to eventually fill this post. She subsequently filed these concerns with the Immigration Department's Permanent Residency Board, stating that she wanted an investigation into the matter. The Immigration department was however of the view that this was an employment issue between the complainant and her employer and in response the complainant made a new complaint to the OCC.

This OCC found that the complaint was not well founded; the OCC agreed that this was an employment related issue between the complainant and the company which should instead have been handled by the Employment Relations Department. In addition the complainant also had the option of taking civil action against her employers.

Case No. 3: Complaint against the Department of Labour and Pensions for Allegedly Mishandling a Case of Overtime Monies Owed

The complainant was awarded compensation against his previous employer by the Labour Tribunal for unfair dismissal, severance and overtime pays. The Tribunal had no jurisdiction in relation to overtime pay, so the complainant decided to file a second complaint with the Department of Labour and Pensions (DLP). During mediation the complainant's former employer agreed to pay him CI\$ 3,500.00. The complainant however refused to sign the release letter which would protect the company from any further claims, demands, liabilities, losses or expense against them.

The complainant then made a complaint to the OCC in which he placed blame on the DLP for not receiving his overtime pay prior to the company ceasing to do business in 2011. After a lengthy and extensive investigation it became clear that the DLP was willing to assist the complainant and even managed to persuade the complainant's former employer to agree to another settlement. Unfortunately the complainant refused to sign the second release letter and rejected the final offer.

As a result of the complainant's refusal to accept the two settlements the OCC decided to close the case based on the fact that the Complainant had refused to accept the terms of release on numerous occasions and in doing so had lost his only avenue to collect the monies owed to him. The DLP could not be held responsible for the actions of the company in this case and could not be expected to shoulder the blame for the complainant losing an opportunity to collect the amount initially owed to him.

Case No. 4: Complaint against the Department of Employment Relations Labour Tribunal for Non-Response

The Complainant claimed that his former employer laid him off from work without any due notice and severance pay. He reported this to the Department of Employment Relations (DER) in 2010 and eventually his case was referred to the Labour Tribunal.

The complainant alleged that each time a Tribunal date was set it would either be cancelled or rescheduled due to his former employer not showing up or the Tribunal forgetting to notify his former employer to attend.

On the last date scheduled for the tribunal to sit, his former boss refused to attend the meeting and the complainant was told that he would later be contacted with an update on his case. When after six months the complainant had yet to receive a call from the Tribunal, he decided to file a formal complaint with the OCC.

The complaint against the DER and the Labour Tribunal was for non-response and failing to provide adequate assistance by updating the complainant on his case. As a result of the OCC's involvement the Labour Tribunal updated the complainant on his case and provided him with the Tribunal's ruling. While the tribunal ruled that the complainant's former employer should pay him severance in the amount of CI\$ 6,720.00 under the Labour Law (2007 Revision), the DER was unable to enforce Labour Tribunal Awards. The investigation against the DER could therefore not proceed any further and complainant was left with no other option but to pursue a civil action against his former employer before the courts.

Case No. 5: Complaint against the Royal Cayman Islands Police Service for the Release of Information to U.S. Authorities

The claimant along with several other individuals was the subject of a criminal investigation by the Royal Cayman Islands Police Service (RCIPS) in relation to the smuggling of firearms from the United States (U.S.) to Grand Cayman. The RCIPS informed the U.S. law enforcement authorities of the investigation who provided that information to U.S. Courts in the form of an affidavit which was later released to the local media.

The claimant alleged that the RCIPS had communicated false and misleading information and that it was defaming his character and unduly putting his educational scholarship at risk.

The OCC was not able to investigate the complaint as a result of Schedule two, paragraph three, of The Complaints Commissioner Law (2006 Revision), which states that matters not subject to investigation include:

"Action taken by or with the authority of [...] the Commissioner of the Police [...] for the purposes of investigating crime or of protecting the security of the Islands..."

Case No. 6: Complaint against Internal Prison Investigation into "Ganja in the Whitehouse"

The complainant was a prisoner serving a 40 month sentence at Northward Prison and was the subject of an internal investigation by the Prison, as well as a police investigation regarding a large quantity of ganja which was found within a kitchen supply closet.

The complainant requested that the OCC monitor his status during the investigation, and appoint him legal counsel.

The OCC was unable to investigate his complaint at the time because the prison was in the process of conducting an internal investigation into the matter and as such had to be allowed to do so without the interference of the OCC. In addition, the OCC did not have authority to give legal advice nor appoint legal counsel under any circumstances. Finally, Schedule two, paragraph three of the Complaints Commissioner Law (2006 Revision) states matters not subject to investigation include:

"Action taken by or with the authority of the Commissioner of Police [...] for the purposes of investigating crime or of protecting the security of the Islands..."

Case No. 7: Complaint against the District Administration Cayman Brac Regarding the Refurbishing of Home after Hurricane Paloma

The Complainant filed a complaint on behalf of her elderly mother against the District Administration of Cayman Brac. The complainant claimed that the refurbishing of her mother's house was done through the Government Administration with allocated funds for hurricane relief. The said home was damaged in hurricane Paloma in 2009.

After work commenced on the house in 2010 the complainant agreed to paint the house and to release addition funds which she was told were necessary for the completion of the project. Work later came to a halt and the complainant was not able to contact the contractor. The complainant therefore completed the outstanding items out of her own pocket but was unable to have the house electrified

because the house had to be passed by an inspector. The inspector brought to her attention a number of items that needed rectifying before the house could be passed.

The matter was finally resolved when our investigator met with the Planning inspector and the District Administration to discuss the issues at hand. The complainant was then asked to complete a planning form as the Planning Board had decided to review the previous requirements for power to be restored and a decision was made whereby a number of these were no longer required. On 24 May 2012, the OCC received notice that full power had been restored to the house and the case was closed.

Case No. 8: Department of Employment Relations' Labour Tribunal Engaged in Unfair Conduct

The complainant filed a complaint against the Department of Employment Relations (DER). The complainant had originally lodged a complaint with the DER against his former employer for wrongful termination and payments of severance. While the complainant was successful at the Labour Tribunal, his former employer appealed and the decision was overturned.

The complainant contended that the board members were improperly interfered with and influenced when his former employer had discussions with one of the Labour Tribunal Board members regarding the hearing and subsequent decision of the Labor Tribunal outside of the hearing.

After reviewing the case and the evidence received from both the DER and the complainant the OCC recommended that the chairmen of the Labour Tribunals within 30 days formally review their code of conduct for Board Members and remind Members of the significant roles that they play and the importance of continuing to keep discussions surrounding Labour Hearings in the strictest of confidence between the Members only, in order to prevent such occurrences from happening again.

Case No. 9: Complaint in Relation to the Processing of an Appeal Submitted to the Immigration Appeals Tribunal

The complainant alleged that the Immigration Appeals Tribunal (IAT) Coordinator had denied her the right to appeal to the IAT as provided for under section 14 of the Immigration Law 2011 Revision. The IAT coordinator had indicated that legal advice would need to be sought to determine whether the complainant had a right of appeal under the Immigration Law before a Notice of Appeal and the prescribed fee could be accepted and processed. In addition the complainant had also not been issued a receipt for the payment she made to IAT for the prescribed processing fee.

Following an investigation the OCC came to the finding that the delay experienced by the complainant due to the IAT Chairman's decision to seek legal advice was necessary in the circumstances. In contrast the IAT's failure to provide a receipt for a payment was contrary to government policy and deprived the complainant of the right to a receipt for her payment.

The OCC recommended that the IAT develop clear policies and guidelines that address the processing of appeals including those which might be considered "unusual" as well as for its process of receiving payments. These policies were to be implemented within 60 days of receiving notice thereof. In addition, the OCC also recommended that a copy of the most recent customer notice for the receipt of Official Government Receipts be posted in the IAT offices where it could be seen by the public. Each member of the IAT was also to be informed of the requirement to issue receipts.

Case No. 10: Complaint Filed against the Royal Cayman Islands Police Service in Relation to the Actions of a Police Officer Following a Traffic Accident

A complaint was filed against the Royal Cayman Islands Police Service in relation to the actions of a police officer following a traffic accident.

The Complainant had to be informed that the complaint was outside of the jurisdiction of the OCC. Schedule two, paragraph three of the Complaints Commissioner Law (2006 Revision) states that matters not subject to investigation include:

"Action taken by or with the authority of the Commissioner of Police [...] for the purposes of investigating crime or of protecting the security of the Islands..."

Case No. 11: Complaint Made against the Public Service Pensions Board (PSPB) Regarding the Non-Payment of Ex-Gratia Pensions

A complaint was made against the Public Service Pensions Board (PSPB) regarding the non-payment of Ex-Gratia Pensions. The complainant did not provide the PSPB with the information needed to complete her application under the Public Service Pensions Law, 1999 Regulations, 2002.

After taking all the evidence and facts into consideration the OCC did not find that that the PSPB were at fault in their decision regarding the non-payment of Ex-Gratia Pensions to the complainant for the period that she stated. The case was subsequently closed.

Case No. 12: Complaint against Ministry of Financial Services and Tourism in Relation to the Handling and Disbursements of Scholarship Grants

A complaint was made against Ministry of Financial Services and Tourism in relation to the handling and disbursements of scholarship grants. The complainant alleged that her son had failed to receive a scholarship from the Young Nation Builders Program (YNBP), because of gross irregularities in the awarding and funding of scholarship money.

The child was however not ordinarily resident in the Islands which meant that the OCC was unable to investigate the complaint since, by virtue of the Complaint Commissioners Law (2006 Revision), section 13 (4):

"A complaint shall not be entertained unless the person aggrieved is ordinarily resident in the Islands..."

Case No. 13: Northward Prison Accused of Withholding Healthcare from Inmates

A concerned citizen made a written complaint to the OCC against the alleged practice of withholding healthcare from inmates at Her Majesty's Prison Northward. While the OCC considered these allegations to be very serious, the complainant had no direct nexus to the alleged malpractice, and the information provided was somewhat vague.

Section 13 (2) of the Complaints Commissioners Law (2006 Revision) requires that in order for the Commissioner to initiate an investigation following a complaint; the complaint must be made by the

aggrieved person himself (save limited exceptions). From the information that was provided to the Commissioner, this would have required that an inmate subject to the alleged malpractice would have to make the complaint himself.

Case No. 14: Complaint against the Immigration Department, and the Portfolio of Internal and External Affairs for Non-Response

A complaint was registered against the Immigration Department, and the Portfolio of Internal and External Affairs for non-response. The complainant alleged that on 28 February, 2011 a complaint was registered with the Immigration Department regarding illegal work permits that her husband had taken out for two individuals who were not employed by his company and, who were working for other persons on the island. In addition the complainant alleged that one of the work permit holders was a woman that her husband was having an affair with, and that the other was the brother of that woman. She stated that even after going through the Internal Complaints Process (ICP) for the Immigration Department, she still had not received a response to her letter.

Upon review of the documentation and evidence provided by the complainant and the Chief Immigrations Officer, it became apparent that the complaint did not provide any evidence to support her allegations. As a result of this, as well as the fact that the complainant no longer wanted to pursue the complaint, the case was closed.

Case No. 15: Complaint against the Department of Immigration's Work Permit Board for Rescinding Key Employee Status

The complainant alleged that the Department of Immigration's (DOI) Work Permit Board granted Key Employee status to the complaint's employee on 23 June 2011 and soon after unfairly rescinded the designation, on 10 November 2011. The employer stated that the employee was key to the successful operation of the business and it was alleged that without that employee, the future of the business would not be viable. Additional grounds for the complaint included the Immigration Appeal Tribunal's (IAT) failure to respond to the complainant's notice of appeal in relation to that same employee's work permit denial and, that the employee was at the time required to work under an Operation of Law (WOL) allowance which was to expire on 5 January 2012, at which time the employee was required to leave the Island.

Subsequent to the OCC initiating an investigation into the matter, the complainant and the DOI met and were able to come to a number of amicable resolutions. The Employee was allowed to return to the Cayman Islands to train another individual, but not as gainful employment as the Employee's work permit and term limit had expired. A visa approval for 30 days was to be issued to provide the employee with return entry to the Cayman Islands. Finally attention was to be given to the IAT's process and how it could be expedited, and pending the outcome of the Appeal, whether the employee's work permit could be renewed.

After considering all the facts in conjunction with the complainant's request for no further action by the OCC, the complaint was closed.

11. Matters Arising from Written Complaints

11.1 SPECIAL REPORTS

The Complaints Commissioner Law (2006 Revision), section 18(3) states that, where the Commissioner has made a recommendation and he is of the opinion that inadequate action has been taken to carry out the recommendations, a special report must be laid before the Legislative Assembly.

One Special Reports was done during the 2011-2012 year.

EXECUTIVE SUMMARY

On 8 April 2009 the Office of the Complaints Commissioner launched an Own Motion Investigation (OMI) into the unreasonable or unjust operation of the Mental Health Law (1997 Revision) section 15 (1), subsections (a) and (b) and related provisions.

The focus of the investigation was on two issues:

1. the steps taken in the process of making a recommendation to His Excellency ("H.E.") the Governor to certify Her Majesty's Prison as a place of safety under the Mental Health Law (1997 Revision); and
2. the publication of patients' identity and medical information.

For the purpose of the Special Report, only Issue 1 above is relevant.

The investigation concluded that the specific procedures for prescribing a "place of safety" as set out in the Mental Health Law (1997 Revision) 15 (1) have never been defined; thereby allowing the administration of this law to be carried out in an *ad hoc* fashion.

In light of this the following OCC recommendation was made:

RECOMMENDATION

It is recommended that the Ministry research and develop a process as prescribed by the Mental Health Law (1997 Revision), (to be put forth as a Regulation) to administer the designation for a place of safety giving due consideration to the preservation of patient privacy.

The Own Motion Investigation Report dated 28 September 2009 was tabled before the Legislative Assembly on 22 October 2009. Once this was done, the OCC began monitoring the recommendation for compliance. As of the time of writing the Special Report, whilst the OCC accepted that some efforts towards compliance had been made by the Ministry, this falls short of substantial compliance. This is particularly serious bearing in mind the following:

1. The importance of the issue itself;
2. The Human Rights implications of non-compliance
3. The extensive correspondence between the OCC and the Chief Officer of the Ministry concerned; and

4. The great age of the matter – **30 months** since the matter was tabled in the Legislative Assembly and **3 years** since the launch of the OCC investigation

Having monitored the recommendations for compliance since 22 October 2009, with no substantial compliance and no immediate signs of resolution, this Special Report has been prepared pursuant to S. 18 of the Complaints Commissioner Law (2006 Revision), in particular S. 18 (3) which states: "...Where the Commissioner has made a recommendation under subsection (1) and within the time specified or a reasonable time thereafter, he is of the opinion that no adequate action has been taken to remedy the injustice, he shall lay before the Legislative Assembly a special report on the case".

MINISTRY EFFORTS AT COMPLIANCE

During the period beginning October 2009 when the OCC began monitoring of the recommendations, up until a few days before drafting of the Special Report began, much correspondence took place between the OCC and the Chief Officer of the Ministry.

On 25 November 2009 the former Administrative and Investigative Officer, sent a follow-up e-mail to the Chief Officer, Jennifer Ahearn, asking for an update on compliance. No response was received.

On 9 December 2009, a message was left for the Chief Officer regarding the matter.

On 5 January 2010 another e-mail was sent to the Chief Officer requesting that a meeting be setup to discuss the matter. Shortly thereafter Mrs. Ahearn informed the OCC that a Mental Health Task Force was currently being formulated and that the terms of reference were currently being finalized and work should be started in the last quarter of the fiscal year, and feedback reported to the Ministry within 6 months. The terms of reference were to include a review and re-write of the law and regulations.

After a series of e-mails from the OCC, Chief Officer Ahearn responded to Commissioner Williams on 27 April 2010 to inform her of the following:

- A Mental Health Task Force was due to meet on or about the second week of May 2010.
- Nominees were to be finalized, but there would be approximately 12 on the Task Force.
- The Terms of Reference for the Task Force has been approved by Cabinet.

On 8 June 2010, Commissioner Williams e-mailed the Chief Officer, who responded the same day to update her as follows:

"The Mental Health Task Force had it second meeting last week (week of 1 June 2010) and they had started looking at the amendments to the Mental Health Law which were necessary to provide for a legislative framework that was more responsive to our current needs, including the process for designation of places of safety. The goal of the committee was to arrive at some legislative amendments that provided the tools needed to balance the need to protect the patient's rights and the need to protect society as a whole (in case of mentally ill persons who may pose a danger to others). The committee was to meet in two weeks to continue their work on the updates to the legislation, and they were all hoping to have a report for the Minister by the final quarter of that calendar year (2010) which he could take to Cabinet to receive their approval to commence the drafting of the updated legislation".

On 7 October 2011, the Commissioner e-mailed the Chief Officer to say:

I have tried to contact you this week without success.

In the sole recommendation contained in the above name Own Motion Investigation Report, the Ministry was to "...research and develop a process as prescribed by the Mental Health Law...to administer the designation for a place of safety giving due consideration to the preservation of patient privacy."

In your e-mail to me dated 7 March, you stated:

In the interim, in order to prevent a repeat of the patient's name being published in the Gazette, we are in discussion with Legal regarding the necessary steps to "permanently" designate Northward and Fairbanks as "place of safety" so that we do not have to do "patient specific" Gazettes when the need arises from time to time. I'm hoping that this will be completed within the next month or so.

I know there are other steps the Ministry has been taking with regard to, inter alia, amending the law. However, please advise whether this, at least, has been done.

It is almost exactly 2 years since this recommendation was made...."

On 31 October 2011, the Commissioner took the serious step of writing a letter to the Chief Officer prior to the issue of a Special Report pursuant to S. 18 (3)-(5) of the Complaints Commissioner Law 2006, setting out the extensive chronology. In the letter, the Ministry was given until 15 November 2011 to reply, thereby affording them an opportunity to be heard pursuant to S. 18 (5) of the CCL 2006. No reply was forthcoming.

On 12 December 2011, the Commissioner wrote to the Honourable Minister Mark Scotland, referring to the letter dated 31 October 2011 previously sent to Chief Officer Jennifer Ahearn, and also referencing 3 additional e-mails that had not been previously referred to in the 31 October letter. The Commissioner also stated:

*"....I find it deeply regrettable that I have been forced to write to your Ministry for a **second** time on what, on any view, is a very serious matter – where there has been a protracted history of non-compliance for over 2 years warranting the issue of a Special Report....", and exceptionally granted the Ministry a further 7 days if they wished to be heard pursuant to S. 18 (5) of the Law.*

On 12 December 2011, Chief Officer Ahearn replied to the Commissioner's letter of 31 October, stating: ".....As I have indicated in previous correspondence and conversations, the Mental Health Taskforce has continued to work very diligently on reviewing and updating the Mental Health legislation. We are presently working with Legal Drafting on the draft bill and are making good progress. We had our last meeting for the year last week, and will be reconvening early in the New Year to continue our work. I am hopeful that the Minister will be able to table the revised Law in the first half of the calendar year 2012, and that the necessary regulations will follow sometime in the third or fourth quarter of 2012. Once we have arrived at a draft Law, we will be sending it to the Human Rights Commission and a Human Rights Consultant for PAHO

to ensure that it is compliant with the necessary conventions. While this may serve to delay the legislation somewhat, I'm sure you will agree it is an important and necessary step.

The issue of the designation of place of safety, and the processes of designating same when the Mental Health Unit at the hospital is full and alternative locations are required, is something that we have discussed at the Taskforce and agreed that the status quo is not acceptable and we will ensure that the revised legislative framework address this. In the interim should the need arise to Gazette a place of safety we will take the necessary steps to ensure the patient's privacy is protected.

As I have outlined in our discussions on this matter, it has not been the case that we have not taken any action. On the contrary, the Ministry and the Mental Health Taskforce have been working very diligently and continuously on this important legislative review. It has been one of our more dedicated groups in terms of meeting attendance and discussion contributions, and I am confident that once we complete the review the country will have a Mental Health Law that not only addresses the issue of the designation process for "Place of Safety", but also puts in place a robust and updated legislative framework that addressed many other important aspects of mental health and protects the rights of the patient and the public...."

In her letter in reply to the Chief Officer dated 19 December 2011, the Commissioner wrote: "...Thank you for your e-mail dated 12 December 2011, which I accept under the provisions of S. 18 (5) of the Complaints Commissioner Law 2006. I have read and carefully considered it, along with previous correspondence (some of which you have referred to in paragraph 2 of your e-mail), including the most recent letters dated 31 October and 12 December respectively sent to both you and Honourable Mark Scotland.

The decision to issue a Special Report, provide a copy of same to His Excellency the Governor, and lay it before the Legislative Assembly, is not one that is taken lightly, hence the relatively few such reports that have been issued since the OCC was established in 2004.

Normally the Commissioner moves to Special Report where there has been no substantial compliance within 12 months. This matter was the subject of an Own Motion Investigation, which in itself is an indication of the level of seriousness of the matter. The recommendation was made on 22 October 2009. It was only because of my personal regard for you that I did not take action as early as October 2010, which I could have been legally entitled to do.

For the avoidance of doubt, contrary to the first line of the penultimate paragraph of your e-mail, I have never said or intended to imply that the Ministry has not taken any action. However, it is now over 2 years since the recommendation was made; not only has there still been no substantial compliance after all this time, there is no likelihood of such compliance anytime soon, as you mention a timescale in paragraph 2 of your e-mail that could conceivably run to "the third or fourth quarter of 2012" – an additional 9 – 12 months.

For these reasons, I find pursuant to S. 18 (3) of the Complaints Commissioner Law 2006, that no adequate actions has been taken to remedy the injustice within the time specified or a reasonable time thereafter, and consequently the matter will now proceed to Special Report...."

MINISTRY REPLY PURSUANT TO S. 18 (5) OF THE COMPLAINTS COMMISSIONER LAW 2006

On 20 April 2012, Chief Officer Ahearn responded to say, "....Minister and I have reviewed your draft report and we note its contents. By way of update I would like to advise that the Mental Health Task Force has continued to meet on a regular basis and has been in constant contact with the Legislative Drafting Department to review and revise the draft Bill and provide instructions regarding the regulations. The processes surrounding all aspects of the legislation, including the designation of "Place of Safety", are under active consideration and discussion by the Task Force.

Due to workload issues, the Legislative Drafting Department has advised that they will not be able to provide us with an updated draft Bill until mid-May, however we will continue our work on the instructions for the Regulations in the interim while we wait for the updated draft Bill.

The need for appropriate facilities is one that the Task Force, and the Ministry are acutely aware of and the need for a long-term solution is under active consideration by all parties. However, I'm sure you can appreciate that identifying the capital funds for such a project is a particular challenge given the Government's current financial circumstances."

CONCLUSION

As stated in the Executive Summary, the OCC Own Motion Investigation Report dated 28 September 2009 was tabled before the Legislative Assembly on 22 October 2009. Since this date, the OCC has been monitoring the recommendation for compliance. As of the time of writing this Report, whilst the OCC accepts that some efforts towards compliance have been made, such efforts fall far short of substantial compliance. To quote the Commissioner's letter to Chief Officer Ahearn dated 19 December 2011: "....Not only has there still been no substantial compliance after all this time, there is no likelihood of such compliance anytime soon, as you mention a timescale in paragraph 2 of your e-mail that could conceivably run to "the third or fourth quarter of 2012" – an additional 9 – 12 months...."

All of the above is particularly serious bearing in mind the following:

1. The importance of the issue itself;
2. The Human Rights implications of non-compliance
3. The extensive correspondence between the OCC and the Chief Officer of the Ministry concerned (see Section 7 above); and
4. The great age of the matter – **30 months** since the matter was tabled in the Legislative Assembly and **3 years** since the launch of the OCC investigation

Having monitored the recommendations for compliance since 22 October 2009, with no substantial compliance and no immediate sign of resolution, a Special Report has been prepared pursuant to S. 18 of the Complaints Commissioner Law (2006 Revision), in particular S. 18 (3) which states:

"....Where the Commissioner has made a recommendation under subsection (1) and within the time specified or a reasonable time thereafter, he is of the opinion that no adequate action has been taken to remedy the injustice, he shall lay before the Legislative Assembly a special report on the case".

12. Own Motion Investigations

12.1 COMPLETED REPORTS

The Commissioner can conduct an investigation as a result of a complaint or on his own motion (or initiative) if there are special reasons that make investigation desirable in the public interest. During the course of the 2011-2012 fiscal year one own motion investigation was undertaken. A synopsis of the report tabled in the Legislative Assembly is presented below. The other investigations which remained open as at the end of the fiscal year are summarised subsequently.

Own Motion Investigation Report Number

12.1 An investigation into the ability of the Department of Labour and Pensions (DLP) – formerly the Department of Employment Relations (DER) – to effectively and properly oversee, inspect and ensure Health and Safety at work for those involved in the construction industry, as mandated under the applicable Law and Regulations.

The focus of the Investigation

The investigation was formally launched on 19 August, 2011 following preliminary research in order to assess both the viability of such an investigation, and to determine whether such an investigation was in the public interest. To demonstrate complete fairness and impartiality, the OCC has taken a 360 degree holistic approach to this investigation, interviewing and conducting research not only among Labour Inspectors past and present, but also with the Cayman Contractors Association [CCA] who represent the interests of contractors; victims of construction accidents; senior civil servants within and outside the Ministry ultimately responsible; lawyers and lawmakers; and internationally known experts in the field. Formal interviews and informed discussions took place with many interests parties, including:

- current and former staff of DER (now DLP), including Directors/Heads of Department
- a former Government Minister
- current and former Chief Officers
- the Attorney General
- the Director of Public Prosecutions (DPP) (formerly Solicitor General)
- victims of construction accidents
- Health & Safety experts in the private sector
- A legal author and expert in the field
- Chief Building Control Officer, Planning Department
- Mr. Samuel Goolsarran, author of the Goolsarran Report commissioned by the Ministry in 2007
- President, Cayman Contractors Association
- Former Crown Counsel, now Deputy Director of Public Prosecutions

Despite repeated requests from the OCC, the current Minister chose not to assist this investigation by making himself available for interview.

Information was gathered from, amongst other sources, the Labour Laws of 2011 and 2007; the Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008; the International Labour Organization Conventions in force from 2005 and currently; the Goolsarran Report 2007; legal articles; press articles; and internal Government documents.

The OCC also dip-sampled existing open case files and closed files within the Department.

Not counting preliminary inquiries, approximately 1100 hours of OCC investigators and Commissioner's time has been spent on research, evidence gathering, writing and editing this report.

COMMISSIONER'S INTRODUCTION

The photograph on the cover of the Report depicts the collapse of scaffolding outside of the Anderson Square building on 4 June 2010. It is important to state right at the outset that this scaffolding collapse was not the fault of the then Department of Employment Relations (DER); indeed, 2 days before this incident happened, two senior DER staff members warned them about the need for secure ties for the scaffolding – both inward ties (scaffolding to building) and outward ties (scaffolding to ground). On being warned, the attitude was reportedly nonchalant. According to a former senior member of DER staff, scaffolding issues were and are still very common.

However, this photograph is emblematic of the state of Health and Safety in the construction industry in the Cayman Islands – a regulatory infrastructure which, if not improved, could collapse at any moment. Despite the reorganization of DER into two departments, one of which, the Department of Labour and Pensions (DLP), deals with health and safety matters, the situation remains the same today.

The OCC acknowledges that, whilst there is room for improvement, the Labour Inspectors are generally doing a good job despite being hobbled by inadequate resources. Three OCC staff attended Occupational Safety and Health Administration (OSHA) Courses run by the then DER in December 2010 and February 2011, and all were awarded certificates by the Honourable Minister Anglin. As Complaints Commissioner, I also endorsed the course, and my remarks praising the course were reported in the media ("DER in push to improve workplace safety" – May 6 2011). My endorsement was repeated in the OCC press release dated 19 August 2011 launching this investigation: "I want to make it clear at the outset that, at present, the Labour Inspectors responsible for Health and Safety are doing good work within the financial and other resource constraints under which they operate. OCC staff has also attended Health and Safety courses run by DER and are now OSHA certified, and as Commissioner I am on record for praising course content".

However, this should not be seen as a charter for complacency. The proper and effective regulation of Health and Safety in construction affects not only workers employed in this industry, but also members of the general public who could be injured – or worse – from falling masonry, unsecured scaffolding (as in the Anderson Square scaffolding collapse) and other Health and Safety breaches. This concern for the safety of the general public as well as the employees is one shared by the Cayman Contractors Association.

The OCC will monitor all recommendations made for compliance.

POWERS OF THE OCC

The aim of the Office of the Complaints Commissioner is to investigate complaints against government in a fair and independent manner in order to determine whether injustice has been caused by improper, unreasonable, or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.

Sec.11(1) of the Complaints Commission Law (2006 revision) empowers the Commissioner to launch an investigation without first receiving a written complaint (i.e. of the Commissioner's Own Motion) for a particular issue that is deemed as having special importance which then makes an investigation by the Commissioner desirable in the public interest.

EXECUTIVE SUMMARY

a) Reasons for investigation

Health and Safety issues are wider than just those that particularly affect the construction industry, and it is true that Health and Safety, even taken as a whole, is only one aspect of the work of DER and DLP over the period covered by this Report, 2005- 2012. It is also true that at a time when there are constraints on all sorts of resources, all government departments are expected to do more with less. **However, the construction industry is in a category of its own. It is a high-risk industry, and there is no price that can be placed on human life. Of all the work the Department undertakes, any failings on their part in this area have the potential to be the most damaging to its reputation.** Put plainly, if there is an accident on a construction site due to negligence or failure to comply with Health and Safety standards that could have been prevented by a more robust programme of inspections, it is possible that not only the offending construction company, but also the Department and the Ministry, could be subject to legal action. At the very least, the resulting negative publicity would concentrate the minds of the public on a Departmental failing rather than any of the other good work it has done and continues to do.

b) Scope of the Investigation and Terms of Reference

The Terms of Reference of this investigation are: "An investigation into the ability of the Department of Labour and Pensions (DLP) – formerly the Department of Employment Relations (DER) - to effectively and properly oversee, inspect and ensure Health and Safety at work for those involved in the construction industry, as mandated under the applicable Law and Regulations" – including examining the effectiveness of existing legislation, and the role of other entities in contributing to proper regulation.

c) Findings

FINDING: Whilst the OCC would strongly support amendments to existing legislation, there is a corresponding duty on Labour Inspectors to cooperate, and work more closely, with the Government Legal Department in a timely fashion, in particular with regard to the delivery of complete instructions and the collection of files. The Department should also be more proactive in looking for matters to prosecute where warranted.

FINDING: OCC interviews with DER staff clearly demonstrated that, as of 2011, there was far less awareness amongst existing DER staff of the importance and effect of these international laws and conventions, and their attendant obligations, than there should be. Unfortunately, there is nothing to indicate that the level of knowledge in this area is any greater since DER became the Department of Labour and Pensions. This must be addressed in training; ignorance should not be seen as an excuse.

FINDING: There is a wealth of collective experience in DLP (formerly DER) but the Department must better demonstrate its professionalism across the board if they are to get and maintain the respect of members of the public and persons in the industry (both employers and employees) alike. Labour Inspectors must carry out more proactive investigations, improve the quality of reports where necessary, maintain valid OSHA training certificates, minimize time spent on negotiations, and conduct a comprehensive outreach programme which must have the full and active involvement of those at Assistant Director level and above.

FINDING: The filing system used by DER and still used by the restructured DLP is both inadequate and inefficient for the needs of the Department, and the Departmental database is not configured in a way that would help the Department to achieve best practice and optimize its efficiency.

d) Recommendations

The intent of the OCC Recommendations is to ensure that Health and Safety in the construction industry is properly and effectively monitored by the Department of Labour and Pensions (formerly the Department of Employment Relations). DLP, like DER before it, is doing as much as it can with limited resources, both financial and personnel. The Labour Inspectors are by and large very committed, but they are inadequately resourced for an important role which, although ultimately protecting the lives of both workers and members of the public, has been reduced to just one of many job functions. The OCC Investigation has taken a 360 degree approach. As a consequence, the recommendations not only impact on the Department but on wider aspects of Health and Safety in this particular area.

The new DLP Director has only recently been appointed to lead this newly restructured Department. **With the new Department in its infancy, this provides the best possible opportunity to implement the following OCC recommendations, thereby demonstrating a clear commitment to proper regulation in this area not only to those involved in the construction industry and members of the public, but also internally to staff.**

DLP

1. DLP should establish a dedicated Health and Safety Unit. This is perhaps the single most important recommendation. Even a small unit comprised of two Labour Inspectors, one senior, would enable them, and DLP as a whole, to be more proactive – preventing accidents from happening rather than reacting to incidents after the fact. The Unit would be able to do more workplace inspections without notice (a proven way of increasing workplace safety), and conduct public education, outreach and training to contractors.
2. Training should be brought and kept up to date. OSHA certification, or its equivalent, for Labour Inspectors is crucial, but training must also include instruction on the relevant ILO conventions, CARICOM Labour Laws and other international obligations. As of December 2011 there was far

less awareness amongst existing DER staff of the importance and effect of these international laws and conventions, and their attendant obligations, than there should be. Ignorance would not be seen as an excuse.

3. Better resources, equipment and transportation, including, but not limited to, oxygen meters, light meters, noise level meters and HD cameras. All of the above are essential professional tools enabling Labour Inspectors to properly conduct inspections and otherwise discharge their duties in this area.
4. DLP must cooperate, and work more closely, with the Government Legal Department in a timely fashion, in particular with regard to the delivery of complete instructions and the collection of files. The Department should also be more proactive in looking for matters to prosecute where warranted.
5. In the professional opinion of Samuel Goolsarran, author of the Goolsarran Report, when interviewed for this investigation, any labour inspector owning or running a construction company would be guilty in his view of a serious professional breach. This could be a conflict of interest, and would tend to demonstrate a less than professional approach to the work; indeed, there is clear evidence with at least one former employee that this has been flouted in such a way that created a clear conflict of interest. This opinion was also shared by one of the victims of a construction accident interviewed for this report (see section 8(d), *post*). The OCC agrees with this, and **recommends** that no new staff employed by DLP may own, run, or have a substantial interest in a construction company. However there may well be existing Department staff that are thus engaged in the construction industry outside their core work for the Department, and to either dismiss them or ask them to immediately relinquish their interests in such companies would be too draconian. The OCC therefore **recommends** that all existing DLP staff, at whatever level, should sign a Register of Interests with a continuing obligation to keep it updated, with failure to do so being considered a disciplinary offence. The OCC is aware that Departmental staff are already expected to declare such interests but this has proven ineffective as currently operated.
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7. DLP must set up a better filing system and/or more comprehensive database. This would not only assist staff internally, but would also greatly assist in the preparation of files before they are referred on to the Government Legal Department.

LAW

8. The following are specific legislative changes recommended by the OCC:
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 - Charities and non-profit, non-commercial organizations should be covered by the Labour Laws and Regulations.
 - Failure by a company or an organization to appoint a Safety Officer should be an offence under the Labour Law and/or Labour Regulations.
9. Consideration should be given to enacting as soon as possible the 2004 Employment Law, Part IX (sections 60-72) of which specifically deal with Health, Safety and Welfare.

OTHER AGENCIES

10. The former DER had a good working relationship with both the Department of Planning and Cayman Contractors Association, and it is to be hoped this will continue under the new DLP. However, there must be better and more effective communication and liaison between DLP and Immigration; Environmental Health; Trade and Business Licensing Board; the Department of Commerce and Investment; Lands and Survey; and all other relevant government entities – **whilst simultaneously taking great care to underscore and emphasise the independence of the DLP, particularly in matters relating to Health and Safety.**
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12. A driver should only be allowed to operate a crane or forklift truck if they are certified to do so. At present, persons driving such equipment need only a Group 4 Licence.
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WHY HEALTH AND SAFETY IN CONSTRUCTION? BACKGROUND TO THE INVESTIGATION

The area of Health and Safety, particularly as it affects construction workers, is ripe for abuse by unscrupulous employers and contractors. Workers in this field, both Caymanian and expatriate, are generally poorly paid. A significant number of construction companies are small to medium-sized businesses, many of which are family owned and operated. A Caymanian worker, if injured in a family business, is extremely unlikely to complain no matter how serious the injury. Non-Caymanians injured as a result of their employers' failure to comply with their Health and Safety obligations, have in some instances had their work permits revoked, been summarily dismissed and forced to return to their country of origin.

This Report covers the period from April 2005 to April 2012. After the destruction of Hurricane Ivan, the following seven months saw a boom in rebuilding and construction. Even though a decline in construction from the post-Ivan boom was inevitably to be expected – in fact, statistics show that construction overall has declined from 2005-11 – this will not always be the case. If, throughout this period, as is clearly shown throughout this Report, Labour inspectors from DER/DLP were and are unable to carry out sufficient workplace inspections and other duties to effectively and properly oversee, inspect and ensure Health and Safety at work to date, what will happen when the economy improves and construction increases again? This is of particular concern with regard to larger building projects involving countries whose record on health and safety in this field does not even reach the standard of that in the Cayman Islands.

The OCC is aware that DER is now DLP. However, as the Report will show, just because the acronym has changed, the more fundamental changes needed to enable the Labour Inspectorate to properly deal with Health and Safety issues have not taken place. On 7 February 2012, Ministry Chief Officer Mary Rodrigues was quoted as stating that the department restructuring would be done “within existing budget allocations for the ministry”. (“Government Labour and Pensions Office Soon Come”, Caymanian Compass). If that is indeed the case, and no additional monies are allocated, such changes that are proposed will be largely cosmetic, of minimal effect and will fail to address the deep-seated issues that have prevented effective and proper regulation in this area to date.

THE OCC INVESTIGATION: Methodology

The investigation was formally launched on 19 August, 2011, following preliminary research in order to assess both the viability of such an investigation, and to determine whether such an investigation was in the public interest. To demonstrate complete fairness and impartiality, the OCC has taken a 360 degree holistic approach to this investigation, interviewing and conducting research not only among Labour Inspectors past and present, but also with the Cayman Contractors Association who represent the interests of contractors; victims of construction accidents; senior civil servants within and outside the Ministry ultimately responsible; lawyers and lawmakers; and internationally known experts in the field. Formal interviews and informed discussions took place with many interested parties, including:

- current and former staff of DER (now DLP), including Directors / Heads of Department
- a former Government Minister.
- current and former Chief Officers,
- current and former Deputy Chief Officers

- the Attorney General,
- the Director of Public Prosecutions (DPP) (formerly Solicitor General)
- victims of construction accidents,
- Health and Safety experts in the private sector,
- A legal author and expert in the field
- Chief Building Control Officer, Planning Department
- Samuel Goolsarran, author of the Goolsarran Report commissioned by the Ministry in 2007.
- President, Cayman Contractors Association
- Former Crown Counsel, now Deputy DPP

Despite repeated requests from the OCC, the current Minister chose not to assist this investigation by making himself available for interview.

Information has been gathered from, amongst other sources, the Labour Laws of 2001 and 2007; the Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008; the International Labour Organization Conventions in force from 2005 and currently; the Goolsarran Report 2007; legal articles; press articles; and internal Government documents.

The OCC also dip-sampled existing open case files and closed files within the Department.

Not counting preliminary inquiries, approximately 1100 hours of OCC analysts and Commissioner's time has been spent on research, evidence gathering, writing and editing this report.

PAST: The Promise

The devastating damage caused by Hurricane Ivan in September 2004 led to a need for massive rebuilding in the Cayman Islands. As a consequence, the number of construction companies grew very rapidly over a short period of time. Although there are no reliable statistics for the period, it is estimated that, before Hurricane Ivan, there were approximately 100 construction companies in the Cayman Islands; immediately after Ivan, this grew to approximately 260 companies and, according to a former member of DER staff, if one included sole traders (persons holding themselves out as working in construction but not registered companies) this figure was as high as 700. The main problem with compliance was with the smaller companies and sole traders.

On 13 April 2005 the then Director of DER, Walling Whittaker, issued a press briefing on Occupational Safety and Health Concerns in the Construction Industry. At the conclusion of the briefing, those present were informed of a 2 day Health and Safety workshop that was to be held the following month, but the briefing started with a worrying description of the position as it then was, and the Department's stated commitment to change:

"During the period from August 2004 to March 2005 the number of construction workers on Grand Cayman has increased by 460% from 803 to 4496.....Most of these workers are likely untrained and many of the newly established construction companies are working with unsafe operating practices. This situation has created a high risk for accidents to occur, and regrettably we have already seen two deaths and several serious injuries in the construction industry, and I am very concerned that more deaths and more injuries will occur unless a serious effort is made to correct many of these unsafe work

practices.....We expect that **every employer** will be aware of their obligations under the current law, because we will be carrying out safety inspections to ensure compliance with the Law. Due to the high incidence of accidents now occurring, **non-compliance will not be tolerated.** These inspections will focus on the construction industry, but we will also include other high-risk industries. All employers are encouraged to carry out a risk assessment of their operations to ensure that work is being done in accordance with the highest standards of safety in their particular industry.” (Emphasis in bold is that of the Director).

In a press article of the same date (“Construction injuries increase”), in a bid to combat fly-by-night firms which had sprung up in the preceding 6 months, Director Whittaker reminded all employers of their obligations under S.57 (1) of the then 2001 Labour Law to register their companies with DER within a month of commencing operations – a requirement that, up until that point, had been routinely overlooked. He confirmed that, although there had been concerns about construction sites before Ivan, the storm had brought the matter to a head with so much work requiring to be done at the same time. He also confirmed that, as well as the 2 deaths, there had been many other injuries including fractures, lacerations, chemical splashes, burns, shocks and accidents involving the loss of digits, and appealed for anyone with concerns about safety in the workplace to come forward.

According to a former member of staff who was employed in DER before, during and after Hurricane Ivan:

When I first took the role there was no Health and Safety Inspector. It was all Labour Inspectors. What they focused more on was the Compliance Section of the Law. Making sure that everyone abided by the Law – that was their area to basically enforce it and also educate people on the law at the same time. It was not until after IVAN that they started looking into Health & Safety itself and that was when they decided that they needed to start building on that part of the Law.

Walling Whittaker agrees: Before I came to the Department, there was no Health and Safety component. I came there, identified the problems and felt I had a legal responsibility under the Labour Law to do something about this. I remember.....expressing concern about “Johnny come lately” construction companies. Doing something about Health and Safety helped to establish and underscore the relevance of our department to outside bodies (i.e., businesses, Cayman Contractors Association). I wanted staff to get trained up in Health and Safety. I got an OSHA certified trainer to do this. I got them all [Labour Inspectors] certified, so not only were they trained but they could train people on construction sites.I also got the Department some inspection equipment. A Health and Safety manual was put together and in use whilst I was there.

Director Whittaker also claimed that, before Hurricane Ivan, there were also no records kept of workplace fatalities or serious injuries until after Hurricane Ivan, in 2005, when both Public Health and the RCIPS started keeping records.

DEPARTMENT OF EMPLOYMENT RELATIONS 2005 – 11: the reality.

Most of the staff employed by the Department during the period covered by this Report have been in post for several years. For example, one current staff member, Assistant Director Robert Whittaker, has now been so employed for over 21 years and thus has seen the transition from the Department of Labour, to DER, to DLP (the Department was restructured at the end of 2001 and renamed DER under

the Directorship of Mr. Walling Whittaker and recently restructured again in February 2012 and renamed DLP under the present Director Mr. Mario E. Ebanks.)

This could potentially be a solid foundation upon which to build - according to one senior Labour Inspector, Gene Hydes, *"We have over 80 years of collective experience..."* in the Department. By the same token, entrenched patterns of working which are not helpful can also become entrenched over a number of years.

a) Inspection and Enforcement

Two months after Walling Whittaker's press briefing, a draft Occupational Safety and Health Code of Practice for the Construction Industry was published on 28 June 2005. This was timely, not only because of the figures referred to above, but also because the number of construction companies, according to Trade and Business Licensing records, had reached 760 by 1 July 2005. Construction companies were given 3 months to comment on the guidelines by DER. In order to instill "a culture of safety", as Mr. Whittaker described it, a safety training programme for companies would take place in August, and in October 2005 DER intended to start a worksite inspection programme.

The draft Code of Practice subsequently became the Health and Safety at Work: Safety Policy for the Construction Industry. DER and the Cayman Contractors Association, among others, worked closely on this policy, which was to be implemented in 3 separate phases year on year from 2007-2009, with phase 1 intended to take effect from November 2007.

Both during the period 2005-11, and as of the time of date of the Report, Labour Inspectors have very little enforcement powers. They have the power to conduct worksite inspections without notice under S.73 (1) of the Labour Law 2007 (also S.73 (1) of the Labour law 2001) and S.11 of the Labour Law Regulations 2008. But whilst inspections do not have to be done on notice, Labour Inspectors have on occasion been refused entry to a site.

Labour Inspectors also have the power to issue a Remedial Notice under S.65 of the Labour Law 2007 (also S.65 of the Labour law 2001), where deemed necessary and appropriate, acting on behalf of the Director. S.65(1) and (5) of the 2007 Law state that, in order to enforce the Health and Safety obligations under Part VIII of the 2007 Law, the Director may:

".....where he is of the opinion that any steps are required to be taken by any person to ensure compliance with this Part or of any regulations made hereunder, serve upon that person a notice, hereafter referred to as a remedial notice." (S.65 (1)).

S.65 (5) states: "Without prejudice to the generality of subsection (1), a remedial notice may require –

- a) The cessation, immediate or otherwise, of any activity, operation or process;
- b) The vacation, immediately or otherwise, of any premises;
- c) The alteration of any premises or plant; or
- d) The introduction of such temporary measures as may be expedient pending the institution or completion of permanent measures.

The Remedial Notice must state what Health and Safety issue it relates to, the steps to be taken and the time within which such steps must be taken (S.65(2)). Whilst there is a right of appeal against the Notice, which operates as a stay of the requirements to comply with the Notice (S.65 (3)), if there is imminent danger to the Health or Safety of employees there is no automatic stay. Separate from any penalties for Health and Safety breaches, failure to comply with a Remedial Notice is itself an offence (S.66 (4)). **However, despite the breaches brought to light post-Ivan and the Labour Law being revised in 2007, the financial penalties for such failure have remained the same since 2001.**

Between 2005-11, there were four Directors or Acting Directors at DER - Walling Whittaker, who stated in interview that he had been in post for six years until 2007; Phillip Scott, former Acting Director; Lonny Tibbetts from 2008-2010; and Acting Director Jennifer Smith. The greatest and most dramatic changes with regard to Health and Safety occurred during Mr. Whittaker's tenure, in the main because of the deficiencies highlighted by the post-Ivan construction boom in a largely unregulated industry, particularly where smaller companies and sole traders were concerned. As a consequence, Director Whittaker made Health and Safety issues more of a priority and brought in 3 key innovations – an internal manual on Health and Safety issues, which formed the basis of the Labour (Occupational Safety and Health) (Construction Industry) Regulations 2008; OSHA training and certification for Labour Inspectors; and, prior to the Goolsarran Report in late 2007, a more specialist approach to Health and Safety as well as other areas of work in the Department.

Before I came to the Department, there was no Health and Safety component. I came there, identified the problems and felt I had a legal responsibility under the Labour Law to do something about this. I remember.....expressing concern about "Johnny come lately" construction companies. Doing something about Health and Safety helped to establish / underscore the relevance of our department to outside bodies (i.e., businesses, Cayman Contractors Association). I wanted staff to get trained up in Health and Safety. I got an OSHA certified trainer to do this. I got them all [Labour Inspectors] certified, so not only were they trained but they could train people on construction sites..... I also got the Department some inspection equipment. A Health and Safety manual was put together and in use whilst I was there.
(Walling Whittaker)

Between 2005 and the dates the current post-holders took office, apart from the current post-holders, there were seven other personnel who worked in DER. Of past Labour Inspectors, the person with the main responsibility for Health and Safety matters was Rohan Marshall; according to Mr. Whittaker, Rohan Marshall became a Health and Safety Specialist within the Department, and that whilst he was in post, he and Tricia Powell did the majority of Health and Safety work.

However there were significant contributions in this area from other members of staff. Apart from the Director, Debra Prendergast (initially Programme Co-coordinator, then subsequently appointed as a Labour Inspector) did a significant percentage of H&S work – approximately 35-40%, as did Gene Hydes who still works as a senior Labour Inspector within the department and who is now recognized as the person with the most Health and Safety expertise. Debbie Prendergast, a former Compliance Officer who became Labour inspector and who worked in the Department from 2002-2007 (she was in post when the OSHA training started, and also when the press release referred to as the starting point for this Report was issued) created the Manual.

When asked if he dealt solely with Health and Safety issues, Rohan Marshall replied: *My responsibility was to set up Occupational Health and Safety for the country. This was the first time and would include taking initial provisions that were initially written by Trisha Powell and expanding and modifying them to*

suit our needs. She started a Manual so what they did was to expand on it, combining information from stakeholders. This project was spearheaded by Walling Whittaker. As the project expanded they found the need to get out and do more visual inspections. The first year of my specialty in being a Labour Inspector, they used a lot of the inspection photographs and recording to build training material, especially for the DER OSHA course.

The Health and Safety Manual

The Manual was created to assist Labour Inspectors who, because of the broad range and number of duties they were tasked with, were relatively inexperienced in this area, particularly when conducting site inspections. Although there were contributions from other Labour Inspectors, Tricia Powell and Walling Whittaker had the greatest input. Ms. Powell's architecture background and previous experience in Public Works, allied to Mr. Whittaker's engineering background, gave the manual a solid basis of useful expertise and awareness of the Health and Safety Standards that would be required as best practice. The manual also incorporated elements of OSHA training, after the first accredited training had taken place in 2005.

The Goolsarran Report was tabled in the Legislative Assembly in late 2007, and this had a direct impact on the structure of the Department. Thus, when Lonny Tibbetts became Director in 2008, DER was restructured into 3 parts – Enforcement, Job Placement, and Research and Statistics (in fact the Report had recommended a 4 part structure, but this was deemed not appropriate for Cayman).

Like Director Whittaker before him, Director Tibbetts also made changes to DER intended to improve the Department's effectiveness. As well as the restructuring above, in accordance with the recommendation in the Goolsarran Report, there was a move away from at least one Labour Inspector specializing in Health and Safety issues to a more generalist approach, where all Labour Inspectors conducted worksite inspections and were responsible for monitoring Health and Safety breaches. Although well-intentioned, and Director Tibbetts cannot be faulted for implementing a recommendation from a Report commissioned by the Ministry at great expense just prior to his appointment, **the OCC disagrees with this approach and has made a Recommendation to this effect** (see Recommendation 6 and section 8(g) of this report).

Director Tibbetts also created a database in 2008, in order to capture the requisite data which would both drive and support policy decisions made by the Department. According to Mr. Yoshneck Mutomba, Assistant Director, Research and Statistics both in the then DER and now in DLP, there was no any other database in place prior to this. This was a good innovation, and sorely needed at the time. However, the OCC has found that better use could be made of the database. Using the database, the Department should be able to (including but not limited to the following):

- track the number and type of construction accidents;
- determine whether or not a company is a repeat offender;
- track the number of remedial notices issued against companies and the time taken to comply with them;
- ascertain what happened to an employee post injury (for example, if the employee was not Caymanian, whether they were deported or their work permit withdrawn as a consequence of this accident)
- track the number of matters referred to Legal

A proper case filing system is a prerequisite for an effective database which would not only assist the Labour Inspectorate but also the Department as a whole, particularly in its communications with the Legal Department. This is especially important now that its wider remit also includes Pensions. On reviewing files for this Own Motion Investigation:

- Files were not in order – for example, pertinent information for a person involved in a workplace accident was incorrectly filed on another person's file.
- Information on some files was inconclusive, with little or no precise detail
- Handwriting was sometimes not very legible
- Documents were not properly punched, stapled or paper clipped, resulting in missing pages
- Most information was not filed chronologically

FINDINGS AND RECOMMENDATIONS

Findings

FINDING: Whilst the OCC would strongly support amendments to existing legislation, there is a corresponding duty on Labour Inspectors to cooperate, and work more closely, with the Government Legal Department in a timely fashion, in particular with regard to the delivery of complete instructions and the collection of files. The Department should also be more proactive in looking for matters to prosecute where warranted.

FINDING: OCC interviews with DER staff clearly demonstrated that, as of 2011, there was far less awareness amongst existing DER staff of the importance and effect of these international laws and conventions, and their attendant obligations, than there should be. Unfortunately, there is nothing to indicate that the level of knowledge in this area is any greater since DER became the Department of Labour and Pensions. This must be addressed in training; ignorance should not be seen as an excuse.

FINDING: There is a wealth of collective experience in DLP (formerly DER) but the Department must better demonstrate its professionalism across the board if they are to get and maintain the respect of members of the public and persons in the industry (both employers and employees) alike. Labour Inspectors must carry out more proactive investigations, improve the quality of reports where necessary, maintain valid OSHA training certificates, minimize time spent on negotiations, and conduct a comprehensive outreach programme which must have the full and active involvement of those at Assistant Director level and above.

FINDING: The filing system used by DER and still used by the restructured DLP is both inadequate and inefficient for the needs of the Department, and the Departmental database is not configured in a way that would help the Department to achieve best practice and optimize its efficiency.

Recommendations

The intent of the OCC Recommendations is to ensure that Health and Safety in the construction industry is properly and effectively monitored by the Department of Labour and Pensions (formerly the Department of Employment Relations). DLP, like DER before it, is doing as much as it can with limited resources, both financial and personnel. The Labour Inspectors are by and large very committed, but

they are inadequately resourced for an important role which, although ultimately protecting the lives of both workers and members of the public, has been reduced to just one of many job functions. The OCC Investigation has taken a 360 degree approach. As a consequence, the recommendations not only impact on the Department but on wider aspects of Health and Safety in this particular area.

The new DLP Director has only recently been appointed to lead this newly restructured Department. With the new Department in its infancy, this provides the best possible opportunity to implement the following OCC recommendations, thereby demonstrating a clear commitment to proper regulation in this area not only to those involved in the construction industry and members of the public, but also internally to staff.

DLP

1. DLP should establish a dedicated Health and Safety Unit. This is perhaps the single most important recommendation. Even a small unit comprised of two Labour Inspectors, one senior, would enable them, and DLP as a whole, to be more proactive – preventing accidents from happening rather than reacting to incidents after the fact. The Unit would be able to do more workplace inspections without notice (a proven way of increasing workplace safety), and conduct public education, outreach and training to contractors.

2. Training should be brought and kept up to date. OSHA certification, or its equivalent, for Labour Inspectors is crucial, but training must also include instruction on the relevant ILO conventions, CARICOM Labour Laws and other international obligations. As of December 2011 there was far less awareness amongst existing DER staff of the importance and effect of these international laws and conventions, and their attendant obligations, than there should be. Ignorance would not be seen as an excuse.

3. Better resources, equipment and transportation, including, but not limited to, oxygen meters, light meters, noise level meters and HD cameras. All of the above are essential professional tools enabling Labour Inspectors to properly conduct inspections and otherwise discharge their duties in this area.

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13. Complaint Resolution and Mediation

The majority of enquiries to this office are handled by referring complainants to the internal complaints manager in the agency concerned. The OCC assists enquirers by helping them to clearly understand their complaint, explaining procedures that apply to their case, and making appointments for them at the relevant government entity. This is consistent with good dispute-resolution principles, which stress that an entity should generally be given the first opportunity to consider a complaint and resolve it. Many government entities now have internal complaints processes that can deal effectively with the majority of the complaints they receive. By handling complaints directly, entities are enabled to learn from their mistakes, to clarify any public misunderstanding about the entity's policies and practices, and to rebuild trust with the clients. Complaint referral is also often the most efficient means of addressing a person's complaint.

However, we have at our disposal another means to resolve disputes. The CCL authorises this office to organise the mediation of a complaint that is minor in nature, where the parties are willing to meet to attempt to resolve the problem. This can be an effective route where, for example, the member of the public must often interact with the same government officer. Mediation can help defuse tension or frustration, and can serve to begin a dialogue and open lines of communication.

14. The Power of Recommendation

In the event that an investigation results in a finding of maladministration and injustice, the OCC can make a recommendation under section 18(6)(a) of the CCL. Some recommendations made were referred to in the case summaries above and others are noted below. Recommendations are monitored to encourage compliance, and if reasonable progress towards compliance is not made (in the case of recommendations arising from written complaints) a special report is made under section 18(3) to the Legislative Assembly. In the event that an investigation results in a finding of no maladministration or injustice, the OCC does not make a recommendation.

14.1 Recommendations complied with

The test for compliance is substantial, not exact, compliance.

The Number of recommendations complied with in 2011-2012 were 7.

In some situations, a long period of time lapses before a recommendation is complied with, i.e.,

amending legislation. In other situations, recommendations are seemingly ignored in spite of the pledge made on behalf of government by the Attorney General recorded in Appendix A. Here are some examples of recommendations made and complied with:

Example A: A Complaint against Her Majesty's Prison Service

On 18 August 2011 a prisoner filed a complaint with the OCC against Her Majesty's Prison Service in regards to the following matter:

A strip-search carried out on her and others which the complainant believes to be in retaliation for a letter she had written the day before, and an inappropriate comment by a Prison Officer.

After reviewing this case and examining the evidence the Commissioner made the following recommendations:

Recommendations made in closing letter to the H.M. Prison Service on 19 October 2011:

1) In a letter sent to the complainant by the Portfolio of Internal & External Affairs an apology was given to the complainant on behalf of HM Prison Service, the letter also stated that disciplinary action had been taken against the officer and her supervisor, including a requirement for the Officer to undergo sensitivity training. Having spoken to the Director of Prisons, the Commissioner was satisfied that the disciplinary action taken amounts to a Written Warning, meaning that if such behaviour is repeated, the officer could either be dismissed or be asked to resign. She therefore made no recommendations for further action against the Officer.

2) The Prisoner Complaints Procedure should be made more simple, clear, logical and easy to understand for both prisoners and prison staff, particularly bearing in mind that some prisoners are semi-literate or English is not their first language. It should also be fully human rights compliant, in accordance with both UN Resolution 45/111 and the Human Rights provisions in the Cayman Islands Constitution which will take effect in November 2012. Work on this is well under way, and the OCC is a full participant in the updating of these procedures.

Compliance: In regards to recommendation No. 1 the Commissioner considered this had already been done, therefore compliance was noted as at 19 October 2011.

In regards to Recommendation No. 2 the Commissioner was provided with proof of compliance on 23 December 2011.

Example B: A Complaint against the Labour Tribunal of Grand Cayman

On 18 January 2012 a complaint was filed with the OCC against the Labour Tribunal in regards to the following matter:

A complaint was filed against the Labour Tribunal whereby the complainant alleged that one of the Labour Tribunal Board members and his former employer, had discussions about his case regarding the hearing and subsequent decision of the Labor Tribunal outside of the hearing. The complainant contended that the board members were improperly interfered with and influenced; hence his reason

for filing a formal written complaint with this Office to investigate his case, in order to highlight the improper actions of Board Members regarding Labour Hearings.

After reviewing this case and examining the evidence received from both the Tribunal Chairman and the complainant, the Commissioner made the following recommendations:

1. The Chairmen of all Labour Tribunals must within 30 days formally review their code of conduct for Board members and remind members of the significant roles that they play and the importance of continuing to keep discussions surrounding Labour Hearings in the strictest of confidence between the members only, in order to prevent occurrences such as this one from happening again. **This Office should also be sent formal notification that this recommendation has been shared with board members.**
2. Provide this Office with a copy of the Rules or Code of Conduct for the Labour Tribunal Hearings.

Compliance: The Monitoring of these recommendations by members of our staff provided evidence of compliance by the Department on 11 July 2012 in regards to both recommendations.

14.2 RECOMMENDATIONS MONITORED

The OCC monitored 26 Recommendations during the 2011-12 Fiscal Year. Of that number, 23 Recommendations were brought forward from the 2010 -11 Fiscal year.

Twenty-One (21) of the Recommendations brought forward from 2010-11 were in relation to an Own Motion Investigation conducted by the OCC into the National Pensions Office. The Own Motion Investigation was undertaken because it was one of the most pressing and obvious examples of systemic failure of a government entity – the National Pensions Office, and the National Pensions Law that underpins it.

Scope of the investigation and Terms of Reference: 'To investigate the ability of the National Pensions Office to effectively investigate, charge and convict private sector companies who are non-compliant with pensions contributions as mandated under the law', including examining the effectiveness of existing legislation and entities responsible for the prosecutions of delinquent employers.

Findings:

- On the whole, the staff of the National Pensions Office, both past and present, are committed to ensuring delinquent employers do not flout the system and are doing the best they can with the limited resources (both budgetary and personnel) and other constraints imposed on them. They are also often frustrated by a system that allows unscrupulous employers to take advantage of loopholes and inherent weaknesses. However, the NPO has also failed to effectively use its existing enforcement powers under the Law to its fullest extent.

- Lack of resources in the NPO has led to ineffective supervision of the Multi-employer Pension Plans and Single-Employer Pension Plans.
- The roles of the National Pensions Board and the National Pensions Office in relation to each other are unclear, further taxing the already stretched resources of the NPO.
- Until very recently, there was little political will both by the Ministry responsible to implement improvements, and generally – for example, with regard to not issuing work permits to delinquent employers; forcing delinquent employers to either comply with their pension obligations or to cease trading.
- Despite Government proposals, there is still clear evidence of the inability of related Government departments (for example, the NPO, Immigration, and Health) to share communication effectively or at all.
- The existing legislation applicable to pensions needs substantial revision, both to impose harsher penalties for non-compliance, and to close loopholes that dishonest employers take full advantage of.
- Once the NPO has made a determination of non-compliance, too many chances are given to non-compliant businesses to pay the pension arrears, which are routinely ignored; and in the meanwhile, the outstanding level of arrears increases. Once a decision has been made to prosecute a delinquent employer, prosecutions through the Court system are too slow and are not an effective enough deterrent to prevent non-compliance. It takes 4 – 5 years for justice by the time a file has substantial documented evidence for prosecution.
- Employees fear being victimized if they take action against their non-compliant employer. There is little or no protection for whistleblowers, and therefore no incentive to bring delinquent employers to the attention of the NPO.

Recommendations:

As shown throughout this Report, root and branch changes are needed to the entire private pensions regulatory regime.

Law

1. As non-compliance (and the amount of monies outstanding as a result) has reached crisis point, in the immediate short-term, there should be at least one Crown Counsel with dedicated responsibility for prosecuting non-compliant employers and businesses to the exclusion of other legal work – moving from sole to primary responsibility in the medium term. In making this recommendation, I bear in mind the demands on the Government Legal

Service who are already heavily tasked with other matters. The advantage of this is that the NPO or replacement regulatory body would have a named lawyer they could communicate with, and that Crown Counsel tasked with this responsibility would build up expertise and a body of knowledge in this area.

2. The power to enter business premises and inspect documents under S.87 of the 2000 Law must be extended to businesses that are owned and operated from a private residence on the same basis. This would require an amendment to the existing Law.
3. The substantive National Pensions Law should be amended to give effect to the recommendation made by the Attorney-General that ".....consideration be given to amending the Pensions Law to state that where funds are earmarked to make good pension arrears, a court should not make an order to allow for payment of costs, legal and other expenses out of such funds/proceeds." Fines should also not be paid out of any monies held in trust or any assets of the pension scheme.
4. Deliberate and dishonest misappropriation pension monies should be prosecuted as theft with the same penalty options, including terms of imprisonment.
5. Fines – whether administrative, as proposed by the Government, or those imposed by the courts – must be set at levels that act as true deterrents.
6. The Law to be changed to allow penalties for victimization in order to protect reporters of wrongdoing (AKA "Whistleblowers").

Public Education and Outreach

7. There must be more public education on pensions by the National Pensions Office.

National Pensions Office and National Pensions Board

8. The NPO should use their existing enforcement powers under the National Pensions Law with vigor, and without fear or favour – and should be granted further powers as *per* 2 above.
9. The Standard Operating Procedures Manual must be updated. It is currently over 2 years out of date, does not give clear and firm guidance and is completely inadequate for the task at hand considering the large number of non-compliant businesses. This should be done as soon as possible, both for the NPO to use unless and until it is replaced under the new government proposals, and also as an aid to the new regulatory body until their own manual is in place.
10. The roles of the Office and the Board in relation to each other and to the governing Ministry should be more clearly defined.
11. The number of inspectors must be increased. I am encouraged to see movements in this direction, with a third Pension Inspector hired this

summer (July 2010). However, this will not be enough. A Pension Inspector can have a caseload of as much as 260 files to manage (each file representing one company with one or several complaints, depending on the size of the company). Further, 72 monthly delinquency reports a year (one each month from the 6 Pension Administrators) have to be reviewed. In addition, Inspectors are expected to carry out on-site inspections of employers and pension plans to ensure that they are in compliance with the National Pensions law, and to assist in the maintenance of the complaints tracking system. As stated before staff at the National Pensions Office are largely willing and committed, but at present staffing levels they cannot cope with the volume of work.

12. All approved Board Minutes to be formally signed, in accordance with best practice.
13. In order to encourage employees and other members of the public to come forward with information on non-compliant employers, the NPO should set up a confidential "hot line". However, whatever information is obtained in this way must be independently verified.
14. In order to prioritize cases, "Non-compliance" should be re-defined and reclassified into two categories:
 - Negligent non-compliance, including ignorance or misunderstanding of the law
 - Deliberate non-compliance, where there has been an intentional and willful flouting of the Law – for example, where an employer does not establish a pension plan for employees or does not enroll them in an existing plan, or where an employer deducts contributions from wages but does not remit them to a pension plan
15. The NPO must implement a system to effectively track those employers who are non-compliant and continue re-opening businesses under different names.
16. Because of the flagrant disregard some non-compliant employers have both for the National Pensions Office, the applicable legislation, and even payment plans agreed between them and the NPO, the NPO must move cases to prosecution much sooner than is the current practice. This would also reduce the outstanding amount of contributions due by the time the matter reaches court.
17. With regard to payment plans, the NPO should consider implementing a policy where no payment plans are agreed for sums owing that are greater than a fixed amount to be decided by the Superintendent of Pensions. Any cases involving sums greater than this amount would be sent directly to Crown Counsel for prosecution.

18. I have seen a checklist provided by the Solicitor-General's Office outlining what would be required in a case file before it is fit for prosecution. This is a useful and helpful document – provided it remains up-to-date - and the NPO should follow it as standard practice.

Government generally, and Inter-Agency Working

19. There must be better and more effective communication and liaison between Immigration, the Trade & Business Licensing Board, and the National Pensions Office. Work permits should only be granted or renewed on the basis of proven compliance with pension obligations as required under the Law.
20. Private sector companies tendering for Government contacts should not be considered for same unless their pension contributions (and health and other employment and business conduct obligations) are proven to be up to date. This should be a prerequisite.

Training

21. Whether under the existing NPO or the new Government proposals, pensions inspectors carry out an important function, often dealing with large sums of money. Fully trained investigators would also assist in the better preparation of files sent to Crown Counsel for prosecution. They must all be fully trained in investigations and evidence gathering, and at least one inspector should have additional forensic accounting skills to lessen the time it takes to quantify outstanding amounts.

The other Recommendations monitored were in relation to complaints filed by members of the public against government agencies.

At the end of the 2011-12 Fiscal Year the OCC continued to monitor outstanding recommendations for compliance. As stated earlier, the Complaints Commissioner Law (2006 Revision), section 18(3) states that, where the Commissioner has made a recommendation and he is of the opinion that inadequate action has been taken to carry out the recommendations, a special report must be laid before the Legislative Assembly.

15. Special Projects

15.1 The Existence of Internal Complaints Processes in Government Entities in 2011-2012.

The OCC continues to monitor entities which have internal Complaint Processes in place.

The OCC held its 2nd Annual Internal Complaints Process (ICP) Seminar on 1 March 2012 to assess how the Internal Complaints Process was working throughout Government one year on. The purpose of the

Seminar was to assist Civil Servants primarily dealing with internal complaints and allowed for an open forum where information, advice and best practices could be discussed.



ICP Presenter, Mr. Jorrit De Jong, Senior Fellow, Ash Center for Democratic Governance and Innovation, and Research Fellow, Harvard University.

The seminar was well attended, with the Deputy Governor, Mr. Franz Manderson also giving an introductory speech to all the attendees. In attendance was also special guest and presenter, Mr. Jorrit De Jong.

Each year the OCC will host its annual ICP Seminar with an open forum where ICP Managers can receive some training and valuable information on how they can improve their service, in addition to giving them the opportunity to exchange/share information on how they feel their service/system may be improved.

The OCC Continues to monitor the work of each Government Entity on a quarterly basis. Each quarter an ICP Quarterly Report is submitted by each Government Entity. The OCC has witnessed a remarkable improvement in the handling of complaints by most ICP Managers.

15.2 PUBLICATIONS

Requests for information on the Small Claims Handbook continue on a weekly basis. The community is now more aware that this is an option in areas where they could not find a solution to getting funds owed to them. Several cases regarding landlords and labour issues are being taken to Small Claims Court to find redress. Cases where the Labour Tribunal award a settlement and the owner of the company refused to pay the funds were taken to small claims court also.

16. Performance Targets 2011-12

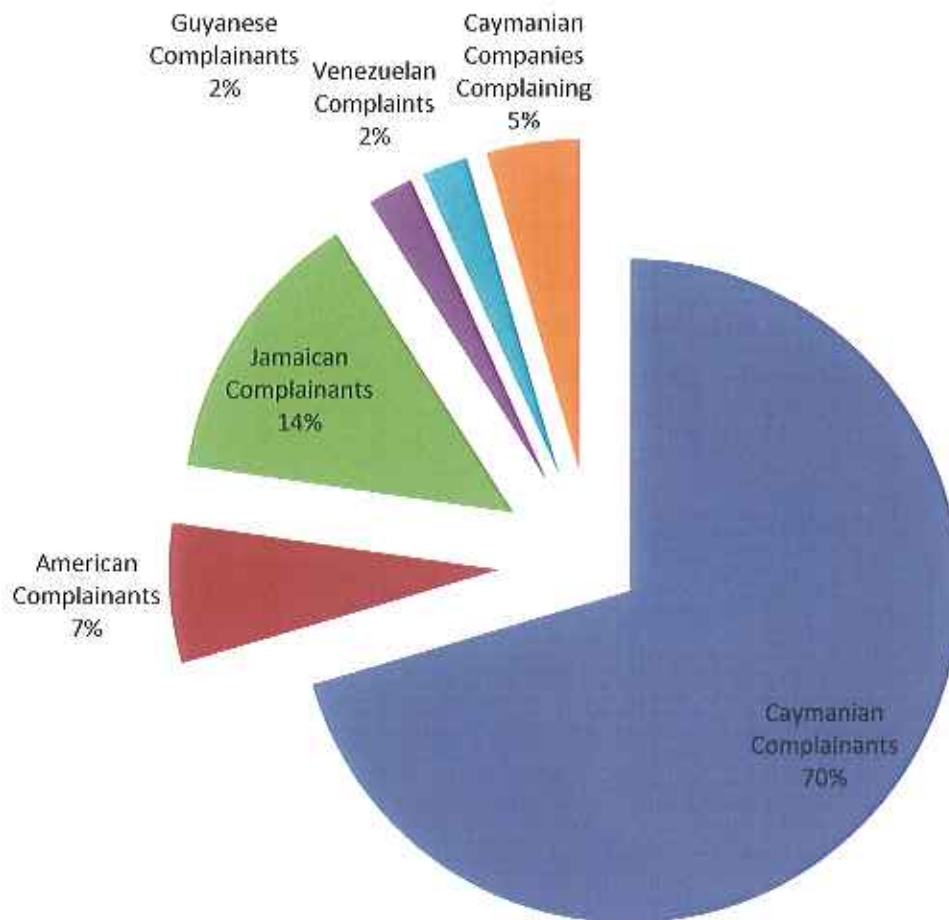
16. STATISTICS INDICATING IN DETAIL THE WORK COMPLETED ARE SET OUT IN APPENDIX B

APPENDIX B

DEMOGRAPHICS of the people served by the OCC.

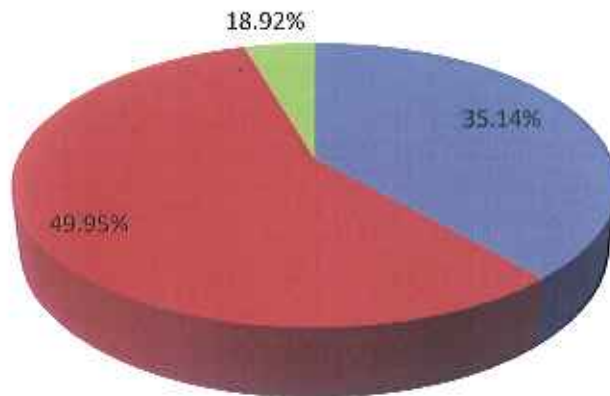
Caymanian Complainants = 31	Canadians = 0	Venezuelan Complainants = 1
Caymanian Companies = 2	Guyanese = 1	Permanent Residents = 0
Americans = 1	Hondurans = 0	Nationality Unknown = 0
British = 0	Jamaicans = 6	Total = 44

Complaints Commission
Chart of Nationalities of Complainants for 2011-12
regarding Written Complaints

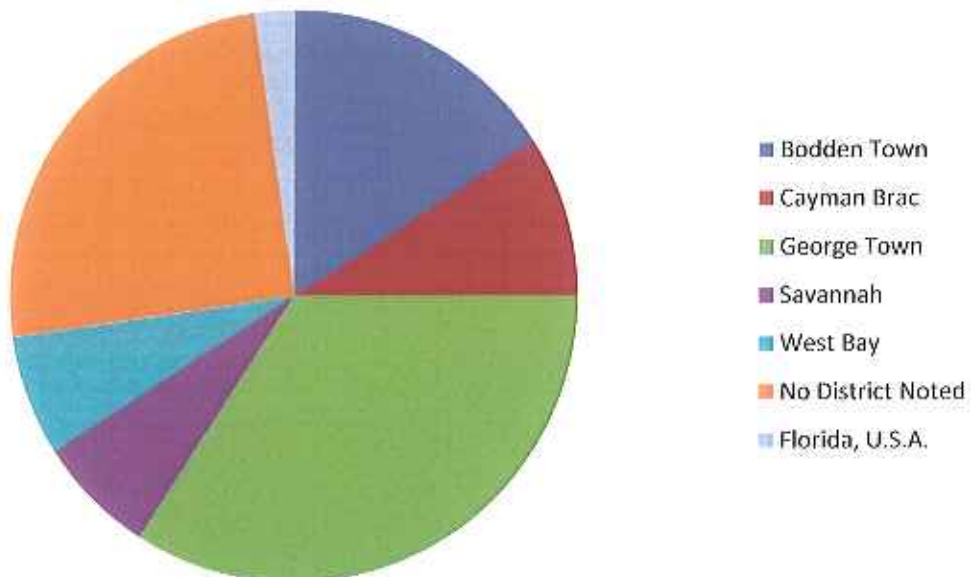


Complaints Commission Chart Re Gender of Complainants for 2011-12

- Female Complainants
- Male Complainants
- Number of Companies that lodged Complaints



Residential Districts of Complainants 2011-12



OUTPUTS DELIVERED DURING THE YEAR

GOVERNMENT OF THE CAYMAN ISLANDS

Office of the Complaints Commissioner

**ANNUAL FINANCIAL STATEMENTS
FOR THE YEAR ENDED
30th JUNE 2012**

Financial Statements for the year ended 30 June 2012

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Phone: (345) 943-2220 Fax: (345) 943-2221

STATEMENT OF RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

These financial statements have been prepared by the Office of the Complaints Commissioner in accordance with the provisions of the Public Management and Finance Law (2012 Revision).

We accept responsibility for the accuracy and integrity of the financial information in these financial statements and their compliance with the Public Management and Finance Law (2012 Revision).

As Chief Officer I am responsible for establishing; and have established and maintain a system of internal controls designed to provide reasonable assurance that the transactions recorded in the financial statements are authorised by law, and properly record the financial transactions of the Office of the Complaints Commissioner.

As Chief Officer I am responsible for the preparation of Office of the Complaints Commissioner financial statements, representation and judgements made in these statements.

To the best of our knowledge we represent that these financial statements:

- (a) Completely and reliably reflect the financial transactions of the Office of the Complaints Commissioner for the year ended 30 June 2012;
- (b) Fairly reflect the financial position as at 30th June 2012 and performance for the year ended 30th June 2012;
- (c) Comply with International Public Sector Accounting Standards as set out by International Public Sector Accounting Standards Board under the responsibility of the International Federation of Accountants. Where guidance is not available, the financial statements comply with International Accounting Standards issued by the International Accounting Standards Committee or accounting practice that is generally accepted in the United Kingdom as appropriate for reporting in the public sector.

The Office of the Auditor General conducts an independent audit and expresses an opinion on the accompanying financial statements. The Office of the Auditor General has been provided access to all the information necessary to conduct an audit in accordance with International Standards of Auditing.



Nicola Williams
Chief Officer

October 31, 2012



Kim France
Chief Financial Officer

October 31, 2012

Auditor General's Report

To the Members of the Legislative Assembly of the Cayman Islands

I have audited the accompanying financial statements of the Office of the Complaints Commissioner ("The Office") for the year ended 30 June 2012 which comprise the statement of financial position as at 30 June 2012, the statement of changes in equity, the statement of financial performance and statement of cash flows for the year then ended and a summary of significant accounting policies and other explanatory notes in accordance with the provisions of Section 60(1)(a) of the Public Management and Finance Law (2012 Revision).

Management's Responsibilities for the Financial Statement

Management is responsible for the preparation and fair representation of these financial statements in accordance with International Public Sector Accounting Standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatements, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend upon the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments the auditor considers internal controls relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

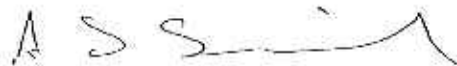
I believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Office of the Complaints Commissioner as at June 30, 2012 and the results of its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards.

Other matter

The Office of the Complaints Commissioner was authorized under section 12 of the Public Management and Finance Law to incurred expenses which were included in a Supplementary Appropriation Bill, as at the date of this report being issued the Supplementary Appropriation Bill has not been passed into Law by the Legislative Assembly.



Alastair Swarbrick, MA (Hons), CPFA
Auditor General

Cayman Islands
October 31, 2012

OFFICE OF THE COMPLAINTS COMMISSIONER
STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 2012
(Expressed in Cayman Islands Dollars)

Prior Year Actual (As restated) CIS000		Note	Current Year Actual CIS000	Final/Original Budget CIS000	Variance (Original vs. Actual) CIS000
	Current Assets				
883	Cash and cash equivalents	2	980	644	(336)
71	Trade receivables	3	57	70	13
-	Prepayments		6		(6)
954	Total Current Assets		1,043	714	(329)
	Non-Current Assets				
7	Property, plant and equipment	4	8	19	11
7	Total Non-Current Assets		8	19	11
961	Total Assets		1,051	733	(318)
	Current Liabilities				
60	Trade payables, other payables and accruals	5	16	45	(29)
8	Employee entitlements	6	9	15	(6)
756	Surplus payable		889	-	889
824	Total Current Liabilities		914	60	854
824	Total Liabilities		914	60	854
137	Net Assets		137	673	536
	Net Assets/Equity				
137	Contributed capital		137	139	2
-	Accumulated surpluses		-	534	534
137	Total Net Assets/Equity		137	673	536

The accounting policies and notes on pages 9-23 form part of these financial statements.

OFFICE OF THE COMPLAINTS COMMISSIONER
STATEMENT OF FINANCIAL PERFORMANCE
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed In Cayman Islands Dollars)

Prior Year Actual (As restated CI\$000)		Note	Current Year Actual CI\$000	Final Budget CI\$000	Original Budget CI\$000	Variance (Final vs. Actual) CI\$000
	Revenue					
849	Sale of goods and services	8	753	753	737	-
849	Total Revenue		753	753	737	
	Expenses					
(432)	Personnel costs	9	(423)	(468)	(468)	45
(186)	Supplies and consumables	10	(195)	(275)	(259)	80
(12)	Depreciation	4	(2)	(10)	(10)	8
(630)	Total Expenses		(620)	(753)	(737)	133
219	Surplus for the period		133	(753)	(737)	133

The accounting policies and notes on pages 9 -23 form part of these financial statements.

OFFICE OF THE COMPLAINTS COMMISSIONER
STATEMENT OF CHANGES IN EQUITY
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed in Cayman Islands Dollars)

	Contributed Capital CI\$000	Accumulated Surplus CI\$000	Total Net Assets/Equity CI\$000	Final/Original Budget	Variance (Original vs. Actual)
Balance at 30 June 2010 restated	137	-	137	673	(536)
Surplus for the period (2010//11)	-	219	219	-	-
Repayment of surplus to Cabinet	-	(219)	(219)	-	-
Balance at 30 June 2011	137	-	137	673	(536)
Balance at 30 June 2011	137	-	137	673	(536)
Surplus for the period (2011//12)	-	133	133	-	-
Repayment of surplus to Cabinet	-	(133)	(133)	-	-
Balance at 30 June 2012	137	-	137	673	(536)

The accounting policies and notes on pages 9 -23 form part of these financial statements.

OFFICE OF THE COMPLAINTS COMMISSIONER
STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed In Cayman Islands Dollars)

Prior Year Actual (As restated CI\$000)		Note	Current Year Actual CI\$000	Final Budget CI\$000	Original Budget CI\$000	Variance (Final vs. Actual) CI\$000
	CASH FLOWS FROM OPERATING ACTIVITIES					
	<i>Receipts</i>					
778	Outputs to Cabinet		767	753	737	14
	<i>Payments</i>					
(425)	Personnel costs		(477)	(468)	(468)	46
(185)	Supplies and consumables		(245)	(275)	(259)	30
<u>168</u>	Net cash flows from operating activities	12	<u>100</u>	<u>10</u>	<u>10</u>	<u>90</u>
	CASH FLOWS FROM INVESTING ACTIVITIES					
-	Purchase of property, plant and equipment		(3)	(10)	(10)	7
<u>-</u>	Net cash flows from investing activities		<u>(3)</u>	<u>(10)</u>	<u>(10)</u>	<u>7</u>
168	Net increase in cash and cash equivalents		97	-	-	97
715	Cash and cash equivalents at beginning of period		883	644	644	239
<u>883</u>	Cash and cash equivalents at end of period		<u>980</u>	<u>644</u>	<u>644</u>	<u>336</u>

The accounting policies and notes on pages 9-23 form part of these financial statements.

OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed in Cayman Islands Dollars)

Description and principal activities

The office of the Complaints Commissioner is a government owned entity as defined by section 2 of the Public Management and Finance Law (2012 Revision) and it is domiciled in the Cayman Islands.

Its principal activities and operations include all activities carried out in terms of the outputs purchased by the office of the Complaints Commissioner as defined in the Annual Plan and Estimates for the Government of Cayman Islands for the financial year ending 30 June 2012.

In addition, the Ministry has reported the activities and trust monies that it administers on behalf of Cabinet.

The principal office of the Complaints Commissioner is located at Anderson Square 4th Floor, George Town, Grand Cayman. As at 30 June 2012, the office of the Complaints Commission had 5 employees (2012: 5).

Note 1: Significant Accounting Policies

These financial statements have been prepared in accordance with International Public Sector Accounting Standards (IPSAS) issued by the International Federation of Accountants and its International Public Sector Accounting Standards Board using the accrual basis of accounting. Where additional guidance is required, International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board are used.

There are no known accounting standards that have been adopted by the IPSAS Board for use in future years that will have a significant impact on these financial statements other than enhanced disclosures.

The accounting policies set out below have been applied consistently to all periods presented in these financial statements.

(a) Basis of Preparation

These financial statements have been prepared on a going concern basis and the accounting policies set out below have been applied consistently to all periods presented. The financial statements are presented in Cayman Islands dollars and the measurement base applied to these financial statements is the historical cost basis.

Changes in Accounting Policies

When presentation or classification of items in the financial statements is amended or accounting policies are changed, comparative figures are restated to ensure consistency with the current period unless it is impracticable to do so.

**OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed In Cayman Islands Dollars)**

Note 1: Significant Accounting Policies (continued)

The presentation of the prior year financial statements has been changed to include a comparison of actual amounts with amounts in the original and final budget as required by IPSAS 24 including explanations of material difference between original budget and actual amounts.

The details and presentation of the Statement of Changes in Net Assets/Equity has been changed to show greater detail and to reflect changes in accounting policies and corrections of errors and omissions.

The revenue recorded in both the current and prior years have been updated to reflect gross revenues earned from outputs billings from Cabinet. In prior years these amounts were disclosed net of the amount repayable to Cabinet.

Segment reporting has been included in accordance with IPSAS 18.

(b) Reporting Period

The reporting period is the year ended 30 June 2012.

(c) Budget Amounts

The original budget amounts for the financial year are as presented in the 2011/2012 Annual Budget Statement and approved by the Legislative Assembly. The Final Budget is those budget amounts approved in Supplementary Budget.

(d) Judgments and Estimates

The preparation of financial statements is in conformity with International Public Sector Accounting Standards that requires judgments, estimates, and assumptions affecting the application of policies and reported amounts of assets and liabilities, revenue and expenses. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the reporting period and in any future periods that are affected by those revisions.

(e) Revenue

Revenue is recognised in the accounting period in which it is earned. Revenue received but not yet earned at the end of the reporting period is recognised as a liability (unearned revenue).

The office of the Complaints Commissioner derives its revenue through the provision of services to Cabinet, to other agencies in government and to third parties. Revenue is recognised at fair value of services provided.

**OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed in Cayman Islands Dollars)**

Note 1: Significant Accounting Policies (continued)

(f) Expenses

Expenses are recognised when incurred on the accrual basis of accounting. In addition, an expense is recognized for the consumption of the estimated fair value of contributed goods and services received.

(g) Operating Leases

Operating lease payments are recognised as an expense on a straight-line basis over the lease term, where this is representative of the pattern of benefits to be derived from the leased property. Lease payments under operating lease, net of lease incentives received, are recognised as expenses on a straight-line basis over the lease term. Lease incentives received are recognised evenly over the term of the lease as a reduction in rental expense.

(h) Capital Charges

Capital charges on the net assets due to the Cayman Islands Government are recognized as an expense in the period in which they are incurred.

(i) Cash and Cash Equivalents

Cash and cash equivalents include cash on hand, cash in-transit and bank accounts with a maturity of no more than three months from the date of acquisition.

When there is objective evidence that a financial asset or group of financial assets is impaired the losses are recognised as an expense in the Statement of Financial Performance.

(j) Prepayments

The portion of recognised expenditure paid in advance of receiving services has been recognised as a prepayment and is classified as accounts receivable in these financial statements.

(k) Property, Plant and Equipment

Property, plant and equipment, is stated at historical cost less accumulated depreciation. Items of property, plant and equipment are initially recorded at cost. Where an asset is acquired for nil or nominal consideration, the asset is recognized initially at fair value, where fair value can be reliably determined, and as revenue in the Statement of Financial Performance in the year in which the asset is acquired.

**OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed In Cayman Islands Dollars)**

Note 1: Significant Accounting Policies (continued)

(k) Property, Plant and Equipment (continued)

Depreciation is expensed on a straight-line basis at rates calculated to allocate the cost or valuation of an item of property, plant and equipment (other than land); less any estimated residual value, over its estimated useful life. Leasehold improvements are depreciated either over the unexpired period of the lease or the estimated useful lives of the improvements, whichever is shorter.

<u>Asset Type</u>	<u>Estimated Useful life</u>
• Computer Equipment	3 – 10 years
• Office equipment and furniture	3 – 25 years
• Motor vehicles	3 – 20 years
• Other equipment	5 – 20 years

The assets residual values and useful lives are reviewed, and adjusted if appropriate, at year end. Assets that are subject to amortization are reviewed for impairment whenever events of changes in circumstances indicate that the carrying amount may not be recoverable. An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amounts. The recoverable amount is the higher of the asset's fair value less costs to sell and its value for use in service.

Disposals

Gains and losses on disposals of property, plant and equipment are determined by comparing the sale proceeds with the carrying amount of the asset. Gains and losses on disposals during the year are included in the Statement of Financial Performance.

(l) Employee Benefits

Employee entitlements to salaries and wages, annual leave, long service leave, retiring leave and other similar benefits are recognised in the Statement of Financial Performance when they are earned by employees. Employee entitlements to be settled within one year following the year-end are reported as current liabilities at the amount expected to be paid.

Pension contributions for employees of the Portfolio are paid to the Public Service Pension Fund and administered by the Public Service Pension Board (the "Board"). Contributions of 12% - employer 6% and employee 6% are made to the fund by the Complaints Commission.

**OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed in Cayman Islands Dollars)**

Note 1: Significant Accounting Policies (continued)

(l) Employee Benefits (continued)

Prior to 1 January 2000, the Board operated a defined benefit scheme. With effect from 1 January 2000 the Board continued to operate a defined benefit scheme for existing employees and a defined contribution scheme for all new employees. Obligations for contribution to defined contribution retirement plans are recognised in the Statement of Financial Performance as they are earned by employees. Obligations for defined benefit retirement plans are reported in the Consolidated Financial Statements for the Entire Public Sector of the Cayman Islands Government.

(m) Financial Instruments

The office of the Complaints Commissioner is party to financial instruments as part of its normal operations. These financial instruments include bank accounts, short term deposits, trade and accounts receivables and trade and accounts payable, all of which are recognised in the Statement of Financial Position.

Classification

A financial asset is classified as any asset that is cash, a contractual right to receive cash or another financial asset, exchange financial instruments under conditions that are potentially favourable. Financial assets comprise of cash and cash equivalents and prepayments.

A financial liability is any liability that is a contractual obligation to deliver cash or another financial asset or to exchange financial assets with another enterprise under conditions that are potentially unfavourable. Financial liabilities comprise of accounts payable and accrued expenses.

Recognition

The office of the Complaints Commissioner recognises financial assets and financial liabilities on the date it becomes party to the contractual provisions of the instrument. From this date, any gains and losses arising from changes in fair value of the assets and liabilities are recognised in the statements of financial performance.

Measurement

Financial Instruments are measured initially at cost which is the fair value of the consideration given or received. Subsequent to initial recognition all financial assets are recorded at historical cost, which is considered to approximate fair value due to the short-term or immediate nature of these Instruments.

Financial liabilities are subsequently measured at amortised cost, being the amount at which the liability was initially recognised less any payment plus any accrued interest of the difference between that initial amount and the maturity amount.

**OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
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Note 1: Significant Accounting Policies (continued)

(n) Contingent Liabilities and Assets (including guarantees)

Contingent liabilities and assets are reported at the point the contingency becomes evident. Contingent liabilities are disclosed when there is a possible obligation or present obligations that may, but probably will not, require an outflow of resources. Contingent assets are disclosed if it is probable that the benefits will be realised.

De-recognition

A financial asset is de-recognised when the Office of the Complaints Commission realises the rights to the benefits specified in the contract or loses control over any right that comprise that asset. A financial liability is derecognised when it is extinguished, that is when the obligation is discharged, cancelled, or expired.

(o) Foreign Currency

Foreign currency transactions are recorded in Cayman Islands dollars using the exchange rate in effect at the date of the transaction. Foreign currency gains or losses resulting from settlement of such transactions are recognised in the Statement of Financial Performance.

At the end of the reporting period the following exchange rates are to be used to translate foreign currency balances:

- Foreign currency monetary items are to be reported in Cayman Islands dollars using the closing rate;
- Non-monetary items which are carried in terms of historical cost denominated in a foreign currency are reported in Cayman Islands dollars using the exchange rate at the date of the transaction; and
- Non-monetary items that are carried at fair value denominated in a foreign currency are reported using the exchange rates that existed when the fair values were determined.

(p) Comparative Figures

The presentation of the prior year financial statements has been changed to include a comparison of actual amounts with amounts in the original and final budget. Comparative figures are restated to ensure consistency with the current period unless it is impracticable to do so.

OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed in Cayman Islands Dollars)

Note 2: Cash and cash equivalents

Cash and cash equivalents include cash on hand and bank accounts in the name of the Office of the Complaints Commissioner the Office of the Complaints Commissioner maintained at Royal Bank of Canada. As at 30 June 2012 the Office of the Complaints Commissioner held no restricted cash balances (30 June 2011: \$0). No interest was earned during the year on the amounts held in these bank accounts (30 June 2011: \$0)

Prior Year Actual	Description	Foreign Currency	Exchange Rate	Current Year, Actual
CIS\$000		\$000		CIS\$000
807	CIS Operational Current Account	787	1.000	787
76	Payroll Current Account	193	1.000	193
883	TOTAL	980		980

Note 3: Trade receivables and other receivables

At year end all overdue receivables have been assessed and appropriate provisions made. The provision for doubtful debts has been calculated based on expected losses for the Office of the Complaints Commissioner and review of specific debtors. Expected losses have been determined based on an analysis of the Portfolio losses in previous periods.

Prior Year Actual	Trade Receivables	Current Year Actual	Final/Original Budget	Variance (Original vs. Actual)
CIS\$000		CIS\$000	CIS\$000	CIS\$000
-	Sale of goods and services	-	-	-
71	Outputs to Cabinet	57	70	13
-	Outputs to other government agencies	-	-	-
-	Other	-	-	-
-	Less: provision for doubtful debts	-	-	-
71	Total trade receivables	57	70	13

OFFICE OF THE COMPLAINTS COMMISSIONER
 NOTES TO THE FINANCIAL STATEMENTS
 FOR THE YEAR ENDED 30 JUNE 2012
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Note 3: Trade receivables and other receivables (continued)

	Trade Receivables	Prior Year Impairment	Net	Gross amount	Current Year
	CIS000	CIS000	CIS000	CIS000	CIS000
Current	57	-	57	57	57
Past due 1-30 days	-	-	-	-	-
Past due 31-60 days	-	-	-	-	-
Past due 61 and above	-	-	-	-	-
Past due 90 and above	-	-	-	-	-
Total	57	-	57	-	57

As of June 30, 2012, accounts receivable are all due within one year.

OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed in Cayman Islands Dollars)

Note 4: Property, plant and equipment

	2012				
	Vehicles \$000	Furniture and fittings \$000	Computer hardware and software \$000	Office equipment \$000	Other Assets \$000
<u>Cost</u>					
At July 1, 2011	-	22	36	30	-
Additions	-	-	3	-	-
Disposals/transfers	-	(10)	(8)	(16)	-
At June 30, 2012	-	12	31	14	-
<u>Accumulated depreciation</u>					
At July 1, 2011	-	16	36	29	-
Depreciation charge for the year	-	1	1	-	-
Disposals/transfers	-	(11)	(8)	(15)	-
At June 30, 2012	-	6	29	14	-
Net book value at June 30, 2012	-	6	2	-	-

	2011				
	Vehicles \$000	Furniture and fittings \$000	Computer hardware and software \$000	Office equipment \$000	Other Assets \$000
<u>Cost</u>					
At July 1, 2010	-	22	36	30	-
Additions	-	-	-	-	-
Disposals/transfers	-	-	-	-	-
At June 30, 2011	-	22	36	30	-
<u>Accumulated depreciation</u>					
At July 1, 2010	-	9	35	25	-
Depreciation charge for the year	-	7	1	4	-
At June 30, 2011	-	16	36	29	-
Net book value at June 30, 2011	-	6	0	1	-

**OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2012
(Expressed in Cayman Islands Dollars)**

Note 5: Trade payables, other payables and accruals

Prior Year Actual CIS000		Current Year Actual CIS000	Final/Original Budget CIS000	Variance (Original vs. Actual CIS000)
7	Creditors	-	30	(30)
28	Creditors Ministries/Portfolios	10	15	(5)
25	Accrued Expenses	6	-	6
60	Total trade payables, other payables and accruals	16	45	(29)

Trade and other payables are non-interest bearing and are normally settled on 30-day terms.

Note 6: Employee entitlements

Prior Year Actual CIS000		Current Year Actual CIS000	Final/Original Budget CIS000	Variance (Original vs. Actual CIS000)
	Current employee entitlements are represented by:			
8	Annual Leave	9	15	(6)
8	Total current portion	9	15	(6)
	Non-current employee entitlements are represented by:			
-	Retirement and long service leave	-	-	-
8	Total employee entitlements	9	15	(6)

The retirement and long-service leave entitlements are calculated based on current salary paid to those employees who are eligible for this benefit.

Note 7: Surplus payables

Surplus payable represents accumulated surplus of \$889K as at June 30, 2012 (2011: \$756K). Under the *Public Management & Finance Law (2012 Revision)* section 39 (3)(f), the Portfolio may "retain such part of its net operating surplus as is determined by the Financial Secretary". Therefore, the Office of the Complaints Commissioner has booked a surplus payable to Government in the amount of \$133K as of June 30, 2012 as the Financial Secretary has not confirmed whether the Office of the Complaints Commissioner can retain the surplus achieved during this and the prior years

OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
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Note 8: Revenue

Prior Year Actual	Revenue type	Current Year Actual	Final Budget	Original Budget]	Variance (Final vs. Actual
CI\$000		CI\$000	CI\$000	CI\$000	CI\$000
849	Outputs to Cabinet	753	753	737	-
-	Outputs to other government agencies	-	-	-	-
-	Fees and charges	-	-	-	-
<u>849</u>	Total sales of goods and services	<u>753</u>	<u>753</u>	<u>737</u>	<u>-</u>

Note 9: Personnel costs

Prior Year Actual (As restated)	Description	Current Year Actual	Final/Original Budget	Variance (Original vs Actual)
CI\$000		CI\$000	CI\$000	CI\$000
378	Salaries, wages and allowances	370	409	39
34	Health care	36	40	4
20	Pension	17	19	21
<u>432</u>	Total Personnel Costs	<u>423</u>	<u>468</u>	<u>45</u>

Note 10: Supplies and consumables

Prior Year Actual (As restated)	Description	Current Year Actual	Final Budget	Original Budget)	Variance (Final vs. Actual
CI\$000		CI\$000	CI\$000	CI\$000	CI\$000
11	Supplies and materials	15	20	20	5
43	Purchase of services	36	60	60	24
59	Lease of property and equipment	75	81	65	6
39	Utilities	39	51	51	12
11	Interdepartmental expenses	11	25	25	14
17	Travel and subsistence	8	11	11	3
5	Training	8	21	21	13
1	Other	3	6	6	3
<u>186</u>	Total Supplies & consumables	<u>195</u>	<u>275</u>	<u>259</u>	<u>80</u>

OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
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Note 11: Capital charge

A capital charge is payable to the Portfolio of Finance and Economics as required by *Public Management and Finance Law, (2010 Revision)* section 41(5). The Financial Secretary annually sets the capital charge rate which was 0% as no capital was budgeted for in 2011-12 (2011: \$0). The capital charge is recorded semi-annually, on December 31 and June 30 and calculated by multiplying the capital charge rate by the net assets/net worth amount. For 2011-12, the capital charge is \$0K (2011: \$0).

Note 12: Reconciliation of net cash flows from operating activities to surplus

Actual Prior year	Description	Actual Current year	Final/Original Budget	Variance (Original vs. Actual) CI\$000
CI\$000		CI\$000	CI\$000	CI\$000
219	Surplus from ordinary activities	133	-	133
	Non-cash movements			
12	Depreciation expense	2	10	8
	Changes in current assets and liabilities:			
(71)	Decrease/(Increase) in receivables	14	-	(14)
	(Increase)/decrease in prepayments	(6)	-	6
8	Decrease/(Increase) in payables	(43)	-	(43)
168	Net cash flows from operating activities	100	10	90

Note 13: Contingent liabilities and assets

No contingent liabilities or assets existed as at June 30, 2012.

Note 14: Commitments

The office of the Complaints Commissioner is presently on a month to month lease

OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011
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NOTE 15: Explanation of major variances against budget

Explanations for major variances for the Office of the Complaints Commissioner performance against the original budget are as follows:

Statement of Financial Position

Cash and cash equivalents

The budgeted figure presumed a repayment of some of the surplus payable to Government which did not materialized hence the increase in the actual year-end cash balances of \$336k

Trade payables and other payables and accruals

The actual is less than budget as a result of timing of payments.

Statement of Financial Performance

Personnel costs

The decrease in actuals to budget is primarily due to the timing in replacement of an Analyst and the non-replacement of the Administrative and Investigative Officer by year-end.

Supplies and consumables

The decrease in actuals to budget is due mainly to the decrease in purchase of services of \$24k, interdepartmental expenses of \$14k, training of \$13k and utilities of \$12k.

The decrease in purchase of service is due mainly to decreases in professional fees of \$15k and maintenance of equipment and computers of \$8k. Professional fees are budgeted as contingencies in the event that the Office of the Complaints Commissioner has to defend itself in Grand Court by way of Judicial Review; however, this was not necessary this year. The decrease in interdepartmental expenses is due to the over estimation in the budget for audit fees of \$14k. The training budget included costs for specialist Human Rights training which was not undertaken. The net decrease in utilities is primarily due to the decrease in electricity charges of \$17k as a result of the change in office location, offset by an increase in telephone charges of \$5k.

NOTE 16: Related party and key management personnel disclosures

Related party disclosure

The Office of the Complaints Commissioner is a wholly owned entity of the government from which it derives a major source of its revenue. The Office of the Complaints Commissioner and its key management personnel transact with other government entities on a regular basis. These transactions were provided free of cost during the financial year ended 30 June 2012 and were consistent with normal operating relationships between entities and were undertaken on terms and conditions that are normal for such transactions.

**OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
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NOTE 16: Related party and key management personnel disclosures (continued)

Key management personnel

Key management personnel were defined as, Chief Officer, Deputy Chief Officer and Chief Financial Officer.

There is one full-time equivalent personnel considered as key management personnel. The total remuneration includes: regular salary, allowances, pension contributions and health insurance contributions. Total remuneration for senior management in 2011-12 was \$128k (2010-11: \$128k). There were no loans made to key management personnel or their close family members in 2011-12 (2010-11: \$0).

NOTE 17: Financial instrument risks

The Office of the Complaints Commissioner is exposed to a variety of financial risks including credit risk and liquidity risk. The risk management policies are designed to identify and manage these risks, to set appropriate risk limits and controls, and to monitor the risks and adhere to limits by means of up to date and reliable information systems. These risks are managed within the parameters established by the Financial Regulations (2010 Revision).

Credit risks

Credit risk refers to the risk that a counterparty will default on its contractual obligations resulting in financial loss to the Office of the Complaints Commissioner. Financial assets which potentially expose the Office of the Complaints Commissioner to credit risk comprise cash and cash equivalents and accounts receivable.

The Office of the Complaints Commissioner is exposed to potential loss that would be incurred if the counterparty to the bank balances fails to discharge its obligation to repay. All bank balances are with one financial institution located in the Cayman Islands which management considers to be financially secure and well managed.

Credit risks

The Office of the Complaints Commissioner is also exposed to a significant concentration of credit risk in relation to accounts receivable, significant of which are due from other Government entities. No credit limits have been established. As at 30 June 2012 and 2011, no provision for doubtful debts has been made on these receivable as none of these accounts are impaired and management considers these debts to be fully recoverable.

The carrying amount of financial assets recorded in the financial statements represents the Office of the Complaints' maximum exposure to credit risk. No collateral is required from debtors.

OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS
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NOTE 17: Financial instrument risks (continued)

Liquidity risk

Liquidity risk is the risk that the Office of The Complaints Commissioner is unable to meet its payment obligations associated with its financial liabilities when they are due.

The ability of the Office of the Complaints Commissioner to meet its debts and obligation is dependent upon its ability to collect the debts outstanding to the Office of The Complaints Commissioner in a timely basis. In the event of being unable to collect its outstanding debts, it is expected that the Government would temporarily fund any shortfalls the office of the Complaints Commissioner would have with its own cash flows. As at 30 June 2012 and 2011, all of the financial liabilities were due within three months of the year end dates.

NOTE 18: Financial instruments – fair values

As at 30 June 2012 and 2011, the carrying values of cash and cash equivalents, accounts receivable, accounts payable and employee entitlements approximate their fair values due to their relative short-term maturities.

Fair values are made at a specific point in time, based on market conditions and information about the financial instrument. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. Changes in assumptions, economic conditions and other factors could cause significant changes in fair value estimates.

NOTE: 19 Segment reporting

The Office of the Complaints Commissioner does not maintain a separate Statement of Financial Position or Statement of Financial Performance for each segment.

NOTE: 20 Appropriations used

Appropriation Description (Including Output number and name)	Amount Appropriated	Appropriation Used	Variance
OCC1	753	753	-
Total	753	753	-