

Annual Report 2005–06

Second Annual Report of the Office of the Complaints
Commissioner of the Cayman Islands addressing the Fiscal
Year July 2005–June 2006



Office of the Complaints Commissioner



Office of the Complaints Commissioner

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Sister Islands Office

Brac House

Cotton Tree Bay

Cayman Brac

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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14 April 2008

The Honourable Edna Moyle, JP
Speaker of the Legislative Assembly
Legislative Assembly
Grand Cayman

By Hand

Dear Speaker:

Re: Annual Report 05-06

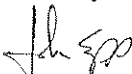
I am pleased to submit my Annual Report for the period of 1 July 2005 to 30 June 2006, pursuant to section 20(1) of the Complaints Commissioner Law (2006 Revision).

Additional copies have been delivered to the Clerk for distribution.

The Chairman of the Legislative Committee on Oversight of this office has agreed to introduce the Annual Report.

This report was drafted in August 2006 and finalized by January 2007, apart from the delay in the completion of the audit of the financial statements and output statements. The delay was occasioned in part by the relevant accounts being handled outside of our office in the Legal Portfolio and by staff shortages in the audit office. I am hopeful that the next annual report will be with you this Spring.

Sincerely,


John A. Epp
Commissioner

cc Hon. Alden McLaughlin, Chairman

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1 Executive Summary

This has been a year of growth and development for the Office of the Complaints Commissioner (OCC). We have new staff members, new management software, new office space, and the benefit of a year of experience. We have become better known in the community and have been privileged to conduct a large number of independent investigations for the residents of these Islands.

The establishment of the legislative committee with responsibility for the financial oversight of the OCC, in accordance with the Public Finance and Management Law, was a welcome event. With the assistance of the chairman, we have succeeded in obtaining agreement to bring the accounting and budgeting responsibilities in-house. From 2006–07 the new administrative and investigative officer will have responsibility for these matters.

With the assistance of the Management Support Unit, performance measures and their definition were considered and redrafted. The new measures will be implemented for the 2006–07 fiscal year. Also, regulations have been drafted to better clarify certain matters under the Complaints Commissioner Law (2006 Revision).

Management software developed by the Ombudsman of British Columbia was modified to meet local needs and installed in the OCC in June 2006.

The retired Ombudsman of Saskatchewan, Mrs Barb Tomkins, spent two weeks with the OCC and provided welcome technical assistance on two investigations and a draft protocol relating to HM Prison.

With the assistance of Mr David Elms of Computer Services, Analyst Scott Swing designed and wrote the contents of our first website. It contains directions on how to file a complaint, a complaint form, and answers to frequently asked questions. It also provides, among other things, links to relevant new items. Please see the website at <<http://www.occ.gov.ky>>.

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. The members of the committee are the Hon. Alden McLaughlin, Jr (chair), Mr W. Alfonso Wright, Mr Moses I. Kirkconnell, JP, Ms Lucille D. Seymour, BEM, and Mr Rolston M. Anglin.

The staff of the OCC included Commissioner John A. Epp, PhD, MCJ, LLB; Ms Susan K. Duguay, administrative and investigative officer; analysts Scott D. Swing, MEd, BA, and Petula A. Twinn, PPC, LLB; Giselle Y. Webb, AD (Phys.Sc.), executive assistant to the Commissioner; and Joan E. Campbell-Forbes, receptionist. Staff members participated in in-service training throughout the year. During the third week of June 2005 the entire OCC team undertook a training programme on the use and functions of the Case Tracker software program. The team also enjoyed educational sessions on Forensic Investigations of Computer Data and human rights. The Commissioner attended a two-week course in Advanced Negotiation Skills at Harvard Law School and the biannual meetings and lecture series of the Caribbean Ombudsman Association, held this year in Barbados. The Commissioner and Mr Swing continued their studies in Information Access and Protection of Privacy, offered online by the University of Alberta. Ms Twinn completed a one-day course in project management, and Mrs Campbell-Forbes attended computer skills workshops.

1.1 ROLE AND FUNCTION OF THE OCC

The OCC has three major statutory roles: complaint investigation, own motion investigation, and monitoring of recommendations made. 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.

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. 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.

The primary functions of the OCC are to investigate, to recommend, to report, and to monitor compliance with recommendations.

The OCC will investigate complaints made in writing that fall within the scope of the Complaints Commissioner Law, 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 or to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.

The powers of investigation are stated to be the same as those of a Grand Court judge, although the Commissioner is not bound by the rules of court and can set his own procedure within the confines of natural justice.

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 it 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.

The OCC must inform the government entity of the result of an investigation if injustice is sustained as a result of the actions taken by the entity's officer. If no action is taken by an administrator on a recommendation made by the OCC, it must report this failure to the Legislative Assembly. Also, if the OCC conducts investigations on its own initiative, it must report the findings to the Legislative Assembly. A special report must be made to the head of department when serious misconduct is discovered in a department, and that report must be presented to the Governor and the Legislative Assembly.

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

Areas outside the jurisdiction of the OCC are listed on page 14.

1.2 DEMOGRAPHICS

Attached as Appendix B is an indication of the demographics of the people served by the OCC, based on 113 files investigated and closed during the period ending the fiscal year June 2006. In brief, most complainants are Caymanian, between the ages of 30 and 50 years, and often residents of George Town. Men are slightly more prone than women to file a complaint (63 males, 38 females, 12 companies). During this fiscal year more males (8) than females (4) registered complaints from Cayman Brac. While not recorded, it was again observed that the apparent socioeconomic profile of complainants was mixed, but middle-class people were slightly over-represented. As result, this office is committed to undertake a more aggressive mixed-media campaign to increase the visibility of the OCC to all socio-economic groups in Cayman society.

1.3 CASE EXAMPLES, OWN MOTION INVESTIGATIONS, MATTERS ARISING FROM WRITTEN COMPLAINTS, AND SPECIAL PROJECTS

A synopsis of one Special Report and summaries of 12 complaint investigations, two own motion investigations, and four pending own motion investigations are presented on pages 14–25. In addition, five matters arising from written complaints are reported on: two matters involving the Department of Licensing; two matters involving the RCIPS Complaints and Discipline Department; and a matter involving the Cayman Brac Labour Tribunal.

Special projects undertaken by the OCC included continuation of the training programme to assist government entities in setting up an internal complaints process; participation in the working group on Freedom of Information legislation and submission of two documents on the subject to the Cabinet Office; production and distribution of a brochure on the OCC's jurisdiction; consultation on changes to the draft Public Management Law 2005 and the draft Personnel Regulations 2007; and production of a booklet entitled *Small Claims Handbook* to assist residents with seeking redress for matters outside the OCC's jurisdiction.

1.4 PERFORMANCE TARGETS

There was a dramatic increase in total complaints received in 2005–06. There has also been a steady increase in the number of more complex matters brought to the Office and in complaints alleging systemic problems in public administration. There was an increase of more than 100 per cent in the number of cases closed by this Office. This year, the Office also monitored 115 recommendations, and by year's end 55 per cent of these had been complied with. In some cases, the OCC was able to hear both sides of a complaint within a day or two, and thereafter resolve the dispute. However, the more complex the allegation and the more people and documents involved, the more time elapsed before the investigation could reach completion. Again this year, the OCC determined that many files were not progressing within a reasonable time. The most prevalent cause of the delay continues to be untimely responses by some – though not all – civil servants. The process of educating the members of the civil service in the role and function of the OCC continues to be very important. Not only does this increase the level of cooperation and positive interaction, it enables civil servants to understand that requests made by the OCC have to be answered in a timely manner.

Some investigations were delayed by changes in the senior ranks of the civil service. Others were delayed for reasons such as the need to take legal advice on the powers or

the jurisdiction of the OCC. Again, delays for those two reasons are understandable given the short history of the OCC.

Another reason for lack of timely progress in some investigations was the increase in the number of complaints closed this year. During the last fiscal year (albeit a shorter period) this office closed 65 files. During the 2005–06 year we closed 174 files, a significant case load increase for the office.

Finally, delays are sometimes the result of our need to use outside professional or technical advisers, who, in some cases, did not complete tasks in a timely manner. These advisers include those retained by the government entity under investigation and those retained by the OCC.

With the guidance of the Budget Management Unit we accepted the following performance measures for the 2005–06 fiscal year which are found in our Annual Budget Statement for 2005–06:

- All enquiries to be answered within five working days (in 95 per cent of cases);
- All complaints to be investigated within three months (in 95 per cent of cases) of complaint being lodged;
- All reports/public interest investigations to be completed within four months (in 95 per cent of cases) of the request.

The OCC was required to monitor compliance with recommendations made and to report to the Legislative Assembly if the recommendations were not followed.

During 2005–06, we monitored 115 recommendations, including 11 recommendations arising out of completed own motion investigations. Only one own motion was completed – tabled in the Legislative Assembly – during the year. One reason for not meeting the target of having the matter completed in four months was the time that elapsed while awaiting the introduction of the report in the Legislative Assembly. Investigation of complaints was timely in 62 per cent of the cases. In 70 per cent of the complaints the investigation was completed within four months.

Any questions raised about the conduct of our team and our jurisdiction or process were fully answered through internal investigations or independent legal advice, and the Commissioner reviewed all findings and reports before they were finalised.

Output 1: Investigations

The following targets were suggested by the Management Support Unit and were accepted by the OCC. The results for 2005–06 are noted, as are the targets for 2006–07.

Targets

Sub-output no.	Details of sub-output	Target 2005–06	Result 2005–06	Target 2006–07
1	Answers to enquiries made in Office	200–300	459	200–400
2	Investigations of residents' complaints	30–60	113	40–80
3	Public-interest investigations [tabled]	2–5	1	2–5

Output 2: Monitoring

Sub-output no.	Details of sub-output	Target 2005-06	Result 2005-06	Target 2006-07
1	Monitoring of recommendations made	20-50	115	20-50
2	Reports to Legislative Assembly, e.g failure to comply with recommendations made or reporting misconduct or annual report	1-4	*2	2-4

Timeliness measures

Measure no.	Detail of measure	Target 2005-06	Result 2005-06	Target 2006-07
1	Enquiries to be answered within 5 working days	95%	100%	90-100%
2	All investigations to be completed within 3 months of commencement (amended to 4 months for 2006-07)	95%	62%	80-100%
3	All reports/public interest investigations to be completed within 4 months of the request (amended to 5 months for 2006-07)	95%	0%	80-100%
4	Monitoring carried out on an ongoing basis until recommendations are substantially implemented or withdrawn, or until they are included in a Special Report to the Legislative Assembly	95%	99%	95-100%
5	Reports submitted as required by the Speaker	100%	100%	90-100%
6	Decision to investigate complaint and, if accepted, commencement of investigation of complaint within 1 month			95-100%
7	Special Reports submitted to the Clerk of the Legislative Assembly Committee within 1 month of the Complaints Commissioner's determining that no adequate action has been undertaken or evidence found of breach of duty or criminal offence			90-100%

The following key strategic ownership goals for the Office of the Complaints Commissioner were established in 2004-05 for a period of two years. The goals, which have all been complied with, are as follows:

1. Establish an office with the necessary personnel, equipment, and systems that can record and resolve grievances occurring in the process of public administration.
2. Prepare public information booklets on the functional role of the OCC to schools, service groups, government agencies, and other potential users of the services provided by the Office.
3. Establish a presence on the Internet for informational purposes and to register complaints online.
4. Implement a case management system, Modified Case Tracker.
5. Implement a performance-appraisal system.
6. Provide a bimonthly report to news media on the work of the OCC.
7. Increase public awareness through media interviews and advertising.
8. Complete in-house training on human rights.

1.5 BUDGET

The Budget Management Unit's Annual Plan Estimate 2005–06 proposed that the amount budgeted for operational expenses in the OCC in the fiscal year July 2005–June 2006 be \$670,000. This was approved by the Legislative Assembly. Notice was given by the OCC that an additional staff member was required for 2006–07 and that an increase in the budget would be needed.

As part of the Public Finance and Management Initiative, government departments providing support services to any other entity are required to enter into Service Level Agreements. Given our budget, we carefully considered each proposal for service. For those services for which government is the only supplier, we monitor the cost of the service and adjust our usage accordingly. While we accepted a service contract with Treasury for the operation of our cheque-generating mechanism, we strongly objected to the fees charged. It was made clear by all concerned that our fee for the 2006–07 fiscal year would be reduced by more than 50 per cent. On that basis we accepted the current terms.

With some operational history, the process of forecasting and completing the budget requirements of the OCC was more manageable for the fiscal year 2006–07.

The OCC must express disappointment, however, in the continuing failure of the BMU to prepare a master list of interdepartmental charges for use in the preparation of the 2006–07 budget. The existing list is more than two years out of date.

The budget increase requested in April 2006 for the 2006–07 fiscal year can largely be attributed to the addition of one person to the staff. The new post of Administrative and Investigative Officer will be formally created on 4 July 2006 (next fiscal year) and will allow the OCC to take control of its own fiscal affairs using the government account system IRIS. As can be seen from the performance targets for 2006–07, the volume targets have been increased from 2005–06. However, the targets are below the actual volume of 2005–06, which means that the OCC must be more selective in choosing which written complaints it accepts for investigation.

1.6 LEGAL ISSUES

Last year the Commissioner suggested that certain sections of the Complaints Commissioner Law, 2003, were *prima facie ultra vires* of the Constitution as being a violation of s 49(N)(5): "In the exercise of his functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority." The Attorney General was invited to provide an opinion on the points raised. On 21 November 2005 he wrote that he "was not persuaded that the matters highlighted by the Commissioner are inconsistent with and therefore repugnant to the constitution". Some of the points were addressed by Cabinet.

Further amendments to the CCL are proposed with respect to the investigative powers of the OCC, protection for whistleblowers, and reporting via silent filing.

Independence of the OCC will be bolstered if the Commissioner's salary is pegged to that of another office, thus avoiding the need for the Commissioner to make a case for his own salary increases to those whom he may have to investigate. His Excellency the Governor has undertaken a review of the situation.

2 Commissioner's Message

This has been a year of growth and development for the Office of the Complaints Commissioner. We have new staff members, new management software, and the benefit of a year of experience. We have become better known in the community and have been privileged to conduct a large number of independent investigations for the residents of these Islands. And, like so many others in Grand Cayman, we managed to make progress while enduring a year of post-Ivan office building repairs which were very distracting and time-consuming.

The establishment of the legislative committee with responsibility for the financial oversight of the OCC, in accordance with the Public Finance and Management Law, was a welcome event. I look forward to meeting with the committee to develop a shared vision for the OCC.

I must record my gratitude to the chairman of the committee for assisting the OCC in important matters. He agreed to introduce in the Legislative Assembly reports written by the OCC, and he helped me to convince all concerned of the merit of bringing the accounting and budgeting responsibilities in-house. From 2006–07 the new Administrative and Investigative Officer will have responsibility for these matters, taking over from CFO (Legal Portfolio) Mr John Regan, who ably assisted the OCC for its first two years. We now have access to the IRIS accounting and financial management software and control of our funds, although our request to be allowed to establish an account apart from the central bank was denied.

With the assistance of the Management Support Unit, performance measures and their definition were considered and redrafted. The new measures will be implemented for the 2006–07 fiscal year. We continue to face the challenge of completing complex investigations within shorter time frames. However, in the year ahead I will be requesting more timely cooperation from those entities being investigated.

I was startled to learn of the publication of the 2006 revisions of the Complaints Commissioner Law as I was not informed that a revision was being drafted.

Regulations have been drafted to better clarify certain matters under the Complaints Commissioner Law (2006 Revision). It is anticipated that they will be put in effect in the near future.

It was an honour for the OCC to have participated in the working group which analysed for Cabinet the public responses to the draft Freedom of Information Bill. While the time commitment was much greater than anticipated, the mission was a very important one.

I feel fortunate to have the privilege of working with a good team. Together we are pleased to have had the opportunity to assist in the encouragement of better governance in these Islands. We have had the satisfaction of seeing positive and lasting change in certain administrative practices, which will benefit the residents of the Cayman Islands. Also, we have seen through our independent investigations examples of the good work done by many civil servants.

I gratefully recognise the assistance of the team in the preparation of this report and express my gratitude to Mrs Susan Duguay for drafting it, and to Ms Claudette Upton of the Brac for editing it.

We have taken great encouragement from the statements and letters received in our office commending us on our good work. A senior member of our community wrote "I watch your comments in the newspaper from time to time and it appears that your investigations are processed without fear or favour and I want to commend you wholeheartedly. Over the years it has been so difficult to find anyone in Government circles without an unbiased mind, and willing to speak out regardless of who it affects." Through the dedicated efforts of our entire team, we will continue to attempt to make a positive difference in the Cayman Islands.

John Epp

August 2006

3 Beyond the Early Days

The second year of the OCC was no less eventful than the first. In this section reference is made to some of the practical issues and developments in the office.

While it was good to have settled in offices in Piccadilly Centre, Grand Cayman, after initially sharing space, the offices were turned into a construction zone for most of this year. We endured what seemed like never-ending interruptions by workmen, and months of the continuous noise of jackhammers on concrete.

The Ombudsman of British Columbia developed in-house an Oracle-based software which effectively manages the intake, assignment, and progress of investigations. After some preliminary research, and with the advice and assistance of Mrs Celia Yates and Mr Graham Monk of Computer Services, this software (Case Tracker) was modified to meet local needs and delivered to the OCC. Installation and final testing commenced in June 2006.

New performance measures were developed with the assistance of Mr Ian Fenton of the Management Support Unit. These will come into effect for the 2006–07 fiscal year.

As new staff joined the team, time was taken to complete basic orientation and training. It was a challenge to concurrently complete training, continue to mentor, and manage the surprisingly large inflow of cases.

The team benefited from the assistance of the retired Ombudsman of Saskatchewan, Mrs Barb Tomkins, During her two-week stay she provided technical assistance on the draft protocol on operations between HM Prison and the OCC, the own motion investigation on Prisoners' Privileges, and the own motion investigation on Prisoners' Discipline.

With the assistance of Mr David Elms of Computer Services, Analyst Scott Swing designed and wrote the contents of our first website. It contains directions on how to file a complaint, a complaint form, and answers to frequently asked questions. It also provides, among other things, links to relevant new items. Please see the website at <<http://www.occ.gov.ky>>.

4 The Oversight Committee of the Legislative Assembly

The Office of the Complaints Commissioner is an independent office. 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 the Hon. Alden McLaughlin, Jr (chairman), Mr W. Alfonso Wright, Mr Moses I. Kirkconnell, JP, Ms Lucille D. Seymour, BEM, and Mr Rolston M. Anglin. We wish to thank Chairman McLaughlin for his assistance in reading our monthly reports and approving our monthly invoice. It is hoped that the Commissioner will be invited to meet and address the members of the committee in the near future.

5 Introduction of Staff

The Office of the Complaints Commissioner is a challenging, stressful, and rewarding place to work. The OCC is proud of the members of its team, who are introduced below.

Commissioner

John A. Epp, PhD (Law) (Liverpool) 2001, MCJ (Texas) 1990, LLB (Sask) 1982, BA (Sask) 1979, called to the Bar of Saskatchewan in 1983. Mr Epp began his professional career in Canada and eventually specialised in insurance litigation. From 1991 to 2004, Mr Epp served in the Attorney General Chambers of the Cayman Islands as a recognised law teacher of the University of Liverpool. He served as a chairman of the Public Service Commission Tribunal. Mr Epp is a certified NITA skills trainer, and regularly

participates in intensive trial advocacy programs. He is the author of *Building on the Decade of Disclosure in Criminal Procedure* (London: Cavendish, 2001), and the co-author of *Legal Aid Provision 2002* (Grand Cayman: CILS Academic Press, 2003). Mr Epp accepted the appointment as Cayman's first Complaints Commissioner in July 2004.

Administrative and Investigative Officer

Susan K. Duguay, BA (University of Western Ontario). Although she began her career in the public service of Canada, after completing a college diploma in Public Relations (Algonquin College) she gravitated to the private sector, where she remained for the balance of her career, holding various administrative and financial positions in offshore jurisdictions. Mrs Duguay, who is fluent in French, Spanish, and English, joined the OCC as its first Administrative and Investigative Officer on 4 July 2006.

Analyst

Scott D. Swing, MEd (Victoria, BC) 2003, BA (Anderson, Indiana) 1991. Mr Swing began his career in the Cayman Islands as a teacher at Triple C School. Later he taught at John Gray High School, and for three years he served as Vice Principal of First Baptist Christian School. After returning to university to complete his master's degree in leadership studies, he served the Cayman Islands Chamber of Commerce as the Programmes Director, focusing on the improvement of the Professional Development and Training Programme and the Better Business Bureau. Mr Swing, who is an accomplished sculptor, joined the OCC on 1 December 2004.

Analyst

Petula A. Twinn, PPC (BVC London, Inner Temple) 2002, LLB (Hons) (Liverpool) 2001. Ms Twinn has worked in the public and private sectors, including periods of service in the judicial and legislative departments. While she was reading law, she worked as a secretary and then a law intern at Walkers. She began her professional career as an attorney at Truman Bodden and Company. Ms Twinn, who is a Florida Supreme Court-certified family-court mediator, joined the OCC on 1 June 2005.

Executive Assistant to the Commissioner

Giselle Y. Webb, AD (Phys. Sc.) (CI Community College). Ms Webb earned her associate degree while continuing to work full-time. She began her administrative career in the private sector but moved to the public sector after Hurricane Ivan, first in the Ministry of Tourism – Housing Recovery Grant, and then as an Assistant Recruitment Officer with the Portfolio of the Civil Service, Personnel Department. Ms Webb is a member of Dance Unlimited, the national dance troupe, which represents the Cayman Islands at international events such as the Aberdeen Festival of the Performing Arts 2005 and CARIFESTA 2002, 2004. Ms Webb joined the office on 16 May 2006.

Receptionist

Joan E. Campbell-Forbes is a Pitman-certified clerical officer with an array of mentoring service awards. She began her career in Grand Cayman in the private sector. After eight years she joined the public sector and served 16 years before taking a rest. Her desire to assist people and be part of the mission of OCC led her back into the work force. She is an active member of the community and regularly assists elderly persons. Mrs Campbell-Forbes joined the OCC on 31 March 2006.

Special mention

We bid an unexpected farewell to Mrs Bridgette von Gerhardt, former assistant to the Commissioner, who as a result of family obligations had to move abroad. The office greatly benefited from her time with us.

During the year the following people graciously assisted the office by serving in temporary positions pending the appointment of permanent staff: Mrs Eleanor Messer, Mrs Heather McLaughlin, and Mrs Carolyn Harrison. Also we benefited from the contribution made by our apprentice analyst, Mr Ian (Jeremy) Durston, who is about to complete his final year reading Law.

6 Training

During the third week of June 2005 the entire OCC team undertook a training programme on the use and functions of the Case Tracker software program. The training was conducted by Ms Jennifer Bertsch, the author of the program and a member of the Office of the Ombudsman of British Columbia. The OCC is grateful to Ms Bertsch for her efforts and for the technical assistance provided by Mr Graham Monk of CI Computer Services.

In-service training continued through the remainder of the year. For example, Mrs Campbell-Forbes attended Microsoft Office workshops to increase her computer skills. The team enjoyed a session on Forensic Investigations of Computer Data, presented by Mr Christopher Rowland of Deloitte and Touche. Mr Gordon Barlow of the Human Rights Committee tutored the team on human rights.

The Commissioner attended a two-week course in Advanced Negotiation Skills at Harvard Law School and the biannual meetings and lecture series of the Caribbean Ombudsman Association, held this year in Barbados.

The Commissioner and Mr Swing continued their studies in the course entitled Information Access and Protection of Privacy, offered online by the University of Alberta. Mr Swing is on target to complete his certification through this program in the first quarter of 2007. Ms Twinn completed a one-day course in project management. Ms Webb continues to improve her Spanish language skills with the aid of a self-tutoring programme.

7 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. The new Administrative and Investigative Officer, Mrs Susan Duguay, is able to assist people in French and Spanish. For services in 50 other languages, the OCC has contracted for translation services by telephone with All Languages Ltd of Toronto, Ontario.

8 Role and Function of the Office of the Complaints Commissioner

8.1 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 arising after 15 December 2003 if the subject of the complaint is a government entity and if the complaint is not excluded by schedule 2 of the 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.

8.2 PRIMARY FUNCTIONS

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

8.2.1 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 stated to be the same as those of a Grand Court judge, although the Commissioner is not bound by the rules of court and can set his own procedure within the confines of natural justice. Some 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.

Throughout 2005–06, we did not have to issue a formal summons or order the re-entry of a person.

8.2.2 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 he thinks fit, whether or not an injustice has occurred.

8.2.3 Report

The OCC must inform the government entity of the result of an investigation if injustice is sustained as a result of the actions taken by the entity's officer. If no action is taken by an administrator on a recommendation made by the OCC, it must report this failure to the Legislative Assembly. Also, if the OCC conducts investigations on its own initiative, it must report the findings to the Legislative Assembly. A special report must be made to the head of department when serious misconduct is discovered in a department, and that report must be presented to the Governor and the Legislative Assembly.

8.2.4 Monitor compliance

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

8.3 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.

8.4 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.

9 Demographics

Attached as Appendix B is an indication of the demographics of the people served by the OCC, based on 113 files closed during the period ending the fiscal year June 2006. In brief, most complainants are Caymanian, between the ages of 30 and 50 years, and often residents of George Town. Men are slightly more prone than women to file a complaint (63 males, 38 females, 12 companies). During this fiscal year more males (8) than females (4) registered complaints from Cayman Brac. While not recorded, it was again observed that the apparent socioeconomic profile of complainants was mixed, but middle-class people were slightly over-represented. As result, this office is committed to undertake a more aggressive mixed-media campaign to increase the visibility of the OCC to all socio-economic groups in Cayman society.

10 Intake and Case Flow Process

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

11 Case Examples

The following are samples of complaint investigations, presented in synopsis form. As the samples demonstrate, the OCC conducts an independent investigation and can help to remedy maladministration or declare that the government entity concerned has done well. The reader is reminded that the OCC endeavours to protect confidential information, and for that reason some of the most interesting and challenging cases cannot be described here, because the identity of the complainant would be readily apparent.

11.1 COMPLAINT #17, OPENED NOVEMBER 2004

The complainant filed a written complaint stating that “despite having satisfied all the criteria for the granting of Caymanian status my application” was denied. The Caymanian Status and Permanent Residency Board agreed that no right of appeal existed.

The secretary to the Caymanian Status and Permanent Residency Board assisted the OCC to understand the scoring system used to determine who was granted Caymanian status in the year in question. The complainant’s file was read and a meeting was held with the board’s chairman to discuss the applicant’s file, the application, and the deliberations of the board.

It was determined that the complainant had sustained an injustice as a result of a fault in the administration of the board. The board, in scoring the application, assumed certain facts and, in consequence, wrongfully deducted points from the final score. Had the board not made those assumptions, the complainant might have had a different score, which might have been sufficient to ensure that the application was successful. Unfortunately the board had no power to grant another person status, as the annual quota had been filled. It was therefore recommended that the file be presented to Cabinet to review and, if appropriate, grant status. After pressing for action, the matter came before Cabinet for consideration. No attempt was made to influence the decision, and in the event application for status was denied.

11.2 COMPLAINT #53, OPENED APRIL 2005

In April 2005 a resident registered a complaint against the Cayman Islands government claiming that doctors and prison health-care providers had misdiagnosed him/her as having a mental disorder. The complainant felt that the authorities had not done enough to ensure that the diagnosis was correct. As a result of our investigation, we determined

that the complaint was not well founded. The OCC found that seven professionally qualified psychiatrists from countries including the United States, United Kingdom, Jamaica, and the Cayman Islands concurred with the original psychiatrist's diagnosis. The OCC was satisfied that the Cayman Islands government had acted appropriately in providing the complainant with access to mental health services and multiple opinions on the condition.

While no maladministration was found, our investigation identified several issues which warranted further consideration by the Ministry of Health and Human Services. These included the need for the ministry to consider providing a purpose-built facility for housing prisoners with mental health problems or, if this was not done, that such patients could be cared for in another country. It was also suggested that the ministry examine the current facilities available at the Mental Health Unit and consider upgrading them to better serve the psychiatric needs of the community. An assisted-living facility for psychiatric patients should be considered, either as part of or independent of the unit.

The Minister accepted these comments and announced major initiatives in the Legislative Assembly.

11.3 COMPLAINT #60, OPENED MAY 2005

The complainant held a valid liquor licence for premises in the George Town area, but was not at the time conducting business at that location, and the licence came under review. He alleged that he was asked by the Liquor Licensing Board (LLB) what he intended to do regarding this business, as two other liquor licence applications had been submitted for the same premises. The complainant objected to the other licences being granted as he believed it was contrary to the law. The complainant subsequently filed a complaint against the LLB alleging that the LLB had approved two different liquor licences at the same location and that this was in contravention of the law. Investigation by the OCC revealed that the actions of the LLB in this case were within the rules established by the board and that the complaint was not well founded. It was not contrary to the law to issue more than one liquor licence for a particular premise.

However, as information regarding the rules, procedures, and powers of the board was not readily available to the public, it was suggested to the LLB that they publish their rules on the procedures of applying for a liquor licence and an interpretation of the board's powers. The LLB provided the OCC with an initial draft handbook, setting out the procedures and regulations of the board and general information about applying for a liquor licence. The handbook was reviewed in conjunction with the Liquor Licensing Law (2000 Revision). Amendments were suggested by the OCC to provide more detailed information regarding the different types of liquor licences and the application process. The final draft was approved by the chairman. The Ministry of Tourism forwarded the draft to Legal Drafting and it began the process of drafting the LLB Procedure Rules.

11.4 COMPLAINT #74, OPENED JUNE 2005

A local company registered a complaint against the Ministry of Education alleging that the ministry had unfairly denied the company the right to bid on the new high schools project. In our investigation we determined that the ministry had indeed used a prequalification scheme not permitted by law in accepting bids from companies. We concluded that excluding this company from bidding on the project through a prequalification was maladministration. The Financial Regulations, 2004, applied to the high school building project. Regulation 39(b) stated that "[the ministry] shall follow the

tendering process, namely (b) offer the contract for open tender, with details of the criteria that will be used to evaluate tenders.”

In the light of our findings and the commitment of the Ministry of Education to correct the inadequacies in the current procedure, we recommended that the ministry establish guidelines which follow the rules for tendering projects as currently prescribed in the regulation, and suspend all prequalification exercises. Such guidelines should address the ability of the bidder to complete the project, and prescribe under what circumstances the lowest bid would not be accepted, as allowed in regulation 39(d).

Section 14(1) of the Complaints Commissioner Law (2006 Revision) states that “[t]he conduct of an investigation under this Law shall not affect any action taken by the government entity concerned, or any power or duty of that government entity, to take further action with respect to any matters subject to the investigation.” Therefore the actions taken in this matter were not subject to reconsideration, but future applications by a service provider are to be considered through a process provided for under the regulation.

11.5 COMPLAINT #91, OPENED JULY 2005

A dispute arose between a customer and the Water Authority. The complainant stated that in January 2005 he/she had registered a protest over the amount of his/her monthly account with the Water Authority. He/she had requested that his/her water meter be tested, but that as of July 2005 the Water Authority had not responded.

In its letter to our office in August 2005, the Water Authority acknowledged undue delay in dealing with this complaint. As a result we found that the complaint of maladministration against the Water Authority well founded. The OCC made several recommendations, including that the Water Authority compensate the complainant for the testing fee, and also that the Water Authority conduct an exhaustive search into the availability of a governing device for residential water meters and provide a cost analysis of this service.

The recommendations were complied with.

11.6 COMPLAINT #92, OPENED JULY 2005

The complainant alleged that he/she was wrongly detained by Immigration officers at the airport and suffered great embarrassment. The computer database indicated to the officers that there was a warrant for the complainant’s arrest arising out of an old civil court dispute. The investigation revealed that the initial registration of the warrant in the system many years ago was correct, but that it had long since been satisfied and that the data in the computer should have been updated. The failure to maintain a current database was maladministration.

It was recommended that by September 2006 the Chief Immigration Officer issue new guidelines for the registration and removal of alerts in the database used by Immigration. This matter will be monitored for compliance and if evidence of compliance is not provided by October 2006, a Special Report will be submitted to the Legislative Assembly.

11.7 COMPLAINT #102, OPENED JULY 2005

A resident filed a complaint against the Department of Licensing alleging that he/she had submitted an application, with all the required documents, for a taxi licence in February

2005. Upon checking on the status of the application, the complainant was told that it had been deferred because the required general-knowledge test had not been taken. Our investigation showed that the complainant had indeed taken and passed the test. Due to a departmental error the test had not been placed with the application.

Our recommendation was that the application be dealt with at the next Public Transportation Board meeting, set for August. However the PTB did not deal with new taxi licence applications as it had to address, on an emergency basis, approval of fare increases. We met with the Permanent Secretary of the Ministry of Tourism, Environment, Investment, and Commerce, and it was agreed that the board would meet and deal with all outstanding applications as soon as possible. In October 2006 the board met and dealt with all outstanding matters. No attempt to influence the decision was made, and as it turned out the complainant was successful.

11.8 COMPLAINT #95, OPENED AUGUST 2005

The complainant contended that he/she was registered with the Department of Employee Relations for over a year and that it had failed to help him/her find employment. The department stated that it was unable to assist the complainant because of certain serious allegations made by previous employers. In addition, the department stated that it had referred the complainant to more than 40 employment opportunities.

Initially the OCC asked the department for evidence that the allegations against the complainant by the former employers had been substantiated. However, despite repeated requests, the OCC was not provided with that documentation. It transpired that the department did not have proper records or files for the complainant.

After pressure was applied, the department gathered documents and assembled a file for the complainant. The list of employers to whom the complainant had been referred was provided to the OCC. However, the list contained very few details of either dates or outcomes of the referrals. The OCC then audited the list by contacting employers directly. The audit showed that there appeared to be many discrepancies between the allegations, the correct information and the department's information. Besides the list provided, there were no other documents on the complainant's file showing any assistance provided by the department to the complainant.

As a result of the investigation, it was recommended to the department that they address the issue of proper record-keeping. This was to include meeting notes on client's files, records in relation to job referrals to employers, results of job referrals, details of meetings with a client in regard to placement issues, and properly documented notes from employers in relation to persons referred to them by the department. As a result, the department has taken steps to implement proper record-keeping on its clients. This includes keeping proper paper files, with file notes and copies of all correspondence with the client, and creation of a software system which is currently being installed. Upon evidence that the software system is in use, the OCC will end the monitoring phase of this matter.

11.9 COMPLAINT #129, OPENED AUGUST 2005

A resident filed a complaint against the Immigration Board for Cayman Brac and Little Cayman ("the board") alleging that his/her work-permit renewal application was wrongly denied as a result of a false allegation made against him/her to the board. The employer commenced an appeal of the decision but withdrew it, leaving the complainant out of time to register his/her own appeal. As the result of our investigation, the OCC concluded

that the complaint was well founded. The complainant's work permit renewal was denied on the basis of unsubstantiated allegations, which he/she was not given adequate opportunity to answer before the board. This was a failure to follow the rules of natural justice and contrary to section 46(10)(c) of the Immigration Law, 2003 which states that "[p]rior to the revocation of, or refusal to renew, a work permit all allegations shall be corroborated and a full investigation of such allegations carried out".

The rules of natural justice and procedural fairness are of paramount importance when considering allegations against a person. Any person whose interests will be affected by the decision made must be provided adequate opportunity to be heard before the decision is made. In the light of our findings our recommendations included that the board must read and follow the rules of natural justice; until such time, if ever, that allegations are substantiated the board must consider the allegations against the applicant as unfounded; the board must write a letter to the complainant specifying the allegations made against the complainant and stating that until allegations are substantiated the board will not consider them; and that future applications of the complainant are to be dealt with afresh disregarding all unsubstantiated accusations. These recommendations were complied with.

11.10 COMPLAINT #160, OPENED NOVEMBER 2005

The complainant was employed with government through November 2004. He/she tendered his/her resignation, and a dispute arose over the amount of money due the government from the complainant. No court made a decision on the dispute, and the complainant did not authorise any deductions from funds in which he/she held money. When the complainant ended his/her pension account with the Public Service Pension Board, the payout was reduced by the amount allegedly owed to government. The complainant alleged that the PSPB had illegally withheld pension monies to pay a disputed debt claimed due to government.

The PSPB claimed authority to take money for the government under the Public Service Pensions Law (2004) Revision section 25(a)(i):

"A pension provided under this Law shall not be-

transferable or assignable by a participant or beneficiary, except for the purpose of satisfying-

(i) a debt due to the Government."

A review of the law by the OCC revealed that in order to satisfy a debt to government, pension benefits had to be assigned or transferred by the participant or the beneficiary. The OCC then sought a legal opinion, which agreed with this interpretation, and as a result the OCC recommended that the PSPB itself seek legal advice on this matter. The PSPB sought legal advice, which confirmed that it did not have the authority to withhold monies from a pension account to satisfy a debt due to government without authority from the participant/beneficiary. A refund of the monies deducted was made to the complainant. A review by the PSPB of other similar situations is underway, and it is due to report to the OCC by the end of August 2006.

11.11 COMPLAINT #178, OPENED JANUARY 2006

In July 2004 the complainant registered a caution against property which he/she occupied. The property was subsequently sold in August 2004 without reference to the caution. The complainant alleged that the Registrar had registered the transfer of the

property in contravention of section 129 of the Registered Land Law (2004 Revision) ("the Law"). Under section 129 of the Law, in order for a transfer of property to take place, either the person that registered the caution must give consent to the transfer or the Registrar must hold a hearing. Neither was done in this instance: the property was transferred without the complainant's consent and without a hearing. The complainant stated that he/she was not given an opportunity to be heard and was not notified of the Registrar's decision to transfer the property until after the fact. As a result, the complainant had to enforce his/her rights through court proceedings (in which he/she was successful). The complainant then filed a complaint of maladministration against the Registrar. The OCC appointed a technical advisor to investigate the matter. A final report was issued saying that the complaint was well founded and the Registrar had acted in contravention of the Law. A number of recommendations were made, including that the Registrar and the Lands and Survey Department issue a comprehensive written guide of formal procedures in the land registry to be used for the guidance of the staff, the public, and professional advisors. Steps have been taken to comply with the recommendations.

11.12 COMPLAINT #179, OPENED JANUARY 2006

A complaint was filed stating that the Department of Tourism was failing to properly inspect hotels and to ensure that each hotel provide a brochure-display rack for use by tour operators, as provided in the law. The DOT replied to the OCC, admitting that the Tourism Regulations did indeed state that properties must provide display racks for local operators, and promised to take swift action. Hotel inspectors were dispatched to visit all of the properties originally mentioned in the complaint and to request that managers install brochure racks. The DOT gave all properties until the end of January 2006 to rectify the situation. In addition, the matter was brought up at the CITA meeting in January 2006, and a memorandum was sent to all CITA accommodation members.

A finding of maladministration was made against the DOT. However, as the DOT took steps to ensure that inspectors enforced the provisions of the law, no recommendations were made.

12 Matters Arising from Written Complaints

12.1 SPECIAL REPORT

One Special Report to the Legislative Assembly was completed and tabled in the Legislative Assembly 30 November 2005.

In the matter of the Complaints Commissioner Law 2003 and Complaint #82 – filed 20 June 2005

On 20 June 2005 AH attended the OCC and filed a written complaint against the Department of Licensing (DL) in regard to its failure to provide him/her with a copy of the Certificate of Vehicle Ownership Registration upon the transfer of a car that he/she allegedly purchased from a member of the RCIP in that member's personal capacity.

An investigation was commenced by the OCC into the DL and its failure to provide AH with copies of the requested document. A copy of the complaint was sent to the DL, and the director responded with a report that included a copy of the Certificate of Vehicle Ownership Registration. Upon receipt of the report and further investigation, AH alleged that one or more of the signatures on the Certificate of Vehicle Ownership Registration document was forged. In consequence, a certificate was wrongly given.

As the matter involved staff members from the DL and the RCIP, appropriate officers were informed. A meeting was held with the director of the DL, and he was provided with a draft report of the investigation. The file was then passed over to him in accordance with Section 19 of the Complaints Commissioner Law, 2003 ("the Law"). The acting deputy commissioner of the RCIP was also contacted and given a copy of the draft report. The matter was initially thought to be one of discipline against the member but it is now being investigated by RCIP as a criminal offence.

The special report closed as follows: "The conduct of the investigation is now in the hands of the appropriate officers and this Honourable Assembly may seek a report on the result in due course from the ministries concerned."

12.2 RCIP COMPLAINTS AND DISCIPLINE DEPARTMENT

Protocol on operations between OCC and RCIP

During the autumn of 2005 the OCC and the RCIP commissioner met to consider the establishment of a protocol to guide interactions between offices. The protocol was established wherein complainants who had not first registered their complaint with the RCIP would be referred from the OCC to the Complaints and Discipline Department. In other situations, wherein the RCIP had allegedly failed to properly respond to a complaint made, the OCC would send notice of its investigation to Chief Superintendent Gooding with a copy to Deputy Commissioner Rudi Dixon. The RCIP would respond within five working days. Protocol was formally confirmed 20 February 2006.

Concern with Complaints and Discipline Department

After a series of constructive meetings in autumn 2005 with RCIP commissioner Mr Stuart Kernohan, concerning the apparent maladministration of the RCIP Complaints and Discipline Department, it was agreed that he would take action to improve the performance of the department.

The RCIP commissioner made public his commitment to improve the Complaints and Discipline Department in the press (*Cayman Observer*, "Commissioner outlines RCIP's priorities for 2006"). He stated, "A proper system needs to be put in place where police listen to a complaint, log it properly, allocate someone to deal with the problem and make contact with the complainant. We need to treat people in a professional and consistent manner."

In support of his pledge, a press release was issued advising members of the public of the commitment and the manners in which a complaint could be registered (*Caymanian Compass*, 31 January 2006, "RCIP advise how to make a complaint".) This included reporting the complaint (in person or by telephone) to the officer in charge of the district station or to the Complaints and Discipline Department in Elizabethan Square Tower or by letter to the deputy commissioner.

Concern about the operation of the department resurfaced in spring 2006. The OCC pressed for better management of the department so that the commitment made to the public would be realised. Methods by which significant improvement could be realised were discussed, and the OCC now is optimistic that meaningful steps will be taken by the RCIP.

12.3 CAYMAN BRAC LABOUR TRIBUNAL

During the period of October 2004 through February 2006 seven formal complaints were filed which in one way or another highlighted the lack of operation of a labour tribunal in Cayman Brac. In the course of our investigations it became evident that there had not been a labour tribunal appointed in Cayman Brac since 1999. After working with representatives of the Department of Employment Relations and then the ministry, in May 2005 the OCC voiced its concerns to the Hon. Alden McLaughlin, Minister for Education, Employment Relations, Youth, Sports and Culture, and the Department of Employment Relations. In October 2005 the OCC received a letter from the secretary of the labour tribunals in Grand Cayman, advising that the Cayman Brac tribunal had been appointed by Cabinet. However in November 2005, the secretary advised this office by e-mail that the matter of the Cayman Brac tribunal had been referred back to the ministry, as the chairperson and the deputy chairperson of the tribunal had declined their appointments. In January 2006 the OCC received notice from Deputy Permanent Secretary that effective 6 December 2005 members of the tribunal were: chairman, Ellen Lazzari; deputy chairman, Dennis Ebanks, JP; member, Theresa Tibbetts; member, Leonard Neckerman. In March 2006 the OCC met with the chairman, who informed us of her intention to have the tribunal meet frequently to clear the backlog of cases. In April 2006 we were informed that the Attorney General had committed to arrange training for members of the tribunal. This training was provided by attorneys from Appleby Spurling Hunter in June 2006. We are pleased to report that the first hearings took place on 12 September 2006.

12.4 CUSTOMER SERVICE AT DEPARTMENT OF LICENSING

The Department of Licensing was examined in investigations arising from written complaints and investigations made in the public interest on the decision of the OCC. The Department gave a public pledge to improve customer service (*Cayman Net News*, 18 January 2006, "Changes coming to vehicle licensing"), and anecdotal evidence supports the view that the pledge has been honoured in the main.

13 Own Motion Investigations

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 2005–06 fiscal year, six own motion investigations were undertaken or continued. In the case of the Immigration Department and the English-language test for immigrating employees, a synopsis of the report tabled to the Legislative Assembly is presented below. The other five investigations which remain open as at the end of the fiscal year are summarised subsequently.

13.1 COMPLETED REPORTS

13.1.1 Report: Immigration and English-language Test for Immigrating Employees – Own Motion Report 3

In May 2005 it came to the attention of the OCC that the Department of Immigration was administering an ad hoc English-language proficiency test. The Chief Immigration Officer required all persons arriving from non-English-speaking countries and intending to work in the Cayman Islands to pass a "basic" English-language proficiency test upon arrival at Owen Roberts Airport. Reports surfaced which indicated that some people had

failed the test and were immediately sent back to their country of origin. This may have resulted in injustice and undue economic waste.

The OCC, having determined that there were reasons of special importance that made investigation desirable in the public interest, began an investigation on his own motion on 7 June 2005. As the result of this investigation, a number of concerns were identified in relation to the administration of the English skills test. In the light of these concerns, possible improvements to the process were discussed with the chief immigration officer and a date for implementation of improvements was agreed on as 10 May 2006. The report, entitled "Department of Immigration English Skills Test", was tabled in the Legislative Assembly on 2 March 2006. The recommendations contained therein stated:

1. That the Chief Immigration Officer, along with the Work Permit Board, the Business Staffing Plan Board, and the Cayman Brac and Little Cayman Immigration Board, determine the level of English-language proficiency required of applicants for work permits.
2. That, in accordance with the agreed level of proficiency, the testing process be designed and documented.
3. That the Chief Immigration Officer write a policy and procedure guidance note directing the administration of the English skills test. For example, there should be a predetermined set of questions to be asked that can be objectively adjudicated by the examiner.
4. That the work-permit application form state that persons coming from a non-English-speaking country will be required to take an oral English skills test upon arrival.

To date these recommendations have not been substantially complied with. Section 18 (3) of the Complaints Commissioner Law, 2003, states that "[w]here 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."

The OCC continues to monitor the implementation of the recommendations.

13.1.2 Investigation of the Privileges and Opportunities Available to the Inmates of Fairbanks and Northward Prisons – Own Motion Report 4

The OCC commenced an investigation into the alleged differences in privileges and programmes afforded to the inmates of Fairbanks (the women's prison) and Northward (the men's prison). The investigation considered the Community Work-Release and Rehabilitation (CWR) Programme, the Educational Programme, telephone access, and the privileges afforded Category D prisoners at Northward and Fairbanks.

There were some differences between the privileges and programmes extended in the two prisons. Of note was the lack of opportunity for female inmates to participate in the CWR Programme.

It is recommended that Her Majesty's Prisons follow the provisions set out in the CWR Programme document. It is also recommended that the guidelines be amended to allow female inmates equal access to the CWR Programme. This will involve addressing concerns about female inmates becoming pregnant while participating in the CWR Programme and will require closer supervision of inmates.

The second noted difference is in the privileges extended to the inmates of Northward and Fairbanks. It is recommended that as far as possible – bearing in mind the structural differences between the two prisons – the privileges afforded to all inmates be consistent. Where there are unavoidable differences, every effort should be made to extend comparable privileges to the inmates of both prisons.

It is our conclusion that the opportunities and privileges extended to the inmates of Northward and Fairbanks are reasonably equal, with one major difference, opportunity to participate in the CWR Programme, and minor differences in the privileges extended to certain categories of inmates. Adherence with the recommendations will end the unsatisfactory situation.

Note: Although our report was presented to the Clerk of the Legislative Assembly on 30 June 2006, according to the 2005–2006 performance target formulation, an investigation is not considered complete until it is tabled in the Legislative Assembly (which was done on 28 July 2006).

13.2 PENDING REPORTS

13.2.1 Historic Public Service Pension Entitlement Concerns: An investigation concerning Caymanians retired or soon to be retired from the Public Service alleging inequitable operation of law in respect of pension entitlement or benefits – Own Motion Report 7

The OCC commenced an investigation concerning civil-service pension benefits and the unreasonable nature or operation of early and current pension laws. Of particular interest were four persons in the age range 58–74 years. Each had served between 10 and 23 years with government. Each is a status holder who did not receive Contracted Officers Supplement, is retired, lives on island, and does not receive pension benefits.

The Complaints Commissioner Law (2006 Revision), Section 20(2), states:

“(2) The Commissioner may lay before the Legislative Assembly reports on the inequitable or unreasonable nature or operation of any enactment or rule of law.”

The Portfolio of Internal and External Affairs agreed that this question was worthy of investigation and pledged its cooperation. After meeting with the head and the deputy head of the civil service, we circulated advertisements in the news media advising of the investigation and asking affected persons to contact the OCC.

As of April 2006, a total of 100 people have come forward to participate in this investigation. Most of these people were interviewed, and as much information as possible was gathered from them. Some were able to provide copies of pay stubs and original contracts; however, some were not able to produce any paper at all.

The investigation is concluded, and a draft report is with the Portfolio of the Civil Service. The results of this investigation will be tabled in the winter session of the Legislative Assembly.

13.2.2 Small Commercial Vessel Safety Regulations – Own Motion Report 5

This own motion investigation considered the extent to which waterborne commercial passenger vessels in use in Cayman waters are regulated by government authorities. Such vessels include cruise ship tenders, passenger ferries, chartered sport fishing boats, submersibles, and power boats chartered or for hire. The investigation will also consider

the extent to which the crews operating small commercial vessels are regulated. Captain Jack Gallagher and Dr Ron Pelot completed a comprehensive risk assessment. The investigation benefited from the comments and experience of local experts. These included the Land & Sea Cooperative, Port Director Mr Paul Hurlston and members of the Maritime Authority of the Cayman Islands including the Director of Shipping, Joel Walton, and Captain Barrie Rial, a consultant in maritime policy and legislation. In the event that the investigation determines that additional regulation may be necessary, the OCC will recommend the steps to be taken by the relevant ministry. The results of this investigation will be tabled in the autumn session of the Legislative Assembly.

13.2.3 Public Service Pension Board – Own Motion Report # TBA

In 1991 the Cayman Islands government created a pension fund for civil servants in its employ. In 1999 the Public Service Pension Law, 1999 (PSPL 1999), was passed and put into effect in January 2000. The PSPL 1999 revised the very nature of the pension plan and created the Public Service Pension Board (PSPB) to oversee and manage the pension plan and the funds collected. The PSBL 1999 compelled exact accounting and reporting obligations of the PSPB and its agency, and created a new set of fiduciary and statutory duties and liabilities for the PSPB and its agency. A number of diverse stakeholders had an interest in, and a need for, such reporting. They included the PSPB, its managerial and administrative staff (“the agency”) and the executive and legislative branches of the CI government. Other stakeholders were pension contributors and beneficiaries, including those who were already receiving benefits, and the citizens of the Cayman Islands, who were and are ultimately concerned with any large and unfunded liability of the CI government as the sponsor and guarantor of the plan. An investigation was launched by the OCC after evidence surfaced that at least some of the reporting with respect to the public service pension plan has failed to occur. The results of this investigation will be tabled in the spring session of the Legislative Assembly.

13.2.4 Discipline for Inmates in Her Majesty’s Prisons: A Review of Regulations and Practice – Own Motion Report 6

This office has completed a review of regulations and practices in HMP for the internal discipline of prisoners. Discipline for prisoners is set out in the *Prison Rules*, a set of regulations made under the Prisons Law. They set out generally the expectations and obligations for the day-to-day management of the Cayman Islands’ prison population. In rules 37 to 41, the *Prison Rules* set out the process for prisoner discipline. When an inmate is believed to have committed one of a list of specified offences against discipline, an internal charge is laid. A member of the prison staff is designated to preside at a hearing respecting the matter, generally by the day following the incident. An oral hearing is held at which the prisoner learns the allegation against him. He/she may present his/her own case, including calling witnesses. If the offence is proven, one or more penalties may be imposed, ranging from a caution through forfeiture of privileges or earnings, to loss of remission. The prisoner may appeal to the director.

A review of those provisions relating to discipline against the rules of natural justice discloses certain issues that require attention now and some that I will monitor in the course of investigating prisoner complaints. The results of this investigation will be tabled in the winter session of the Legislative Assembly.

14 Complaint Resolution and Mediation

The majority of enquiries to this office are handled by referring complainants to the complaint officer in the agency concerned. The OCC assists enquirers by helping them to crystallize their complaint, explaining procedures that apply to their case, and making appointments for them at the relevant agency. This is consistent with good dispute-resolution principles, which stress that an agency should generally be given the first opportunity to consider a complaint and resolve it. Many government entities now have internal complaint-handling procedures that can deal effectively with the majority of the complaints they receive. By handling complaints directly, agencies are better placed to learn from their mistakes, to clarify any public misunderstanding about the agency'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. During this year the OCC was able to resolve a complaint between adjoining property owners and the Department of Environmental Health through mediation. The mediation that was described in the last annual report was unsuccessful and the complaint went ahead for investigation. In the event, the investigation found no maladministration against the department involved.

15 Special Projects

15.1 INTERNAL COMPLAINTS PROCESS

In the early days of the OCC's operation, a survey was conducted of government offices with the goal of determining the manner in which various departments sought to address complaints from residents of the Islands. The formal part of the survey determined that certain departments had, by legislation, established complaint processes – for example, the RCIP. An informal survey was conducted in other departments.

The results of the survey were not indicative of a universal commitment to good complaint response or resolution. Many departments did not have a process for registering and resolving complaints, nor did they have a person assigned to receive complaints. These results were cause for concern. However, as a result of the training sessions for civil servants, many departments instituted internal complaints departments or processes. With the support of the Chief Secretary, we continued this training programme and offered assistance to all government entities. A Special Report on the number of departments with ICPs will be submitted to the Legislative Assembly in the winter session.

15.2 BRIEF ON FREEDOM OF INFORMATION

As anticipated, the OCC was invited to continue its involvement in reviewing the proposed Freedom of Information legislation by participating in the working group which was established through the Cabinet Office in the spring of 2006. Mr Scott Swing was appointed to serve as the OCC representative with this group. The working group compiled and summarised the responses from the public consultation period. Their report to Cabinet was submitted in August 2006.

The OCC continues to support the move towards greater openness and transparency which may be achieved through legislation such as the proposed Freedom of Information Bill. The office made submissions to the Cabinet Office. The first was a general submission researched by Professor Marc Racicot of the University of Alberta Access to Information study program. The second commented on business interests and the protection of third parties by attorney-at-law Colette Wilkins, co-author of the book *The Law of Freedom of Information*.

15.3 PRODUCTION OF BROCHURE

In the past year, the Office of the Complaints Commissioner received numerous complaints about matters that residents of the Cayman Islands believe the Office should be able to investigate but which fall outside the jurisdiction of the OCC. The OCC took steps to educate the public on its jurisdiction by publishing an information brochure and by distributing it through local businesses. The stock of brochures is replenished quarterly.

15.4 OTHER PROJECTS

This office is frequently invited to contribute to projects being conducted by government ministries/departments/portfolios. For example, the Commissioner participated in discussions on topics such as the guidance circular on the use of e-mail by government employees. Of particular note, however, was the extensive input and consultation that he gave on the changes to the draft Public Management Law 2005 and the draft Personnel Regulations 2007.

This year analyst Petula Twinn wrote a booklet entitled *Small Claims Handbook* to assist residents in pursuing available legal remedies through the Summary Court. This booklet is a plain-language guide to making a claim and enables complainants to seek redress to complaints which fall outside the jurisdiction of this office. It has been used, for example, to make claims against a private car vendor and a landlord. A second edition is planned.

16 Performance Targets 2005–06

Taking into account the guidance of the Management Support Unit, with the concurrence of the chairman of the Legislative Oversight Committee and the suggestions of the BMU, the following output targets were accepted by the OCC. The results for 2005–06 are noted.

16.1 OUTPUT 1: INVESTIGATIONS

Statistics indicating in detail the work completed are set out in appendix D.

Outputs Delivered

OCC 1		Public Interest Investigations		
Description				
▪ Deal with telephone enquiries and provide advice and guidance to the public that do not result in a formal investigation ▪ Investigate complaints made regarding injustice caused by improper, unreasonable, or inadequate administrative conduct on the part of any Ministry/Portfolio and respective department, unit, and section, government-owned company, and statutory authority ▪ Undertake public-interest investigations				
Measures		2005–06 Budget	2005–06 Actual	Variance
Quantity				
No. of enquiries		200–300	459	+159
No. of complaints investigated		30–60	113	+53
No. of public-interest investigations		2–5	1	-1
Quality				
All complaints, enquiries, and public-interest investigations to be investigated by suitably qualified and trained staff		100%	100%	0%
All conclusions on complaints to be made or drawn by Complaints Commissioner		100%	100%	0%
All reports to be signed off by Complaints Commissioner		100%	100%	0%
All complaints investigated in accordance with the parameters established by The Complaints Commissioner Law, 2003		100%	100%	0%
Timeliness				
All enquiries to be answered within 5 working days		95%	100%	0%
All complaints to be investigated within 3 months of complaint being lodged		95%	62%	-33%
All reports/public-interest investigations to be completed within 4 months of request		95%	0%	100%
Location				
Cayman Islands		100%	100%	0%
Cost		536,000	536,000	0

OCC 2 Monitor Compliance with the Commissioner's Recommendations			
Description ▪ Monitor compliance with the recommendations or the report of the Commissioner and the timescales specified in the report of action to be taken ▪ Provide reports to the Legislative Assembly where no adequate action has been taken to remedy the injustice			
Measures	2005–06 Budget	2005–06 Actual	Variance
<i>Quantity</i>			
No. of actions monitored	20–50	115	+65
No. of reports to Legislative Assembly	1–4	2	0
<i>Quality</i>			
All monitoring by suitably qualified and trained staff	100%	100%	0%
All reports to be signed off by Complaints Commissioner	100%	100%	0%
All actions monitored in accordance with the parameters established by The Complaints Commissioner Law, 2003	100%	100%	0%
<i>Timeliness</i>			
Monitoring on an ongoing basis	95%	99%	0%
Reports submitted as required by the Speaker	100%	100%	0%
<i>Location</i>			
Cayman Islands	100%	100%	0%
<i>Cost</i>	134,000	134,000	0

16.1.1 Targets and results

Our 2005–06 target for answers to enquiries made in the OCC, which was 200 to 300, was in fact far exceeded, as we answered 459 enquiries during the period in question. The same is true of investigations of resident's complaints: our target was 30 to 60 investigations, and 113 were carried out. We had anticipated that 2 to 5 public-interest investigations would be tabled, but in the event only a single one was.

16.1.2 Timeliness and targets

There was a dramatic increase in total complaints received in 2005–06. There has also been a steady increase in the number of more complex matters brought to the Office and in complaints alleging systemic problems in public administration. There was an increase of more than 100 per cent in the number of cases closed by this Office. This year, the Office also monitored 115 recommendations, and by year's end 55 per cent of these had been complied with. In some cases, the OCC was able to hear both sides of a complaint within a day or two, and thereafter resolve the dispute. However, the more complex the allegation and the more people and documents involved, the more time elapsed before the investigation could reach completion. Again this year, the OCC determined that many files were not progressing within a reasonable time. The most prevalent cause of the delay continues to be untimely responses by some – though not all – civil servants. The process of educating the members of the civil service in the role and function of the OCC continues to be very important. Not only does this increase the level of cooperation and positive interaction, it enables civil servants to understand that requests made by the OCC have to be answered in a timely manner.

Some investigations were delayed by changes in the senior ranks of the civil service. Others were delayed for reasons such as the need to take legal advice on the powers or the jurisdiction of the OCC. Again, delays for those two reasons are understandable given the short history of the OCC.

Another reason for lack of timely progress in some investigations was the increase in the number of complaints closed this year. During the last fiscal year this office closed 65 files. During the 2005–06 year we closed 174 files, a significant case load increase for the office.

Finally, delays are sometimes the result of our need to use outside professional or technical advisers, who, in some cases, did not complete tasks in a timely manner. These advisers include those retained by the government entity under investigation and those retained by the OCC.

With the guidance of the Budget Management Unit we accepted the following performance measures for the 2005–06 fiscal year:

The following targets were contained in our Annual Budget Statement for 2005–06.

- All enquiries to be answered within five working days (in 95 per cent of cases);
- All complaints to be investigated within three months (in 95 per cent of cases) of complaint being lodged;
- All reports/public interest investigations to be completed within four months (in 95 per cent of cases) of the request.

Only one own motion public interest investigation was completed – tabled in the Legislative Assembly – during the year. One reason for not meeting the target of having the matter completed in four months was the time that elapsed while awaiting the introduction of the report in the Legislative Assembly.

One major change to note is in the definition of “completed”: in previous years, own motion investigations and Special Reports were not considered completed until they were tabled in the Legislative Assembly. In future we will be able to state that such work is complete when the report is submitted to the Clerk of the Legislative Assembly.

Investigation of complaints was timely in 62 per cent of the cases. In 70 per cent of the complaint the investigations was completed within four months.

16.2 OUTPUT 2: MONITORING RECOMMENDATIONS

The OCC was required to monitor compliance with recommendations made and to report to the Legislative Assembly if the recommendations were not followed.

During 2005–06, we monitored 115 recommendations, including 11 recommendations arising out of completed own motion investigations. Given the current trends, we expect that the year ahead will require the OCC to monitor more cases and the recommendations arising therefrom.

The case examples given in part 11 above reveal some of our monitoring activities and recommendations complied with.

16.3 QUALITY MEASURES

We used suitably qualified and trained staff to investigate and monitor complaints, and we were alert to challenges to our jurisdiction and questions of fair process. We achieved these targets by recording any questions about the conduct of our team and our jurisdiction or process and by answering the questions fully through internal investigations or independent legal advice. Also, the Commissioner reviewed all findings and reports before they were finalised. In consequence we met our quality targets.

16.4 STRATEGIC OWNERSHIP GOALS

The following key strategic ownership goals for the Office of the Complaints Commissioner were established in 2004–05 for a period of two years. The goals, which have all been complied with, are as follows:

1. Establish an office with the necessary personnel, equipment, and systems that can record and resolve grievances occurring in the process of public administration.
2. Prepare public information booklets on the functional role of the OCC to schools, service groups, government agencies and other potential users of the services provided by the Office.
3. Establish a presence on the Internet for informational purposes and to register complaints online.
4. Implement a case management system, Modified Case Tracker.
5. Implement a performance-appraisal system.
6. Provide a bimonthly report to news media on the work of the OCC.
7. Increase public awareness through media interviews and advertising.
8. Complete in-house training on human rights.

17 Budget 2005–06

17.1 AMOUNT

The Budget Management Unit's Annual Plan Estimate 2005–06 proposed that the amount budgeted for operational expenses in the OCC in the fiscal year July 2005–June 2006 be \$670,000. This was approved by the Legislative Assembly.

Notice was given by the OCC that an additional staff member was required for 2006–07 and that an increase in the budget would be needed.

17.2 SERVICE LEVEL AGREEMENTS

As part of the Public Finance and Management Initiative, government departments providing support services to any other entity are required to enter into Service Level Agreements. Given our budget, we carefully considered each proposal for service. For those services for which government is the only supplier, we monitor the cost of the service and adjust our usages accordingly. While we accepted a service contract with Treasury for the operation of our cheque-generating mechanism, we strongly objected to the fees charged. It was made clear by all concerned that our fee for the 2006–07 fiscal year would be reduced by more than 50 per cent. On that basis we accepted the current terms.

18 Budget 2006–07

With some operational history, the process of forecasting and completing the budget requirements of the OCC was more manageable for the fiscal year 2006–07.

The OCC must express disappointment, however, in the continuing failure of the BMU to prepare a master list of interdepartmental charges for use in the preparation of the 2006–07 budget. The existing list is more than two years out of date.

The budget increase requested in April 2006 for the 2006–07 fiscal year can largely be attributed to the addition of one person to the staff. The new post of Administrative and Investigative Officer will be formally created on 4 July 2006 (next fiscal year) and will allow the OCC to take control of its own fiscal affairs using the government account system IRIS. As can be seen from the performance targets for 2006–07, the volume targets have been increased from 2005–06. However, the targets are below the actual volume of 2005–06, which means that the OCC must be more selective in choosing which written complaints it accepts for investigation.

19 Performance Targets for 2006–07

19.1 OUTPUT 1: INVESTIGATIONS

The following targets were suggested by the Management Support Unit and were accepted by the OCC.

19.1.1 Targets

Sub-output no.	Details of Sub-output	Target 2005–06	Result 2005–06	Target 2006–07
1	Answers to enquiries made in Office	200–300	459	200–400
2	Investigations of residents' complaints	30–60	113	40–80
3	Public-interest investigations [tabled]	2–5	1	2–5

19.2 OUTPUT 2: MONITORING

Sub-output no.	Details of Sub-output	Target 2005-06	Result 2005-06	Target 2006-07
1	Monitoring of recommendations made	20-50	115	20-50
2	Reports to Legislative Assembly eg failure to comply with recommendations made or reporting misconduct or Annual Report	1-4	2	2-4

19.3 TIMELINESS MEASURES

Measure no.	Detail of measure	Target 2005-06	Result 2005-06	Target 2006-07
1	Enquiries to be answered within 5 working days	95%	100%	90-100%
2	All investigations to be completed within 3 months of commencement (amended to 4 months for 2006-07)	95%	62%	80-100%
3	All reports/public interest investigations to be completed within 4 months of the request (amended to 5 months for 2006-07)	95%	0%	80-100%
4	Monitoring carried out on an ongoing basis until recommendations are substantially implemented or withdrawn, or until they are included in a Special Report to the Legislative Assembly	95%	99%	95-100%
5	Reports submitted as required by the Speaker	100%	100%	90-100%
6	Decision to investigate complaint and, if accepted, commencement of investigation of complaint within 1 month			95-100%
7	Special Reports submitted to the Clerk of the Legislative Assembly Committee within 1 month of the Complaints Commissioner's determining that no adequate action has been undertaken or evidence found of breach of duty or criminal offence			90-100%

20.1 BACKGROUND

The Cayman Islands (Constitution)(Amendment) Order 1993 amended the Constitution of the Cayman Islands to establish the Office of the Complaints Commissioner. Section 49N states: “(1) Subject to the provisions of this Constitution, a law may make provision for the office, functions, jurisdiction and powers of a Complaints Commissioner.” Section 49N continues: “(5) In the exercise of his functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.”

The Office of the Complaints Commissioner was initiated pursuant to the Complaints Commissioner Law (2006 Revision) (CCL).

20.2 PROPOSED AMENDMENTS TO COMPLAINTS COMMISSIONER LAW (2006 REVISION)

20.2.1 Amendments to resolve violations of s 49(N)(5)

Last year the Commissioner suggested that the sections set out below were *prima facie ultra vires* of the Constitution as being a violation of s 49(N)(5) “In the exercise of his functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.” The Attorney General was invited to provide an opinion on the points raised. On 21 November 2005 he wrote that he “was not persuaded that the matters highlighted by the Commissioner are inconsistent with and therefore repugnant to the constitution”. Some of the points were addressed by Cabinet.

CCL s 6(2) Governor appoints staff.

Contention: The OCC must be able to select and appoint appropriate members of staff.

Result: Law amended to provide that the Commissioner appoints staff.

CCL s 6(3) Cabinet sets fees charged by OCC, and can add conditions.

Contention: The OCC must be able to decide if fees are to be charged, and if so, in what amount and what conditions, if any, should be added.

Result: No change.

CCL s 8(2) Cabinet to approve fees paid to appointees under s 8(1).

The OCC can contract the services of experts pursuant to s 8(1). Apparently the Commissioner is not able to set the fee for service – for example, to pay them fair market value. Payment amounts require the approval of Cabinet according to section s 8(2).

Contention: Clarify that the OCC is to set the rate of remuneration. Otherwise Cabinet could choke the ability of the Commissioner to engage experts.

Result: Cabinet invited the question to be clarified in regulations which are now in draft.

CCL s 14(4) The payment of expenses in aid of investigation is ... subject to conditions as may be prescribed [in regulations].

Contention: In theory, if no regulations are made then there can be no payments; and if regulations are made they may be too restrictive. This is a matter of discretion for the OCC.

Result: Cabinet invited the OCC to draft regulations.

CCL s 23(1) Cabinet may make regulations for administration of the CCL.

Contention: The advice of the OCC should be the basis upon which regulations are made.

Result: Cabinet invited the OCC to draft regulations.

20.2.2 Additional amendments

The amendments suggested below concerning power of investigation and protection of whistleblowers remain outstanding. Progress was made on the question of filing reports. In addition, it may be necessary to amend section 18 to better clarify the powers of the OCC to monitor compliance with recommendations made. The OCC must have unrestricted access to entity files for the purpose of conducting sample audits.

20.2.2.1 POWER OF INVESTIGATION

While the investigative powers of the OCC as stated in section 15 are reasonable, one power should be added to facilitate certain investigations. The OCC requires the power to enter private land to further an ongoing investigation against a department – for example, allegations of the failure of Planning Department to complete inspections or to operate a proper compliance unit. A similar power was given to health officers in section 64 of the Public Health Law (2002 Revision).

20.2.2.2 PROTECTION FOR WHISTLEBLOWERS

Whistleblower protection is suggested as an addition to section 15. The General Orders, Chapter 9, paragraph 9.2, address the issue of public servants' conduct. Paragraph 9.2(f)(h) appears to prohibit what might be termed "whistleblowing" – conduct such as breaking confidences to report wrongdoing by superiors in relation to the operation of the department and matters under investigation. This issue may be addressed in the draft Personnel Regulations 2007 which are now under consideration.

20.2.2.3 SILENT FILING

Last year it was stated that reporting to the Legislative Assembly must be regularised and timely. Two options were presented: "silent filing", and introduction of reports by the chairman of the Legislative Assembly Committee on oversight of the OCC. The second option was implemented. However, it still may be appropriate to adopt a process used in other jurisdictions known as "silent filing". A report written by the OCC is deemed tabled when the Clerk places it in the Legislative Assembly on the appropriate table. No introduction is required by a MLA. Upon tabling, the OCC may then publicise the report.

The freedom to report immediately and publicly supports independence, government accountability, and public confidence.

20.2.2.4 SALARY OF COMMISSIONER

The salary of the Commissioner was set by His Excellency the Governor on advice from the Chief Officer, Portfolio of the Civil Service, in accordance with section 5 of the CCL.

It is submitted that the Commissioner should not be in the position of having to make a case for increases in his own salary, especially when the arguments will be presented to members of the Legislative Assembly, some of whom will be responsible for departments under investigation by the OCC. Independence will be bolstered by pegging the Commissioner's salary to that of another office as is done in other jurisdictions – for example, the Auditor General or a puisne judge.

Appendix A Hansard – Second Reading of the CC Bill

Second Reading as recorded in Official Hansard Report 24 September 2003

The Complaints Commissioner Bill, 2003 – selected extracts:

Hon. W. McKeeva Bush: Thank you very much, Madam Speaker. I am very pleased to present this Bill on behalf of Government. For many, many years we have talked about having such an ombudsman in this country and I am pleased that the United Democratic Party has seen fit to bring such legislation for the appointment of such a person.

Madam Speaker, and fellow Members of this Honourable House, as you may be aware,

“Section 49N of the Cayman Islands (Constitution) Order 1972 provides for the enactment of a law relating to the office, functions, jurisdiction and powers of a Complaints Commissioner. The section enables the Governor, after consultation with the Cabinet, to appoint a Complaints Commissioner”.

In light of Government’s continued commitment to open government, and to give people more opportunity to air their grievances, accusations and fault-finding, it is felt that this is an appropriate time for the appointment of such an independent officer whose function would be to ascertain whether injustice has been caused by the improper, unreasonable or inadequate administrative conduct of a Government entity. ...

As Leader of Government Business and Leader of the United Democratic Party I am indeed proud to pilot this legislation today. It has been long in coming promised by many Governments and talked about for probably ever since I have been in this Legislative Assembly and I am the longest serving Member.

This is a milestone in the platform of our administration. Over my near 20 years in Government and even before that, I have known about complaints that never got looked at, heard or addressed. This fundamental piece of legislation, Madam Speaker, will give the public and everybody an avenue to have their complaints investigated and the facts laid before the world.

I am glad that this is here today. When a person is making a complaint it cannot be frivolous but should be of a serious nature. Be assured Madam Speaker, that while this Bill will give the public much scope to have their grievances checked and aired about Government, it will also give a needed avenue for Elected Members and Cabinet persons and other civil servants (this is the side that I like about it) that when allegations are made they can be aired by an independent source.

When a Minister is accused of making somebody lose his job, from any public platform this Ombudsman will check it and air it and say to the world what has happened and when lies are told it will also bring out the truth. ...

I want to thank the Attorney General, his office and the Chief Secretary’s office, the Deputy who is standing in here today, and the Draftsmen for getting it here. We will probably find areas where we would have preferred to see something else but I say to all let us get someone in place because as far as I am concerned there are far too many people willing to accuse, to make allegations and to destroy public servants’ names and destroy elected officials’ names by merely getting up and making accusations that the whole world in their own heart of hearts know could not be so. I am really proud after

being elected here from 1984 to know that finally we are going to have somebody in place to do that.

Mr V. Arden McLean: Thank you, Madam Speaker. A generous gesture from the Leader of Government Business! I rise in support for this Bill for the establishment of a Complaints Commissioner office. This has been around for a very long time as I recall. A long time before I came to the forefront of politics the Minister of Education advocated having a Complaints Commissioner, Ombudsman or whatever we want to call it.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

As has been said before by my colleague, the Elected Member for East End, the Opposition is certainly in support of this Bill. However, I think perhaps in support of the Bill there may be some other areas which are directly affected that we might need to draw some attention to. ...

There is absolutely no question in my mind that, first of all, the Complaints Commissioner (as is said in the very first paragraph of the Memorandum of Objects and Reasons) in the exercise of his functions he would not be subject to the direction or control of any other person. That is exactly how I think it should be; there is no question in my mind about that.

Hon. Samuel Bulgin: Thank you, Madam Speaker.

I rise to give my support to the Bill for a Law to Provide for the Appointment and Functions of a Complaints Commissioner for the Investigation of Administrative Action Taken by Government Entities; and for Incidental and Connected Purposes. ...

In the usual tradition of things, Madam Speaker, I can tell you where an Ombudsman makes a recommendation Government always acts on the recommendation. It is similar to a declaration made by the Grand Court, where in itself it is made against Government it does not carry much force. However, Government in the true spirit of things always acts on the declaration – especially if it is the right of some other person that is involved.



Appendix B Demographics of Closed Cases to 30 June 2006

District	Female	Male	Company
West Bay	4	4	0
Seven Mile Beach	3	9	1
George Town	14	16	5
Airport PO	4	9	1
Savannah	0	5	0
Bodden Town	3	5	0
North Side	2	2	3
East End	1	2	1
Cayman Brac	4	8	0
Little Cayman	0	0	1
USA address	2	0	0
Canadian address	0	2	0
UK address	1	1	0
Jamaican address	0	0	0

Nationality	Female	Male	Company
Afghani	0	1	0
British	1	2	0
Canadian	1	3	0
Caymanian	30	40	12
Cuban	0	1	0
Honduran	1	0	0
Jamaican	2	5	0
Nicaraguan	0	2	0
Filipino	0	2	0
Trinidadian	0	1	0
USA	2	3	0
Information not provided	1	4	0

Age	Female	Male	Company
20-30	3	3	0
31-40	13	18	1
41-50	6	18	1
51-60	5	12	3
61-70	6	5	0
71-80	0	3	0
81+	0	0	0
Information not provided	5	4	9

113 closed cases

Complainants: male, 63; female, 38; local companies, 12

There were 62 additional complaints filed and later categorized as enquiries

And 20 additional cases/investigations open to be resolved in 06-07

Appendix C Intake and Case Flow Process

COMPLAINT RECEIVED

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

Sufficient information? No → Complainant informed about materials to gather

Yes

Informal review determines if evidence is

sufficient for informal resolution or investigation. No → Complaint closed by letter

Yes

Informal resolution 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 HOD

Yes → Resolution and/or Report

RESOLUTION AND/OR REPORT

May include recommendations or comment.

Appendix D Statistics Summary to 30 June 2006

IN-OFFICE SERVICES COMPLETED TO 1 JULY 2005 - 30 JUNE 2006

1. Number of enquiries	459
2. Number of media enquiries	10
3. Number of written complaints closed	174
4. Number of own motion investigations commenced	4
5. Number of own motion reports tabled in Legislative Assembly with recommendations	1
6. Number of recommendations monitored (including own motion)	115
7. Number of recommendations complied with	63
8. Number of recommendations being monitored	52



Cayman Islands

Office of the Complaints Commissioner

CERTIFICATE OF THE AUDITOR GENERAL

To the Members of the Legislative Assembly of the Cayman Islands

Report on the Financial Statements:

I have audited the accompanying financial statements of the Office of the Complaints Commissioner ("The Office"), which comprise the balance sheet as at 30 June 2006, and the operating statement, statement of changes in net worth and cash flow statement, statement of commitments and contingent liabilities for the year then ended and a summary of significant accounting policies and other explanatory notes as set out on pages 47 to 56 in accordance with the provisions of Section 44(3) of the *Public Management and Finance Law (2005 Revision)*.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility for the Financial Statements

My 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 control 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 for the Financial Statements

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Complaints Commissioner as of 30 June 2006, and of its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards.

Report on Statement of Outputs Delivered

I have audited the Statement of Outputs Delivered of the Office of the Complaints Commissioner ("The Office") for the year ended 30 June 2006 as set out on pages 28 & 29 of the Annual Report 2005-06 in accordance with the provisions of Section 44(3) of the *Public Management and Finance Law (2005 Revision)*.

The Statements consist of the following outputs:

- OCC 1 – Public Interest Investigations
- OCC 2 – Monitor Compliance with the Commissioner's Recommendations

Management's Responsibility for the Statement of Outputs Delivered

Management is responsible for the preparation and fair presentation of the Statement of Outputs Delivered in accordance with section 44(2) of the *Public Management and Finance Law (2005 Revision)*. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the Statement of Outputs Delivered that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate criteria and measures to the outputs delivered. Management is required to present the following performance indicators for the Office of the Complaints Commissioner:

- 1) Description of outputs delivered for the year ended 30 June 2006.
- 2) Quantitative measures of the outputs delivered during the year ended 30 June 2006.
- 3) Qualitative measures of the outputs delivered during the year ended 30 June 2006.
- 4) Timeliness measure of the outputs delivered during the year ended 30 June 2006.
- 5) Location of delivery of outputs during the year ended 30 June 2006.
- 6) Financial measures of the actual costs incurred in respect of each output for the year ended 30 June 2006 compared to Budgeted Costs for each output as duly approved in the "Budget 2005/6".

Auditor's Responsibility for the Statement of Outputs Delivered

My responsibility is to express an opinion on the Statement of Outputs Delivered based on our audit. We conducted our audit in accordance with International Standards on Assurance Engagements 3000: Assurance Engagements Other Than Audits of Historical Financial Information. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the Statement of Outputs Delivered is free from material misstatement.

Our audit of the Statement of Outputs Delivered was planned and performed to obtain all information and explanations we considered necessary to form an opinion based on a reasonable level of assurance. Our audit procedures included examining, on a test basis, evidence supporting the amounts and other disclosures included in the Statements and making enquiries of key members of management and the staff of the Office.

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

Overall Scope Limitations

The parameters included for each of the output measures included in these statements have been provided to me by the Complaints Commissioner's management and are solely their responsibility. I do not accept responsibility for the determination of these parameters as the basis of measure for each of the outputs, or for their appropriateness or relevance.

Nor do I accept responsibility for the accuracy of the information contained in the "Description" field of each statement. The information as documented included there in has been determined by the Complaints Commissioner's management in their best judgment and as such its accuracy and relevance are solely their responsibility.

Qualified Opinion for the Statement of Outputs Delivered

OCC 1 – Public Interest Investigations

Cost – The Office did not have a system in place to allocate their cost between the output groups based on the quantities reported, therefore we are unable to determine whether costs were fairly allocated to this output.

Timeliness - There was no means of determining the date that an enquiry was actually addressed. Therefore we could not confirm that they were addressed in the timeframe stated by the Office in the output statement.

In my opinion, except for the effects of such adjustments, if any, as might have been determined to be necessary had we been able to satisfy ourselves as to the accuracy of the cost allocation, and timeliness, the OCC 1 Statement of Outputs Delivered presents fairly, in all material respects, the outputs delivered for the Office of the Complaints Commissioners as of 30 June 2006.

OCC 2 – Monitor Compliance with the Commissioner's Recommendations

Cost – The Office did not have a system in place to allocate their cost between the output groups based on the quantities reported, therefore we are unable to determine whether costs were fairly allocated to this output.

In my opinion, except for the effects of such adjustments, if any, as might have been determined to be necessary had we been able to satisfy ourselves as to the accuracy of the cost allocation, the OCC 2 Statement of Outputs Delivered presents fairly, in all material respects, the outputs delivered for the Office of the Complaints Commissioners as of 30 June 2006.

Matter of Emphasis

Without qualifying the audit opinion we note that the Office of the Complaints Commissioner did not report the Ownership Performance achieved during the financial year as required under subsection 44(2)(d) of the *Public Management & Finance Law (2005 Revision)*.


for Dan Duguay, MBA, FCGA
Auditor General

Cayman Islands
14 April 2008

Office of the Complaints Commissioner

STATEMENT OF RESPONSIBILITY FOR FINANCIAL STATEMENTS

These financial statements have been prepared in accordance with the provisions of the Public Management and Finance Law (2005 Revision).

I 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 (2005 Revision).

To the best of my knowledge the financial statements are:

- (a) complete and reliable;
- (b) fairly reflect the financial position as at June 30th 2006 and performance for the financial year ended June 30th 2006;
- (c) comply with generally accepted accounting practice.



Dr. John Epp
Chief Officer
Office of the Complaints Commissioner

14 April 2008



Mrs. Susan Duguay
Administrative and Investigative Officer
Office of the Complaints Commissioner

14 April 2008

Office of the Complaints Commissioner
OPERATING STATEMENT
FOR THE YEAR ENDED 30 JUNE 2006

	Note	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Revenue				
Outputs to Cabinet		670	670	326
Interest revenue		3	-	-
Total Operating Revenue		673	670	326
Operating Expenses				
Personnel costs	1	308	307	182
Supplies and consumables	2	254	348	141
Depreciation	3	12	15	3
Capital Charge		12	-	-
Total Operating Expenses		586	670	326
Surplus from operating activities and before extraordinary items				
Extraordinary items		-	-	-
Net Surplus		87	-	-

Office of the Complaints Commissioner
STATEMENT OF CHANGES IN NET WORTH
FOR THE YEAR ENDED 30 JUNE 2006

	Note	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Opening balance net worth		77	77	-
Adjustment to opening net worth		3		
Net surplus		87	-	-
Total recognised revenues and expenses				
Capital withdrawal		(87)		
Equity investment		45	45	77
Closing balance net worth		125	122	77

The accounting policies and notes on pages 52 to 56 form part of these financial statements.

Office of the Complaints Commissioner
BALANCE SHEET
AS AT 30 JUNE 2006

	Note	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Current Assets				
Cash and cash equivalents	4	126	42	13
Accounts receivable and prepayments	5	126	78	130
Total Current Assets		<u>252</u>	<u>120</u>	<u>143</u>
Non-Current Assets				
Property, plant and equipment	6	52	52	56
Total Non-Current Assets		<u>52</u>	<u>52</u>	<u>56</u>
Total Assets		<u>304</u>	<u>172</u>	<u>199</u>
Current Liabilities				
Accounts payable	7	33	50	46
Employee entitlements	9	13	-	4
Other current liabilities	8	114	-	53
Total Current Liabilities		<u>160</u>	<u>50</u>	<u>103</u>
Non-Current Liabilities				
Employee entitlements	10	19	-	19
Total Non-Current Liabilities		<u>19</u>	<u>-</u>	<u>19</u>
Total Liabilities		<u>179</u>	<u>50</u>	<u>122</u>
TOTAL ASSETS LESS TOTAL LIABILITIES		<u>125</u>	<u>122</u>	<u>77</u>
NET WORTH				
Accumulated Contributed capital		125	122	77
Total Net Worth		<u>125</u>	<u>122</u>	<u>77</u>

The accounting policies and notes on pages 52 to 56 form part of these financial statements.

Office of the Complaints Commissioner
CASH FLOW STATEMENT
FOR YEAR ENDED 30 JUNE 2006

	Note	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
CASH FLOWS FROM OPERATING ACTIVITIES				
Receipts				
Outputs to Cabinet		674	682	218
Interest received		2	-	-
Payments				
Personnel costs		(299)	(307)	(178)
Suppliers		(302)	(375)	(73)
<i>Net cash flows from operating activities</i>	11	75	0	(33)
CASH FLOWS FROM INVESTING ACTIVITIES				
Purchase of non-current assets		(7)	(15)	(31)
<i>Net cash flows from investing activities</i>		(7)	(15)	(31)
CASH FLOWS FROM FINANCING ACTIVITIES				
Equity investment		45	45	77
<i>Net cash flows from financing activities</i>		45	45	77
<i>Net increase/(decrease) in cash and cash equivalents</i>		113	30	13
Cash and cash equivalents at beginning of period		13	12	
Cash and cash equivalents at end of period		126	42	13

The accounting policies and notes on pages 52 to 56 form part of these financial statements.

Office of the Complaints Commissioner
STATEMENT OF COMMITMENTS
AS AT 30 JUNE 2006

Type	One year or less	One to five years	Over five years	Total
	\$000	\$000	\$000	\$000
Capital Commitments	-	-	-	-
Land and buildings	-	-	-	-
Other fixed assets	-	-	-	-
Other commitments [list separately if material]	-	-	-	-
Total Capital Commitments	-	-	-	-
Operating Commitments				
Non-cancellable accommodation leases	-	-	-	-
Other non-cancellable leases	-	-	-	-
Non-cancellable contracts for the supply of goods and services	-	-	-	-
Other operating commitments	-	-	-	-
Total Operating Commitments	-	-	-	-
Total Commitments	-	-	-	-

The accounting policies and notes on pages 52 to 56 form part of these financial statements.

Office of the Complaints Commissioner
STATEMENT OF CONTINGENT LIABILITIES
AS AT 30 JUNE 2006

Summary of Quantifiable Contingent Liabilities

	\$000
Legal Proceedings and Disputes	
None	-
Total Legal Proceedings and Disputes	-

Other Contingent Liabilities

None	-
Total Other Contingent Liabilities	-

Summary of Non-Quantifiable Contingent Liabilities

None

The accounting policies and notes on pages 52 to 56 form part of these financial statements.

Office of the Complaints Commissioner
STATEMENT OF ACCOUNTING POLICIES
For the year ended June 30, 2006

General Accounting Policies

Reporting entity

These financial statements are for the Office of the Complaints Commissioner. The Office was established in July 2004 under the Complaints Commissioner Law (2003). The Complaints Commissioner Office is located at 202 Piccadilly Centre 28 Elgin Avenue.

Basis of preparation

The forecast financial statements have been prepared in accordance with International Public Sector Accounting Standards (IPSASs) using the accrual basis of accounting. Where there is currently no IPSAS, other authoritative pronouncements such as International Financial Reporting Standards and United Kingdom reporting standards applicable to the public sector have been used. The measurement base applied is historical cost adjusted for revaluations of certain assets.

The financial statements have been prepared on a going concern basis and the accounting policies have been applied consistently.

Reporting Period

The reporting period is the period ended 30 June 2006. The 2005/06 budget figures presented in the financial statement are the amounts included in the annual budget statement for the financial year ended 30 June 2006.

Specific Accounting Policies

Revenue

Output revenue

Revenue is derived from outputs provided to Cabinet. Revenue is recognised when it is earned.

Interest revenue

Interest revenue is recognised in the period in which it is earned.

Expenses

General

Expenses are recognised when incurred.

Depreciation

Depreciation of non-financial physical assets is generally provided on a straight-line basis at rates based on the expected useful lives of those assets.

Capital Charge

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

Assets

Cash and cash equivalents

Cash and cash equivalents include cash held in the Office of the Complaints Commissioner bank account and on deposit with the Portfolio of Finance and Economics (Treasury).

Accounts Receivables and advances

Receivables and advances are recorded at the amounts expected to be ultimately collected in cash.

Office Equipment

Office equipment, is recorded at cost (or fair value if acquired prior to 2006) less accumulated depreciation.

Computer Hardware and Software

Computer hardware and software are recorded at cost, and depreciated in accordance with the policy on depreciation.

Depreciation of office equipment and computer hardware and software is calculated using the straight-line method at the following rate, to allocate the cost of the assets over their estimated useful lives:

Computer equipment	3-6 years
Office Equipment	3-10 years

Liabilities

Accounts Payable

Accounts payable are recorded at the amount owing after allowing for credit notes and other adjustments.

Provisions

Provisions are recognised in accordance with IPSAS 19 Provisions, Contingent Liabilities and Contingent Assets.

Employee entitlements

Amounts incurred but not paid at the end of the reporting period are accrued. Annual leave due, but not taken, is recognised as a liability.

Long service leave liabilities are measured as the present value of estimated leave service entitlements.

Pension Obligation

Pension contributions for employees of the Office of the Complaints Commissioner are paid to the Public Service Pension Fund ("The Fund"). The Fund is administered by the Public Service Pensions Board and is operated as a multi-employer non-contributory fund, whereby the employer pays both the employer and employee contributions. Prior to 1 January 2000 the scheme underlying the Fund was a defined benefit scheme. With effect from 1 January 2000 the Fund had both a defined benefit and a defined contribution element. Participants joining after that date became members of the defined contribution element. Pension scheme contributions are included in personnel costs in the operating statement.

The Public Service Pension Liability for all civil servants (both current and past) is an executive liability managed by the Hon. Financial Secretary. This liability is reported on the Hon. Financial Secretary's executive financial statements.

Office of the Complaints Commissioner
NOTES TO THE FINANCIAL STATEMENTS
For the year ended June 30, 2006

NOTE 1. PERSONNEL COSTS

	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Salaries and wages (including employee pension contributions)	294	292	174
Employer/Government pension expense	14	15	8
Total Personnel Costs	308	307	182

NOTE 2. SUPPLIES AND CONSUMABLES

	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Supply of goods and services	217	304	128
Operating lease rentals	37	44	13
Total Supplies and Consumables	254	348	141

NOTE 3. DEPRECIATION

	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Furniture and fittings	5	15	2
Computer hardware and software	7		1
Total Depreciation	12	15	3

Assets are depreciated on a straight-line basis as follows:

	Years
Furniture and fittings	6
Computer hardware and software	4-5
Office equipment	5 1/3

NOTE 4. CASH AND CASH EQUIVALENTS

	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Bank accounts	126	42	13
Total Cash and Cash Equivalents	126	42	13

NOTE 5. ACCOUNTS RECEIVABLE AND PREPAYMENTS

	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Outputs to Cabinet	104	78	108
Outputs to other government agencies	19	-	19
Insurance Advance	2	-	-
Prepayments	-	-	3
Interest Receivable	1	-	-
Total Gross	126	78	130
Less provision for doubtful debts	-	-	-
Total Net	126	78	130

NOTE 6. PROPERTY, PLANT AND EQUIPMENT

DESCRIPTION	COMPUTER HARDWARE	COMPUTER SOFTWARE	OFFICE EQUIPMENT, FURNITURE & FITTINGS	TOTAL
Cost				
At beginning of year	6	27	26	59
Additions	-	-	8	8
Cost at June 30, 2006	6	27	34	67
Depreciation				
At beginning of year	1	-	2	3
Depreciation Charge for the year	1	6	5	12
Accumulated Depreciation at June 30, 2006	2	6	7	15
Net Book Value at June 30, 2006	4	21	27	52
Net Book Value at June 30, 2005	5	27	24	56

NOTE 7. ACCOUNTS PAYABLE

	2005/06 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Trade Creditors	2	50	-
Accruals	31	-	46
Total	33	50	46

NOTE 8. OTHER CURRENT LIABILITIES

	2005/06 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Creditor due to cabinet/other ministries	114	-	53
Total	114	-	53

NOTE 9. EMPLOYEE ENTITLEMENTS (CURRENT)

	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Long service leave and other leave entitlements	13	-	4
Total Employee Entitlements	13	-	4

NOTE 10. EMPLOYEE ENTITLEMENTS (NON-CURRENT)

	2005/6 Actual \$000	2005/6 Budget \$000	2004/5 Actual \$000
Long service leave and other leave entitlements	19	-	19
Total	19	-	19

**NOTE 11. RECONCILIATION OF OPERATING SURPLUS TO CASH FLOWS
FROM OPERATING ACTIVITIES**

	2005/6 Actual \$000	2005/6 Budget This Year \$000	2004/5 Actual \$000
Operating surplus/(deficit)	87	-	-
Non-cash movements			
Depreciation	12	15	3
Increase in provision for doubtful debts	-	-	-
(Decrease)/Increase in payables/accruals	(30)	(49)	94
Decrease/(Increase) in receivables	6	70	(130)
Net cash flows from operating activities	75	36	(33)

NOTE 12. COMPARATIVE INFORMATION

Certain balances have been reclassified to conform to the current year's financial statement presentation.

Staff photo

