



# Annual Report 2019





## OMBUDSMAN FOR BERMUDA

26<sup>th</sup> June 2020

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

Dear Honourable Speaker:

I have the honour of presenting my Annual Report which covers 1<sup>st</sup> January to 31<sup>st</sup> December 2019.

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

### **Annual and Special Reports**

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

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

Yours Sincerely,

Victoria Pearman  
Ombudsman

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## OMBUDSMAN MESSAGE

I am pleased to present the Annual Report 2019 on the work of the Office for the period of 1st January through 31st December 2019. In 2019, we were contacted about 214 complaints and 49 enquiries for a total of 263 cases. The Office worked diligently to address these new cases. Overall we handled 299 cases including those carried over. We progressed cases well during this time of transition, although we were short-staffed for part of the year.

We successfully resolved several systemic matters without the need for formal investigation. Even where investigations are ongoing, authorities have taken actions to address concerns we identified. In this year's Report we have provided updates on systemic investigations, which relate to senior abuse complaint handling, public bus schedule communications and delayed applications for criminal injuries compensation. There was improved follow-up on senior abuse complaint handling. The Authority acknowledged that alternative ways of communicating public bus service cancellations and delays were required for true accessibility. In criminal injuries compensation, legislative changes were made.

As Ombudsman, my duty is to protect the interests of the public to ensure fair treatment in the provision of public services. In doing so, we prioritise safeguarding the needs of the most vulnerable. Some of the people we have assisted this reporting year include the elderly and young in care; persons with physical and mental health challenges; children with special educational needs; the indigent; the unsheltered and people who have lost their liberty. These are areas where systems have not always provided what was needed.

Access and communication are central themes. Our aim is to provide information and assistance for public services to be accessed fairly. We identified that fair access required making accommodations for service users due to physical, mental, literacy or other challenges.



We encouraged streamlining the process wherever possible, recognising obstacles faced and assisting service users with administrative requirements. This is a customer-focused approach.

Access to justice is a concern. The cost of legal advice and legal representation is beyond the reach of many working people. This may deprive people of accessing legal remedies when they have grievances. Legal aid is not always available to those who need it. An increasing number of litigants in person are left to navigate the Courts as best they can to seek redress.

Access to information and good communication are important to the public. In the provision of public services, users are entitled to be kept informed and told when there are changes in services in an appropriate, reliable way. We continued to monitor the communication on various matters.

People need a straightforward, direct means of raising concerns with public service providers. Our recommendation that Government implement an internal complaint system to receive complaints and feedback was accepted and work is well underway. This will be beneficial to both the public and authorities during these critical times. We look forward to its completion.

Ours is an office of last resort. We are here to assist when people are unsure where they can turn. During the period of compiling this report, our island has been contending with the effects of the COVID-19 pandemic. We along with people all over the world have had to adapt as best we can to this new reality we are currently living in. This pandemic has been a shock to the system. It has highlighted existing weaknesses and revealed additional vulnerabilities.

As a community, we are all affected. We heard concerns about physical vulnerability to the virus itself and emotional vulnerability as we and those who rely on us grapple with grief, anxiety, separation and greater uncertainty about what the future holds. All of these extraordinary circumstances illuminate the significance of the work we do at the Office and the areas we focused on in 2019 which we continue to give our attention.

People have looked out for those in need and have been appreciative for what they have received. This is a double blessing as thankfulness and giving are protections against feelings of despair. Our sincere thank you to all those working to keep us protected, sustained and cared for on and off the frontline, including community partners. We have provided timely 'Did you know' excerpts in this Report and thank all offices who contributed information.

Effective public communication is indispensable, especially now. Efforts must continue to ensure that those who do not access information by internet are included. We recommended official briefings on social media be broadcast, by traditional means, on the Government's emergency radio station for a period of time and the Government television station, CITV. This was necessary and welcomed during the height of the shutdown, when public information on commercial stations was limited.

We were mindful of the importance of forwarding our office phones to be answered directly rather than rely on voicemail and email only. We encouraged others to do the same.

Access to information corresponds with access to services. Those addressing the public must be mindful of this. It is unhelpful if people are directed only to online platforms to complete applications or ask questions when they are unable to do so. As the Government looks to advance e-Government usage, this will require consideration of ways to assist members of the public, including the vulnerable, who are not connected to the internet.

Our role is to safeguard access to administrative justice. We provide people who have unresolved complaints an alternative means of fairly resolving them. We carefully listen to concerns and are alert to identify things that are not working. We use the information gathered, through our privileged position with the public, to learn. Our professional relationship with the public service and the Government allows us to bring issues forward to be addressed.

We acknowledge the work of the Government and the public service to keep the people of Bermuda protected and well-informed during these perilous times. Members of the public will be aware of the strain on the system and its resources.

We are encouraged by efforts we have seen by authorities. The Acute Community Mental Health Services mentioned on page 25 and the Department of Corrections, both mentioned in this Report on page 30 are examples where authorities have responded to assist service users. The Department of Financial Assistance provided a computer on site for their clients to access information needed for reassessments.

We are encouraged by all the country has achieved quickly, through collective effort. In the midst of a pandemic, people came together in a series of protests against racial injustice in solidarity with world-wide protests, the largest of which saw an estimated 7,000 people in attendance. We are the descendants of intrepid women and men who took on whales and looked hurricanes in the eye.

Our foreparents invented industries when Bermuda needed island tourism and captive insurance. It is a part of us to be innovative, to survive and to thrive. Together we can do this.

My sincere thanks to members of the public who continue to entrust us with their complaints. Complaints brought to our attention help to identify areas of general concern. I also thank those who work in the various areas of the public service for their work, assistance and cooperation. My appreciation to all my colleagues for their knowledge and support.

A very special thank you to my team at the Office of the Ombudsman for their invaluable support. Their vision, knowledge, commitment and hard work ensure our Office is accessible and responsive. Thanks also to our summer interns, Ms. Ailey McLeod, a 2019 University College Utrecht graduate and Ms. Saeluhn Fray, a third year student at Kingston University. My thanks to all those who have contributed to the achievements of this Office.



Victoria Pearman  
Ombudsman for Bermuda

**And let us not be weary in well doing: for in due season we shall reap, if we faint not.**

**Galatians 6:9 (King James Version)**



Photo credit  
Christine Jones

# OMBUDSMAN'S OFFICE STAFF



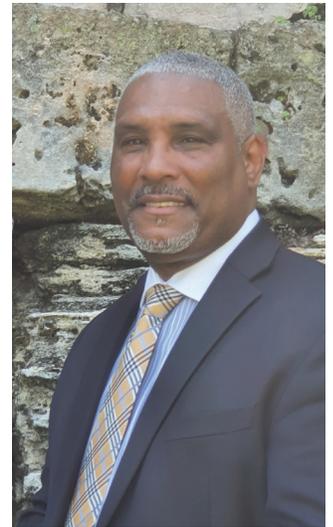
**VICTORIA PEARMAN**  
Ombudsman



**ROBYN EVE**  
Executive Assistant



**AQUILAH FLEMING**  
Investigations Officer



**HOWARD EBBIN**  
Investigations Officer



**SHAUN DILL**  
Manager, Finance  
& Administration



**BARRY FLEMING**  
Temporary Senior  
Ombudsman Specialist



**LAKAI DILL**  
Investigations Officer



**KRISTEN AUGUSTUS**  
Complaints Assistant



**AILEY MCLEOD**  
Summer Intern 2019



**SAELUHN FRAY**  
Summer Intern 2019

**SPECIAL THANKS TO**



**CATHERINE HAY**  
former Deputy Ombudsman / Investigations Officer



**LAMUMBA TUCKER**  
former Manager, Finance & Administration

for their years of dedicated service, commitment to the work of the Office and for the valuable contributions they have made.

## MISSION AND VALUES

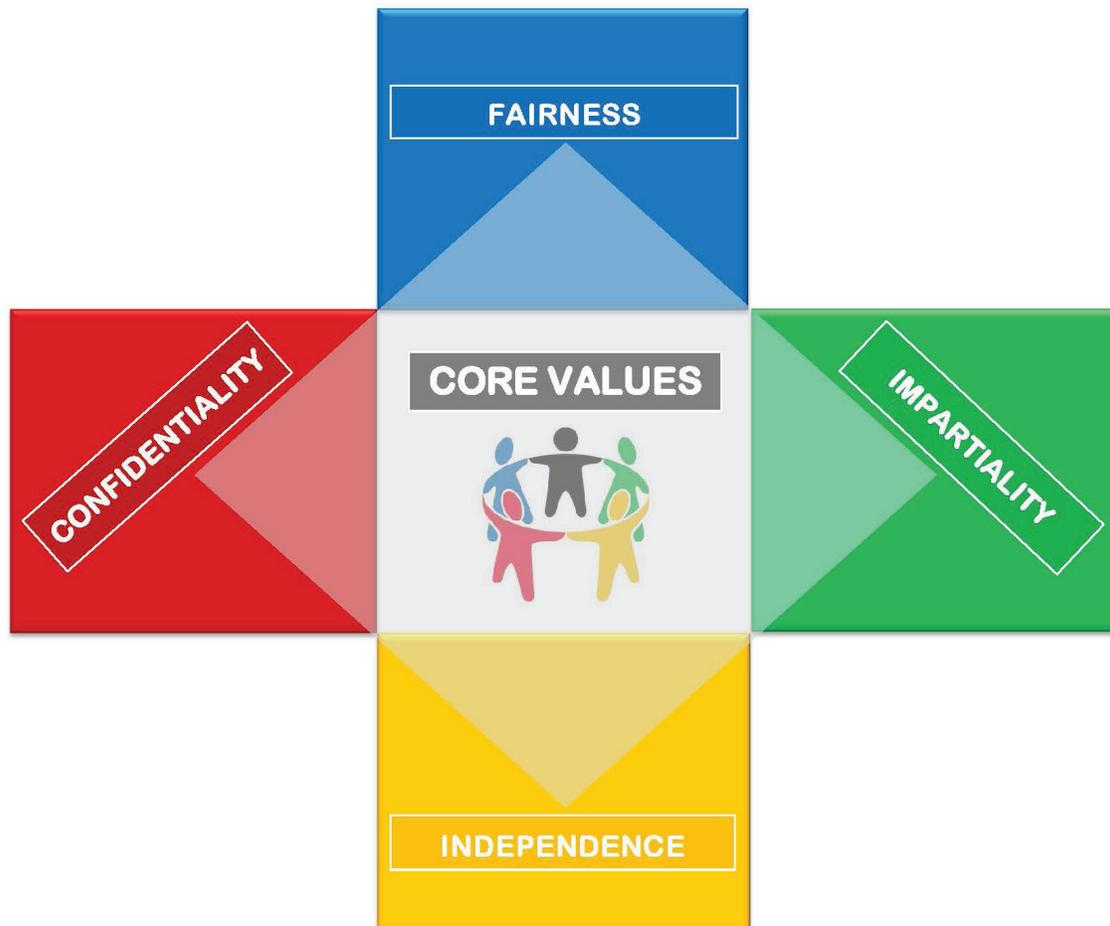
We protect the interest of the public by providing independent resources and interventions for individuals with complaints about public services, while influencing improvement in standards of those services to ensure people are treated fairly.

*Portuguese Translation:* Nós protegemos o interesse do publico providenciando independentes recursos e intervencao para indivíduos com problemas de serviços públicos oferecendo melhorias a esses servicoes com a certeza que as pessoas sejam tratadas com justiça.

To achieve our mission, we aim to:

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

**Our core values include:**



## OVERVIEW

The Ombudsman's strategic aims for her term are:

- Greater public access,
- Greater public awareness, and
- Championing best practice.

Our team has continued to work diligently to achieve these aims as we strive for greater accountability to the public, the Legislature, the Government and the Public Service – all of whom have a vested interest in the success of this Office.

In our Annual Report 2019, we report on these efforts and our progress during this Office's 14th year in service, using the Ombudsman's strategic aims for its structure.

- The second section on '**Greater public access**' describes how the public can reach us and our outreach activities.
- The third section on '**Greater public awareness**' reviews our complaint handling through summaries of cases and statistics, to help show how we do what we do. It also highlights information we learn about public authorities and their processes as we carry out our work.
- The fourth section on '**Championing best practice**' identifies useful resources on what good administration means and our recent activities to improve our case management practices and outreach efforts to public authorities.

We welcome your feedback about our services and this publication.

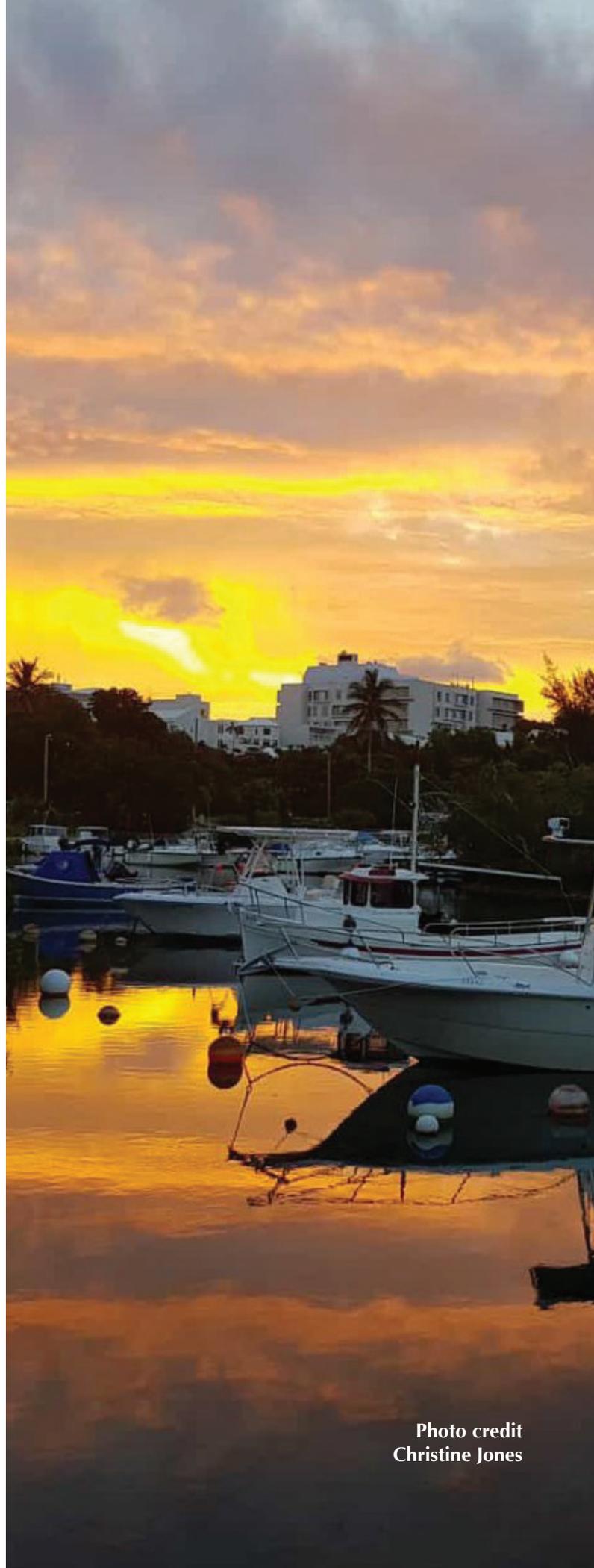


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Christine Jones

## STRATEGIC AIM I: GREATER PUBLIC ACCESS

### HOW TO MAKE A COMPLAINT

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

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

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

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

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

Remember we are here to assist you.



#### ADDRESS:

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

#### OFFICE HOURS:

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

#### CONTACT:

Tel: 441-296-6541  
Fax: 441-296-7734

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

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

Online: [www.ombudsman.bm](http://www.ombudsman.bm)

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



## OMBUDSMAN 'OUT AND ABOUT'

2019 was a busy year for the Ombudsman and the Office as we gave orientation presentations, attended local seminars, engaged in community outreach and participated in special events. These provided valuable opportunities for us to share about the Ombudsman's work as well as meet and network with colleagues.

The Ombudsman enjoys speaking and interacting with Bermuda's young people. In February Ms. Pearman visited P3 Liverpool and Paget Primary's 'Black History Museum', in what has become an annual tradition. In April the complaint team made their annual presentation to Youth Parliament. In May the Ombudsman visited students at Success Academy and impressed upon them how valuable they are and reminded them that they were not defined by mistakes or circumstances. Ms. Pearman also encouraged the students not to let others place limitations on them and to never give up on their dreams, because Bermuda is counting on them.

Outreach to authorities is also an important part of the work of our Office. During the month of March the Ombudsman, Deputy Ombudsman Catherine Hay and Investigations Officers LaKai Dill and Aquilah Fleming attended the offices of the Human Rights Commission, Labour Relations and Consumer Affairs. Our complaint team met with staff and held general discussions on complaint handling they felt our Office could assist with and the potential for further training and support.

During the month of October there were a number of opportunities for engagement. The Ombudsman and Investigations Officer LaKai Dill, were invited to participate in the Bermuda Mental Health Situational Analysis with experts from the Pan American Health Organization and from Public Health England. Ms. Pearman and Ms. Dill engaged in discussions on the current state of mental health in Bermuda and offered suggestions on how it can be improved, as did colleagues and other stakeholders. The Ombudsman also attended Kennedys Bermuda Hot Topics Seminar, the Bermuda Arts Council Awards Ceremony and the Ministry of Health's 'Celebrating Wellness' Expo which was held in nearby Victoria Park.

In November our Office set up an information table at the Portuguese Community Block Party on Reid Street alongside our colleagues from the Information Commissioner's Office. Investigations Officer Aquilah Fleming, Executive Assistant Robyn Eve and Complaints Assistant Kristen Augustus shared information about the Ombudsman's Office and answered questions from members of the public. Special thanks to Mount Saint Agnes Grade 12 student, Ines Bolarinho, who was available to assist with translation. Ms. Bolarinho also translated our revised mission statement from English into Portuguese. The mission statement is now displayed in the foyer of our Office in both languages.



## PATI UPDATE

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

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

From 1 January to 31 December 2019, our Office did not receive any PATI requests from the public. Likewise no requests were received in previous years. To obtain a copy of our PATI Information Statement (last updated January 2020) and learn about records that can be made available to the public, stop by our Office or visit our website to download it.

## ACCESSING PUBLIC INFORMATION

We continue to learn about the Government's efforts to inform the community about its work. We also observe how public authorities are working to streamline their work.

The Ombudsman advocates for authorities to produce information for the public to learn about their services and processes. One such area is having an internal complaint handling process, which includes ensuring that such information is accessible to everyone. We believe that the authorities' effective complaint handling will allow them to resolve complaints more quickly and provide them with useful lessons on how to improve, even before reaching our Office. Various authorities have taken the lead to ensure their publications, including pages on the Government's website, describe how service-users may raise feedback or concerns about their experiences.



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Brandon Morrison Photography

## STRATEGIC AIM II: GREATER PUBLIC AWARENESS

### OVER A DECADE OF COMPLAINTS

Since opening our doors in 2005, we have handled over 2,340 individual complaints. We can break down our handling of complaints into four basic categories:

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

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

**Figure A: Complaints 2005 – 2019**

Year	Start	End	Open	Disposed of*	Referred	Declined	Total per year
1	2005 Aug	2006 Jul	22	57	47	11	137
2	2006 Aug	2007 Jul	29	44	44	17	134
3	2007 Aug	2008 Jul	35	53	20	21	129
4	2008 Aug	2009 Jul	35	29	53	26	143
5	2009 Aug	2010 Jul	58	44	80	66	248
5 Interim	2010 Aug	2010 Dec	21	5	30	34	90
6	2011 Jan	2011 Dec	48	23	54	78	203
7	2012 Jan	2012 Dec	47	30	57	32	166
8	2013 Jan	2013 Dec	45	26	38	36	145
9	2014 Jan	2014 Dec	55	11	42	20	128
10	2015 Jan	2015 Dec	32	21	61	47	161
11	2016 Jan	2016 Dec	53	65	24	15	157
12	2017 Jan	2017 Dec	32	43	23	28	126
13	2018 Jan	2018 Dec	30	57	31	48	166
14	2019 Jan	2019 Dec	25	59	26	104	214
<b>Total per category</b>			<b>567</b>	<b>567</b>	<b>630</b>	<b>583</b>	<b>2,347</b>
<b>Average per category</b>			<b>41</b>	<b>41</b>	<b>45</b>	<b>42</b>	<b>168</b>

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

### CASEWORK IN 2019

From 1 January to 31 December 2019, we worked to address a total of 299 cases (see Figure B). This included:

- enquiries people made to us – 49,
- new complaints opened in 2019 – 214, and
- outstanding complaints we carried into 2019 from previous years – 36.

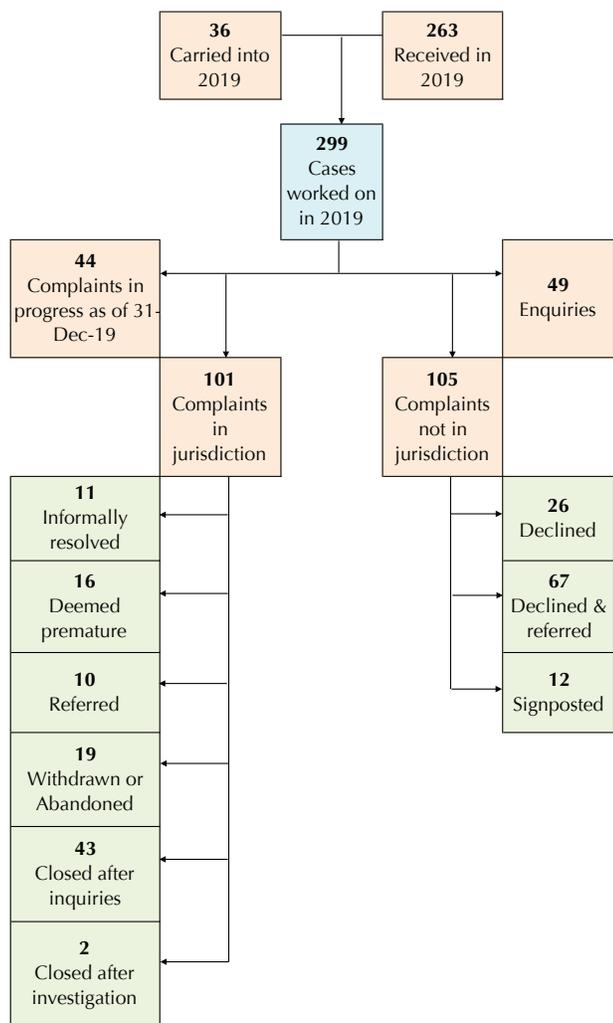
To summarise new cases opened in 2019:

- We received 263 new cases: 214 complaints + 49 enquiries.
- Of the 214 complaints, we found that 85 were in our jurisdiction and 104 were not. The remaining 25 were open at year-end.
- We assisted 79 of the 104 that were Declined with additional resources, plus 26 of those 85 within jurisdiction – giving a total of 105 that were Referred. We helped them raise their issues with the right entity or directed them back to the authority complained of.
- 17 complaints were Abandoned or Withdrawn by the complainant.
- 10 complaints were resolved between the complainant and the authority with informal and limited intervention by us.
- 32 were Closed After Inquiries.
- 29 people came back to us again, either raising separate issues or bringing up the same issue later, accounting for 67 cases and thus 25% of 2019 cases. We do not always record a caller's name if the initial call addresses the question completely and we close it as an 'enquiry'.
- 49 new enquiries were made. These are cases when people contacted us to seek information, without making a complaint. Due to the nature of our work, we are routinely learning about the services of public authorities and some private organisations in the community. Our enquiry

process translates this information into a resource for members of the public who may need assistance on where to go to address their issues. The enquiry process seeks to add value to all persons who come to our Office for assistance. On average, enquiries make up 35% of our caseload.

For the 299 cases worked on in 2019, we closed 255 by year's end, and the remaining 44 were open on 1 January 2020 (see Figure E). Of those 44 cases carried over into 2020, 7 were closed by 28 February 2020, leaving a total of 37 cases open that had been received either in 2019 or years prior – including 5 from 2017.

**Figure B: Cases worked on in 2019**



For a description of our complaint process and dispositions, see pages 53 - 56.



Figure C: Cases received in 2019 by Authority

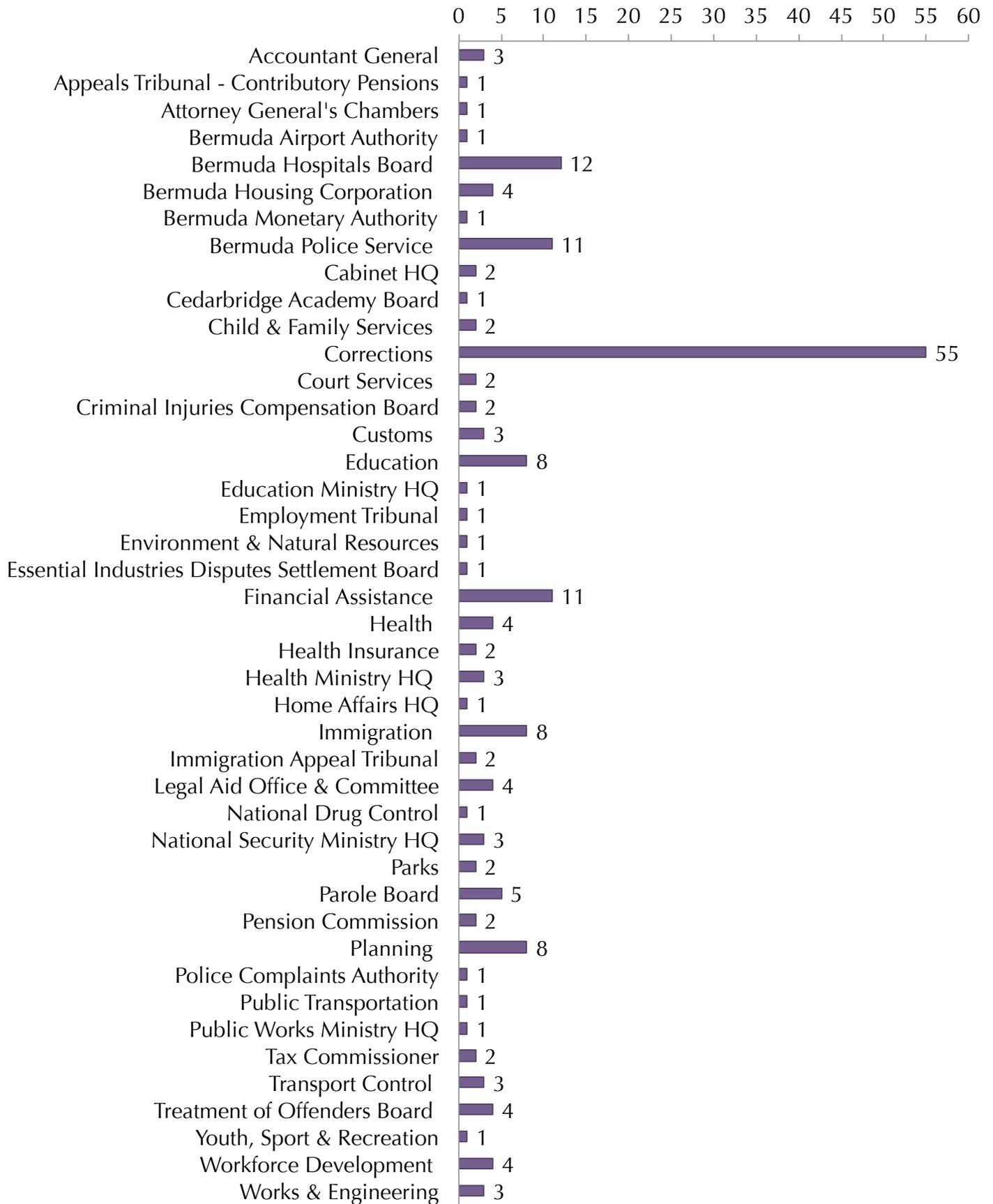
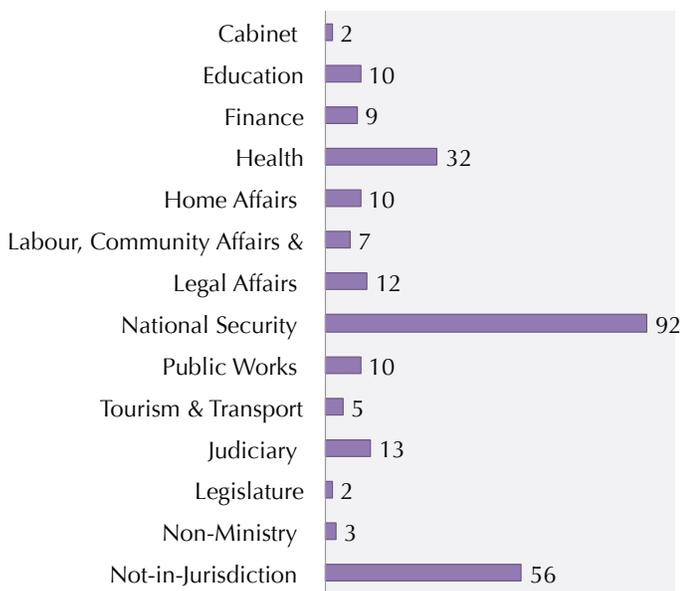


Figure C shows the total for new cases in 2019 by each authority, excluding authorities which are a Non-Ministry or other bodies Not-in-Jurisdiction. These numbers represent complaints and enquiries made, not findings of the Ombudsman in relation to the cases. Counts also do not indicate whether the complaints were upheld by the Ombudsman through our inquiries. Authorities with a higher volume of public interaction – and more service-users – might lead to a greater proportion of complaints made to the Ombudsman. For instance, complaints received about the Department of Corrections peaked at a total of 55; see page 31 for a commentary on the relationship between prison complaints and the Parliamentary Ombudsman.

Figure D summarises the new cases received in 2019 by the relevant Ministry according to the Government’s organisational chart at year-end. (As of April 2019, changes were made to the organisation of Ministries, departments, and other bodies under the Government’s responsibility.) The graph also includes two other categories: ‘Non-Ministry’, which are Government-funded bodies that are not part of a Ministry; and ‘Not-in-Jurisdiction’, which are bodies not subject to the Ombudsman Act.

**Figure D: Cases received in 2019 by Ministry**



## OUTSTANDING COMPLAINTS

During 2019, we succeeded in addressing and closing 17 of the 36 complaints that were opened in prior years. Out of these 17 closed cases, we resolved 65% after inquiries that we considered to have reasonably satisfied the issues. Out of the 21 cases being prepared to be investigated or being progressed through an investigation, 5 remained open from 2017.

**Figure E: Complaints carried into 2020**

Complaint Status as at 31-Dec-19	Year opened			TOTAL
	2019	2018	2017	
Intake*	7			7
Facilitated resolution	15		1	16
Pre-investigation	2	9	1	12
Investigation	1	5	3	9
<b>Total complaints carried into 2020</b>	<b>25</b>	<b>14</b>	<b>5</b>	<b>44</b>
Complaints carried into 2020 then closed by 28-Feb-20	6	1		7
<b>Total complaints carried into 2020 &amp; open as at 1-Mar-20</b>	<b>19</b>	<b>13</b>	<b>5</b>	<b>37</b>

*\*For cases carried into 2020 at the intake stage, 70% were less than 1 month old, and 30% more than 5 months old.*

Even after we close cases which have been investigated, our work may continue. We follow-up with authorities about progress with implementing the Ombudsman’s formal recommendations and other suggestions, which were made to improve the delivery of public services. Two investigations concluded in 2019 led to a total of 13 general recommendations, 6 of which are listed below:

1. The Department of Immigration should post a more detailed notice about name change evidence required for Bermuda passport applications, to amend what is currently on [www.gov.bm](http://www.gov.bm), and make such notice available to potential applicants.

2. The Department of Immigration should include as a procedural requirement in its Bermuda passport application process to contact applicants where there is any question or difference on the desired name change at an early stage after the application is reviewed and that such steps be recorded on file.
3. The Department of Education should systemically review its current record-keeping practices for handling complaints and concerns about students' public-school education. As a result, the Department should produce written internal guidance for a revised process to address gaps identified.
4. The Department of Education should publish information for parents about the process for complaining to the Department about a student's public-school education. The published information should include written guidance on expected standards for the delivery of public educational services, templates for recording these requests, both written and verbal, as well as summaries of the Authority's work to resolve past complaints.
5. The Department of Education should monitor how information is recorded on school files for students receiving special education services, such that basic information is fully and consistently recorded on documents, including whether draft or final, all relevant boxes are checked, dates for when it is created or finalised, the author and who was involved, and subject matters.
6. The Department of Education should update its 2010 review of how its compliance with the Government's 2007 'National Policy for Disabilities' is in alignment with Plan 2022 and any other more recent guidance.



Photo credit  
Christine Jones

## SELECTED CASE SUMMARIES & DID YOU KNOWS

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

Here is a selection of anonymised complaints that were closed by our Office in 2019. These complaints resulted in information that we have chosen to share for its public benefit, including reflections on each case. Complainant details have been altered to protect confidentiality. We also include useful 'did you know' information.

### CASE SUMMARY: SHORT AND SWEET (LIKE THE OMBUDSMAN!)

Our Office is regularly contacted by people seeking assistance. Unfortunately we are unable to assist in all matters. We are governed by legislation which imposes limitations on what we can do. However, this does not mean that we are tone-deaf to the needs of the people who bring their concerns to us. Here are three "short and sweet" examples where our Office intervened and we assisted women and men who had problems that were not contemplated by the powers we derive from the Ombudsman Act.

First, a woman contacted us to complain about the corporate governance of a voluntary organisation of which she was a member. She felt that annual general meetings, board minutes, and the timely dissemination of corporate information was lacking. She was frustrated. We did not have jurisdiction to progress her complaint, but it is our goal to always assess how we might be able to provide assistance in other ways. We aim to say yes before we say no. Rules are important to what we do but we are not meant to create rules that limit our ability to assist people. The ombudsman institution was created, in part, to offer people who are overwhelmed by bureaucracy somewhere to turn. Even when we are unable to do anything else, we listen. Even where we lack jurisdiction to investigate, we persuade and encourage resolutions and preservation of relationships. We determined that the organisation of which she was a member was not a public authority over which we had jurisdiction, that is, the legal right to investigate. Regardless, we ascertained how she might proceed and gave her general information as to who to contact in order to resolve the issue. This took some staff effort but we were pleased to be able to assist a member of the public, although it was not in the traditional ombudsman way. This was very much appreciated by the woman who contacted us.

Second, we received a call from a leader in a citizens-formed advocacy group claiming the Government had issued a general directive that any emails emanating from them would not receive a response. While it should be a last

resort, we contacted public officers in other authorities who could help resolve her allegations. We assisted by providing timely and helpful information to assist this individual in contacting the appropriate agencies that had the potential to address her grievances.

Lastly, we were contacted by a woman who alleged unreasonable delay with respect to having her complaint investigated by the Human Rights Commission (“HRC”). She felt that those allegations were, in fact, serious, yet her concerns were not being taken seriously. She alleged that a former employer discriminated against her based on her gender and race. Our inquiries revealed the HRC had experienced problems with their electronic file management system. We had a meeting with officials from that Authority and determined that the woman’s complaint was under active investigation and that there had been problems in gathering relevant documents and contacting witnesses. As the matter was progressing through the HRC processes and as an office of last resort, we were obliged to stand down and let the HRC investigation proceed. However, we did not stop there: we encouraged officials from the HRC to be mindful of improving the Authority’s communication particularly while experiencing technical problems that were affecting its communication. We also encouraged the woman who made the complaint to be more open with the Authority and to give them an opportunity to conclude the investigation which was underway.

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

**Don’t expect to see a change  
if you don’t make one.**

**- Anonymous**

## **COMMENTARY: CICB Update**

The Criminal Injuries Compensation Board (“the Board”) is mandated to provide compensation to those who have suffered physical and mental harm as a result of being victimised by crime. Its purpose is to identify this society’s empathy and concern for those victims.

For some time, our Office has had concerns about significant delays individuals have experienced getting their applications processed by the Board. During the reporting period, we continued an own motion investigation into the Ministry of Legal Affairs and the Board to assist in our understanding of the issue. We requested a detailed amount of documentary evidence including, but not limited to, the following:

1. Documentation for the calendar years 2016, 2017, 2018 and 2019 (up until 15 October) including:
  - a. The number of applications received and disposed of,
  - b. The number of times the Board met and the minutes of those meetings,
  - c. Copies of all Orders issued by the Board,
  - d. Budgets allocated to the Board and actual expenditures
2. Copies of all Regulations made pursuant to Section 6A of the Criminal Injuries (Compensation) Act 1973 (“the Act”).
3. Copies of the policies and procedures utilised by the Board in hearing and assessing applications including tariffs for determining compensation under the Act.
4. A selection of 10 files for each of the calendar years listed above to be selected at random by a member of the Ombudsman’s Office.

We are able to report that we had the full cooperation of all parties. The Ombudsman had an open, frank and very productive meeting with the (then) Chair of the Board. It provided our Office with a historical understanding of the administrative challenges that the Board has

experienced. We learned that the Board budget did not have a dedicated line item to provide the administrative infrastructure one might expect of a modern administrative tribunal. We also benefited from an informative interview with an experienced administrator hired by the Ministry of Legal Affairs Headquarters last year in a contractual capacity. He provided us with an update on progress being made by the Board to address the backlog of applications.

During the year the Board had its constituting legislation amended. A bill, which was subsequently passed, gave the Ministry of Legal Affairs the ability to appoint members to the Board. Previously, Board members were appointed by the Governor on the advice of the Minister. This amendment should streamline the appointment process and minimise delays in having members commence their important work. The legislation also prescribes that the Chair and Vice Chair are to be experienced lawyers; in the case of the Chair, ten years' experience and the Vice Chair, eight years' experience. Previously the Chair had been a Judge of the Supreme Court and the Vice Chair was drawn from among the undefined category of experienced lawyers. These changes will result in less demand on scarce judicial resources. The Ombudsman has confidence that senior members of the Bar have the necessary skills to effectively weigh the evidence and apply the law which is required for these roles.



### **CASE SUMMARY: DIFFICULT CIRCUMSTANCES, DIFFICULT RESPONSE**

**ISSUES:** The Department of Education (“DOE”) has the challenging and necessary responsibility of providing a comprehensive education experience for students while accommodating any special needs they may present. Our Office received a complaint from parents of a child who had a diagnosis which indicated special needs. The parents alleged that the child had been overlooked by the public education system. More specifically, they alleged that the DOE failed to adequately prepare or communicate any educational plan that was sufficiently responsive to the child’s needs. They claimed that the DOE unreasonably delayed providing a written comprehensive plan for restructuring the functional skills programme at the new school to which their child had been transferred to benefit from this programme. They also complained that the DOE failed to ensure a comprehensive Individualized Education Plan (IEP) was in place for their child at the new school.

**INTERVENTION:** Our investigation considered information provided by the parents and the DOE through interviews and documents. We reviewed the Education Act 1996 and guidance documents related to special education in the public system. We also researched good practice through comparatives with other ombudsman investigation work. In planning our investigation, we considered that the public education system has encountered challenges on several fronts over the years. It has been publicly acknowledged that children with special needs have been under-serviced which has been contributed to by a systemic issue. That being Bermuda has no statutory framework for special education.

The Ombudsman found maladministration in the Authority’s handling of the parents’ concerns in various ways. She found that the DOE failed to communicate a comprehensive plan to the parents related to the child’s placement in the functional skills program at the child’s school. What the parents were provided was inadequate to meet any reasonable standard that would

indicate how an educator could continually assess the suitability of the child's placement based on established goals and progress. The Ombudsman also found that the DOE failed to ensure the parents were suitably included and properly communicated with about the implementation of educational plans that would be fully responsive to the child's individual needs. She also found unfairness in the Authority's actions in that it created a legitimate expectation in the parents, which in this case it did not uphold; that their child would be provided with private educational services beyond what was available in the public school system.

The Ombudsman made six recommendations to address the specific circumstances of the child's educational needs. She also made four recommendations about the Authority's practises including: that the DOE systemically review its current record-keeping practises for handling complaints and concerns about students' public school education; that it publish information for all parents about the process for complaining to the authority about a student's public school education; that it should update its 2010 review of how its compliance with the Government's 2007 National Policy for Disabilities is in alignment with Plan 2022 and any other more recent guidance; and it is to monitor how information is recorded in school files for students receiving special education services.

Following the issuance of the Ombudsman's final investigation findings and recommendations, our Office continues its work with the Authority to ensure the implementation of all recommendations.

**INSIGHTS:** We saw no indication during our investigation that officials set out to undermine the accommodation of this child's special needs. Rather, the child's education was lacking because of a number of inadequate administrative practices. Our investigation confirmed the importance of planning, execution of plans, good record-keeping and good communication, which are essential to ensure the vulnerable in our society do not fall through the cracks.

## **CASE SUMMARY: THE DILIGENT RETIREE**

**ISSUES:** A long-term guest worker who had worked in Bermuda for 47 years, retired to his homeland. On his 65th birthday, he became eligible for payments based on his contributions to the social insurance fund while employed in Bermuda. Such matters can be very technical and he sought the assistance of an overseas pension agency in his home country to apply for his social insurance pension. The overseas agency advised the retiree, in order to apply, he only needed to submit a specified IPC005 form ("the Form") to the Department of Social Insurance ("DOSI"). The overseas organisation submitted the Form on behalf of the retiree on 18 November 2017 and advised him to expect to receive a response from DOSI after the form was submitted. He resent the Form on his own. He was uncertain when exactly in 2018 he did so. He believed it could have been between early 2018 and mid-2018.

The retiree made a complaint to our Office after not receiving a response to his letter with the Form nor his follow up emails to DOSI's general enquiry email address. The retiree emailed his complaint to one of our two general inquiry email addresses, however, our Office did not become aware of the retiree's complaint until he sent an email to our second address. In this email, the retiree not only complained of unresponsiveness against DOSI but against our Office as well. The retiree provided a screenshot of his first email to our Office to support his complaint.

**INTERVENTION:** Our Office checked our inboxes to rule out whether we overlooked the retiree's email. We did not find his first email in either of our inboxes. Then, we looked to determine why our Office did not receive the email. We found that the retiree's email address was stopped by our firewall. As a result, we were unable to receive emails from the retiree. Thanks to his complaint, we were able to rectify the issue to receive emails from addresses using the same platform as the complainant.

Our Office then made inquiries with DOSI. We notified DOSI of the retiree's complaint of unresponsiveness to his email.

We explained our issue in receiving emails from the retiree's email address. We asked DOSI to check whether it encountered a similar issue.

We informed DOSI of an additional complaint of unresponsiveness relating to the 18 November 2017 letter and the Form. DOSI confirmed it received the Form on 10 August 2018. However, it took no action because the Form was insufficient on its own. It explained the Form must be accompanied by the relevant departmental forms, namely the DOSI Contributory Pension Application form and the DOSI Payment Mandate form. Without these documents, DOSI were unable to process the application and, therefore, took no action.

DOSI explained that contacting every would-be claimant is too onerous of an administrative burden to place on DOSI given the large volume of applicants. This, it stated, is why its policy places the responsibility on the applicants to submit their applications in full and on-time.

DOSI also informed us that after the retiree submitted the correct forms, he would only be entitled to 13 weeks' retroactive pay according to the Contributory Pensions Act 1970, section 5(2). After reviewing the matters, our Office advised DOSI it would be unfair to punish the retiree for the mistake of the third party. DOSI agreed to process the retiree's benefits from his first contact with DOSI if he could provide proof of the incorrect advice. Fortunately, the overseas agency had advised the retiree in writing.

We contacted the retiree and informed him that, contrary to the advice of the British advisory agency, the submission of the Form alone does not prompt DOSI's application process and is insufficient to initiate receiving benefits. We assisted the retiree by providing him with the relevant forms and suggested he submit them right away.

Subsequently, a record of the retiree's emails to DOSI was found after email issues were identified. The earliest email was dated December 2017. DOSI agreed it would process the retiree's social insurance payment from that date. The retiree, who had forgotten about the 2017 email, was pleased his retroactive lump sum payment commenced from that period.

INSIGHTS: Our review concluded DOSI's policies were not unfair. If DOSI was responsible for ensuring all would-be claimants were contacted about their eligibility for social insurance benefits when they became eligible, it would place a heavy burden on the Department to contact all persons turning 65 who worked in Bermuda over an undefined period. This would mean ensuring updated contact information and contacting hundreds, if not thousands, of people, both Bermudians and non-Bermudians, each year who live in various countries around the world. In the absence of a means to readily access this information this could present an administrative nightmare and also place potential liability on DOSI for inability to find or notify in time.

However, while fair, the policies had a high threshold and must be considered on a case-by-case basis. In this case, the retiree relied on misinformation given to him by a third party. It was reasonable for the retiree to rely on and trust the advice of a third party agency which purports to provide expertise and which he trusted as it correctly advises many persons every year.

The Principles of Good Administration state public bodies should be customer focused and should aim to ensure customers are clear about their entitlements, about what they can and cannot expect from the public body and about their own responsibilities. In this case, the retiree mistakenly believed the submission of the Form meant DOSI would begin to process his pension payments. It was reasonable for the complainant to imply this as DOSI did not clarify the submission of the form was insufficient and the Form contained all the information necessary to determine whether he was eligible.

Additionally, the Form contained pertinent information, including the retiree's name, date of birth and the social insurance contributions he made during his 47 years in Bermuda. Therefore, as of 10 August 2018, DOSI was aware the retiree:

- was eligible for pension payments;
- needed to submit the DOSI Payment Mandate Form and DOSI Contributory Pension Application Form;
- would not receive payments until these forms were submitted; and
- would not receive retroactive payments unless there was evidence that he contacted DOSI by some other means.

The Form also included the retiree's telephone number and mailing address. DOSI did not contact the retiree upon receipt of the Form to advise him it was incomplete. It seemed it could have done so without undue effort.

Fortunately, DOSI did not need to rely on an implication because the retiree had proof of misleading advice from the third party. It was reasonable for the complainant to imply this as DOSI did not clarify the submission of the form was insufficient and the Form contained all the information necessary to determine whether he was eligible. This complaint demonstrates the important advantage of keeping a record when making applications to authorities.

**Be an encourager.**

**The world has plenty of critics already.**

**- Author Unknown**

## **CASE SUMMARY: UNDERSTANDING MENTAL HEALTH**

**ISSUES:** Our understanding of mental health issues is evolving. Greater awareness of challenges faced by those living in our community with mental health is expanding. It is not acceptable to treat people as outsiders. These are our family, friends and neighbours. We need to respond to those who present with mental health challenges with the same understanding and empathy which we have shown to persons who have physical disabilities.

**INTERVENTION:** A woman presented at our Office seeking public assistance. We were familiar with her as she came for help often over the years. We made no judgment about how she presented or the way she tried to access the services she so clearly needed. It was apparent however, that she was unable to navigate the requirements acquiring such assistance.

The Ombudsman met with her personally. She, with the assistance of dedicated staff members from both Authorities, facilitated the woman's interaction with the Department of Financial Assistance and Acute Community Mental Health Service to lay the ground work for her to receive the services and benefits she was entitled to under law and policy. That required intervening to ensure necessary meetings were held, assistance with acquiring all required documentation, prioritising and, most importantly, being available. This involved intensive intervention.

**INSIGHTS:** We must look closely at the procedural requirements imposed on service users. Adaptions may be required with administrative assistance provided. We have advocated for a multidimensional and a multi-authority approach. Here, we worked with dedicated employees who understood the challenges with which the woman presented, and more importantly, exhibited flexibility within the discretion they were afforded under law and policy to assist.

As our understanding of mental illness and its challenges becomes better understood, we will have to be attuned to these needs. The ability to access basic services must be protected for all vulnerable people who are dependent on them.

**CASE SUMMARY:**  
**CLAIMS OF MISTAKEN IDENTITY**

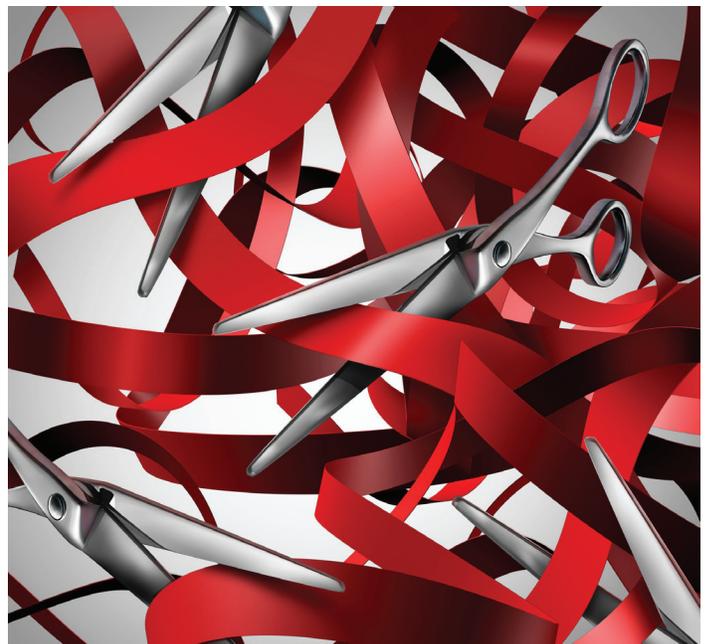
**ISSUES:** A policyholder of the Health Insurance Department (“HID”), complained HID sent her numerous statements informing her of claims made against her health insurance policy by an individual with the same first and last name and also born in the same year. The complainant feared these claims would adversely affect her policy limit and could wrongly restrict her ability to claim on her insurance in the future.

**INTERVENTION:** After inquiries were made by our Office, HID wrote to the complainant and her namesake. It explained it was totally reliant on the service provider to submit the correct information. HID encouraged the complainant’s namesake to take special care to see that her services are charged to her policy when receiving healthcare services. HID also contacted Bermuda Hospital’s Board (“BHB”) as incorrect claims were known to come from there as well. It was informed measures had been put in place to reduce the chance of this happening in the future. Our Office closed the complaint against HID at that time.

Unfortunately, the issue occurred again after our attempted resolution and the complainant returned to our Office. We opened a new complaint, this time directed to BHB. Our inquiries revealed not only did the complainant and her namesake share the same name and the same birth year, they both were also born on the 24th day of their respective birth month. In a standard record-keeping system, they could only be distinguished by middle name and birth month. In this case, their middle initials had not been entered into BHB’s system for claims.

BHB informed us their claims administrators were retrained on the importance of being alert when processing claims. They were made aware of the complainant and the other individual who shares her name and birth year so that extra care can be taken when processing their claims. At our request, BHB wrote an apology to the complainant for the seven errors which occurred over the course of one year.

**INSIGHTS:** This case highlights the advantage of our Office’s unique position. We were eventually able to pinpoint why the error was recurring given our jurisdiction over both the Bermuda Hospitals Board and the Health Insurance Department. Such separate yet interdependent processes would not have been apparent at the service user level. The complaint also demonstrated how we are alerted to issues when the public bring matters to our attention. As a result, necessary changes are made for the benefit of the wider public. We were pleased to learn the complainant became aware of our Office because of an advertisement placed in another authority within our jurisdiction. We were also encouraged by the fact that she did not give up after the first attempt to resolve the matter did not fix the issue and she brought her complaint and gave us a second opportunity to resolve the issue.



**CASE SUMMARY:**  
**INTER-DEPARTMENT IMPACT**

**ISSUE:** A woman complained to our Office that she was removed from the Ageing and Disability Services' ("ADS") Personal Home Care Benefit ("PHCB") Register. Caregiving providers are required to register with ADS if their client's services are paid for by the Health Insurance Department ("HID"), the Department of Financial Assistance ("DFA") or the War Veterans Benefit provided by the Department of Social Insurance. She indicated that she was not eligible for payment of benefits from DFA or HID.

**INTERVENTION:** We met with the woman to understand the particulars of her complaint. We reviewed the large amount of documentation provided illustrating her attempts to have her issues resolved. We also conducted significant research on ADS, DFA and HID. The three aspects of the woman's complaint were related in that she had to be on the PHCB Register in order to receive payments from the DFA and HID for caregiving services. We explored possible administrative actions and appeals that could assist her to regain access to payments. It was our determination that her complaint to us was premature. We proposed that the best way for her to proceed was to request the Permanent Secretary of the Ministry of Health to review all ADS, DFA and HID decisions relating to her complaint.

Our involvement with this woman did not end with the suggestion that she request a review of her file by the Permanent Secretary. We stayed in touch and considered that review after it was completed. We noted that she was afforded a right to be heard which in this case was a meeting with the Permanent Secretary to which she was permitted to bring a representative. The Permanent Secretary showed flexibility in accommodating the scheduling of the meeting. The review was not decided in the woman's favour but it concluded in a written decision that outlined the relevant facts. It illustrated that the Permanent Secretary understood the woman's position and provided a transparent rationale for the decision.

Ultimately, we determined that the woman was treated fairly and an investigation was not warranted in the circumstances.

**INSIGHTS:** This case illustrates how a decision by one Authority has an impact on how and why other Authorities interact with an individual. The decision by ADS affected the manner in which DFA and HID were empowered to react to this woman's circumstances. The case also highlighted the importance of procedural fairness and the way this woman's concerns were ultimately dealt with. When an individual has been treated fairly by an Authority an Ombudsman will not intervene.

**COMMENTARY:**

**Ageing and Disability Services Update**

Our own motion investigation into the adequacy of the Government's administering and coordinating public services for seniors at risk of abuse and for the handling of those complaints by the authorities responsible progresses. The responsible authorities are the Ministry of Health, the Office of the Chief Medical Officer and Ageing and Disability Services (together referred to as the "Authority").

Some of the matters we identified as concerns have been acknowledged with actions taken to address them.

Our approach to this investigation is evolving. Some of the evidence we have collected in the past has been overtaken and does not reflect changes made by the Authority. There have been improvements. New policies and procedures are being developed. The Ombudsman was encouraged to see pertinent authorities enter into a Memorandum of Understanding to clearly articulate and delineate their respective roles with regard to the handling of allegations of senior abuse. Our work progresses but is not yet complete. The Ombudsman has conducted several interviews with Authority staff and management. Significant evidence has been compiled from Authority files to ascertain the current state of file management.

Effective complaint handling in addition to coordinating public services for seniors at risk of abuse can be complex and challenging. Our approach to this investigation is to carefully consider the impact on this most vulnerable population while assisting where required to identify, gather and assess the most current evidence which will enable the Ombudsman to make relevant conclusions and helpful observations.

**COMMENTARY:**

Department of Public Transportation Update

There are said to be approximately 140 miles of paved public roads in Bermuda. While many people are privileged to have access to a bike or car, many others rely on public transportation, including bus services, to navigate the country for work, school and leisure. Some of Bermuda's most vulnerable persons, including children and seniors, depend on a reliable bus service. When bus services are canceled, individuals have to find alternate transportation. It is, therefore, important that timely notification of those cancellations take place.

The Ombudsman commenced an own motion investigation into the Department of Public Transportation in 2018, dealing with its notification of bus cancellations. During 2019, our office monitored changes in bus schedules and the impact those changes had on notifying the public about bus cancellations.

The Department has assigned more staff to ensure that information and bus cancellations are communicated to the public in a timely fashion. Our fact-finding phase of the investigation progressed during the reporting period. We learned that there are 748 subscribers to the public broadcast email service, which provides information about bus cancellations. We also learned that efforts are underway to engage Google Transit and a local GPS service provider to acquire a flexible real time scheduling and cancellation system. Information can be obtained by telephone call on bus cancellations for those who do not have access to the internet.

While progress has been made in using technology to notify the public about bus cancellations, the Ombudsman continues to be concerned that people without access to the internet and/or smart devices are not being left out. It is the most vulnerable in our society who are least likely to have internet access or smart phones.

We continue our efforts to acquire the necessary information to formulate our final investigation report during the 2020 reporting year.

**CASE SUMMARY:**

**PRACTICAL COMPLAINT HANDLING**

**ISSUES:** A woman complained to our Office that Consumer Affairs failed to use the powers conferred on it by the Consumer Protection Act 1999 to address her complaint, and further, it unreasonably delayed the handling of that complaint.

**INTERVENTION:** The Ombudsman Act 2004, section 8, provides that the Ombudsman, for the purposes of determining whether to undertake an investigation, may conduct such preliminary investigations as she considers appropriate.

Our Office conducted a preliminary inquiry. This entailed getting particulars from the woman about her allegations, contacting Consumer Affairs to ascertain its position with regard to them, and reviewing all relevant legislation.

With respect to the first aspect of the complaint, our preliminary inquiries revealed it was the position of Consumer Affairs that the enforcement officer assigned to investigate the woman's complaint had informed her that the grounds of her complaint fell within the provisions of the Supply of Services (Implied Terms) Act 2003. Section 3 of that legislation provides there is an implied term in every contract of service that the supplier will carry out the service with reasonable care and skill. The essence of the woman's complaint to Consumer Affairs was about the quality of service she experienced with a private repair shop – the type of complaint contemplated by section 3 of the Supply of Services legislation. Relief under that legislation is sought through

an action in the Magistrates' Court rather than through a complaint to Consumer Affairs. As the woman had a legal remedy to resolve her issue, we declined to investigate this aspect of her complaint to our Office.

With regard to the second aspect of the woman's complaint to our Office, the enforcement officer assigned to her file said that it was her firm belief that the woman withdrew her complaint to Consumer Affairs about the repair shop, and therefore the file was closed. The woman denied she withdrew the complaint. As there was no documentary or witness evidence to support either party's perception, we were unable to make a finding of fact on the issue, even if we had the benefit of a full investigation. While we dismissed this aspect of the complaint as well, we had lingering concerns that Consumer Affairs did not have documentation to support its position that the woman had withdrawn her complaint. This prompted us to make an informal recommendation to Consumer Affairs that it consistently follow a policy of documenting when an individual withdraws a complaint.

INSIGHTS: There are two helpful insights flowing from our intervention in this complaint. The first, is that when suitable we can use preliminary inquiries to support our resources to address individual concerns without the necessity of a formal investigation while still applying ombudsman principles and understanding to those concerns. Second, while we appreciate the many and varied demands on those who work in the public service, the need for documenting their interactions with the public is essential.

**“The greatest problem in communication is the illusion that it has taken place.”**

**- George Bernard Shaw**

## **CASE SUMMARY: THE NEED FOR PROCEDURAL FAIRNESS**

ISSUES: Individuals can apply for a Permanent Resident's Certificate (PRC) under the Incentives for Job Makers Act 2013 and the associated legislation, which set out a number of criteria which have to be met. The criteria requires applicants to fall within the exemption under the Economic Development Act 1968 and to be ordinarily resident in Bermuda for 10 years, including the two years before the application was made.

A woman contacted our Office to express concern about the delays in processing her PRC application at the Department of Immigration (“the Department”). During her contact with us, her application was rejected. She was understandably disappointed with the decision. She also had concerns with the process for appealing the same.

INTERVENTION: This woman applied for a PRC in October 2018. After making numerous inquiries to the Department, she contacted our Office when, in October 2019, her application was still not processed. Our interventions are not intended to move the matter ahead of older cases because of our attention. This would be unfair to others who have been awaiting the processing of their applications.

This PRC application was processed and rejected a short time later. We had concerns that the reasons given for the decision did not sufficiently articulate why the application was rejected. It simply stated the criteria that had to be met to obtain a PRC and the fact that the woman did not meet them. Two important considerations about the nature of these reasons caused concern for the Ombudsman. The first was that the woman was left with no understanding as to why the application had been rejected. Secondly, the lack of sufficient reasons made arguing an appeal of the decision difficult. The Ombudsman contacted officials at the Department to remind them of the importance of providing applicants with meaningful reasons for decisions.

The woman subsequently appealed the decision to the Immigration Appeal Tribunal (“the Tribunal”). We helped facilitate information-sharing from the Tribunal to the woman and for setting a date for her appeal.

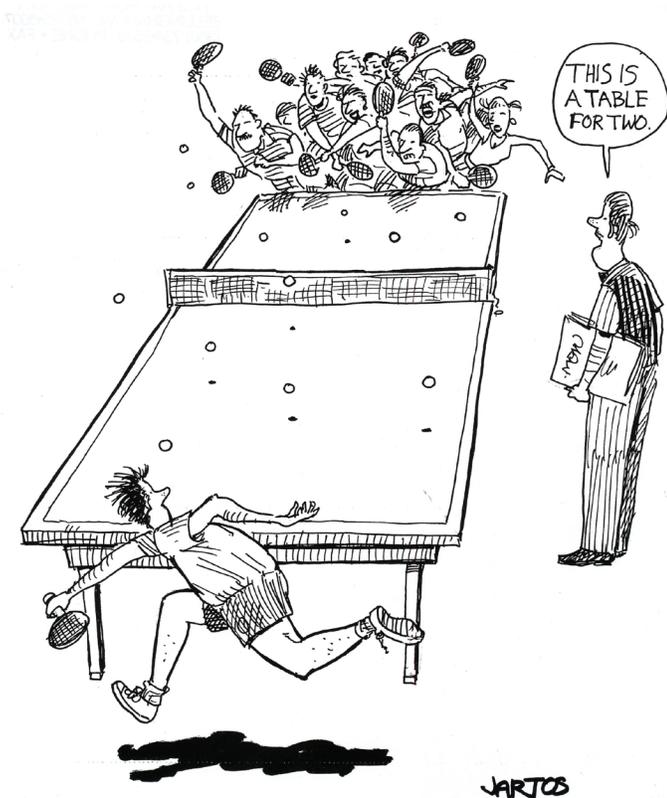
**INSIGHTS:** The Ombudsman does not have the jurisdiction to investigate or intervene in the substantive decisions made by a minister or a tribunal. However, that does not mean that the Ombudsman cannot provide assistance in good administration, including requests for the issuance of reasons for decisions.

## CASE SUMMARY: BALANCE AND DISCRETION IN GOOD ADMINISTRATION

**ISSUES:** An inmate complained his mother, sister and fiancée tried to reschedule a visit with him but their requests were denied. He explained it was a result of the Department of Corrections’ (“Corrections”) newly implemented policy restricting the rescheduling of visits coupled with their existing procedure whereby visitors are scheduled for visits one month in advance. The inmate’s mother, fiancée and sister worked as caregivers and were usually given only a few days’ notice of their work schedules. The inmate complained that the requirement of one month’s notice was too long to confirm whether his mother, fiancé and sister would be available to visit.

**INTERVENTION:** Our Office made inquiries with Corrections which confirmed the inmate’s understanding of the newly implemented policy was correct. We further confirmed Corrections gives two to four weeks’ notice for visits. Corrections explained the change in policy provided room for discretion and it would only allow a visit to be rescheduled if the visitor could prove they were due to travel. It explained the new policy was implemented to better manage prison security and because several visitors asked for visits to be rescheduled for what Corrections deemed to be frivolous reasons. For example, requests were made to change visits where the visitor had overslept or to accommodate hair appointments. Since Corrections implemented this policy, it reported it has seen a considerable decrease in what it considered frivolous requests to change visits. Unfortunately, Corrections could not recall why it denied the inmate’s mother, fiancée and sister’s requests.

While we understood the need to manage the rescheduling of visits, we informed Corrections it was appropriate to have a balanced approach, including the exercise of its discretion where warranted. We explained in this case it appeared reasonable to allow a visit to be rescheduled. We also advised Corrections to begin recording requests to reschedule visits. It agreed to do so.



**INSIGHTS:** Our Office supports efforts by authorities to manage processes against abuse. Requests to reschedule visits to inmates take considerably more administrative work than responding to a single phone call. Corrections, like any authority, is responsible for ensuring it maximises its efficiency. This is good administration. However, such measures, when implemented, may require the exercise of discretion. In this case, the inmates' family was affected by the change in policy. In the absence of discretion, Corrections may not have been able to carry out its commitment to facilitate its goal to ensure inmates maintain family connections while incarcerated.

**COMMENTARY:**

An exploration of the relationship between prison complaints and Parliamentary Ombudsman

A fundamental role of the Office of an Ombudsman is to promote fair and accountable public service and good administration. Our function is not just to criticise. An Ombudsman champions international administrative best practice. Ombudsman functions include:

- protecting the interest of the public by providing access to administrative fairness;
- providing the public with assistance and direction when they encounter an administrative hurdle;
- providing authorities with reliable, independent feedback on administrative issues;
- informally resolving or adjudicating administrative disputes between authorities and members of the public in the best interest of both parties; and
- ensuring authorities are carrying out the operations of government and acting in the public interest.

It does not come as a surprise that authorities that deal with matters impacting livelihood get frequently complained of. It is also more likely that authorities with critically strained

resources will be the subject of complaints. Both situations apply to the Department of Corrections. Complaints against the Department of Corrections account for the largest number of complaints by Department we receive each year. Interestingly, prison and custodial complaints tend to make up a significant portion of total complaints received in ombudsman offices in other jurisdictions. Below is a comparison of the percentage of prison complaints our Office received over a four-year period to some other parliamentary ombudsman offices in other jurisdictions based on information reported in annual reports from largest to smallest. These reports represent different regions within the global ombudsman institution.

<b>PERCENTAGE OF COMPLAINTS MADE AGAINST PRISONS</b>				
Parliamentary Ombudsman Offices (or equivalent)	2018	2017	2016	2015
State of Iowa (North American Region)	35.2%	31.4%	22.4%	17.9%
Saskatchewan (North American Region)	19.5%	19.2%	20.9%	21.9%
Ontario (North American Region)	16.6%	18.7%	14.8%	13.9%
Bermuda (Caribbean & Latin America Region)	16.3%	16.6%	10%	5%
New South Wales (Australia and Pacific Region)	12.5%	13.2%	11.3%	12.1%

*NB: 2019 figures have not been included in this comparison as not all ombudsman offices listed have published their annual reports for 2019 at the time of preparing our report.*

In addition to the reasons suggested, there are other considerations which may contribute to this. Our Office can be more appealing than making a complaint directly with an officer. Inmates are likely to complain about the very person who is responsible for providing the complaint to our Office. Where a confidential complaint can be made, they may be reluctant to bring their complaints to the persons in the facility who they may be complaining about. There are sometimes concerns about reprisal for making complaints. Inmates can contact an ombudsman office discreetly and directly. In Bermuda, we have worked to ensure calls can be made through the pin phone without charge to the inmate.

Another reason is that ombudsman offices tend to be well-informed about corrections departmental processes and policies. Inmates may feel more comfortable raising their concerns with us before speaking with the prison administration. Persons who have lost their liberty are confined to the facilities they live within. At times what a complainant wants to achieve may be inconsistent with the aims of Corrections' administration and what an inmate wants may conflict with what the administration should and could achieve.

The number of complaints made may also be driven by the nature and amount of its interactions. It must be made clear that making a complaint does not prove maladministration by the Authority against which it is made. This applies to all complaints made to our Office – not just those against Corrections. Whether or not maladministration has occurred is determined by the Ombudsman. While we report the Department of Corrections has the largest number of complaints annually, not all complaints are upheld. Further, many complaints against Corrections are declined within the complainant's first conversation with our Office or after our first conversation with Corrections because they are outside of our jurisdiction, premature, unsubstantiated or misdirected. Complaints may also be resolved informally without an investigation as seen below. The good professional relationship which exists encourages concerns identified by the Ombudsman to be

addressed. Below is a figure illustrating how many Corrections complaints our Office has received that were closed at the earliest stage in our complaint process.

PERCENTAGE OF BERMUDA OMBUDSMAN CORRECTIONS COMPLAINTS WHICH DID NOT PROGRESS BEYOND INTAKE				
2019	2018	2017	2016	2015
66%	36%	54%	31%	66%

Bermuda's Department of Corrections is managed by a group of officers aptly referred to as "the Administration". We acknowledge the important work carried out by the Administration and thank all those who have worked collaboratively to address issues as they have arisen, namely: Acting Commissioner Keeva-Mae Joell-Benjamin, ACOC Philip Downie, Chief of Training Shannon Hollis, Chief Officer Ryan Belboda, Chief Officer Darynda Caisey-Brown, Chief Officer Dwight Richards, Chief Officer Sandra Gomes, Operations Manager April Ming, Principal Officer Winette Thomas, Principal Officer Scott Turner, Basic Officer Rajae Bean as well as the other intake officers at Westgate Correctional Facility and all other officers and staff of the Westgate Correctional Facility, Farm Facility, Co-Ed Facility, and The Right Living House for their work at the Department of Corrections and for their assistance to this Office over the last several years. Our Office offers our condolences for the loss of Chief Officer Reginald Gomes.

**We need leaders not in love with money but in love with justice. Not in love with publicity but in love with humanity.**

**- Dr. Martin Luther King, Jr.**

## **COMMENTARY:**

Thoughts on apology legislation: 'sorry' seems to be the hardest word

Apology legislation, as an amendment to a jurisdiction's Evidence Act or a standalone piece of legislation, was created to restrict the admissibility of acts or words of remorse or regret given by one person to another in litigation. It has been widely credited with preventing expensive and resource intensive court and administration litigation and promoting conciliation and mediation.

The concept of apology legislation arose in the United States in 1986 when the Massachusetts legislature enacted "Safe Harbour" provisions, allowing persons to apologise in tortious claims. They decreed "statements, writings or benevolent gestures expressing sympathy, or a general sense of benevolence relating to the pain, suffering or death of a person involved in an accident and made to such person or the family of such person shall be inadmissible as evidence of an admission of liability in a civil action."

In Canada, a 2006 Discussion Paper drafted by the British Columbia Ministry of the Attorney General suggested the province enact legislation that would stimulate the use of apologies in an effort to promote alternative dispute resolutions. The purpose of the legislation would be to "prevent liability being based on an apology, by making the apology inadmissible for the purposes of proving liability and by not construing the apology as an admission of liability". The Discussion Paper was widely circulated and its suggestions were lauded by a wide variety of interested parties including the Ombudsman of British Columbia, Howard Kosher. In "The Power of an Apology: Removing the Legal Barriers", a Special Report by the Ombudsman of the Province of British Columbia (2006) he stated;

"Often, providing an apology is simply the right thing to do. I also ask the Attorney General to consider the New South Wales Civil Liability Act (2002) as a model for legislative debate in British Columbia and I urge the Attorney General

to introduce legislation to protect public officials so that they can apologise without fear of litigation on the grounds that an apology is an admission of negligence...Providing apologies may not completely replace the option of seeking justice through litigation but might offer an alternative to the adversarial process for those who seek recognition and remorse in order to feel justice is served. In recognition of the power behind the words of apology, this Office will continue to seek and to recommend apologies."

Apology legislation was heartily debated in the British Columbia legislature but ultimately passed on 18 May 2006, making it the first legislature in Canada to have done so.

It is interesting to note that apology legislation finds a welcome home in health care administration. Adverse medical events by medical professionals have a statistically significant increased result in prolonged illness and death in patients. Traditionally, the legal and medical professions have resisted the opportunity to profess mistakes to their employers or professional governing bodies. This has been a cause of greater suffering as the deprivation of current professional information, including that a mistake has occurred, has increased poor medical outcomes; thinking has evolved. It is now better practice to admit a mistake in the protection of a quality assurance program so that systems can be engaged to minimise the damage caused by those mistakes. A key factor in a robust quality assurance program is having the opportunity for the health care provider, the patient and patient's family to have a frank discussion as to what has occurred, including a statement of apology by the health care provider as to his or her role into what has occurred. That discussion can only occur if the health care provider's comments are not to be viewed as evidence in any subsequent litigation.

To be clear, apology legislation does not, in any material way affect the legal position of the parties to civil or administrative litigation.

Administrative or tortious wrong doing will always have to be proven by the aggrieved person on the balance of probabilities. What changes is the expression of human regret for errors made in the course of a professional career. Those expressions of regret often are what the aggrieved persons are truly seeking, which facilitates a healthy discussion as to what damages or results should flow from those errors.

The current Ombudsman's perspective is two-fold on this issue considering her two careers as a lawyer and Ombudsman. As a lawyer, she understood that a robust conversation has to occur between all interested parties as to whether apology legislation should be introduced with respect to civil matters in Bermuda. As an Ombudsman, she understood that its introduction in the context of public administration would be a significant enhancement in improving the relationship between the people of Bermuda and the government employees which serve them.

It should also be noted that former Bermuda Ombudsman, Arlene Brock gave consideration to this issue in her 2012 Annual Report which can be found on page 16 of that Report.

### ***Did you know:***

#### **Bermuda Economic Development Corporation**

For over 40 years the Bermuda Economic Development Corporation (BEDC) has been Bermuda's source of free, confidential business advice with a singular focus to actively assist the development of a strong, well-managed and prosperous local business sector in Bermuda. The BEDC's key objective remains to assist the Government in encouraging economic growth for Bermuda's local small and medium sized businesses.

Through its mission, the BEDC seeks to inspire, inform, support and grow new and existing Bermuda businesses through education, guidance, data provision, advocacy, networking and financing.

Do you need:

- advice on how to start or grow your business? Book a free, one-on-one, confidential meeting with one of BEDC's team of 14 to discuss your business goals.
- financing to get your business started or to grow? BEDC provides direct Micro Loans for up to \$30,000 and they guarantee up to 75% of a loan and/or overdraft from an approved financial institution or individuals.
- industry expertise? Register for any of BEDC's quarterly seminars or Lunch & Learns that provide attendees with information on a variety of topics that range from industry specific topics to business essentials including marketing, accounting and Government obligations.
- education related to starting a business in Bermuda? BEDC facilitates four multi-week courses which take you through the various stages of business development.

- support to get your business started? Apply to BEDC's Enterprise Bermuda Incubator programme. This programme guides eight select business owners through an in-depth twelve-month development process, which ensures the entrepreneurs get beyond the idea stage and start to bring their businesses to fruition.
- business continuity funding to get you through Covid-19 Global Pandemic? BEDC is providing a series of financial products to assist with business continuity, inclusive of a Loan & Grant; Loan Guarantee and Overdraft Guarantee.

Over the years thousands of Bermudians have received support from the BEDC. Officers meet with hundreds of individuals annually and the BEDC has supported in excess of \$20,000,000 (twenty million dollars) in bank loans, directly assisting close to 400 business owners. To find out more about BEDC and how their team may be able to assist you, visit their website at [www.bedc.bm](http://www.bedc.bm), email [info@bedc.bm](mailto:info@bedc.bm) or call **441-292-5570**.

***Did you know:***  
**Consumer Affairs**

Consumer Affairs is a small team of dedicated individuals that play a critical role in handling a myriad of issues, some unrelated to their mandate. Its experienced team of professionals address all sorts of complaints, concerns and general issues while also conducting investigations and ensuring legislative compliance.

The market is evolving at rapid speed and with globalisation, e-commerce and advancements in technology, people have access to an abundance of goods and services. Technology within a globalised market has made it clear that in order to safeguard consumers and businesses from scams and social media abuses there was a need to enact new legislation and amend others to address the way we do business today.

Consumer debt has been a major concern. Much of the debt is not generated by frivolous purchases but by health care, banking and housing expenses such as rent and electricity for example. In response to this concern Consumer Affairs concentrated their efforts on legislative solutions in 2019.

In response to increasing consumer debt, Consumer Affairs developed The Debt Collection Act 2018 which received assent in January 2020. The Act gives the Licensing Authority (Consumer Affairs) oversight of debt collection business when pursuing repayment of a debt. The Act has six main components:

1. Establishing a Government regulatory Licensing Authority
2. Prohibiting unfair debt collection practices
3. Giving the debtor certain rights during the collection process
4. Requiring financial transparency limiting interest and administration fees
5. Establishing complaint procedures, investigation powers, offences and appeals.

6. Businesses that offer credit and who collect their own debt are subject to the provisions under Part 4 of the Act.

In 2019 Consumer Affairs began preparation for the Act's assent. It worked with the Attorney General's Chambers to develop regulations for each phase of the Act, tribunal procedures and development of licensing applications and processing procedures. Education was provided for stakeholders and application assistance was given to those who requested it.

Phase two is being developed in 2020 which will encompass regulations for credit reporting and payday loans.

In 2019 amendments were developed for the Minister of Home Affairs to have oversight of mortgages and consumer banking under the Consumer Protection Act 1999. Legislation was also proposed to regulate unfair contract terms which will help to level the playing field for consumers when entering into a contract for goods and services.

Landlord and tenant issues are contentious at best; mainly due to the legislation that governs this industry not being comprehensive or reflective of today's rental market. Three of the biggest concerns within this industry are return of deposits, maintenance and eviction and non-payment of rent, all of which require judicial ruling. During 2019, Consumer Affairs met with stakeholders to identify areas needing amendment and made plans to amalgamate all the relevant legislation into one comprehensive Act of Parliament under the oversight of Consumer Affairs.

**CONTACT:**

Address: D. Rego Building, 3rd Floor, 75 Reid Street, Hamilton HM 12

Tel: **441-297-7627**

Email: **consumers@gov.bm**

***Did you know:***

**Department of Financial Assistance**

The mission of the Department of Financial Assistance ("the Department") is to ensure that Bermudian individuals and families with insufficient resources have access to services in order to gain, maintain or regain a minimum standard of living while encouraging personal and economic independence. The services will enable the individual to maintain dignity and self-worth and encourage the development of personal skills and resources.

The Department assists individuals and families to determine their level of need. It does so by administering the Financial Instructions and Financial Assistance legislation. The Department is responsible for the operation of two programmes. The Financial Assistance Programme ensures that eligible individuals and families are assessed, and if eligible, are awarded a grant for the provision of a basic/minimum standard of living. This programme also provides funds for the distribution of grant money to a number of religious and community groups that provide services to clients. The Child Day Care Programme aids parents and guardians by assisting them with financial assistance to offset the cost of child care services for children up to the age of four.

The Department has a legal duty under the Public Access to Information Act 2010 to maintain and update annually an Information Statement. This will facilitate easy access to information by the public and increase accountability and transparency of the Department, which will endeavour to proactively publish as much information as possible. The purpose of the statement is to outline the information held by the Department of Financial Assistance which is readily available to the public.

**CONTACT:**

Address: Global House – First Floor, 43 Church Street, Hamilton HM 12

Tel: **441-297-7600**

Website:

**[www.gov.bm/department/financial-assistance](http://www.gov.bm/department/financial-assistance)**

### ***Did you know:***

## **Labour Relations Section, Ministry of Labour**

The Labour Relations Section is responsible for:

- educating employers and employees on Bermuda's labour laws;
- investigating and mediating employment complaints with a mandate to remain neutral;
- making appropriate referrals of unsettled complaints to the appropriate body for determination; and
- facilitating the process of union certification and decertification.

Here is a quick summary of the provisions the Section oversees.

The Employment Act 2000 sets the minimum terms and conditions of employment for persons working full time in Bermuda. A Labour Relations Officer will ascertain whether a complaint is valid and conduct an investigation into it, mediate the parties to a resolution and, if a resolution cannot be reached, refer the complaint to the Employment Tribunal for determination.

Under the Labour Relations Act 1975 the Section settles labour disputes via mediation or arbitration and establishes and governs the procedure for the settlement of labour disputes within essential industries and essential services. If resolutions cannot be reached, the Section refers the matter to the Minister of Home Affairs for consideration and referral to the appropriate Board or arbitration panel.

The Labour Disputes Act 1992 establishes a Labour Dispute Tribunal where it is expedient for the settlement of certain labour disputes within the non-essential services and industries.

Finally, the Trade Union Act 1965 governs certification and decertification of unions in the private and public sectors. A Labour Relations Officer will review the certification application, assist the parties in determining the bargaining unit and conduct a secret ballot of the affected employees to declare whether or not the union will act as the sole bargaining agent. Additionally, upon receipt of an application for decertification from the employer or group of employees, a Labour Relations Officer enquires into the reasons for the application and conducts a secret ballot of employees to determine whether the union will be removed as the sole bargaining agent.

### **CONTACT:**

Address: Dame Lois Browne-Evans Building, 4th Floor, 58 Court Street, Hamilton HM 12

Tel: **441-294-9146**

Website: **[www.gov.bm/labour-relations-office](http://www.gov.bm/labour-relations-office)**



CartoonStock.com

***Did you know:***

**Land Title and Registration Office**

With the introduction of a new land registration system in Bermuda, owners can secure better title to their real property when deeds are lost or when facing a claim of adverse possession.

Both applications rely on the applicant being able to produce evidence from a wide variety of sources to prove their claim of title to a property. Investigations to gather this evidence are usually carried out by a qualified local attorney which involve time and money. All sources need to be looked at. A lost deeds application means inquiring as to who last held the deed and in what capacity and getting various parties to swear affidavits to formally confirm the information they have. Documentary evidence will also need to be attached to the exhibits of the affidavit. These might include old or current land tax bills, old or current insurance policies relating to the properties, old photos showing the applicant at the property in the past, Department of Planning documents, Department of Archives documents and Parish Vestry records. If LTRO is satisfied, then it is highly likely that a decision will be taken to register the property in the name of the applicant.

Adverse possession is a concept which has existed legally in Bermuda for many years. The process is similar to that of lost deeds. Previously, the only way a person could claim adverse possession effectively was by applying to the Supreme Court and obtaining a judgement to declare it to be so. To do this they would have to produce evidence which was satisfactory to the court. LTRO has introduced an adjudication service as an alternative method of going to court in order for an applicant to prove its claim. The current period in which an applicant would have to prove the authorised exclusive use and occupation of land is 20 years for private land and 60 years for government land. LTRO has successfully registered claims based on adverse possession and others are currently being examined. It is not an easy path and will likely require legal assistance, time and money.

NUMBER OF PROPERTIES REGISTERED UNDER LAND REGISTRATION		
Year	Voluntary registration	Compulsory registration
2018	75	100
2019	136	439

**CONTACT**

Address: 1st Floor Milner Place, 32 Victoria Street, Hamilton HM 12

Tel: **441-294-9260**

Email: **LandTitleRegistryOffice@gov.bm**

***Did you know:***

**Mid-Atlantic Wellness Institute's Acute Community Mental Health Services**

Mental wellness is an important aspect of the overall health of a person. A growing sensitivity and acknowledgment of this is beginning to take root in the Bermuda community. Sadly, people who experience mental health conditions still often experience stigma. The Mid-Atlantic Wellness Institute (MWI) offers treatment and support to clients and their families and also educates the public on mental health and wellness. In this way, the organisation is building a more supportive, caring and inclusive community for us all.

One of the services delivered by MWI, is the Acute Community Mental Health Services Department, whose staff meet clients wherever they are to deliver care. The team of 18 currently manage 785 clients. Clients may live independently, in group-homes, be homeless, or be MWI in-patients. No matter the time of day or the location of the client, the Acute Community Mental Health Services team provide the assistance required. Often this means visiting persons late at night or in the wee hours of the morning. It may entail going to a homeless shelter, park, or other locale where someone may be "living rough".

A person with mental illness can voluntarily refer themselves, or be referred by anyone in the community. Referred individuals are clinically

assessed and triaged. This determines the appropriate clinician to manage their case.

The dedicated Acute Community Mental Health Services team includes a clinical manager, two psychiatrists, two physicians, two psychologists, seven community psychiatric nurses (two are Mental Welfare Officers with the authority to admit people to MWI for treatment against their will in accordance with the Mental Health Act), a triage nurse in the clinic, a social worker, a secretary and a receptionist.

With 785 clients and only seven psychiatric nurses, it is impossible to see every client immediately. Using the following criteria, the team is able to prioritise cases:

1. Emergency – Person is a risk to him/herself or others. This requires immediate intervention. Examples include suicide attempt/plan, behaviour likely to endanger self/others.
2. Urgent – Person is deteriorating mentally. This requires an assessment be arranged within seven days.
3. Non-urgent – All other referrals and/or appointments with a clinician, must take place within 14 days.

Individuals using the service require varying degrees of assistance. To facilitate this, the Acute Community Mental Health Services team has developed strong partnerships with a wide range of government, other not-for-profit and charitable organisations and agencies. These include, but are not limited to, (in alphabetical order):

- Bermuda Housing Corporation
- Bermuda Police Service
- Ageing and Disability Services
- Department of Child & Family Services
- Department of Corrections
- Department of Court Services
- Department of Financial Assistance

- Department of Parks
- FOCUS
- General Practitioners (GPs)
- King Edward VII Memorial Hospital
- Men's Treatment Centre
- MWI - Community Rehabilitation Services
- MWI- Inpatient Services
- MWI - Turning Point
- Salvation Army
- St Vincent DePaul Society
- Women's Treatment Centre

The Acute Community Mental Health Service is one of five mental health services offered by MWI– the mental health facility of Bermuda Hospitals Board. The other services are Community Rehabilitation, Child & Adolescent Services, acute inpatient care, inpatient rehabilitation and long- term stay. MWI also delivers programmes to help people with substance abuse problems and people with intellectual disabilities.

If you or someone you know requires the service please call **the clinic on 441-249-3432**.

If in crisis (e.g. feeling suicidal), please call the **crisis line on 441-239-1111**.

On **weekends and weekdays from 5pm to 9am** please call **441-249-3258** and ask for the evening/ night manager.

## ***Did you know:***

### **Pension Commission**

The Pension Commission is a corporate body established under the National Pension Scheme (Occupational Pensions) Act 1998 and has the following functions:

- to administer the Act and the regulations;
- to consider and determine applications for the registration of pension plans;
- to consider and determine financial hardship withdrawal applications;
- to promote and ensure compliance, by pension plans, with the provisions of the Act and the regulations;
- to monitor the administration and funding, of pension plans and to enforce the provisions of the Act and regulations in respect of such administration and funding;
- to verify the payment of benefits under pension plans;
- to promote public education on pension plans and their benefits;
- to advise the Minister on any matter relating to pensions, including the development of laws relating to pension plans;
- to provide such information relating to its functions as the Minister may require;
- to investigate complaints relating to a pension plan and a pension fund; and
- to perform any other functions provided for in or under this Act.

The Commission also has responsibility for the administration of the Pension Trust Funds Act 1966 and pension trusts established and administered under this Act.

A number of important changes to the legislation have been made in 2019 and more recently in 2020. For example, for the first time since the Act came into operation in January 2000, over 20 years ago, regulatory fees will be payable by plan administrators which will be used to offset regulatory costs incurred by the Commission in their supervision and regulation. The long-term goal of the Commission is to be financially independent of the Government and the introduction of these fees is the first step in achieving this goal.

Financial hardship withdrawals were enhanced and plan members are allowed to make financial withdrawals for the following:

- a. Eligible Uncovered Medical Expense
- b. Threat of Loss of Principal Residence due to Debt Default
- c. Threat of Eviction from Home due to Arrears of Rent
- d. Eligible Fees Payable for Tertiary Education
- e. Eligible Funeral Expenses

The Financial Hardship Application statistics to 31 December 2019 are as follows:

- financial hardship withdrawal meetings – 6,100;
- total applications received since August 2010 (the start date) – 3,370;
- approval applications – 2,700;
- declined applications – 463;
- applications pending and/or withdrawn – 108;
- total amount approved - \$33.82 million.

Due to the COVID-19 crisis, the House of Assembly passed legislation in May 2020 to expand the scope of existing provisions for financial hardship to include a one-time voluntary withdrawal, for persons under the age of 65, of up to \$12,000, from a plan member's defined contribution pension plan or their individual retirement account. The deadline to apply for these refunds is 30 June, 2021. Furthermore, plan members or former members who are 65 or older may also voluntarily withdraw up to 25% from their defined contribution pension plan or their individual retirement account. There is no deadline for such applications to be made.

Additional amendments are also to be introduced to permit the voluntary suspension of pension contributions into a registered plan by both employees and employers. The Government, with the advice of the Commission, will also examine additional financial relief measures for plan members.

Total value of assets at 31 December, 2019 under the National Pension Scheme, is estimated at USD \$4.15 billion (rounded up) consisting of approximately USD \$3.2 billion in employer plans and USD \$946.5 million in approved local retirement products.

There are a total of 3,126 Employer Plans (3,111 Defined Contribution & 15 Defined approved local retirement products).

There are an estimated 303 Self-Employed Plans.

USD \$633,000 of plan assets were transferred to Overseas Retirement Vehicles in 2019 compared to USD \$2.1 million in 2018.

As at 31 December 2019, the Commission:

- wound-up 39 plans in 2019 compared to 55 in 2018;
- registered 42 plan amendments in 2019 compared to 73 in 2018;
- approved 0 plan trustees in 2019 in comparison to 1 in 2018;

- initiated 11 civil actions against delinquent employers and their directors and officers in 2019 compared to 16 in 2018;
- conducted 86 compliance meetings;
- held 26 compliance meetings with Plan Administrators in 2019 compared to 26 in 2018;
- participated in 27 public and/or advisory committee meetings in 2019 compared to 23 in 2018; and
- completed 38 transactions in 2019 under the Pension Trust Funds Act 1966 compared to 33 in 2018.

#### CONTACT:

Address: Wessex House, 45 Reid Street,  
Hamilton HM 12

Tel: **441-295-8672**

Email: **info@pensioncommission.bm**

***Did you know:***  
**Office of the Privacy Commissioner**

The Personal Information Protection Act 2016 (PIPA) was passed to ensure that individual rights to privacy are protected. PIPA also created the Office of the Privacy Commissioner for Bermuda as an independent public office. The mandate of the Privacy Commissioner is to regulate the use of personal information by organisations in a manner which recognises both the need to protect the rights of individuals in relation to their personal information and the need for organisations to use personal information for legitimate purposes, among other duties. Bermuda's first Privacy Commissioner, Alexander White, was appointed in January 2020.

Ensuring that people stay in control of their privacy is so important, now and in the future. Privacy helps our democratic society to function by protecting freedoms of assembly and secret ballots. It helps our economies work by helping us trust one another online. And as we all get shown more and more "personalised content", we may be getting completely different information from others. Privacy helps us ensure we stay in control of our own decisions.

PIPA gives individuals the power to be in control of their own lives, but it is up to individuals to hold organisations accountable for their actions by asking questions and taking action if necessary. Commissioner White is there to help you in that regard.

To learn more about the Privacy Commissioner and privacy issues, visit the Office's website at **[www.privacy.bm](http://www.privacy.bm)**. If you have questions, you can reach out directly by calling **441-543-7748** or emailing **[PrivCom@privacy.bm](mailto:PrivCom@privacy.bm)**.

***Did you know:***  
**Third Sector Coordinated  
Crisis Response (CCR)**

The CCR team has identified critical non-profits and other organisations that provide community support with shelter, food and other essential services such as mental health counselling. Having determined the needs, it has worked to assemble the resources to meet those needs. The CCR team continues its outreach to individuals and organisations to prepare.

Who is behind the CCR?

- Bank of Bermuda Foundation
- Bermuda Community Foundation
- Bermuda Health Council
- Inter-Agency Committee for Children and Families
- Age Concern Bermuda
- Tina Nash, former Executive Director of Raleigh Bermuda
- Danielle Riviere, former Executive Director of the Centre on Philanthropy

The CCR team compiled useful resources for vulnerable persons which included a schedule of food security locations and times as well as a list of essential services, many of which were funded by the Bermuda Emergency Fund. The CCR team recently released a close-out report which details their efforts. See the full report on the BCF website.

CONTACT:  
Bermuda Community Foundation

Address: 16 Wesley Street,  
Hamilton HM 11

Tel: **441-294-4959**

Email: **[info@bcf.bm](mailto:info@bcf.bm)**

**[www.bermudacommunityfoundation.org](http://www.bermudacommunityfoundation.org)**

## STRATEGIC AIM III: CHAMPIONING BEST PRACTICE

### ASSESSING GOOD ADMINISTRATION

Ombuds offices worldwide benefit from shared tools and guidance on how to assess the actions of public bodies. In our work of investigating the conduct of authorities in Bermuda, we routinely refer to the “Principles of Good Administration” published by the UK Parliamentary and Health Service Ombudsman in 2007. These guiding principles provide clear and succinct language on how to define good administrative practices. We also routinely describe them in our presentations and correspondence to authorities regarding their complaint handling.

There are other useful resources for guidance on what administrative fairness means. These publications are based on decades of experience investigating complaints. They are intended to promote a shared understanding of how our Office will consider the cases of complainants and how we will assess the authorities’ delivery of service to the public.

#### VOCAB ALERT:

The “Principles of Good Administration” are:

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

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

- “Fairness by Design: An Administrative Fairness Self-Assessment Guide” from various Canadian Ombudsman offices in collaboration (2019)
- “Good Conduct and Administrative Practice: Guidelines for State and Local Government” from Australia’s New South Wales Ombudsman (2017)
- “Principles of Good Administration and Good Records Management” from Wales’ Public Services Ombudsman and Information Commissioner’s Office in collaboration (2016)
- “Administrative Fairness Guidebook” from Canada’s Alberta Ombudsman (2013)
- “Defining Fairness in Local Government” from the Ombudsman Toronto (2013)
- “Principles of Good Complaint Handling” from the UK Parliamentary and Health Service Ombudsman (2008)
- “Principles for Remedy” from the UK Parliamentary and Health Service Ombudsman (2007)
- “A Guide to Principles of Good Complaint Handling” from the Ombudsman Association (2007)
- “Code of Administrative Justice” from the British Columbia Office of the Ombudsman (2003)

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

- “Good Practice Guide to Dealing with Challenging Behaviour” from Australia’s Victorian Ombudsman (2018)
- “Managing Unreasonable Complainant Conduct Practice Manual” from Australia’s New South Wales Ombudsman (2012)

- “Being Complained About – Good Practice Guidelines” from the University of Glasgow and Hirstworks (with input from the Scottish Public Services Ombudsman) (2019)
- “Complaints: Good Practice Guide for Public Sector Agencies” from Australia’s Victorian Ombudsman (2016)
- “Complaints Improvement Framework” from the Scottish Public Services Ombudsman (2017)
- “Effective Complaint Handling Guidelines” from Australia’s New South Wales Ombudsman (2017)
- “Effective Complaints Management Self Audit Checklist” from Australia’s Queensland Ombudsman (2006)

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

## DEMONSTRATING ACCOUNTABILITY

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

In late 2017, we began re-validating membership with one of our affiliate ombuds organisations. This process has required more rigour in our approach to evaluating and improving on our work. To date, we have introduced and made available to the public new written guidance on these topics:

- making reasonable adjustments to accommodate persons with disabilities or other challenges;
- dealing with unacceptable behaviour;

- how to request an internal review of a complaint decision (note: in 2019 we received 1 request);
- how to make a complaint about our services (note: no complaints requests in 2019); and
- how staff declare and record potential conflicts of interests.

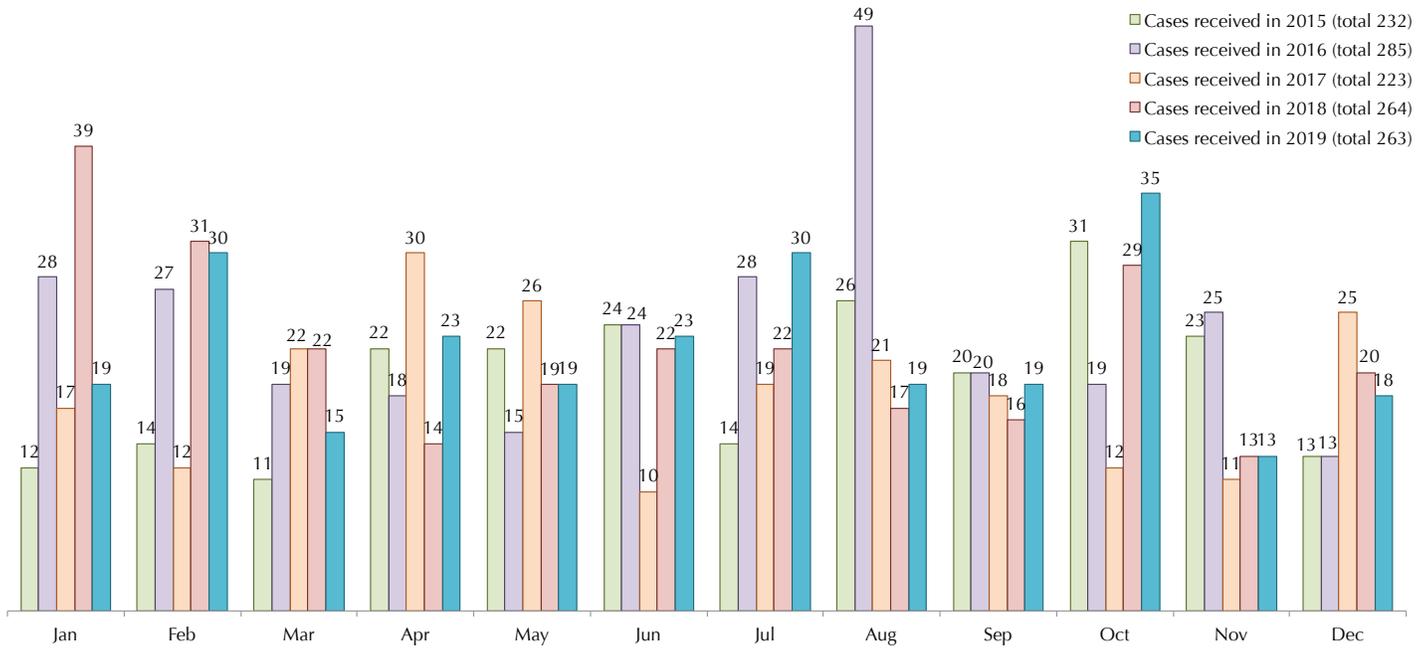
We also updated information about potential complaint outcomes and posted a searchable list of public authorities on our website. (Note that our jurisdiction is based on both the body and the subject being complained of.) You are encouraged to explore our website or stop by for a print copy.

In our submission for the Government’s budget book for 2020-2021, we refreshed our Office’s mission and objectives (see page 10). We also revised the performance measures, to ensure we were prepared to provide the public with meaningful information about our core performance in detail. We aim to publish complaint-handling outcomes for our revised performance measures, since generating case reports from our new electronic system now is within reach.

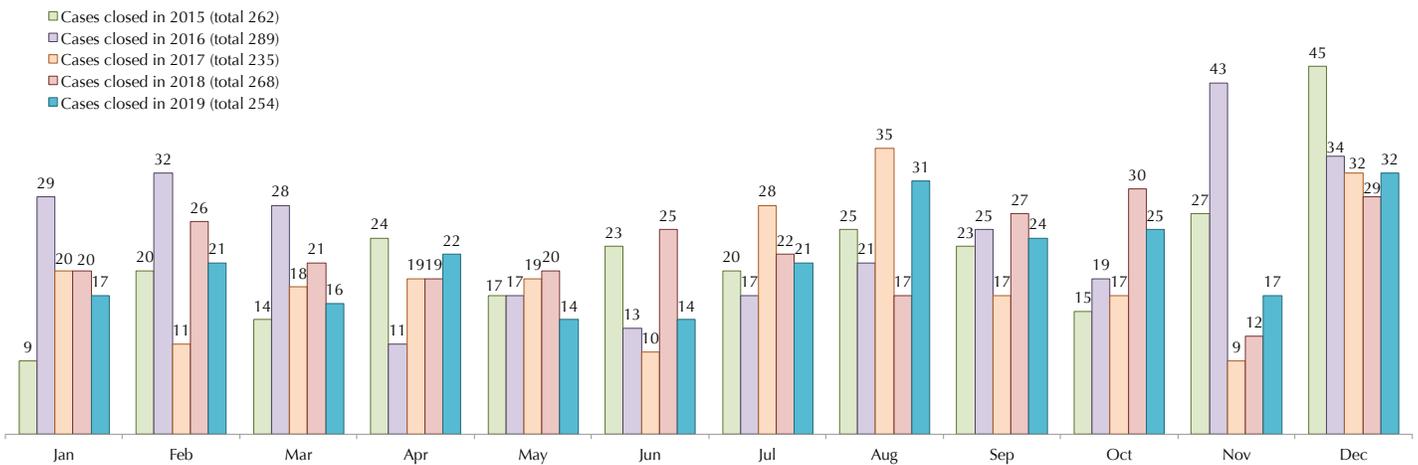
Our progress with closing cases, while receiving new cases, has remained steady. Based on the past five reporting years, we can report that:

- On average each month, 21 new cases are received, and 22 cases are closed.
- The fewest new cases opened in a month was 10, in June 2017, and the most was 49, in August 2016.
- The fewest cases closed in a month was 9, in January 2015 and November 2017, and the most was 45, in December 2015.
- On average our busiest months for receiving new cases are August and October, and for closing cases December.

**Figure F: Cases opened per month: 5-year glance**



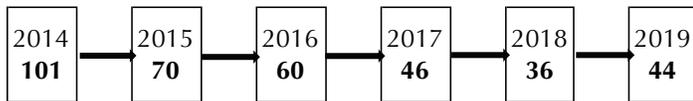
**Figure G: Cases closed per month: 5-year glance**



The complaint-handling outcomes, based on our target timeframes for different stages in our process, were improved in part during 2019:

- We aim to complete intake for incoming cases within 7 working days. We met our target for 58% of new complaints received in 2019 (not counting in enquiries) – a 10-point increase from the year before.
- For 84% of enquiries dealt with in 2019, we met our target to quickly assist the caller, in less than 7 working days – a 4-point decrease from the year before.
- We also aim to address any complaint that we think does not require a full investigation within 30 working days (i.e. no more than six weeks). In 2019, we met our target for 24% of complaints in the facilitated resolution stage – a 12-point decrease from the year before.

We continue working towards carrying over fewer and fewer outstanding complaints at each year's end. For complaints carried into the next year from all prior years, our steady success with having a lower count was interrupted in 2019, as shown below.



However, when we focus on our complaint performance for new complaints received in its reporting year alone (excluding the outstanding complaint balance from the prior year), our trend remains steady. For the past 3 years, we have reduced the portion of open complaints compared with the year's total received (see Figure A on page 15). In 2019, we carried over the lowest portion – a 10-point decrease from our 5-year average of 22%.

	Open	Total	Portion
2019	25	214	<b>12%</b>
2018	30	166	18%
2017	32	126	25%
2016	53	157	34%
2015	32	161	20%
<b>Average</b>	<b>34</b>	<b>165</b>	<b>22%</b>

As stated in last year's report, we believe our ideal carry-over count, from month-to-month, will be about 20 cases. This is based on the trends as shown in Figures F and G as well as the above extract from Figure A. We are pleased to show that our success in 2019 brings us 2-points away from achieving this goal.

## STAFF TRAINING



A defining characteristic of an Ombudsman and their teams is that they are specially trained. They are specialists in dispute resolution. Ombudsmen are trained to assist with addressing complaints in a fair manner and to operate confidentially, impartially and in accordance with best practice. The nature of ombudsman work is unique and specialised. Ombudsman training is designed to share practices, standards, research and strategies at regional and international conferences and training as well as during specially designed professional development programmes. Local trainings provide insight into positive developments and challenges at home and allow us to meet others from offices with which we work. Our team took part in local and international training in 2019. These opportunities to gain insight and establish relationships have proven to be as valuable as the training sessions themselves.

The training highlight of the year was in May when our whole team participated in a two-day session facilitated by Dr. Victor Ayeni, after the Caribbean Ombudsman Association (CAROA) conference, alongside the international delegates and our local non-ministry colleagues. Details of the conference are reported in greater detail on page 49.

Other 2019 conferences for the Ombudsman included:

- attending the International Ombudsman Institute (IOI) Board of Directors meeting in Merida, Mexico as she continues to serve as IOI Caribbean Director and Regional President for the Caribbean and Latin America (May);
- attending and presenting at the Institute of Latin American Ombudsman (ILO) 10th General Assembly in San Salvador, El Salvador. Ms. Pearman was invited to attend and deliver a speech entitled, “Beyond Barriers – Partnering to Strengthen Good Governance in our Region” (July);
- attending the United States Ombudsman Association 40th Annual Conference in Honolulu, Hawaii. As part of this conference, Ms. Pearman gained insight into interventions on behalf of those with mental health issues as well as family-related matters (September);
- attending and presenting at the first ever International Ombuds Expo in Abuja, Nigeria. This historic event brought together over 500 national and specialty ombuds and grievance handling offices from over 100 countries in an exhibition of the role and operations of these unique institutions. The Ombudsman represented both Bermuda and CAROA with an exhibition booth and presented a paper entitled, “Why Does Effective Complaint Handling Matter in Good Public Administration?” The Expo also featured a tribute Celebrating Women Leaders which included Ms. Pearman and former Bermuda Ombudsman, Ms. Arlene Brock (October).

Staff members completed these trainings:

- Our team participated in Appreciative Inquiry training with Ms. Aderoke Bademosi-Wilson, Director of the Department of Communications. Appreciative Inquiry (AI) is a change-management approach which focuses on strengths rather than weaknesses and requires a particular way of asking

guided questions that encourage positive thinking and outcomes. This differs from many approaches to evaluation which focus on deficits and problems. AI can be used by individuals, teams or organisations. It helps people move toward a shared vision for the future (March);

- Executive Assistant, Robyn Eve, participated locally in the “4th Annual Administrative Professionals Development Conference” hosted by Admin Excellence. Ms. Eve joined hundreds of admin professionals from across the public and private sectors for a day filled with resources and learning with an international guest speaker and local panelists (April);
- Investigations Officer, LaKai Dill, completed a second postgraduate module on “Complaints & Ombuds Techniques”, delivered online through Scotland’s Queen Margaret University (September to January).



Ms. Pearman (2nd row, far right) at the IOI Board of Directors Meeting



Ms. Pearman meets the Hon. Chief Public Complaints Commissioner for the Federal Republic of Nigeria, Mr. Chille Wanger Igbawua , co-host of the IOE Expo

## AFFILIATIONS

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



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

The Ombudsman served as President of CAROA until 30 June 2019, concluding a two-year term, and handed-over to the newly elect council which was decided during the 2019 General Membership Meeting, held in Bermuda at CAROA's biennial conference in May 2019.



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



International Ombudsman Institute  
Institut International de l'Ombudsman  
Instituto Internacional del Ombudsman

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

In March 2019, the Ombudsman began to serve as the Caribbean Director and Regional President for the Caribbean and Latin America for the IOI, for a two-year term.

## OMBUDSMAN ASSOCIATION

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



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

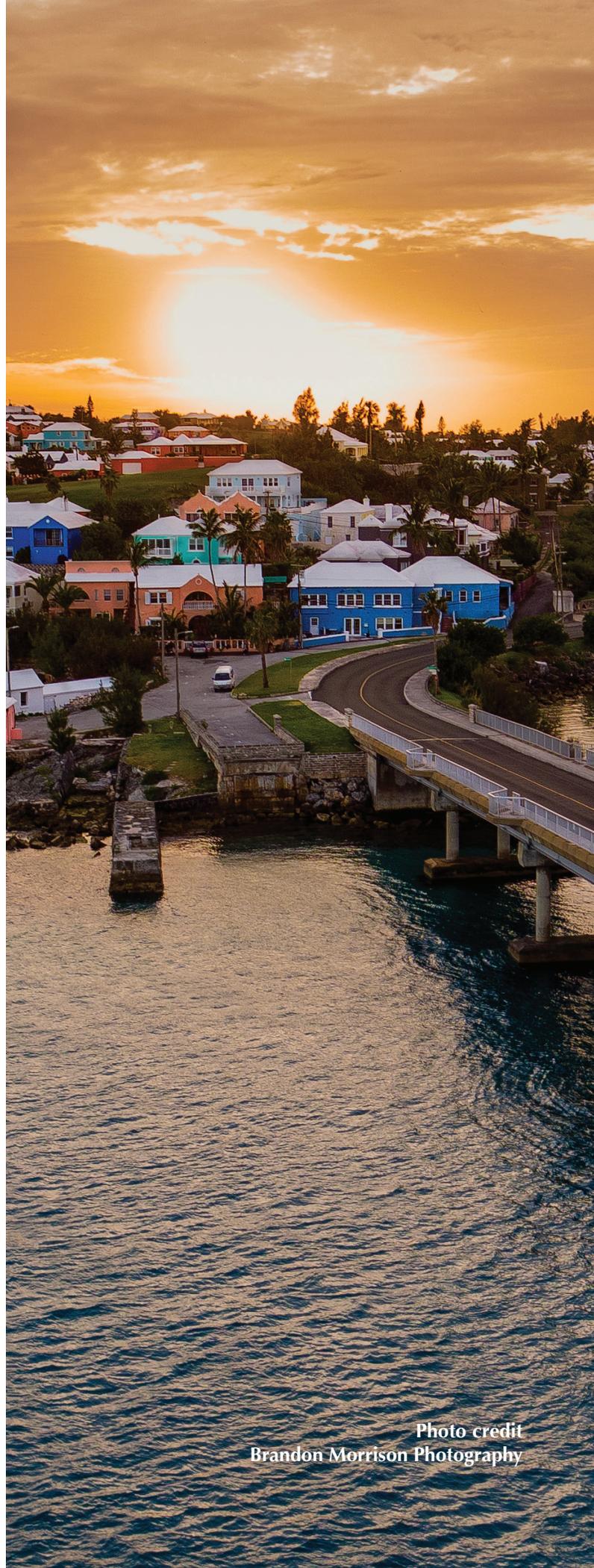


Photo credit  
Brandon Morrison Photography

## **Bermuda Ombudsman Office Hosted International Conference and Training**

28 – 31 May in Bermuda

Bermuda hosted the 10th Biennial Caribbean Ombudsman Association (CAROA) Conference and Training from 28 through 31 May 2019 at the Fairmont Southampton Resort. This was the 2nd time Bermuda has hosted the CAROA Conference, the first being in 2010. We welcomed 32 delegates, not including their guests, from various Ombudsman Offices and other complaint handling bodies from 15 countries to our shores. The theme for the two-day conference was *‘Strengthening the Role and Performance of the Ombudsman and the Human Rights Institutions in the Caribbean and Latin America’*.

The conference was moderated by Mr. Leopold Mills II, Barrister and Attorney, former Cabinet Secretary and Head of the Public Service, and began with two public sessions. These public sessions featured local and international presenters who shared valuable insight on two timely subjects: ‘Strengthening Relationships while Maintaining Independence’ and ‘Climate Change and Ombudsmanship’. A blessing for a successful conference was offered by Chaplain Kevin Santucci. Opening remarks were given by the Deputy Premier and Minister of Home Affairs, the Hon. Walter H. Roban, JP MP. A goodwill message was given by First Vice President of the International Ombudsman Institute (IOI) and Vice President of the United States Ombudsman Association (USOA) Ms. Diane Welborn. Attendees at the public sessions, included the Deputy Governor Ms Alison Crocket, President of the Senate the Hon. Joan Dillas-Wright, former Premiers, senior public servants, colleagues from non-ministry offices and members of public.

A leader in establishing CAROA over 20 years ago, Dr. Victor Ayeni gave a thought-provoking keynote address on ‘The Role of CAROA in the Promotion of Ombudsmanship and Human Rights in the Region’. Presentations and reflections on progress and challenges in the region were in closed session.

The session entitled ‘Climate Change, Natural Disasters and Ombudsmanship’ was timely and informative. The Minister of Public Works, Lt. Col. David Burch, chaired this public session. Presenters included, amongst others, Dr. Mark Guishard of the Bermuda Institute for Ocean Sciences (BIOS); Ms. Amrikha Singh, CARICOM Sustainable Development Manager and Mr. Renan Hedouville, Public Protector of Haiti.

Of the numerous lessons to come out of the climate change session was Minister Burch’s commitment to encourage the Bermuda Government to invite the Ombudsman to join in disaster management efforts at the planning stage. This would allow for more direct sharing of lessons learned across the region and CAROA invites other regional governments to consider such action.

A significant outcome from the conference was the Bermuda Declaration, which demonstrated commitment to continually improving ombudsman practices through regional cooperation. During the session ‘Looking to the Future’, a number of important areas were identified as priorities and action planning for the elected CAROA Council.

The feedback received from delegates, local participants and members of the public was extremely positive. Our thanks to all delegates, presenters and attendees who contributed to the conference being a great success, full of learning, culture and collegiality.

The elected CAROA Council is headed by President, Dr. Rosemarie Husbands-Mathurin, Parliamentary Commissioner for St. Lucia. Ms. Pearman continues to work with CAROA and regional bodies following her election in March 2019 as Regional President for the Caribbean and Latin America of the IOI, the largest global body representing ombudsman from more than 205 associated bodies in over 100 countries.

Following the conference, delegates had the benefit of a first-class executive two-day training facilitated by Dr. Victor Ayeni, Director of GMSI UK. Dr. Ayeni is a highly regarded and well-

known international authority on the ombudsman and related oversight institutions. In addition to being a proponent of establishing CAROA he provided guidance during the establishment of the Office of the Ombudsman for Bermuda and trainings to our team. The theme for the trainings was 'Advancing the Ombudsman's Impact: Roles, Services and Performance'.

Training sessions covered amongst other things: fundamental principles and changing nature of the ombudsman; ombudsman's multi-dimensional series; ombudsman complaint handling and investigations.

Many thanks to my team, Youth Parliament volunteers, conference organiser Mr. Dean Parris and all who assisted in organising and hosting this conference.



CAROA Conference 2019 - Delegates of the Caribbean Ombudsman Association photo credit DCI



CAROA Conference 2019 – Attendees during the public sessions on the opening day of the conference photo credit DCI



CAROA Conference 2019 – Minister David Burch with conference delegate Mr. Dayne Gellineau, Investigator at the Office of the Ombudsman, Trinidad & Tobago. photo credit DCI



CAROA Conference 2019 - Former Premiers the Hon. Dame Jennifer Smith and the Hon. W. Alex Scott, CBE speak with Government House Policy Officer Ms. Pearl Melius photo credit DCI



## 10<sup>TH</sup> BIENNIAL CAROA CONFERENCE 2019

## Bermuda Declaration

On the 21<sup>st</sup> Anniversary of the  
Establishment of CAROA

WE, members and associates of the Caribbean Ombudsman Association (CAROA),

MEETING on the 21<sup>st</sup> anniversary of our Association at the 10<sup>th</sup> Biennial Conference of CAROA held in Bermuda on 28<sup>th</sup> and 29<sup>th</sup> May 2019;

CONSIDERING the theme of “Strengthening the Role and Performance of the Ombudsman and Human Rights Institutions in the Caribbean and Latin America”;

RECOGNISING the support extended to us by the Ombudsman for Bermuda who hosted the conference and our gratitude to the following bodies who contributed to the success of the Conference: the UK Foreign and Commonwealth Office, the Government of Bermuda, International Ombudsman Institute, and Regional Governments;

NOTING our achievements over the last 21 years including in the expansion of our role and influence, membership and scope of operations in response to the new and emerging challenges we face in a rapidly changing world;

RESTATING the continued relevance and importance of our role towards securing quality public services, effective public accountability of governments, protection and promotion of human rights, and overall good governance,

RESOLVED to adopt the following declaration:

1. Reaffirm the fundamental principles of independence, fairness, transparency and impartiality that underpin and uphold the Ombudsman institution and other related oversight institutions in the conduct of their work in securing administrative justice and human rights for all;
2. In view of the changing realities of our region, embrace the associated and necessary expansion of our mandate, role and responsibilities, including in areas such as human rights, the environment, disaster mitigation and management towards ensuring that people of the region are guaranteed the highest quality of governance;
3. Continue to advance the professionalisation of the Ombudsman role and its functions in order to enhance the prospects of those who work and associate with it;
4. Strengthen the operational framework of our Association towards enhancing its resilience, effectiveness and responsiveness to the demands and challenges facing our members; and
5. Reinforce our engagement and collaboration with governments, civil society, regional bodies, other international partners and organisations and relevant stakeholders, for the enhancement of our role and operations.

Adopted this day on Wednesday, 29<sup>th</sup> May 2019

Victoria Pearman  
Ombudsman for Bermuda  
President of the Caribbean Ombudsman Association (2017 – 2019)



CAROA Conference 2019 – Former Premier Paula Cox, former Bermuda Ombudsman Ms. Arlene Brock and President of the Senate the Hon. Joan Dillas-Wright photo credit DCI



CAROA Conference 2019 – Delegates had an opportunity to explore historic sites around the island including Cobb's Hill Methodist Church in Warwick. photo credit Robyn Eve



CAROA Conference 2019 – Local panelists discuss the importance of “Strengthening relationships while maintaining independence”. photo credit Robyn Eve



CAROA Conference 2019 – The H&H Gombey Troupe performing at the welcome reception held at Government House photo credit Robyn Eve



CAROA Conference 2019 – Ombudsman Team pictured with the H&H Gombey Troupe at the welcome reception held at Government House photo credit Robyn Eve

## SUPPLEMENTARY RESOURCES

### COMPLAINT PROCESS FAQ'S

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

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

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

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

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

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

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

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

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

The Ombudsman can recommend financial consolation and financial compensation payments.

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

- A financial compensation payment is used to restore the complainant to the position they were in before the maladministration occurred.

Both forms of financial remedy are rarely recommended and can only be recommended after a finding of maladministration. Unlike the Courts, the Ombudsman's recommendations are neither binding nor enforceable.

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

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

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

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

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

A consolation payment can range from \$50 – \$5,000, depending on the severity of the maladministration found; the amount of the payment is determined at the Ombudsman's discretion.

When deciding whether a complainant should be financially compensated, the Ombudsman considers questions such as: Has the complainant suffered a financial loss as a result of maladministration? Is the loss quantifiable?

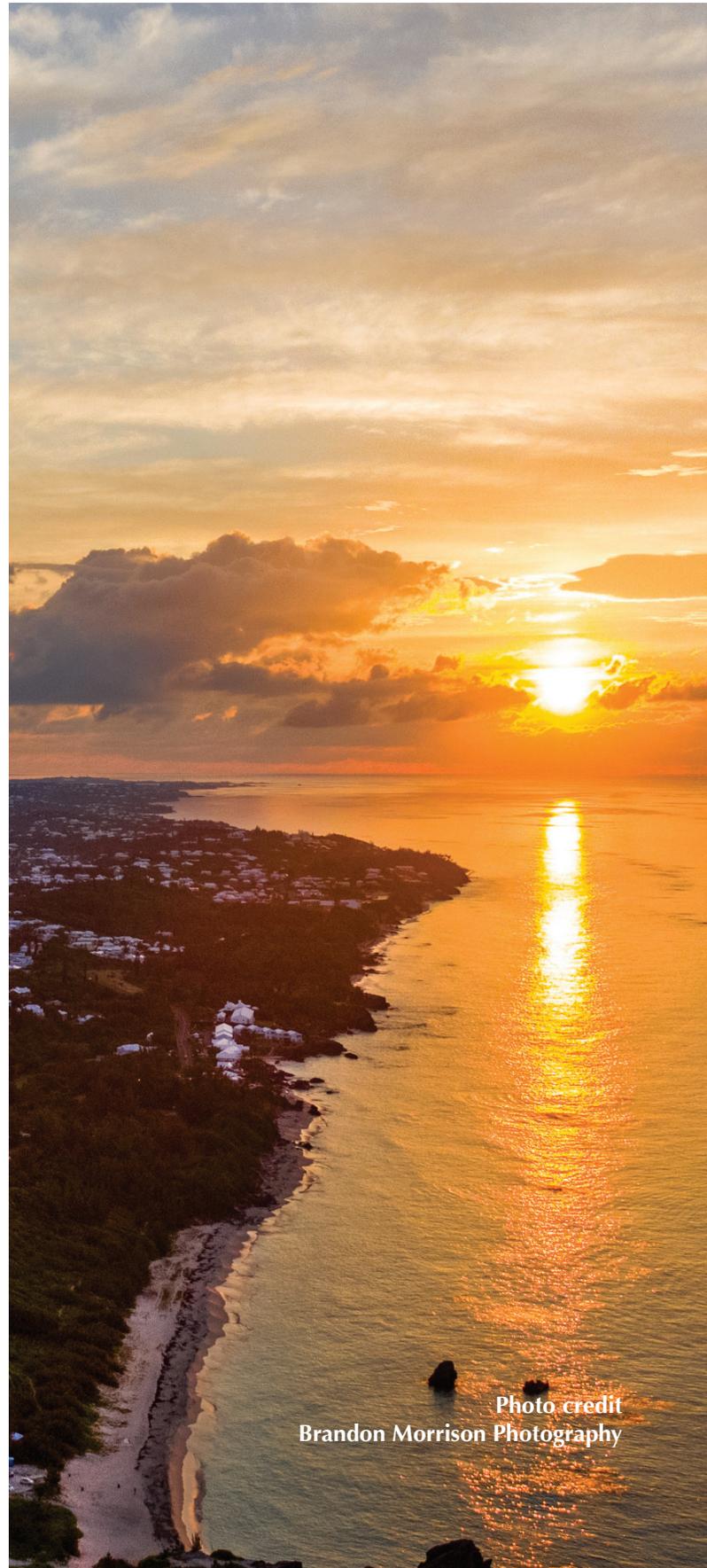


Photo credit  
Brandon Morrison Photography

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

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

## COMPLAINT DISPOSITIONS

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

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



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

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## ABOUT OUR SERVICES

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

Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

Agree                       Neither agree nor disagree                       Disagree                       I do not know

3. Staff listened to me and understood my complaint.

Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

Agree                       Neither agree nor disagree                       Disagree                       I do not know

5. Staff treated me with courtesy and respect.

Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

14. Staff treated me without discrimination and prejudice.

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

- Agree                       Neither agree nor disagree                       Disagree                       I do not know

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

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OMBUDSMAN FOR BERMUDA

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**complaint@ombudsman.bm**

*For The  
Good Of  
The Public*



*And Those  
Who Serve  
The Public.*

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