

*MONTSERRAT
COMPLAINTS COMMISSION*

Annual Report

2013 - 2020

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INTRODUCTION

This Report is submitted pursuant to section 30 of the Complaints Commission Act. That section provides that the Commission shall, as soon as may be practicable after 30 June in each year, furnish to the Governor a report on the performance of the functions of the Commission during that financial year, including a general survey and statistics in relation to complaints received by the Commission, the results of mediations and investigations conducted under the Act, steps taken to implement its recommendations and any other matter or development it thinks fit. The Act also requires the submission of the audited annual reports of the Commission.

This Annual Report is the first to be issued by the Commission pursuant to Section 30 of the Act. Having commenced operations in 2013 with a clean slate, and without *inter alia*, rules of procedure for the investigation and hearing of complaints, the initial focus was inevitably, the establishment of the Commission's operational parameters and the sensitisation of stakeholders. As a Commission serviced by volunteer Commissioners meeting occasionally as occasion warrants, and initially beset by staffing issues, the requirements of Section 30 of the Act went overlooked for some time. In 2019 the Commission prioritised the finalisation of the Annual Report for issue in early 2020, but the dislocation brought on by the COVID-19 pandemic resulted in a further delay in the issuing of the Report.

The Report covers the period 1st February 2013 to 30 June, 2020. Over that period the Commission received 29 complaints under the Complaints Commission Act, 15 of which were investigated. By Regulation 47 of the Public Finance (Management and Accountability) (Procurement) Regulations 2019, the Commission has jurisdiction to hear appeals from decisions of the Procurement Board. During the period of one year since it sentry into force, no appeals were received. Written reports of the Commission's findings and recommendations in relation to the complaints investigated by the Commission were disseminated as required under section 20 of the Complaints Commissions Act.

The Report presents a summary of the work and activities of the Commission from the commencement of its operations, including a synopsis of some of the challenges encountered by the Commission, the nature and origin of the complaints received, their investigation and outcome, and the status of implementation of the Commission's recommendations.

OVERVIEW, COMPOSITION, MEMBERSHIP AND ADMINISTRATION

Overview

The Complaints Commission was established by section 105 of the Montserrat Constitution Order 2010, for the purpose of encouraging the resolution of human rights and maladministration complaints in the Government of Montserrat, and other complaints prescribed by law, and to assist in their resolution, by providing an independent, fair and accessible process for resolving them. A human rights complaint is a complaint of breach or infringement of a right or freedom referred to in Part 1 of the Constitution.¹ The actions and conduct which constitute maladministration are set out in the Complaints Commission Act, which also establishes the composition of the Commission and defines the scope of its jurisdiction and powers.² In addition to the jurisdiction of the Commission under the Complaints Commission Act, Section 105(2) of the Constitution enables the Commission to consider other complaints prescribed by law. By Regulation 47 of the Public Finance (Management and Accountability) (Procurement) Regulations 2019, the Commission was conferred with jurisdiction to hear appeals from decisions of the Procurement Board.

Composition

The Commission comprises a Chairman and two other members appointed by the Governor on the advice of the Cabinet. The members are required to be persons of high public standing with a reputation for personal integrity. At least one member of

¹ Section 105(4) Montserrat Constitution Order 2010

² See sections [12] [13] and [14] Complaints Commission Act 2011.

the Commission is required to be an attorney at law of at least fifteen years standing at the bar.

The role and functions of the Commission are akin to those of an ombudsman in other parts of the Commonwealth Caribbean. The Commission accordingly shares a mutually beneficial working relationship with the seventeen-member Caribbean Ombudsman Association (CAROA), of which it is also a voting member.

Membership

The Commission commenced operations in February 2013. Two of the members appointed in 2013, Mr. George Kirnon and Mr. Julian Daniel are still members of the Commission. Miss Florence Daley, the former Chair of the Commission, demitted office in March 2019. Mr. Leslie Sweeney was appointed as a Member of the Commission in August 2019.

Chairman – George Kirnon

Mr. Kirnon is an attorney at law of over twenty-five years standing. A former Parliamentary Counsel in the service of the Government of Montserrat, and later a legal adviser to the Barbados-based Caribbean Development Bank, he is currently the Assistant General Counsel of the Caribbean Community Secretariat where he holds operational and supervisory responsibility for the development and preparation of legal instruments in furtherance of the work of the Community.

Although he has resided outside of Montserrat for upwards of twenty years, his contribution and continuing commitment to the development of Montserrat has never been in question. In 1995, his desire to see Montserratians realise their full potential led him to establish a Centre for the Teaching of Law, an initiative which led to the birth of the legal careers of several attorneys, five of whom, including the Director of Public Prosecutions, are members of the local bar. In 1996 he crafted the Emergency Powers Regulations during an afternoon of heightened volcanic activity in Montserrat,

and the full scale evacuation of Plymouth, to establish the legal framework for the management of the volcanic crisis. In 1998 he was appointed by the Government of Montserrat to conduct national consultations and to prepare a Report in response to a UK Government White Paper on the future relationship between Montserrat and the UK, which later formed the basis for the change in nomenclature from “Colony of Montserrat” to “Overseas Territory of Montserrat, and the extension of UK Citizenship to nationals of Montserrat.

Mr. Kirnon practiced as a member of the private bar between 2000 and 2008 but family and overseas work commitments compelled him to withdraw his practice in 2008. He subsequently carried out assignments for the Government of Montserrat as a consultant, and in 2012 was appointed Law Revision Commissioner in relation to the preparation of the 2012 Revised Edition of the Laws of Montserrat.

Regionally, Mr. Kirnon has been associated with a number of important development initiatives. In 2004 he conceptualised and drafted the Caribbean Court of Justice Trust Fund Agreement, a novel legal construct for the investment of the initial capital injection of USD100M to finance the operations of the Caribbean Court of Justice into perpetuity. During his stint at the Caribbean Development Bank he held primary legal responsibility for over a hundred regional and other projects, including the establishment of the CCJ, the re-financing of LIAT, infrastructure and social development projects, lines of credit to financial intermediaries and policy-based loans to regional governments.

Mr. Kirnon is the holder of the Bachelor and Master of Laws degrees from the University of the West Indies, the Certificate of Legal Education from the Norman Manley Law School, a Master of Laws degree in international trade law from Dalhousie University, Canada, and the Master of Business Administration degree from Bradford University (UK). He specialises in administrative, constitutional and international trade law and is also an experienced legislative drafter. He is an avid music enthusiast

and holds the Master Certificate in Writing and Production from Berklee School of Music.

Member – Julian Daniel

Mr. Daniel is an alumnus of The University of the West Indies having completed undergraduate studies at Cave Hill and St. Augustine campuses in Barbados and Trinidad, respectively.

As a consultant, Mr. Daniel was directly contracted by the Caribbean Development Bank to locally manage the Hurricane Lenny Rehabilitation Project for Anguilla in 2000. From 2017 he was the United Kingdom, Foreign and Commonwealth Office supported Infrastructure Advisor for Anguilla which spanned the period when Hurricane Irma struck the island and was intimately instrumental in the recovery and rebuilding actions.

Mr Daniel has been engaged in extensive infrastructure development consultancy work for over twenty-five (25) years. He has vast experience in working with governments, international contractors, engineering firms, and funding agencies. He has been instrumental in the implementation and execution phases of major infrastructure projects throughout the Caribbean that significantly impact on the socio-economic fabric of the respective islands. Recipient territories include Anguilla, Montserrat, Tortola B.V.I., St. Croix U.S.V.I., St. Eustatius, St. Kitts and St. Maarten. Projects include airports, seaports, cruise facilities and roadway construction and rehabilitation, to name a few.

Mr. Daniel is the Managing Director and owner of Emerald Homes Development Inc. and Emerald Group of Companies Inc. the parent group of Emerald Consultants which have collaborated in the successful completion of many projects. He was also acting CEO and Executive Chairman of the Montserrat Development Corporation.

In addition to a Bachelors Degree in Natural Science, Mr. Daniel also holds a Masters degree in Anti-Corruption Studies (MACS) from the International Anti-Corruption Academy (IACA) in Austria.

The afore-mentioned are underpinned by Mr. Daniel's active Christian Pastoral qualifications, experience and work in Montserrat, Anguilla and regionally and his involvement in community services and development.

Member – Leslie Sweeney

Mr Leslie Sweeney is a retired civil servant. He served the Montserrat Civil Service for 30 years within the Montserrat Fire and Rescue Services. For several years he held the post of Chief Fire Officer with responsibility for the financial management, human resources management, general administration, procurement, and inventory management functions of the Fire Service. Mr. Sweeney's achievements include leading the search and rescue efforts during the volcanic crisis, aligning the structure of the Fire Service to meet current requirements, and developing strategies to integrate members of the Fire Service with the local community. During the period of his leadership, the Fire Service also forged relationships with regional Fire Services with reciprocal participation in local sporting tournaments.

Mr Sweeney currently serves as a member of the Prison Visiting Committee, where prisoner's welfare and matters pertaining to the operation of the prison are considered. He is an alumnus of the Fire Services College, Moreton in Marsh, Gloucestershire, England, the Montserrat Community College, and the St John's Primary School. He has been awarded the Queens Gold and Diamond Jubilee awards and medals for long service in the public service.

He joined the Montserrat Complaints Commission on 27th August 2019, and is due to serve the Commission for a period of four years.

Administration

Administrative responsibility for the Commission lies with the Constitution and Commissions Secretariat, which is headed by a Director. The Secretariat also has responsibility for administering the Electoral Commission, the Integrity Commission and the Mercy Committee. In undertaking its administrative functions, the Secretariat liaises with Departments of Government and Public Organisations, conducts outreach activities and ensures that regular office functions are carried out thus allowing the Complaints Commission to focus on its core functions. The Commission is staffed by the following members of staff –

Judith Baker – Director

Mrs. Baker holds Bachelor of Arts Degree in Economics and Geography from the Texas State University, a Master's Degree in Business Administration from Memorial University in Canada, Bachelor & Masters of Theology Degrees from The Light House Christian College in the USA.

She has worked with the Government of Montserrat in various capacities throughout her career. She started off as an educator in the Primary School system and eventually taught in the Secondary School system for many years. She then became an Assistant Secretary and worked at the Ministry of Communications, Works and Labour and the Ministry of Education, Health and Community Services. She was later appointed Clerk of the Legislative Assembly where her role was eventually enlarged to that of Director of the Constitutions Commissions Secretariat.

Shivonne White - Senior Commissions Analyst

Mrs. White holds an LLB degree from Northampton University. She occasionally acts as a Registering Officer and Alternate Clerk of Cabinet and has on several occasions acted as Director of the Secretariat. She has had stints as Election Observer for elections in Anguilla and Turks & Caicos Islands. Mrs White is currently the

Commissioner of the Montserrat Girl Guides Association and is also a member of the Executive Council of the Girl Guides Association.

Francelise White – Commissions Analyst

Miss White is an alumnus of the St. George's Primary School, Montserrat Secondary School and the University of the West Indies. She holds a Certificate in Public Administration amongst many other certificates. Ms White brings a wealth of knowledge and experience to the Secretariat after working for eighteen years in the private sector. She is the focal point for all inquiries directed to the Secretariat, and is responsible for scheduling and organising meetings of the Commissions, and recording and producing minutes.

PERFORMANCE OF THE COMMISSION

As a body formed for the purpose of improving the administration and functioning of the public service through the hearing and investigation of complaints, the Commission has, through its adoption of transparent and objective processes, its interactions with public servants at all levels, and the clarity and objectivity of its reporting, established itself as an entirely independent yet integral part of the governance landscape of the public service.

The operations of the Commission commenced in February 2013 with a week of activities. These included physical working meetings between the members of the Commission to review the Complaints Commission Act, and the delivery of presentations to public servants designed to raise awareness of the existence, and role and functions of the Commission.

A review of its terms of reference and the scope of the jurisdiction of the Commission was a critical consideration in the proper discharge of its functions. The Commission understood, from the outset, that although its primary task was one of enquiry and

investigation, the discharge of its functions should be informed by the need to promote good governance within the public sector. Good governance is promoted where, through an objective and transparent process, acts of maladministration are found to have been committed or not committed, and where committed, recommendations made to mitigate their recurrence.

Maladministration includes all acts which are generally accepted as bad or poor administration. The definition stresses, in particular, the unreasonable exercise of discretion, lack of consideration for persons affected, and unjust and oppressive conduct. The duty of the Commission is to enquire whether there is evidence of maladministration and to make appropriate recommendations with a view to improving the administration of the public service. This duty is however one to be exercised with care. Apart from the interpretative challenges discussed later in this Report, the Commission is not a decision-making body. It cannot investigate the merits of administrative decisions or replace decisions or policies with its own. It cannot make orders. Its sole function is to determine whether acts of maladministration have been committed, and to make appropriate recommendations for dealing with them, consistent with the objectives of the Act. The yardstick against which the Commission's performance must necessarily be assessed therefore is the extent to which it has exercised its functions within the reasonably understood and applied parameters set out in the Complaints Commission Act. That assessment, it is suggested, is to be gleaned from the contents of the reports issued in relation to its investigations, each of which includes a summary of the complaint, the course of the investigation, the information solicited, the findings, and the Commission's recommendations.

The adoption of a meticulous form of reporting has encouraged, and in some instances compelled greater objectivity and transparency within the administrative processes of the public service, and enhanced the legitimacy and credibility of the Commission.

A further yardstick for assessing the performance of the Commission over the Reporting period is the relevance and effectiveness of its recommendations. Effectiveness is to be measured by the impact or potential impact of the recommendations on the operations of the public service and the degree of compliance. The impact on the operations of the public service is an empirical consideration which invites independent study, but the Commission is satisfied that its recommendations have been entirely relevant and useful in addressing the peculiar circumstances of each complaint investigated. Pages 28-50 of this Report set out the main recommendations of the Commission in relation to each complaint investigated, and the status of the recommendation at the date of this Report.

WORK OF THE COMMISSION

The work of the Commission was largely carried out through meetings of the Commission convened on an as-needed basis. At least one Commissioner resided out of Montserrat during the entire reporting period. Routine meetings were therefore always partly virtual, partly physical. There were four on-island meetings, one each in 2015, 2016, 2018 and 2019, each of which were approximately 3 days' duration. The on-island meetings were used to advance investigations of the Commission, promote public awareness and to meet with stakeholders in furtherance of the work of the Commission.

Meetings and interviews with Complainants were initially conducted via Skype but this presented formidable challenges of communication which compelled the need for a more effective platform. Meetings are now conducted via zoom, which provides a vastly improved platform for conducting the meetings of the Commission.

The consideration of a complaint commences with a meeting of the Commission where the contents of the written complaint are discussed and a course of action decided upon. This initial meeting may involve the participation of the Complainant where the

Commission requires clarifications or better particulars in relation to aspects of the complaint. At this meeting a decision is taken, consistent with the requirements of the Complaints Commission Act, whether or not to investigate. A decision not to investigate, results in a correspondence to the Complainant setting out the reasons. A decision to investigate is followed by a written request by the Secretariat of the Commission informing the Head of the relevant department of the particulars of the complaint and inviting a written response to the complaint. Based on further meetings with the Complainant and relevant personnel of the respondent department or Ministry, to solicit all relevant information, the Commission prepares a Report setting out its findings and recommendations. The Report is sent to the Governor and each member of the Cabinet as required under section 20(3) of the Complaints Commission Act. The Commission informs the Complainant of the results of the investigations in accordance with section 21 of the Act.

The response of the Departments and Ministries of the public service in relation to requests from the Commission for information to further its investigations has been particularly good. The attendance and participation of public officers has also been commendable.

The issuing of Reports by the Commission following the investigation of a complaint has not been as timely as the Commission would have liked. Report-writing is time-consuming and as an entirely voluntary activity on the part of the Commissioners, it will inevitably be subordinated in priority to other demands on the time available to the Commissioners. The head of the public service will need to determine, going forward, whether the voluntary writing of reports by the members of the Commission is sustainable, particularly following inevitable changes in the membership of the Commission. Shorter reports which contain an abbreviated summary of the findings of the Commission and its recommendations may be a course of action to which the Commission may need to resort in the near future.

Other activities of the Commission undertaken during the period include the following:

(a) *Public Awareness* -

(i) In an effort to increase awareness of the public service and private sector of the existence, and the role and functions of the Commission a series of seminars and workshops were conducted. A week of daily seminars were conducted in 2013 for various groups of persons both within and outside of the public service. Seminars were conducted with the Royal Montserrat Police Service and nurses of the Ministry of Health in 2016 and 2017 respectively.

(ii) In 2019, the staff of the Secretariat made a presentation to the younger members of the public service about the work of the Commission. The presentation was well received and enabled a lively discussion amongst the participants and the presenter. The number of questions and enquiries about the operations and functions of the Commission demonstrated an extremely high level of interest in the operations of the Commission. The Secretariat is in the process of planning similar activities for other sections of the public service and statutory authorities.

(ii) A leaflet and a brochure containing information about the Commission were produced in 2019 for the benefit of the public. Information from the brochure was recorded and aired on radio in early 2020. In the not too distant future a number of internet-based initiatives will be employed in support of the Secretariat's public awareness program.

(b) *CAROA Activities* –

Montserrat became a voting member of CAROA (Caribbean Ombudsman Association) in 2014. This has provided an opportunity for the Secretariat to participate in the highly beneficial training and other activities of the Association. To date, the Commission has received assistance from CAROA on two occasions for the purpose of attending its conferences. The 10th Biennial CAROA Conference was held in Bermuda from May 28th to 31st, 2019 with the theme; “*Strengthening the Role and Performance of the Ombudsman and Human*

Rights Institutions in the Caribbean and Latin America.” The Keynote address, entitled, *"After 20 Years, What is the Role of CAROA in the Promotion of Ombudsmanship and Strengthening of Human Rights in the Caribbean and Latin American region?"* was delivered by Dr. Victor Ayeni, Director of GMSI, UK

During the workshop session focussing on Climate Change and Ombudsmanship under the theme, *"Addressing the Public's Needs and Learning Experiences Following Natural Disasters"*. Complaints Commissioner Mr. Julian Daniel gave a presentation with the attention given to, the importance of good Communication before, during and after natural disasters.

Training was held after the conference under the theme; *"Advancing the Ombudsman's Impact: Roles, Services and Performance"*. The facilitator was Dr. Victor Ayeni, Director of GMSI, UK.

Commissioners Daley and Daniel also attended the 7th and 8th CAROA conferences in St Marten and Curacao, in May 2013 and 2015 respectively. The several conference sessions were held under the topics:

- i. Ombudsman relationships
- ii. Challenges facing the Ombudsman
- iii. Networking
- iv. Non-traditional issues facing Ombudsman Institutions

Anti-corruption Procurement and Integrity training was held, after the conference under the auspices of the International Ombudsman Institute and the International Anti-corruption Academy.

CHALLENGES OF THE COMMISSION

This section of the Report discusses some of the technical challenges to the work of the Commission during the reporting period.

The challenges include, firstly, interpretative difficulties associated with defining the jurisdiction of the Complaints Commission in two instances, namely (a) in relation to personnel matters such as appointments, removals, pay, discipline, and pension and (b) determining how to treat with complaints where a remedy may exist in the courts.

Secondly, issues surround the integration of the Commission within the public service. The alignment of the Commission's procedures with the policies and procedures of the public service has not been as smooth as the Commission would have liked. The difficulty arises from an existing view within the management of the public service that the jurisdiction of the Commission should be limited to the hearing of complaints from non-public officers. This fact, coupled with the interpretative challenges referred to above, may, in due course impact the full acceptance of the Commission's recommendations in relation to complaints arising within the public service.

(1) DEFINING THE JURISDICTION OF THE COMPLAINTS COMMISSION

(a) Personnel matters - Appointments, removals, pay, discipline, and pension remains a challenge

As a creature of the 2010 revised Constitution of Montserrat, the Complaints Commission is relatively new to the administrative and governance arrangements of the public service. It was therefore important for the Commission, as a first step, to properly ascertain the scope of its jurisdiction, having regard to the parameters established by the Complaints Commission Act. This process as it relates to jurisdiction, is still unfolding but the extent of its jurisdiction to investigate complaints of discrete acts of maladministration appearing in an administrative process involving

human resource issues such as appointments, removals, pay, discipline, and pension remains a challenge.

The issue arises under Section 13(3) (b) of the Complaints Commission Act which provides that the Commission shall not investigate any action, or action taken with respect to any matter described in the Schedule to the Act. The Schedule to the Act contains five restrictions, the fourth of which states as follows -

Action taken in respect of appointments or removals, pay, discipline, pension or other personnel matters in relation to service in any office in the public service or a public authority.

A purely literal reading of the above restriction would seem to prohibit the Commission from investigating any action taken as part of a continuum of actions or decisions which ultimately lead for example to a transfer or appointment. In the case of an appointment for example, actions and decisions to be taken include the preparation of a job description, advertising the job, short listing, interviewing, notification of results and the appointment to a post. All of these actions and decisions may be regarded as having been taken *in respect of* the appointment. Accordingly, a literal reading of the restriction renders the Commission incapable of investigating any action associated with actions or decisions taken in relation to any of these steps. For example, an alleged act of discrimination which takes place in the short-listing of candidates, would fall outside of the jurisdiction of the Commission.

When one removes all permissible actions and decisions which may be taken in relation to the multiplicity of potential personnel matters, and from which the Commission is therefore excluded, the leap in public sector governance which the establishment of a Complaints Commission at first appears to represent, begins to look more apparent than real. This is particularly the case since, outside of the usual grievance procedure mechanism, there is no independent dispute resolution mechanism within the public sector for the hearing of complaints in connection with personnel matters.

The Commission's discussion and analysis of the issue over time, given in particular the purpose for which the Commission was established, has compelled a purposive and pragmatic approach in relation to the application of the restriction to the facts of individual complaints. A slavish approach will preclude the Commission from enquiring into complaints involving discrete acts of maladministration however removed in time and space from the final personnel action simply because they are part of a chain or process which involves a personnel action or decision further along the chain. So to do, would be to render the jurisdiction inaccessible to public officers in practically every matter incidental to their tenure of employment.

Having reviewed the issue in some detail, including the conduct of wide research, the Commission has approached complaints on the basis that the restriction seeks to prohibit the Commission from enquiring into the substantive merits of personnel matters such as appointments, transfers and pay. For example, it would be ultra vires for the Commission to enquire into the question whether the transfer, appointment or transfer of an individual lacks merit. To do so would be to entertain an appeal on the merits of the decision which is clearly wrong. On the other hand, and using the same example, the restriction does not in the Commission's view, prevent the Commission from enquiring into a complaint which alleges that a public officer wrongly, and inconsistent with the HR procedures, prepared a shortlist of candidates in a manner which was clearly oppressive or discriminatory. This would be a discrete act of maladministration, severable from anything which follows, and which in the Commission's view clearly falls outside of the category of actions which could be properly described as an action or decision in relation to a personnel matter.

In one of the earliest complaints investigated by the Commission, a public servant alleged conduct and the taking of decisions which were unfair and ultimately resulted in the relevant Ministry changing his study leave status from leave with pay to leave without pay while he was studying abroad. Based on a narrow view of the facts comprising the complaint, this may have been seen as a personnel matter involving

pay or leave, and accordingly a restricted matter within the meaning of section 13(3)(b) of the Complaints Commission Act. On a purposive view however, the complaint had more to do with the unfair treatment that the Complainant was found to have received as a result of the failure of the decision-making process, and less to do with the cessation of salary. On this view the cessation of salary was the restricted action under the Act, and the Commission would have been prohibited from investigating this action on its merits. A series of administrative failures prejudicial to the complainant however preceded the personnel action ultimately taken and were easily severable from the personnel action which resulted. The principle would seem to be that acts of maladministration do not somehow become restricted under the Act because at the end of the process a personnel action which is restricted from investigation occurs. In the Commission's view maladministration committed in such circumstances is clearly severable from the restricted personnel action or decision, and falls to be investigated as a discrete act of maladministration.

The above complaint which was the first to be investigated by the Commission, provides a very neat summary of an issue which was to again play out in relation to later complaints.

In a complaint received in 2019, for example, certain clear acts of maladministration on the part of the Department of Administration in the handling of a confidential complaint, followed by certain actions which lacked transparency and due process, ultimately resulted in the transfer of a public officer. Her complaint focused entirely on the treatment of confidential information by the Administration, the arbitrary handling of which was prejudicial to her. The Complainant did not seek to challenge the transfer but focused her complaint squarely on the actions of the Department of Administration in improperly sharing confidential information. The Commission took the view that the transfer of the Complainant at the end of a process was consequential and could not transform an earlier act of maladministration into a restricted matter because of the nature of the decision made at the end of the process.

The Commission recognises that not every complaint in relation to personnel actions will lend itself to a severance of discreet acts of maladministration from a personnel action. Each complaint will turn on its facts. The distance of the acts of maladministration in time and space, from the personnel action taken is often pivotal. Actions contemporaneous with the personnel action may be incapable of being severed without appearing to investigate the personnel action.

(b) Restrictions where a remedy exists by way of Proceedings in Court

The Commission was also challenged in operationalising the provisions of Section 13(3)(a) of the Complaints Commission Act which restricts the Commission from investigating— (a) any matter in respect of which the complainant has or had—

- (i) *a remedy by way of proceedings in a court, other than by way of judicial review; or*
- (ii) *a right of appeal, objection, reference or review to or before any person, tribunal, board or other authority appointed or constituted by or under an enactment;*

Section 105 of the constitution provides that the jurisdiction of the Commission shall be without prejudice to the jurisdiction of any court. This means that the establishment of the Commission is not to have the effect of curtailing the jurisdiction of any court. Accordingly, any complaint lodged with the Commission remains judiciable before the courts, (assuming that a cause of action exists), irrespective of whether the Commission decides to investigate, is in the process of investigating, or has investigated a complaint. This fact does not in itself give rise to a challenge to the operations of the Commission and there is no inconsistency between the Constitution and section 13(3)(a) of the Complaints Commission Act. The challenge lies in paragraph (i) of the section which restricts the Commission from investigating any matter in respect of which the Complainant has or has a remedy by way of proceedings

in a court, other than by way of judicial review. It is clear that if legal proceedings are in progress, or the Complainant is contemplating legal proceedings at the time the complaint is lodged with the Commission then it is to be presumed that the Complainant has a remedy in court, and the Commission is accordingly restricted from investigating such a complaint. Where no legal proceedings are in progress however, or the Complainant informs the Commission that it is not his/her intention to pursue such proceedings, the provision would seem to require the Commission to make an assessment whether the Complainant has, or may have a remedy by way of proceedings in a court, other than by way of judicial review. Such an assessment could only be an arbitrary one, since it involves a degree of speculation in relation to the relative merits of the complaint, as well as whether the facts underlying the complaint are sufficient to attract a remedy in the courts other than by way of judicial review. In sum therefore, the provision presents interpretative difficulties which have challenged the Commission to proceed with extreme caution in its decision whether to investigate.

In a complaint lodged in 2017 against the hospital authorities in relation to the operation of the hospital medevac service, the Complainant sought a remedy of compensation for loss consequent on alleged acts of maladministration by the hospital authorities. The Commission elected not to investigate, and instead wrote to the Complainant to provide the reasons, based on Section 13(3)(i) of the Act. The Complainant responded that he only wished to lodge a complaint in relation to the treatment he received and was not pursuing the remedies stated. On that basis the Commission investigated the complaint and found that one or more acts of maladministration were involved in the handling of the Complainant's case. Based on its findings the Commission made several recommendations with a view to improving the operation of the medevac services but could find no basis on which to recommend the award of compensation to the Complainant. The Complainant then commenced legal proceedings against the Commission alleging that the Commission, having found the existence of maladministration was compelled to award him compensation.

It is of no relevance to the issue under discussion that the application was dismissed by the courts. The relevance of the investigation lies in the lessons of experience for the Commission in its application of the section 13(3)(i) restriction. First, an undertaking by a Complainant that a judicial remedy is not being pursued does not provide a basis for concluding that such a remedy does not in fact exist, or that the Complainant will not in fact pursue that remedy subsequent to the investigation. Second, the decision and findings of the Commission in relation to a complaint could be used by a Complainant to pursue judicial remedies. On the other hand, the failure of the Commission to investigate a complaint in which the Complainant has no interest in pursuing remedies in legal proceedings, but where the Commission finds that he/she may have such remedies, creates a situation of potential for clear cases of maladministration to be overlooked and therefore remain un-investigated by the Commission.

The above examples should suffice to show the challenges inherent in the application of section 13(3) of the Complaints Commission Act. These challenges along with other apparent defects in the Act, were formally brought to the attention of the Office of the Attorney General in November of 2018. While to date no action has been taken, it is a good time for consideration to be given to whether the approach of the Commission is in keeping with what was envisaged for the governance of the public service, and if not, what are the legislative interventions which need to be made to better align the jurisdiction of the Commission with the needs of the public service.

(2) INTEGRATING THE COMMISSION WITHIN THE PUBLIC SERVICE

The first few years of the Commission's operations evidenced a substantial degree of integration and alignment with the procedures of the public service. If the public service is to realise optimum benefit from the establishment of the Complaints Commission however, the integration must be permitted to continue. This will require (a) further alignment of the Commission's procedures with the dispute resolution

procedures of the public service and (b) acceptance of the legitimacy of the Commission by public officers through the promotion and facilitation of its operations

(a) Alignment with policies and procedures of the public service

The Commission hears complaints from both within and outside of the public service. Where complaints arise within the public service and stem from relational issues, it is not always clear whether the Commission should proceed to investigate the conduct complained of, or seek to provide a medium for the repair of the relationship. These approaches are not mutually exclusive, but the Complaints Commission Act mandates a focus on acts of maladministration, with the possibility of making recommendations to address relational issues. A successful repair of a relationship will likely mitigate the recurrence of the conduct complained of, but the conduct, being the gravamen of the complaint must be assessed for compliance with the dictates of good administration. A focus on the conduct will likely exacerbate the relationship which needs to be salvaged, and so the Commission must walk a tight line in complaints of this nature, by focusing on the conduct while at the same time keeping in view the courses of action which may be required to promote good administration.

The alignment of the dispute resolution procedures of the public service with the operations of the Commission would have the effect of shunting complaints of maladministration arising from relational issues away from the Commission and into a grievance mechanism. This may be done through a mutual understanding and acceptance by the Commission and the management of the public service of the point at which complaints of maladministration become ripe for consideration by the Commission. This would normally be after the exhaustion of remedies available through properly functioning mechanisms for dispute resolution.

In the investigation of a complaint in 2018³ the Commission found that the absence of a grievance procedure, or the failure to resort to it left the complainant without a means of redress, and compelled her to lodge a complaint with the Commission. Following the investigation of the Complaint the Commission recommended that a grievance procedure be established within the public service. The Human Resources Department subsequently notified the Commission of its completion and implementation, a step, which, together with the proactive interventions of that Department should greatly facilitate the work of the Commission and result in less complaints of a purely relational nature, reaching the Commission. The HR Department has assured the Commission that appropriate measures would be taken to sensitize the public service of the existence and use of the grievance mechanism, and more importantly, how the mechanism aligns with the operations of the Commission.

(b) Legitimacy through acceptance

The Commission's work has been met with a commendable level of acknowledgement and acceptance as witnessed by the response to its requests for information, as well as, the degree of compliance with the Commission's recommendations. There have however been instances of inertia among the management of the public service in relation to the Commission's requests, and there has been evidence of apprehension in relation to some of its recommendations in matters in which there were lingering questions, mainly in relation to the scope of the Commission's jurisdiction. By and large however, until steps are taken to clarify the jurisdiction of the Commission by way of amended legislation there remains a need for the level of acceptance to continue on its upward path, given especially that both the Commission and the public service are united in the single objective of developing the public service.

³Complaint # 001-2018

More often than not, a finding by the Commission that an act of maladministration has occurred is likely to implicate the management of a Ministry or Department, which may in turn engender resistance and efforts to project the work of the Commission in a negative light. Given this distinct possibility, the Commission seeks to promote its own legitimacy by carefully and objectively considering each complaint, and recording its findings and recommendations clearly, often at the expense of brevity. A reciprocal gesture by the management of the public service, would be an acceptance of the Commission's findings and recommendations as evidenced by the approach to the implementation of the recommendations. As intimated later in this Report with reference to the specific recommendations of the Commission, the progress of implementation has been quite good in many respects, but lags behind in others.

Commendation, and therefore acceptance of the work of the Commission has been expressed at the highest levels of the public service. Complainants have also themselves expressed support for the work of the Commission.

There is however a school of thought expressed by stakeholders within the public service, that complaints to the Commission should be restricted to those originating outside of the public service. There is however nothing in the Complaints Commission Act which compels that view or otherwise supports the contention that the Commission's ambit is or ought to be restricted to complaints arising outside of the public service. A comparative analysis of the functions of the Ombudsmen function in legislation across the Commonwealth Caribbean also shows no such restriction or qualification. Restricting access to the Commission may also face constitutional hurdles.

The Commission is of the view that there will be nothing gained by seeking to amend the relevant legislation to restrict the Commission from hearing complaints arising within the public service. A more worthwhile initiative would be a further alignment of the grievance processes of the public service with the jurisdiction of the

Commission, and a clarification of the interpretative challenges outlined earlier in this Report. In any event however, if this course of action is to be pursued, it should be done concurrently with the pursuit of measures for the independent resolution of complaints arising within the public service.

STATISTICAL SURVEY OF COMPLAINTS

Section 30 of the Complaints Commission Act provides that the Annual Report of the Commission should include a general survey and statistics in relation to complaints received by the Commission, the results of mediations and investigations conducted under the Act, steps taken to implement its recommendations and any other matter or development it thinks fit. This section of the Report seeks to fulfil that requirement by providing a statistical overview of the complaints received followed by a matrix which provides a synopsis of each complaint, the recommendations made to address the complaint, and the steps which have been taken to date in relation to the recommendations.

During the reporting period a total of 29 complaints were lodged with the Commission, of which 15 were investigated, one partially investigated, and 10 not investigated. Complaints were not investigated either because they were withdrawn, restricted from investigation, did not on their face include facts capable of supporting a finding of maladministration, involved relational matters which were better resolved through mediation, or could not be considered under the Complaints Commission Act. There were no discernible trends in the reasons for not investigating. With the exception of two complaints which were withdrawn in 2019, the complaints not investigated were received during the first two years of the establishment of the Commission, which suggests that they may have been lodged as a result of initial uncertainty in relation to the Commission's jurisdiction.

The Table below shows the number and classification of complainants received annually during the reporting period.

YEAR	TYPES OF COMPLAINT				TOTAL
	<i>Maladministration (only)</i>	<i>Human Rights (only)</i>	<i>Mixed</i> To include one or more type of complaint	Other	
2013 & Prior	1	1	-	1 3	6
2014	2	1	1	-	4
2015	2 1	-	1 1	-	5
2016	3 1	-	1	-	5
2017	1 1	-	-	-	2
2018	1 1	-	1 1	-	4
2019	1	-	-	-	1
2020	1 1	-	-	-	2

Key:-

Investigated

Withdrawn

Ongoing

Discontinued

Outside jurisdiction

Partially investigated

Predated Commission

Of the 29 complaints lodged with the Commission, 21 or 72% were made by males and 8 or 28% by females. The Table below shows a breakdown of the complaints received annually by gender.

YEAR	GENDER		TOTAL
	MALE	FEMALE	
2013	5	1	6
2014	2	2	4
2015	5	-	5
2016	4	1	5
2017	-	2	2
2018	2	2	4
2019	1	-	1
2020	2	-	2

(1) INVESTIGATION RATE OF COMPLAINTS

Of the 29 complaints, 15 or approximately 50% were investigated and 13 or 45% not investigated and 1 partially investigated. 10 or approximately 35% were filed by public servants and 19 or 65% by non-public servants. Of the 10 complaints by public servants 7 or 70% were investigated. Of the 19 complaints from outside of public service, 8 or 42% were investigated. 72% of the investigated complaints were filed by males and 28% by females.

(2) TARGET MINISTRIES - COMPLAINTS FILED WITHIN THE PUBLIC SERVICE

The action or conduct complained of by Public Servants emanated within the following Ministries and/or agencies of the public service -

Ministry/Agency	Number of complaints
Royal Montserrat Police Force	3
Human Resources Department	4
Ministry of Agriculture, Land, Housing & the Environment	1
Office of the Premier & Associated Departments	1
Office of the Deputy Governor	1

(3) TARGET MINISTRIES - COMPLAINTS FILED OUTSIDE THE PUBLIC SERVICE

The 19 complaints by non-public servants were directed at the following Ministries and/or agencies of the public service -

Ministry/Agency	Number of complaints
Office of the Premier & Associated Departments	2
Montserrat Social Security	1
Ministry of Culture/Tourist Board	1
Hospital	1

Police Service	7
Human Resources Department	1
Ministry of Communications, Works, Energy & Labour	1
Ministry of Agriculture, Land, Housing & the Environment	1
Ministry of Health & Social Services	1
Other	3

COMMISSION RECOMMENDATIONS AND FOLLOW UP ACTIONS

(1) HUMAN RESOURCES DEPARTMENT

(a) Complainant 1

This complaint involved a change in the Complainant's study-leave status from study leave with pay to study leave without pay while studying abroad, resulting in a loss of salary for a period of four months, leaving the Complainant with no source of income for that period. The investigation revealed that information which would have been critical to the consideration of the matter was not made available to the Public Service Commission which merely endorsed the decision of the Cabinet Secretary without an enquiry. Having not enquired into the matter, the PSC provided no reasons for its decision.

RECOMMENDATIONS	FOLLOW-UP RESPONSE
The Complainant's application for paid leave should be referred back to PSC for further consideration. The PSC should provide reasons for its recommendation, to enable the Deputy Governor to make an informed and objective decision with respect to the Complainant's application. Alternatively, the Deputy Governor should give consideration to whether, having regard to the findings of the Commission with respect to the circumstances which	The Deputy Governor accepted the recommendation to reverse the decision which was taken to grant the

compelled the Complainant's application, and the prejudice to his application on account of the procedural issues set out in paragraph 7 of the Report, the decision to grant the Applicant leave without pay should be reversed.

The system for the grant of paid and unpaid study leave should be evaluated for rationality, consistency and efficiency, and appropriate measures taken for improvement. In particular:

policy guidelines should be articulated for the benefit of staff with respect to the permissible categories of training and associated leave, eligibility requirements and the respective benefits, duties and responsibilities associated with each; and

The existing processes for the provision of training support to officers on study leave should be evaluated for efficiency.

Appropriate measures should be taken throughout the public service to ensure that recommendations and decisions which touch and concern the professional growth and advancement of public officers are supported by reasons.

The processes currently in place within the public service for decision-making and follow up with respect to recommendations issued to, and emanating from PSC should be evaluated with a view to making these processes more efficient and responsive.

Arrangements should be made to ensure that in cases where any amounts are to be deducted from the salary of public servants in similar circumstances that appropriate measures are taken to uphold the dignity of the public officer concerned;

Complainant leave without pay. The Complainant was paid his salary for the period of 4 months.

He also conveyed his full support for the recommendations of the Report and commended the Commission for having done an excellent job

(b) Complainant 2

The Complainant in this matter sought the confidential guidance of the HR Department in dealing with relational issues with a supervisor. The complaint alleged maladministration in the treatment of confidential information shared with the HR Department, on the basis that the information was wrongly shared with her supervisor contrary to the express agreement and understanding between the parties. The confidential information wrongly shared precipitated a course of action which culminated in the Complainant's transfer, in circumstances found by the Commission to be unfair and lacking in due process. The recommendations of the Commission included the following –

RECOMMENDATIONS	FOLLOW-UP RESPONSE
The HR department must in future demonstrate a clearer understanding of the various HR services it provides to staff and the processes associated with each. The HR department is expected to provide managerial/advisory support to managers within the public service, and this may often be on a “sensitive” basis where it works with individual staff members to assist them in being better managers, a role which need not require the involvement of any other person. This role is distinct from its mediation role where it assists staff members in managing conflicts before they escalate. Then there is its role in facilitating the grievance process. This process must be clearly documented and staff sensitised. There should be increased attention and diligence by the HR Department in relation to these processes, and in particular, in ascertaining the correct process or procedure to be applied in each case. The Deputy Governor, as Head of the public service must establish a benchmark of when the Deputy Governor should get involved in	For the most part, these recommendations were accepted. A Grievance Procedure was approved and circulated to all Heads of Departments and Staff across the Government of Montserrat. In addition, HRMU accepted the need to train staff and will endeavour to put on learning and Development activities through the Learning and Development Unit, to not only train HRMU staff but staff across the Government of Montserrat. Training will be provided in relation to employee relations. The Officer was compensated as recommended by the Commission. Recommendations in relation to the Deputy Governor are under consideration.

matters of conflict. As a general rule, the Deputy Governor should seek to intervene in matters of conflict only as a matter of last resort, and only on the basis of written reports from the parties directly involved and not, for example, on the basis of an oral report from the HR Department.

There should be intervention by the Deputy Governor only where the grievance process has been invoked and only in accordance with the procedures applicable to that process.

Where a decision is to be taken by the Deputy Governor which is punitive in nature, or otherwise involves loss of benefits, the Deputy Governor must ensure that the staff member to whom the decision applies has been provided with the fullest opportunity to be heard at every stage, and that the reasons for the decision are objective and also properly documented.

The Commission recommends that the Complainant be remunerated to the extent of the difference between the complainant's current salary and the salary received in the position of Director of the Ministry), for a period of four months or the period of the unexpired portion of her contract, whichever is applicable.

(c) Complainant 3

The complaint emanates from the administration of a scholarship award (the Award) granted by the GOM to the Complainant in 2015 to pursue a four-year course of study at UTECH leading to a BSc Degree. The bonding arrangements between the Complainant and GOM (the Bond) contemplated a four-year course of study at UTECH leading to the award of the BSc Degree. The Complainant however gained acceptance to pursue, not a four-year course of study leading to the BSc. but a two-year course

of study leading to an Associate Degree. The Bond however remained unchanged. The Complainant therefore embarked on a two-year course of study under a four-year Award. This mismatch between the duration of the Award and the shorter duration of the study ultimately gave rise to the complaint, at the heart of which was the Complainant's request for the final year of the award to be applied to a course of study at a UK institution and the refusal by NTSAC, to accommodate the Complainant's request. The Commission made the following recommendations -

RECOMMENDATIONS	FOLLOW-UP RESPONSE
The grant of each Award should be properly aligned with the course of study specified in the Bond. An additional Clause should also be inserted into the Bond template used by GOM, to the effect that the awardee warrants that he/she has been accepted by the relevant institution for the course of study which is the subject of the Bond. Also, that GOM's verification of such acceptance shall be a condition precedent to disbursement of financial resources under the Award. The penalties set out in the Bond for breaches of its provisions should be reconsidered with a view to their waiver in light of the fact that the circumstances which transpired were all induced by an apparent error on behalf GOM permitting the Complainant to accept an Award which was not aligned with his course of study, and under which the requirements of the Bond (to pursue a BSc in four years after two years is applied to the pursuance of an Associate degree) could not be achieved The report recommended that the Complainant consider signing the Supplemental Bond, as an act of good faith and an intimation of his desire to regularise the Award. This being the case, then his application for further financial support could be considered in the ordinary course of scholarship applications; particularly given the fact that his area of study falls within the priority areas for Government of Montserrat.	The Human Resources Unit has initiated dialogue with the complainant. The Supplemental Bond has been issued and the complainant encouraged to sign it.

It was recommended that the CHRO initiate dialogue with a view to reaching a mutually agreed position, as far as it may be practicable.	
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(d) Complainant 4

The Complainant in this matter was placed on compulsory leave for an extended period of time. He describes a history of discourtesy, lack of consideration, oppressive, unjust and unreasonable conduct linked to inactivity, delay and lack of communication regarding the matter. Having met with doctors as required and a series of medical reports issued, the Complainant was, even after several years, not made unaware of the status of his future employment within the public service.

The Commission met with the Deputy Governor to discuss the matter and was assured that the matter would be progressed. The matter is currently before the Public Service Commission for resolution.

(2) OFFICE OF THE PREMIER

Complainant 1

This complaint invited consideration of issues of critical significance to the operations of the public service, related to the non-renewal of the Complainant's three-month contract of service. The issues included (a) the absence of a system for training or performance review, (b) failure to be informed by her managers that there were deficiencies in her performance (c) absence of opportunity to improve performance; and (d) inadequate system for the handling of grievances. The Commission found the presence of maladministration and made the following recommendations-

RECOMMENDATIONS	FOLLOW-UP RESPONSE
If GOM intends to appoint persons from outside of the public service to fill relatively senior positions within the public service on a	The revised recruitment process – Jobs are being advertised both internally and externally and a

temporary basis, with a view to confirmation on successful performance, then the HR Department would need to institutionalise the process and procedures with a view to preventing a recurrence of the circumstances arising in this matter. Among the matters which need to be put in place are as follows – a more robust examination process at the recruitment stage to ascertain skill sets relative to position and the nature of any training or other support which may need to be put in place in relation to each appointment; an on-boarding and orientation process; provision of opportunities for existing staff members to compete for positions; preparation of existing staff members for external appointments; the establishment of the parameters against which temporary appointees are to be assessed a clear understanding on both sides regarding the conditions of contract renewal; on-going dialogue with appointees to provide feedback against agreed goals; Production of a written assessment of performance at the end of the period and appropriate recommendations. The appointee should be permitted to offer comments on the assessment and recommendation prior to the making of a final decision; and Recourse to the same mechanisms, rights, conflict resolution and avenues for natural justice available to established Public Servants. The Complaints Commission Act identifies discourtesy and the lack of consideration for persons affected by any action as acts of	selection process conducted, where candidates with the requisite skills are selected and given an orientation to Government. The selection involves practical and theoretical modules that assess the candidates' competency for the post applied for. Successful candidates participate in an orientation process, where he or she is given the requisite information and orientation to Government. Officers coming from abroad are on-boarded an the head of Departments/Managers are required to ensure information is discussed and communicated as per the posts in compliance with the Performance Managers Systems The Government of Montserrat engages Temporary Officers who are given special agreements, contract officers and Permanent and Pensionable Officer. The PDAs, Schedule 1 with the deliverables for the post forms part of the Contract and signed by the candidate, the lien Manager/HoD and/or the CHRO. Provisions are made via the Performance Management System for various phases in the cycle (Planning, monitoring and review) for regular feedback as to the candidates performance; and development opportunities should be provided for improved performance during the year. Officers and Managers are encouraged to document and provide constant feedback.
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maladministration. The senior management of the offices for the public service should therefore adopt a zero-tolerance approach to such conduct especially in cases where it is aimed at frustrating the success of new appointees The HR Department should always make clear to staff members what are the options available to them in circumstances where, following mediation by the HR Department, the staff member has outstanding concerns or seeks further relief. The staff member must be permitted to formally commence the grievance process. The reasons for the non-renewal of a contract should be clearly stated: (1) based on objective grounds and should be related to the goals and targets set at the beginning or the assignment. (2) Considering that some contracted individuals may have had a reasonable expectation of their contract being renewed. Given therefore the findings of the Commission that there were several acts of maladministration in dealing with the Complainant's case, the fact that the Complainant vacated a position in the public service to undertake a temporary appointment within the public service, and CHRO's undertaking set out in the termination letter in September to find alternative employment, the Commission recommends that, should the Complainant remain interested, that consideration be given to re-engaging her in an appropriate position within the public service.	Part of the orientation process involves informing the candidate of all mechanisms available within GoM's Public Service which includes the grievance procedure, advancement of Disciplinary Matters through PSC (PSC Act) and also advancement of complaints through the Complaints Commission. The Performance Management System (S) guides as to the assessment of performance, productivity and development of Officers. Through the Contract and Schedule 1 attached, officers are assessed. Communication is provided through the HoD's/HRMU to officers regarding the renewal of contracts or otherwise. The HRMU conducted several awareness programmes within the Public Service to ensure all officers are aware of the conduct of public officers within the public service. The Code of Conduct also guide and should be practiced by all Officers. Head of Departments/Manager must provide guidance during their regular internal briefings. There is an established grievance process within Public Service and this must be communicated to all for full implementation.
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(3) MINISTRY OF AGRICULTURE

Complainant 1

This Complaint, lodged by a member of the public, alleged that the practice of permitting the Chief Land Surveyor to also privately engage in the practice of land surveying in Montserrat represented a grave conflict of interest and accordingly an act of maladministration which was prejudicial to the land registration process in Montserrat. The Commission agreed with the submission of the Complainant and recommended to the Director of Human Resources that the practice should be brought to an end. The Chief Human Resources Officer undertook to implement different arrangements at the end of the Chief Surveyor's contract, which was imminent. The Commission has confirmed that the recommendation was implemented.

(4) MONTSERRAT SOCIAL SECURITY

Complainant 1

This complaint against the Montserrat Social Security Fund (MSSF) in June 2015 alleged acts of maladministration by MSSF in failing to pay to the Complainant terminal benefits in respect of his employment with a private sector company during the period 1999 to 2001. Following a consideration of the matter including the contents of a written legal opinion requested by the Commission from the Attorney General, the Commission found that no terminal benefits were due to the Complainant and accordingly no act of maladministration was committed by MSSF in its decision not to accede to the Complainant's request. The investigation of the complaint however revealed that there were many former contributors to the Social Security Scheme living in Montserrat and abroad who were in a similar position to the Complainant and were not aware of their social security status and what if anything could be done to qualify for a terminal benefit.

RECOMMENDATIONS	FOLLOW-UP RESPONSE	STATUS
The Social Security Board should - (a) compile a list of all non-contributing or “dormant” members who have not yet passed retirement age, together with their current addresses; (b) send correspondences to each of these members setting out their account status with respect to the number of contributions, and guidelines with respect to what would be required for eligibility with respect to the various benefits and entitlements; (c) conduct a survey of currently contributing members who are likely to retire without attaining the required level of contributions to earn a terminal benefit, and conduct consultations as necessary to update such members with respect to their status; and (d) based on the findings from the survey and compilation at paragraphs (a) and (c) above respectively, make recommendations as appropriate to promote the objectives of that Act as it relates to the welfare of the persons identified.	The Social Security indicated on more than one occasion that they are currently working with their “Software provider in Barbados to be in a position to deal with recommendations (a-c). They were hopeful that they will be able to manipulate the software to provide the required information so that they could pass it on to the relevant persons. They however pointed out that since the mass migration it has been difficult to get in touch with insured persons as most of the addresses on record are the local addresses.” They decided to increase awareness through the use of radio programmes, but acknowledged that some people may still fall into the category of the complainant. This notwithstanding, they determined to inform their customers, in a timely manner, what is required to be eligible to receive the various benefits and entitlements from the Social Security Fund.”	As at the end of the reporting period, the Social Security has not sorted out the issue with the Software, which is being developed. This is detrimental to the many customers which it serves. Radio Programmes were used to increase awareness of the Social Security Fund, and what is required for contributors to be eligible to receive the various benefits and entitlements from the Social Security Fund.

(5) MONTSERRAT TOURIST BOARD/DEPARTMENT OF CULTURE

Complainant 1

This complaint arose out of circumstances in which the Department of Culture and the Montserrat Tourist Board entered into certain oral arrangements with the Complainant to provide financial support to a transaction aimed at the Complainant's string band producing a CD of local music for commercial marketing. The project failed and the Complainant lodged a complaint, alleging maladministration in the manner in which the transaction was dealt with.

RECOMMENDATIONS

Although the complaint came at a time when the Tourist Board was already dissolved, the recommendations are applicable across public sector agencies, involved in the dispensing of public funds for cultural activities. Good administration suggests that:

- I. funds should be expended in accordance with a specific program with clearly written objectives and criteria;
- II. persons involved in the dispensing of such funds should not also be involved in the receipt or application of those funds;
- III. there should be a well-documented application process or procedure;
- IV. the application of the criteria for the approval and or grant of funds should be properly documented together with the written obligations and expectations of the recipients;
- V. there should be a system of accountability in place which requires the administrator of the program to provide periodic written reports regarding the administration of the program.
- VI. The report referred to in paragraph (v) above should be reviewed against the matters set out in paragraphs (i) to (iv) above.

Finally while the Commission has made no findings with respect to the merits of the Complainant's application to the court for redress, it would seem that the failure to observe principles of good administration may have contributed in large measure to the several misunderstandings which eventually resulted in a claim being made through the courts. The importance of the above recommendations should therefore not be underestimated.

(6) GLENDON HOSPITAL

Complainant 1

The complaint emanated from the Chief Medical Officer's refusal to authorise the Complainant to use the hospital medevac services for the return of the Complainant (a non-national) from Antigua to Montserrat in circumstances where the CMO was of the view that the Complainant's medical condition could not be handled by the local health authorities. The Complainant independently procured medical authorisation to use the medevac service for a return journey to Montserrat. Although the earlier medevac service out of Montserrat was authorised by the CMO there were delays on account of procedural issues including payment for the services.

RECOMMENDATIONS	FOLLOW-UP RESPONSE	STATUS
Given the lack of certain specialist medical equipment and services in Montserrat, medevac services would be a routine part of the medical services landscape of Montserrat. Accordingly the procedures for medevac services should be well documented and made available for the benefit of all persons who may need to use the service. The Protocol checklist referred to by the CMO in her March 2015 letter 2015 should be considered with a view to determining whether any of its contents could usefully form a part of a simple document for the information of the public. Although medevac services often need to be arranged in circumstances of medical emergency, if payment in advance is a necessity in each	"The Chief Medical Officer is in the process of finalising the Montserrat Medical Evacuation Procedure including payment and repatriation of the medically evacuated patient/body. The policy will include a simple document for staff and general public summarising the Medical Evacuation Procedure.	The procedure for the medevac process was completed, but not for the public. The CMO will attempt to work on the public version in the final quarter of the financial year 2020/2021, once time and resources are available.

case, the procedures referred to in paragraph 1 should require that where practical, such payment be made prior to expending of time and resources in making arrangements for the medevac. If the health authorities of Montserrat consider it a risk and a liability for patients with specified ailments to return to Montserrat, the procedures referred to in paragraph 1 should set out for the benefit of users, the considerations to be brought to bear on the decisions in that regard, and the application procedures to be observed by the applicant. The circumstances comprising this incident and the findings of the Commission should be discussed with the CMO by the Reporting Officer of the CMO to determine where there may be a need for any training in the area of patient handling and the effective administration of duties from a psychological perspective at any level of the hospital services, training which the Commission recognizes may already form part of the training of health care providers. Such training should focus on the techniques required to achieve a good balance between empathy, compassion and administrative firmness within the context of administering patient care.		
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Finally given the Commission's findings as set out in paragraph (i) above, the Commission does not consider this matter to be one in which a recommendation with respect to reimbursement of expenses would be appropriate or, at any rate, correct.		
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(7) ROYAL MONTSERRAT POLICE SERVICE

(a) Complainant 1

This complainant alleged that the police filed criminal proceedings against a Defendant for causing an accident, only after the statutory period of limitation (in civil proceedings in respect of the same matter) had ended. This resulted in financial and other losses to him. Following an investigation, it was found that the late filing resulted from poor administrative and filing arrangements. It was recommended that an audit of the administrative practices be carried out.

A follow-up report submitted to the Complaints Commission confirmed the implementation of improved administrative processes in some areas, including the introduction of a log book to capture the movement and status of all case files as well as the establishment of an electronic database, which contains data in relation to all traffic investigations. These processes are closely supervised by the Sergeant in charge of the Traffic Department.

(b) Complainant 2

This complaint involves the cancellation of a senior Police Officer's nomination for a regional training award tenable in Italy, without notice to the nominee or the provision of reasons, and in circumstances which were found by the Commission to be arbitrary, irrational and penal. The Commission made the following recommendations –

RECOMMENDATIONS	FOLLOW-UP RESPONSE	STATUS
The Commissioner of Police should with the support Human Resources Management Unit develop a training policy for the police force. The policy should inter alia, set out training criteria, the procedures for the nomination of candidates for training and should specify the persons responsible for taking decisions in relation to the categories of training identified. If a training policy already exists it should be reviewed against the criteria set out in this recommendation and the issues emanating from this Report. The members of staff of the Police Service should be provided with the opportunity to comment on the contents of the policy prior to its finalisation, and when finalised, should be made available to the members of staff through such notification procedures as are in place within the police force. The Commissioner should put measures in place to ensure that all training opportunities are dealt with strictly in accordance with the policy requirements and the principles of good administration as set out in this Report. The Commissioner should on an ongoing basis undertake a	The Police Welfare Association and the General body are consulted and participate in the formulation on RMPS Policies and strategies. All new policies are published in the Police Monthly force order (or newsletter). These policies, strategies, the Crime and Policing Plan, the Force Strategic Plan to include Key performance indicators are also placed on the H Drive of the Police Computer for all to have access. Therefore, it is published in both Hard and Soft Copy and on the I T Platform <i>“Deputy commissioner Thompson has been tasked to review and update the Human Resource Strategy and Policies of the RMPS”</i> Courses are advertised internally and is opened to all to apply and a team from internal HR selects from candidates meeting the criteria. A Meeting was held between CHRO, the complainant and Commissioner in December of 2017.	A response is awaited as to whether this was completed.

revision of the various procedures and policies currently in place within the Police Service which directly impact staff and staff relations with a view to ensuring that decisions taken are taken with the requisite degree of transparency, are well documented and notified to staff members affected. Reasonable opportunities be made available for staff members to be heard in relation to decisions which are likely to have an adverse impact. The Chief Human Resources Officer, Human Resources Management Unit should make arrangements for the conduct of a meeting with the Commissioner of Police and the Complainant to discuss any underlying issues, whether or not specifically mentioned in this Report which may assist in fostering improved collegiality between the Complainant and the management of the police force. The meeting should also address the current role played by the Complainant within the police force, and whether there are ways in which his competences and experience may be better utilised within the Police Service or other areas of the The Chief Human Resources Officer should meet with the Commissioner and also the President of the Police		
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Association on an ongoing basis to assess the state of staff relations within the Police Service and to provide HR support to the Commissioner in relation to the specific area of staff relations. The Chief Human Resources Officer should keep the Deputy Governor informed in relation to these matters The Chief Human Resources Officer should meet with the Commissioner and also the President of the Police Association on an ongoing basis to assess the state of staff relations within the Police Service and to provide HR support to the Commissioner in relation to the specific area of staff relations. The Chief Human Resources Officer should keep the Deputy Governor informed in relation to these matters.		
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(c) Complainant 3

This complaint involved a purported restructuring exercise within the police service which was found by the Commission to have contained elements of maladministration which unfairly prejudiced the complaint. The recommendations of the Commission include the following -

RECOMMENDATIONS	FOLLOW-UP RESPONSE
The Commissioner should give careful thought to future restructuring exercises within the Police Service in the context of the discussion in the Report and should enlist the support of the Chief Human Resources Officer prior to implementation.	Decisions to make changes in structures, portfolios and police are discussed prior with the senior management team, the Police Welfare Association, in Commissioner's Parade (Monthly Conference) and affected parties in advance of

Steps should be taken to inform senior officers of the Police Service of the matters set out in the Commissioner's Response as appropriate, so that senior officers are not taken by surprise by managerial decisions in relation to the rotation, deployment and appointment of officers to acting positions. Consideration should be given to amending the RSODR in a manner consistent with the requirements and resources of the new HR department; and	restructuring. Agreed effective dates and discussion with officers impacted by any change, rotation etc. If it is a force wide police decision this is also discussed in the Commissioner Monthly meeting with all staff before implementation. The Police Staff association also makes an input in things which have an impact on the general body. All Officers are clear that Acting appointments are not substantive with fixed start and end dates. Officers are verbally informed at least once in advance along with a formal letter of thank you at the end of the acting period. All acting appointment is used as development for officers and thus the organization policy of rotating acting appointment between all officers of that level. All officers senior and junior are fully aware of the RMPS rotational Policy and the Senior Officers are aware that there is a force wide succession and development plan. The Police HR Department have as a standard procedure other than emergencies formally document and correspond with officers before they are transfer or rotated. HR also hold discussions with Officers and or Senior Management before transfer appointment. The Document (RSODR) is a living document and is updated as required.
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(d) Complaint 4

This complaint of discrimination emanated from a purported limited restructuring of the training and HR divisions of the Police Service. The exercise resulted in a somewhat ad hoc and arbitrary arrangement which was inconsistent with the requirements of the Recruit Standing Order and Disciplinary Regulation which remained amended, and contained aspects of discrimination. The recommendations of the Commission included the following -

RECOMMENDATIONS	FOLLOW-UP RESPONSE	STATUS
The creation of a new post or position to be rotated among the Sergeants, and which was, at least in its inception, involved the payment of additional remuneration, falls to be classified as a partial restructuring exercise. The Commission renews its recommendation for such exercises to be carried out with the technical support and guidance of the Chief Human Resource Officer. Where the relationship between the Commissioner and the Complainant is concerned, they will both need to make a special effort to rebuild a professional relationship. The Commissioner seemed to have recognised the need for this given his intimations towards the Complainant in their meeting in September 2018. There will need to be a follow up of such initiatives by the Commissioner. The Complainant on the other hand will need to be more receptive to overtures for an	The Chief Human Resources Officer is committed to assisting the Commissioner of Police with any further restructuring exercises within the Police Service. Retreat style meetings were held with the Commissioner of Police and the complainant in May, June, September and October of 2019. The Government's Clinical Psychologist attended all of the sessions. The complainant has been assigned to the Training Unit and is pleased with this assignment. It does not appear that he now wishes to be transferred from the Police Service. He has indicated that he enjoys his work and is committed to the Royal Montserrat Police Service.	The recommendations have largely been accepted and implemented. The HRMU is willing to provide advice, but due to the legislation which governs the Police, final appeals need to be made to the Governor.

improvement in the relationship. The Commission recommends that a retreat-style meeting be held between CHRO the Commissioner and the Complainant to discuss the ways in which the relationship could be improved. The Commission and the Deputy Governor should be kept abreast of the initiatives taken and the results. Based on the results, CHRO should, in due course make an appropriate recommendation to the Deputy Governor regarding the Complainant's future tenure within the Police Force One of the remedies sought by the complainant in his complaint, was a transfer from the Police Force. The Commission does not, in the circumstances view this request unfavourably. Given the expertise possessed by the complainant however, his obvious experience and therefore, his value to the Police Force, the Commission considers that it would be in the best interest of the Police Service for the complainant to remain a member of the Police Force, provided that this could be accommodated within the context of the relational challenges. The Commission recommends that the initiatives set out at paragraph 2 above be first initiated, following which, consideration could be given	Further, that wherever his expertise are required he is willing and ready to provide his assistance. The HRMU will provide the relevant support to the Commissioner of Police to operationalise the post of Station Manager if he intends to establish this position. The HRMU notes that there is no basis to recommend the payment of additional remuneration since there was no agreement by the Commissioner of Police to remunerate the complainant. HRMU notes the recommendation of the Commission with respect to the structure of the Police Service. However section 3 of the Public Service Act advises that the regulations do not apply to "an office in the Royal Montserrat Police Service". All Officers however who have a complaint against the Commissioner of Police may appeal to the Governor directly.	
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to whether a transfer would in the circumstances be appropriate. The Commission understands that the position of Station Officer has not been filled since the complainant's transfer. It is however recommended that if the management of the Police Service considers it worthwhile to further pursue this initiative, which the requisite steps should be taken to properly operationalise the position with the support of the Human Resources Department. In the case of the complainant's, the Commission finds that although he was appointed Station Officer, the additional remuneration was, to his knowledge, not approved by the Commissioner. There is accordingly no basis on which the Commission could recommend the payment of the additional remuneration. The Commission notes, finally, that the decision-making structure of the Police Service is highly centralised. One aspect of the structure which needs to be reconsidered, is the current HR arrangements within the Police Service in which HR matters concerning GAZETTED police officers		
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(above the rank of Sergeant) are dealt with by the HR Department of the Public Service, while the HR matters concerning NON-GAZETTED officers are dealt with by the HR Unit of the Police Force, of which the Commissioner is the head. This situation, in the circumstances of the complainant. The complaint, presents a situation of conflict and anomaly since any HR support which the complainant would have needed in dealing with the perceived actions of the Commissioner, resided in the Commissioner himself as Head of the HR Unit of the Police Force. It is therefore recommended that the Deputy Governor in consultation with the Commissioner, and subject to the availability of resources, take the steps necessary to revisit this hybrid arrangement with a view to determining whether, in the interest of the better functioning of the Police Service and by extension, the Public Service, there may be need for change.		
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FINANCIAL STATEMENTS

The Constitution and Commissions Secretariat is administratively responsible for the Complaints Commission. The Secretariat operates on a shared cost basis, as a means of ensuring a cost effective and cost efficient approach to servicing the Commissions.

Over the reporting period an amount of *EC\$201,168.77* was allocated to the work of the Commission. Below is a breakdown of the items to which the allocated amounts were applied. It should be noted that Commissioners receive a statutory allowance on a per meeting basis.

Breakdown by year:- (2013)

Stipend	2,400.00
Accommodation (Training)	3,655.03
CAROA Annual membership	2,248.52
Training	5,381.51
Total	13,685.06

Breakdown by year:- (2014)

Monthly stipend	14,200.00
Other expenses	960.00
Total	15,160.00

Breakdown by year:- (2015)

Stipend	5,000.00
Accommodation; Training	4,182.80
Air/Sea Transportation	631.00
CAROA Annual membership	1,050.92
Other expenses; Training	5,517.93
Total	16,382.65

Breakdown by year:- (2016)

Stipend	24,350.00
Accommodation	1,584.24
Ground Transportation	648.00
Air/Sea Transportation	3158.00

<i>Rental of Building</i>	1,375.00
<i>Training</i>	13,051.18
Total	44,166.42
<u>Breakdown by year:- (2017)</u>	
<i>Stipend</i>	10,760.00
<i>Accommodation</i>	5,095.51
<i>Ground Transportation</i>	1,560.00
<i>Air/Sea Transportation</i>	24,876.78
<i>CAROA Annual membership</i>	643.38
<i>Other expenses</i>	6,113.86
Total	49,049.53
<u>Breakdown by year:- (2018)</u>	
<i>Stipend</i>	21,640.00
<i>Accommodation</i>	1,412.64
<i>Ground Transportation</i>	1,352.60
<i>Air/Sea Transportation</i>	3,412.60
Total	27,817.84
<u>Breakdown by year:- (2019)</u>	
<i>Stipend</i>	8,160.00
<i>Accommodation</i>	1,059.48
<i>Ground Transportation</i>	665.50
<i>Air/Sea Transportation</i>	6,021.32
<i>CAROA Annual membership</i>	1,266.77
<i>Other expenses; Training</i>	190.00
Total	17,363.07
<u>Breakdown by year:- (2020)</u>	
<i>Stipend</i>	12,600.00
<i>Air/Sea Transportation</i>	4,944.20
Total	17,544.20

MONTserrat COMPLAINTS COMMISSION
GEORGE KIRNON, CHAIRMAN

NOVEMBER 17, 2020