



MONTSERRAT COMPLAINTS COMMISSION

Working to resolve
Maladministration and
Human Rights Complaints

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This document presents a brief overview of the purpose and functioning of the Montserrat Complaints Commission, including the scope of its jurisdiction to hear complaints.

1) Purpose, Composition and Jurisdiction

(a) Purpose

The Montserrat Complaints Commission was created in 2011 for the purpose of resolving complaints of maladministration and breach of human rights within the Government of Montserrat in a transparent and objective manner. Its composition, jurisdiction and mode of operation were later established in 2013 by the enactment of the Complaints Commission Act.

(b) Composition

The Commission comprises three members appointed by the Governor, one of whom must be an Attorney-at-Law with at least 15 years' experience.

(c) Jurisdiction

Although the jurisdiction of the Commission was initially established under the Complaints Commission Act, that Act additionally made provision for other laws to enlarge the jurisdiction of the Commission. Accordingly, in 2019 the Public Finance (Management and Accountability)(Procurement) Regulations provided for appeals to be made to the Commission in procurement matters. The Commission's jurisdiction therefore emanates from both the Complaints Commission Act and the Procurement Regulations.

Jurisdiction under the Complaints Commission Act

- (i) The Complaints Commission Act empowers the Commission to hear complaints of maladministration and breach of human rights occurring within all departments of government, government agencies and public authorities.
- (ii) A public authority is an authority or body –

(a) where the majority of whose members are appointed by the Governor; or

(b) whose funds consist wholly or mainly of money provided out of public funds;

(iii) Complaints may therefore be made to the Commission in relation to any perceived maladministration or breach of human by the Public Service Commission, the Elections Commission, the Integrity Commission and other commissions and bodies involved in the work of the Government.

(iv) Similarly, the administrative actions of public authorities and agencies of the Government may be the subject of complaints to the Commission. Public authorities and agencies of Government include -

- Montserrat Customs and Revenue Services (MCRS)
- Montserrat Postal Service
- Montserrat Philatelic Bureau
- Radio Montserrat (ZJB)

- Government Information Unit (GIU)
 - Department of Information Technology and E-Government services (DITES)
 - Montserrat Arts Council
 - Tourism Division
 - Airport
 - Physical Planning Unit
 - Financial Services Commission
 - Montserrat Volcano Observatory
 - Montserrat Social Security; and
 - Montserrat Port Authority
- (v) Complaints must relate to acts of maladministration.
- (vi) Maladministration means bad or improper administration and includes abuse of power, and actions which are unreasonable, unjust, oppressive or discriminatory.
- (vii) A breach of human rights is an infringement of a right or freedom conferred by the Constitution including the right to privacy, the right to freedom of expression and the right to associate.

Jurisdiction under the Procurement Regulations

Under the Procurement Regulations a supplier who claims to have suffered, or that he/he is likely to suffer loss or injury due to a decision, action, breach of a duty or non-compliance with the Procurement Regulations by a procuring entity (such as a Ministry) may appeal to the Commission.

2) Restriction on Jurisdiction

- (i) The Complaints Commission Act restricts the Commission from hearing certain types of complaints. For example, actions taken for the purpose of investigating crime, or the security of Montserrat, as well as actions connected to the conduct of civil proceedings before a court, fall outside of the Commission's jurisdiction.
- (ii) Also, the exercise by the Attorney General, the Auditor General and the Director of Public Prosecutions of any power conferred by the Constitution

falls outside of the jurisdiction of the Commission.

- (iii) Another notable restriction which has been the subject of much discussion, are “actions taken in respect of appointments, removals, pay, discipline, pension or other personnel matters”.
- (iv) This restriction has provided interpretative difficulties for the Commission, related in particular to the scope of a person’s conduct which falls within this restriction.
- (v) The Commission has noted and has said elsewhere,¹that a purely literal reading of the restriction prohibits the Commission from investigating any action taken as part of a series of actions or decisions which ultimately lead for example to a transfer or appointment.
- (vi) 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

¹See Complaints Commission Annual Report 2013-2020

listing, interviewing, notification of results and the appointment to a post. All of these actions and decisions may be regarded as actions taken *in respect of* the appointment.

- (vii) Accordingly, a literal reading of the restriction will render the Commission incapable of investigating any action associated with actions or decisions taken in relation to any of these steps. On a purely literal interpretation, for example a blatant act of discrimination in the short-listing of candidates, will fall outside of the jurisdiction of the Commission.
- (viii) 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.

- (ix) 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 hearing complaints in connection with personnel matters. The Public Service Commission for example is a part of the executive decision-making apparatus of the public sector and therefore cannot also be a dispute resolution mechanism for executive decisions.
- (x) The Commission's analysis of the issue over time, given in particular the purpose for which the Commission was established, has however compelled a purposive approach in relation to the application of the restriction to the facts of individual complaints.
- (viii) The issue is however of seminal importance to the governance of the public service, and therefore one worthy of further consideration.

3) Access to the Commission

- (i) Under the Complaints Commission Act, complaints may be made by any member of the public, including public servants and persons held within the custody of Her Majesty's Prison.
- (ii) A person may apply to the Commission in cases where he/she alleges that he/she has sustained an injustice, as a result of a breach of or infringement of a human right or because of maladministration.
- (iii) Complaints should normally be made within a period of one year from the date of the incident or conduct being complained against.
- (iv) The Commission may also in its discretion, and on its own volition, elect to investigate a matter on the ground that a person or body of persons has, sustained an injustice as a result of a breach or infringement of a human right or maladministration.

- (v) Where a complaint emanates from within the public service and involves matters which could routinely be resolved within the established grievance procedure of the public service, the Commission will normally require that the grievance process be resorted to prior to lodging a complaint. The Grievance process however does not automatically preclude the jurisdiction of the Commission in relation to any matter which falls within the scope of the Commission's jurisdiction
- (vi) Under the Procurement Regulations, an appeal may be made by a supplier who had the potential to procure a contract from the Government by virtue of having submitted a bid or tender.
- (vii) Before applying to the Commission, the supplier should, in the case of a decision made by a procuring entity, (such as a Ministry) apply to the Chairman of the Procurement Board for a review of the decision.

- (viii) Similarly, in the case of a decision made by the Procurement Board, the supplier should first apply to the Financial Secretary for a review of the decision of the Procurement Board.
- (ix) The Chairperson and Financial Secretary are required to resolve the matter by mutual agreement with the supplier or issue a written decision and reasons for the decision within fourteen days of the referral of the matter.
- (x) If the supplier remains aggrieved following a review by the Chairperson or the Financial Secretary, he/she may then appeal to the Commission.

4) Submission and investigation of Complaints

a) Submission of Complaints

- (i) Under the Complaints Commission Act, Complaints are submitted in writing. Forms can be obtained from the Constitution and Commissions Secretariat. Completed

forms may be hand-delivered, mailed or emailed. Forms may also be completed online through the Commission's website.

- (ii) Complaints should normally be submitted within one year after the facts constituting the complaint came to the attention of the complainant.
- (iii) The name and address of the complainant would normally be entered on the forms provided, but the Commission may in its discretion entertain an application which is anonymous.
- (iii) Complaints are expected to be made in good faith, and should not be trivial, frivolous or vexatious.

b) Investigation of Complaints

- (i) In order to determine whether to conduct an investigation, the Commission would normally undertake preliminary enquiries in relation to the facts and the nature of the complaint, the steps taken in relation to the matters constituting the complaint, any

prejudice suffered, the relief sought, and generally the scope of its jurisdiction to hear the complaint.

- (ii) The Commission also has the discretion to investigate matters in the public interest and may, undertake or continue an investigation into a complaint even if the complainant has withdrawn the complaint.
- (iii) Prior to conducting an investigation, the Commission will inform the head of the relevant department of Government or public authority of its intention to conduct an investigation and may seek his or her comments.
- (iv) If in the Commission's opinion, informing the head of department will not be appropriate in a given matter, the Commission may instead inform the Governor of its intention to conduct an investigation.
- (v) The Commission may during the course of its investigation obtain from any person any information it considers necessary. It has the

powers of the High Court to summon witness (except the Governor or a Minister), and compel them to give evidence on oath and to produce any document or thing.

- (vi) The powers of the Commission to obtain information through witnesses does not apply to information about the proceedings of Cabinet or any committee of Cabinet.
- (vii) Investigations are conducted in private and legal practitioners do not have a right of audience but a legal practitioner may appear before the Commission if the Commission thinks fit.
- (viii) If during the course of an investigation it appears to the Commission that there are grounds for making a recommendation which may adversely affect an officer, the officer will be given the opportunity of being heard.

5) Report on Investigation

- (i) Upon completing an investigation the Commission is required to provide the relevant department or public authority with a copy of a report containing its findings, opinion and reasons for its opinion.
- (ii) The report is distributed to the Governor and Cabinet, Head of Department of the relevant Ministry or Public Authority. The complainant is kept abreast of the process and at the end he/she gets a copy of the findings and recommendations.
- (iii) If the Commission is of the opinion that any person has sustained an injustice as a result of an act of maladministration or breach of human rights it is required to include in its report such recommendations as it thinks fit, and a request that the relevant department or public authority notify it, within a specific time of the steps that it proposes to take to give effect to the recommendations. The Commission may also specify the time within

which the injustice should be remedied.

- (iv) If no action is taken by the relevant department within the time specified, the Commission may, after considering the reasons for non-compliance, furnish a special report on the matter to the Governor.

6) Submission of Appeals (Procurement Regulations)

- (i) Appeals to the Complaints Commission under the Procurement Regulations are to be made in writing within ten days of receipt of the decision of the Financial Secretary or the Chairman of the Procurement Board as the case may be.
- (ii) On receipt of an appeal, the Complaints Commission will request all records in respect of the relevant procurement process from the procuring entity or the Chair of the Procurement Board.

- (iii) The decision of the Complaints Commission is to be in writing and made within fourteen days of receipt of the appeal. It is issued to the supplier, the procuring entity and the Chair of the Procurement Board, and will set out the reasons for the decision.

7) Further Information

For further information about the operations of the Complaints Commission please see the Commission's Annual Report 2013 – 2020 or contact the Director of the Constitution and Commissions Secretariat, as per the details below.

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**A publication by the
Constitution and Commissions Secretariat
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