

PITCAIRN, HENDERSON

DUCIE & OENO ISLANDS

No 1 of 2012

Enacted by the Governor of the Islands
of Pitcairn, Henderson, Ducie and Oeno

OMBUDSMEN ORDINANCE 2012

DATE MADE: 17 MAY 2012

DATE PUBLISHED: 21 MAY 2012

An Ordinance to prescribe the functions, powers and jurisdiction of ombudsmen in
Pitcairn

PART I – PRELIMINARY

Title and
commencement

1. This Ordinance may be cited as the Ombudsmen Ordinance 2012 and shall
come into force on the day after it is published.

Definitions

2. In this Ordinance, unless the context otherwise requires—

“action” includes an omission;

“aggrieved person” means a member of the public who claims to have
suffered injustice in consequence of maladministration in the

Government of Pitcairn or in a body mentioned in Schedule 1;

“Ombudsman”, in relation to any function, power, or duty under this Ordinance, means the Ombudsman for the time being investigating the complaint in respect of which the function, power, or duty is being exercised;

Ombudsmen

3. – (1) There shall be appointed one or more Ombudsmen.

(2) Each Ombudsman shall be appointed by the Governor.

(3) If more than one, then one of the Ombudsmen shall be appointed as Chief Ombudsman, and shall be responsible for the administration of the office, and the co-ordination and allocation of the work between the Ombudsmen.

(4) An Ombudsman shall not, without the approval of the Governor in each particular case, hold any office of trust or profit, other than his or her office as an Ombudsman, or engage in any occupation for reward in Pitcairn outside the duties of his or her office.

(5) Except as otherwise provided in this Ordinance, every Ombudsman shall hold office for a term of 5 years.

(6) Any Ombudsman may at any time resign his or her office by writing addressed to the Governor of Pitcairn, and shall so resign his or her office on attaining the age of 72 years.

(7) Any Ombudsman may at any time be removed or suspended from his or her office by the Governor for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct.

(8) No Ombudsman shall be removed under subsection (7) except in accordance with subsection (9).

(9) If the Governor considers that the question of removal under subsection (7) arises, then—

(a) the Governor shall appoint a tribunal, which shall consist of a convenor and two other members, selected by the Governor from amongst those who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in one of more Commonwealth jurisdictions or in Ireland or a court having jurisdiction in appeals from any such court; and

(b) the tribunal shall inquire into the matter and report to the Governor and advise the Governor whether the Ombudsman should be removed from office under subsection (7).

(10) An Ombudsman is entitled to a daily attendance allowance for each day on which the Ombudsman is engaged in the performance of his or her functions, and to reimbursement of expenses for such travel as is required for the performance of his or her functions.

(11) Before entering upon the exercise of the duties of his or her office, an Ombudsman shall take an oath, administered by the Governor, that he or she will faithfully and impartially perform the duties of his office, and that he or she will not, except in accordance with this Ordinance, divulge any information received by him under this Ordinance.

PART II – FUNCTIONS AND LIMITS

Functions of
Ombudsmen

4. – (1) Subject to section 5, it shall be a function of an Ombudsman to investigate any decision, recommendation or action relating to a matter of administration and affecting any person or body of persons in his or her or its personal capacity, made in or by any of the divisions or organisations named or specified in Schedule 1 of this Ordinance, or by any officer, employee, or member of any such division or organisation in his or her capacity as such officer, employee or member.

(2) A matter referred to in subsection (1) includes any matter relating to the appointment, remuneration, pension, discipline, redundancy of office, suspension or dismissal or terms of service of an employee of the Government or of any body mentioned in Schedule 1.

(3) Subsection (1) shall apply whether the recommendation, decision or action occurred before or after the passing of this Ordinance provided that the time limit set out in section 11(1) is observed or is extended pursuant to s 11(2).

(4) The powers conferred on Ombudsmen by this Ordinance may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, or action shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose decision, recommendation, or action it is shall be challenged, reviewed, quashed, or called in question.

(5) An investigation under this section may be made at the instigation of an Ombudsman or in respect of a complaint made under s 7(1) by a person who is aggrieved.

(5) The Ombudsmen shall each have the further powers and exercise the functions set out in Part III of the Freedom of Information Ordinance 2012.

Limits of
jurisdiction

5. – (1) An Ombudsman does not have jurisdiction to inquire into the following matters:

- (a) the conduct of the Governor;
- (b) a matter that is mentioned in Schedule 2;
- (c) any decision, recommendation, or action of the Attorney General, or any person acting as legal adviser to the Governor, or acting as counsel for the Governor in relation to any proceedings;
- (d) any decision, recommendation, or action of any member of the Police, other than any matter relating to the terms and conditions of service of any person as a member of the Police;

(2) An Ombudsman may in his or her discretion refuse to inquire into any decision, recommendation, or action in respect of which there is, under the provisions of any Ordinance, a right of appeal or objection, or a right to apply for a review, available to the complainant, on the merits of the case, to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired.

Personal interest

6. – (1) If the Ombudsman has a personal interest in a complaint, or considers that he or she may have or may reasonably be perceived as having such an interest, the Ombudsman is to inform the Governor.
- (2) The Ombudsman may recuse himself or herself from considering a complaint in which he or she has, or may reasonably be perceived as having, a personal interest.

PART III – MAKING AND INVESTIGATING COMPLAINTS

Who may complain

7. – (1) A complaint can only be made by or on behalf of a person who is aggrieved.
- (2) A complaint may be made only if the aggrieved person is resident in Pitcairn (or, if dead, was resident in Pitcairn at the time of death).

Internal remedies

8. – (1) If an internal procedure is available, an aggrieved person or the person acting on his or her behalf must take reasonable steps to obtain a remedy under the procedure before making a complaint under this Ordinance.
- (2) An internal procedure is available for the purposes of this section if—
- (a) the body against which the complaint has been made has an internal complaints procedure for complaints;
 - (b) the body has taken reasonable steps to make the availability of the procedure known to the public; and

(c) the complainant has access to that procedure.

(3) An Ombudsman may refuse or defer an investigation of a matter while an internal review of the same matter is being carried out.

How a complaint is made

9. – (1) A complaint must be in writing.

(2) A complaint must be lodged with the Office of the Ombudsmen.

(3) The Governor shall ensure that the address and mode of contacting the Office of the Ombudsmen is published in Pitcairn.

(4) If a complainant is an individual that individual must make the complaint personally. If the aggrieved individual has died or is unable to act, the complaint may be taken by a personal representative, guardian, attorney, family member, or other suitable individual.

Governor may refer matter to Ombudsmen

10. The Governor may refer to the Ombudsmen any question of maladministration in the government of Pitcairn.

Time limit for complaint

11. – (1) A complaint is only to be dealt with if it is offered within twelve months from the date that –

(a) the aggrieved person has notice of the matters alleged in it; or

(b) any court proceeding or internal procedure regarding the matter is concluded;

whichever is the later.

(2) Subsection (1) does not apply if the Chief Ombudsman considers there are special circumstances that make it proper that the complaint should be entertained.

Ombudsman to consider complaint

12. – (1) Subject to section 13, the Ombudsman who is to investigate a complaint must proceed to consider it.

(2) The Ombudsman may conduct such preliminary inquiries as he or she considers appropriate.

(3) The investigation of a complaint is to be conducted in private.

Ombudsman may refuse to investigate complaint

13. (1) The Ombudsman may in his or her discretion decide not to investigate any complaint if in his or her opinion—

(a) the subject-matter of the complaint is trivial; or

(b) the complaint is vexatious or is not made in good faith; or

(c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(2) In any case where an Ombudsman decides not to investigate or make further investigation of a complaint he or she shall inform the complainant of

that decision, and shall state his or her reasons therefor.

Procedure

14.– (1) Before investigation, an Ombudsman shall–

- (a) inform the body or person against which a complaint has been made of the complaint and details of the complaint; and
- (b) inform the body or person against which a complaint has been made of the Ombudsman’s intention to conduct the investigation; and
- (c) offer principal officers and the people against whom the complaint is made an opportunity to comment on the allegations.

(2) The Ombudsman may establish his or her own procedure in conducting an investigation.

(3) The Ombudsman need not hold a hearing, and may gather information as he or she thinks fit.

(4) If there are any comments that adversely affect a division of the Government of Pitcairn or other body or person, the Ombudsman is to give that division or body or person an opportunity to be heard.

Determining a complaint

15. – (1) On completing investigation of a complaint, the Ombudsman is to prepare a report setting out—

- (a) the Ombudsman’s findings of fact;
- (b) his or her opinion as to whether the aggrieved person has suffered injustice in consequence of maladministration;
- (c) the Ombudsman’s reasons for that opinion.

(2) A report under this section shall not include material for which a public interest certificate has been issued under section 23, but shall include a summary of the general nature of any such material.

(3) For the purposes of section 15(1), injustice has been suffered where the decision, recommendation or action that is the subject matter of the investigation—

- (a) appears to have been contrary to law; or
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act, regulation, or bylaw or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or
- (c) was based wholly or partly on a mistake of law or fact; or
- (d) was plainly wrong.

(4) If the aggrieved person has in the opinion of the Ombudsman suffered an injustice—

- (a) the report is to set out the Ombudsman’s recommendations for the prevention of a recurrence of the injustice; and
- (b) it may include a recommendation that a payment be made for any financial loss or inconvenience that the aggrieved person has suffered

due to the injustice.

(5) A recommendation does not bind any body.

Disclosure of report 16. – (1) The Ombudsman is to send copies of the report to the following persons—

- (a) the complainant;
- (b) the Governor;
- (c) the principal officer of the division or other body concerned;
- (d) each person against whom the complaint was made; and
- (e) each person who is criticized in the report, or may be adversely affected by it.

(2) The Ombudsman may publish the report or an adequate summary of it.

Response to report 17. – (1) If a report contains recommendations that a body to which the report relates should or should not take a course of action, a written response must be submitted to the reporting Ombudsman within three months after the report is received by the body.

(2) The response must state—

- (a) which recommendations are accepted; and
- (b) which recommendations are not accepted; and
- (c) if a recommendation to take a course of action is accepted, how it is intended to take that course of action.

PART IV – MISCELLANEOUS

Summons and evidence

18. – (1) An Ombudsman may summon a person to appear before the Ombudsman and to provide information. The summons is to be in writing in the form prescribed in Schedule 3.

(2) When summoning a person under subsection (1), an Ombudsman may at his or her discretion, require that person to appear before the Ombudsman in person, by telephone conference, or by video-link or in any other manner.

(3) Subject to subsection (4), any person who is bound by the provisions of any enactment to maintain secrecy in relation to, or not to disclose, any matter may be required to supply any information to or answer any question put by an Ombudsman in relation to that matter, or to produce to an Ombudsman any document or paper or thing relating to it, notwithstanding that compliance with that requirement would otherwise be in breach of the obligation of secrecy or non-disclosure.

(4) An Ombudsman shall not require the provision of any information for which a public interest certificate has been issued under s 23(1).

(5) Every person shall have the same privileges in relation to the giving of information and the answering of questions as witnesses have in any court.

Duty of non-disclosure

19. – (1) Information obtained by an Ombudsman in the course of an investigation is not to be disclosed except for the purposes of investigation and any report made.

(2) An Ombudsman or member of the staff of the Ombudsmen cannot be called to give evidence in any court of matters coming to his or her knowledge in the course of an investigation under this Ordinance.

Privilege

20. – (1) For the purposes of any civil or criminal proceedings, publication in any of the following circumstances is absolutely privileged—

(a) the publication by an Ombudsman of a report under this Ordinance, or of any other matter by the Ombudsmen in making a report under this Ordinance;

(b) the publication for the purposes of this Ordinance of any matter by the Governor or his or her officials in communication with the Ombudsmen or any member of staff of the Ombudsmen;

(c) the publication for the purposes of this Ordinance of any matter by an Ombudsman or any member of the staff of the Ombudsmen, in communicating with the Governor or his or her officials.

(2) Except on the trial of any person for perjury in respect of his sworn testimony, or in any proceedings in respect of an offence under section 21 of this Ordinance, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before an Ombudsman shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before an Ombudsman shall be given against any person.

Offences

21. – (1) If a person, in giving evidence to an Ombudsman (whether or not on oath) knowingly or recklessly makes a statement that is false in a material particular, he or she commits an offence.

(2) If a person without lawful excuse obstructs an Ombudsman or a member of the Ombudsmen's staff in the performance of his or her functions under this Ordinance, he or she commits an offence.

(3) If without reasonable excuse a person on whom a summons is served under this Ordinance fails to appear before the Ombudsman at the time and place specified on the summons, or fails to produce a document or publication

that the summons requires, that person commits an offence.

(4) If a person, without reasonable excuse, on being required by an Ombudsman to take an oath or to make an affirmation, refuses to take an oath or make an affirmation, or refuses to answer any lawful and relevant question put by an Ombudsman, that person commits an offence.

Penalties

22. – (1) Any person who commits an offence under section 21 is liable to a fine not exceeding \$500.

Public interest certificates

23. – (1) The Governor, acting in his or her discretion, may certify in writing for the purposes of this Ordinance that the production of a specified document or publication to the Ombudsmen, or the provision of any specified information to the Ombudsmen, might:

- (a) prejudice the security, defence or international relations of Pitcairn or the United Kingdom or the investigation and detection of offences; or
- (b) involve the disclosure of the deliberations of a Minister of the Crown in the United Kingdom.

(2) The Governor, acting in his or her discretion, may certify in writing for the purposes of this Ordinance that the public disclosure of any specified evidence is likely to damage or cause prejudice to the security of Pitcairn.

SCHEDULE 1

BODIES IN RESPECT OF WHICH COMPLAINTS MAY BE INVESTIGATED

1. The Office of the Governor.
2. The Island Council.
3. Any division of the Government of Pitcairn Islands.

SCHEDULE 2

MATTERS OVER WHICH THE OMBUDSMEN DO NOT HAVE JURISDICTION

1. Any complaint in respect of which the Governor, acting in his or her discretion, certifies under s 23 that it is not in the public interest that an Ombudsman investigate the matter.
2. The content of legislation.
3. The conduct of a member of the judiciary.
4. The investigation of crime.
5. Action relating to extradition or to fugitive offenders.
6. The conduct of an employee of the Foreign and Commonwealth Office who is a member of the Governor's staff.
7. Rights of persons or bodies arising under contracts made between such persons or bodies, on the one hand, and persons or bodies in Schedule 1, on the other.

SCHEDULE 3

**SUMMONS TO APPEAR AND PROVIDE INFORMATION
IN THE MATTER OF THE OMBUDSMEN ORDINANCE 2012**

Pursuant to s18(1) of the Ombudsmen Ordinance 2012

To:

Address:

You are hereby summoned to appear before the Ombudsman on day the
..... day of, 20.....

You must appear at
.....
.....
(describe place)

and you must provide the following information:

.....
.....
.....
.....
.....
.....

Signed

Ombudsman

Dated.....

THE OMBUDSMEN ORDINANCE 2012

CONTENTS

PART I – PRELIMINARY

1. Title and commencement
2. Definitions
3. Ombudsmen

PART II – FUNCTIONS AND LIMITS

4. Functions of Ombudsmen
5. Limits of jurisdiction
6. Personal interest

PART III – MAKING AND INVESTIGATING COMPLAINTS

7. Who may complain
8. Internal remedies
9. How a complaint is made
10. Government may refer matter to Ombudsmen
11. Time limit for complaint
12. Ombudsman to consider complaint
13. Ombudsman may refuse to investigate complaint
14. Procedure
15. Determining a complaint
16. Disclosure of report
17. Response to report

PART IV – MISCELLANEOUS

18. Summons and evidence
19. Duty of non-disclosure
20. Privilege
21. Offences
22. Penalties
23. Public interest certificates

Schedule 1 – Bodies in respect of which complaints may be investigated

Schedule 2 – Matters over which the Ombudsmen do not have jurisdiction