

Report to His Excellency the Governor of the Principal Complaints Commissioner

This report is written to comply with the Complaints Commissioners Ordinance 2010 Section 38 as quoted below:-

38. Annual report to Assembly

(1) The Principal Complaints Commissioner is to provide to the Governor, before 31st March in each year, a report on the performance by the Complaints Commissioners of their functions in the preceding year.

(2) The Governor is to lay the report before the Legislative Assembly within 3 months after receiving it.

Complaints received :-

There have only been two complaints received.

One was not dealt with as it was out of time and the complainant had written stating that he was satisfied that his complaint had been dealt with fairly and in a satisfactory fashion. Having stated that in writing, it was therefore not possible to consider the subsequent complaint which was, in any case, out of time.

The second complaint was raised in August 2015 but was only presented to Executive Council in October 2016.

The complaint and Exco's response has been published on the PCC website in redacted fashion.

The investigation of this complaint raised issues that are worthy of consideration and which should, in my view, be discussed more fully. The Government and Elected Members may wish to consider changes to legislation to clarify some parts of the Complaints Commissioners Ordinance 2010.

- The investigation of this complaint was finished in October 2015 – two months after the complaint had been received. It took a further 12 months for the report to be forwarded by the civil service to Exco. This delay of twelve months led the complainant to feel an even greater sense of injustice. Consideration should be given on how to prevent such delays from occurring in future.
- Complaints relating to the conduct and management of staff within the Falkland Islands Government. There was much debate between myself and the Attorney General's Chambers regarding whether or not the Complaints Commissioner can look into a complaint arising from the treatment of a FIG employee within the workplace. I recommend that this question, and in particular the interpretation of Schedule 2 to the Ordinance, be clarified. I submit that where it is unclear whether or not the Complaints Commissioner can look into a matter, that decision is for the Complaints Commissioner.

- Once the officers who were the subject of the complaint had been contacted by myself, the Attorney General's office immediately responded directly to me on behalf of "their client". The Attorney General's office cannot, in my view, decide to represent an officer in relation to any investigation by the Complaints Commissioner. The Commissioner's investigation is not a court of law. Under Section 21 (Procedure) (3) (d) "the Commissioner may determine whether or not a person may be represented, by a legal advisor or by another person, in the investigation". I question whether it is proper for the Attorney General's Chambers to become involved in an investigation by the Complaints Commissioner unless requested to do so by the Commissioner.
- Under the Ordinance a complaint must be made (assuming it does not relate to a Member) via an MLA [Section 14 (5) (a)]. There is nothing within the legislation to suggest that the MLA who receives the complaint should act as a "screen". There is nothing either to suggest that the MLA who forwards the complaint does so because they feel any degree of sympathy with the complainant. It is also clear that an MLA may decide to forward the complaint whilst having no sympathy at all with the complainant. I simply question therefore why an MLA has to be involved at all with forwarding a complaint to the Commissioner. I feel a complainant should be entitled to submit a complaint directly to the Complaints Commissioner.
- During the course of the last year, I was able to write up a website and it is now online with FAQ's, downloadable copies of the legislation and also the two publicised reports. The website is at www.fig.gov.fk/pcc The PCC website should not, in my view, be a subsidiary page to the FIG website as the role of the PCC is independent of the government or the judiciary. I would welcome the establishment of an independent website for the Complaints Commissioner, as there is for the Courts.