

Report

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Investigation further to the withdrawal of cash payment options on Bonaire by the Tax Administration of the Caribbean Netherlands.

Finding

The National Ombudsman received a complaint against the Tax Administration of the Caribbean Netherlands, Bonaire. Following due investigation, the National Ombudsman finds the complaint to be grounded.

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THE COMPLAINT

Unkobon, a consumer organization, requested the National Ombudsman to consider a complaint that the Tax Administration of the Caribbean Netherlands ('BCN') no longer accepts cash payments made in person at its offices on Bonaire. Following the partial withdrawal of facilities on 1 May 2015, the BCN closed all public cash desks on 1 June 2015.

THE INVESTIGATION

Unkobon made an initial complaint to the BCN itself. Being dissatisfied with the response to this complaint, Unkobon then contacted the National Ombudsman who referred the matter to the Minister of Finance and requested further information from the BCN. During the course of the investigation, Unkobon made a freedom of information request to the Ministry of Finance asking for copies of all relevant documents which were then made available to the National Ombudsman. The ministry also answered questions submitted by the Ombudsman. Unkobon was given an opportunity to respond to the ministry's statement, whereupon both parties were able to offer any additional information as required. The National Ombudsman drew upon all information which compiling his report. A summary of the facts is given below. The full report, which includes a more detailed account of the National Ombudsman's findings, is attached to this summary.

REASONS FOR WITHDRAWAL OF CASH PAYMENT FACILITIES

The BCN administers various public taxes, including vehicle tax and judicial penalties. It also collects local taxes, such as ground rents and land taxes, on behalf of the special municipality of Bonaire. In late 2010, it was determined that the acceptance of cash payments raised certain integrity and security risks for the organization, its staff and visitors. During the period 2011 to 2013, some 80% of all payments were made 'over the counter' at the BCN offices. Only 20% were made by means of (online) bank transfer. By 2014, only 22% of payments were being made in cash.

A further consideration was the government's policy whereby any activity which does not form part of its own core tasks and responsibilities should be outsourced to private sector service providers. It was felt that the task of processing payments would be more appropriately undertaken by the local banks. Moreover, those banks were experiencing difficulties due to the economic situation. The authorities wished to ensure that enough branches remained open to support market competition. It is this combination of factors which underpinned the BCN's decision to promote the use of online banking for all or most payments, whereupon its own cash desks would eventually be closed. According to the statement made to the National Ombudsman, the BCN had not been instructed to implement this measure solely with a view to reducing costs.

During the first quarter of 2015, the BCN deployed a number of staff to advise and instruct visitors about how to make their payments in future. Staff from the commercial banks were also on hand to help consumers make the necessary arrangements and to provide information about the payment options which would be most suitable in any given

situation. The BCN closed all but one of its cash desks on 1 May 2015. With effect from 1 June 2015, it no longer accepted cash payments at all, and members of the public were then required to conduct their business through the banks, either online or in person at a local branch office.

The new arrangements proved problematic for many. One distinct disadvantage of all options involving a bank as intermediary is that they involve (higher) costs. The banks have made some concessions: where consumers opt to pay a demand in instalments by standing order, for example, a single transaction fee is charged. However, over-the-counter cash payments continue to attract a relatively high fee. Similarly, while there is no charge for transferring funds between two accounts held by the same customer, the transfer of an amount to a third party account does incur costs, even if that third party's account is held at the same bank. All banks charge a monthly fee for maintaining an account. The larger branches have desktop computers which may be used by customers.

The National Ombudsman notes that the BCN did not conduct any form of market research to determine whether the people of Bonaire are already familiar with online banking, or whether they would be willing *and able* to adopt its use. According to the BCN itself, such research was unnecessary since there are other payment options such as written payment instructions, standing orders or over-the-counter payments. The BCN has no information which may reveal how many people would be unable to use online banking services. Although it has made some enquiries, the BCN has been unable to ascertain how many people continue to make their payments in cash at the bank counter. It seems that the banks' administration systems do not distinguish between digital transactions and those conducted in person. The BCN is aware that some people continue to make cash payments because they want a physical, paper receipt as proof of payment. It is possible that others do so because they are unable to use internet banking for whatever reason. The BCN is unable to establish the numbers concerned, although it does know that 173 cash payments were made during May 2015, compared to 1,718 in the same month of 2014. (These figures exclude vehicle tax payments).

The BCN asserts that there is no legislative requirement to facilitate cash payments. The only stipulation is that adequate payment options must be in place to allow citizens to fulfil their fiscal responsibilities on time. The BCN is of the opinion that it has created 'adequate payment options' by opening one or more accounts with each of the commercial banks.

THE SITUATION ON BONAIRE

According to a research report produced by the BCN in October 2014, some 5,000 people (almost a third of Bonaire's total population of 17,000) fall into the low income group and can experience difficulties in meeting all payment obligations. Of this group, more than 4,000 persons are living below the poverty line. At the time of the study, just over 5,000 people on the island had a permanent internet connection. An estimated 8,000 islanders had a mobile internet subscription via their smartphone. (These groups are not mutually exclusive.) According to the report *Vijf jaar Caribisch Nederland. Gevolgen voor de bevolking* ('First five years of the Caribbean Netherlands:

consequences for the local population’) published by the Netherlands Institute for Social Research in October 2015, over 75% of the population of Bonaire had internet access via the home computer in 2013, while mobile phone penetration had risen to almost 98% in 2015.

Unkobon states that many of the people in the low-income group do not have a bank account at all. Even among those who do, not everyone is able to afford the internet subscription needed to use online banking, which costs around \$80 per month. It is the members of this group who were most likely to make small but regular cash payments group at the BCN’s offices. They consider the charges they must now pay to make the same payments at the bank’s counter to be unfair. As Unkobon points out, Bonaire is a community in which cash continues to play an important role.

Three separate reports produced by the Dutch National Institute for Family Finance Information (Nibud) (*Armoede in Caribisch Nederland, een verkenning* (2012); *Koopkrachtonderzoek Caribisch Nederland* (2012); *Minimumvoorbeeldbegrotingen voor Bonaire* (2014)) conclude that many people living on Bonaire find it difficult to meet ends meet. Some find it impossible to do so. Those at particular risk include the elderly whose only source of income is a state pension, persons with a disability and (single) mothers. Even the group of ‘working poor’ seems to be growing in size, as acknowledged by the report of the Spies Commission, which was charged with assessing the new constitutional structure of the Caribbean Netherlands.¹ The commission’s report also notes that taxpayers have yet to become accustomed to the new system in which all payments must be made through the banks. There is a general feeling that the BCN has failed to make adequate allowances for either the local situation or the personal circumstances of individual citizens.

THE NATIONAL OMBUDSMAN’S FINDINGS²

The National Ombudsman has considered this case against the requirement for ‘thoroughness of preparation’ and that of ‘fairness and proportionality’³. The test is whether a public authority – in this case, the Tax Administration of the Caribbean Netherlands – has taken all interests into consideration, weighing one against the other in order to reach a fair and equitable decision. The National Ombudsman must therefore examine whether the public authority has made every reasonable effort to collect the necessary information and whether it is aware of all relevant facts and circumstances. Has the public authority identified all stakeholder interests, balancing one against the other? Has it quantified the effects of the decision being prepared?

¹ *Evaluatie uitwerking nieuwe staatkundige structuur Bonaire, Sint Eustatius en Saba*, Ministry of the Interior and Kingdom Relations, The Hague, October 2015.

² The question whether cash payments in general are a privilege or a right is discussed in an article by Bram Scholten in the Dutch Lawyers' Journal (NJB) (NJB 2015, 2870-2873).

³ See also the National Ombudsman’s recent report on chip-and-pin (debit card) payments at town hall offices.

The objectives being pursued by the BCN – to reduce security and integrity risks, to focus on core activities and to support the local banking sector – are in themselves reasonable. However, it is also important for the government to take the interests of its citizens into account.

In the report *De burger gaat digitaal* ('The citizen goes digital'), 2013/170 of 9 December 2013, the National Ombudsman states that any government authority which intends to digitize its services must make allowances for those citizens who, for whatever reason, may have difficulty in using those services. It is essential to safeguard continued access to all government services for all members of the public. One of the report's recommendations was that at least one secondary channel should be implemented alongside the digital channels. Online access should never be the only option.

The National Ombudsman notes that the Tax Administration of the Caribbean Netherlands took measures to ensure a relatively smooth transition. It opened accounts with each of the banks operating in the region, deployed staff to advise visitors about online banking, and conducted a publicity campaign for six months prior to the discontinuation of cash payments. A significant number of people living on Bonaire have a limited income; many do not have (ready) access to the internet and some do not (yet) have a bank account. The BCN's decision to discontinue the acceptance of cash payments is likely to cause significant inconvenience to these citizens.

The BCN's preference for online payments is understandable. It is perfectly entitled to encourage and facilitate the adoption of such a system. If, however, there is a substantial group of people who are unable use online banking, an acceptable alternative must be put in place. Bonaire has a significant number of people for whom online banking is not an appropriate solution. The National Ombudsman finds it noteworthy that the BCN failed to conduct any form of research in this regard.

The National Ombudsman therefore finds that the BCN did not take the interests of the public adequately into account when deciding to withdraw cash payment options. No reasonable alternative has been implemented. Accordingly, the Ombudsman concludes that the BCN has failed to meet the required standards of fairness and proportionality.

CONCLUSION

The National Ombudsman finds the complaint to be grounded.

RECOMMENDATION

The National Ombudsman recommends that the Minister of Finance should reverse the decision to withdraw cash payment facilities at the Bonaire offices of the Tax Administration of the Caribbean Netherlands, and should publicize the restoration of such facilities in an appropriate manner.