

# Report

## Patience, a virtue?

An investigation into the handling of a compensation claim by the Bonaire island authority (OLB)

### **Decision**

On the basis of the investigation, the National Ombudsman has decided that the complaint against the OLB is justified.

**Date: 29 October 2014**

**Reportnumber: 2014/149**

**In 2012, the complainant damaged a wheel rim when he drove over a pothole.  
Steps taken to obtain compensation.**

**27 August 2012**

Complainant sends Bonaire island authority (OLB) a compensation claim for damage to car caused by pothole.

**28 August 2012**

OLB sends confirmation of receipt to complainant.

**24 September 2013**

Complainant sends e-mail to National Ombudsman complaining that OLB has failed to respond to his compensation claim.

**11 November 2013**

National Ombudsman e-mails complaint to OLB.

**16 December 2013**

National Ombudsman sends reminder to OLB, asking for response within a week.

**20 December 2013**

The OLB's island secretary is investigating.

**3 January 2014**

National Ombudsman e-mails reminder to island secretary.

**3 January 2014**

Island secretary refers matter to head of Legal and General Affairs Department (JAZ).

**17 January 2014**

Island secretary promises to ensure that National Ombudsman and complainant receive decision by end of following week.

**29 January 2014**

Complainant e-mails National Ombudsman: he has still heard nothing from OLB.

**29 January 2014**

Island secretary promises to write to complainant by following Friday.

**13 February 2014**

National Ombudsman e-mails island secretary: letter to complainant has still not arrived.

**13 February 2014**

Island secretary e-mails National Ombudsman: head of JAZ will phone him.

**13 February 2014**

Head of JAZ promises to phone complainant about progress. Letter to follow in two weeks.

**28 February 2014**

National Ombudsman e-mails OLB asking when complainant can expect decision.

**28 February 2014**

E-mail from head of JAZ: he will contact complainant on 7 March. JAZ has submitted a draft policy document on handling of compensation claims to head of Finance and to Infrastructure & Development Department (R&O).

**10 March 2014**

Island secretary says matter has been overlooked due to computer problems.

**11 March 2014**

Head of JAZ has phoned complainant.

**14 March 2014**

Head of JAZ e-mails National Ombudsman: he has submitted new draft policy document to head of Finance and R&O.

**31 March 2014**

National Ombudsman e-mails list of unresolved National Ombudsman cases, including this one, to OLB.

**3 April 2014**

OLB e-mails National Ombudsman: JAZ is currently drawing up joint policy recommendations in consultation with R&O.

**8 April 2014**

Head of JAZ e-mails complainant: efforts are being made to obtain a policy decision from the council without delay so that the compensation claim can be settled as soon as possible.

**11 April 2014**

The new compensation policy is awaiting signature by the director. The council's decision on the claim is expected in three weeks. Complainant should hear outcome in late May.

**9 June 2014**

Complaint e-mails National Ombudsman: OLB has again failed to fulfil its promise.

**23 June 2014**

National Ombudsman sends reminder to OLB.

**24 June 2014**

The policy is about to be submitted to the director of Administration & Support Services (B&O) and then to the council.

**17 July 2014**

Complainant e-mails National Ombudsman: he has still heard nothing from OLB.

**9 September 2014**

Island secretary writes to National Ombudsman: the council aims to reach a decision within three weeks.

## THE NATIONAL OMBUDSMAN'S DECISION

### *Criterion of promptness*

The promptness criterion means that government should act as quickly and decisively as possible. It implies that administrative authorities should issue decisions on applications within the prescribed time-limits.

The Dutch General Administrative Law Act (AWB) states that decisions on applications for which there is no statutory time-limit must be given within a reasonable period, defined as no more than eight weeks after receipt of the application. Under the Bonaire, Sint Eustatius and Saba (Public Bodies) Act, however, the AWB does not apply to local authorities in the Caribbean Netherlands.

The National Ombudsman is aware of the distinctive culture of the Caribbean Netherlands and accepts that it is not always realistic to apply general European principles of proper administration and the specific standards of government conduct developed in the Netherlands over recent decades (in part by the National Ombudsman) to the Caribbean part of the Kingdom. This recognition is known as the 'poko-poko principle' (see Dutch-language article by Dr J.P. de Haan in the *Nederlands Juristenblad* of 18 January 2013).

Even so, a period of more than two years to settle a compensation claim is far too long. The authority's desire firstly to establish a general policy on compensation claims is an explanation for the delay, but in no way justifies it. The actions of the island authority were therefore in breach of the promptness criterion. This was not proper.

The National Ombudsman is glad to hear that the island authority itself recognises that the delay was unjustifiable. The authority has indicated to the National Ombudsman that it aims to settle future compensation claims within four to six weeks. To achieve this goal, it has established a precise procedure and given two employees authority to decide compensation claims of up to \$ 1,000. The council will still need to decide higher compensation claims (like that of the complainant). On 9 September 2014, the claim was still being processed by the Legal Affairs Department. The council hoped to reach a decision within three weeks. On 24 September 2014, the council wrote to the complainant notifying him that the island authority would pay compensation.

### *Criterion of adequate information provision*

The criterion of adequate information provision is also relevant to this case. Authorities should ensure that citizens receive the information they need and that the information provided is clear, correct and complete. They should provide such information not only if the citizen asks for it, but also on their own initiative. Authorities should therefore ensure that citizens receive regular information about the progress of their applications, whether they ask for it or not.

In report no. 2007/015 of 30 January 2007, concerning an investigation undertaken on the National Ombudsman's own initiative into the way Dutch municipalities handled letters

from members of the public, the National Ombudsman lays down standards for the way authorities should keep citizens informed of progress in the handling of their applications. These standards are as follows:

Confirmation of receipt to be sent within 2 to 3 weeks and to include:

- the expected date of a substantive response
- the name of the official or department dealing with the matter.

If it proves impossible to deal with the matter within the expected period, an interim reply should be sent

- before the end of the period originally indicated
- stating the reason for the delay
- indicating a new decision date
- or giving reasons if it is not possible to indicate a new decision date.

In this case, the complainant did receive confirmation of receipt but was otherwise not kept informed of progress. There was no contact until the National Ombudsman intervened in response to the complaint. The actions of the island authority were therefore in breach of the criterion of adequate information provision. This was also not proper.

The National Ombudsman was pleased to note that, in the course of his investigation, the head of the Legal and General Affairs Department (JAZ) took the initiative of telephoning the complainant to keep him regularly informed of progress.

**CONCLUSION**

The complaint about the actions of the Bonaire island authority is justified because they failed to meet both of the criterion of promptness and the criterion of proper information provision.

**RECOMMENDATIONS**

The National Ombudsman recommends the council of Bonaire:

1. To ensure that the confirmation of receipt sent to applicants includes notification both of the expected decision date and of the identity of the department or employee dealing with the application.
2. To make systematic use of interim replies whenever it is clear that the expected decision date given to the applicant will not be met. Instead of a written notification, the authority could consider telephoning the applicant to inform him of the delay and fix a new deadline for decision. This should be done before expiry of the original period, the new deadline should be recorded internally and the date should be confirmed in writing if the applicant requests this.
3. To ensure adequate record-keeping and monitoring of progress.

The National Ombudsman of the Netherlands,

F.J.W.M. van Dooren,  
Acting Ombudsman