

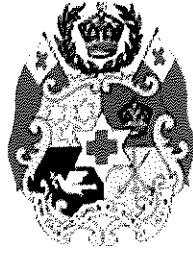
OFFICE OF THE OMBUDSMAN

**P.O Box 847, Retirement Fund Building, Nuku'alofa
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**OMBUDSMAN'S FINAL REPORT ON
THE COMPLAINT BY
Pongipongi Ki He Hau Lomu**

CASE NO. CPR16/54

**Whether the Ministry of Finance and National
Planning has the authority to withhold a portion
of the complainant's salary and remit the same as
loan repayments to the Pacific International
Commercial Bank with or without the
complainant's consent**



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EXCECUTIVE SUMMARY

1. The complainant – Mr. Pongipongi Ki He Hau Lomu has a loan with the Pacific International Commercial Bank (“the PICB”). He began payments on this loan in 2014 whereby he instructed the Ministry of Finance & National Planning (“the Ministry”) to remit the whole of his salary to his account held at the PICB. On receipt of the complainant’s fortnightly salary, the PICB would deduct the loan repayment amount and credit the balance to the complainant’s savings account.
2. The PICB’s banking license was revoked by the National Reserve Bank of Tonga (“the NRBT”) in July 2016.
3. This resulted in a change to the way the complainant received his fortnightly salary. Instead of receiving the balance of salary via withdrawals from his PICB savings account at the PICB premises, he was informed that his salary would be dispersed directly to him from the Ministry less the loan repayment amount which the Ministry would be withholding and paying directly to the PICB.
4. While the complainant does not dispute his debt to the PICB, he is not satisfied with the Ministry withholding his salary and questioned firstly whether the PICB was still a valid business and secondly the authority of the Ministry to withhold part of his salary.
5. After I referred the matter to the Ministry for a response, the Ministry sought the advice of the Solicitor General regarding the legal standing of the PICB. The Solicitor General advised that the PICB was still a valid business but the Ministry did not seek his advice regarding their authority to withhold part of the complainant’s salary towards his loan with the PICB and as such, the Solicitor General did not provide advice in this respect.
6. I am recommending three things in this Report pursuant to section 18(3) of the Ombudsman Act 2001 –
 1. That the Ministry recognise that this matter is a legal issue to be determined between the Ministry and the Attorney General’s Office to ascertain whether the Ministry has the authority to act as the debtor to PICB with or without the consent of the complainant;
 2. The Ministry must inform the complainant of a way forward regarding this matter.
 3. That the Ministry report back to me within **one month** of the date this

report is finalised to provide a follow up report on the recommendations.

BACKGROUND

7. The complaint was received on the 12th September 2016.
8. I assigned the investigation to my Investigation Team who undertook the investigation and corresponded between the complainant and relevant Government Ministries.
9. The team requested, received and reviewed documents from the Ministries' relating to the complainant's application.

THE OMBUDSMAN'S ROLE

10. Under section 11 of the *Ombudsman Act 2001*, the Ombudsman has the authority to investigate the administrative acts, decision, omissions and recommendations of an officer of an organisation in his capacity as an officer of that organisation. This applies to the Ministry which is an organisation under the Act. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
11. My investigation is not an appeal process nor am I conducting a judicial proceeding. I would not generally substitute my judgment for that of the decision maker. Rather, I consider the substance of the act or decision and the procedure followed by the Ministry. I then form an opinion as to whether the act or decision was one the Ministry could reasonably make or that the procedures followed by Ministry was properly followed.
12. My role is to consider the administrative conduct and decisions of the Ministry and to form an independent opinion on whether that conduct was fair and reasonable.

THE LOAN, THE REVOCATION, THE LOAN REPAYMENTS

13. The complainant entered into a loan agreement with PICB on the 25th of July 2014 for the principal sum of \$40,000 - payable within 3 years and 9 months.
14. On the 26th July 2016, the NRBT issued a public notice stating that it had revoked the PICB's banking license with immediate effect¹.

¹ <http://www.reservebank.to/index.php/90-general/373-revocation-of-pacific-international-commercial-bank%E2%80%99s-license.html>

15. On 10th August 2016, the PICB wrote to the MFNP requesting approval for the twelve Government employees whose salaries were remitted to PICB, for the loan amounts to be dispersed in cash directly to the PICB to update their loan accounts before disbursement of the balance to them in cash form².
16. Based on this request, the Ministry entered into an arrangement with NRBT that for all Government employees that had loans with PICB - the Ministry would withhold the loan amount from their fortnightly salaries and discharge the loan payment directly to PICB. The remaining balance to be paid out to the employee.³ The complainant was not a party to this agreement.
17. In response to the referral from this Office to the Ministry of the complainant's complaint, the Ministry sought legal advice from the Solicitor General regarding the legal standing of PICB. The Solicitor General provided written advice to the Ministry that the PICB was and is still a valid business under the Business License Act 2002⁴ although it could not conduct further banking activities. The Ministry did not seek legal advice whether it had the authority to withhold salary and make loan repayments. As such, no legal advice was received in this regard.
18. Under the Public Finance Management Act 2002, it is the duty of the Minister of Finance & National Planning to disperse fortnightly salaries to Government employees and to withhold amounts as required by law.
19. The Ministry accepted that because PICB is still in existence under a valid business license, it would step in and act as the payee on behalf of the Government employees. The complainant rightly questions this role and the Ministry has not responded to this issue.

RECOMMENDATIONS

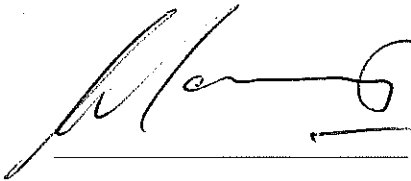
20.
 1. That the Ministry recognises that this matter is now a legal issue to be determined between the Ministry and the Attorney General's Office to ascertain whether the Ministry has the authority to act as the debtor to PICB with or without the consent of the complainant.
 2. The Ministry must inform the complainant of a way forward regarding this matter.

² Letter from PICB to MFNP (dated 10/08/16)

³ Letter from Acting CEO of MFNP to Office of CPR (ref:22S/1326 dated 17/10/16)

⁴ Letter from Solicitor General to Chief Executive Officer for Public Relations (ref: SFS1217/16-AG/C.10 dated 23/11/16)

3. That the Ministry report back to me within **one month** of the date this report is finalised to provide a follow up report on the recommendations.



Aisea H. Taumoepeau, SC
Ombudsman of Tonga

