

Report on Case No EU 0106

Investigation following complaint on car damages suffered due to sea water flooding at Birżebbuġa.

Case history

On 16 December 2020 this Office received a complaint that the area of St George's Bay experienced flooding of sea water for more than a decade due to high tides and that the authorities have not taken any measures and advise alternative routes. When the complainant asked who is responsible for the damages sustained - consisting of rust in the under-side of the vehicle after regularly driving through the area - the Local Council, Transport Malta and Infrastructure Malta replied that they are not responsible.

On 7 January 2021 and 15 March 2021 complainant was informed to sustain the claim through a technical report that would also include an estimate of the claim and the vehicle value and to submit this claim to Transport Malta.

On 15 March 2021 complainant forwarded to this Office correspondence with Transport Malta and the Local Council together with photos and the vehicle log book.

On 17 March 2021 and 3 May 2021 this Office informed the complainant that this Office cannot intervene on whether there was any maladministration in the handling of this complaint by the relative Authority before it can be fully ascertained that the claim was first properly directed to Transport Malta as described in our previous communications.

On 11 May 2021 Transport Malta informed the complainant that this type of query falls under the remit of Infrastructure Malta and not Transport Malta.

On 13 May 2021 this Office informed Transport Malta and copied Infrastructure Malta with the following:

“This Office received a complaint regarding car damages due to seawater flooding at Birzebbuga.

On 11 May 2021 Ms Nadege Borg from Transport Malta replied to the complainant that this type of query does not fall under the remit of Transport Malta but it falls under the remit of Infrastructure Malta.

Without delving into the merits whether this complaint is justified or not, please clarify how Infrastructure Malta should see to this complaint considering that this is not a maintenance issue but an issue related to the low level of an old road with respect to the sea level and also considering that Transport Malta still retains the ownership of the same road in line with the Agency for Infrastructure Malta Act.

The Agency is also being copied for any comments it might wish to submit.”

On 25 June 2021 Transport Malta replied that they are liaising internally with their Perit to get information in relation to this case and on 7 July 2021 Transport Malta acknowledged that sea water overrides the road in Birzebbuga, however it submitted that any proposed projects related to the quay or the road in this area would be in the pipeline at Infrastructure Malta.

On 12 July 2021 this Office sent the following to Transport Malta:

“Your letter dated 7 July 2021 in reply to our email dated 13 May 2021 refers.

The subject-matter of this complaint – that is very clear from the complainant’s email to Transport Malta dated 8 May 2021 to which Ms Nadege Borg from Transport Malta replied on 11 May 2021 as mentioned in our letter – is not a request to avoid future damages but a claim for damages sustained in the vehicle.

One can understand that it is the responsibility of Infrastructure Malta to carry out projects so that sea water does not continue flooding the area, however, without delving into the merits whether the claim is justified or not, Transport Malta – being responsible for the same road – should provide the complainant with a reasoned reply why this claim is or is not justified (based on the documents submitted to Transport Malta) and not simply rejecting outright the request on the premise that Infrastructure Malta is responsible. This is not the case since the complainant is claiming for damages recurring since before the inception of Infrastructure Malta and based on the state of the road in the past both as regards the design in relation to the sea level and also with regards to the signage indicating possible flooding.

Please reply at your earliest in order to find a closure to this case.”

No reply to the latest communication from Transport Malta was forthcoming.

Observations

The subject-matter of this complaint concerns a long-standing issue consisting of sea water overflowing onto the street adjoining the shore in the area of St George’s Bay at Birżebbuġa.

It is important to stress from the outset that this opinion is not delving whether Transport Malta or any other entity is responsible for the material damages sustained by private parties but only on the issue whether Transport Malta, or any other entity, is responsible to reply to this claim and not acting by simply referring the complainant to another entity.

It is a known and uncontested fact that this street is on occasions flooded with sea water and that there are pending issues such as the provision of signs and the implementation of capital projects to avoid and/or contain similar occurrences. These pending issues have not been investigated since the claim is actually related to the vehicular use of the same street during flooding that occurred during the previous years.

Article 6(1)(i) of the Authority for Transport in Malta Act (Chapter 499 of the Laws of Malta) lists one of the functions of Transport Malta to “*provide for the safe use of any vehicle.*”

Article 5 of the Agency for Infrastructure Malta Act (Chapter 588 of the Laws of Malta) states that:

“... the property and undertakings owned by the Authority for Transport in Malta, or owned by the Government and used by the said Authority, on which the Agency shall undertake the mentioned works, shall remain the Authority’s assets:

Provided that where the maintenance of any local road is by law the responsibility of a local council, the maintenance of such road shall not, to the extent of such responsibility, be the function of the Agency:”

The claim in question is related to damages allegedly sustained during the use of the street in question due to its condition/situation in relation to the sea level and is not related to maintenance issues whereas any installation of road signs and/or any future capital projects embarked upon by Infrastructure Malta will not change the damages that were suffered in the past.

Therefore, whilst Transport Malta is right in stating that “*any proposed projects related to the quay or the road in this area would be in the pipeline at Infrastructure Malta*”, it is the responsibility of Transport Malta to address the claim brought forward in relation to the past use of this street and it cannot simply refer the complainant to Infrastructure Malta or to any other entity.

Conclusion

Without delving into the merits whether the claim for compensation is justified - which claim has yet to be analysed by the relative entity on presentation of the appropriate evidence - it is being recommended that:

1. Transport Malta should recognise its responsibilities in connection with the claim put forward by the complainant; and
2. Transport Malta should reply to this claim and not abdicate its responsibilities by simply referring the claimant to another entity.

Perit Alan Saliba
Commissioner for Environment and Planning
Office of the Ombudsman

17 September 2021