**First Name: Johanna**

**Surname**: MacRae
**ID Card Number:**

**On behalf of**: Up in Arms
**Email:**

**Address:**
**Home Telephone:**

 **Mobile**:

**To whom would you like your complaint forwarded to?**
Parliamentary Ombudsman

**Brief description of your complaint**
**Arms’s billing system discriminates against all tenants residing in Malta.**

**Which government department, agency, organization or service do you wish to complain about?**
Arms / Enemalta / the MRA / WSC / Ministry for Energy and the Conservation of Water / Ministry for Finance / Ministry for Justice, Culture and Local Government

**Please provide information about your case and the decision, action or omission by the body mentioned above and about which you are submitting this complaint.**

**Our group consists of approximately 3 000 members. Many members are tenants and are thus subject to the problems described below. This complaint will first of all describe the Arms billing system. It will proceed to describe why we find this discriminatory towards all tenants. We will then show how Arms is behaving with impropriety in knowingly overcharging tenants and we will describe the consequences of this incorrectly implemented billing system to tenants and to Malta.**

**How the ARMS Billing System Works**

**The billing system has three tariff structures: non-residential (formerly called commercial), residential and domestic.**

**Non-residential rate: This is designed for businesses and not for residences. However, some residential tenants are incorrectly being charged according to this tariff. This seems to arise from a simple lack of knowledge among landlords.**

 **Residential rate: There are two principles dictating the circumstances in which a person is billed at the residential rate. These principles appeared in several adverts placed by ARMS in the Times of Malta late last year:**

**(1) “Residential tariffs are applicable to one primary residence” and (2) “The residential tariff is applicable on the consumer’s primary residence.”**

**With this tariff, the number of persons residing in the household can be registered with ARMS. Consumers on the residential rate enjoy realistic annual allowances of electricity and water consumption *per person* at a reasonable rate. In addition, there are eco reductions on the cost of electricity consumption.**

**Domestic rate: This rate is designed for owners of empty or occasionally used properties and does not take into account the number of residents. The allowances of water consumption are low and there are no eco reductions on the electricity consumption. The payment rates for consumption of water and electricity are much higher than the residential rates.**

**Comparison of cost at residential and domestic tariffs: Below is an illustration of the cost at the residential and domestic rates for a family of 5. It is assumed that the consumptions of water and electricity are the annual maximum allowances allowed at the residential rate for a family of 5 (165 cubic metres of water and 8 750 units of electricity).**

|  |  |
| --- | --- |
| **Water- residential** | **Water-domestic** |
| **At the residential rate, a resident is allowed a consumption of 33 cubic metres of water per year at 1.3965 euro per cubic metre; five registered residents are allowed 165 cubic metres per year at 1.3965 euro per cubic metre.** **Therefore, 165 cubic metres of water costs 230.42 euro for a family of 5, residing in their primary residence at the correctly applied residential rate. (see photoscreen of the Arms online calculation)** | **At the domestic rate, for a second home there is a single allowance of 33 cubic metres of water at 2.185 euro per cubic metre. This allowance is perfectly reasonable for occasional use, but a family of 5 would pay 2.185 euro per cubic metre for the first 33 cubic metres of water (about 2.5 months’ worth for this family), and then an eye watering 5.1395 euro per cubic metre for the remaining 9.5 months of the year.** **Therefore, at the incorrectly applied domestic rate, the consumption of 165 cubic metres of water would cost a family of 5 living in their primary residence 750.25 euro. This is more than three times the cost at the residential rate. (see photoscreen of the Arms online calculation)** |

|  |  |
| --- | --- |
| **Electricity – residential** | **Electricity – domestic** |
| **At the residential rate, a resident is allowed a consumption of 1 750 units of electricity *per person* per year at a more favourable rate. Therefore, 5 registered residents enjoy an allowance of 8 750 units of electricity at a favourable rate.****Therefore, 8750 units of electricity would cost a family of five 999.53 euro at the correctly applied residential rate. (see photoscreen of Arms online calculation)****This includes an eco reduction of 235.52 euro.** | **At the incorrectly applied domestic rate, the same family of 5 would only be allowed an allowance of 2 000 units of electricity at a more favourable rate.****Therefore, the same 8750 units of electricity at the incorrectly applied domestic rate would cost 1 497.78 euro, 50% more than at the residential rate. (see photoscreen of Arms online calculation)****There is no eco reduction applicable to the cost at the domestic rate.** |

|  |  |
| --- | --- |
| **Total cost at the residential rate** | **Total cost at the domestic rate** |
| **1 289.11 euro** | **2 372.36 euro** |

**Implementation: The features of the tariffs clearly show how they were designed to be applied. Somehow the rationale behind these tariffs has been subverted and now these tariffs are incorrectly implemented with regard to tenants living in their primary residence. These tariffs should be correctly applied as publicly advertised by ARMS in the Times of Malta.**

**Why We Feel this Billing System is Discriminatory**

**Two-tier system: The problem with all two tier systems is that they are unwieldy, unworkable and open to abuse. Clearly, the two tier system was designed as a kind of property tax for multiple property owners. If this billing system were properly implemented by all concerned, then there would be no discrimination against tenants. As it is, the situation is that the majority of tenants, residing in their primary residences, are paying for their consumption of water and electricity at the extortionate domestic rate, designed for owners of empty multiple properties.**

**ARMS Policies Are the Start of the Problem**

**Consumer: There is no mention of tenants on the Arms website. Ex Arms CEO, James Davis, told Patricia Graham, foundress of our group: “tenants do not exist for Arms”. Our group has also been told that the ‘consumer’ referred to in the electricity and water supply regulations is not the tenant consuming water and electricity in their rental property, but the account holding owner of the property.**

**Farcical, callous sophistry with words will not change the meaning of the word ‘consumer’. Legally, the consumer may very well be the account holding landlord. However, of course, it is the tenants living in the property (their primary residence) that are consuming water and electricity. They should be paying for this consumption at the same rate as homeowners. Tenants are not lesser beings.**

**What is important is the end result. Tenants are paying more for their consumption of water and electricity simply because they are tenants.**

**Application for residential rate: There are two ways for a tenant to get the residential rate.** A tenant can either:

Ask the landlord to complete Arms Form F (Registration of Change in Consumer). This means that the account is in the tenant's name and he can see his actual usage pattern and bills. In this case the landlord does not have access to the account because of the Data Protection Act. A deposit of €466 with ARMS is required.

Or

Ask the landlord to complete Arms Form H (Change in the Number of Persons Declaration). This means that the account is still in the landlord's name. In this case the tenant does not have access to the account because of the Data Protection Act and cannot check if the bills are actually being paid. No deposit is required here.

**Both** ways require the landlord’s permission and signature on the forms. Each way is open to abuse.

**Other factors surrounding this discrimination**

* **No one informs the tenant in a systematic way about these two tier tariffs.**
* **Members of our group were not provided with information about the two tier tariff from letting agents, even though the fee paid to the letting agent is the same for the tenant as it is for the landlord. We have had meetings with the Federation of Estate Agents and were told that the tenant needs to take this up with Arms and that it is nothing to do with estate agents.**
* **Many landlords are badly misinformed about which tariffs apply under which conditions.**
* **There are no standard rental contract clauses for regulating this issue officially and correctly.**
* **Most landlords are uncomfortable with the idea of officially registering the tenant as resident in their 'empty' properties. We have a very strong impression that landlords are not declaring their rental income.**
* **Some landlords did not continue to chase Arms overcharges when the tenant threatened to report the landlord to the Tax Compliance Unit. However, some proceeded to have garnishee orders issued against salaries / bank accounts when the tenant refused to continue unjustly overpaying. Our already overburdened courts should not have to deal with cases caused by big bad holes of governance in the state owned utility billing company.**
* **When tenants have objected to overpaying, some landlords have turned nasty, threatening or resorting to violence. Tenants are not protected by the police as they say this is a civil matter and not a criminal one.** The Commissioner of Police did not rebut any of the information in the article below by Malta Today’s Miriam Dalli.

<http://www.maltatoday.com.mt/news/national/39085/tenants_in_malta_living_in_fear_say_expats>

* **T**he EU is strongly pushing governments to reduce tax evasion. This billing system encourages exactly the opposite.
* Some vulnerable Maltese tenants are not in receipt of their hard won housing subsidies because, as well as refusing to endorse Arms Form H, landlords do not want to complete the necessary forms for fear of being exposed to the Inland Revenue.
* The vulnerable tenants referred to in this article are clearly paying at the domestic rate:

<http://www.timesofmalta.com/articles/view/20120319/local/Poverty-runs-deep-in-Qawra-amrun.411764#.UtAopp5dVqV>

 “He pointed to the “rampant abuse” in the locality, where landlords rule as opposed to a more regulated system in housing estates. They present inflated utility bills of about €200 a month and kick tenants out because they cannot pay the rent, resulting in six apartment changes in a year in some cases.”

**How the System Conspires to Collect More Money for ARMS**

To conclude, even if a tenant finds out about these two residential tariffs, Arms will tell them that they do not exist and that they need their landlord’s permission to be charged at the residential rate.

In effect, Arms is knowingly overcharging people living in their primary residences. This is institutionalized theft.

Whichever way you look at it, Arms is knowingly in receipt of income it should not be getting.

Firstly, each for reasons of their own, Arms / letting agents / landlords conspire to make it virtually impossible for the tenant to know about the two tier tariff. Secondly, the tenant pays at the incorrectly applied domestic rate. Finally, Arms does not do refunds.

Arms has told us that this situation is nothing to do with them; it is between landlords and their tenants. So, tenants are passed from pillar to post. But if you follow the money trail, the overcharge is going to Arms.

This is impropriety of the tallest order.

**This Billing System and the EU**

1. Most tenants are non-Maltese EU nationals and therefore this billing system is in breach of EU law in that it indirectly discriminates against non Maltese EU nationals. It causes huge damage to Malta's reputation as many ex tenants leave for their home countries with their horror stories. Several non-Maltese EU nationals have sent complaints to the EU about Arms:

<http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-532.615&format=PDF&language=EN&secondRef=01>

<http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-532.467&format=PDF&language=EN&secondRef=01>

<http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-532.646&format=PDF&language=EN&secondRef=01>

<http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-536.067&format=PDF&language=EN&secondRef=01>

2. An advisory service for the non Maltese, Balluta Advisory Services, has seen a niche in the market. Below are a couple of excerpts from their website, http://www.ballutaas.com/:

“If you are having trouble with your landlord, you are being physically threatened or abused, we can make ourselves present the next time you meet your landlord. Whether you would like to introduce us as a friend or witness, take part in the conversation or sit idly in the background, we will ensure a stop to any harassment that takes place. Being Maltese, we can interact with the landlord on your behalf, ensure all of your rights are protected and vehemently defend your entitlements and safety.”

“We are aware of the struggles and running back-and-forth expats face when filling forms for services, contracts and other matters such as residency. We can assist you with any forms you are required to fill in (including residency and utility forms) and chase them up with the relevant bodies whether governmental or your landlord, including Form H.”

This is totally against the fundamental concept of freedom of movement of all EU nationals anywhere in the EU.

**When did your grievance first come to your attention?**
The starting point was a somewhat different conflict, namely the refusal of ARMS to accept applications for the residential rate from non-Maltese resident home-owners who could not present a 'Certificate of Residence'. For EU-nationals resident in Malta, this aspect of the billing system was in breach of EU law in that it does not allow the free movement of EU nationals with treatment equal to that of Maltese nationals.

The situation for home-owners has improved. It was while trying to solve inequalities for the non-Maltese residents in rental properties that we discovered ALL tenants are subject to discrimination compared to home-owners.

**Have you already taken any steps to try to resolve your problem or asked for a review/reconsideration or appealed against the decision which you considered unfair?**
Yes.

**How has the action of the public body concerned affected you and what steps did you take to seek redress?**
We have outlined how Arms's billing system has affected tenants, residing in their primary residences in Malta. We have taken various steps to seek redress:

* Up in Arms foundress, Patricia Graham, has had many meetings with a succession of Arms CEOs, Konrad Mizzi, the Federation of Estate Agents and various others.
* Johanna MacRae has corresponded with ex Arms CEO, James Davis. Konrad Mizzi and the Prime Minister were cc’d in. She has written to the Auditor General, asking him to conduct an audit of Arms accounts with consumptions that belie the zero residents label and also the tax accounts of multiple property owners at the Inland Revenue.
* The group has organized a petition against the discrimination of EU nationals. Many reasons for signing the petition are to do with this billing system. <http://www.change.org/petitions/eu-commission-stop-the-discrimination-of-eu-nationals-in-malta>
* We have organized protest marches, the latest one on the 29th June, 2014 in Valletta.
* We have tried to provide information (leaflets, social media etc) to prospective tenants before they signed rental contracts.
* We have tried to maintain a high profile in the press with numerous articles about this issue.

**Why do you think the public body treated you unfairly or infringed upon your rights?**
At the end of the day, it does not cost more to provide water and generate electricity for tenants than it does for multiple property owners. We find it demeaning that as tenants, we are not allowed to have a relationship with our utility provider without the consent of our landlords. I think that this billing scheme has allowed landlords to feel that they are lords of the manor, we are the serfs in a feudal system and that we should pay whatever they say we have to pay. We strongly object to this and we see it the duty of the Maltese government to make sure that we are not overcharged for our consumption of water and electricity.

**What results do you hope to achieve with your complaint to put things right and resolve the dispute?**
We hope that either the two tier tariff is scrapped or safeguards are put in place to implement this billing scheme correctly so that ALL consumers of water and electricity living in their primary residences are billed at the correct residential rate. We also hope that we will get our overpayment to Arms back.

**Supporting documentation:**

UiA1: Johanna MacRae’s correspondence with Arms CEO James Davis

UiA2: a photoscreen of the Arms online calculator showing the cost of the 35 month consumption of water and electricity of the MacRae family at the residential rate (Number of residents = 5)

UiA3: a photoscreen of the Arms online calculator showing the cost of the 35 month consumption of water and electricity of the MacRae family at the domestic rate (Number of residents = 0)

UiA4: Johanna MacRae’s first letter to the Auditor General, Mr Anthony Mifsud

UiA5: correspondence between Eric MacRae, Johanna MacRae and the National Audit Office

UiA6: comparison of the three Arms tariffs

UiA7: cost of annual maximum allowances at the residential rate

UiA8: cost of annual maximum allowances at the domestic rate

UiA9: Arms advert in the Times of Malta

**Authorisation**

Our group, Up in Arms, wishes the Ombudsman to investigate our complaint and we consent to the obtaining of all relevant papers for the purposes of investigating the complaint under the Ombudsman Act.