

*The Ombudsman on perils faced by schoolchildren
left unattended in front of their school gate*

Background information

Early in November 2010 a group of parents residing in Manikata whose children, with ages varying from three to eight years, attended the Mġarr Primary School submitted a complaint to the Ombudsman against the Directorate for Educational Services in connection with the school transport system provided for their children by the Directorate and the way that this system was allowed to operate.

Complainants told the Ombudsman that on 24 February 2010 the Head of the Mġarr School informed them that following a directive issued by the Malta Union of Teachers (MUT), the main gate of the school would no longer be open before school hours, that is, before 8.30am, since no supervision would be available. The Head of School added that children who used school transport would no longer be able to enter the school premises before 8.30am even if the transport provider brought them to school earlier. Parents were warned that even if the directive was withdrawn and no teachers would be found who were willing to supervise children before lessons started, this restriction would continue to apply.

Complainants explained that as from 25 February 2010 children making use of the school transport service provided by the Directorate and who arrived at their school at around 7.55am were left unsupervised in the street outside the school gate.

Complainants reported to the Ombudsman several other misgivings including their concern that the driver of the minivan who took their children to and from school drove at excessive speed and more often than not conveyed them in an overcrowded vehicle with children having to sit on top of each other. Besides, on several occasions this transport provider would make arrangements for other backup drivers to take these children to school in their own private cars. This meant that since only a few of them could be collected at a time, schoolchildren who took the earlier trips were left at Mġarr with an individual who happened to be outside the school premises while the standby driver would return to pick up the remaining students. This

would repeat itself several times until all the children would be picked up and taken to school.

Complainants reported that with only one policeman on duty at the Mgarr Police Station, on various occasions there would be no police presence at all in the school area during school opening and closing hours.

Complainants explained to the Ombudsman that although they raised the issue with the competent authorities regarding the time when the school gate would be opened, this was to no avail. Both the College Principal and the Head of School admitted that they were unable to remedy the situation since they were not in a position to provide the necessary supervision for schoolchildren.

Complainants further divulged that when they raised their quandary with the Minister of Education, they were told that the Directorate for Educational Services was dealing with the matter. Moreover, even though the Minister promised to do her best to provide the required supervision, the situation remained unchanged.

On 13 October 2010 the parents signed a petition requesting supervision so that the school gate would open before the official opening time.

Complainants then aired their grievances about the shortcomings of the transport system that was being provided for their children with officials from the Directorate for Educational Services and suggested that in any future arrangements for this system, a later pickup time should be specified. Notwithstanding their concerns, complainants were told that the transport contractor was entitled to pick up children an hour before the time that lessons got under way and that their reports about the minivan driver could not be addressed.

Faced with a situation where, despite the urgency of the situation, all the authorities involved failed to deal with their grievances promptly but merely sought to shift the responsibility to another party, complainants requested the Ombudsman to intervene so that the school gate would again open at 8.00am and children would be able to enter the school grounds so as to avoid the risk of accidents.

Action by the Ombudsman

The Ombudsman, having decided to investigate the allegations by parents about the conduct and behaviour of the minivan driver and problems associated with the opening of the school gate and the Directorate's reactions to these issues, asked for the reactions of the Ministry of Education, Employment and the Family on these allegations by means of a letter dated 18 November 2010.

Despite the urgency of the situation and a series of reminders by the Ombudsman, it was only in May 2011 that the Office learnt from the Ministry that correspondence sent to Transport Malta with a possible solution to the problem remained unanswered. In this correspondence the Ministry pointed out that since school transport generally takes children to their schools much earlier than the opening time, very often students are merely left outside the school premises – and this led to strong concerns regarding their safety due to passing traffic. To this end the Ministry requested Transport Malta to explore the possibility of extending the times appearing on *No Entry* signs for vehicles from half an hour before school starting time and after the end of lessons to one hour to ensure improved safety levels.

While the reaction by Transport Malta to this proposal was still awaited, complainants informed the Ombudsman that the situation had not improved at all. Although some parents offered to supervise the children within the school premises, the Head of School turned down this offer on the grounds that their number was not enough.

Complainants also stated that although the school transport operator no longer resorted to standby drivers to pick up their children in their private cars and made arrangements to send a substitute driver, this person was always late for the return trips and children were back home from school more than half an hour after their lessons were over. Moreover, children were still being picked up a few minutes before eight o'clock and were in front of the school entrance well before school opening time since there is only a short distance between Manikata and Mgarr. Parents remained concerned that there was no supervision inside the minivan.

When on 12 May 2011 the Ombudsman approached Transport Malta on this issue, the authority acknowledged that the Ministry's

proposal would have strong repercussions on all the schools in the country. Since most schools are in village cores, school transport is bound to affect vehicular traffic flows generated by the day-to-day activities in these communities, business and the delivery of essential services and provisions. Transport Malta noted that the times being proposed for this traffic measure coincided with rush hour traffic particularly in the morning and it was feared that any such extension could possibly give rise to a chaotic situation in these areas. For these reasons Transport Malta admitted that it would be rather difficult to extend the time of a *No Entry* sign to one hour.

Transport Malta went on to suggest that school transport providers should be obliged to pick up children not more than one hour prior to start of school rather than change traffic patterns and disrupt flows in areas around all government schools to suit the commercial needs of providers of the school transport service. Transport Malta held that in the circumstances the best solution was not through new traffic management schemes.

A year gone by – and still no tangible improvement

To a large extent by June 2011 the situation remained the same; and this meant that the matter had been at a standstill for almost one whole scholastic year. Efforts to get the authorities to improve matters only met a limited measure of success and although there was some improvement in the school transport service to the Mgarr school with the replacement of the unruly driver, parents continued to complain that the van remained overcrowded and that there was no supervision while their children were taken to school. The school gate continued to open at the official school opening time and children continued to be left outside even in bad weather although some teachers took it upon themselves to look after children after school closing time until the minivan would pick them up.

In a letter dated 24 June 2011 the Ministry pointed out to the Ombudsman that school staff are not obliged to report for work before school opening time and that schools have a legal obligation to provide education to students and not to provide childcare before and after school opening and closing times. Nevertheless, the Ministry was addressing the issue of students arriving at school premises before the opening time.

The Ministry also confirmed that the morning pick-up time of students was well within the conditions stipulated in the agreement between the Directorate for Educational Services and transport providers. Besides, since the number of vehicles for school transport is small in comparison to the number of students who need to be transported to school, it is not at all surprising that each vehicle carries out several trips per day with the result that it is impossible for children to arrive at school only a few minutes before their lessons start or to be picked up just after school ends.

The Ministry pointed out that supervision of schoolchildren does not form part of the school transport service provided by the Government. Furthermore, this service is not obligatory and parents may make their own arrangements for the transport of their children to and from school.

Further contacts between the Office of the Ombudsman and the Ministry of Education, Employment and the Family

During a meeting on 12 July 2011 at the Office of the Ombudsman with officials from the Ministry the Ombudsman insisted that immediate remedial action was required since the safety of schoolchildren was at stake. In a nutshell, schoolchildren were being left on their own outside the school grounds with little or no formal supervision because arising from the agreement with the MUT, teachers are no longer obliged to turn up for work before the schools' official opening time and to supervise children until lessons would get under way. The Ombudsman maintained that the Directorate should take immediate steps and find an acceptable solution before the new scholastic year starts in September 2011. Once the Directorate provides a transport service for schoolchildren, it is bound to ensure that children are secure and safe from any perils during these journeys.

The Ministry explained that the Directorate was trying hard to sort out this issue on time. New arrangements were being negotiated with contractors running the school transport service regarding the pickup times of children with an eye to the distance from the agreed student pickup points and their schools. Moreover, a pilot project was in hand – the Early Bird Supervision Project – in six schools where volunteers supervise streets where children gather before the school gate is opened.

The Ministry added that teachers replace parents only during school hours and recalled that the agreement with the MUT meant that any supervisory duties would only be done against extra payment. The Ministry also pointed out that before any additional supervisory duties are introduced, costs associated with these new tasks would need to be quantified given that any such duties would involve all government and church schools and would also have to be submitted for consideration by the Government.

The Ombudsman emphasized that the safety of children should be the main concern of the Directorate and while he acknowledged that financial aspects should be given due importance, he observed that it is obvious that children are safer inside school premises, and this even if only a limited form of supervision is available.

On its part the Ministry was of the view that supervision can only be done by persons who are employed for this purpose such as retired persons who would be willing to work for a few hours per week. Besides the supervision ratio indicated in the agreement with the MUT with regard to school breaks would also have to be applied in the supervision of children before and after school.

The Ministry assured the Ombudsman that the Directorate for Educational Services was dealing with the matter while on his part the Ombudsman requested the Directorate also to keep in view the situation in other schools because he was sure that this problem is not limited to the Mgarr School.

Preliminary considerations by the Ombudsman

The Ombudsman thought it proper to register in some detail a number of preliminary considerations including facts that resulted from his investigation because the complaint concerns the supervision and safety of schoolchildren at kindergarten and primary level on their way to and from government schools. This issue is of the utmost concern to all the public authorities involved.

The Ombudsman observed that it should be obvious to one and all that leaving minor children unattended for any length of time could lead to very serious accidents, if not tragedies. This was potentially a situation that seemed to be beckoning for a tragedy to happen at any moment – a situation that should no longer be tolerated and that

would be too late to remedy in the event of a horrible accident. Action had to be taken and it had to be taken fast.

The Ombudsman explained that the complaint on the situation at the Mgarr School had two different and distinct aspects. The first aspect concerned serious allegations against a service provider who was blatantly failing in her contractual duties when providing transport to a state school. Although this driver was replaced since the complaint was lodged, the Ombudsman could not but remark that it had taken the Directorate for Educational Services more than seven months to take action after the complaint was first raised with his Office in November 2010. Clearly, this is indicative of lack of proper and prompt supervision by the Directorate on service providers.

The Ombudsman insisted that it is the duty of the authorities to act immediately whenever serious allegations of this nature are made. All public authorities have to err on the side of caution and exert strict discipline and observance of contractual and other obligations especially in issues related to the safety and well being of children under their care. The Ombudsman went on to state that the issue of care and custody is central to this complaint.

The Ombudsman went on to admit that during his investigation he was particularly struck by the negative approach of the authorities involved. While recognising the serious issues involved, they all shirked responsibility for looking after the interests and safety of children and seemed more intent on shifting responsibility onto others. This was especially evident when these authorities were asked for their reaction on the main issue of the complaint, namely that upon arriving at school by means of the school transport service provided by the Directorate for Educational Services, schoolchildren were being left, sometimes for over half an hour, on the streets without any surveillance by police, teachers or guardians of school irrespective of weather conditions and other safety considerations.

The unsatisfactory reaction by the public authorities

The Ombudsman felt that the reactions of the public authorities involved in this saga were largely unsatisfactory; and some of these reactions are outlined below:

(i) The Head of School, while admitting that the school gate was now being opened exactly at 8.30am following a directive by the MUT, went on to state somewhat strangely that this decision was meant to safeguard the safety of schoolchildren since no adults would assume responsibility for their safety once they were inside the school grounds. In an equally bizarre manner, the Head advised parents to make their own arrangements for the safety of their children until the school gate would be opened – and this advice applied in respect of all schoolchildren at Mgarr including those who used school transport. The Head of School went on to declare that even if the MUT directives were suspended, the school gate would still only be open as from 8.30am unless some teachers were prepared to assume responsibility for supervision.

(ii) As pointed out by the Ministry of Education, Employment and the Family, the provider of the minibus service cannot be held responsible for schoolchildren and for their safety once they alight from the minibus onto the road in front of the school grounds as long as the contractual obligation for the collection and transport of schoolchildren within the prescribed time has been observed.

(iii) On its part Transport Malta was felt to have adopted an insensitive attitude when it held that the service provider should be obliged to deliver the children within the stipulated time and that although a solution had to be found, this should not be done at the expense of new traffic management measures.

(iv) The Ombudsman felt that the reaction by the Ministry of Education, Employment and the Family was initially ambivalent and its officials appeared to be conditioned by the attitude of the MUT. The Ministry was prepared to accept that once teachers would not provide supervision inside the school precincts for half an hour before lessons got under way, the Head of School was correct not to open the school gate and to leave children waiting in the road outside the school gate. The Ministry also considered as acceptable a situation where schoolchildren were left unattended in the road and its only reaction was to suggest that the times appearing on the *No Entry* signs be extended to one hour before the school gate would be opened or closed. Although the Ministry was fully aware that the existing situation was dangerous and that schoolchildren were at risk, the rejection by Transport Malta of this proposal did not seem to have bothered the Ministry unduly.

(v) The Ministry maintained that although it provides school transport for the convenience of parents, it is not responsible for the care and custody of children until they actually enter the school precincts. It held that, until that time, parents are still responsible for their children.

During his investigation the Ombudsman formed the impression that none of the authorities involved were ready to assume responsibility. It also became obvious in the course of his inquiry that the problem was not limited to Mgarr but involved all government schools, both in Malta and Gozo. To be fair, while the investigation was under way Ministry officials acknowledged that the situation was untenable and that an urgent solution had to be without any further delay. It was also recognised that although there were financial implications, yet the overriding concern should always be the safety of children.

The Ombudsman's Final Opinion

The Ombudsman declared in his Final Opinion that in these circumstances, the main thrust of his concern should be to ensure that the authorities shoulder their full responsibilities and seek solutions for a situation that was manifestly unsafe and potentially extremely dangerous for schoolchildren. He further declared that parents, the minivan service provider, the education authorities, the Head of School and the Malta Union of Teachers are all, in varying degrees, responsible and in duty bound to seek and implement effective solutions.

The Ombudsman stated that he could not disagree more with the stand by the education authorities that they are not to be held responsible for the safety or security of children before they are admitted to the school grounds. According to the Ombudsman there is no doubt that once these authorities provide school transport and take over the care and custody of children from the hands of parents onto minibuses detailed by them to transport schoolchildren to school, it is their duty to ensure that these children arrive at school, and within the school, safe and sound and without any risk to their safety. There is no way in which the education authorities can divest themselves of this responsibility short of suspending the school transport system.

The Ombudsman also remarked that the decision to refuse to open the school gate before the start of school hours and to close them immediately after closing time, is unreasonable and contrary to the rules of good administration. Children in the care and custody of the education authorities during school hours should remain so until handed over to their parents or guardians within a reasonable time. The school authorities have certainly no right to keep children out on the road and, even less, show them out of school onto the road, unattended and unguarded. It stands to reason that school grounds have to be opened for a reasonable time before school hours and closed after a reasonable time when school hours end, to allow parents and transport providers to collect children. It also stands to reason that during this period children have to be supervised.

The Ombudsman added that it is of course not for his Office to determine how and by whom this supervision has to be made but undoubtedly children have to be tended and looked after at all times. Forcing young schoolchildren, especially those attending primary schools, out in the road unattended and unsupervised is, according to the Ombudsman, highly irresponsible and unacceptable. Ways and means have to be found, with the cooperation of all concerned, not least with the MUT that cannot shirk its responsibilities, to seek solutions that provide a safe haven for children. Clearly these solutions have to be found within the school precincts, under the direction of the education authorities, and that ought therefore to be acceptable to parents as well.

The Ombudsman also declared that it was his firm conviction that the suggestion to extend the time on the *No Entry* sign in the roads in front of schools from thirty minutes to one hour, is neither adequate nor satisfactory. It ignores the issue of supervision and responsibility for children and is unacceptable especially since leaving children unattended and unsupervised in the road is obviously a much more hazardous situation than leaving them within the schools' precincts. Moreover, the dangers in the road are not limited to the possibility of traffic accidents since there are other, even more dangerous perils, on the road to which children can be, and often are, exposed.

The Ombudsman insisted that there is the need for a much greater awareness of the gravity of the situation that concerns all government schools. This awareness would serve to instil in all the

authorities involved a greater sense of responsibility to act urgently and to find effective solutions before it is too late.

The Ombudsman concluded his Final Opinion by stating that following a meeting held at his Office a few weeks earlier, the Ministry had made serious attempts to find solutions to this serious problem. Progress, however, appeared to be slow and there were indications that the outcome would not be positive since unfortunately financial considerations remain the overriding obstacle. Indeed it appeared that the extra costs involved to provide the necessary additional supervision before and after school hours would relate to the refusal by teachers to provide supervision outside school hours and to claims for compensation that would be made by the MUT for added duties beyond those established in the current Collective Agreement.

The Ombudsman strongly recommended that it was time to ensure that all these obstacles would be overcome through cooperation by all in the interest of the safety of children before the start of the 2011-2012 scholastic year in a few weeks' time.

The Ombudsman concluded by observing that his investigation has shown that similar problems do not seem to exist in regard to children attending private or church schools where children, as a rule, alight from buses within the school precincts and are collected under the supervision of school staff. The Ombudsman admitted that he failed to see why children attending public schools should receive different treatment and be put at unnecessary risk and peril.

Since this Opinion is of general public interest, the Ombudsman decided that it should be made public in terms of section 23 of Act XXI of 1995.

12 August 2011