

Annual Report 2018



PARLIAMENTARY
OMBUDSMAN
MALTA




OMBUDSMAN

FOR THE PERIOD
JANUARY - DECEMBER 2018

Presented to the House of
Representatives Malta
pursuant to Section 29 of
the Ombudsman Act, 1995





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The Honourable Dr Angelo Farrugia
President of the House of Representatives
Parliament of Malta
Freedom Square
Valletta



Mr Speaker

In terms of Section 29 of the Ombudsman Act 1995, I am hereby submitting the Annual Report concerning the performance of the Office of the Ombudsman for the period January to December 2018.

The Annual Report includes an oversight of the activities and initiatives taken during that year as well as relevant data regarding the conduct of the investigation of complaints. It also includes reports by the Commissioners for Education, Health and Environment and Planning covering the same period.

Yours sincerely

Anthony C. Mifsud
Parliamentary Ombudsman

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PARLIAMENTARY OMBUDSMAN

ANNUAL REPORT



OMBUDSMAN



VENICE COMMISSION REVIEWS MALTA'S DEMOCRATIC CREDENTIALS

In 2019, the Venice Commission, as the European Commission for Democracy through Law is commonly known, delivered two authoritative opinions that directly concern issues that the Ombudsman has been addressing in recent years, on the need to strengthen the promotion and protection of human rights and to safeguard the enjoyment of the citizens' right to a good public administration. Objectives that can only be achieved through the continued empowerment of authorities and institutions having the function to secure the rule of law in the country.

COMMISSION'S ROLE IS ADVISORY

The Venice Commission is the Council of Europe's advisory body on constitutional matters. Its role is to provide legal advice to its Member States and in particular to help States wishing to bring their legal and institutional structures in line with European standards and international experience in the fields of democracy, human rights and the rule of law. Each Member State nominates a delegate to the Commission. Malta has been a founder member since the Commission was set up in 1990 and actively participates in its proceedings. The Commission is by statute, fully autonomous and independent from the governments of its Member States. It is strictly apolitical.

The Commission as a rule, gives its opinion on the democratic and constitutional credentials of a country's institutions only at the request of the Council of Europe, or at the invitation of the government of the country involved with which it always seeks to engage in a spirit of constructive dialogue. When formulating its opinions the Commission generally appoints a group of expert rapporteurs to conduct an in-depth investigation aimed to establish all relevant facts, examining them within the context of obtaining national perspective. An exercise meant to establish whether the facts satisfy or would satisfy generally accepted, democratic and human rights international standards.

To do so these rapporteurs not only consult all relevant legal instruments and documentation but also make it a point to meet the representatives of state authorities, politicians, NGOs and other stakeholders that can provide them with

first-hand information on the issues involved from the widest possible spectrum of public opinion. The report of the Commission usually reflects the comments of its rapporteurs. A procedure that ensures that its conclusions are based on a correct analysis of all the factual and legal elements relevant to the merits of the investigation. This was the procedure adopted in compiling the two reports on Malta made by the Commission last year.

MEETINGS WITH OMBUDSMAN REQUESTED

On both occasions the rapporteurs of the Commission requested to have a meeting with the Ombudsman. It was clear from these meetings that the Commission recognises the Office of the Ombudsman in Malta as a fully autonomous and independent institution that could provide it with authoritative and objective views on the issues they were examining. The Commission considers that the Ombudsman has all the institutional, statutory and legal requisites necessary to qualify as a fully-fledged national human rights institution. The delegation sought the views of the Ombudsman and his advisors not only on matters that were strictly related to the functions of his Office but also on questions that affected the democratic environment, the enjoyment of fundamental human rights and the right of the citizen to a good public administration generally. Those views were taken into account and are mainly reflected in both opinions delivered by the Commission.

This Annual Report is not the place to conduct a comparative study between the considerations and conclusions of the Venice Commission in these two opinions and the recommendations made by the Ombudsman on the same vital issues in recent years. It might perhaps be useful to conduct such a study in other appropriate fora. It is however relevant to stress a number of points that could contribute to the ongoing consultations and debate that should lead to constitutional and legal developments of the utmost importance required to improve the democratic credentials in the country. This in areas that, as is now widely recognised, are in need of urgent reform.

THE FIRST OPINION ON DRAFT LAWS ON EQUALITY AND HUMAN RIGHTS

In June 2018 the Venice Commission adopted an opinion on the draft laws relating to equality and human rights, specifically the Equality Bill and the Human Rights and Equality Commission Bill that the Government was proposing to strengthen Malta's legal framework in this sector. The Government invited the Venice Commission to compile an independent report on these bills to ensure their compliance with accepted democratic standards. The Government made this request because it considered that the Commission was expressly tasked with providing Member States with legal advice on democracy, human rights and the rule of law.

OMBUDSMAN PRIME PROMOTER OF NHRI

The Office of the Ombudsman is particularly interested in this Opinion because since 2012 it has been a prime promoter on the need to set up a national human rights institution that would provide the individual with optimum protection in the enjoyment of his fundamental human rights, coordinate the activities of national authorities and institutions that have a strong human rights content in their functions and contribute towards their more effective and comprehensive enforcement.

The Office of the Ombudsman has published two reports in relation to the establishment of a Maltese National Human Rights Institution. The first official publication, in October 2013, elaborated on a proposal on how such a national human rights institution could be set up. The publication entitled "*The setting up of a National Human Rights Institution - A proposal by the Office of the Parliamentary Ombudsman*" expressly states that it was the government's prerogative to choose the model best suited to Malta's needs.

MINISTRY'S INITIATIVE

Subsequently, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties took the process towards the formation of a Human Rights and Equality Commission a step further with the publication of a White Paper tracing the broad outlines of the legal framework it intended to set up to address identified gaps in the protection of freedoms enjoyed by individuals in Malta. It undertook to ensure that Malta would have an internationally accredited Human Rights and Equality Commission that meets the obligations both of human rights standards laid out in the Paris and Belgrade principles and subsequent documents as well as EU Equality legislation.

In a follow up reaction report entitled "*Reflections on the White Paper - towards the establishment of the Human Rights and Equality Commission*" published in July 2015 the Ombudsman stated that the objectives set out in the White Paper were undoubtedly laudable and fully met the expectations and stringent institutional parameters needed to ensure international accreditation. It remained to be seen how those objectives could be realised in practice through the legal instruments setting up the proposed framework. In that document the Ombudsman attempted to ascertain whether the proposed legislation would be fully compliant with the Paris and Belgrade principles. It also analysed the institutional set up in the context of the historical development of the constitutional and legal fundamental human rights scenario in Malta and the need for further promotion and protection. The Ombudsman noted that there was general consensus in principle on the way forward however care should be taken to ensure that existing structures were not weakened or demotivated.

In his foreword to the second publication, Professor Kevin Aquilina, the then Dean of the Faculty of Laws states "*The Ombudsman's Reflections give flesh to the White Paper's spirit. Needless to say the White Paper sets out the principles which the Government wants to achieve in the realm of human rights and equality law; the Ombudsman's Reflections chart out the ways and means how these principles can be concretized in practice*".

OMBUDSMAN'S CONCERNS ON DRAFT BILLS

In March 2018 the Government published the three Bills that were then submitted for the consideration of the Venice Commission. The Ombudsman welcomed the Bills as a step in the right direction but considered that they raise serious constitutional, legal and drafting issues which needed to be addressed. Among these concerns are the lack of clarity regarding the definition of substantive equality that goes beyond what is provided for in the Constitution, the European Convention and other legislation and the way that definition can be widened or restricted; the composition of the Human Rights and Equality Commission and whether it satisfies the required international standards and the setting up of the Human Rights and Equality Board that does not appear to conform to the accepted principles regulating due process and fair trial guarantees in so far as it would neither be independent nor impartial.

It is sufficient for the purposes of this Annual Report to highlight these concerns without going into further details. However, it is proper and useful to publish as an annex to this Annual Report a brief report by Professor Kevin Aquilina on the three Equality Bills which had been submitted to the Ombudsman by Government in April 2018. This report analyses in some depth the concerns of the Ombudsman and should be read in conjunction with his Reflections published in 2015.

RAPPORTEURS MEET OMBUDSMAN

The rapporteurs of the Commission had a long and fruitful meeting with the Ombudsman and his advisers in which they reviewed the proposed legislation that they considered to be a positive contribution to the legal and institutional framework which regulates issues of equality and non-discrimination in Malta. The rapporteurs were aware of the concerns of the Office of the Ombudsman on certain aspects of the Bills that in the view of this Office, needed to be revisited. This to ensure that the proposed institutional model would not give rise to questions from a constitutional perspective and from the perspective of international human rights law. Care should be taken to avoid conflicts of jurisdiction, ensuring that the proposed set up would fit in and complement existing structures having a strong human right element in their functions. It was essential to secure that *quasi*-judicial powers to enforce the provisions of the Equality Bill would be in the hands of a Board that would be truly independent and autonomous and that can guarantee the right to a fair hearing and due process.

The views of the Office of the Ombudsman are very well reflected in the Opinion of the Commission prepared on the basis of the contributions of its rapporteurs. The Opinion based on the relevant Council of Europe and other international human rights standards, EU legislation and case law of the European Court of Human Rights and of the Court of Justice of the European Union as well as the previous opinion of the Venice Commission on good national practice. The opinion provides an in-depth, well documented analysis of the three Bills, raises key issues and provides indications of areas of concern.

AFFINITY WITH OMBUDSMAN'S POSITION

A brief reference to these issues and areas of concern, elicited from the conclusions of the Opinion, suffices to indicate the affinity of the position taken by the Office of the Ombudsman with the concerns expressed by the Commission.

These include:

- Some of the elements of the proposed reform need to be revised in order to avoid possible conflicts with the Constitution of Malta, the European Convention on Human Rights or EU Directives.
- While it is possible to set up a Human Rights and Equality Board with a broad competence entrusted with some *quasi*-judicial functions, it had to be ensured that such a Board would have all the qualities of a Tribunal. A body that would be fully independent and autonomous, offering procedural guarantees of a fair trial. If the judicial function of the Board was to be maintained a comprehensive revision of its structure to conform with the requirements of the Constitution and European Convention needed to be made.
- The independence of the Human Rights and Equality Commission as proposed in the Bill is not sufficiently guaranteed and its composition should be revised.
- A general equality duty for the public administration provided for in the draft Equality Act, should not mean that the public administration has the power to create enforceable obligations for private actors. Such obligations may only be imposed by the legislator.

The Ombudsman concurs with the opinion of the Commission that the main aim of the Bills is to incorporate into Maltese Law, international and European standards in the field of non-discrimination and equality and to do so in a comprehensive manner. An aim that has been generally achieved. The proposed structures have however to be reviewed and fine-tuned to ensure a seamless application of the provisions of the Bills. This will not only guarantee their conformity with accepted European standards on equality and non-discrimination, but also provide adequate protection of the right to be judged by an independent and impartial tribunal, applying clear and well defined laws and regulations enacted by competent legislative organs.

The Bills have as yet not been given a first reading in the House of Representatives. It is understood that the Government is in the process of reconsidering and redrafting aspects of the legislation that require amendment in the light of the Opinion of the Venice Commission and other submissions made during the consultation process. This is positive.

The Ombudsman will continue to monitor developments in this major project intended to improve and update the enjoyment of fundamental rights and their effective enforcement.

THE SECOND OPINION ON THE RULE OF LAW

The second Opinion of the Venice Commission adopted in December 2018 referred to Constitutional arrangements and separation of powers and

the independence of the judiciary and law enforcement. This Opinion was first requested by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE).

This request followed a report by the Parliamentary Assembly on *“Daphne Caruana Galizia’s assassination and the rule of the law in Malta and beyond - ensuring that the whole truth emerges”*. Almost simultaneously - just three days later - the Minister for Justice, Culture and Local Government requested an opinion of the Venice Commission *“on Malta’s legal and institutional status of law enforcement, investigations and prosecution in the light of the need to secure proper checks and balances and the independence and neutrality of those institutions and their staff whilst also securing their effectiveness and democratic accountability”*.

In its report the Venice Commission expressly states that *“the scope of its opinion is confined to an evaluation of Malta’s constitutional arrangements”*. It looks into the structural, constitutional and legislative issues with a view to improving checks and balances and the independence of the judiciary. It is strictly within these parameters that the rapporteurs during their visit to Malta, felt that they had to meet the Ombudsman. The Venice Commission always considered the institution of the Ombudsman when properly structured, enjoying constitutional guarantees that ensure its independence and autonomy and well administered, to be an efficient and effective monitor of the level of the proper enjoyment of the people’s right to a good public administration. A right that can only be wholly experienced in a country in which the rule of law prevails.

OMBUDSMAN IMPORTANT, RELEVANT PLAYER

The Commission has actively advocated and promoted the setting up of ancillary parliamentary institutions all over Europe. It contributes through its expertise, advice and technical assistance, to secure their autonomy from the executive, preferably through constitutional recognition and protection. It has always considered the Ombudsman institution to be an important player in ensuring transparency and accountability of the public administration in a wide sense. The Commission has always held the Parliamentary Ombudsman institution in Malta in high regard. It recognises that the institutional and legislative framework within which it operates is of the required standard. This is reflected in its opinion in the chapter on the Ombudsman. While the Commission makes some recommendations on a constitutional level, its main concerns refer to issues that negatively impact on the process of investigation of the Ombudsman and Commissioners in the exercise of their functions.

During their meeting with the Ombudsman it was made clear by the rapporteurs that they considered the institution to be independent, autonomous and credible. An authority that could provide objective, reliable information on matters concerning the rule of law, the administration of justice, the effectiveness of existing, institutional checks and balances and the accountability of the Executive. The discussion dwelt on a wide variety of topics that fell within the remit of the rapporteurs. Views were exchanged in an open and frank manner

and generally, the position taken by the Ombudsman is correctly reflected in the Opinion of the Venice Commission.

GOVERNMENT EXPRESSES AGREEMENT

The Government is on record that in general, it agreed with the proposals and would consult and implement accordingly. It understood that there was the need for a better balance of power and was willing to commit itself to carry out the necessary changes. It called the recommendations of the Commission “a *valuable contribution to the legal and constitutional reform*”. It should be noted that, while it is welcome to have Malta’s institutional and constitutional structures scrutinized by such an authoritative body as the Venice Commission, to ensure a level of compliance with accepted democratic European standards, it is fair to note that many of the facts, considerations and recommendations contained in the Opinion concern issues that have for some time, been highlighted as requiring attention and reform by a number of legal experts and authorities, including the Ombudsman and *ad hoc* Commissions set up by Government.

Many of the concerns voiced in this opinion have generated general consensus calling for an effective and meaningful constitutional reform. Many of the recommendations made by the Venice Commission are not therefore new or novel. The Ombudsman has in recent years contributed to this debate not only generally by advocating transparency and accountability in the management of public affairs and the need to ensure effective checks and balances within the context of the separation of powers but also by making specific proposals on the strengthening of the Ombudsman institution. These are contained *inter alia*, in a publication of January 2014 entitled “*On the Strengthening of the Ombudsman institution*” that can be accessed through the Office’s website. In it the Ombudsman outlined the basic elements of measures that could be taken for a correct evolution of the institution in a modern democratic society.

Following the opinion of the Venice Commission that document has again become relevant. It could prove to be a valid contribution towards the debate to realise the Commission’s recommendations as Government proposes to do. It need not be stressed that the recommendations of the Venice Commission are intended to generate substantial reform that would improve the democratic texture of the country, giving more power to the people, while ensuring greater accountability of all institutions. They are not intended to provoke mere cosmetic changes that would not positively alter the status quo in the existing balance of power. Its recommendations on the Ombudsman should not prove to be controversial. They only require the political will to translate them into a meaningful reform that would strengthen the Institution.

THE OMBUDSMAN PART OF THE LEGISLATIVE ORGANS OF THE STATE

It is significant that in its Opinion the Venice Commission considers the Office of the Ombudsman to be part of the legislative organs of the State in so far as it recognises that its primary function is to ensure transparency and accountability

of the administrative actions of the Executive, the pre-requisites to secure the individual's right to the enjoyment of a good public administration. In fact Part IV of the Opinion deals with the Legislative Power and is divided in two sections: a) the House of Representatives; and b) the Ombudsman.

This is perfectly in line with the Ombudsman's recommendation that any substantial exercise to strengthen the Ombudsman institution should have as its starting point a univocal, political statement expressed by the people, through their Constitution, that they intend the Office of the Auditor General and that of the Ombudsman to be Officers of Parliament, answerable to their representatives; to be their watchdog and defender to ensure a clean and transparent administration by the Executive. These two institutions should therefore be seen essentially, as a vital tool in the democratic system of checks and balances by which Parliament can verify, monitor and control the actions of the Executive. The Ombudsman expressly suggested that in a redrafting of a new Constitution, the provisions regulating these two authorities should be grouped together and placed in a separate title immediately after those regulating Parliament. The Constitution should recognise their status as authorities answerable to Parliament, entrusted by it to verify that the actions of the Executive conform to legislation enacted by it and satisfy the requisites of the right to a good public administration.

COMMISSION'S OPINION IN LINE WITH OMBUDSMAN'S PROPOSALS FOR REFORM

In paragraph 95 of its Opinion the Commission, while recognising that in 2007 the Ombudsman institution was raised to a constitutional level, notes that the necessary safeguards, notably those concerning appointments, dismissal and powers of the Ombudsman were left to ordinary law, namely the Ombudsman Act. It recommends in paragraph 101 that in order to give the Office sufficient weight, the rules on appointment and dismissal of the Ombudsman, as well as, his/her powers should also be raised to a constitutional level.

The Ombudsman has for years been advocating such a constitutional reform. In its 2014 publication '*On the strengthening of the Ombudsman Institution*', the Ombudsman had dwelt in some detail on his proposal that the Constitutional provisions governing his Office and that of the Office of the Auditor General should be on dual, parallel though not necessarily converging, tracks. Both authorities should be on an equal footing and the Ombudsman should enjoy the same protection accorded to the Auditor General.

The Auditor General enjoys constitutional safeguards regulating his/her method of appointment, term of office, security of tenure, the funding of the office and conditions of service. All essential elements required to guarantee his proper constitutional status and ability to function as an independent and autonomous authority. There is no reason why these guarantees should not be extended to the Ombudsman institution.

PARLIAMENTARY DEBATES ON FINAL OPINIONS

The Venice Commission also recommends that Parliament should be obliged to debate reports addressed to it by the Ombudsman. This too is a proposal that has been repeatedly made by the Ombudsman. The Ombudsman has time and time again insisted that it should be the House of Representatives that should finally determine whether the opinion of the Ombudsman and the Commissioners, who are its officers, and the recommendations made by them to rectify administrative injustice, merited to be further discussed to determine whether they were correct and should be sustained. He has therefore recommended that the Speaker should refer reports sent to him by the Ombudsman to the appropriate Standing Committee of the House and that such reference should be followed by a debate statutorily provided for in Standing Orders.

If the Standing Committee decides to discuss the matters further, it could call on the Ombudsman and Commissioners as well as the public authority involved in the complaint to appear before it to explain their respective positions. Such a procedure would ensure that it would be the House of Representatives that would be the final arbiter on the report filed by the Ombudsman and on whether its recommendations should be accepted.

OTHER SUGGESTED REFORMS

These are the main recommendations the Venice Commission made within the strict parameters of the scope of its Opinion that was confined to an evaluation of Malta's constitutional arrangements. The Ombudsman has from time to time made many other recommendations, including those in the 2014 publication that have been submitted to Parliament for its consideration. These proposals could be considered by Government and included in the draft law it proposes to table next year.

These include the need to appoint a constitutionally recognised Deputy Parliamentary Ombudsman on the lines of the Deputy Auditor General; the need to consider whether it is advisable to convert the term of office of both the Ombudsman and the Auditor General and their deputies to a single albeit longer, term of say seven years; to consider whether it was advisable that the President should retain a subsidiary role in the appointment of such high profile posts, in case the Prime Minister and Leader of the Opposition fail to agree within a definite time frame established by law; the advisability of extending the jurisdiction of the Ombudsman to protect citizens receiving an essential service given by a private stakeholder which was previously administered by Government; bestowing on the Ombudsman institution a specific and formal mandate to investigate complaints of alleged violations of fundamental human rights within the areas falling under his jurisdiction and others. It is within this context that reference is made to the aforementioned publication on the '*Strengthening of the Ombudsman Institution*' that elaborates these issues in some detail.

TWO MATTERS MERITING ATTENTION

There are two other matters raised in the Venice Commission's Opinion that concern the Office of the Ombudsman and that merit attention.

- a. It notes with approval the appointment of the Commissioner for Standards in Public Life; and
- b. It notes with concern the reluctance of the public administration to provide the Ombudsman with information required for the conduct of his investigations.

A. THE SETTING UP OF THE OFFICE OF THE COMMISSIONER OF STANDARDS IN PUBLIC LIFE

UNANIMOUS APPROVAL

The unanimous approval by the House of Representatives of the Standards in Public Life Act (Chapter 570) on 22 May 2017 was a major and significant legislative measure meant to foster and secure greater transparency and accountability in the management of public affairs.

The appointment of the first Commissioner was generally warmly received. In its opinion the Venice Commission welcomed "*The Maltese Parliament's enactment of legislation on public standards and its recent election of a Commissioner for Public Standards who comes from a political background within the political party currently in opposition*" (Para 15-16 of its Opinion).

CLOSE AFFINITY BETWEEN THE TWO INSTITUTIONS

Having regard to the fact that there is a close affinity between their respective functions, the Ombudsman readily offered his full cooperation and support to the Commissioner in the setting up of his office. An agreement was reached to allow the Commissioner the use of an identified part of the premises housing the Office of the Ombudsman and logistic and administrative arrangements were put in place for its use.

The Ombudsman and the Commissioner agreed to consult on matters of mutual interest and areas of concern. It is noted that the Standards on Public Life Act has been largely modelled on the Ombudsman Act which at the time of its enactment was and still is, considered to be with justification very progressive, comprehensive and constitutionally correct. A law that fully respects the separation of powers, strengthening the system of checks and balances necessary to ensure a healthy democratic environment.

The Commissioner like the Ombudsman, enjoys full autonomy and independence from the Executive and is accountable only to Parliament. The law endows him with security of tenure and provides adequate administrative and financial guarantees that allow him to exercise his functions without fear or favour and without undue interference in the conduct and management of his Office. More importantly, the law gives the Commissioner, like the Ombudsman, full powers to conduct investigations including own initiative ones and freedom to exercise his functions without being in any way subject to the direction and control of any other person or authority.

The laws setting up both institutions, though not perfect and could in the light of past experience be in some respects improved, undoubtedly provide a solid framework within which the Ombudsman and the Commissioner can function as watchdogs to secure for the citizen a good public administration. Naturally, as is the case with all other institutions, including the Courts, in which the exercise of their functions is vested in the incumbent, their effectiveness and impact on society, will depend on the manner in which the Ombudsman and his Commissioners and the Commissioner for Standards in Public Life perform to attain the objectives of their high office. More importantly, much will also depend on the level of awareness of the legislative and executive arms of Government of the relevance of these two institutions and on their readiness to recognise and accept them as independent and authoritative watchdogs of their actions.

CONVERGENCE OF FUNCTIONS

This Annual report is not the forum in which one can discuss and compare the functions of the Office of the Ombudsman and those of the Commissioner for Standards in Public Life. There are however a number of basic points on the correlation between the two institutions that need to be highlighted.

1. There is not only a close affinity between the functions of both Parliamentary institutions in so far as they are both entrusted to monitor, investigate and ensure the correct behaviour of persons in public life or in the public administration. Their functions actually run on parallel lines and on certain issues they actually converge.
2. Thus for example, the basic function of the Commissioner for Standards in Public Life is to guarantee the observance of statutory or ethical duties of certain categories of public persons. He is empowered not only to enforce codes of ethics of Members of the House of Representatives and Ministers as provided in the law but also to make recommendations for the improvement of any code of ethics applicable to persons who are subject to his scrutiny. On the other hand, the Ombudsman has the function to investigate complaints against the public administration generally to ensure that the actions of ministries, departments, public authorities and institutions are correct, just, free from abuse of power and improper discrimination. He has to make sure that these actions are not only legally correct but also conform to the basic principles that govern a good public administration. Principles that are essentially motivated and applied by a sense of justice, equality and ethical correctness.
3. The Ombudsman has a wider jurisdiction than the Commissioner for Standards in Public Life in so far as his remit extends to the whole public administration in a wide sense and includes persons that could also fall under the scrutiny of the Commissioner. It is clear that complaints alleging a breach of a code of ethics by a person within the jurisdiction of the Commissioner for Standards in Public Life should be investigated by the Commissioner. Similarly allegations of maladministration by those same persons should be investigated by the Parliamentary Ombudsman. There

are however situations that could give rise to complaints made to the Commissioner that allege a breach of a code of ethics but would translate into an act of maladministration affecting a complainant. This aspect of the complaint would fall within the competence of the Parliamentary Ombudsman. *Vice versa* a complaint received by the Ombudsman alleging an act of maladministration could also involve a breach of a code of ethics that should be investigated and determined by the Commissioner.

4. The uncertainty on the dividing line between the functions of the Commissioner of Standards in Public Life and the Ombudsman is further blurred by the fact that, the Commissioner is by law entitled not only to investigate alleged breaches of ethical duties by persons in public life falling under his remit, but also breaches of statutory duties that these persons are alleged to have committed. The term "*statutory*" needs clarification since it appears to include any violation of a law or regulation even if not related to a breach of a code of ethics. This could lead to instances of uncertainty, if not confusion, on the dividing lines of jurisdiction of both institutions.
5. It is recognised that, while the rules governing the investigative process in both institutions are very similar, their finality is different. The Commissioner seeks to establish that a breach has been committed by a person in public life and if proved, to recommend appropriate sanctions. The investigation therefore involves only the responsibility of the person who allegedly committed the breach who is sanctioned if found guilty. On the other hand, the Parliamentary Ombudsman investigates allegations of complaints of maladministration and if these are found to be justified, he can recommend appropriate remedies to rectify the injustice and to repair the damage caused to complainant.

STRENGTHENING THE RULE OF LAW

It is to be stressed that both institutions are important structures meant to strengthen the rule of law and to render persons in public life and the public administration, charged with giving a service, more accountable to society for their actions or inaction. There is therefore room for close consultation and collaboration between the two institutions to help provide a comprehensive and holistic network that would strengthen transparency and accountability and promote a correct behaviour by those in authority. This would benefit the democratic credentials of the country and society generally. There is also room for a healthy discussion on grey areas that might result in the handling of investigations aimed at avoiding any possible conflict on the interpretation and application of the respective Acts to define the limits of the respective jurisdictions of both institutions. There might be a need to establish protocols to determine how investigations into complaints that can interest both institutions should be processed.

Thus for example, two areas that immediately come to mind on which a positive exchange of ideas between the two institutions could be extremely useful refer to the legal status and regulation of persons employed in a position

of trust and the lobbying sector. The Ombudsman has in recent years expressed his concern on these two issues that directly affect the right of the citizen to a good public administration. Issues that can, and indeed have in certain circumstances, given rise to complaints by aggrieved citizens and to concern on the negative effect of unregulated lobbying and relative excessive use of the power of incumbency. In line with the Opinion of the Venice Commission, the Standards in Public Life Act confers on the Commissioner specific functions to oversee and regulate persons in positions of trust and lobbyists. It would therefore appear that consultation on how to move forward in the investigation of complaints in these areas would be very useful.

B. THE PROVISION OF INFORMATION REQUESTED BY THE OMBUDSMAN AND HIS COMMISSIONERS

One of the main concerns voiced by the Venice Commission in its Opinion, relates to the availability of information that the Parliamentary Ombudsman and his Commissioners require from the public administration for the proper investigation of complaints. The Ombudsman notes with approval the statement of the Commission that, unless the information requested concerns matters affecting security or defence; seriously damage the economy; involve the disclosure of the deliberations or proceedings of Cabinet or any Committee of Cabinet; or prejudices the investigation or detection of offences, *“it should be made available not only to the Ombudsman but to the public at large”*. The Office concurs with its statement in paragraph 100 that *“the Freedom of Information Act should be updated using available international models to guarantee transparency of the administration vis-à-vis the media and the citizens”*. Indeed this was one of the main conclusions of the Roundtable Conference of the Public Sector Ombudsman Group held in Malta on 15 December 2015 with the theme *“Truth, Transparency and Accountability - the State’s duty to inform essential to the right of good governance”*.

CLARIFICATION NEEDED

There is however one statement in the Opinion that needs to be clarified. The Commission’s Opinion states that *“According to the Annual Report of the Ombudsman (2017) requests for information are frequently not complied with. This is worrying. Widespread refusal by the administration to provide the information needed for the work of the Ombudsman is inadmissible.”* This statement is not entirely correct and could lead to misunderstanding.

It is correct to state that the Ombudsman had in that Annual Report deplored the systemic refusal of the administration to disclose information on certain high profile cases that understandably generated wide public interest. However, the main thrust of the Ombudsman’s criticism in the section of that Annual Report referring to the failure to provide information, did not mainly address the relations between the public administration and the Office of the Ombudsman

but rather the regrettable climate of secrecy and extreme reticence that seem to pervade and shroud the management of public affairs. It was there stated that regrettably, the public administration, and this includes public authorities, appears to have adopted a generally negative approach towards its duty to disclose information and the citizen's right to be informed. The Ombudsman felt and still feels that undue reluctance to provide information to which the public is entitled is not conducive to ensure transparency and accountability as well as the right of enjoyment to a good public administration.

INFORMATION TO THE OFFICE OF THE OMBUDSMAN GENERALLY FORTHCOMING

On the other hand, the Annual Report very clearly stated that the situation in respect of the Office of the Ombudsman was quite different. In fact, the Ombudsman recorded that *"it must be stated that this sustained reticence to disclose information, has not except for some notable exceptions, seriously hindered the work of the Office of the Ombudsman"*. This Office has generally, had throughout the year under review, access to information required to conduct investigations on the complaints received.

The report gave examples of some of these notable exceptions that concerned investigations into complaints that were, and some of them still are, of great public interest. It was shown in that Annual Report how the negative response of public authorities to provide information in these exceptional cases hindered the Ombudsman and his Commissioners in the exercise of their functions.

The general policy of the public administration and public authorities towards disclosing information to the public does not seem to have changed. One is led to believe that the public administration including public authorities adopt an attitude of reticence and non-cooperation when the subject matter of the complaint or the own initiative investigation does not conform with the government's objectives or policies. This is fundamentally wrong and unacceptable.

On the other hand, one should not generalise. It is not fair to say that the failure or reticence of the public authorities to provide information is generally the cause of investigation being hindered or delayed. It has only been exceptionally so. However, when the public administration, without good cause, fails in its duty to take society in its confidence by providing correct and timely information to which it is justly entitled, it would be undermining the Principles of transparency and accountability seriously weakening the democratic credentials of the country.



OPM'S PUBLICATION ON GOVERNANCE - OMBUDSMAN'S REACTION

This misreading of this part of last year's Annual Report, probably fuelled by headline media vibes and the way the Ombudsman's message was interpreted, failed to distinguish between comments that were critical of the failure of the public administration to satisfy the people's right to be informed and those that referred to the level of cooperation between the public administration in a wide sense, and the Office of the Ombudsman in the investigation of complaints. That misreading was echoed in the Foreword to the publication of the Office of the Principal Permanent Secretary entitled '*Governance - Action on the Parliamentary Ombudsman's Annual Report 2017*', published in November 2018. The explanatory note made above to remarks made in the Opinion of the Venice Commission applies fully to comments made in the same vein in the Foreword of the Principal Permanent Secretary.

One cannot but concur that the great majority of public officers and employees in public authorities deserve recognition for hard work, dedication and sterling efforts to ascertain that the Public Administration acts fairly, equitably and with transparency. The function of the Office of the Ombudsman is to ensure that, that sterling work is not tainted by the failure of the few to attain the required standards of efficiency and accountability expected of them.

It is not considered proper for the Office of the Ombudsman to engage in controversy on matters arising out of the exercise of its functions. Unlike the situation obtaining in other countries, like Canada, the Office of the Ombudsman is not a pressure group or a lobbyist, actively involving itself in campaigns to further its ideas. It limits itself to stating its position on matters of concern related to good governance and the conduct of the public administration. It leaves the debate to other fora, notably public opinion and where appropriate, the political arena. It will act likewise on this occasion.

It is however incorrect to state or suggest that in his Annual Report the Ombudsman included elements that "*are by their very nature of a political character*", essentially insinuating that the Ombudsman was acting beyond the exercise of his functions and that therefore those comments could be ignored. The Office of the Ombudsman prides itself that it has never and will never, involve itself in political controversy and has always maintained and will continue to maintain complete independence and absolute impartiality beyond any political debate.

On the other hand, the Office of the Ombudsman is conscious of its role to act as the conscience of the public administration and the promoter of the principles of good governance, apart from being the defender of the rights of citizens through the investigation of their complaints. This role is expressly sanctioned by the Ombudsman Act and has been and will continue to be developed throughout the years.

OBJECTIVE APPRAISALS WELL RECEIVED

The Ombudsman and the Commissioners are satisfied that their objective appraisal on the conduct of public affairs and their conformity to the required democratic standards as well as their recommendations for addressing systemic failures to ensure the highest levels of democratic credentials, are well received and given the required attention by public opinion both locally and internationally.

APPROVAL OF CODE OF ETHICS

The Office of the Ombudsman recognises that it needs to be transparent and accountable in the exercise of its functions. The approval in March 2018 of a Code of Ethics meant to guide the conduct of the Parliamentary Ombudsman and the Commissioners for Administrative Investigations for specialised areas is a small but necessary step in this direction. The Ombudsman promulgated this Code after consulting his Commissioners, in terms of the powers given to him by Legal Notice 250 of 2012, that provides that in the exercise of their functions it shall be the duty of the Commissioners to comply with any code of practice and procedure which the Ombudsman may from time to time set out for this purpose. The Office of the Ombudsman and that of the Commissioners is comparable to that of members of the Judiciary. Like them they are expected to conform to the highest ethical standards and to follow mandatory rules of good practice. It is for this reason that the code is inspired by, and modelled on, the Code of Ethics that govern the behaviour of members of the Judiciary.

The Code is meant as a guide to simplify and further clarify the correct parameters within which the Ombudsman and the Commissioners are expected to function; to ensure that their conduct is above reproach and to inspire confidence to guarantee the autonomous, impartial and authoritative service that the Office of the Parliamentary Ombudsman is expected to deliver. This Code was forwarded to the Speaker of the House of Representatives and laid on the Table of the House. It is being published as an Annex to this Annual Report for the information of the general public. Like all codes it is a living document that needs to be kept under review and might need fine tuning from time to time to adapt it to changing situations. Undoubtedly it contributes towards a more transparent and accountable service that the Office is bound to give to society.

COMMENTS ON GOVERNANCE PUBLICATION

The Office has taken note of the critical comments on last year's Annual Report made by the Principal Permanent Secretary in his "Foreword". He is perfectly entitled to his opinion. His comments will be taken into account where and when appropriate. The Office is aware that one of its main challenges is to limit further the time span within which an investigation is carried out and completed. That is a negative factor that the Office needs to continue to address keeping in mind that constraints on human resources and the complexity of the subject matter of some complaints do not allow for standard, strict time frames to be imposed.

The Principal Permanent Secretary is proud that a significant percentage of complaints was resolved without the need for investigation and even more were finalised through mediation, without the need of a final opinion. Credit for this satisfactory report is also due to the team of Investigating Officers and for the hard, time consuming work they do to engage in mediation between aggrieved citizens and public authorities. The Office however strongly resents vague insinuations that in its Annual Report it was unjust and "*somewhat unfairly critical*" of the public administration. It will limit itself to two examples referred to in the "Foreword".

PERSONS IN POSITIONS OF TRUST

The Office of the Prime Minister reiterates that the engagement of persons in positions of trust are made in line and in compliance with the provisions of the Constitution governing employment in the public administration. It maintains that since they are engaged for a definite term, such engagement is not tantamount to employment with the public administration as governed by the Constitution. In the Ombudsman's opinion that interpretation is not correct. The Constitution does not make any distinction between full time and part time employment in the public administration. The Ombudsman reiterates the view that there are serious reservations whether such employment is constitutionally correct. This was also the opinion of the Public Service Commission at least until 2013, and legal experts and authorities. The issue unless otherwise resolved, can only be finally determined by the Constitutional Court.

The Ombudsman has time and time again highlighted this issue noting that there is consensus that it is required to have a small number of persons employed in positions of trust. It seems however that the practice has gone out of hand and he has recommended that the issue should be debated, crystallized and appropriate legislative and constitutional amendments introduced. The Ombudsman's position is reflected and fully vindicated in the intensive analysis of this thorny issue by the rapporteurs of the authoritative opinion of the Venice Commission. The initiatives of the present administration, on the lines originally introduced by the more restrictive regulations enacted in 2004 and subsequently, though undoubtedly laudable and well-intended, do not address the core, concern or the legality of such appointments. The Ombudsman is on record that on this issue he has now rested his case.

FAILURE TO INFORM AND IMPLEMENT RECOMMENDATIONS

Another bone of contention in the Foreword in the document on “*Governance*” is the statement that “*there were no instances where information requested was not provided by the public administration*”. This is manifestly incorrect.

This categoric statement has already been shown not to be exact. In the year under review, though in some areas significant progress has been registered as for example noted by the Commissioner for Environment and Planning in his Annual Report, difficulties in this respect were still being encountered. They varied from an outright refusal to provide information in exceptional, high profile cases to reticence in providing it or inordinate delay in responding to correspondence by the Ombudsman and the Commissioners aimed to finally resolve justified complaints. For example the Commissioner for Health in his Annual Report expresses great concern at the delay or outright failure by the health authorities in implementing his recommendations to remedy proved injustice or improper discrimination.

There have been instances where authorities and institutions, in a misguided and ill-advised attempt to over protect themselves, pass on complaints under investigation to legal advisers who treat the brief from a purely legalistic perspective since they do not have the slightest notion of the functions of the Ombudsman institution. They fail to understand that the primary function of the Ombudsman and Commissioners is to seek to remedy administrative malpractice by applying principles of justice and equity rather than strict legality. Applicable laws and regulations have to be taken into account and applied, but these have to be tampered with the norms of natural justice and equity when the parameters of administrative discretion allows it.

The Ombudsman Office is not a Court of Law. Indeed its aim is to avoid litigation between the aggrieved citizen and the public administration. It investigates complaints without prejudice to the respective rights of the contending parties. The public administration would therefore do well to avoid involving legal advisers and experts during the investigation of complaints by the Office of the Ombudsman.

INITIATIVE WELCOMED - PUBLICATION NEEDS REVISION

The Ombudsman welcomed the initiative of the Office of the Principal Permanent Secretary last year to review all the cases that were investigated the previous year “*to ensure that the rule of law and good governance are upheld*”. The Ombudsman informed OPM that his Office was committed to promote a good public administration and was always prepared to cooperate with initiatives that advance this end. It was therefore prepared to provide information requested on investigations that were still pending. However, this was being provided not only within the constraints imposed by Data Protection, but also and more importantly by the duty of the Office to conduct its investigations in private.

The Ombudsman informed OPM that initiatives similar to those taken by it, could lead to the setting up of effective mechanisms that would ensure not

only the speedier conclusion of the investigation of complaints but also lead to a more effective implementation of the recommendations made to redress injustice and maladministration. The Ombudsman understood at the time, that the data provided by his Office would be adequate to enable OPM to follow up each case and to facilitate the early conclusion of the investigation of the complaint and it would be used solely for this purpose.

An aim that has the full support of the Ombudsman since it is meant to secure immediate action when the public administration needs to resolve shortfalls identified during the investigation of complaints. More importantly such an initiative would provide a structure that would ensure that cooperation with the Office of the Ombudsman is maintained and improved and that an effective, timely and centralised monitoring process at the highest level of the public service is put in place.

INTERNAL MONITORING MECHANISM USEFUL

The Office appreciates that if well managed the setting up of such a mechanism as are outlined in the “*Governance*” publication, could not only improve its relations with the public administration helping it to better attain its objective, but also and more importantly greatly benefit aggrieved complainants. This by favouring more focused investigations, encouraging mediation between complainants and the public administration and limiting the number of complaints requiring full scale investigation leading to a final opinion.

This internal, monitoring mechanism could also indirectly serve as a check and balance on the efficiency of the investigative processes conducted by the Ombudsman and the Commissioners. One would justly expect a prompt reaction from the Office when the public administration shows a willingness to correspond favourably in the resolution of complaints. There is nothing wrong and everyone stands to gain from the promotion of such a positive environment so long as the principles that guide it are reciprocal, and the autonomy and independence of the Ombudsman institution guaranteed by the Ombudsman Act are fully recognised and respected. The efficacy of the reform introduced by the Principal Permanent Secretary this year will be fully assessed next year. When introducing such measures, consultation with the Office of the Ombudsman is of the essence. It was sadly lacking on this occasion.

FINAL CRITICAL NOTE

In this respect there is one final critical note that needs to be made. The Ombudsman Act expressly provides in sub-clause 2 of Clause 18 that “*every investigation by the Ombudsman under this Act shall be conducted in private*”. Since the setting up of the Office, the Ombudsman and Commissioners have rigorously observed the duty to treat all information relative to investigations as confidential to be used with the utmost discretion. They consider themselves to be custodians of the information, data and documents received and jealously conserve them, disclosing only what is strictly necessary for the proper conduct of the investigative process.

Privacy and strict confidentiality imposed by law are considered to be essential components and requisites of the investigative process. While the Ombudsman and his Commissioners do not entertain anonymous complaints and will only investigate complaints if the aggrieved person has a personal, actual interest in its merits, it is accepted that those who have recourse to the Office of the Ombudsman do so on the understanding that their identity and the nature of their grievance would be protected from undue and unwanted publicity. The Office expects that public authorities and the public administration in general should appreciate the importance of respecting and adhering to the provision of the Ombudsman Act that provides that investigations are to be conducted in private and confidentially. They should not therefore betray the trust that complainants put in the Office of the Ombudsman.

The Office of the Ombudsman from time to time reviews its policies regarding the implementation of the privacy and confidentiality principles. It is because of these constraints that on its website it has not provided a link where complainants can trace and follow the progress in the investigation of their grievance. These constraints preclude the Office from even indicating whether a person actually filed a complaint or not and no comment is allowed on its merits or its outcome except for what is contained in a Final Opinion.

It was therefore surprising to the Office how the publication on *“Governance”* contained information on each and every case investigated by the Ombudsman during the previous year. It provided data of a personal nature and information on the nature of the complaint and progress made in the investigation. In some cases it even provided information on action taken by the department when asked to react to the complaint and responses by the Office of the Ombudsman. Reserved information that the Investigating Officers sometimes felt it was not appropriate to give to complainants during the course of the investigation.

The only significant, personal data not included in these lists are the age and addresses of complainants and their ID Numbers. In some instances because of the details given, there is enough data to enable interested persons to identify the person or persons concerned. The Ombudsman had not been given advance notice of the information that was to be published in the *“Governance”* document, that even goes beyond the information his Office had volunteered to give at OPM’s request. Information that had been expressly *“provided not only within the constraints imposed by data protection but also and more importantly by the duty of this Office to conduct its investigation in private”*.

One hopes that in future, such an exercise, that marred an otherwise positive initiative, would be reviewed and radically revised.



NOTES FROM THE 2018 DIARY

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN

NOTES FROM THE 2018 DIARY

JANUARY 30, 2018

The Office of the Ombudsman organised a series of information meetings for Liaison Officers from different Ministries, Departments and Public Entities. The role of the Liaison Officers is to serve as a link between the Office of the Ombudsman and the ministry, department or public entity in which they are assigned.

The meetings were addressed by the Ombudsman, Mr Anthony C. Mifsud and the Investigation Team.



FEBRUARY 5, 2018

The Commissioner for Environment and Planning, Perit Alan Saliba had a meeting with the Minister for Transport, Infrastructure and Capital Projects, the Hon. Ian Borg.

The meeting discussed issues related to Conservation of Urban Areas, traffic and sustainable development. The meeting was also attended by the Parliamentary Secretary for Planning and the Property Market, the Hon. Chris Agius.





FEBRUARY 13, 2018

The Parliamentary Ombudsman, Mr Anthony C. Mifsud met Mr Victor Zaharia, UN Expert of the Subcommittee on Prevention of Torture.

The aim of the visit was to discuss the recommendations of a country report issued by the Subcommittee on Prevention of Torture. The meeting was also attended by Mr Paul Borg, Director General, Office of the Ombudsman.



MARCH 14, 2018

The Parliamentary Ombudsman, Mr Anthony C. Mifsud, presented the Case Notes 2017 to the President of the House of Representatives, the Hon. Anglu Farrugia.



MAY 3, 2018

The Parliamentary Ombudsman received a delegation from the Council of Europe.



MAY 24, 2018

The Parliamentary Ombudsman delivered a speech during the 'Human Rights and Equality 2.0' Conference. The Ombudsman was part of the panel entitled: 'Structure, Framework and the Human Rights and Equality Commission Act'

MAY 31, 2018

During the 10th General Assembly of the Association of Mediterranean Ombudsmen (AOM), held in Skopje, Macedonia, the Parliamentary Ombudsman of Malta, Mr Anthony C. Mifsud was elected as Secretary General and Treasurer of the Association.

For the past years, since the inception of the AOM, the Office of the Ombudsman in Malta occupied the post of Treasurer, which now will be amalgamated with the responsibilities of the Secretary General.

The elected members of the new Governing Board of the AOM are:

- President - Andreas POTTAKIS, Ombudsman, Greece
- 1st Vice-President - Francisco FERNÁNDEZ MARUGÁN, Defender of People, Spain
- 2nd Vice-president - Erinda BALLANCA, People's Advocate, Albania
- Secretary General and Treasurer - Anthony C. MIFSUD, Parliamentary Ombudsman, Malta
- Member - Jacques TOUBON, Defender of Rights, France
- Member - Ixhet MEMETI, People's Advocate, Macedonia
- Member - Judge (Ret.) Joseph SHAPIRA, State Comptroller and Ombudsman, Israel
- Member - Issam YOUNIS, General Commissioner of the Independent Commission for Human Rights, Palestinian Authority
- Member - Vlasta NUSSDORFER, Ombudsman, Slovenia
- Member - Maria STYLIANOU-LOTTIDES, Ombudsman, Cyprus
- Member - Abdessattar BEN MOUSSA, Administrative Mediator, Tunisia



JUNE 5, 2018

The Parliamentary Ombudsman presents the Annual Report 2017 to the President of the House of Representatives, the Hon. Anglu Farrugia.





JUNE 19, 2018

The Parliamentary Ombudsman and the Commissioners received a courtesy call from Alternattiva Demokratika - The Green Party.

During the meeting, issues raised in the Ombudsman's 2017 Annual Report were discussed.

Alternattiva Demokratika's delegation was led by Perit Carmel Cacopardo, Chairperson, and also included Mr Ralph Cassar, Secretary General and Ms Anna Azzopardi, Deputy Secretary General.

SEPTEMBER 14, 2018

The 2019 Ombudsplan was tabled in Parliament by the President of the House of Representatives, the Hon. Anglu Farrugia.

As it was the practice in the previous years, the Ombudsplan 2019, also highlights issues that the Ombudsman consider that deserves a particular discussion namely the European Pillar of Social Right, the Equality Bill, the proposed set up of the Equality Commission and Immigration.

The Ombudsplan was then discussed and approved during a special sitting of the House Business Committee in October.



OCTOBER 2, 2018

The Parliamentary Ombudsman participated in *'The Ombudsman an Open and Participatory Society'* organised by the IOI Europe and the Office of the Federal Ombudsman of Belgium.



OCTOBER 3, 2018

The Office of the Ombudsman participated at the University of Malta, Institute for Tourism Studies (ITS) and Malta College for Arts, Science and Technology (MCAST) Freshers' Week.

OCTOBER 12, 2018

The Parliamentary Ombudsman met Ms Flutura Kusari, Legal Advisor of the European Centre for Press and Media Freedom. Ms Kusari was in Malta on a fact-finding mission to commemorate the first anniversary of the assassination of journalist Daphne Caruana Galizia.

The joint mission composed of a group of international press freedom and freedom of expression NGOs: Reporters Without Borders; the Committee to Protect Journalists; the European Centre for Press and Media Freedom; the International Press Institute; and PEN International



OCTOBER 23, 2018

The Parliamentary Ombudsman participated in the Own Initiative Event - Exploring best practice in the exercise of Own Initiative investigation powers, organised by the Northern Ireland Ombudsman in collaboration with the IOI-Europe.



OCTOBER 24, 2018

The Parliamentary Ombudsman met with a delegation from the Parliamentary Assembly Committee on Legal Affairs and Human Rights of the Council of Europe led by Mr Pieter Omtzigt who were in Malta to draft an opinion on Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges.

NOVEMBER 6, 2018

The Parliamentary Ombudsman met a delegation of the Venice Commission who were in Malta on a mission to establish an opinion on the Constitutional Arrangements and separation of powers and the independence of the Judiciary and Law Enforcement.





NOVEMBER 15, 2018

The Commissioner for Environment and Planning within the Office of the Ombudsman, Perit Alan Saliba presented to Parliament his opinion on the State of the Environment Report 2018. The State of the Environment Report is published by the Environment and Resources Authority (ERA) every four years in terms of the Environment Protection Act.

PERFORMANCE REVIEW 2018

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN

PERFORMANCE REVIEW 2018

CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

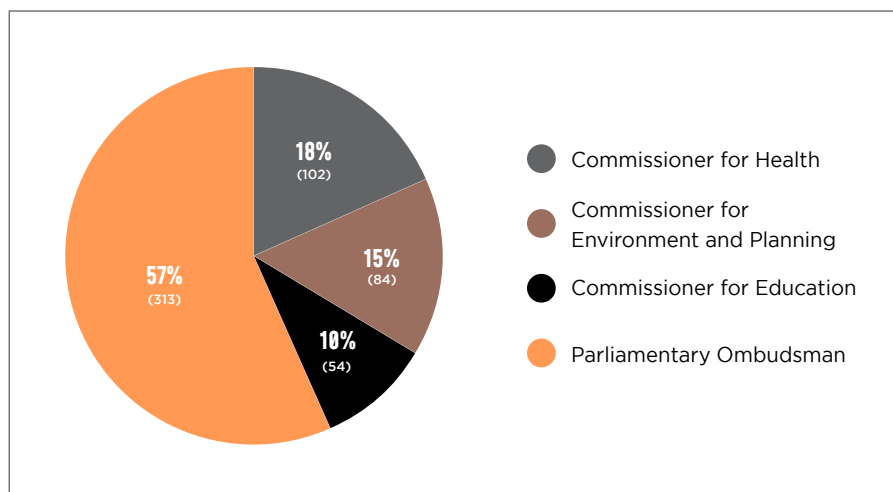
TABLE 1.1 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

2017 - 2018

	2017	2018
	No of cases	No of cases
Parliamentary Ombudsman	336	313
Commissioner for Education	39	54
Commissioner for Environment and Planning	62	84
Commissioner for Health	83	102
Total	520	553

DIAGRAM 1.2 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

2018



During the year under review, the Office of the Ombudsman handled 553 cases, an increase of 6% when compared to the cases received in 2017. As shown in Table 1.1 and Diagram 1.2, of the 553 cases, 313 were investigated by the Parliamentary Ombudsman, 7% less than 2017; 102 by the Commissioner for Health, an increase of 23% from 2017, 84 by the Commissioner for Environment and Planning, a 35% increase on 2017 and 54 by the Commissioner for Education, 38% increase over the previous year.

IMPLEMENTATION OF OMBUDSMAN'S RECOMMENDATIONS

TABLE 1.3 – SUSTAINED CASES CLOSED DURING 2018 INCLUDING OUTCOME

2018

	No of cases	Recommendations implemented	Recommendations partly implemented	Recommendations not implemented
Parliamentary Ombudsman	22	8	1	13
Commissioner for Education	7	3	3	1
Commissioner for Environment and Planning	8	7	-	1
Commissioner for Health	51	38	3	10
Total	88	56	7	25

In order to give a clearer picture of the outcome of the investigations conducted by the Office of the Ombudsman, and the implementation of the recommendations, as from this year, a new table was introduced.

Table 1.3 shows that from the 22 sustained cases by the Parliamentary Ombudsman, 8 (36%) recommendations were implemented by the Public Administration, 1 (5%) was partly implemented and 13 (59%) were not implemented.

In the case of the Commissioner for Education, from the 7 sustained cases, 3 (43%) recommendations were implemented, 3 (43%) were partly implemented, and the Public Administration did not implement 1 (14%).

The Commissioner for Environment and Planning sustained 8 of the cases investigated during the year under review, of which 7 (88%) were implemented, and 1 (12%) was not.

The Commissioner for Health had 51 sustained cases, of which the Public Administration implemented 38 (75%), 3 (6%) were partly implemented, and 10 (19%) were not implemented.

In total, from the 88 cases sustained by the Office of the Ombudsman, a total of 56 (64%) cases were implemented, 7 (8%) were partly implemented, and 25 (28%) were not implemented.

When the Public Administration does not implement the recommendations made by the Ombudsman and the Commissioners, the Ombudsman Act states that the Ombudsman cannot enforce his recommendations and that he cannot overwrite the decisions and actions of public authorities in order to oblige them to comply with his Final Opinion recommending how an injustice or grievance should be redressed. In terms of the Act, if the Ombudsman's recommendations for the award of appropriate redress are left pending or else not accepted, the Ombudsman may send a copy of his report and recommendations on the matter to the Prime Minister and the House of Representatives. The Ombudsman may also publish reports on such cases.

INCOMING COMPLAINTS

TABLE 1.4 – COMPLAINTS AND ENQUIRIES RECEIVED

1996-2018

Year	Written complaints	Enquiries
1996	1112	849
1997	829	513
1998	735	396
1999	717	351
2000	624	383
2001	698	424
2002	673	352
2003	601	327
2004	660	494
2005	583	333
2006	567	443
2007	660	635
2008	551	469
2009	566	626
2010	482	543
2011	426	504
2012	443	462
2013	329	475

Year	Written complaints	Enquiries
2014	352	581
2015	405	554
2016	361	579
2017	336	484
2018	313	438

TOTAL CASE LOAD

During the year under review, apart from the written complaints, the Office handled 438 enquiries, a drop of 10% when compared to 2017 (484). Whereas the number of written complaints handled by the Parliamentary Ombudsman, during 2018 decreased by 7% (23) from 336 in 2017 to 313 in 2018.

Table 1.4 and Diagram 1.5 show the number of enquiries and written complaints received by the Parliamentary Ombudsman since its establishment in 1995.

DIAGRAM 1.5 – OFFICE OF THE OMBUDSMAN – WORKLOAD 1996-2018

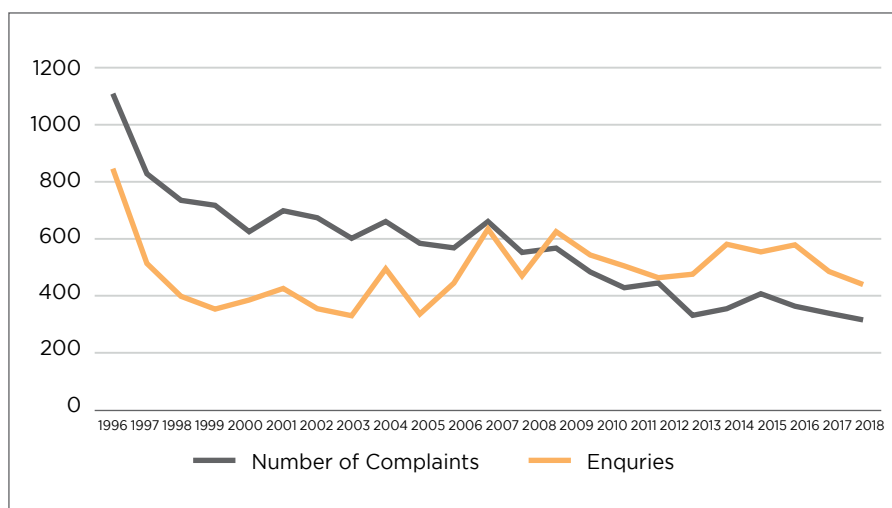


TABLE 1.6 – GENERAL ELECTIONS TREND 1997-2018

Year	No of Cases
1997	829
1998 (GE)	735
1999	717

Year	No of Cases
2002	673
2003 (GE)	601
2004	660
2007	660
2008 (GE)	551
2009	566
2012	615
2013 (GE)	493
2014	538
2015	611
2016	557
2017 (GE)	520
2018	553

The last General Election in Malta was held in 2017, and experience has shown that, when an election is held, the Office of the Ombudsman experiences a decline in complaints.

Table 1.6 illustrates the same trend was experienced during the past years whenever a General Election was held. This is attributed to the post-election euphoria, which sees many citizens seeking direct access to the Government to seek redress.

TABLE 1.7 – COMPLAINTS STATISTICS BY MONTH

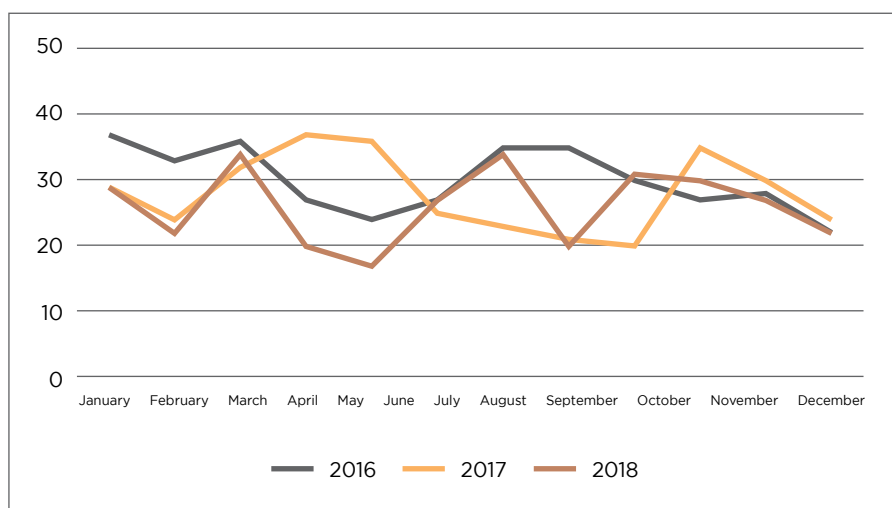
2016 – 2018

	2016			2017			2018		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
Brought forward from previous year			276			123			168
January	37	35	278	29	27	125	29	41	156
February	33	33	278	24	29	120	22	25	153
March	36	73	241	32	36	116	34	36	151
April	27	49	219	37	21	132	20	17	154
May	24	41	202	36	31	137	17	15	156

	2016			2017			2018		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
June	27	25	204	25	18	144	27	17	166
July	35	28	211	23	21	146	34	25	175
August	35	67	179	21	23	144	20	25	170
September	30	29	180	20	20	144	31	24	177
October	27	61	146	35	29	150	30	36	171
November	28	42	132	30	22	158	27	23	175
December	22	31	123	24	14	168	22	14	183
Total	361	514		336	291		313	298	
Enquiries	579			484			438		

DIAGRAM 1.9 – COMPLAINTS STATISTICS BY MONTH

2016-2018



Between January and December 2018, the number of completed investigations slightly increased from 291 in 2017 to 298 in 2018. At the end of 2018, the pending caseload stood at 183, which amounts to an increase of 9% from the pending caseload at the end of the previous year.

TABLE 1.9 – COMPLAINTS RECEIVED CLASSIFIED BY MINISTRY AND RESPECTIVE DEPARTMENTS

2018

Autonomous

Sector	No of Cases received	Investigated	Sector not involved*
Public Service Commission	20	12	8
Other	1	-	1

Office of the Prime Minister (OPM)

Sector	No of Cases received	Investigated	Sector not involved
Electoral Commission	1	-	1
Identity Malta	1	1	-
Identity Malta (Central Visa Unit)	3	1	2
Identity Malta (Citizenship and Expatriate Affairs)	12	9	3
Identity Malta (ID Cards)	1	1	-
Identity Malta (Passports)	2	2	-
Identity Malta (Public Registry)	4	3	1
Malta Communications Authority	1	1	-
Malta Council for Science and Technology	1	-	1
Malta Financial Services Authority	1	1	-
Malta Gaming Authority	3	2	1
Malta Information Technology Agency	1	-	1
Office of the Prime Minister	4	1	3
People and Standards Division	9	5	4
Registry of Companies	1	1	-
Resource Support and Services	1	-	1
TOTAL	46	28	18

Ministry for the Economy, Investment and Small Businesses (MEIB)

Sector	No of Cases received	Investigated	Sector not involved
Economy, Investment and Small Business	1	1	-
Malta Enterprise	1	-	1
TOTAL	2	1	1

Ministry for Education and Employment (MEDE)

Sector	No of Cases received	Investigated	Sector not involved
Commission for Voluntary Organisations	1	1	-
Education Department	10	4	6
ELT Council	1	1	-
Foundation for Educational Services	1	1	-
Jobs Plus	3	-	3
National Commission for Further and Higher Education	1	1	-
National Literacy Agency	1	1	-
National Sport School	1	-	1
University of Malta	2	1	1
TOTAL	21	10	11

Ministry for Energy and Water Management (MEW)

Sector	No of Cases received	Investigated	Sector not involved
ARMS	15	13	2
Enemalta	7	1	6
Engineering Resources Ltd	4	4	-
Regulator for Energy and Water Services	3	-	3
Water Services Corporation	2	2	-
TOTAL	31	20	11

Ministry for the Environment, Sustainable Development and Climate Change (MESDC)

Sector	No of Cases received	Investigated	Sector not involved
Agriculture	1	-	1
Environment, Sustainable Development and Climate Change	2	1	1
WasteServ	2	2	-
TOTAL	5	3	2

Ministry for European Affairs and Equality (MEAE)

Sector	No of Cases received	Investigated	Sector not involved
European Affairs and Equality	4	2	2
Occupational Health and Safety Authority	1	-	1
Industrial and Employment Relations Department	1	-	1
TOTAL	6	2	4

Ministry for the Family, Children's Rights and Social Solidarity (MFCS)

Sector	No of Cases received	Investigated	Sector not involved
Department of Social Security	20	14	6
Housing Authority	10	9	1
Ssupport	2	-	2
TOTAL	32	23	9

Ministry for Finance (MFIN)

Sector	No of Cases received	Investigated	Sector not involved
Commissioner for Revenue (Customs)	1	1	-
Commissioner for Revenue (Inland Revenue)	12	7	5
Commissioner for Revenue (VAT)	1	1	-
Finance	1	1	-
Investor Compensation Scheme	1	1	-
Tax Compliance Unit	2	-	2
Treasury Department	1	-	1
TOTAL	19	11	8

Ministry for Foreign Affairs and Trade Promotion (MFTP)

Sector	No of Cases received	Investigated	Sector not involved
Foreign Affairs and Trade Promotion	2	-	2
TOTAL	2	-	2

Ministry for Gozo (MGOZ)

Sector	No of Cases received	Investigated	Sector not involved
Gozo Affairs	2	1	1
Gozo Channel Co Ltd.	1	1	-
TOTAL	3	2	1

Ministry for Health (MFH)

Sector	No of Cases received	Investigated	Sector not involved
National Screening Unit	1	1	-
TOTAL	1	1	-

Ministry for Home Affairs and National Security (MHAS)

Sector	No of Cases received	Investigated	Sector not involved
Armed Forces of Malta	1	1	-
Correctional Services	3	2	1
Home Affairs and National Security	3	3	-
Immigration	1	-	1
Office of the Commissioner of Refugees	1	-	1
Police	5	3	2
TOTAL	14	9	5

Ministry for Justice, Culture and Local Government (MJCL)

Sector	No of Cases received	Investigated	Sector not involved
Courts of Justice	1	-	1
Justice, Culture and Local Government	5	4	1
Local Enforcement System	6	2	4
Local Councils	11	10	1
Malta Competition and Consumer Affairs Authority	2	2	-
Malta Council for Culture and the Arts	2	1	1
TOTAL	27	19	8

Ministry for Tourism (MOT)

Sector	No of Cases received	Investigated	Sector not involved
Air Malta	9	2	7
Aviation	1	1	-
Malta Tourism Authority	1	1	-
TOTAL	11	4	7

Ministry for Transport, Infrastructure and Capital Projects (MTIP)

Sector	No of Cases received	Investigated	Sector not involved
Engineering Professions Board	1	1	-
Infrastructure Malta Agency	1	1	-
Lands Authority (Estate Management)	1	1	-
Lands Authority (Lands)	17	12	5
Land Registry	1	1	-
Planning Authority	3	2	1
Transport Malta	15	11	4
TOTAL	39	29	10
Outside Jurisdiction	33	-	-
TOTAL	313	174	106

Table 1.9 shows the complaints received classified by departments and public authorities according to each ministry's portfolio. The table categorises the number of complaints received, the number of complaints investigated with the departments and authorities concerned and those grievances that for different reasons were resolved without the need of involving the department or ministry concerned. Most of these cases are closed at a pre-investigation stage and therefore, the department, entity or ministry was not informed or involved during the investigation for one of the following reasons:

- the person submitting the grievance has a reasonable alternative remedy available at law;
- the issue raised in the complaint is considered to be trivial, frivolous or vexatious and/or not made in good faith;

- the person submitting the grievance is found to have an insufficient personal interest in the case; or
- the complaint is outside the Ombudsman's jurisdiction or time-barred.

The following analysis focuses on the top five ministries by the number of complaints received. In all, the top five ministries attracted 175 complaints or 56% of the total amount of grievances lodged:

THE OFFICE OF THE PRIME MINISTER (OPM)

The Office of the Prime Minister (OPM) and the departments under its portfolio attracted the most number of complaints received. In all, it attracted 46 complaints, of which 28 (61%) were investigated with the department involved, and 18 (39%) were not.

MINISTRY FOR TRANSPORT, INFRASTRUCTURE AND CAPITAL PROJECTS (MTIP)

Ministry for Transport, Infrastructure and Capital Projects (MTIP) attracted the second number of complaints received. From the 313 cases received by the Ombudsman, 39 cases (12%) were against a department or authority which falls under the MTIP. From the 39 complaints lodged, 29 were investigated, and the remaining 10 were either concluded without an investigation or were investigated without involving the department concerned. Most of the cases related to the MTIP were against the Lands Authority (46%) and Transport Malta (38%).

MINISTRY FOR THE FAMILY, CHILDREN'S RIGHTS AND SOCIAL SOLIDARITY (MFCS)

Ministry for the Family, Children's Rights and Social Solidarity (MFCS) attracted 32 complaints, 10% of the complaints received by the Ombudsman, of which 23 were investigated and the remaining 9 were looked into without the involvement of the department concerned. The cases were mainly related to Social Security (63%) and housing issues (31%).

MINISTRY FOR ENERGY AND WATER MANAGEMENT (MEW)

The Ministry for Energy and Water Management (MEWM) attracted 31 complaints from aggrieved citizens, of which 20 (65%) were investigated, and the remaining 11 were seen without the need of involving the Ministry. Most of the complaints related to billing issues against ARMS Ltd (48%).

MINISTRY FOR JUSTICE, CULTURE AND LOCAL GOVERNMENT (MJCL)

The Office of the Ombudsman received 27 complaints from aggrieved citizens, against the Ministry for Justice, Culture and Local Government (MJCL) of which 19 (70%) were investigated, and the remaining 8 were seen without the need of involving the Ministry. Most of the cases were about local councils issues (41%) and the local enforcement system (22%).

TABLE 1.10 – COMPLAINT GROUNDS

2016-2018

Grounds of Complaints	2016		2017		2018	
	Count	Percentage	Count	Percentage	Count	Percentage
Contrary to law or rigid application of rules, regulations and policies	55	15%	36	10%	41	13%
Improper discrimination	37	10%	37	11%	16	5%
Lack of transparency	20	6%	-	-	2	1%
Failure to provide information	34	10%	11	3%	11	4%
Undue delay or failure to act	84	23%	82	25%	79	25%
Lack of fairness or balance	131	36%	170	51%	164	52%
Total	361	100%	336	100%	313	100%

DIAGRAM 1.11 – CATEGORIES OF COMPLAINTS RECEIVED (BY TYPE OF ALLEGED FAILURE)

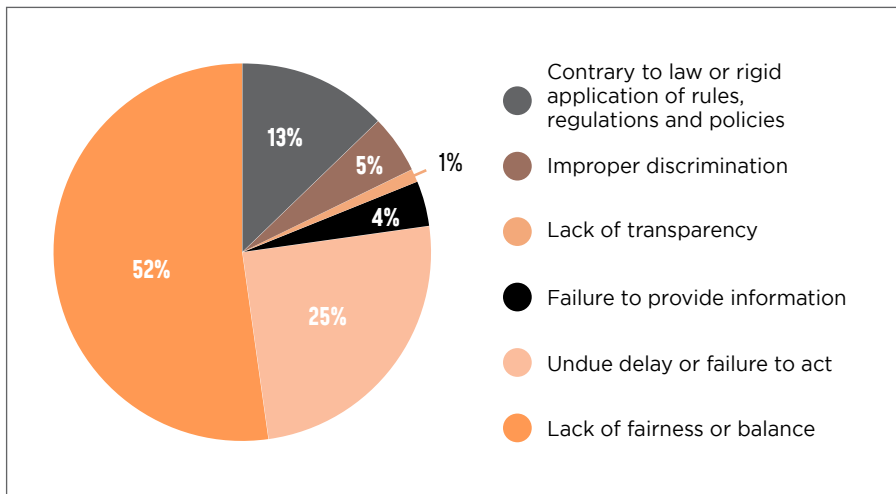


Table 1.10 and Diagram 1.11 show a detailed analysis of the complaints by the type of alleged maladministration. The most common complaints received from aggrieved citizens during 2018 were related to lack of fairness or balance. This category amounted to 52% of the complaints (164) in the same level of the previous year. Followed by complaints alleging undue delay or failure to act that attracted 25% (79) of the complaints.

TABLE 1.12 – COMPLAINTS BY LOCALITY

2016-2018

Locality	2016	2017	2018
Attard	7	8	8
Balzan	5	7	8
Birgu	-	-	-
Birkirkara	23	19	20
Birzebbuga	4	5	5
Bormla	5	6	4
Dingli	2	2	5
Fgura	9	11	1
Floriana	-	1	1
Għargħur	2	1	-
Għaxaq	-	7	6
Gudja	4	1	6
Gżira	4	8	4
Ħamrun	5	6	7
Iklin	-	2	4
Isla	2	-	1
Kalkara	-	-	3
Kirkop	2	2	2
Lija	4	2	1
Luqa	6	1	1
Manikata	1	1	-
Marsa	8	1	4
Marsaskala	7	8	8
Marsaxlokk	3	4	3
Mellieħa	9	5	3
Mġarr	-	-	2
Mosta	11	9	15
Mqabba	2	1	1
Msida	8	6	2
Mtarfa	3	1	2
Naxxar	10	7	8
Paola	11	8	9
Pembroke	2	5	5
Pietà	6	2	4
Qormi	11	6	1
Qrendi	1	1	3
Rabat	7	5	4
Safi	1	5	1

Locality	2016	2017	2018
San Ġiljan	5	6	4
San Ġwann	3	11	11
San Pawl il-Baħar	21	8	18
Santa Luċija	4	1	3
Santa Venera	5	4	5
Siġġiewi	8	6	3
Sliema	13	9	11
Swieqi	3	3	6
Ta' Xbiex	1	1	-
Tarxien	6	11	4
Valletta	7	7	5
Xgħajra	-	1	-
Xemxija	1	-	-
Żabbar	12	15	11
Żebbuġ	8	13	7
Żejtun	6	5	5
Żurrieq	10	11	4
Gozo	30	29	16
Other	19	18	16
Overseas	14	13	22
Total	361	336	313

TABLE 1.13 – AGE PROFILE OF OPEN CASELOAD AT END 2018

Age	Cases in hand
Less than 2 months	37
Between 2 and 3 months	16
Between 3 and 4 months	9
Between 4 and 5 months	8
Between 5 and 6 months	11
Between 6 and 7 months	14
Between 7 and 8 months	6
Between 8 and 9 months	4
Over 9 months	78
Total Open files	183

Table 1.13 and Diagram 1.14 show the number of cases still under investigation that stood at 183 at the end of 2018.

DIAGRAM 1.14 – PERCENTAGE OF OPEN COMPLAINTS BY AGE (AT END 2018)

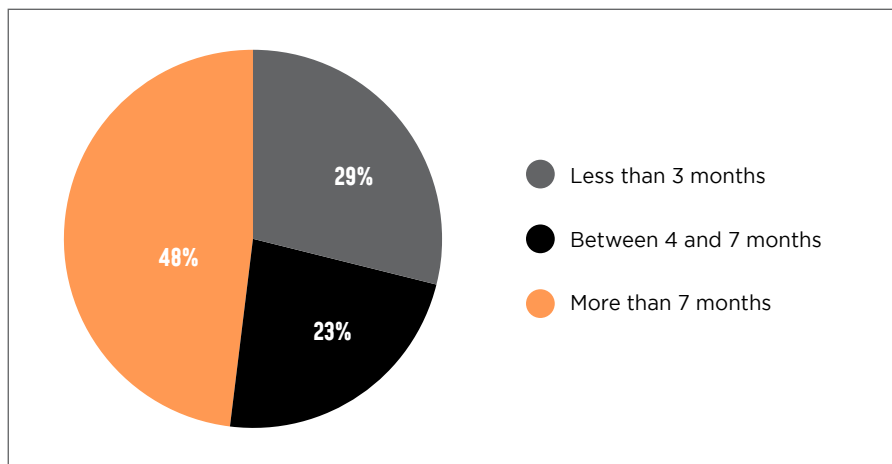


TABLE 1.15 – OUTCOMES OF FINALISED COMPLAINTS

2016 - 2018

Outcomes	2016	2017	2018
Sustained cases	25	18	22
Cases not sustained	127	63	37
Resolved by informal action	161	114	113
Given advice/assistance	57	35	42
Outside jurisdiction	105	49	76
Declined (time-barred, trivial, etc.)	39	12	8
Total	514	291	298

DIAGRAM 1.16 – OUTCOMES OF FINALISED COMPLAINTS

2016 - 2018

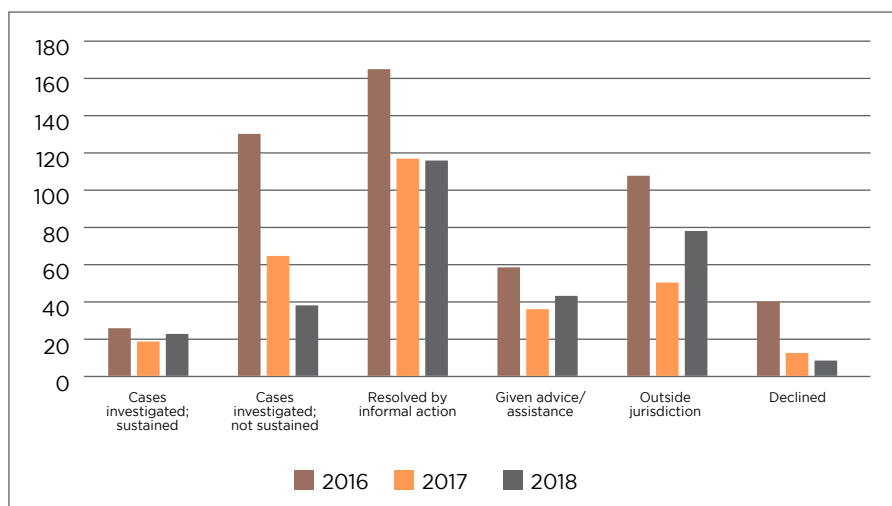


Table 1.15 and Diagram 1.16 show the outcome of the finalised complaints. In 2018, 22 of these complaints were sustained by the Ombudsman with a satisfactory result for the complainant. For the second consecutive year, during the year under review, there was a decrease in the complaints that were not sustained, which amounted to 37, 41% less than 2017. It is worth noting that compared to 2016, the number of cases that were not sustained by the Ombudsman fell by 71%.

Also, 42 cases were finalised by giving advice or assistance and without the need to conduct a formal investigation. There were also 113 cases that were also solved by informal action while there were 76 cases that were outside the Ombudsman’s jurisdiction, 55% more than the previous year.

TABLE 1.17 – TYPE OF MALADMINISTRATION IN JUSTIFIED COMPLAINTS 2016-2018

Grounds of Complaints	2016		2017		2018	
Contrary to law or rigid application of rules, regulations and policies	35	19%	16	12%	22	17%
Improper discrimination	21	11%	13	10%	14	10%
Lack of transparency	16	9%	1	1%	-	-
Failure to provide information	18	10%	10	7%	2	1%
Undue delay or failure to act	61	32%	45	34%	42	31%
Lack of fairness or balance	35	19%	47	36%	55	41%
Total	361	100%	132	100%	135	100%

DIAGRAM 1.18 – CASES CONCLUDED AND FOUND JUSTIFIED 2016-2018

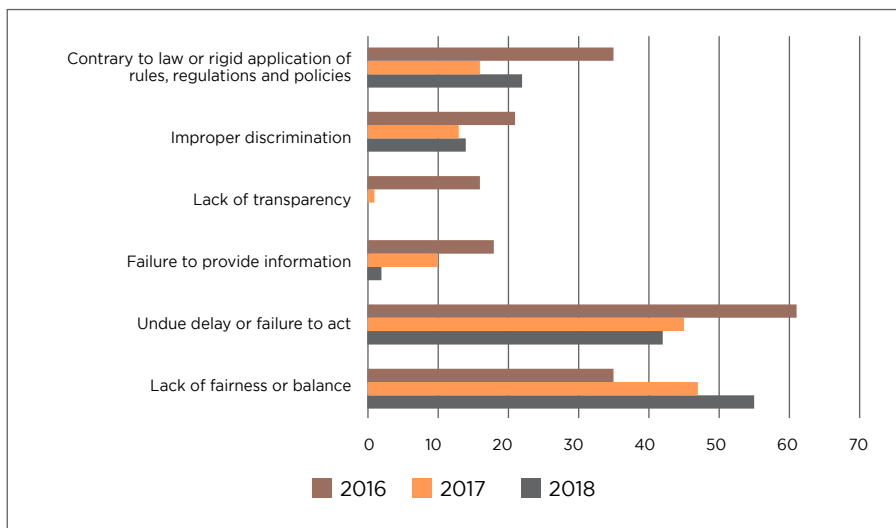


Table 1.17 and Diagram 1.18 illustrate the type of maladministration of justified complaints. Of the 135, justified complaints, 41% concerned a lack of fairness or balance. The second most common type of complaints was about allegations that the administration delayed its action or failed to take action, amounting to 31% of the 2018 justified caseload.



COMMISSIONER FOR EDUCATION

ANNUAL REPORT 2018



OMBUDSMAN

ANNUAL REPORT BY THE **COMMISSIONER FOR EDUCATION**

AN UNJUSTIFIED SENSE OF ENTITLEMENT

The sense of entitlement is more developed and hence more noticeable in human beings than the sense of duty. People are acutely conscious of having rights, and are equally acutely militant in attempting to safeguard them. Problems are encountered, however, when people are so convinced that they are right that they are not interested in the truth.

At times, there is friction between what is good for the individual and what is for the common good, and it is very difficult to find a person who agrees without argument that the common good must have the upper hand.

It would be an injustice in itself if each person were to decide what his or her due is, because there would be no end of strife – and even violence - if that were to be allowed. It is what we call ‘the Law’ which decides what is yours and what is not. Nobody can stop you from disagreeing with the Law, but not observing it is not allowed. At times, the Law consists of a compromise between what appertains to the individual and what appertains to Society, but at other times it is Society that wins over the individual, and it is in these cases that people stamp their feet and claim unfairness.

Very often, it is the one who interprets and applies the Law, be it the Commissioner, the Magistrate or the Judge, who is considered as being unfair and unjust. This is quite understandable because any sentence they pass is more often than not an expression of their opinion on how the Law applies to a specific case.

It might seem strange, but in fact, the Law does create discrimination. The legislator, in declaring what is yours and what is not, is in fact, telling you that in certain circumstances, you are entitled to less than others, or even that you are not entitled to what others have. An easy example is the right that a disabled person is given, by the Law, to a reserved parking space in places such as supermarkets or, in specified circumstances, in public roads, while others who are not disabled are not. Thus, a disabled person is given more rights than others. Although the law discriminates in favour of disadvantaged people, this cannot be challenged as being discriminatory in a negative sense. In simple

terms, a citizen cannot sue the Government to give him privileged parking space because a disabled person in his street has one. He or she cannot accuse the Government of acting in such a way as to discriminate against him or her. One should notice, for example, that a reserved parking space in a public street exists at the expense of parking spaces available to all users, so the Law grants a privilege by diminishing the rights of other citizens.

Of course, this is a very simple and obvious example, but it serves to illustrate the operation of the Law which in the majority of other instances may not be quite so simple or obvious.

The Commissioner notes that individuals, and even Institutions, are becoming increasingly irritated by adverse judgements, and refuse them or contest them, even when the available evidence indicates clearly that they are in the wrong. This is a dangerous tendency because it displays lack of faith in the sincerity of the person passing judgement, and therefore is an indication of a general lack of trust in the Law and its processes.

It is clear that at the start of any case, the balance in the hand of blindfolded Justice lies level, but at the end the scales tip, one side or the other. Naturally, people approach the Ombudsman because they feel they are right, and feel badly done by, but in quite a number of cases this is just a perception. If a person comes to the Ombudsman seeking Justice from him because he trusts him, that initial trust should remain intact to the end, irrespective of the outcome. At the Office of the Parliamentary Ombudsman, contrary to what happens in the Courts of Justice, a person lodging a complaint trusts the Office and the Commissioner who might be entrusted with handling the case, if this trust vanishes merely through dashed perceptions and disappointment, then we could be dealing with the dawn of what is being called, abroad, individual sovereignty. One hopes it is not the case.

BULLYING INCIDENTS INVOLVING FOREIGN STUDENTS

The Commissioner for Education noted, towards the final months of 2018, that bullying seemed to be rearing its head. There was an increase in both the number of incidents as well as in the gravity of such incidents in recent months. It is the prerogative of the Commissioner to investigate any matters which seem to bear special import to him as a private initiative, so it was natural that such a dangerous phenomenon would attract his attention, but at the same time, two complaints were received and officially investigated by his Office within the space of a week, apart from a number of enquiries.

The first thing that must be stressed is that 'bullying' is, in fact, a generic term for all sorts of dysfunctional behaviour within the school environment. It can range from the real to the virtual, and from persistent ridicule to physical and moral violence which in acute circumstances could result in lasting harm or even, in the most extreme cases, in death or suicide, so it is certainly not a matter to be taken lightly. Another aspect of bullying is that it can occur between students as well as between staff and students, and in the latter it can either be the student that harasses a member of the staff or a staff member who harasses a student.

The Ministry for Education and Employment has a unit, called the 'Educational Psych-Social Services Unit' which contains an anti-bullying section. The Commissioner paid a visit, announced at short notice, to the anti-bullying section of the Educational Psych-Social Services Unit in Hamrun in order to see (1) its *modus operandi*; and (2) to check whether it was operating efficiently. It resulted that, whilst having a very low-profile location, it had all the structures necessary to engage with the phenomenon of bullying, and that it had capable personnel, though, as is often the case, it needed more staff and some slight adjustments to operational procedures. The data and statistics obtained from the unit showed that bullying cases tackled by the unit amounted to a little over a hundred over the past year, and that certain schools were hot spots which recorded over twenty cases each.

During his investigation the Commissioner, on account of the cases before him, was particularly interested in a specific school that statistics showed had registered well over 20 cases. The Commissioner noticed that this school had a strong proportion of foreign students coming from various nationalities, with a couple of nationalities standing out for misbehaviour. Though bullying is by no means a recent phenomenon, the Commissioner has data which indicates that there is a link between the number of cases of bullying recorded in a school and the number of students belonging to a particular nationality in that school.

It also resulted that school-management personnel are not trained to cope with the new aspects of bullying, simply because these aspects were not predictable and could not have been anticipated when the administrative staff had received their training. Bullying is a dynamic, not a static, phenomenon, and constantly evolves. One such particular aspect which is indeed extremely worrying and dangerous is 'group-bullying' by ethnic gangs formed within a school. The Commissioner is convinced that the formation of such gangs when rooted in ethnicity, was caused by two factors.

One is curricular dystopia, which means that non-Maltese students are being forced to follow curricula which are tailored for Maltese students but are not considered useful by foreign students. This is complicated by the fact that some foreign students cannot, even with intermediate proficiency, speak or understand either Maltese or English, and this instinctively leads such students into seeking the company of students from their own country. Naturally, the more students from a particular country, the larger, and hence more powerful, the gang will be.

A second factor is the students' social background. The troublesome foreign students seem to come from war-torn countries, and may have been brutalised by being exposed to violence at an early age. Others may come from countries whose citizens have been rendered 'soulless' by political regimes. Last, but not least, some students may have a family background which is far from ideal. The latter is becoming increasingly applicable to Maltese students, who, of course, form an obviously numerically-important part of the school environment. Vast cultural differences also play an important part.

The Commissioner believes that the root cause aggravating the problem - and this results from his investigation - also lies in the fact that a school which was conceived and administered as a normal Secondary school, could be

transformed into an international school within a few months through suddenly - changed demographic circumstances, without it having the necessary structures, curricula or human resources suitable for it to operate as an international school.

Malta's population underwent a significant change in that the number of foreign expatriates increased dramatically and within a relatively short period as a result of geo-political upheavals and economic turmoil in both Europe and Northern Africa, and a sizable proportion of these foreign expatriates who work or seek refuge in Malta have families with children who need educating.

The influx of these families strained the educational system and presented it with the problems outlined above. Whilst the only immediate solution was the absorption and inclusion of the children of these foreign students in the local schools, the very fact that assimilation is proving difficult strongly suggests that a more long-lasting solution needs to be found. The Commissioner believes that the setting-up of a centrally-located International School wherein the students would receive instruction in their particular languages and wherein their particular cultures form part of the curriculum would go a long way to eliminate the aberrant behaviour emanating from boredom and subject-irrelevance. The Commissioner is aware, however, that this solution is fraught with difficulties and would offer a considerable challenge to the Government.

PERFORMANCE REVIEW

The following tables detail the extent and the nature of the work carried out by the Commissioner for Education during the year under review.

TABLE 2.1 COMPLAINTS INTAKE BY INSTITUTION

2016-2018

Institutions	2016	2017	2018
University of Malta	35	22	24
MCAST	11	6	10
Institute of Tourism Studies	3	1	-
Education Authorities	10	10	19
Outside Jurisdiction	-	-	1
Total	59	39	54

During the year under review, the highest number of complaints (24) came from the University of Malta, the institution with the highest number of students and staff. The second highest came from other departments under the education authorities.

As reported in previous years, the trend of low incidence of complaints from the Institute of Tourism Studies persists even though the Office increased its outreach efforts targeted to the institute by participating in activities such as freshers' week.

The data in Table 2.2 is self-explanatory and does not require further elaboration.

TABLE 2.2 - COMPLAINTS BY INSTITUTION CLASSIFIED BY GENDER AND STATUS OF COMPLAINT 2016 - 2018

	University of Malta			MCAST			Institute of Tourism Studies			Education Authorities			Total		
	2016	2017	2018	2016	2017	2018	2016	2017	2018	2016	2017	2018	2016	2017	2018
Students															
male	18	7	10	1	2	2	1	-	-	6	-	6	26	9	18
female	5	9	5	3	1	2	-	1	-	3	2	5	11	13	12
Staff															
male	4	1	7	4	2	4	-	-	-	-	1	2	8	4	13
female	8	5	2	3	1	2	1	-	-	1	4	6	13	10	10
Others	-	-	-	-	-	-	1	-	-	-	2	-	1	2	-
"Total complaints by students and staff"	35	22	24	11	6	10	3	1	-	10	9	19	59	38	53
Own initiative cases	-	-	-	-	-	-	-	-	-	-	1	-	-	1	-
outside jurisdiction	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
TOTAL	35	22	24	11	6	10	3	1	-	10	10	20	59	39	54

TABLE 2.3 - OUTCOMES OF FINALISED COMPLAINTS

Outcomes	2016		2017		2018	
Resolved by informal action	7	10%	1	3%	8	19%
Sustained	5	7%	4	12%	4	10%
Partly sustained	8	12%	-	-	3	7%
Not sustained	34	50%	22	67%	16	38%
Formal investigation not undertaken/discontinued	11	16%	2	6%	5	12%
Investigation declined	3	4%	4	12%	6	14%
Total	68	100%	33	100%	42	100%

Table 2.3 illustrates the outcome of the finalised complaints of which 38% were not sustained. Even though there was a substantial decrease from the previous year, the number of complaints that are not sustained are on the high side. One must understand that the decision not to sustain is not taken lightly. Such decisions follow thorough investigation of the facts, clarifications (through correspondence and meetings) of the allegations or claims by the complainant, and careful analysis of the replies and reactions by the institution concerned. Many complainants, who are obviously disappointed by the adverse outcome, still feel that they have had a fair hearing and feel satisfied at the fact that they had been provided with a full explanation why their complaint had not been upheld.

TABLE 2.4 SOURCES OF COMPLAINTS

Outcomes	2016		2017		2018	
Unfair marking of academic work	7	12%	3	8%	-	-
Special needs not catered for	-	-	4	10%	2	4%
Promotion denied unfairly	5	8%	2	5%	5	9%
Post denied unfairly (filling of vacant post)	7	12%	4	10%	1	2%
Unfair/discriminatory treatment	34	58%	24	61%	44	81%
Lack of information/attention	6	10%	1	3%	2	4%
Own-initiative	-	-	1	3%	-	-
Total	59	100%	39	100%	54	100%

The following is a breakdown of the cases that were classified under the category 'unfair/discriminatory treatment':

Unfair discriminatory treatment	22
Unfair treatment regarding government stipends and scholarships	5
Unfair treatment on academic grounds	16
Unfair treatment on non-academic grounds	1
Total cases	44

This table provides information on the type of claims dealt with by the Commissioner for Education in the year under review. The trend follows that of the previous years, with the highest incidence (44 cases/81%) occurs in the 'unfair/discriminatory treatment' category. These complaints include claims by students and staff who feel that they were deprived of their rights whether of an academic or non-academic nature.



COMMISSIONER FOR ENVIRONMENT AND PLANNING

ANNUAL REPORT 2018



OMBUDSMAN

ANNUAL REPORT BY THE COMMISSIONER FOR ENVIRONMENT AND PLANNING

2018

This first full year in Office has been an extraordinary experience getting acquainted with the Government authorities, departments and agencies that in some way or another leave an effect on our environment. It is quite a complex task when considering the vast amount of environment-related government bodies that operate under a rather complex regulating framework. I am pleased to report that during this year a high level of mutual understanding and cooperation has been reached with the majority of the Government entities. Nonetheless, there is always room for improvement and the main focus will remain that the other entities lagging behind will at least approach the same level of understanding and cooperation in the way and the time they take to respond to the queries made by this Office.

Unfortunately sometimes, complainants do get let down when their complaint is not sustained, or even more, is not eligible for an investigation by the Commissioner, and in this respect it is important to stress the fact that the Commissioner is also bound to proceed with extreme caution and to follow the right procedure as established in the Ombudsman Act. The Commissioner is not there to investigate complaints of a civil nature between neighbours or other inconveniences falling within the remit of criminal action. Nor should the Commissioner be expected to delve into the technical aspects of a case when it is not within his remit. The Government entities have all the expertise at their disposal to carry out these assessments and the role of the Commissioner is to see that these experts are actually commissioned whenever required and that their assessments do not go unnoticed.

All in all it has been a very positive and busy year that has seen a 35% increase in the case load in addition to other environment-related assignments that include the Opinion on the State of the Environment Report issued by the Environment and Resources Authority last summer and own-initiative actions related to traffic safety and public hazard.

The results for this year, as compared to 2017, are being summarized below:

TABLE 3.1: CASE LOAD

	2018	2017
Pending cases from previous years	10	24
New requests for investigation	84	62
Total	94	86

All the 10 pending cases from previous years are 2017 cases whilst the 84 new cases include five own-initiative investigations.

TABLE 3.2: FINAL OPINION CONCLUDED

	2018	2017
Pending cases from previous years	8	24
New requests for investigation	59	52
Total	67	76

These cases include those cases where the Commissioner closed the investigation and delivered his Final Opinion. Sometimes, although an investigation is concluded, the case is not closed pending the implementation of the same opinion by the Government entity in question. The Final Opinion has been concluded in almost all cases from previous years except in two cases, one against the Superintendence of Cultural Heritage and the other against Wasteserv. The first due to lack of a reply from the Superintendence of Cultural Heritage and the latter as it relates to a case that is under an ongoing investigation.

TABLE 3.3: AGE PROFILE OF CONCLUDED CASES

	2018	2017
Less than 2 months	41	29
Between 2 and 3 months	8	11
Between 3 and 4 months	7	9
Between 4 and 5 months	2	4
Between 5 and 6 months	2	3
Between 6 and 7 months	3	1
Between 7 and 8 months	-	-
Between 8 and 9 months	-	2
More than 9 months	4	17
Total	67	76

Table 3.3 shows that 62% of the cases opened this year have been closed during the same year. Only seven cases took more than six months to close and this compares very well to the twenty similar cases registered last year. This is mainly due to the fact that during this year the majority of Government entities reduced the response time to an acceptable level whilst also improving the quality of their replies to queries made by the Commissioner. The interventions by their respective liaison officers proved also very beneficial. Such improvements were significantly registered in cases involving the Planning Authority and this is a huge plus when considering that half the caseload is against this Authority. One can only hope that this cooperation will persist in the coming years and that similar advances are also registered in other sectors, particularly in cases involving the Superintendence for Cultural Heritage.

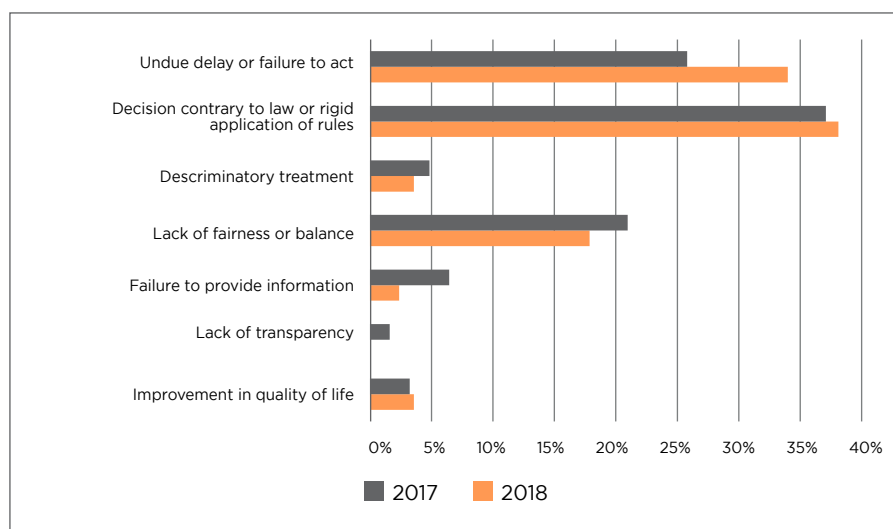
TABLE 3.4: GOVERNMENT ENTITIES SUBJECT TO COMPLAINTS

	2018	2017
Agenzija Sapport	1	-
Building Regulation Office	7	4
Superintendence of Cultural Heritage	3	2
Enemalta	1	1
Environment and Planning Review Tribunal	-	1
Environment and Resources Authority	-	1
Environmental Health Directorate	1	-
Housing Authority	1	-
Infrastructure Malta	2	-
Lands Authority	6	2
Local Council	5	1
Office of the Prime Minister	-	1
Occupational Health and Safety Authority	1	1
ORNIS Committee	1	-
Outside Jurisdiction	1	1
Planning Authority	42	37
Police	1	-
Regulator for Energy and Water Services	-	2
Transport Malta	6	5
Ministry for Transport, Infrastructure and Capital Projects	3	1
Water Services Corporation	2	1
Wasteserv	-	1
Total	84	62

As mentioned above, the Planning Authority takes the majority of the caseload with 50% of the cases addressed against this Authority. Although there was an increase in the number of complaints against the Planning Authority to 42 from the 37 registered last year, there was a ten point decrease from the 60% of the caseload registered against the Planning Authority last year owing to the fact that the total number of cases received this year increased significantly. This year saw also the introduction of a new entity, namely Infrastructure Malta, and there were no cases involving the Environment and Resources Authority.

TABLE 3.5: CASELOAD RECEIVED BY NATURE OF COMPLAINT

	2018		2017	
Undue delay or failure to act	29	34%	16	26%
Decision contrary to law or rigid application of rules	32	38%	23	37%
Discriminatory treatment	3	4%	3	5%
Lack of fairness or balance	15	18%	13	21%
Failure to provide information	2	2%	4	6%
Lack of transparency	-	-	1	2%
Improvement in quality of life	3	4%	2	3%
Total	84	100%	62	100%

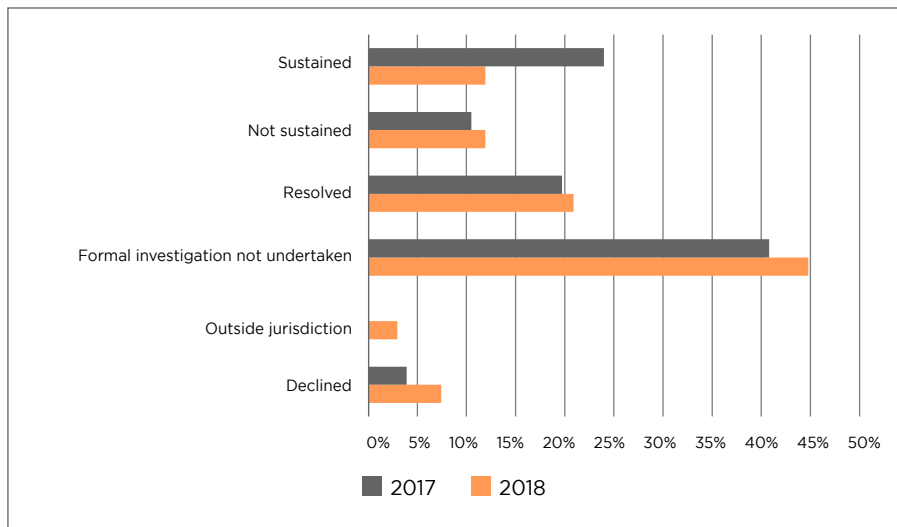


There was a shift in the nature of the complaints received in that those related to ‘undue delay or failure to act’ increased to 34% from 26% last year whilst ‘lack of fairness or balance’ and ‘failure to provide information’ reduced by 3 and 4 points respectively. Whilst the latter are very encouraging, it is important that the delay or failure to act is addressed in this fast-moving pace we are living in

where the complainants are having higher time-related expectations, especially when the same authorities are expecting similar higher time-related responses from the same citizens. Other than a simple acknowledgement, complainants are entitled to a reply within a reasonable period of time - in other words within weeks and not months - so that they can seek the relevant advice on the basis of the same reply. Citizens cannot stay for months on end in limbo wasting time reminding and chasing the same entity for a reply. As the ordinary citizen is expected to reply or make a substantial payment within a few weeks, it is unacceptable that a Government entity - that is more equipped and specialized than the same citizen - takes months to answer such queries. An immediate reply, other than satisfying the complainant time-wisely, reduces bureaucracy and time-wasting correspondences and communications.

TABLE 3.6: OUTCOME FOLLOWING FINAL OPINION

	2018		2017	
Sustained	8	12%	19	24%
Not sustained	8	12%	8	11%
Resolved	14	21%	15	20%
Formal investigation not undertaken	30	45%	31	41%
Outside jurisdiction	2	3%	-	-
Declined	5	7%	3	4%
Total	67	100%	76	100%



This year, the number of sustained cases reduced dramatically to 12% from 24% last year. This is very satisfying and confirms that although there is always room for improvement, advancements are being registered throughout.

Although the number of eight sustained cases might look insignificant to some, these should never be underestimated as one sustained case can mean the permanent loss of a cultural heritage that could have been enjoyed by future generations in years to come and one unrectified sustained case can mean that a complainant and his family have to endure living in their most valuable possession adjacent to an irregularly approved development causing them nuisance for the rest of their lives. The fact that all the Government entities have replied positively to the rational recommendations issued by this Office shows that the Government entities are acknowledging the importance of aiming for a target to reduce the number of sustained cases to a zero, which target is potentially achieved through the interventions of scrutinizing structures such as the Office of the Ombudsman. Everyone can make a mistake, especially in the existing scenario of processing a significant number of public applications in a reasonable period of time. The wrong would be if the same mistakes are not rectified or even worse, if they keep repeating themselves.

OWN INITIATIVE INVESTIGATIONS

Five own-initiative investigations were opened during the current year. These were opened either following reports in the media or else from personal knowledge. Three cases were against the Planning Authority and related to the removal of garages to make way for commercial outlets, the fuel stations policy and large enclosures on roads for tables and chairs. Another case was against Transport Malta in relation to the parking spaces in front of commercial outlets and the other case was against Infrastructure Malta relating to the removal of a segregated cycle lane to make way for an additional vehicular lane. All the final opinions related to these investigations were concluded during the current year.

OTHER CASES

There are other own-initiative actions not included in the cases mentioned above and these include proposals to ameliorate traffic junctions and suggestions to remove a particular danger to the public. In these cases the relative Government entity, namely Infrastructure Malta and the Works and Infrastructure Department, have generally acceded to the request of the Commissioner and sometimes even exceeded his expectations. Other than solving issues of traffic and public safety, these interventions tackle probable complaints before they are even received by the relative Government entity or by this Office. This signifies that acting in a timely manner reduces bureaucracy and time-wasting correspondence and communications.

THE STATE OF THE ENVIRONMENT REPORT

This Opinion on the State of the Environment Report stems from the provision embedded in the Environment Protection Act, stipulating that the Environment and Resources Authority shall publish this Report in four year intervals and that the Commissioner for Environment and Planning within the Office of the Ombudsman shall deliver his opinion on the same Report to the Speaker of the

House within eight weeks. Hence, it is needless to say how busy the two successive months were in analysing such a voluminous document, which dragged on to the following weeks when this opinion and report were on the forefront of the local agenda. Some of the main recommendations in the same report included:

- The importance of regularly updating the State of the Environment Report in time so that action can be taken without delay preferably also by involving the Commissioner from the outset;
- The need for an underground mass transportation system possibly linked to mega developments that are in the pipeline; and
- The involvement of the Environment and Resources Authority in the decision process related to development permits for certain projects located outside development zones.

Needless to say that the latter is not a question of strengthening one authority for the detriment of another, but a case of giving the right teeth to the Environment Authority tasked with the preservation of our environment. It is satisfactory to note that certain other minor suggestions in the Opinion have already been taken on board. As regards ODZ developments, the Environment and Resources Authority should, if not the final decision, at least be given the benefit to have its consultation report presented at par with, rather than incorporated in, the Planning Directorate's report for the consideration of the Planning Board. Then it is up to the Planning Board to decide and justify its deviation from one report or the other.

OTHER MATTERS

The State of the Environment Report introduced the Commissioner to the Parliamentary Environment and Planning Standing Committee. The way this Committee is structured and the aspiring work it carries out put this Committee in an important stand *vis-à-vis* the role of the Commissioner towards the public. In the light of the fact that the Ombudsman Act establishes the Parliament as the Institution where the Commissioner shall direct his opinions in the case of non-compliance by the relevant Government entity, the involvement of the Environment and Planning Standing Committee should be explored as an important tool for the implementation of the Commissioner's opinions, if possible even through an ad-hoc sitting.

CONCLUSION

All in all it has been a very fruitful and inspiring year where in general, the environment benefits both from the review of the complaints received and also through the various other interventions taken by this Office. This is a very prospective ideal where good governance is not only a requirement enhancing the protection of human rights but also directly or indirectly assisting the environment that should be rightfully enjoyed by all. Other ideas developed by this Office to further improve public administration together with a commitment by the same public entities to further improve their performance will augur very well for a sustainable and healthy environment.





COMMISSIONER FOR HEALTH

ANNUAL REPORT 2018



OMBUDSMAN

ANNUAL REPORT BY THE COMMISSIONER FOR HEALTH

INTRODUCTION

During the year 2018 the Commissioner for Health received 102 complaints, an increase of 23% increase over the previous year. The complaints received were 70 from the public and 32 from the employees of the public health sector.

During the year under review, a total of 111 cases were closed, of which 69 concerned complaints received during 2018, and the remaining 42 were in respect of cases which were pending over the previous three years.

The Commissioner for Health notes that it is of concern that 14 of his recommendations were not implemented by the administration, of which 12 concern the Ministry for Health and 2 concern the Office of the Prime Minister. Also, the reluctance by the Ministry for Health to amend Protocols which are discriminatory and in breach of the law is also of grave concern.

PERFORMANCE REVIEW

TABLE 4.0 - COMPLAINTS RECEIVED

JAN – DEC 2018

Complaints Received	2017	2018
From the public	38	70
From employees in the Health Sector	45	32
Total	83	102

TABLE 4.1 COMPLAINTS RECEIVED

JAN – DEC 2018

Against	No. of complaints
Ministry for Health	74
Ministry for the Family, Children's Rights and Social Solidarity	12
Public Service Commission	10
Ministry for Justice, Culture and Local Councils	2

Office of the Prime Minister	1
Department of Customs	1
Housing Authority	1
Private Pharmacy	1
Total	102

Table 4.1 shows that from 102 complaints received, 74 were against the Ministry for Health, 12 against the Ministry for the Family, Children's Rights and Social Solidarity and 10 against the Public Service Commission.

TABLE 4.2 OUTCOME OF CASES RECEIVED IN THE YEAR 2018

JAN – DEC 2018

Outcome	No. of complaints
Sustained	34
Partly sustained	2
Not sustained	21
Resolved by informal action	5
Advised	3
Withdrawn	3
Outside jurisdiction	1
Pending	33
Total	102

Table 4.2 illustrates the outcome of the complaints received. In 2018, from the 102 complaints received, 36 cases were either sustained or partly sustained, 21 cases were not sustained.

Table 4.3, shows the age profile of pending cases. By the end of the year under review of the 33 pending cases, 9 were pending for over 6 months.

TABLE 4.3 AGE PROFILE OF PENDING COMPLAINTS

JAN TO DEC 2018

Age	Pending cases
Less than 2 months	11
Between 2 to 3 months	8
Between 4 to 5 months	5
Between 6 to 7 months	4
Between 8 to 9 months	2
Over 9 months	3
Total	33

TABLE 4.4 PENDING BY MINISTRY

JAN – DEC 2018

Department/Ministry	No. of complaints
Ministry for Health	24
Ministry for the Family, Children's Rights and Social Solidarity	6
Public Service Commission	2
Minister for Justice, Culture and Local Councils	1
Total	33

As shown in Table 4.4, the Ministry for Health tops the list of pending feedback by 24 (73%) cases which are pending some sort of reply or feedback. This is expected as the Commissioner's remit focuses on health related cases.

TABLE 4.5 CATEGORIES OF COMPLAINTS FROM THE GENERAL PUBLIC

JAN – DEC 2018

Nature of complaint	No. of complaints
Denied request for free medicines	22
Request for refund of expenses incurred for medicines/prostheses	4
Request for compensation for failed surgery	3
Reimbursement of medical expenses incurred whilst on holiday in an EU country	2
Unfair practice by Funeral Directors	2
Elderly person who was denied Home Help	2
Deduction in pension	2
Alleged discrimination of parking facilities at MDH	2
Reimbursement of expenses incurred because of discrimination between patients sent abroad by Government in UK or in an EU country	1
Refusal by Department of Health to approve burial in a particular grave at the Addolorata Cemetery	1
Lack of reply by the Medical Council	1
Waiving off of hospital fees by foreign resident	1
Refusal by Department of Health to authorise transportation abroad of human ashes	1
Request by disabled person for priority attention when attending at health clinics	1
No information regarding date of operation	1
Amendment to the Social Security Act to entitle hospitalised patients to free financial assistance	1
Non issuing of Certificate of Death	1
Delay to receive Schedule V (yellow) card	1
Delay to approve home leave to a Mount Carmel Hospital patient	1
Non approval of allowance given to nurses when accompanying Government patients for treatment abroad	1

Non approval by health authorities to import frozen suppressed breast milk	1
Lack of attention regarding drainage overflow	1
Non approval to be given medical equipment prescribed for patient who was sent by the Department of Health for treatment abroad	1
Request for exemption from VAT regarding medical equipment	1
Relocation of elderly patients from one Home to another	1
Request for refund of certain expenses concerning unborn babies sent for treatment abroad	1
Refusal for Disability pension	1
Allegation of poor service at the Emergency Department at MDH	1
Termination of Contract of Medical Practitioner	1
Alleged abuse by pharmacists who dispense controlled drugs	1
Admission to Old Peoples Home	1
Alleged discrimination by Department of Health concerning deduction in pensions	1
Denied request for free medical care	1
Denied request for importation of e-cigarettes	1
Alleged inconsiderate attention by Mater Dei Hospital pharmacist towards elderly person	1
Eviction from home of disabled person who lives alone and cannot afford to pay higher rent	1
Request for refund of medical expenses incurred abroad	1
Denied request to retrieve medical reports electronically	1
Request for urgent hospital appointment	1

Table 4.5 illustrates the nature of complaints lodged by the general public with the most common grievances, as in previous years, related to the right of free medicines.

TABLE 4.6 CATEGORIES OF COMPLAINTS FROM EMPLOYEES OF THE PUBLIC HEALTH SECTOR

**JAN TO DEC
2018 – STAFF**

Nature of Complaint	No. of complaints
Non eligibility when applying for Calls for Applications	9
Alleged unfair disciplinary action	5
Suspension from work	2
Request for refund of unauthorised allowance	2
Request for transfer	2
Denied approval of unpaid leave	1
Request for the issuing of Call for Applications to improve conditions of work which are already being performed	1
Working environment in place of work	1
Unforeseen implications following Sectoral Agreement	1
Unfair interpretation of allowance regulations	1

Delay to be Registered in the Specialists Register	1
Request for revision of marks given following a Call for Applications	1
Alleged unfair discrepancies in Scales of Post of Senior Technical Officer	1
Request for monetary compensation	1
Request for Deputising Allowance	1
Request to be given Appointment following a Call for Applications for which he placed first	1
Unfair withholding of Salary	1

Similarly to the complaints lodged by the general public, the categories of the complaints received from the health sector employees are diverse in nature, totalling to 22 different types of complaints. As shown in Table 4.6 the most complaints by employees working in the Public Health sector relate to alleged injustices on the place of work.

TABLE 4.7 CLOSED CASES

JAN – DEC 2018

	No. of complaints
Closed Cases from the 2015 Caseload	2
Closed Cases from the 2016 Caseload	14
Closed Cases from the 2017 Caseload	26
Closed Cases from the 2018 Caseload	69
Total	111

Table 4.7 illustrates the number of cases closed during the year under review. From the 111 cases closed by the Commissioner, 69 (62%) emanated from the 2018 caseload. During 2018 the Commissioner managed to conclude 42 cases which were pending from the previous years.

TABLE 4.8 TOTAL NUMBER OF PENDING COMPLAINTS

(2012 – 2017 – AS AT 31 DEC 2018)

Department / Ministry / Sector	No. of complaints
Ministry for Health	17
Office of the Prime Minister	2
Total	19

As shown in Table 4.8 and Table 4.9 at the end of the year under review, the Commissioner for Health had 19 pending cases of which 17 were against the Ministry for Health, and 2 were against the Office of the Prime Minister.

TABLE 4.9 CASES PENDING FROM PREVIOUS YEARS

Department / Ministry	No. of complaints
2014	
Ministry for Health	1
2015	
Ministry for Health	2
2016	
Ministry for Health	4
2017	
Ministry for Health	10*
Office of the Prime Minister	2
Total	19

*One of the 2017 cases concerns the purchase of a few pairs of elastic stockings which are used to improve circulation to cater for the smallest and the largest of sizes. It is unbelievable that after more than two years the matter is still pending.

TABLE 4.10 RECOMMENDATION NOT IMPLEMENTED

Department / Ministry / Sector	No. of complaints
Ministry for Health	12
Office of the Prime Minister	2
Total	14

TABLE 4.11 – STATUS OF RECOMMENDATIONS NOT IMPLEMENTED

JAN – DEC 2018

Department / Ministry / Sector	No. of complaints
Cases referred to the Prime Minister (awaiting reply)	9
Cases referred to Parliament (awaiting reply)	2
Awaiting implementation by the Ministry for Health during 2019	3
Total	14

Table 4.10 and 4.11 show the status of the recommendations made by the Commissioner which were not implemented by the administration. Of the 14 cases which were not implemented 12 related to cases against the Ministry for Health and two against the Office of the Prime Minister.

The recommendations which were not implemented are in respect of:

1. Free supply of Analogue Insulin to Type 2 diabetics (pending since 2015).
2. Introduction of a particular cancer drug on the Government Formulary List (pending since 2017).
3. Screening of neonates for hearing loss (pending since 2015) – hopefully to be implemented during 2019.
4. Discriminatory/Illegal Protocols (pending since 2013).
5. Refund of expenses incurred by patients for purchase of medicines to which they were entitled.

The recommendation made in 2013 for the procurement of treatment for Hepatitis C was implemented in 2018.

When the public administration does not honour the recommendations of the Ombudsman and the Commissioners, and leave them pending or else are not accepted, the Ombudsman Act stipulates that the Ombudsman may send a copy of his Final Opinion and recommendations on the matter to the Prime Minister and to the House of Representatives. The Ombudsman may also publish reports on such cases in the local media.

The non-implementation of the recommendations mentioned in point (4) above which have been pending since the year 2013, is a very serious matter because they were meant to solve the discrimination and illegality created. The patients are purely and simply being oppressed. This was explained in detail in a report sent to the Minister for Health, the Prime Minister and Parliament in August 2015. Some of the Protocols refer to cancer drugs.

As yet there seems to be no end to this problem because the Ministry for Health is very reluctant to take any action. This, in spite of the fact, that Section 22 and 23 of the Ombudsman Act refer specifically to such an occurrence. The Ministry for Health seems to be taking advantage of the fact that the Office of the Ombudsman does not have executive powers.

An eminent statesman once said that it is not enough that one is proofed right but it is important that that right is acknowledged. This Office, in its Ombudsplan for 2018, declared that the citizen is informed of the Final Opinion that he/she is right but the right is not given because remedial action is not taken.

On another positive note, the recommendation made in 2013 for the procurement of treatment for Hepatitis C was implemented in 2018.

BRANDED MEDICINALS

The question of supply of branded medicinals has been going on at least since 2016. In Parliament on 27 October 2016, the Minister for Health had said *“those who for some specific reason cannot take generic medicines we will make special allowance for them”*.

On 1 December 2016, during a Business Breakfast held at the Hilton Hotel organised by the Malta Business Weekly in conjunction with the Ministry for Health, the Minister for Health is reported to have said *“in genuine cases where generics*

are less effective than branded medicine there are protocols for procurement of the latter. These protocols are being revised making access easier”.

On 27 February 2018, during a Seminar on Rare Disease the Deputy Prime Minister and Minister for Health is reported to have said *“dan il-Kumitat sa jkollu baġit ta’ €5.5 miljun fis-sena u se jkun qiegħed jevalwa wkoll talbiet għall-mediċini li m’humix fil-formularju tal-Gvern kif ukoll aċċess għall-mediċini branded f’każijiet eċċezzjonali”.*

The Committee mentioned by the Minister was set up after discussions were held by the Commissioner for Health with the Minister for Health.

Unfortunately the Committee – Exceptional Medicinal Treatment Committee (EMTC) – has moved the goal posts with the result that the subject became the medicinal and not the patient. In fact the answers being given to the patients read *“cannot be considered since there is a potentially high number of patients hence cannot be considered as exceptional”* and *“not according to the evaluation criteria of EMT policy – high potential for further similar cases”.*

The scope of the Committee was to scrutinise whether the patient’s particular case merited *“exceptional”* consideration and not the medicinal which was prescribed to him/her.

The Deputy Prime Minister and Minister for Health is committed to give certain patients the branded medicine but, the Department for Health with its attitude, did not honour the Minister’s statements. Another problem arose because the few cases that were approved by the EMTC were blocked by the Central Procurement and Supplies Unit (CPSU) within the same Ministry, which has refused to purchase the medicines claiming that the Unit is precluded by the Public Procurement Regulations to purchase branded medicinals.

From discussions held by this Office with the Department of Contracts it transpired that the Department for Contracts found no objection under certain conditions. However even though the conditions were met, CPSU is still refusing to proceed with the procurement. CPSU is adopting a Policy of one size fits all. This is a matter of grave concern because unless given the appropriate treatment patients will suffer the consequences.

PRELIMINARY INQUIRIES

During the year under review, the Commissioner for Health conducted a number of Preliminary inquiries:

1. Lack of ventilation on board buses;
2. Irrigation by treated water from sewage;
3. Care workers standing-in for Nurses (reply still awaited);
4. Emergency access and protection against fire in high rise buildings;
5. Employment in the Assisted Reproductive Technology sector;
6. Treatment for HIV (reply still awaited);
7. Maintenance of bridges and subways;
8. Donation of blood by homosexuals;
9. Registration of non-EU trained nurses;
10. Electromagnetic radiation (reply still awaited);

11. Disposal of medicines;
12. Treatment for Macular Degeneration (pending since 2016); and
13. Privatisation of Health Services (pending since 2016)

PRIVATISATION OF HEALTH SERVICES

The Contract signed between the Ministry for Health and Vitals was requested by the Commissioner for Health in 2016. The Ministry refused to submit the full text and instead sent a redacted version which was also tabled in Parliament. When Vitals passed on the concession to Steward Healthcare, this Office again asked for a copy of the new contract but no reply was forthcoming.

In January 2019, extracts of the contract were leaked and published in the local media and once again the full version was requested but the Ministry did not comply even though the Ombudsman Act gives such a right. The Commissioner for Health is of the opinion that the authority of the Ombudsman is being undermined.

CONCLUSION

During 2018 there has been a notable improvement regarding replies from the Ministry for Health. In all 111 cases were closed. However this should not lead to any relaxation because 41 cases were still pending on 31 December 2018¹.

As stated in the introduction, and throughout this report, the major problems to which there are no end in sight are those of:

- Protocols which the Ministry for Health has illegally created;
- the policy change which EMTC has adopted; and
- the non-supply of branded medicines where indicated.

These three issues are to the great detriment of the patients. Positive urgent resolution is strongly recommended.

This Office's criticism is done in good faith so that the Department of Health recognises its deficiencies and agrees to amend its ways. However, it not only continues to oppose such changes but it went a step further by making amendment to the Social Security Act which makes it more difficult for a patient to be given what is his/her by right.

¹ At the time of going to print (26 June 2019) the number of pending cases was 93 as follows: Department of Health 77 (30 in respect of 2019); Office of the Prime Minister 11; Parliament 2; Department of Social Security 2; Resource and Support Services Ltd (RSSL) 1.



APPENDICES

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN



APPENDIX 1

CODE OF ETHICS FOR THE OMBUDSMAN AND THE COMMISSIONERS IN THE OFFICE OF THE PARLIAMENTARY OMBUDSMAN.

Inspired by and modelled on 'The Code of Ethics for Members of the Judiciary', and including subsequent amendments and guidelines by the Chief Justice.

March 2018

PREAMBLE

This Code of Ethics is meant to guide the conduct of the Parliamentary Ombudsman, appointed in terms of the Ombudsman Act (Act No XXI of 1995), and the Commissioners for Administrative Investigations for specialised areas hereinafter called "Commissioners", appointed in terms of the Ombudsman (Amended) Act 2010 (Act No XVII of 2010).

This Code applies to the Parliamentary Ombudsman and the Commissioners and is binding on each one of them as applicable. This Code is being promulgated and published by the Ombudsman, after consulting the Commissioners, in terms of the powers given to him in sub-section 1 of Section 5 of Legal Notice 250 of 2012. This provides that "*In the exercise of their functions under the Act or any other law and these rules, it shall be the duty of Commissioners to comply with any Code of Practice and Procedure which the Ombudsman may from time to time set out for this purpose.*"

The Ombudsman and the Commissioners acknowledge that they are Officers of Parliament, accountable to it. They enjoy the security of tenure during their term of office meant to guarantee the independence and autonomy necessary for the proper exercise of their functions.

Their high office is comparable to that of Members of the Judiciary. Like them they are expected to conform to the highest ethical standards and to follow mandatory rules of good practice. It is for this reason that this Code

is inspired by and modelled on the Code of Ethics that govern the behaviour of Members of the Judiciary.

The aim of this Code is for the Ombudsman and the Commissioners to have rules set out, providing them with guidelines that expressly confirm the values represented by their high office which they are bound to adhere to. These values are also being brought to the attention of the public so as to strengthen trust in the administration of the Office of the Ombudsman. This trust cannot be maintained and reinforced if the Ombudsman and the Commissioners do not conform to this Code and if they fail to observe the highest standards of correct ethical behaviour. It also takes into account that the Office of the Ombudsman needs to ensure that the Ombudsman and the Commissioners have at their disposal all the necessary means and resources to enable them to carry out their duties efficiently and within a reasonable time.

It is understood and underlined, that the Ombudsman Act, together with the 2010 amendments and consequential subsidiary legislation, set out procedures that establish the manner in which the Ombudsman and the Commissioners are bound to exercise their functions. These contain legally-binding rules that regulate their conduct which they are bound to observe and follow. This Code is therefore to be read and applied in conjunction with the said laws and regulations, and any consequential subsidiary legislation made on their strength. In case of any conflict of interpretation between this Code and these laws and regulations, it is the latter that shall prevail.

This Code is meant as a guide to simplify, and further clarify, the correct parameters within which the Ombudsman and the Commissioners are expected to function, to ensure that their conduct is above reproach, and inspires confidence to guarantee the autonomous, impartial and authoritative service that the Office of the Parliamentary Ombudsman is expected to deliver.

RULES

1. The Ombudsman and the Commissioners shall perform their duties with competence, diligence and dedication.
2. The Ombudsman and the Commissioners shall seek to finalise investigations assigned to them within a reasonable time, taking into account all constraints, most particularly delay of replies from respective departments, relative to the respective case.

Within the limits of the exercise of their functions, they are to endeavour to secure, for all, the enjoyment of the right to a good public administration. They should strive to rectify injustice, suggest remedies against maladministration, prevent improper discrimination and curb abuse of power. However, it is emphasised that the Ombudsman and the Commissioners do not have executive powers.

3. The Ombudsman and the Commissioners should ensure, that during their investigations, the rules of due process to ensure a fair hearing are followed. Provisions regulating the conduct of investigations which are expressly

laid down in the Ombudsman Act and other relevant laws and regulations are to be scrupulously adhered to. Furthermore, the Ombudsman and the Commissioners are to ascertain that their decisions and opinions shall, whenever required, be duly motivated so as to enable a proper understanding of their reasoning.

4. The Ombudsman and the Commissioners undertake to follow established procedures meant to ensure a proper distribution of the investigation of complaints. In particular, Commissioners are to register all complaints received with the Registry of the Office of the Ombudsman. The Ombudsman will then assign complaints for investigation to the Commissioner or Commissioners who, in his opinion, can validly investigate their merits. The Commissioners recognise that the Ombudsman's decision in this respect is final and that they are duty bound to investigate complaints assigned to them.
5. The Ombudsman and the Commissioners shall carry out their duties with dignity, courtesy and humanity. In particular, they are to show respect towards complainants, public authorities as well as towards the public in order to ensure the orderly and decorous conduct of investigations.
6. The Ombudsman and the Commissioners shall at all times show respect towards their colleagues and particularly towards the final opinions they pronounce.
7. The Ombudsman and the Commissioners shall not, save in exceptionally serious circumstances, fail to exercise their duties as Ombudsman and Commissioners. Should this legitimate impediment last for some time, the Ombudsman shall be duly informed of this fact as well as of the cause thereof.
8. The Ombudsman and the Commissioners recognise that their Office is incompatible with the exercise of any professional, banking, commercial or trade union activity or other activity for profit or reward. They shall therefore not accept any post that could hinder them or restrict them in the full and correct performance of their duties. They shall not hold any position which is incompatible with the correct performance of their official duties or with their impartiality and independence or with public confidence therein. The Commissioners shall declare to the Ombudsman, and through him seek the approval of the Speaker of the House of Representatives, of any position, trust or membership which the Ombudsman considers does not affect their impartiality or independence and public confidence and which they desire to retain during their term of office.
9. The Ombudsman and the Commissioners have every right to administer their personal assets and belongings in the manner most beneficial to them. However, they shall not engage in any activity that is, by its very nature, incompatible with the office they hold.
10. Commissioners shall not hold any office or post, even though of a temporary, voluntary or honorary nature, and may not perform any activity which in the opinion of the Ombudsman was not compatible with existing legislation regulating their conduct or that may compromise or prejudice their position or their duties or functions.

11. The Commissioners shall inform the Ombudsman of any other post that they might hold both in Malta and overseas, be it remunerated or otherwise.
12. The Ombudsman and the Commissioners have a right to their private life. However, in this context, the Ombudsman and the Commissioners are to ensure that their conduct is consistent with their Office and that it does not tarnish their personal integrity and dignity which are indispensable for the performance of their duties.
13. The Ombudsman and the Commissioners shall not join organisations, associations or bodies with political leanings or which, in their nature or in the purpose of their existence, can be in conflict with their independence or impartiality. The Ombudsman and the Commissioners cannot, in any way neither show support, even by way of financial assistance, nor participate in activities of such organisations, associations or bodies.
14. The Ombudsman and the Commissioners shall not associate or show familiarity with persons or associations that could discredit the Office of the Ombudsman, the Ombudsman institution or the office they hold and should avoid any conduct that could give rise to public scandal. In their behaviour the Ombudsman and the Commissioners shall demonstrate respect for the law.
15. The Commissioners are to obtain, as required by law, the authorisation of the Ombudsman in writing before conducting an own initiative investigation. In the exercise of their functions, the Ombudsman and the Commissioners may, if they deem it necessary, consult another Commissioner or Commissioners within the Office of the Ombudsman, to obtain advice or to coordinate a common approach on matters of mutual interest. Working in a unified and integrated administrative structure, the Ombudsman and the Commissioners should endeavour to foster a healthy work environment that encourages team spirit in order to maximize the efficiency and efficacy of the service. To this end, the Ombudsman and the Commissioners should endeavour to participate fully in regular meetings held by the Ombudsman to discuss management, administrative matters, as well as issues of policy that require a common approach.
16. The Ombudsman and the Commissioners shall carry out their duties according to the dictates of their conscience, objectively and without fear, favour or prejudice and in keeping with the laws and customs of the land. Their final opinions shall be solely motivated by their legal and factual merits, equity and good administrative practice.
17. The Ombudsman and the Commissioners shall conduct themselves, during the exercise of their functions and elsewhere, in such a manner as not to put into doubt their independence and impartiality, or the independence and impartiality of the office they hold.
18. When a Commissioner conducts investigations or formulates opinions in conjunction with the Ombudsman or with the other Commissioners, he or she shall not, directly or indirectly, disclose to third parties his/her opinion or that of other Commissioners, who might have a different view.

19. The Ombudsman and the Commissioners are to conduct their investigations with confidentiality. They are not to divulge information acquired during the exercise of their functions unless as allowed by applicable legislation. They are free to communicate directly or indirectly with any of the parties involved in a case or their representatives, with a view to obtaining all the information essential for the determination of the complaint. They are also free to act as mediators between the complainant and the public authorities with a view to reaching an amicable and just resolution of the dispute.
20. The Ombudsman and the Commissioners shall not involve themselves in the investigation of a complaint in which they know there exists any one of the reasons for being challenged as is provided for in the Code of Organisation and Civil Procedure in the case of Judges and Magistrates, or where there exists a manifest danger or prejudice to a fair hearing. In all other cases they are bound not to abstain from their duty. In cases of doubt, a Commissioner is to refer the matter to the Ombudsman and his decision in this regard would be final.
21. The Ombudsman and the Commissioners shall not accept any gift, favour or benefit which might possibly influence them in the proper fulfilment of their duties or which might give an impression of improper conduct.
22. While the Ombudsman and the Commissioners are entitled to their own personal convictions, they are not in any way allowed to involve themselves, directly or indirectly, in political party activities of any kind. They shall not, whether in private or public life, act in such a manner as might imply political partiality.
23. In the exercise of their functions, the Ombudsman and the Commissioners may find it useful, proper and even necessary to maintain a dialogue between them and public authorities for the purpose of promoting measures to improve and sustain a good public administration. The Commissioners might find it opportune and useful to discuss with the Ombudsman the modalities of such a dialogue as well as any other matter connected with their duties or functions. The Ombudsman and the Commissioners shall not individually accept any advantage or benefit from public authorities except, if such advantages or benefits, are addressed to the Office of the Ombudsman as an Institution.
24. While retaining full autonomy and independence in the exercise of their functions, it is advisable that the Ombudsman and the Commissioners, when commenting or granting interviews to the media or speaking in public on matters of general concern, should avoid involving themselves in matters which constitute public controversy beyond what is strictly necessary for the proper performance of their duties. The Ombudsman and the Commissioners reserve the right to name and shame as necessary and to publicly express themselves on matters pertaining to a good public administration in so far as they are empowered to do so by the Ombudsman Act. In general, however, the Ombudsman and the Commissioners shall not seek publicity or the approval of the public or the media.

25. The Ombudsman shall, if and when necessary, issue guidelines for the Ombudsman and the Commissioners for the purpose of clarifying how any of the rules in this Code may apply to concrete cases and to ensure, as far as possible, uniformity in the implementation of the said rules.

GUIDELINES

(made pursuant to Rule 25 of the Code of Ethics for The Ombudsman and the Commissioners)

Introduction

These guidelines are intended to supplement the provisions of the code of Ethics for the Ombudsman and the Commissioners, hereinafter referred to as “the Code” by referring in more concrete terms to types of interest and activity which are most likely to occur and by recommending the proper course to be undertaken by the Ombudsman and the Commissioners. They are also intended to ensure uniformity, while respecting fully the autonomy and independence of the Ombudsman and the Commissioners in the exercise of their functions.

Financial interests

There is normally no objection to the Ombudsman and the Commissioners holding shares in a commercial company. However, they should not hold a commercial directorship, whether in a private or in a public company, irrespective of whether or not that directorship is remunerated. This applies even if the company is solely owned by the Ombudsman or by a Commissioner and his respective family.

Termination of professional and business contacts

The Ombudsman and the Commissioners are expected to terminate all professional and business contacts with their former partners and clients and to sever professional connections with their former office or chambers on taking up office, save to the extent that such contact may be necessary for practical purposes, such as the receipt of outstanding fees. The Ombudsman and the Commissioners are absolutely forbidden from undertaking new briefs or conducting any activity they were engaged in previously.

It is however recognised, that on taking office an Ombudsman and/or a Commissioner might require a short definite period within which to disengage himself/herself from his/her former professional activity. In particular, to avoid prejudice to his/her former clients or third parties. The length of this transition period and its modalities are to be determined by the Ombudsman and, when necessary, after consultation and with the approval of the Speaker of the House of Representatives as prescribed in the Ombudsman Act.

An Ombudsman and/or a Commissioner should not maintain an office or make use of office facilities in the premises of the partnership, firm or chambers with which he/she was formerly connected, and he/she should also bear in mind the need for discretion in the number and frequency of visits he/she makes there, even when these are of a social or personal nature. He/she is also to ensure

that his/her name is removed from the headed papers and other stationery of the partnership, firm or chambers.

Social, cultural and other activities

As a rule, the Ombudsman and the Commissioners may engage in historical, educational, cultural, sporting or social and recreational activities, if such activities do not detract from the dignity of the office or otherwise interfere with the performance of their duties; and for such purpose, the Ombudsman or a Commissioner may be a member of a historical, educational, cultural or sporting association. The same applies to charitable activities. However, membership of associations which involve or require regular meetings with persons who are actively engaged in the business sector or in politics should be undertaken with great caution. In case of doubt, the Ombudsman is to be consulted and his direction is to be followed.

Other than for honorary (that is, non-executive) posts, the Ombudsman and the Commissioners should not hold any post within an association, whether in Malta or abroad, where such association, directly or indirectly, requires fundraising from third parties not being members of that association, or which requires sponsorship solicitation, or which administers immovable property or other property of a substantial nature, or which is involved in commercial dealings, or an association which, by its very nature or purpose, involves the Ombudsman or a Commissioner in decision-making processes directly affecting, or likely to directly affect, the members of the association; or an association which is in receipt of funds from the Government or which is charged with the task of giving effect to Government policy in any field.

However, the Ombudsman and the Commissioners may hold an executive unremunerated post in an international association or network which is in receipt of such funding and which is set up to promote international Ombudsman co-operation. Again, in case of doubt, the Ombudsman should be consulted.

Since propriety, and the appearance of propriety, are essential to the performance of all the activities of the Ombudsman and the Commissioners, membership of 'social networking internet sites' is incompatible with their office.

Lecturing and writing

There is in principle no objection to the Ombudsman and the Commissioners speaking on technical matters relating to the public administration, which are unlikely to be controversial, at lectures and conferences organised by professional, academic and other similar non-profit organisations. Lectures and seminars which deal with matters of more general public interest may, however, raise wider issues of policy, sometimes not immediately apparent. The Ombudsman and the Commissioners will therefore wish to be cautious about speaking at these. Depending on circumstances, it could also be inappropriate for them to receive a fee for giving a lecture or otherwise conducting a conference or seminar. The same applies to lectures of a cultural nature. Commissioners are advised to consult the Ombudsman before accepting similar invitations and be guided by his direction.

The writing of books, articles in professional or academic journals, and the editing of textbooks are not, as a rule, incompatible with the holding of office. Technical books and articles do not normally give rise to difficulties. However, whilst acknowledging the Ombudsman's and the Commissioners' right to freedom of expression, it may sometimes be advisable for them to avoid writing on a subject of wider or more general public interest, or on a topic which is likely to be controversial.

The Ombudsman and the Commissioners should always ensure that writing or lecturing, whether occasional or otherwise, does not compromise their position with respect to any complaint, pending or likely to be pending, before them.

Masonic and secret associations

Membership of Masonic lodges and secret associations as well as membership of any association that requires a promise of allegiance from its members is incompatible with the Office of the Ombudsman and the Commissioners



APPENDIX 2

REPORT ON THE THREE EQUALITY BILLS BY PROF. KEVIN AQUILINA

30th April 2018

Mr Anthony Mifsud
Parliamentary Ombudsman
Office of the Ombudsman
11, St Paul Street
Valletta VLT 1210

REPORT ON THE THREE EQUALITY BILLS

I have pleasure in submitting for your consideration this brief report in relation to the three Bills submitted by government to your office in relation to the proposed establishment of a Human Rights and Equality Commission and enactment of an equality law.

1. *The Ombudsman's Contribution to the Debate on the National Human Rights Institution*

The Office of the Ombudsman had published two reports in relation to the establishment of a Maltese National Human Rights Institution. The first official publication by your Office, dated October 2013, consisted in a proposal to set up a National Human Rights Institution well before government began to address this matter. It was entitled: *The Setting up of a National Human Rights Institution: A proposal by the Office of the Parliamentary Ombudsman*.

Subsequent thereto, government took the lead on the matter and published a White Paper on the subject largely ignoring your first report's recommendations. Your Office published a follow up reaction report, which I fully endorse, consisting in a thorough and meticulous evaluation of the said White Paper. Your second report on the subject was published in July 2015 and was entitled *Reflections on the White Paper 'Towards the Establishment of the Human Rights and Equality Commission'*.

Government has in March 2018 passed on to your Office three Bills which are the subject of this report. Once again, government is moving in a different direction than that advocated by your Office in the aforesaid July 2015 report – the current National Human Rights Institution of Malta.

2. The Current Legal Scenario for the Protection of Human Rights and Equality Law in Malta

The history of human rights¹ in Malta – largely dates back to 1961 when the first set of civil and political rights were introduced in colonial times in the 1961 Constitution of Malta. In 1964 Malta became an independent state and its civil and political rights have since then been, and are henceforth, regulated by Chapter IV of the independence 1964 Constitution. In terms of article 46 thereof, the Civil Court, First Hall, presided by one judge – as the court of original jurisdiction – hears and determines civil and political rights' complaints with a right of appeal directly to the highest court in Malta, the Constitutional Court, composed of the Chief Justice and two senior judges. It is only these two courts which are empowered by the Constitution to adjudge upon human rights cases. Not even other courts are allowed by the Constitution to determine human rights disputes. Indeed, the Constitution reserves specifically jurisdiction over human rights to these two courts and none other even though the other courts are also presided by judges (e.g. sitting in the Court of Appeal, Court of Criminal Appeal, Criminal Court, Commercial Court, Family Court, etc.) or by Magistrates, who all enjoy independence and impartiality in terms of the Constitution and of law. When the Council of Europe's European Convention of Human Rights and Fundamental Freedoms was incorporated in 1987 into Maltese Law, it was, and still is, these same two courts of constitutional competence which adjudicate human rights disputes lodged thereunder.

Needless to say, the two competent human rights courts of constitutional competence – the Civil Court and, on appeal, the Constitutional Court – are totally independent from the other two organs of the state – the Legislature and the Executive – and have over time asserted their independence through the application of human rights provisions against the other two organs of the state. In the case of the legislature, the courts of constitutional competence have declared ordinary laws to contravene human rights while also finding policies and decisions of the government of the day to be in violation of the Constitution (and of the European Convention on Human Rights under the European Convention Act² which incorporates into Maltese Law the said Council of Europe Convention and Protocols, bar – at least at the moment of writing – Protocol 12).³

All this is done mainly because the judiciary are independent and enjoy security of tenure. Citizens and foreigners in Malta are comforted by the fact that should there be a breach, or a likelihood of a breach, of their human rights, they can proceed before an independent and impartial court which will afford them a right to a fair and public trial. It is therefore on the basis of the doctrines of the independence of the judiciary, the rule of law and the separation of

1 In this report, the expression 'human rights' is used to include also 'fundamental freedoms'.

2 Chapter 319 of the Laws of Malta.

3 One of the three bills, the Equality Bill, is proposing to incorporate ECHR Protocol 12 into the European Convention Act. Although Malta has ratified the said Protocol, it has not yet incorporated it into Maltese Law.

powers that the Maltese state is established by the Constitution of Malta, the supreme law of Malta.

On a quasi-judicial level the Constitution also establishes an Employment Commission to hear and determine cases of political discrimination and a Parliamentary Ombudsman – also an independent and impartial officer of Parliament – who receives complaints where the subject-matter of the investigation, according to article 22(1) of the Ombudsman Act –

- appears to have been contrary to law; or
- was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a law or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or
- was based wholly or partly on a mistake of law or fact; or
- was wrong’.

The Ombudsman is nevertheless precluded by law from overstepping onto the court’s jurisdiction when the latter is seized of a case. In that instance, the Ombudsman has to stay proceedings and await the final and conclusive outcome of the court’s deliberations. The courts, in turn, stay their proceedings when the Employment Commission is seized of a case.

There is also established by law, a National Commission for the Promotion of Equality between Men and Women. Similar to the Ombudsman, this Commission does not have any adjudicative functions. Its decisions are binding only if accepted by both the employer and employee.

As can be seen from the above, the protection of human rights and equality in Malta is primarily assigned by the Constitution – the highest law of Malta – to the two courts of constitutional competence and the Employment Commission as they have the function to decide and enforce their decisions. The Ombudsman does not enjoy such power as this constitutional and parliamentary office only draws up non-binding recommendations, persuasive and authoritative as they are and in large measure heeded to by the public administration. The National Commission for the Promotion of Equality between Men and Women also enjoys no executive power.

3. *The Proposed New Changes to Human Rights and Equality Law*

Government is proposing the enactment of three laws:

- (a) a law to alter the Constitution, modelled on the provision of the Ombudsman (article 64A of the Constitution) whereby the Human Rights and Equality Commission will be established by the Constitution (the Constitution of Malta Amendment Bill);
- (b) a law to grant equality rights and prohibit discrimination (the Equality Bill); and
- (c) a law to establish and regulate the Human Rights and Equality Commission.

3.1 *The Constitution of Malta (Amendment) Bill*

In so far as the first Bill mentioned in paragraph (a) above is concerned, a reading thereof conveys the impression that it was drafted not concomitant, by later therewith, to the drafting of the second and third Bills mentioned respectively in paragraphs (b) and (c) above. This is evident by the fact that the Commission is being established by both the first and third bills rather than by the first bill with the third regulating its composition, functions, etc. In the case of your Office, it is established by the Constitution and regulated by the Ombudsman Act, not established by the Constitution and by the Ombudsman Act. It does not make sense, from a legal drafting point of view, to establish one and the same office under two distinct laws. This, without a shred of doubt, serves to create confusion in the mind of the reader of the two Bills under examination and does not provide for certainty of the law.

It is, however, not the purpose of this report to indicate legislative drafting idiosyncrasies amongst the three bills *inter se* or with other extant legislation as that would require a study from the legislative drafting angle in its own right. Instead this report concentrates more on the potential breaches of human rights law as posed by the first and third bills and the inconsistencies and conflictual instances advanced by the first and third bills with the Constitution and ordinary law.

What is more of relevance in so far as the first bill is concerned is that the Human Rights and Equality Commission proposed to be established, in terms of the Constitution, by that Bill, 'shall have, *inter alia*, the function to investigate alleged cases relating to violations of human rights, and the right to equal treatment and non-discrimination'. Five inevitable reflections have to be pondered upon at this juncture.

- First, the functions of the Human Rights and Equality Commission are not exhaustively laid down in the first Bill when it proposes to amend the Constitution to establish the said Commission and bestow upon it constitutional functions. The words *inter alia* (meaning 'amongst other things') imply that ordinary law (including delegated legislation made by the competent Minister in terms of the third Bill) may confer further powers upon the Commission (whatever these might be) which could also include enforcement of non-first generation human rights or which, purely and simply, might contradict the current functions assigned by the third Bill to the Human Rights and Equality Commission (such as to act as an appellate body - in lieu of the Court of Appeal as currently proposed in the third Bill - from decisions of the Human Rights and Equality Board).
- Second, the Human Rights and Equality Commission can 'investigate alleged cases relating to violations of human rights, and the right to equal treatment and non-discrimination'. This therefore implies that the Human Rights and Equality Commission will have the function to investigate all cases of human rights violations whatever these might be, whether in relation to Chapter IV of the Constitution, the European Convention Act (incorporating the

ECHR and its Protocols into Maltese law) and other ordinary law where human rights are enshrined. In terms of the first Bill, the Human Rights and Equality Commission will enjoy the same functions as the courts of constitutional competence and the Employment Commission currently enjoy. As, in terms of the Constitution (and the European Convention Act), the courts of constitutional competence may decline to exercise jurisdiction in terms of article 46(2) of the Constitution and article 4(2) of the European Convention Act, when the courts are satisfied that adequate means of redress for the contravention of human rights exist, does this mean that: (i) the courts have lost their jurisdiction, in favour of the Human Rights and Equality Commission, to hear and determine human rights complaints?; and (ii) will this somehow affect the exercise of the right to individual petition to the European Court of Human Rights? Does it also make sense, from an institutional and organizational viewpoint, to have three different institutions (courts of constitutional competence, Employment Commission and the proposed Human Rights and Equality Commission determining the same subject-matter (human rights and equality) more so in the light of the principle of legal certainty and conflicting decisions which might emanate from these three organs on the same provision of the law? This point is of course being made without consideration of the additional financial burden on the state that the creation of new structures inevitably entails. Finally, will not the courts of constitutional competence lose, what article 46(2) of the Constitution and article 4(2) of the European Convention Act refer to as, their 'jurisdiction to hear and determine' human rights cases? Will not a conflict between two provisions of the Constitution arise when the first Bill is enacted into law? Will not the ordinary law – the second and third Bills – be considered to be in breach of the supremacy provision (article 6) of the Constitution once the human rights provisions of the Constitution (and of the European Convention Act) are superior to, hierarchically speaking, to the ordinary law as it is being proposed to be enacted by the second and third Bills?

- Third, it is not clear why 'the right to equal treatment and non-discrimination' is being singled out from the other human rights provisions in extant law (in particular, Chapter IV of the Constitution and the European Convention Act) more so when the human rights provision in Chapter IV of the Constitution already contemplate the prohibition of discrimination in article 45 and this latter provision is also supplemented by Article 14 of the ECHR as incorporated in the European Convention Act.
- Fourth, the first bill, in substance, consists of one clause. There is no provision contained therein establishing, let alone, regulating the independence and impartiality of the Human Rights and Equality Board established by the third bill, which board has decision making and executive powers. For one, I would have expected to learn what guarantees this clause is making to ensure that the Board complies with Article 6 of the ECHR and its corresponding article 39 provision in the Constitution. To my entire bemusement, I found

none. Indeed, whilst the Human Rights and Equality Commission will be entrenched in the Constitution by means of a two-thirds majority, nothing of the sort applies to the Board which will be established and regulated wholly by ordinary law – the third Bill. After all, it is the Human Rights and Equality Board – not the Commission – which will decide and enforce human rights and equality complaints.

- Fifth, once the Constitution will allow for the exercise of a parallel remedy for human rights and equality law breaches (one before the courts and/or Employment Commission; and one before the Human Rights and Equality Board), the situation will inevitably arise – in terms of Strasbourg case law – that the complainant before the Human Rights and Equality Board need not take his/her case before the courts of constitutional competence and/or the Employment Commission but might decide to petition directly the European Court of Human Rights without having had recourse to the Maltese courts of constitutional competence.

3.2 The Equality Bill

This report will not discuss in detail the second Bill, the one dealing with substantive equality rights, but will restrict itself to pointing out that due to the very loosely worded provisions in this Bill, legal certainty – itself a fundamental human right as acknowledged by the European Court of Human Rights in its judgments – is relegated to second class status. Whilst it is clear that this Bill transposes certain EU directives, it does not stop there but goes beyond that task and contributes to the uncertainty of legal interpretation of key terms and provisions contained therein. In relation to the EU directives, there is an authoritative European Court of Justice to interpret this terminology; in the case of the local additions there is no such body and there is no assurance that the additions will not run counter to EU law, or the ECHR, or the Constitution of Malta, bearing in mind that the government has published no human rights impact assessment and EU Law impact assessment of the three Bills under consideration. Moreover, the directives referred to in the long title of the Equality Bill are already transposed under Maltese Law. Hence equality is already regulated by EU Law and already transposed into Maltese Law. For instance, the definition of ‘discrimination’ contained in the second Bill does not follow neither the definition of the European Convention on Human Rights nor that of the Constitution but introduces a third variant.

Further, Malta already prohibits discrimination in several laws such as in the Constitution of Malta (where the right not to discriminate is a right in itself); in the European Convention Act (which incorporates into Maltese law, since 1987, the Council of Europe’s Convention on Human Rights and Fundamental Freedoms, including the right against discrimination); the Ombudsman Act and other special legislation. As stated above, there are already three institutions of the state – the courts, the Employment Commission and the Ombudsman – that are tasked with hearing/receiving/recommending upon, and in the case of the former two of determining, human rights complaints. In addition, does

it make sense, from the perspective of the integrity and consistency of the Statute Book, to have three different definitions of 'discrimination', one in the Constitution, one in the ECHR and one in the second Bill? Will not this amount to over-regulation and legal uncertainty?

There are other human rights issues which can be raised such as the presumption of innocence. With the shifting of the burden of proof upon employers, will the presumption of innocence of the accused employer be adversely affected such that s/he will end up having to prove his/her own innocence or found guilty by association?

3.3 The Human Rights and Equality Commission Bill

The first and third Bills propose to establish a parallel Commission which will simply serve to duplicate the functions and jurisdiction of the current three constitutional state entities referred to above, that is, the two courts of constitutional competence, the Employment Commission and the Ombudsman. By making the decisions of the Human Rights and Equality Board binding on the public administration and the private sector, the end result is that human rights and equality complaints may no longer be referred to these three constitutional state institutions but to the new Human Rights and Equality Board. Now, of course, it can be argued that the more state institutions exist to grant remedies to the citizen from government abuse, the better for the citizen so that, hopefully, if s/he has a valid case, then that case will sometime be decided in his/her favour and a remedy afforded in a timely manner. This might be true. But the difficulty with the third Bill is that it will take over the human rights and equality functions of the courts, Employment Commission and the Ombudsman, replicate extant structures, place additional financial burdens on government coffers and create confusion in people's minds who will not understand before which state institution they ought to proceed with their complaint.

In so far as your Office is concerned, who will seek redress before the Ombudsman when s/he knows that this institution - in conformity with the Paris NHRI Principles - only makes non-binding recommendations to the public administration and does not decide complaints when the new Human Rights and Equality Board will not only decide but even enforce its own decisions? In this respect, the third Bill very much sounds the death knell of the Ombudsman's office. As to the courts and Employment Commission, a complainant might prefer to have recourse to the Human Rights and Equality Board to by-pass the formalities of these two constitutional organs, hopefully get a faster decision, avoid paying heftier court fees, have it enforced in the nick of time, do away with complex long winded judicial procedures and, due to the lack of independence, impartiality and expertise of the Commission's Board dealing with such complaints, hoping to be able to convince the Board to interpret human rights and equality in a way well beyond that ordinarily recognised by the competent courts. Combined with the wide meaning of the terms used in the second Bill, legal uncertainty might prevail. These conclusions are arrived at from an analysis of the second and third bills read in conjunction together.

3.3.1 *Points to Ponder Upon*

Just to give some examples of the difficulties these bills pose, the following instances – which are only by way of illustration and not intended to be a comprehensive list of problems the third Bill raises – will be referred to below:

- The Human Rights and Equality Commissioner is appointed by the President acting in accordance with a resolution of the House of Representatives whose nomination is supported by not less than two-thirds of all the members of the House. The other members are appointed by a simple majority vote. The Commissioner need not be well versed in Human Rights Law and Equality Law as one would have expected. There is no requirement that s/he should have had practiced law for twelve years as is the case with prospective judges. Nor is the Commissioner subjected to a vetting exercise for compliance with a set of pre-established criteria by the Judicial Appointments Committee. The criteria for appointment tend to stress more human rights administration thereof (clause 5(2)(a)), commitment thereto (clause 5(2)(b)) and advocacy therefor (clause 5(2)(c)) rather than human rights law expertise. Hence, provided that the Commissioner obtains the vote of two-thirds of the members of the House of Representatives any person who is not debarred by clause 7 may be so appointed, irrespective of whether s/he enjoys any qualification/s and expertise in law, in particular, human rights law. Additional criteria which the law sets out is that the Commission – and the Commissioner is the one who heads it – has to be composed ‘as far as possible, of a balanced, wide and pluralist representation of Maltese society’. Although this is commendable, there should also be a provision in addition thereto requiring proven expertise in Human Rights Law and Equality Law.
- Although the said Commissioner is appointed by the President of Malta on the basis of at least a two-thirds majority vote in the House of Representatives, s/he may be removed by the President in terms of a simple majority vote in the House. Essentially, this means that the Commissioner has no security of tenure. Once s/he decides a case not to the government’s liking, s/he is out of a job, dismissed irrevocably at government’s pleasure. One of the reasons for removal is that the Commissioner ‘is unfit to continue in office’. It is government that decides when such Commissioner has become ‘unfit to continue in office’. Deciding citizen complaints against the public administration might be construed by the government to amount to such unfitness bearing the vagueness of the term used.
- The Commissioner, who need not be well versed in Human Rights Law and Equality Law, chairs the Human Rights and Equality Board. The Board has four members in addition to the Commissioner of which only one has to hold a degree in law and have experience in issues relating to human rights and the principle of equal treatment. Moreover the degree in law is not specified and nor is it required to be in Human Rights Law and/or Equality Law. Hence a degree in Commercial Law or IT Law suffices. Nor is the level of the degree

set out: should it be an undergraduate certificate, diploma or degree, a post-graduate diploma, a master's degree, or a doctorate? Nor does the degree need to be in Maltese Law or at least contain an amount of knowledge of Maltese Law pertinent to human rights and equality law. The other three members essentially hail from the advocacy field: 'Three other persons who shall be suited to deal with issues relating to human rights and the principle of equal treatment, having professional experience in working within the human rights sector for at least five years'.

- Apart from the fact that the chair of the Commission and three of its four members need not be well versed in Human Rights Law and Equality Law, the Human Rights and Equality Board enjoys no independence from the Commission which appoints it and from government.
- The quorum of the Board is four (clause 23(5)). This means that when the Board is hearing a complaint, not all members need be present. The absent member may however partake in the decision making process.
- When the Chair (the Commissioner) is unable or perform his/her functions of office, s/he is substituted by the Deputy Commissioner. This means that if the Chair cannot attend for one meeting over a number of sittings when hearing one case, the Deputy Chair may cast his/her vote even if s/he attends the last meeting without being properly briefed of the case. Further, the Deputy Chair may attend one meeting instead of the Chair and might not have the same opinion of the Chair. Further, it all depends who of the two attends the final meeting when the decision is taken which is vital for the decision making process.
- Although the Human Rights and Equality Board is partial, does not enjoy independence and does not boast of expertise in human rights law and equality law apart, possibly, from one member thereof, it is tasked to take decisions requiring the cessation or prevention of any infringement of human rights or of the right to equal treatment and non-discrimination in accordance with the provisions of this Act and the Equality Act. It is thus the Board which will henceforth in Malta decide human rights and equality complaints, parallel with the courts, Employment Commission or the Ombudsman, with the attendant difficulties posed to legal certainty in the state's jurisprudence in relation to human rights law and equality law.
- The Board is also tasked to 'receive requests by the Commission formally requesting the Board to commence investigations on a specific matter in accordance with article 15 of this Act'. Article 15 states that where 'the Commission has reasonable suspicion of a breach of a human right and, or of the principle of equal treatment and non-discrimination, it may request the Board to initiate investigations on the matter'. Hence, the Commissioner as Chair of the Commission first makes a *prime facie* appraisal of guilt and then, as Chair of the Human Rights and Equality Board, in breach of human rights law and impartiality, passes on to investigate what s/he had already decided upon in another forum (the Commission).

- The Human Rights and Equality Board is empowered to refuse to investigate or investigate further certain complaints in terms of clause 28(1). However, this Board is so much independent from the Commission that if the latter requests it to investigate a complaint, the Board may not and cannot refuse to investigate such complaint in terms of clause 15, irrespective of whether it had previously arrived at such a determination.
- Clause 19 states that 'the Commission may file an application against the Attorney General before the First Hall of the Civil Court in its Constitutional Jurisdiction where it is of the opinion that a legislative provision is unconstitutional, or is contrary to the provisions of the Equality Act'. Apart from the fact that article 116 of the Constitution has since 1964 already allowed for the institution of a court case to declare a law to be in breach of the Constitution, clause 31(3) of the Equality Bill has a different provision: 'If any conflict relating to a matter dealt with in this Act [the Equality Act] arises between this Act and the provisions of any other law other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act must prevail'. What is the need of two clauses in ordinary law on the same subject-matter? Does not this procure uncertainty in the law? Moreover, if the other law happens to be the European Convention Act or the European Union Act, then the Equality Act prevails over the ECHR and its Protocols and European Union Law! This would be in breach of Malta's international obligations unless, of course, it opts to denounce the ECHR and Maltexit the European Union!
- The Board has the power to enter premises and seek evidence therein subject to 'legal privilege'. The words 'legal privilege' are undefined. Are they limited only to professional legal secrecy? Do they include official secrecy? Does the Board have a right to search a journalist's office or home to arrive at the identity of informers much required by the government of the day to take punitive action against them?
- The Board cannot, without the consent of the Commission join two or more cases for hearing and determination (clause 28(2)). Where is the Board's independence here from the Commission?
- The Board cannot investigate 'any issues of general interest contained in a complaint' (clause 28(2)). Where is the Board's independence here from the Commission?
- There is no provision which states what happens where both the Board and the courts are seized of an identical case. Who would enjoy jurisdiction?
- There is no obligation to hear the parties viva voce. Persons are summoned to produce documents and give evidence but the proceedings are inquisitorial not adversarial. What happens to all the guarantees of a fair trial enshrined in Article 6 of the ECHR and article 39 of the Constitution?
- Although no hearing is afforded, the Board may impose damages up to 10,000 Euro and, also without a hearing, the Board may impose a maximum penalty of 20,000 euro together with a maximum 500 euro daily fine. All this is done in breach of all the safeguards of Article 6 of the ECHR and

its corresponding article 39 in the Constitution of Malta. These damages, penalties and fines, although administrative in nature might well be, in terms of Strasbourg case law, considered to be of a criminal nature. If they are of a criminal nature, then it is imperative that all the safeguards of Article 6 / article 39 aforesaid are complied with to the letter.

- Although human rights cases are assigned by the Constitution to be dealt with by the courts of constitutional competence, clause 42 of the third Bill assigns appeals from decisions of the Human Rights and Equality Board to the Court of Appeal (Superior Jurisdiction). Needless to say that this provision, like others commented above, breaches the Constitution of Malta and will inevitably be struck down at the very first opportunity by the Constitutional Court as unconstitutional. The Court of Appeal, in terms of the Constitution, does not have any competence in human rights and equality matters. Once the third Bill runs counter to the Constitution, this part of the Bill is unconstitutional and null and void to the extent of the inconsistency. Put plainly, the third Bill violates the supremacy of the Constitution over ordinary law.
- The long title of the third Bill states that the bill provides ‘for the establishment of a body to be known as the Human Rights and Equality Commission in line with the Principles relating to the Status of National Institutions (The Paris Principles)’. However, a reading of the Paris Principles indicates that they do not recommend that the institution to be established thereunder should be self-enforcing. On the contrary, it envisages a consultative/advisory body, very much on the lines of the current Office of the Ombudsman which squarely and roundly falls under the Paris Principles.
- Clause 3(2) of the third Bill states that the Commission, ‘subject to the provisions of this Act, shall perform its functions with impartiality and independence’. The words ‘Subject to the provisions of this Act’ therefore convey the meaning that the third Bill allows and sanctions situations where the Commission is partial and/or dependent. Worst still, there is no such enunciation of impartiality and independence in so far as the Human Rights and Equality Board is concerned. This therefore implies that the Board is by law partial and dependent.
- Clause 3(3) provides that the Commission ‘shall not be subject to the direction or control of any other person or authority’. But there is no corresponding provision in relation to the Human Rights and Equality Board. Does this mean that Parliament, government and the Commission may give directions or control the decision making process of the Board?
- The definition of the expression ‘human rights’ in clause 2 extends to ‘those principles and, or practices recognised by the jurisprudence of the Maltese and international courts’. This is quite a confusing provision which topples on its head legal certainty. First, there are instances where national courts disagree with international courts. Malta’s abysmal record at the ECHR is a case in point. Second, there are instances where the national courts pronounce themselves in a conflicting way. Third, to which ‘international

courts' is reference being made? Does this term also include case law of 'international courts' to which Malta is not a party such as the Inter-American Court of Human Rights? Finally, if there is a conflict between the written law and court judgments, which one is to prevail? This provision simply enshrines legal uncertainty in the statute book.

4. Conclusion

In sum the three Bills pose the following difficulties:

- the amendments are, in certain parts, unconstitutional in so far as it is the courts of constitutional competence and the Employment Commission which are granted jurisdiction to decide upon human rights (including equality and non-discrimination) complaints and such provisions are entrenched by at least a two-thirds majority vote of the members of the House of Representatives;
- the vast remedies that the courts of constitutional competence can grant for a breach of human rights are very broad indeed and incomparable to those afforded by the Human Rights and Equality Board. In this respect, it is questioned how effective the latter remedies are and what is the whole purpose to establish a Human Rights and Equality Board with very limited satisfaction powers. Further, the proposed Bills limit access to the courts – a human right in itself – whilst politely ousting the courts of constitutional competence's jurisdiction in relation to human rights and equality complaints;
- the judiciary are independent, protected by law, enjoy security of tenure and are impartial - both real and perceived. They enjoy all the safeguards of Article 6 ECHR / article 39 of the Constitution. The same argument cannot be put for the Human Rights and Equality Board which is neither independent nor impartial, does not enjoy security of tenure and does not afford respect for the fair trial guarantees of Article 6 / article 39;
- there is no mandatory requirement that the Human Rights and Equality Board holds its proceedings in an adversarial manner, hears parties viva voca and in both parties' mutual presence, and in open court. The right to a public trial is also breached due to the inquisitorial set out adopted devoid of respect to the right to a fair and public trial;
- there is no requirement that the parties appear in person or through a representative of their own choice; no provision for legal aid; no requirement for oral and written pleadings; no right to examine and cross examine witnesses and verify documentation submitted before the Board; witnesses appear to be allowed to give evidence in camera, in the absence of the parties; parties do not have a right to access the Board's file;
- there are grave reasons to legitimately raise the doubt that there is little to no compliance with the constitutional doctrines of the supremacy of the Constitution; separation of powers; rule of law; independence of the judiciary; accountability and openness of proceedings; good governance; financial propriety;

- duplication of extant structures, from the viewpoint of good governance and financial propriety should be shunned away from not encouraged;
- legal certainty is the exception in the Bills not the guiding force: there will be over-duplication of structures replicating each other churning out different, contrasting and conflicting decisions in relation to the same subject-matter;
- no human rights and EU impact assessment has been carried out to ensure compliance with ECHR and EU law;
- from a purely legislative drafting point of view, the three Bills leave much to be desired and need extensive rewriting.

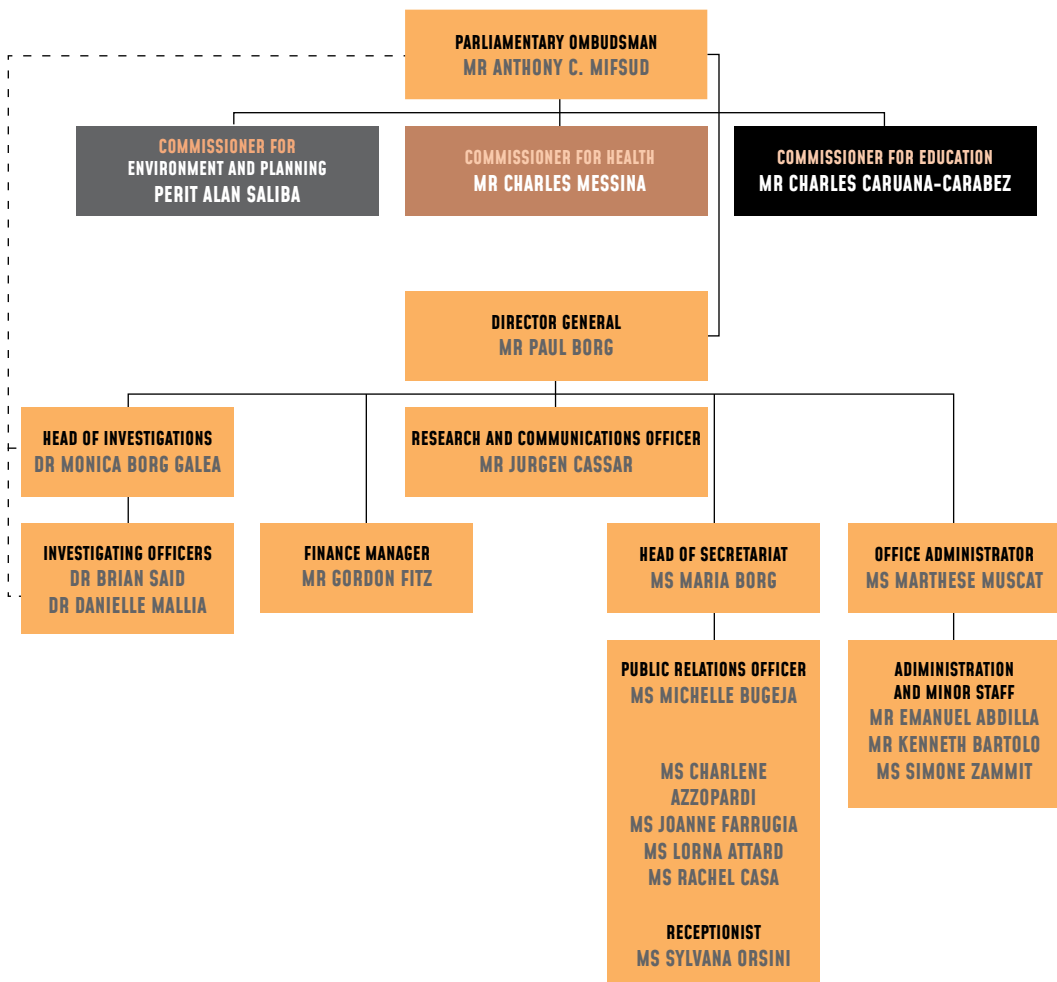
In a nutshell, the three Bills under consideration do raise serious constitutional, legal and drafting issues which, undoubtedly, need addressing. The three bills are, from a legislative drafting viewpoint ill-drafted, inconsistent, conflictual with extant law, unconstitutional, and in breach of human rights, in particular the right to a fair and public trial. Unless all these matters are addressed they will end up to be a judge's nightmare, a lawyer's minefield and a citizen's quagmire, provoking multiple court litigation largely due to the total drafting inadequacies of these three bills.

Professor Kevin Aquilina
Ph.D. (Lond.)(L.S.E.), LL.D.
(Melit.), LL.M. (IMLI)
Dean, Faculty of Laws
University of Malta

APPENDIX 3

STAFF ORGANISATION CHART

ORGANIGRAM AS AT 31 DEC 2018



LEGEND

— ADMINISTRATIVE RELATIONSHIP

- - - - FUNCTIONAL RELATIONSHIP



APPENDIX 4

REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2018

STATEMENT OF RESPONSIBILITIES OF THE OFFICE OF THE OMBUDSMAN

The function of the Office of the Ombudsman is to investigate any action taken in the exercise of administrative functions by or on behalf of the Government, or other authority, body or person to whom the Ombudsman Act 1995 applies. The Ombudsman may conduct any such investigation on his initiative or on the written complaint of any person having an interest and who claims to have been aggrieved.

The Office of the Ombudsman is responsible for ensuring that:

- proper accounting records are kept of all transactions entered into by the Office, and of its assets and liabilities;
- adequate controls and procedures are in place for safeguarding the assets of the Office, and the prevention and detection of fraud and other irregularities.

The Office is responsible to prepare accounts for each financial year which give a true and fair view of the state of affairs as at the end of the financial year and of the income and expenditure for that period.

In preparing the accounts, the Office is responsible to ensure that:

- Appropriate accounting policies are selected and applied consistently;
- Any judgments and estimates made are reasonable and prudent;
- International Financial Reporting Standards are followed;
- The financial statements are prepared on the going concern basis unless this is considered inappropriate.



Paul Borg
Director General



Gordon Fitz
Finance Manager



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Report of the Auditor General

To the Office of the Ombudsman

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Ombudsman set out on pages 5 to 16, which comprise the statement of financial position as at 31 December 2018, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

The Office of the Ombudsman's responsibility for the financial statements

The Office of the Ombudsman is responsible for the preparation of financial statements that give a true and fair view in accordance with International Financial Reporting Standards as adopted by the European Union, and for such internal control as the Office of the Ombudsman determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the preparation of financial statements of the Office that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal control of the Office. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Office of the Ombudsman, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the financial position of the Office of the Ombudsman as at 31 December 2018, and of its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with the Office of the Ombudsman Act, 1995.


Auditor General

29 April 2019

STATEMENT OF COMPREHENSIVE INCOME

	Schedule	2018 €	2017 €
Income			
Government grant		1,150,000	1,200,000
Non-operating income (note 3)		116	94
		1,150,116	1,200,094
Expenditure			
Personal Emoluments (note 4)		(984,367)	(891,156)
Administrative and other expenses	1	(239,274)	(236,782)
		(1,223,641)	(1,127,938)
Total Comprehensive (Outflow)/Income for the year		(73,525)	72,156

STATEMENT OF FINANCIAL POSITION

	Notes	2018 €	2017 €
ASSETS			
Non-current assets			
Property, Plant and Equipment	5	703,923	793,524
Current assets			
Receivables	6	16,592	17,801
Cash and cash equivalents	7	213,147	195,410
		229,739	213,211
Total assets		933,662	1,006,735
EQUITY AND LIABILITIES			
Accumulated surplus		927,900	1,001,425
Payables	8	5,762	5,310
Total Equity and Liabilities		933,662	1,006,735

The financial statements on pages 5 to 16 were approved by the Office of the Ombudsman on 3rd February 2019 and were signed on its behalf by:



Paul Borg
Director General



Gordon Fitz
Finance Officer

STATEMENT OF CHANGES IN EQUITY

	Accumulated Fund Total €
At 1 January 2017	929,269
Statement of Comprehensive income	
Profit for the year	72,156
At 31 December 2017	1,001,425
Statement of Comprehensive income	(73,525)
Deficit for the year (page 5)	
At 31 December 2018	927,900

STATEMENT OF CASH FLOWS

	2018	2017
Notes	€	€
Cash flows from Operating activities		
(Loss)/Surplus for the year	(73,525)	72,156
Depreciation	97,853	101,604
Loss on disposal of tangible fixed assets	165	92
Non-operating income	(116)	(94)
Operating surplus before working capital changes	24,377	173,758
(Increase) in receivables	1,209	(2,791)
Increase / (Decrease) in payables	452	(33,344)
Net cash generated from operating activities	26,038	137,623
Cash flows from Investing activities		
Payments to acquire tangible fixed assets	(8,417)	(31,415)
Non-operating income	116	94
Net cash used in investing activities	(8,301)	(31,321)
Net increase in cash and cash equivalents	17,737	106,302
Cash and cash equivalents at beginning of year	195,410	89,108
Cash and cash equivalents at end of year	213,147	195,410

NOTES TO THE FINANCIAL STATEMENTS

1 Legal Status

In 1995, the Maltese Parliament enacted the Ombudsman Act and established the organization and functions of the Office of the Ombudsman. The main objective of the Office of the Ombudsman is to investigate complaints by the public against any action taken in the exercise of administrative functions by or on behalf of the Government or other authority, body or person to whom the Ombudsman Act 1995 applies. The Office of the Ombudsman is situated at 11, St Paul's Street, Valletta.

These financial statements were approved for issue by the Finance Manager and Director General on the 3rd February 2019.

2 Summary of significant accounting policies

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated

Basis of preparation

The financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS) and their interpretations adopted by the International Accounting Standards Board (IASB). The financial statements have been prepared under the historical cost convention.

The preparation of financial statements in conformity with IFRS requires the use of certain critical accounting estimates. Estimates and judgements are continually evaluated and based on historic experience and other factors including expectations for future events that are believed to be reasonable under the circumstances.

In the opinion of the Finance Manager and the Director General, the accounting estimates and judgements made in the course of preparing these financial statements are not difficult, subject or complex to a degree which would warrant their description as critical in terms of requirements of IAS 1. The principal accounting policies are set out below:

Materiality and aggregation

Similar transactions, but which are material in nature are separately disclosed. On the other hand, items of dissimilar nature or function are only aggregated and included under the same heading, when these are immaterial.

New and revised standards

During the year under review, the Office of the Ombudsman has adopted a number of standards and interpretations issued by the IASB and the International Financial Reporting Interpretations Committee, and endorsed by the European Union. The Office of the Ombudsman is of the opinion that

the adoption of these standards and interpretations did not have a material impact on the financial statements.

There have been no instances of early adoption of standards and interpretations ahead of their effective date. At the date of statement of financial position, certain new standards and interpretations were in issue and endorsed by the European Union, but not yet effective for the current financial year. The Office of the Ombudsman anticipates that the initial application of the new standards and interpretation on 1 January 2012 will not have a material impact on the financial statements.

Property, plant and equipment (PPE)

Property, plant and equipment are stated at historical cost less accumulated depreciation and impairment losses. The cost of an item of property, plant and equipment is recognized as an asset if it is probable that future economic benefits associated with the item will flow to the group and the cost of the item can be measured reliably.

Subsequent costs are included in the asset's carrying amount or recognized as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the group and the cost of the item can be measured reliably. The carrying amount of the replaced part is derecognized. All other repairs and maintenance are charged to the income statement during the financial period in which they are incurred.

Depreciation commences when the depreciable amounts are available for use and is charged to the statement of comprehensive income so as to write off the cost, less any estimated residual value, over their estimated lives, using the straight-line method, on the following bases.

	%
Property improvements	7
Office equipment	20
Computer equipment	25
Computer software	25
Furniture & fittings	10
Motor vehicles	20
Air conditioners	17

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount. The carrying amount of an item of PPE is de-recognised on disposal or when no future economic benefits are expected from its use or disposal. The gain or loss arising from derecognition of an item of PPE are included in the profit and loss account when the item is de-recognised.

Receivables

Receivables are stated at their net realizable values after writing off any known bad debts and providing for any debts considered doubtful.

Cash and Cash equivalents

Cash and cash equivalents are carried in the Statement of Financial Position at face value. For the purposes of the cash flow statement, cash and cash equivalents comprise cash in hand and deposits held at call with banks.

Payables

Payables are carried at cost which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Office.

Revenue recognition

Revenue from government grants is recognised at fair value upon receipt. Other income consists of bank interest receivable.

Foreign currencies

Items included in the financial statements are measured using the currency of the primary economic environment in which the Office operates. These financial statements are presented in €, which is the Council's functional and presentation currency.

Transactions denominated in foreign currencies are translated into € at the rates of exchange in operation on the dates of transactions. Monetary assets and liabilities expressed in foreign currencies are translated into € at the rates of exchange prevailing at the date of the Statement of Financial Position.

Critical Accounting Estimates and Judgements

Estimates and judgements are continually evaluated and based on historical experience and other factors including expectations of future events that are believed to be reasonable under the circumstances. In the opinion of the Finance Officer, the accounting estimates and judgements made in the preparation of the Financial Statements are not difficult, subjective or complex, to a degree that would warrant their description as critical in terms of the requirements of IAS 1 – 'Presentation of Financial Statements'.

Capital Management

The Office's capital consists of its net assets, including working capital, represented by its retained funds. The Office's management objectives are to ensure:

- that the Office's ability to continue as a going concern is still valid and
- that the Office maintains a positive working capital ratio.

To achieve the above, the Office carries out a quarterly review of the working capital ratio ('Financial Situation Indicator'). This ratio was positive at the reporting date and has not changed significantly from the previous year. The Office also uses budgets and business plans to set its strategy to optimize its use of available funds and implements its commitments.

3 Non-operating income

	2018	2017
	€	€
Bank interest receivable	88	91
Other	28	3
	116	94

4.1 Personal Emoluments

Wages and salaries	948,829	857,924
Social security costs	35,538	33,232
	984,367	891,156

4.2 Average No. of Employees

24	25
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NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

5i. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2018	895,243	32,426	29,452	42,607	60,457	118,445	104,131	1,282,761
Additions	377	1,404	2,400	1,164	-	3,072	-	8,417
Disposals	-	(198)	(245)	-	-	(759)	-	(1,202)
At 31 December 2018	895,620	33,632	31,607	43,771	60,457	120,758	104,131	1,289,976
Depreciation								
At 1 January 2018	227,435	20,649	26,268	42,398	37,935	71,182	63,370	489,237
Charge for the year	58,810	4,536	2,266	448	7,792	7,873	16,128	97,853
Release on disposals	-	(118)	(245)	-	-	(674)	-	(1,037)
At 31 December 2018	286,245	25,067	28,289	42,846	45,727	78,381	79,498	586,053
Net book value								
At 31 December 2018	609,375	8,565	3,318	925	14,730	42,377	24,633	703,923

5ii. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2017	897,743	28,986	27,949	44,936	52,259	117,365	104,131	1,273,369
Additions	(2,500)	5,982	1,632	-	24,550	1,751	-	31,415
Disposals	-	(2,542)	(129)	(2,329)	(16,352)	(671)	-	(22,023)
At 31 December 2017	895,243	32,426	29,452	42,607	60,457	118,445	104,131	1,282,761
Depreciation								
At 1 January 2017	167,752	18,671	24,022	41,379	46,495	64,004	47,241	409,564
Charge for the year	59,683	4,520	2,375	3,348	7,792	7,757	16,129	101,604
Release on disposals	-	(2,542)	(129)	(2,329)	(16,352)	(579)	-	(21,931)
At 31 December 2017	227,435	20,649	26,268	42,398	37,935	71,182	63,370	489,237
Net book value								
At 31 December 2017	667,808	11,777	3,184	209	22,522	47,263	40,761	793,524

6 Receivables

	2018	2017
	€	€
Bank Interest receivable	-	13
Stocks (stationery)	11,983	13,341
Trade receivables	281	-
Prepayments	4,328	4,447
	16,592	17,801

7 Cash and Cash Equivalents

Cash and cash equivalents consist of cash in hand and balances in bank. Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

	2018	2017
	€	€
Cash at bank	212,389	194,692
Cash in hand	759	718
	213,147	195,410

8 Payables

	2018	2017
	€	€
Trade payables	597	688
Accruals	5,165	4,622
	5,762	5,310

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables.

9 Fair values

At 31 December 2018 the fair values of assets and liabilities were not materially different from their carrying amounts.

SCHEDULE

Administrative and other expenses

	2018	2017
	€	€
Utilities	15,974	16,566
Materials and supplies	7,379	7,629
Repair and upkeep expenses	6,635	6,616
Rent	8,016	8,016
International membership	1,850	1,893
Office services	7,557	6,799
Transport costs	12,267	11,012
Traveling costs	14,796	15,984
Information Services	7,445	7,454
Outreach	2,950	3,995
Contractual Services	35,872	45,114
Professional Services	15,513	1,852
Training expenses	4,361	763
Hospitality	365	1,032
Bank charges	276	361
Depreciation	97,853	101,604
Disposals	165	92
	239,274	236,732

