

## Report on Case No CEDUC-23-4196

### *The complaint*

1. The complaint, received by the Office of the Ombudsman on the 28th November 2023, was made by a non-academic member of staff of the Malta College of Arts, Science and Technology.

2. The complainant's grievance concerns the outcome of the interview for the post of Human Resources Director at MCAST which was held on the 13th of September 2023. The complainant alleged that he was unfairly treated in the course of the interview by being given low marks (in fact he did not obtain the required pass mark). He attributes this to the fact that from roughly June 2021 onwards he had been given a rough time by the College authorities because he had been pointing out to them various irregularities in administrative procedures the College had undertaken.

3. Apart from the very low marks obtained in the interview, the complainant also alleged unfairness because of the fact that two members of the interviewing panel – the College Principal and the Deputy Principal Administration – had worked “too closely” with him and that therefore they could not have “an unbiased opinion” of him. Moreover, he also specifically complained that when he appealed the results of the interview, two of the three members of the Appeals Board were MCAST senior management team members: one was a Deputy Principal, whose direct line manager is the Principal of MCAST himself; the other member was a Director of an Institute, whose definite

contract of employment renewal was, in practice, at the Principal's discretion. This, the complainant alleged, constituted procedural unfairness.

### *The investigation and findings*

4. The undersigned Commissioner obtained all the necessary information and documentation from the MCAST administration which – the undersigned hastens to add – co-operated fully in the investigation and was forthcoming with whatever was requested from it. The information obtained included the detailed allocation of marks, under several heads, in respect of all seven applicants for the post and as given by each member of the interviewing panel. From a careful analysis of these marks, and in the context of other information available, no objective evidence of unfairness or of any malpractice could be discerned. Suffice it to point out that out of the seven applicants, only three obtained a pass mark (and were duly ranked first, second and third), while the other four (including the complainant) failed to make the grade. Of these four, the complainant obtained the highest, albeit failing, mark.

5. Since such interviews are not video-recorded, no account could be taken of how questions were put to each of the seven candidates or applicants, in order to assess, for instance, whether each one was asked substantially the same questions to ensure as much as possible a level playing field, or whether any specious or misleading questions were put. This is, unfortunately, a recurring issue with complaints levelled at MCAST in connection with interviews for both administrative and academic posts – the conduct of the interviewing board or panel can never be properly assessed *ex post facto*. This invariably raises lingering doubts in everyone.

6. As to the alleged subjective bias due to the fact that two of the three members of the interviewing panel were the College Principal and the Deputy Principal Administration, the undersigned observes that it is standard practice in all recruitment procedures for top administrative posts that the interviewing panel include persons with whom the prospective employee would be expected to work closely. The complainant applied for the post of HR Director, a position where one is expected to work closely with both the College Principal and the Deputy Principal Administration. Their presence on the interviewing panel was, therefore, justified, a point which was also made, albeit in a somewhat circumlocutious manner, in the discussion of the Board of Appeal of the 21st November 2023.

7. As to the composition of the Board of Appeal, the undersigned observes that it is a fundamental and basic principle natural justice and of the rule of law that whenever a right of appeal is granted, that right must be, both procedurally and substantively, a practical and effective right and not merely a right that is theoretical or illusory. To be practical and effective this right requires that the members of any board of appeal should be objectively independent of the parties. In the instant case – where the issue was the fairness of the interview procedure and of the marks allocated in view of the presence of the Principal and the Deputy Principal Administration on the interviewing panel, it simply beggars belief how the College could have regarded the composition of the Board of Appeal as objectively independent of the parties. Two of the members of the Board of Appeal were blatantly “dependant” on the College Principal. While, in the absence of any specific evidence – always very difficult to find –, one cannot say that these two members of the Board of Appeal (a Deputy Principal and the Director of an Institute within MCAST) were subjectively biased, their dependence on the College Principal and close line relationship with him and with the Deputy Principal Administration, meant that the Board of

Appeal was not objectively independent. There was, therefore, a clear procedural unfairness in the whole affair.

### *Conclusion and recommendations*

8. This investigation has highlighted the somewhat happy-go-lucky way in which recruitment to senior administrative posts and interviews in general is conducted by MCAST, with minimal guidance to be found in the in-house Manual of Procedures.

9. In the instant case, the complainant suffered procedural injustice to the extent, and only to the extent, that the Board of Appeal was not objectively independent. In light of all the above and to ensure greater transparency and accountability, something which all public institutions should aspire to, the undersigned recommends:

(a) that in the recruitment procedure for senior administrative posts within MCAST, the composition of the interviewing panel should be communicated in advance to all applicants to enable them to challenge for cause any member of the panel (the final decision whether to abstain or otherwise resting with panel collectively);

(b) that all such interviews as well as interviews for teaching posts should be fully video-recorded with the express permission of each interviewee, and the recording kept for a known and pre-determined period of time to enable applicants to appeal or to seek judicial or extra judicial (including recourse to the Ombudsman) redress; and

(c) that any and every Board of Appeal set up by the College to hear appeals from any administrative decision, including recruitment to senior administrative posts and to teaching posts, should be effectively and in practice independent of the parties, contrary to what happened in this case.

Vincent A De Gaetano  
Commissioner for Education

10 July 2024