

ANNUAL REPORT 2022

PARLIAMENTARY OMBUDSMAN MALTA



OMBUDSMAN

for the period

JANUARY - DECEMBER 2022

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





OMB/6/9/26

June 2023

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 2022.

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,

Judge Emeritus Joseph Zammit McKeon
Parliamentary Ombudsman

Foreword



On 8 March 2023, I was given the oath of office as Ombudsman by the President of Malta following my approval by a unanimous vote of the House of Representatives on 6 March 2023.

Despite my short term in office, the publication of this Annual Report for 2022 falls under my responsibility, an onus that I shall bear.

The results outlined in this report were delivered during the extended term of office of my predecessor Mr Anthony C. Mifsud.

I salute not only the work but, most of all, the person of Mr Mifsud, who, away from the limelight, and many times in silence, took upon himself the weight of remaining in office according to law for two years in excess of the statutory five year period.

Remarkable for the real essence of this report were the accomplishments of the then Commissioner for Health, Mr Charles Messina, whose second five-year term of office came to a close in 2022.

The country should be grateful for having had Mr Mifsud and Mr Messina as loyal servants. An official and public acknowledgement of their office is a must for the purposes of this report.

For the next five years, I intend to reaffirm, through tangible and positive action, the primary role of the Ombudsman is that of addressing complaints by persons with regard to actions of the public administration allegedly unfair, prejudicial or discriminatory.

I sincerely believe that, through determined pro-active action, either through the handling of complaints or, if need be, through ad hoc “own initiatives”, change for the better is possible and probable in the workings of the public administration, not just to better the level of service, but also to bring out the good that the public administration does give to its customers.

I also strongly believe that my Office, even within the framework of the law as it stands to date, has the ability and the will to stimulate and move forward legitimate debates on the day-to-day defence of human rights of the person in all directions.

In these initial months, I want to commend those sectors of the public administration that have reacted positively or shown understanding to inquiries made by my Office. Part of my mission is to convince and insist on rectification where required. I have witnessed responsive public services and will strive to see the achievement of quality public services.

Between January and May 2022, the Ombudsman's caseload (excluding complaints that were referred to the Commissioners) decreased to 85 from 109 registered in 2021. I must point out that in the first five months of 2023, the figure has increased significantly and reached 111.

Part of my role is to convince the public administration that it has to better its services at the cost of making mistakes. I shall not hesitate the least to insist on rectification where required. I state this because I have already witnessed remarkably responsive public services.

I must remark that own initiative investigations were relatively low in 2022.

That will certainly not be the case in the current year and in the four years to come. Persons should find comfort in this Institution, and at least for the time I shall be around, that will be the case.

I shall do my very best to ensure that recommendations are implemented by the public authorities.

I intend to do so primarily through the force of conviction.

Recommendations are submitted not just to place behaviour under strict exam but, most of all, to mend ways significantly in favour of justice, fairness and non-discrimination.

I am determined to seek targeted and effective results in order to address issues of everyday life for persons vis-à-vis the public administration.

I want to thank all members of staff for the important contribution they make to the work of the Office.

It is indeed my pleasure to submit this Annual Report to the House of Representatives in terms of the Ombudsman Act 1995 (Chapter 385 of the Laws of Malta).

Judge Emeritus Joseph Zammit McKeon

Parliamentary Ombudsman

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Parliamentary Ombudsman

ANNUAL REPORT 2022



PARLIAMENTARY OMBUDSMAN

ANNUAL REPORT 2022

A Difficult Year – Hoping For A New Dawn

In the introduction to the Annual Report for 2021, it was stated that 2021 was a year where the country had to face challenges in a time of transition that inevitably generated uncertainty. Echoing the State of the Nation address by the President of Malta, that Report had addressed issues that were not only a cause of concern for the wellbeing of people but also related to matters of good governance and institutional failures that needed to be addressed. Particular attention was given to the President's specific reference to the Office of the Ombudsman that highlighted the inadequacy of the legislative mechanism that was intended to ensure a smooth and timely process for the appointment of a new Parliamentary Ombudsman when the need arose. That Report expressed hope that the new year would see the Ombudsman Institution through the uncertainty caused by various restrictions that curtailed its activities, and that after having passed through a long period of transition the Office would be in a position to regain stability and move forward.

Unfortunately, though progress was made in some areas, in 2022, that hope did not fully materialize. Problems that hampered the proper and efficient functioning of the Office of the Ombudsman remained unresolved.

Lifting of pandemic restrictions

Undoubtedly one of the most welcome developments during the year was the complete lifting of restrictions necessary to control and contain the spread of the COVID-19 pandemic. Prudently and correctly, they were gradually removed during the first half of the year and were completely lifted by July. The Office like the rest of the country could then enjoy the benefit of living a new normality looking forward to functioning freely in close, personal contact with those who seek its services and the public administration. The Ombudsman, Commissioners and investigating officers gradually resumed meetings with complainants and witnesses thereby not only facilitating the investigation of complaints but also improving the prospects of mediatory attempts aimed at amicably resolving disputes.

The beneficial effects of the resumption of direct personal accessibility to the services offered by the Ombudsman were perhaps even more felt at the front desk at which aggrieved persons make enquiries and seek advice on how best to obtain redress for their grievance, on whether the merits fall within the jurisdiction of the

Ombudsman and his Commissioners, and whether it is advisable to file a complaint for investigation. The front-desk office offers guidance on how best to proceed, often directing the public to government departments and public authorities to ensure that the grievances are referred to the proper channels for investigations since the Office of the Ombudsman is, by statute, an office of last resort. While it is true that such crucial assistance in these initial stages can and is given by telephone and other electronic means, it is obvious that a one-to-one meeting with those who seek the help of the Office is the best, more secure and most satisfying means of providing guidance and help, especially in the case of those who cannot do otherwise or are not familiar with the use of electronic means to file a complaint or are the most vulnerable. Activating the front-desk to pre-COVID-19 levels was undoubtedly the most tangible and physical sign of a return to normality.

The removal of restrictions was a gradual process. Management followed closely and implemented the directives given by the health authorities to ensure a seamless transition while keeping in place the basic restrictions that were from time to time considered necessary to effectively protect the country from the spread of the virus and favour its complete eradication. One could sense that by the end of the year the country had heaved a sigh of relief that this deadly crisis was indeed over. One could live in the hope that in the new year COVID-19 would no longer be considered to be a global health emergency.

It is in order to commend the quick and comprehensive response of the public administration to the COVID-19 pandemic as it developed and the practical effective measures that were taken to ensure the protection of the population even before the virus spread. Malta's comprehensive response to the pandemic was impressive, and gained merited recognition even in the international sphere, to the extent that the World Health Organization (WHO) identified Malta as a "*country to follow*". From the standpoint of good public administration, the management of the crisis by the health authorities, the outstanding dedication of doctors, nurses and paramedics, and the positive response of the population to the implementation of restrictive measures, deserve nothing but praise.

Inevitably during the year, the pandemic continued to have a negative effect on social and economic activity in the country as it struggled to shrug off the tail end and the adverse effects of the crisis. The Office of the Ombudsman was not spared from this impact. This is reflected by the all-time low in the number of complaints handled by the Ombudsman and Commissioners during the year. The exceptional circumstances under which they had to operate during the pandemic undoubtedly contributed in some measure towards the decline. There were however other determining factors that need to be considered.

Decline in number of complaints

The Ombudsman and his Commissioners throughout the year actively investigated 434 new complaints and the Office registered a further 314 enquiries. These figures show a marked decrease from those of the previous year when 527 cases were investigated and 433 enquiries were dealt with. The reasons for this decrease need to be identified and objectively analysed taking into account all the circumstances that could have had a bearing on the assessment of the Institution by aggrieved persons as an effective means of redress or on the quality of the services offered.

It has been stated by Sir John Robertson, the eminent New Zealand Ombudsman who advised the Government of Malta on the drafting of the Ombudsman Act in 1995, that the main function of an Ombudsman is to drive himself out of a job, in the sense that in the exercise of his functions he should have such a positive impact on improving the public administration in a way that no one would have cause to complain to his Office.

A decline in the number of complaints and enquiries made need not necessarily be in itself a negative and worrying omen. Numbers should not be taken at face value or even less bandied about lightly. It is wrong to draw hasty conclusions. They should be carefully studied and put in their proper context.

In this respect it has been said that there are three kinds of falsehoods: - *lies, damned lies and statistics* (a phrase in its current form attributed to Arthur James Balfour, 1st Earl of Balfour, as quoted in the *Manchester Guardian*, 29th June 1892). Raw data, statistics and graphs are useful tools to assess past performance, to make projections and plan future policies and strategies. They however need to be examined critically and in depth within the historical context, time, and social circumstances to which they refer.

The Performance Review of cases handled by the Office of the Ombudsman during the year published with this Annual Report contains a wealth of data and information on the work carried out by the Ombudsman and his Commissioners that go beyond providing the basic numbers of complaints and enquiries made, how many cases were closed, and how many were sustained, the grounds for complaint, their source by locality, the Ministry, departments, and public authorities to which they were addressed.

The Performance Review follows in the main the pattern adopted by previous reviews year after year. It is therefore possible to make comparative assessments that allow for an objective, correct and realistic appreciation of the performance of the year under review. Such an appreciation can only be usefully and credibly done through a comparative analysis with other performance reviews covering a

number of previous years while factoring in important circumstances that could have, positively or negatively, impacted performance.

The fact that the Office of the Ombudsman is approaching its 30th year from its constitution, and that performance reviews following basically the same pattern are available for all these years, ensures that such an analysis and appreciation can be scientifically made with a greatly reduced margin of error. The outcome of such an important exercise is crucial to identify the merits and failings of the institution's performance, the areas that need to be addressed to improve the services provided and what new policies and strategies have to be introduced to make them even more accessible to those who really need them.

Accuracy and objectivity

Commenting and interpreting statistics on the performance of the Ombudsman institution should be made accurately and objectively. Comparisons have to be supported by arguments on facts and numbers properly read and interpreted. Critics of the Ombudsman's performance often stress that the workload of his Office was in sharp decline in recent years. They stress that while in 1996, the first year of operation, the total number of complaints dealt with by the Ombudsman was 1112 and 849 enquiries were received, those numbers had dwindled to 527 and 433 respectively in 2021.

That argument is completely misleading in that the data is taken out of context and without any effort at a comparative analysis with the number of complaints and enquiries dealt with in the intermediate years. It does not take into account the fact that in its first year of operation, the Office was inundated by complainants who enthusiastically sought to avail themselves of a novel, attractive and free of charge mechanism to seek redress against perceived injustice by the public administration. As expected, once the institution started to function within the parameters of its jurisdiction, those numbers started to decrease to the extent that by the end of the second term of the first Ombudsman in 2005, they were practically halved and had gone down to 583 complaints and 333 enquiries.

These figures were on average maintained during the two terms of the second Ombudsman and the following seven years of the present incumbent. This with the exception of the year under review when the Ombudsman handled 434 new complaints and dealt with 340 enquiries. A noticeable drop from the averages registered in previous years. A decrease of almost 20% in the number of complaints and of over 25% in the number of enquiries registered in 2021.

Reasons for decline in workload

The marked decrease in the workload handled by the Ombudsman and his Commissioners, though not alarming, needs to be addressed. An attempt should

be made to try and identify its cause and to what extent external forces and circumstances beyond the control of the Office could have contributed to the apparent unwillingness of persons to have recourse to the services offered. One should try to establish also whether it could have been due to a growing perception that there was a lack of conviction regarding the effectiveness of the procedures adopted and/or the failure of the public administration to accept some of the recommendations made.

Surveys repeatedly show that there has been no reduction in the high level of trust that the institution continues to enjoy. Indeed, throughout the year the Office of the Ombudsman continued to be recognised as an important institution that promotes good governance, defending those who feel that they have been wronged by the public administration and, where necessary, provide guidance on how the country could best be administered in full respect of the enjoyment of fundamental rights and freedoms.

There have been a number of factors that in varying degrees could have impacted on the performance of the Office. These include: -

- a. the end of the COVID-19 pandemic;
- b. the General Election;
- c. the appointment of the Commissioners in the Office of the Ombudsman; and
- d. the appointment of a new Ombudsman.

A. The end of the COVID-19 pandemic

In the first half of the year during which restrictions were rapidly lifted, the Office continued to operate within the approved limits and with the minimum of direct personal contact with complainants and the public administration. Contact was kept remotely with an increase in the use of video conferencing both locally and abroad. Benefitting from the goodwill that the Office had acquired in previous years, the institution continued to function albeit with reduced visibility and accessibility. This to the credit of a well organised administration and seasoned investigators.

Data shows that between January and July 265 complaints out of a total of 434 were introduced during those months. This number is on par with that of the previous year for the same period. It was in the following months up to the end of the year that the number of incoming complaints dropped by almost 200 cases to 169. This at a time when one would have expected the number of incoming cases to increase once the Office started to function without any restriction, in a new normality.

Significantly the largest decrease was registered in cases received by the Ombudsman and in those investigated by the Commissioner for Health, Mr Charles Messina, who ended the second term of his appointment on 12 September 2022.

Understandably this Commissioner received a record number of 74 cases during the first half of the year, in part reflecting the health crisis that the country was still experiencing. That number dropped by more than half during the second half of the year, in some measure as a result of the process leading up to the appointment of a new Health Commissioner.

It is to be hoped that once the trauma the country experienced during the COVID-19 is fully absorbed and the Office is fully operational under normal conditions and led by a new Ombudsman, the intake of new cases will revert to pre-pandemic numbers, if not improved.

B. The General Election

In March 2022 the country was called to vote in a general election. The party in government was returned to power with an increased majority. That event too could have contributed towards a decrease in the number of complaints even though it is difficult to quantify. The institution is there to investigate maladministration and rectify injustice but it is no secret that before a general election, the public administration seeks to do its best to satisfy demands especially of the potential voter. On the other hand, persons who for some reason or other felt aggrieved with an act or omission of the public administration may have opted to put forward their claims or seek proper redress before or after the election not from the Ombudsman but from a Minister or MP seeking re-election. Human nature being what it is and given the particular political setup that favours clientelism, that reality is understandable and cannot be avoided. Statistics seem to bear this out.

One of the tables annexed to this report (Table 6.1) gives data on general elections trend. That chart gives the figures of the intake of cases received in the year previous to an election, those received in the election year itself and in the year immediately after. It shows that in each of the six general elections held between 1998 and 2022 there has always been a marked drop in the number of cases introduced when compared to the previous years ranging from a few tens to more than a hundred. The following are figures showing the decrease in the number of complaints in each election year:

Year of GE	Less cases
1998	94
2003	72
2008	109
2013	132
2017	37
2022	93

Though these figures show a constant trend that there is a decrease in the intake of complaints during election years, one cannot make comparisons between one year and another since there are many and various contributory factors. Other circumstances during those years could have contributed to the decline, perhaps even in a more determining manner.

A case in point was the record drop that happened in 2013 when the election heralded the advent of a new administration promising policies that were more customer friendly, and that raised expectations that then was the time to seek redress directly from the public administration. The setting up of Grievances Units to cover wide areas of perceived injustices going back in years was one way of materialising that promise. Undoubtedly a factor that contributed to the decrease in the number of complaints in that year.

This Office has had occasion to express its reservations on the way these units were set up, their composition, their lack of autonomy and independence, their regulation, their procedures and their finality. The way they functioned was in sharp contrast with the Commissions for the Investigation of Injustices set up following the 1987 elections. Those Commissions were in fact the forerunners of the Ombudsman institution, unanimously set up by Parliament that agreed that the time had come to ensure that any aggrieved person should have the right to seek redress against injustice and abuse by the public administration by having his/her complaint investigated by an Officer of Parliament who is completely autonomous and independent from the Executive.

The bottom line however remains that there is evidence to show that a general election could for various reasons influence the number of complaints received by the Ombudsman.

C. The appointment of Commissioners

Another event that contributed to uncertainty experienced by the Office during the year under review was the procedure leading up to the appointment of three specialised Commissioners for the Administrative Investigations whose term of office lapsed on 31 August. That procedure is regulated by Section 17A(2) of the Ombudsman Act that is to be followed not only for the original appointment of a Commissioner but also for whenever the need arises to fill a vacancy. The law provides that the Ombudsman appoints as Commissioner such person as the Prime Minister and the Leader of the Opposition shall jointly communicate to him in writing as the person to be appointed to the post. It further provides that in default of receipt of such communication within three weeks from the date when the Ombudsman informs them in writing of the decision to appoint such a Commissioner or from the date when a vacancy arises in any such office, the

appointment of the Commissioner shall be made by the Ombudsman acting in accordance with his own deliberate judgement.

This procedure had to be activated at a time when the Ombudsman was functioning in an *ad interim* capacity *ex lege* since his first term of Office had lapsed months before. He had duly notified the Prime Minister and Leader of the Opposition that he did not wish to seek reappointment to a second term. Regrettably no progress had been registered for the appointment of his successor and it was obvious that the level of consultation and constructive dialogue leading to the desired consensus was lacking. The Ombudsman was anticipating that similar difficulties could be encountered in the appointment of the Commissioners.

On 1 August the Ombudsman informed the Prime Minister and Leader of the Opposition that the term of the three Commissioners in his Office was due to lapse and that their vacancies needed to be filled. He informed them that the Commissioner for Education Chief Justice Emeritus Vincent A. De Gaetano and the Commissioner for Environment and Planning Perit Alan Saliba were eligible to be reappointed for a second term and had signified their willingness to continue to serve. The Commissioner for Health Mr Charles Messina was not eligible as he had served for two terms. Since Commissioners are by law Officers of Parliament, the Ombudsman thought it fit and proper to notify the Speaker of the House of Representatives with a copy of his letter that was in effect the first step to put in motion the procedure for the appointment of Commissioners following a vacancy.

The process leading to their appointment was not easy. At one point it was advised that good governance, common sense, courtesy and respect towards the new Ombudsman suggested that it was proper that the appointments procedure should be conducted by the new holder of the Office, taking into account that the term of the present Ombudsman had lapsed by 17 months and that, with goodwill, agreement could be reached on the appointment of his successor.

The Ombudsman did not accept that advice. He pointed out that Section 5(2) of the Ombudsman Act provides that "*Unless his office sooner becomes vacant, a person appointed as an Ombudsman shall hold office until his successor is appointed*". In that eventuality, he would not be functioning in a caretaker capacity but with all the duties and responsibilities inherent in the exercise of all his functions as Ombudsman. He felt it was his duty to ensure that the provisions that regulate the appointment of Commissioners were duly observed by him correctly and with a sense of responsibility. He had the duty to ensure continuity in the work of the institution while also respecting the Commissioners whose term of Office was due to lapse. The Office could not be left in a state of uncertainty.

While it was true that, just like the Ombudsman, a person appointed as Commissioner holds Office until a successor is appointed, the law enjoins the Ombudsman to act when the Prime Minister and Leader of the Opposition fail to agree within the prescribed period on an appointment. It provides this anti-deadlock mechanism to ensure continuity in the services provided by this Office and to avoid the possibility of a lengthy period of transition and insecurity that could hamper the proper functioning of the Office. A possibility that could have become a reality, considering that by the end of the year no progress had been made in a deadlock to appoint a new Ombudsman and that by then, had protracted to an extraordinary 20-month period. Little progress had apparently been made and there was no end in sight of the continuing deadlock.

Three Commissioners appointed

Since the Prime Minister and the Leader of the Opposition did not inform the Ombudsman within the prescribed time on the persons to be appointed as Commissioners, the Ombudsman decided to exercise the powers given to him by Section 17A(2) of the Ombudsman Act.

Acting in accordance to law and with his judgement the Ombudsman appointed the following as Commissioners for a period of 5 years with effect from the 13 September 2022:-

- Perit Alan Saliba, who was reappointed as Commissioner for Environment and Planning;
- Chief Justice Emeritus Vincent A. De Gaetano, who was reappointed Commissioner for Education; and
- Professor Raymond P. Galea, who was appointed Commissioner for Health.

There have been no adverse comments on the appointments that have been generally welcomed. This was not the first time that appointments of Commissioners were made by the Ombudsman exercising the residual powers given to him by the Ombudsman Act. There have been other Commissioners who were similarly appointed under different administrations. The anti-deadlock mechanism has been well tried and tested.

It is to the credit of the House of Representatives that when enacting the 2010 Amendments to the Ombudsman Act, the House foresaw the possibility that the Government and the Opposition could fail to reach agreement on the persons to be appointed Commissioners. It is a sign of political maturity that the House unanimously decided to set a time limit within which consensus had to be reached and also provided for an inbuilt mechanism to resolve the impasse by providing that the final decision has to be taken by the Ombudsman acting in his own discretion. It was a manifest sign of trust by the House of Representatives in the

person occupying the Office that when deciding in his own personal discretion, the Ombudsman would act in the national interest and the common good.

D. Appointment of a new Ombudsman

In the case of the appointment of the new Ombudsman, the turn of events was unfortunate.

The failure of the political leaders of the country to reach a consensus within a reasonable time on the choice of the person for Ombudsman to succeed the present incumbent was certainly a negative destabilizing factor in the functioning of the Office throughout the year.

It is regrettable indeed that 20 months after Mr Anthony C. Mifsud informed the Prime Minister and Leader of the Opposition that he did not wish to seek reappointment, the impasse remains unresolved. By the end of the year under review, for no plausible reason whatsoever, no consensus was reached on a suitable candidate to occupy a constitutional position, which is crucial to ensure accountability and transparency in the public administration and to secure the effective enjoyment of the fundamental right of the citizen to a good public administration.

Multiple are the reasons for this manifest failure, including a lack of proper appreciation of priorities and of the standing that the Office of the Ombudsman and other authorities in the service of Parliament with the function of scrutinising the public administration should be accorded within the constitutional and institutional set-up of the country. Moreover, the complex and critical period that the country was experiencing throughout the year, a lack of proper consultation, and acute political bickering and confrontation contributed in no small measure to the deadlock.

It is not the purpose of this report to identify and to judge the reasons and responsibilities for the delay. However, the Ombudsman must, as has been done on several occasions, express his deep concern that failure to reach consensus in choosing a successor after an unreasonably long lapse of time is hard to justify.

People in politics have towards the country a duty to rise always to the occasion where the common good is at stake. The common good includes the appointment of officers of Parliament. The Ombudsman as an officer of Parliament, is no exception.

Throughout the year, it became clear that the issue of conflict was not the lack of qualified and competent persons to serve as Ombudsman. The unwarranted impasse, unresolved by the end of the year, is not fair on the present holder of the Office who remains, for months on end serving in an interim capacity.

Even worse it is not conducive to a proper, regular functioning of the Office that was forced into a state of uncertainty about its future, unable to take major decisions, implement policies or promote long-term initiatives that could benefit aggrieved persons.

Inevitably the uncertainty about the future and the conviction that it was prudent not to take decisions, unless absolutely necessary, that would in any way bind or condition the new Ombudsman, tended to demotivate the Office, seriously limiting its sense of purpose and direction.

When such a situation persists for many months as has been the case throughout the year, the Office is limited to the day-to-day business of investigating incoming complaints, focusing mainly on those complaints that could be speedily resolved. Its forward-looking proactive role as an effective instrument to secure good governance and efficiently scrutinising the workings of the public administration was practically brought to a halt. Damage done could have been avoided.

It is imperative that the impasse on the appointment of a new Ombudsman be positively resolved as soon as possible.

Resolving the crisis

The Office of the Ombudsman has in recent years foreseen the possibility of such a deadlock arising especially due to the excessively polarised, partisan, bi-party political system. It attempted to suggest ways and means how such a deadlock could be resolved speedily and effectively. In last year's Annual Report, the Ombudsman stated that failure to reach agreement over a considerable period of time could lead to situations that negatively impact on the proper functioning of the institution meant to hold the Executive accountable. The lack of an inbuilt anti-deadlock mechanism could also give rise to excessive and unwelcome political lobbying by forces that are certainly not conducive to secure the appointment of the best and most qualified persons for the Office of Ombudsman and other sensitive posts.

The crisis was compounded by the fact that the consultation process for the choice of a new Ombudsman was linked with that of the appointment of a new Commissioner for Standards in Public Life that became vacant in the second half of the year. A fact that complicated the consultation process and introduced an element of horse trading that does not favour a serene and objective assessment of the qualities of the persons considered for appointment to these two high offices.

By the end of the year the country had to witness a demeaning debate in Parliament, on social media and elsewhere on the presumed qualities and defects of the identified candidate/s, both eminent former members of the judiciary. One hopes that this will not be the accepted standard of dialogue, structured consultation, and

even parliamentary debate that the country could expect during the process of the selection of qualified and competent persons to fill the most important positions in the country's administration that to-date, require a qualified two-thirds majority support of all Members of the House of Representatives.

This year the country had the misfortune to experience the worst scenario foreseen by the Ombudsman in this respect. Political intransigence and personal confrontation resulted in continued deadlock that perpetuated a crisis that had been going on for months.

Ombudsman's proposals for a long-term solution

By September it became amply clear that there was little chance of an agreement to be reached amicably and that the need for a legislative measure to resolve the impasse was becoming a reality. This experience has shown that it was not enough to have faith in the good will of political parties, to hope that eventually common sense would prevail and that in time agreement would be reached. The Ombudsman's concern was compounded by the fact that following constitutional amendments in line with recommendations by the Venice Commission that appointment to some of the highest offices of State, including the President of the Republic are to be made with the approval of a resolution by two thirds majority of the Members of Parliament, there was a greater risk of having these positions essential for the proper administration of the country, reduced to a state of limbo and uncertainty that could provoke a political crisis.

Radical change in selection procedures

In the Ombudsplan for next year the Ombudsman proposed a radical change in the method of selection of the Ombudsman, the Auditor General and the Commissioner for Standards in Public Life that seeks to introduce an element of transparency and certainty in the process. What was proposed is just an outline that needs to be closely studied to establish whether it could provide a practical and viable solution that favours political consensus in a healthier democratic environment. The proposal seeks to stress the fact that these authorities are or should be Parliamentary institutions headed by Officers of Parliament.

The selection should therefore be guided and overseen by the Speaker of the House of Representatives and not solely dependent on a process of private consultation between the Prime Minister and the Leader of the Opposition. It attempts to distance the selection process from partisan politics as much as possible, introducing an element of objectivity in the assessment of the qualities and suitability of prospective nominees. The proposal suggests a shortlisting of potential candidates by a Select Committee of the House, chaired by an independent person who had at one time occupied a position which required a resolution enjoying the support of a qualified majority of the House of Representatives.

The principle that the holders of these three offices would still be appointed by the President of the Republic following the approval of a resolution to that effect by a two-thirds majority of the Members of the House, would be retained. However, if that agreement is not reached within a definite statutory period the choice of the person to be appointed would be made by the President acting in his own personal discretion. Crucially the whole process should be finalized within a maximum period of eight weeks.

This law requires that such appointments should be made by political consensus are undoubtedly forward looking. They are not only a strong manifestation of power sharing but also a healthy exercise in democratic participation at Parliamentary level. Similar provisions for the appointment of the Ombudsman, the Auditor General and his deputy have worked reasonably well since their institutions were set up. The Constitution and Laws do not however provide for the eventuality that there is a failure to reach political consensus over a long period of time. They do not provide for a resolution of such an impasse.

Constitutions and laws are living instruments that need to adapt to meet the exigencies of society from time to time, to face the challenges raised through experience. They should remain valid to secure good public administration by providing effective instruments to ensure good governance also in times of national crisis or political deadlock.

Significantly the House of Representatives did not have an opportunity to voice its first reaction to this or any other proposal that could facilitate the process of appointment of persons who lead these three institutions. Up till the end of the year the Ombudsplan had not yet been discussed in the House Business Committee. The annual budget itemising the funds required for the administration of the Office next year was duly approved with the Estimates without any debate.

Agreement on a new Ombudsman

It became evident that the disagreement between the Government and the Opposition on the appointment of a new Ombudsman and a new Commissioner for Standards in Public Life had deepened to the extent that the Opposition was accusing Government of arrogance while Government retorted that the Opposition was capricious. During those heated exchanges it was revealed that there was agreement between Government and the Opposition on the nomination of Judge Emeritus Joseph Zammit McKeon to serve as Ombudsman but no agreement had been reached on the appointment of Chief Justice Emeritus Joseph Azzopardi to serve as Commissioner for Standards in Public Life.

Motions recommending the appointment of the two personalities to kick start the procedures, that according to obtaining laws require a two-thirds majority, were

moved by the Prime Minister in the House of Representatives. He announced in Parliament that if no agreement would be reached on the appointment of the Commissioner for Standards in Public Life, then a mechanism would be triggered so that the post would not remain vacant. The Prime Minister was very clear in his declaration in Parliament that the Commissioner for Standards in Public Life had to be appointed concurrently with that of the Ombudsman.

On the 19 December 2022 Government presented a Bill to amend the Standards in Public Life Act. The objects and reasons of the Bill are to provide an anti-deadlock mechanism in the appointment process of a Commissioner when a resolution of the House of Representatives supported by the vote of not less than two thirds of all the Members of the House is not obtained after two votes. In substance the Bill provides that a third vote is then taken and approval by a simple majority of Members would be sufficient to secure the approval of the resolution. The Opposition declared its disapproval of the Bill.

The Ombudsman understands that it is Parliament who has to legislate on how to resolve deadlocks that hinder the appointment of persons to occupy high positions. However, efforts of all sorts should be made to reach political consensus, as this undoubtedly strengthens the authority of the institutions and underlines the standing and respect that the holder of these offices should enjoy in the exercise of his/her functions. It is not for the Ombudsman to express himself on the unfortunate turn of events surrounding these appointments. He only remarks that this was the state of play at the end of 2022.

Constitutional Reform to Strengthen Parliament

Contributing to the ongoing debate of constitutional reform, the Ombudsman has in recent times been stressing the need to consider amendments that could strengthen Parliament, especially in the exercise of its important function to keep the Executive accountable for its actions at all times, to ensure that the Executive administers the country not only in accordance with laws and regulations, but also in conformity with the principles of good governance that comprise the right to a good public administration. Parliament already does this through the work of its MPs when they request information, explanations and justifications from Ministers of Government, but also and in a way, perhaps more importantly, through its Select Committees that verify and scrutinise many aspects of the public administration. It is being felt that the tools at the disposal of Parliament to carry out this scrutiny effectively need to be strengthened.

The Ombudsman has proposed that one way of doing so could be to promote a stronger link between Parliament, the Ombudsman, the Auditor General and the Commissioner for Standards in Public Life, granting them recognition as authorities in the service of Parliament in order to help scrutinise and oversee the

Executive and the public administration in general. Such a development would not only enhance the status and authority of the three institutions, but would also help to develop a synergy between them and Parliament that would further secure the enjoyment of the right to a good public administration by restraining proactively maladministration, improper discrimination and abuse of power. The three institutions have throughout the years been given full credit for their impartial, objective, and equitable final opinions, reports and recommendations. They are widely recognised as key players in the system of checks and balances that the country needs to have to strengthen and guarantee good governance.

The three authorities, while retaining their full autonomy and independence, acting in the exercise of their proper functions, can be moulded into an efficient, effective and secure network to investigate the public administration in all its facets, a network in the service of Parliament that would provide a comprehensive safety net against injustice, improper discrimination, the incorrect exercise of administrative discretion and abuse of power.

The outlines for this proposal for constitutional reform fit in with the Ombudsman's insistence throughout the years that the right to a good public administration should be recognised as an enforceable, fundamental right.

This proposal has been submitted from time to time by the Ombudsman for the consideration of Parliament as his contribution towards the ongoing debate on constitutional reform. It has been reaffirmed in last year's Annual Report and reiterated in the Ombudsplan for next year, and the latter can be accessed on this Office's website. The proposal is not cast in stone, but if the new Ombudsman agrees with the basic principles that inspire it, he might wish to adopt and integrate the proposal into his vision for the future development of the institution, a vision that would include the promotion of better relations with the House of Representatives also as a means to ensure the enforcement of his recommendations and respect for his final opinions as well as to foster good relations with analogous institutions that have the same core functions as his Office.

Pivotal in this proposal is the recommendation that the provisions regulating the setting up of the Offices of the Ombudsman, the Auditor General and the Commissioner for Standards in Public Life guaranteeing their autonomy and independence should be harmonised, drafted *mutatis mutandis* on parallel lines and enjoy the same constitutional protection. The outlines of this novel selection process, as set out in this year's Ombudsplan do not contain an anti-deadlock mechanism. While maintaining the qualified majority rule, it attempts to avoid the possibility of a deadlock through the introduction of a number of obligatory stages that provoke active consultation focusing on the scrutiny of the qualities, competence and suitability of prospective nominees, including the Speaker of

the House and the President of Malta to facilitate consensus and agreement within a time-frame.

The Ombudsman's proposal is just a working document. One is free not to agree with it or on certain aspects of it. However, the issue needs to be put on the political agenda. Just ignoring it will not mean that the problem will go away. It is not unlikely that a similar deadlock could happen on the appointment of other persons to high office, whether their procedure is constitutionally protected or not. It is the duty of the legislator to provide for such eventualities in a fitting manner.

A ray of hope

The only silver lining that gave light to the dark clouds that overshadowed the protracted selection process that remained unresolved till the end of the year was the declared consensus that the political parties reached on the appointment of Judge Emeritus Joseph Zammit McKeon as the new Ombudsman - a welcome agreement that was in some measure spurred by the fact that the provisions in the Ombudsman Act that the Ombudsman is appointed by the President acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the Members of the House was entrenched in the Constitution following the amendments made by Act XLII of 2020. These amendments were made on the recommendation of the Venice Commission following representations made by the Ombudsman to strengthen the constitutional guarantees that underpin the autonomy and independence that his Office must enjoy. The Office of the Auditor General and his deputy enjoy similar constitutional protection.

That the method of appointment to these two high offices is itself an entrenched provision in the Constitution and any amendment to it requires the approval of a qualified majority of at least two-thirds of all Members means that it is not possible to change that procedure by an amendment in an ordinary law to have that appointment finally approved by a simple majority.

The appointment of a Commissioner for Standards in Public Life does not enjoy similar constitutional protection. The constitutional entrenchment on the method of appointment of the Ombudsman and the Auditor General was indeed providential. There would otherwise have been a real risk that the Bill proposing the anti-deadlock mechanism for the Commissioner for Standards in Public Life would have been extended to apply also to them. That would have been a step back and a matter of serious concern. Indeed, one cannot exclude that consensus on the appointment of a new Ombudsman was reached precisely because there was no other alternative or way out to resolve the impasse.

This episode shows that campaigning for continued institutional reform aimed at strengthening these three offices, supported by corresponding constitutional

guarantees, is not a futile exercise. These are issues that the new Ombudsman might seek to address after taking stock of the situation, also in consultation with his other counterparts the Auditor General and the Commissioner for Standards in Public Life.

New challenges facing the new Ombudsman

The new Ombudsman would have to face other challenges, perhaps even more pressing and closer to home. It is expected that the procedure for his appointment could be finalised by the first quarter of next year. The Office and, indeed, the country have high expectations that that event would usher a new dawn for the institution that needs to be reinvigorated into a fresh normality.

During his term in Office Mr Anthony C. Mifsud had the arduous task to pilot the institution through a very difficult period during which the country had to pass through difficult times. It was a time of major political turbulence, a crisis in good governance, two general elections and a very grave pandemic. For a number of reasons, the institution of the Ombudsman did not rank high in the country's priorities during this period. Not unsurprisingly, the Ombudsplan for 2022 submitted to Parliament in September 2021, just like the Ombudsplan for next year, was still not debated by the House Business Committee by the end of the year under review.

One major challenge was the need to take bold steps to regain the visibility of his Office as a constant and credible defender of aggrieved persons. That visibility and accessibility have suffered in recent years. There is a need to identify areas of vulnerable, voiceless persons who suffer injustice in silence as a result of maladministration or violations of their fundamental human rights: persons in correctional facilities, immigrants in detention centres, third-country nationals, issues of human trafficking, patients in some public hospitals and institutions, including the elderly, come to mind. The Office needs to reach out to these persons who might not yet be aware of the service that it offers to redress any grievance of theirs.

One needs to consider whether the time has come to revamp the corporate image of the institution through aggressive outreach initiatives and information campaigns using all means of communication available.

While the core function of the Office remains the investigation of complaints, their expeditious consideration and resolution within a reasonable time, the new Ombudsman might consider it opportune to make greater use of his right to conduct his own initiative investigations. Working in unison with his Commissioners, the Ombudsman could proactively enquire into serious allegations in the public domain of actions of the public administration that could be indicative of a systemic

failure of good governance or abuse of power. To be fair, though the Ombudsman himself did not conduct such investigations during the year under review, he has authorised his Commissioners to do so on various occasions on matters that fell within their jurisdiction.

In this respect, the Ombudsman might consider that decisions to carry out own initiative investigations are taken in consultation with his Commissioners acting as a team, perhaps even in meetings where the performance of the public administration is kept under review. Fostering a climate of collegiality would generate a spirit of cooperation, encourage involvement and maximise the input of know-how and expertise that the Commissioners can contribute towards the functioning of the Office. Such a collegial effort would not in any way impinge on their autonomy in the exercise of their functions. If anything, it should enhance their status and contribute towards the provision of a homogenous service. The Office of the Ombudsman has the duty to provide not only appropriate redress to aggrieved persons but also to actively promote a better public administration.

Another important challenge that the new Ombudsman would need to tackle is restoring and improving the strained relationship between his Office and the public service. For the Executive to deliver a good public administration, it requires an efficient, forward-looking public service inspired by the values of using powers responsibly, reporting improper conduct, avoiding any real or apparent conflicts of interest, striving to earn and sustain public trust on a high level. A service that cherishes and prides itself in exercising the virtues of responsiveness, integrity, impartiality, accountability, respect and promotion of the observance of fundamental human rights.

These values are embodied in the Public Administration Act 2019 which seeks to affirm and apply them as an instrument for the common good through the organisation and management of the public sector.

In the Ombudsplan for next year the Ombudsman dedicated a chapter to the relations between his Office and the public sector which includes public service. He noted with regret that many of the serious allegations of maladministration, abuse of power and corruption in recent years that tainted the conduct of the public administration were undoubtedly due to the failure of a number of public servants occupying senior positions, including persons of trust, to respect these core values.

During the year, welcome were initiatives aimed to stop the rot and restore confidence in the public administration were taken. The appointment of a new Principal Permanent Secretary (PPS), Mr Tony Sultana, was indeed a step in the right direction. The Ombudsman sensed the will to change and took the initiative to start rebuilding bridges with the Office of the Prime Minister with a number of

courtesy and informal meetings between the Ombudsman and the PPS. A number of initiatives were explored, including:

- Periodic meetings of information and exchange of ideas between the PPS, the Ombudsman and his Commissioners to examine how the Ombudsman service can be improved.
- The creation of a more positive synergy between the Office of the Ombudsman and the public administration to facilitate the investigation of complaints in the shortest time possible.
- How the implementation of the recommendations made by the Office could be improved.
- Resumption of meetings with Permanent Secretaries, CEOs of public authorities and entities.
- Similar periodic meetings to be held with Mayors and other officials of the Local Councils against whom a considerable number of complaints are lodged with the Ombudsman and his Commissioners.

The Ombudsman has insisted with the Principal Permanent Secretary that it was important that the structure of the Liaison Officers with all government departments, authorities and public entities and that constituted the essential link between the public administration and his Office should be renewed and strengthened. These liaison officers have the function of facilitating a direct link with the Ombudsman and his Commissioners, in particular, facilitating the initial stages of the investigation of a complaint through their contact of the investigating officer. Particularly they facilitate the exchange of information that can lead to a successful outcome of the mediation process. All these issues, among others need to be followed up with vigour and conviction.

Undoubtedly the new Ombudsman will immediately and enthusiastically take steps to repair dented bridges with public administrators, establishing good working relationships with direct personal contacts. He will have his own ideas on how the issues mentioned above should be managed. He will have a different approach to how investigations are conducted and to what extent he is prepared to make use of the extensive powers he has at law to assert the authority of his Office when needed. He might prefer to rely more on his powers of persuasion to obtain results. Undoubtedly, he will have his own style in exercising his functions, but he shall do so with enthusiasm, a sense of purpose, and humanity and without fear or favour, acting as a defender of aggrieved individuals and the conscience of the public administration.

Another area that could require the attention of the new Ombudsman is the continued maintenance of good relations that the Office has with International Organisations that continue to show interest in the conduct of public affairs in Malta. These include the Council of Europe and the European Union institutions tasked with overseeing of the state of the Rule of Law in Member Countries. The Council of Europe, the European Union and United Nations Commissioners for Human Rights, the Venice Commissioner, OECD, Greco and others. These institutions hold the Office of the Ombudsman in Malta in high regard. They consider the Office to be an authoritative, independent and objective source of information and balanced judgement on matters of concern regarding institutional reform, guaranteeing fundamental human rights and securing the enjoyment of a good public administration. Their queries usually reflect a good and correct analysis of what could be happening in the country and the opinions given by the Ombudsman are highly valued. A case in point is the questionnaire sent to the Ombudsman by the European Commission in preparation for its last Rule of Law report and the feedback provided from the Office of the Ombudsman that are being reproduced as an Annex to this Annual Report.

For a number of reasons, including COVID-19, the visibility of the Office in international ombudsmen fora has diminished. Its links with European institutions, like the European Ombudsman and the European Network of Ombudsmen (ENO) need to be re-established or strengthened. Throughout the year under review, the Office has maintained a leadership role in the Association of Mediterranean Ombudsmen (AOM), fulfilling the roles of Secretary and Treasurer that are pivotal in maintaining a proper functioning of the organisation. Malta is a founder member of this important group. The new Ombudsman might consider upgrading its presence and proactively participating in its activities. This could be an opportunity to enhance Malta's standing in an organisation that could be of great value to promote good governance in the Mediterranean region.

Looking forward with confidence

The long road to regain lost ground will not be easy. However, the Office, during this and other difficult years, could rely on a small, experienced and by now highly qualified staff in all its investigative and administrative departments. They continued to provide the core services that the Ombudsman and his Commissioners required in the exercise of their functions despite the uncertainty, demotivation and lack of security that they have gone through.

The daunting agenda that the new Ombudsman and his Commissioners will be undertaking is by no means a comfortable exercise. To be successful, the Ombudsman requires the support, commitment and hard work of his dedicated staff who have for years given their very best to help provide the quality service that the country has come to expect from the Office. Most of the staff at all levels of the

organisation have been employed for many years, a few from the very beginning when the Office was first set up. They deserve recognition for their loyalty, dedication and hard work. Their support is invaluable.

Even in this respect however, the new Ombudsman would do well to monitor closely the work relationships, even at a personal level, to detect possible signs of burnout, stress or job dissatisfaction and situations that could cause unnecessary friction and tension. The fact that it is a small complement working in what is virtually a closed shop severely limits the opportunity for career progression, promotion and improvement of employment packages. These are important considerations that can dent a healthy work environment. Ways and means have, therefore, been found to limit the possibility of negative situations developing. Importantly it is essential that team building exercises are held from time to time to promote unity, empathy and solidarity among staff, though it is recognised that by and large relations are excellent and cooperation and work ethics optimal. The staff complement is a priceless human resource that the new Ombudsman and his Commissioners can safely rely on to plan the way ahead with confidence and a much-needed sense of direction. A lot of hard work is in store; however, the Office is well-gearred to take up the challenge and can look forward with confidence to a better future in the hope that a new dawn under a new leadership can be realised.

From the Ombudsman's

DIARY 2022




OMBUDSMAN

RECOMMENDATIONS NOT FULLY ACCEPTED: UNFAIR TREATMENT DURING A SCHOLARSHIP INTERVIEW

January 24, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr Anthony C. Mifsud and the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano, have sent to the House of Representatives the Final Opinion on a complaint lodged by a Theology graduate who alleged that she was treated unfairly during a scholarship interview.

Summary of the Case

The complainant applied for an Endeavour Scholarship to undertake a one-year course (2020-2021) at the Catholic University of Leuven and was unconditionally accepted by that university. The interview was conducted online, and the complainant obtained a “fail” mark in this interview.

The complainant appealed before the Scholarships Appeals Board. She complained, in essence, that she was not given a fair hearing for reasons both connected with the appreciation of her work experience and proposed studies and for reasons connected with the conduct of the interview. The Scholarships Appeals Board claimed that it had “*no competence to substitute its judgment for that of the Endeavour Scholarships Scheme Board regarding the criteria on which the applicant is assessed.*”

Following a thorough investigation, the Commissioner upheld the complaint only to the extent that words were said and comments passed by a member of the interviewing board, which justifiably upset the complainant. The Commissioner recommended that the Ministry for Education devise a short Code of Conduct or a set of Guidelines for members of interviewing boards for scholarships and similar

awards, focussing in particular on the conduct of the interviews. The Commissioner also recommended that each interview, whether conducted online or in person, should be recorded with the person's consent. Such a record should be kept for a pre-determined time deemed sufficient for filing internal review proceedings.

Outcome

The Ministry for Education, by letter dated 10 December 2021, while accepting the first of two recommendations made by this Office, has indicated that it will not implement the second recommendation.

No reasons have been given for refusing to implement this second recommendation. The Ombudsman and the Commissioner brought the case to the Prime Minister's attention on 27 December 2021. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the House of Representatives for its attention.

DR JOHN STANTON, SENIOR LECTURER IN CITY, UNIVERSITY OF LONDON, PAYS A COURTESY CALL AT THE OMBUDSMAN'S OFFICE

March 10, 2022



Dr John Stanton, Senior Lecturer in Law at City, University of London, paid a courtesy call at the Ombudsman's Office on Monday, 7 March.

Dr Stanton was in Malta on an Erasmus exchange programme to deliver a number of talks at the University of Malta. He teaches Constitutional, Administrative and Human Rights Law, and his primary research interests concern local government, democracy and devolution. He also has a keen interest in Comparative Constitutional Law, particularly emphasising the Constitution of Malta. He has worked as a visiting lecturer in law at the University of Malta since 2018, and in

2019 he published a paper in the Journal of International and Comparative Law exploring the Maltese legal system.

Dr Stanton was met by the Commissioner for Education within the Ombudsman's Office, Chief Justice Emeritus Vincent A. De Gaetano and former Ombudsman Chief Justice Emeritus Joseph Said Pullicino.

Dr Stanton was accompanied by former EU Commissioner and Senior Lecturer in the Department of Public Law of the University of Malta, Dr Tonio Borg.

THE PARLIAMENTARY OMBUDSMAN PRESENTS CASE NOTES

2021 TO PARLIAMENT

April 8, 2022



The Parliamentary Ombudsman, Mr Anthony C. Mifsud, presented the Case Notes 2021 to the President of the House of Representatives, the Hon. Anglu Farrugia.

The periodic publication of Case Notes highlights complaints by aggrieved individuals seeking redress from the Office of the Ombudsman for injustices suffered as a result of the conduct of the public administration or of a systemic failure that was unfair or unjustly discriminatory. It brings to the attention of the general public the nature of the complaints that fall within the jurisdiction of the Ombudsman and the specialised Commissioners within his Office; provides an inkling on how these complaints are investigated, the procedures followed as laid down by laws and regulations, to establish the facts, the way final opinions are

crafted, what recommendations could be expected when a complaint is sustained and its possible outcome.

In the Case Notes' foreword the Ombudsman stated that he firmly believes that the mission statement of the institution extends to a commitment to its proactive role as the public conscience of the public administration that needs to be constantly alerted to its obligations not only to do what is legally right but also that which is intrinsically correct and just.

The Ombudsman concluded that the Office of the Ombudsman *“should be strengthened not only through legislative provisions that further secure its autonomy and independence but also and perhaps more importantly, by a change in mentality that it is not an extension of the public administration but a valid instrument at the disposal of Parliament to hold the Executive accountable for its actions at all times. This is my heartfelt hope for the future.”*

As in previous years, this bi-lingual publication includes three separate sections reporting complaints investigated by our specialised commissioners in the areas of Health, Education and Environment and Planning.

A GROUP OF STUDENTS FROM THE MARIA REGINA COLLEGE, MOSTA SECONDARY SCHOOL VISITED THE OFFICE OF THE OMBUDSMAN

April 27, 2022



A group of Year 9 and 10 students from Maria Regina College, Mosta Secondary School, visited the Office of the Ombudsman to acquaint themselves with the institution's work.

The students participated in an information session addressed by the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano.

RECOMMENDATIONS NOT IMPLEMENTED: PRIMARY SCHOOL TEACHER ON A CAREER BREAK NOT ALLOWED TO WORK TEMPORARILY IN THE PRIVATE SECTOR

April 28, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr. Anthony C. Mifsud, and the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano, have sent to the House of Representatives the Final Opinion on a complaint lodged by a primary school teacher who wished to work in the private sector while on a career break.

Summary of the Case

The complainant, who resides in Gozo and is a primary school teacher currently on a career break, filed her complaint with the Ombudsman's Office after having exhausted all other possible avenues. For years previously, she had regularly commuted from Gozo to Malta and back to attend to her teaching duties on the main island. She is currently fifth on the list of primary school teachers waiting to be deployed to Gozo. As a primary school teacher in government service and with very young children, the only work-life balance measure available to the complainant was the "career break," as envisaged in item 2.3 of the Manual on Work-Life Balance Measures.

To keep in touch with the education sector and because the career break entailed a substantial diminution of income for the family, the complainant sought temporary employment (on a definite contract) in the private sector (a church school). Permission was repeatedly refused.

The Commissioner for Education concluded that by denying the complainant's possibility to work on a definite contract (whether full-time or part-time) in a church school, the complainant has been the victim of maladministration in terms of Art. 22 of the Ombudsman Act.

The Commissioner recommended that:

1. the complainant be allowed to work at least part-time and on a definite contract in the private sector in the educational field in Gozo even though benefitting from a career break; and
2. the last two paragraphs of item 6.2.3.1 of the Public Service Management Code be revisited to ensure that they do not undermine the whole purpose of the various work-life balance measures and the career break.

Outcome

Both the People & Standards division within the Office of the Prime Minister and the Ministry for Education indicated, for reasons that the Commissioner considers to be unfounded, that they did not intend to implement the recommendations made in his Final Opinion.

In March 2022, the Ombudsman and the Commissioner brought the case to the Prime Minister's attention. Since no action was taken, the Ombudsman and the Commissioner sent the report to the House of Representatives for its attention.

RECOMMENDATION NOT IMPLEMENTED: THE UNIVERSITY OF MALTA FAILS TO ASSIST IN DUE TIME A THIRD-COUNTRY NATIONAL IN RENEWING HIS WORK PERMIT.

April 28, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr Anthony C. Mifsud, and the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano, have sent to the House of Representatives the Final Opinion on a complaint lodged by a member of the academic staff of the University of Malta who alleged that the University had failed to assist him in due time in the renewal of his work permit.

Summary of the Case

The complaint referred in substance to the failure and neglect by the University to assist a tenured and full-time academic at the University, a third-country national, to renew his work permit. The academic complained that notwithstanding several requests made by him to the University to be supplied with the necessary letter that he was still on the books of the University – a letter needed to regularise his position with Identity Malta and to be allowed to remain in Malta – such a letter was only provided after considerable delay. This resulted in financial loss to the complainant. The Commissioner found that both in the act and in omission, the University acted unjustly and oppressively contrary to the law in failing to assist the complainant in due time.

Outcome

The Final Opinion was communicated to the University of Malta together with a request, in terms of Article 22(3) of the Ombudsman Act, to indicate what action the University intended to take in line with the recommendation. Despite reminders sent, the University did not react to the Commissioner's report.

Since the recommendation was not accepted by the University, the Ombudsman and the Commissioner, after seeking the intervention of the Prime Minister, sent the report to the House of Representatives for its attention.

RECOMMENDATION NOT IMPLEMENTED: STUDENT COMPLAINS THAT THE UNIVERSITY OF MALTA UNFAIRLY TREATED HIM IN THE EXAMINATION AND GRADING OF HIS DISSERTATION

May 3, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr Anthony C. Mifsud, and the Commissioner for Education, Chief Justice Emeritus Vincent A. De Gaetano, have sent to the House of Representatives the Final Opinion on a complaint lodged by a mature student registered with the Islands and Small States Institute of the University of Malta. He complained that he was unfairly treated during the examination and grading of his dissertation.

Summary of the Case

The complainant alleged that he was unfairly treated in the examination and grading of his dissertation; moreover, the University authorities displayed a patronising attitude towards him. He also complained about what he calls “*wilful neglect*” on the part of the University (through the Institute), particularly in the composition of the board which eventually examined his dissertation and which, by assigning to that dissertation a very low mark when compared to the marks he had previously obtained for the other components of the course, resulted in an overall low-grade mark for his Master’s degree.

As the Commissioner for Education has often reiterated in his Opinions and Letters of Closure, it is not his function to re-examine the grades or marks awarded to students but only to ensure that in the process leading up to that grading or marking, there was no element of maladministration as defined in Article 22(1) and (2) of the Ombudsman Act (Cap. 385) read in conjunction with Article 13(1).

In the Commissioner’s considered opinion, the complainant’s dissertation was doomed from the very moment that the Senate approved the Board of Examiners on the recommendation of the Institute. The complainant’s dissertation had a heavy ethnomusicological and performative arts component, but only one of the three examiners appointed to examine his dissertation had any expertise in these components.

The Commissioner for Education concluded that the board’s composition appointed to examine the complainant’s dissertation was wrong in principle and unfair, resulting in an *ab initio* prejudice to the ensuing examination and grading process and final result.

The Commissioner recommended that the Board of Examiners be reconstituted afresh with persons with appropriate expertise who would then re-evaluate the dissertation in question in its entirety.

Outcome

The University of Malta informed the Commissioner for Education that it would not affect his recommendation.

The Ombudsman and the Commissioner brought the case to the Prime Minister's attention. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the House of Representatives for its attention.

COLLABORATION BETWEEN THE OFFICE OF THE OMBUDSMAN AND THE DEPARTMENT OF PUBLIC POLICY AT THE UNIVERSITY OF MALTA

May 21, 2022



Mr Jurgen Cassar, Head of Communications and Research at the Office of the Ombudsman, was invited by the Department of Public Policy to discuss how the relationship between the two entities can become even stronger through publications, participation in the media, and keynote lectures. Dr Mario Thomas Vassallo, Head of the Public Policy Department, said the Office of the Ombudsman is a key guardian of good governance and ethical leadership. There are many ways in which the Department of Public Policy and the Institution of the Ombudsman can collaborate to develop a fair and accountable public service culture. Also present at the meeting were Dr George Vital Zammit and Dr Marie-Louise Mangion.

**THE PARLIAMENTARY OMBUDSMAN PRESENTS THE ANNUAL REPORT 2021
TO THE SPEAKER OF THE HOUSE
May 31, 2022**



The Parliamentary Ombudsman, Mr Anthony C. Mifsud, called upon the President of the House of Representatives, the Hon. Dr Angelo Farrugia, to present the Office of the Ombudsman's Annual Report for 2021.

The Annual Report describes the past year as a year of transition and uncertainty. The 2021 Annual Report refers to the needed reforms to further the separation of powers in the country's administration raised by the President of Malta in his Republic Day Speech.

Case Load

In 2021, the Office of the Ombudsman received 527 (+5%) complaints, of which 239 (-2.5%) were investigated by the Parliamentary Ombudsman, 143 (+35%) were investigated by the Commissioner for Health, 95 (-11%) by the Commissioner for Environment and Planning and the remaining 50 (+11%) were investigated by the Commissioner for Education. The Office also handled 433 enquiries, 13% less than the previous year.

RECOMMENDATIONS NOT IMPLEMENTED: LANDS AUTHORITY FAILS TO TAKE APPROPRIATE ACTION TO REMEDY A SEWAGE BLOCKAGE CAUSED BY A GARAGE IT OWNS

July 7, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr. Anthony C. Mifsud, and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion about a complaint concerning a sewage blockage in a block of apartments in Siggiewi caused by a poorly maintained garage owned by the Lands Authority.

Case Summary

On 18 May 2021, the Office of the Ombudsman received a complaint against the Lands Authority for failing to take action to remedy the condition of its owned garage, which was causing a blockage in the drainage system of a block of apartments in Siggiewi. The complainant alleged that this blockage was causing lift damages and rat infestation.

Following an investigation, the Commissioner concluded that there were serious shortcomings in how the Lands Authority dealt with this complaint.

The Commissioner recommended that the Authority make necessary repairs without further delay.

Outcome

Since the Lands Authority did not accept the Commissioner's recommendations, the case was referred to the Prime Minister in May 2022. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the attention of the House of Representatives.

APPOINTMENT OF COMMISSIONERS FOR HEALTH, EDUCATION AND ENVIRONMENT AND PLANNING

September 13, 2022

The Parliamentary Ombudsman, Mr. Anthony C. Mifsud, appointed three Commissioners for Administrative Investigations for specialised areas.

Perit Alan Saliba has been re-appointed as Commissioner for Environment and Planning.

Chief Justice Emeritus Vincent A. De Gaetano has been re-appointed as Commissioner for Education.

Prof. Raymond Galea has been appointed as Commissioner for Health. He succeeds Mr. Charles Messina, whose two terms as Commissioner for Health expired.

The Parliamentary Ombudsman appointed the Commissioners in terms of the power conferred on him by Articles 17 A (1) and (2) of the Ombudsman Act 1995 as amended. The appointment is for a five-year term with effect from today.

The Commissioners, like the Ombudsman, are autonomous Officers of Parliament and enjoy the same independence and security of tenure. The Commissioners work independently but coordinate their work with the Office of the Ombudsman. The Ombudsman thanked Mr. Charles Messina for his dedicated and sterling work as Commissioner for Health during the last ten years.



Perit Alan Saliba, Commissioner for Environment and Planning



Chief Justice Emeritus Vincent A. De Gaetano, Commissioner for Education



Prof. Raymond Galea, Commissioner for Health

OMBUDSMAN PRESENTS THE OMBUDSPLAN 2023 TO THE SPEAKER OF THE HOUSE

September 29, 2022

Recommends an anti-deadlock mechanism to unblock situations where the required agreement of two-thirds of parliamentary support for certain appointments is not reached.

The Parliamentary Ombudsman, Mr. Anthony C. Mifsud, presented the Ombudsplan 2023 to the Speaker of the House of Representatives, the Hon. Anglu Farrugia.

The Ombudsplan 2023 highlights the urgent need for an anti-deadlock mechanism to unblock situations where the required agreement of two-thirds of parliamentary support for certain appointments is not reached and makes recommendations to this effect.

As in previous years, the Ombudsplan 2023 also highlights issues that the Ombudsman considers that deserve particular discussion, namely the culture of sanctioning and the need for an efficient public service with sound values.

The Ombudsplan was tabled in Parliament on the 4th of October and will be discussed during a special sitting of the House Business Committee.



THE COMMISSIONER FOR EDUCATION VISITS THE INSTITUTE FOR TOURISM STUDIES FRESHERS' 2022

October 4, 2022

The Commissioner for Education, Chief Justice Emeritus Vincent De Gaetano, visited the Institute for Tourism Studies Freshers' Week 2022.

The ITS CEO, Mr Pierre Fenech, welcomed the Commissioner and explained the vision and upcoming ITS projects.

The Office of the Ombudsman took part in this year's ITS Freshers' Week event giving information about the role and services of the institution.





OFFICE OF THE OMBUDSMAN AT FRESHERS' WEEK

October 5, 2022



As in previous years, the Office of the Ombudsman, participated in the KSU Freshers' Week at the University of Malta.

The presence of the Office of the Ombudsman on campus was aimed at increasing the institution's visibility with students and academic staff.

During Freshers' Week, students had the opportunity to acquaint themselves more with the role and functions of the Ombudsman and of the Commissioner

for Education and to enquire about the services offered by the Office of the Ombudsman. Information, publications and other handouts were distributed to the students and academic staff who visited the stand.

The Commissioner for Education, Chief Justice Emeritus Vincent De Gaetano, visited the stand of the Office of the Ombudsman.

**RECOMMENDATIONS NOT IMPLEMENTED: COMPLAINT
ALLEGING MISREPORTING BY CASE OFFICER ON A DEVELOPMENT
APPLICATION IN XEWKIJA.**

October 20, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr. Anthony C. Mifsud, and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion concerning a complaint alleging misreporting by a Planning Authority Case Officer on a development application in Xewkija.

Case Summary

The Office of the Ombudsman received a complaint alleging misreporting or poor reporting by case officers leading to poor decisions by the Planning Commission. The Ombudsman referred the case to the Commissioner for Environment and Planning for investigation.

Following the investigation of the allegations made by the complainant, the Commissioner concluded that in the absence of planning reasons justifying the overturning by the Planning Commission of the recommendation by the Executive Chairperson in line with Article 10 of the second schedule of the Development

Planning Act, there is a strong case for the application of Article 80 of the same Act due to an error on the face of the record by the Planning Commission. Therefore, the Commissioner recommended that the relative documents approved in the original permit should be replaced with those in the minor amendment permit.

Outcome

The Planning Authority, through its Internal Audit Office, informed the Commissioner that it was not in agreement with his recommendations. Therefore, the Case was referred to the Prime Minister in September 2022. Since no action has been taken, the Ombudsman and the Commissioner sent the report to the attention of the House of Representatives.

RECOMMENDATIONS NOT IMPLEMENTED: COMPLAINT FOLLOWING THE REJECTION OF REPRESENTATIONS BY THE PLANNING AUTHORITY

October 20, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr. Anthony C. Mifsud, and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion concerning a complaint regarding the rejection of representations by the Planning Authority following the filing of fresh plans at the request of the Planning Board or the Planning Commission.

Case Summary

On 3 January 2022, this Office received a complaint that major fresh plans cannot be objected to in writing in front of the Planning Authority, adding that one cannot make detailed researched objections in a board meeting orally.

As the complainant referred to a pending case on 7 January 2022, the complainant was informed that the specific case would not be investigated in line with Article 13(3) of the Ombudsman Act. However, the Commissioner decided to proceed with the investigation concerning problems of general interest contained in the complaint that would affect various applications processed by the Planning Authority.

The Commissioner for Environment and Planning opened an investigation regarding representations following fresh plans submitted at the request of the Planning Board. This Office highlighted that following a previous investigation by this Office, the Planning Directorate is no longer issuing a late representation reply after registered representees submit new representations following fresh plans that are submitted before the first Planning Board hearing, but it is issuing a late representation reply for representations against fresh plans that are submitted following the Planning Board hearing, and to this effect the representees are being requested to make their submissions only orally during the hearing.

Following representations from the Planning Authority, the Commissioner for Environment and Planning concluded that the rejection of representations in writing following the filing of fresh plans at the request of the Planning Board or the Planning Commission is not found to be justified. Therefore, the Commissioner recommended that:

1. when the Planning Board or Planning Commission authorises fresh submissions by the applicant, it also establishes a reasonable period within which the registered interested parties may file representations in writing following these fresh submissions.
2. the Planning Authority accepts representations by the registered interested parties that are filed in writing within the period stipulated by the Board or Commission; and
3. for pending applications, where the applicant has already been invited to revise the proposal, the Planning Authority shall accept representations that are submitted at least fifteen days before the next Board or Commission hearing.

Outcome

The Planning Authority informed the Commissioner that following a discussion in the Executive Council, his recommendations wouldn't be implemented because the regulation does not provide for written submissions. Therefore, the case was referred to the Prime Minister in September 2022, and since no action has been taken, the Ombudsman and the Commissioner sent the report to the attention of the House of Representatives.

RECOMMENDATIONS NOT IMPLEMENTED: COMPLAINT FOLLOWING AN ALLEGED IRREGULAR APPROVAL OF A STRUCTURE ON A PAVEMENT IN SLIEMA

October 26, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr. Anthony C. Mifsud, and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion concerning a complaint regarding a permit for a metal and glass structure taking up the public footpath at the Strand in Sliema.

Case Summary

On 16 May 2022, the Commissioner for Environment and Planning received a complaint against a permit for a metal and glass structure to take up the public footpath at the Strand in Sliema. The complainant had objected to this structure during the relevant representation period, only to be ignored by the Planning Commission. The MTA had also insisted that the “*retractable canopy should not be an enclosed structure.*”

Following an investigation, the Commissioner concluded that the allegations against the Planning Authority that it irregularly approved a structure on the pavement at Sliema had been found to be justified. The only two legal and right options for the Planning Authority were to process the proposal as a retractable canopy in line with the Policy, Guidance, and Standards for Outdoor Catering Areas on Public Open Spaces or else ask the applicant to change the proposal to a shading structure to respect the submitted drawings and advertise it and process the application as such. The Planning Authority did neither and chose to approve the proposal after advertising it as a retractable canopy and processing it as an enclosure and shading structure.

The Commissioner recommended that the Planning Authority should invoke Article 80 of the Development Planning Act and revoke the permit. The Commissioner also recommended that the application should then be reverted to the pre-publication stage so that the application is correctly advertised and correctly processed in line with the Development Planning Act and with the Policy, Guidance, and Standards for Outdoor Catering Areas on Public Open Spaces.

Outcome

The Planning Authority did not implement the Commissioner's recommendations, and therefore, the case was referred to the Prime Minister in September 2022, and since no action has been taken, the Ombudsman and the Commissioner sent the report to the attention of the House of Representatives.

RECOMMENDATIONS NOT IMPLEMENTED: NO ACTION WITH REGARD TO TABLES AND CHAIRS ON PUBLIC LAND IN SENGLEA

December 5, 2022



In terms of Article 22(4) of the Ombudsman Act, the Ombudsman, Mr. Anthony C. Mifsud, and the Commissioner for Environment and Planning, Perit Alan Saliba, have sent to the House of Representatives the Final Opinion concerning a complaint alleging no action with regards to tables and chairs on public land in Senglea.

Case Summary

On 1 June 2022, this Office received a complaint alleging no action by the Lands Authority against the illegal occupation of public land through the placing of tables and chairs in Senglea. The complainant submitted a photo showing the alleged illegal occupation in question consisting of four sets of tables and chairs, including umbrellas, located on the promenade.

The Commissioner for Environment and Planning initiated an investigation involving the Lands Authority, the Planning Authority, and the Malta Tourism Authority. No reply was forthcoming from any of the governmental entities involved. The Commissioner observed that this is a clear case of lack of cooperation by the authorities, particularly the Lands Authority, with the Ombudsman institution that is performing its constitutional role in overseeing the administrative functions of public entities. The Commissioner commented that this country could not move forward if a Constitutional institution such as the Ombudsman, is ignored.

The Commissioner recommended that the Lands Authority shall provide and publish all the encroachments on public land, properly listed under location and street name – preferably also through a system similar to the Planning Authority’s Mapserver – starting with those in Senglea. Also, the Lands Authority must take immediate action against any illegal encroachments and fine the contravenor in line with Article 62 of the Lands Authority Act.

Outcome

The Lands Authority did not even react to the Commissioner’s recommendations, let alone implement his recommendations. The case was referred to the Prime Minister in October 2022, and since no action has been taken, the Commissioner sent the report to the attention of the House of Representatives.

Performance Review 2022

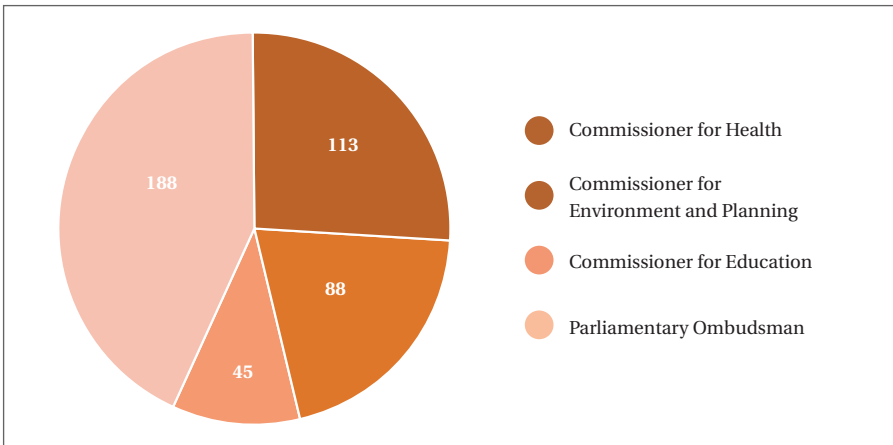
CASES HANDLED BY THE
OFFICE OF THE OMBUDSMAN



**TABLE 1.1 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN
2021 - 2022**

	2021	2022
	No of cases	No of cases
Parliamentary Ombudsman	239	188
Commissioner for Environment and Planning	95	88
Commissioner for Education	50	45
Commissioner for Health	143	113
Total	527	434

**DIAGRAM 1.2 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN
2022**



During the year 2022, the Office of the Ombudsman dealt with a total of 434 cases, representing a reduction of 18% compared to the previous year's caseload. Table 1.1 and Diagram 1.2 illustrate that out of the 434 cases, 188 were investigated by the Parliamentary Ombudsman, representing a 21% decrease from the previous year. Additionally, 113 cases were handled by the Commissioner for Health, which reflects a 21% decrease from 2021, while 88 cases were dealt with by the Commissioner for Environment and Planning, representing an 7% reduction from the previous year. Lastly, the Commissioner for Education handled 45 cases, which is a 10% reduction from the previous year.

TABLE 1.3 – SUSTAINED CASES CLOSED DURING 2022 INCLUDING OUTCOME

	No of cases	Sustained – awaiting outcome	Sustained – no recommendation made	Recommendation implemented	Recommendation not implemented	Recommendation Partly implemented
Parliamentary Ombudsman	12	3	-	8	1	-
Commissioner for Environment and Planning	9	-	-	6	3	-
Commissioner for Education	9	-	1	3	5	-
Commissioner for Health	37	-	14	22	1	-
Total	67	3	15	39	10	-

Table 1.3 presents the outcomes of cases that were sustained and closed during the year 2022. Out of the 12 sustained cases investigated by the Parliamentary Ombudsman, 8 recommendations (67%) were implemented by the Public Administration, and 1 (8%) was not implemented. The Office of the Ombudsman was awaiting a response from the relevant entity for the remaining 3 (25%) cases.

The Commissioner for Environment and Planning sustained 9 cases during 2022, of which 6 (67%) were implemented and 3 (33%) were not implemented.

Among the 9 sustained cases investigated by the Commissioner for Education, 3 (33%) recommendations were implemented by the Public Administration, 5 (56%) were not implemented, and 1 (11%) was sustained, but no recommendation was made.

The Commissioner for Health had 37 sustained cases, out of which 22 (59%) were implemented by the Public Administration, 14 (38%) were sustained but no recommendation was made, and 1 (3%) case still needs to be implemented.

Overall, out of the 67 cases sustained by the Office of the Ombudsman and closed during 2022, 39 (58%) were implemented, 15 (22%) were sustained, but no recommendation was made, 10 (15%) were not implemented, and 3 (4%) cases are still awaiting the outcome from the public administration.

TABLE 1.4 – COMPLAINTS AND ENQUIRIES RECEIVED**1996-2022**

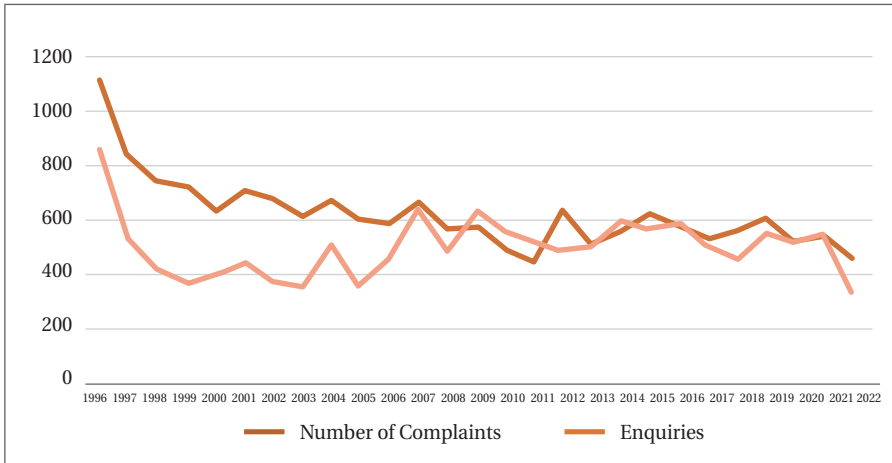
Year	Written complaints					Enquiries
	Total number received by Ombudsman's Office	Ombudsman	Commissioner for Environment and Planning	University Ombudsman/ Commissioner for Education	Commissioner for Health	
1996	1112					849
1997	829					513
1998	735					396
1999	717					351
2000	624					383
2001	698					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	623	443	92	56	32	462
2013	493	329	61	38	65	475
2014	538	352	49	60	77	581
2015	611	405	65	65	76	554
2016	557	361	55	59	82	579
2017	520	336	62	39	83	484
2018	553	313	84	54	102	438
2019	592	336	84	68	104	533
2020	503	245	107	45	106	498
2021	527	239	95	50	143	433
2022	434	188	88	45	113	314

Total Case Load

The total caseload of the Office of the Ombudsman since its establishment in 1995 is presented in Table 1.4 and Diagram 1.5. In 2022, the Office investigated 434 cases,

and in addition to that, it handled 314 enquiries, which represents a 27% decrease when compared to 2021 (433).

**DIAGRAM 1.5 – OFFICE OF THE OMBUDSMAN – WORKLOAD
1996-2022**



**TABLE 1.6 – GENERAL ELECTIONS TREND
1997-2022**

Year	No of Cases
1997	829
1998 (GE)	735
1999	717
2000	624
2001	698
2002	673
2003 (GE)	601
2004	660
2005	583
2006	567
2007	660
2008 (GE)	551
2009	566
2010	482
2011	426
2012	623
2013 (GE)	493
2014	538
2015	611
2016	557

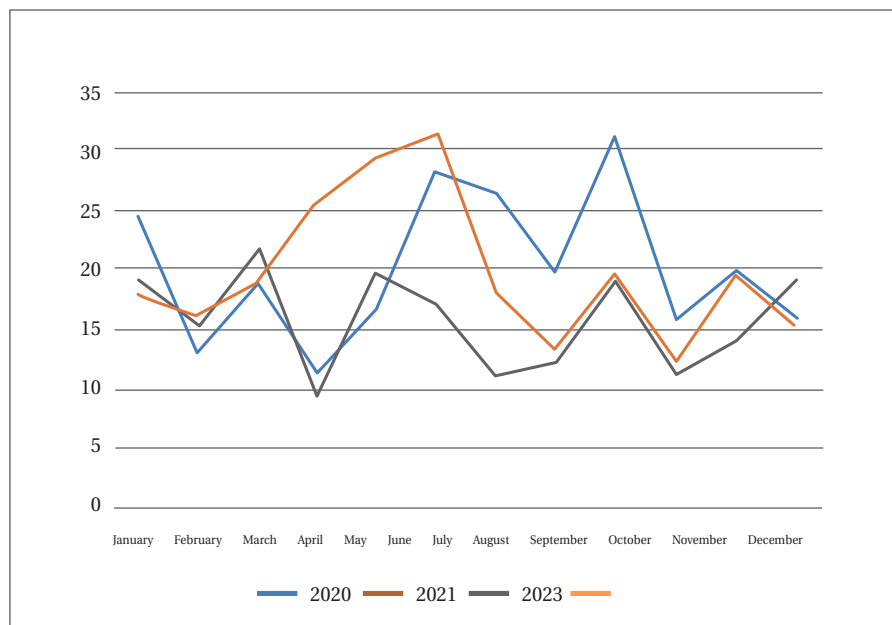
2017 (GE)	520
2018	553
2019	592
2020	503
2021	527
2022 (GE)	434

Table 1.6 displays the number of complaints investigated by the Office of the Ombudsman in the years before and after a General Election.

Historically, the Office of the Ombudsman has experienced a decline in the number of complaints leading up to a general election. However, this trend is typically reversed in the year following the election. In 2022, the country held a General Election in March, and this trend was once again observed with a decrease in the number of complaints. This phenomenon is attributed to the post-election euphoria, which often sees citizens seeking direct access to the Government to address their concerns.

**TABLE 1.7 – COMPLAINTS STATISTICS BY MONTH
2020 - 2022**

	2020			2021			2022		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
Brought forward from previous year			167			168			117
January	25	20	172	18	16	170	19	18	118
February	13	17	168	16	36	150	15	19	114
March	19	15	172	19	29	140	22	17	119
April	11	23	160	26	22	144	9	24	104
May	17	16	161	30	32	142	20	15	109
June	29	25	165	32	22	152	17	16	110
July	27	13	179	18	19	151	11	21	100
August	20	10	189	13	31	133	12	8	104
September	32	26	195	20	26	127	19	10	113
October	16	21	190	12	10	129	11	20	104
November	20	39	171	20	26	123	14	29	89
December	16	19	168	15	21	117	19	16	92
Total	245	244		239	290		188	213	
Enquiries	498			433			314		

DIAGRAM 1.8 – COMPLAINTS STATISTICS BY MONTH**2020 - 2022**

Between January and December 2022, there was a decline of 27% in the number of completed investigations, from 290 in 2021 to 213 in 2022.

As of the end of 2022, the pending caseload stood at 92, which is a 21% decrease from the previous year.

TABLE 1.9 – COMPLAINTS RECEIVED CLASSIFIED BY MINISTRY AND RESPECTIVE DEPARTMENTS**2022**

Office of the Prime Minister (OPM)	
Sector	No of Cases received
Department for Industrial and Employment Relations ⁽¹⁾	2
Electoral Commission	1
Institute for the Public Service	2
People and Standards Division	1
Public Service Commission	6
TOTAL	12

1 Change of Ministry from OPM to Ministry within the Office of the Prime Minister on 26.03.22.

Ministry within the Office of the Prime Minister

Sector	No of Cases received
Department of Industrial and Employment Relations ⁽¹⁾	1
TOTAL	1

Ministry for Agriculture, Fisheries and Animal Rights (MAFA)

Sector	No of Cases received
Agriculture and Rural Payments Agency	1
Agriculture, Fisheries and Animal Rights	1
TOTAL	2

Ministry for the Economy and Industry (MEI)

Sector	No of Cases received
Lands Authority ⁽²⁾	1
TOTAL	1

Ministry for the Economy, European Funds and Lands (MEFL)

Sector	No of Cases received
Economy, European Funds and Lands	1
Joint Office	1
Lands Authority ⁽²⁾	7
Malta Communications Authority	1
Malta Gaming Authority	1
TOTAL	11

Ministry for Education and Sport (MEDS)

Sector	No of Cases received
Foundation for Tomorrow's Schools ⁽³⁾	2
Higher Education ⁽³⁾	1
TOTAL	3

2 Change of Ministry from MEI to MEFL on 26.03.22.

3 Change of Ministry from MEDS to MEYR on 26.03.22.

Ministry for Education, Sport, Youth, Research and Innovation (MEYR)

Sector	No of Cases received
Education, Sport, Youth, Research and Innovation	2
National Commission for Further and Higher Education	2
TOTAL	4

Ministry for Energy, Enterprise and Sustainable Development (MESD)

Sector	No of Cases received
ARMS ⁽⁴⁾	2
Regulator for Energy and Water Services (REWS) ⁽⁴⁾	2
Water Services Corporation ⁽⁴⁾	1
TOTAL	5

Ministry for the Environment, Energy and Enterprise (MEEE)

Sector	No of Cases received
ARMS Ltd ⁽⁴⁾	6
Enemalta plc	2
Energy and Water Agency	1
Engineering Resources Ltd	1
Environment, Energy and Enterprise	1
Malta Enterprise	1
Water Services Corporation ⁽⁴⁾	2
TOTAL	14

Ministry for Finance and Employment (MFE)

Sector	No of Cases received
Air Malta	4
Arbiter for Financial Services	1
Commissioner for Revenue (Customs and Excise)	2
Commissioner for Revenue (Inland Revenue)	3
Commissioner for Revenue (VAT)	1
Finance and Employment	2

⁴ Change of Ministry from MESD to MEEE on 26.03.22.

Jobsplus	6
TOTAL	19

Ministry for Gozo (MGOZ)

Sector	No of Cases received
Gozo	3
Gozo Channel Ltd	1
TOTAL	4

Ministry for Home Affairs, National Security and Law Enforcement (MHSE)

Sector	No of Cases received
Correctional Services Agency^[5]	1
Home Affairs, National Security and Law Enforcement^[5]	1
Identity Malta Agency^[5]	3
Identity Malta Agency - Central Visa Unit^[5]	1
Identity Malta – ID Cards^[5]	1
Identity Malta – Public Registry^[5]	1
International and Protection Agency^[5]	1
Local Enforcement System (LESA)^[5]	1
Police^[5]	4
TOTAL	14

Ministry for Home Affairs, Security, Reforms and Equality (MHSR)

Sector	No of Cases received
Armed Forces of Malta	3
Civil Protection Department	1
Community Malta Agency	2
Correctional Services Agency^[5]	5
Home Affairs, Security, Reforms and Equality	1
Identity Malta Agency^[5]	3
Identity Malta Agency - Central Visa Unit^[5]	1
Identity Malta Agency - Expatriates Unit	1

⁵ Change of Ministry from MHSE to MHSR on 26.03.22.

Independent Police Complaints Board	2
International and Protection Agency ^[5]	1
Local Enforcement Systems Agency (LESA) ^[5]	5
Police ^[5]	8
TOTAL	33

Ministry for Health

Sector	No of Cases received
Health Services	3
Mount Carmel Hospital	1
TOTAL	4

Ministry for Inclusion, Social Wellbeing and Voluntary Organisations (MIWV) ^[6]

Sector	No of Cases received
Commission for the Rights of Persons with Disability	1
TOTAL	1

Ministry for Justice (MFJ)

Sector	No of Cases received
Courts of Justice ^[7]	1
Information and Data Protection Commissioner ^[7]	1
Justice	1
TOTAL	3

Ministry for Justice and Governance (MFJG) ^[7]

Sector	No of Cases received
Courts of Justice ^[7]	1
Information and Data Protection Commissioner ^[7]	1
TOTAL	2

6 Change of Ministry from MIWV to MIVC on 26.03.22.

7 Change of Ministry from MFJG to MFJ on 26.03.22.

Ministry for the National Heritage, The Arts and Local Government (MHAL)

Sector	No of Cases received
Local Councils	7
Local Government	2
National Heritage, The Arts and Local Government	1
Valletta Cultural Agency	1
TOTAL	11

Ministry for Public Works and Planning (MPWP)

Sector	No of Cases received
Planning Authority	1
Public Works and Planning	1
TOTAL	2

Ministry for Social Accommodation (MSA) ⁽⁸⁾

Sector	No of Cases received
Housing Authority ⁽⁸⁾	2
TOTAL	2

Ministry for Social and Affordable Accommodation (MSAA)

Sector	No of Cases received
Housing Authority ⁽⁸⁾	4
TOTAL	4

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

Sector	No of Cases received
Department of Social Security ⁽⁹⁾	3
TOTAL	3

8 Change of Ministry from MSA to MSAA on 26.03.22.

9 Change of Ministry from MSFC to MSPC on 26.03.22.

Ministry for Social Policy and Children's Rights (MSPC)	
Sector	No of Cases received
Department of Social Security ^[9]	7
Social Policy and Children's Rights	1
TOTAL	8
Ministry for Tourism and Consumer Protection (MTCP)	
Sector	No of Cases received
Tourism and Consumer Protection	1
TOTAL	1
Ministry for Transport, Infrastructure and Capital Projects (MTIP)	
Sector	No of Cases received
Infrastructure Malta Agency	1
Transport Malta	15
TOTAL	16
Outside Jurisdiction	8
TOTAL	188

Table 1.9 presents the complaints received classified by departments and public authorities according to each ministry's portfolio.

The following analysis focuses on the top five ministries that received the highest number of complaints. In total, the top five ministries attracted 126 complaints or 67% of the total grievances lodged:

Ministry for Home Affairs, Security, Reforms and Equality (MHSE)

The Ministry for Home Affairs, Security, Reforms and Equality and the departments under its portfolio received the highest number of complaints. In total, it attracted 47 complaints or 25% of the Parliamentary Ombudsman's caseload. This number includes 14 complaints against the Ministry for Home Affairs, National Security, and Law Enforcement (MHSE), as it was referred to before the March general election.

Ministry for Finance and Employment (MFE)

The Ministry for Finance and Employment (MFE) received the second-highest number of complaints. The Office of the Ombudsman received 19 (10%) complaints from aggrieved citizens against the MFE.

Ministry for Environment, Energy and Enterprise (MEEE)

The Ministry for Environment, Energy, and Enterprise (MEEE) also received the second-highest number of complaints, with 19 (10%) complaints from citizens lodging complaints against one of the entities falling under this Ministry. This includes 5 complaints lodged against the Ministry for Energy, Enterprise, and Sustainable Development (MESD), as it was referred to before the March general election.

Ministry for Transport, Infrastructure, and Capital Projects (MTIP)

The Ministry for Transport, Infrastructure, and Capital Projects (MTIP) received 16 complaints, which accounted for 9% of the caseload handled by the Parliamentary Ombudsman in 2022, making it the third ministry that received the most complaints.

Office of the Prime Minister

In 2022, 13 cases (7%) were against a department or authority falling under the Office of the Prime Minister, making the OPM the fourth ministry that received the most complaints. The total number of cases includes a case lodged against an entity falling under the Ministry within the Office of the Prime Minister.

Ministry for the Economy, European Funds and Lands (MEFL)

The fifth and last Ministry that received the most complaints was the Ministry for the Economy, European Funds, and Lands (MEFL), which received 12 (6%) complaints against a number of its entities. This includes a case lodged against the Ministry for the Economy and Industry (MEI) as it was known before the March general election.

TABLE 1.10 – COMPLAINT GROUNDS 2012 - 2022

Grounds of Complaints	2021		2022	
	Count	Percentage	Count	Percentage
Contrary to law and policies or rigid application of legislation, regulations and policies	21	9%	18	10%
Improper discrimination	21	9%	18	10%
Failure to provide information or to provide a reply	14	6%	20	11%
Undue delay/failure to act/waiting lists	42	17%	12	5%
Unfair treatment/lack of equity	85	36%	96	51%
Unfair selection process/promotion/grading	28	11%	14	7%
Improper attitude of staff or management	2	1%	2	1%
Personal matters/staff issues/student issues	19	8%	2	1%
Review of Commissioner's decision	3	1%	5	3%
Other	4	2%	1	1%
Total	239	100%	188	100%

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

2022

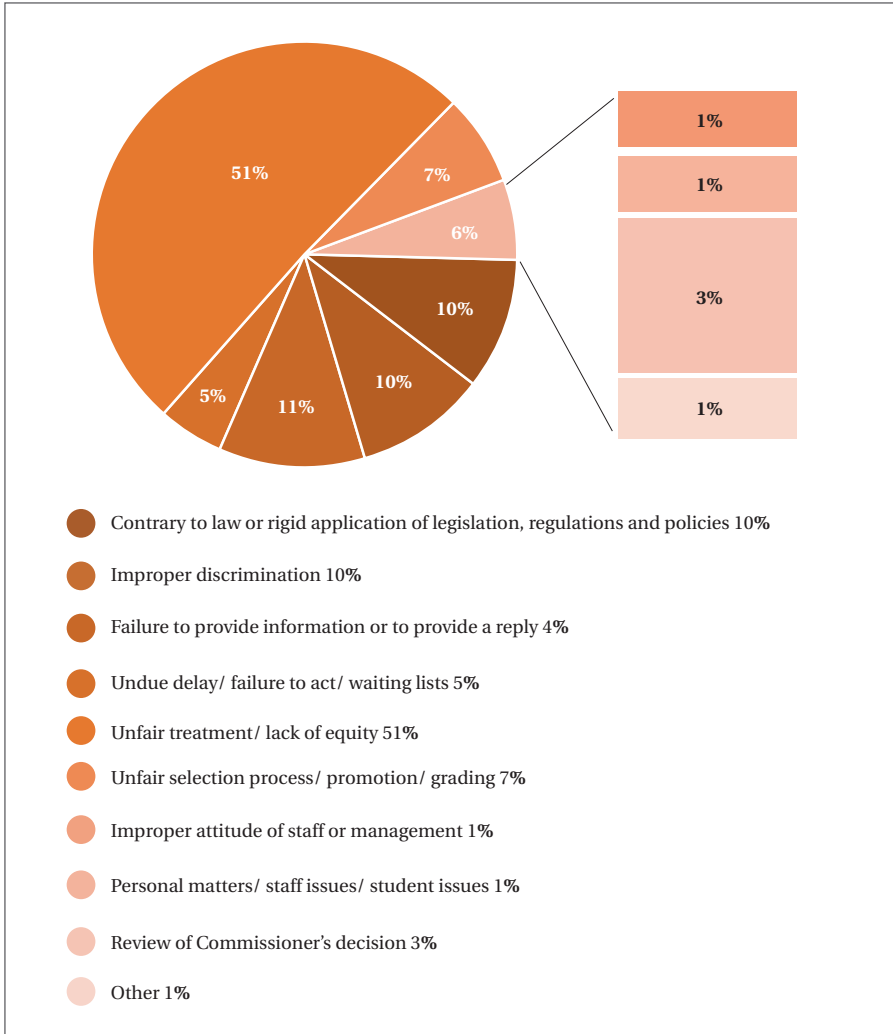


Table 1.10 and Diagram 1.11 provide a detailed analysis of the complaints by the type of alleged maladministration.

The most common complaints received from aggrieved citizens in 2022 were related to unfair treatment/lack of equity, which accounted for 51% of the complaints (96). This was followed by complaints alleging a failure to provide information or reply, which attracted 11% (20) of the complaints.

**TABLE 1.12 – COMPLAINTS BY LOCALITY
2021-2022**

Locality	2021	2022
Attard	9	6
Balzan	1	4
Birgu	-	-
Birkirkara	10	7
Birżebbuġia	4	4
Bormla	-	-
Dingli	2	2
Fgura	2	3
Floriana	-	1
Gharghur	2	-
Ghaxaq	-	3
Gudja	1	2
Gżira	1	5
Hamrun	1	4
Iklin	1	1
Isla	2	-
Kalkara	-	-
Kirkop	5	2
Lija	1	-
Luqa	3	1
Madliena	1	-
Manikata	-	-
Marsa	2	1
Marsaskala	11	6
Marsaxlokk	5	2
Mdina	-	-
Mellieha	5	4
Mgarr	2	1
Mosta	12	7
Mqabba	2	-
Msida	6	3
Mtarfa	2	3
Naxxar	9	6
Paola	3	9
Pembroke	1	4
Pietà	5	3
Qormi	2	1
Qrendi	-	-

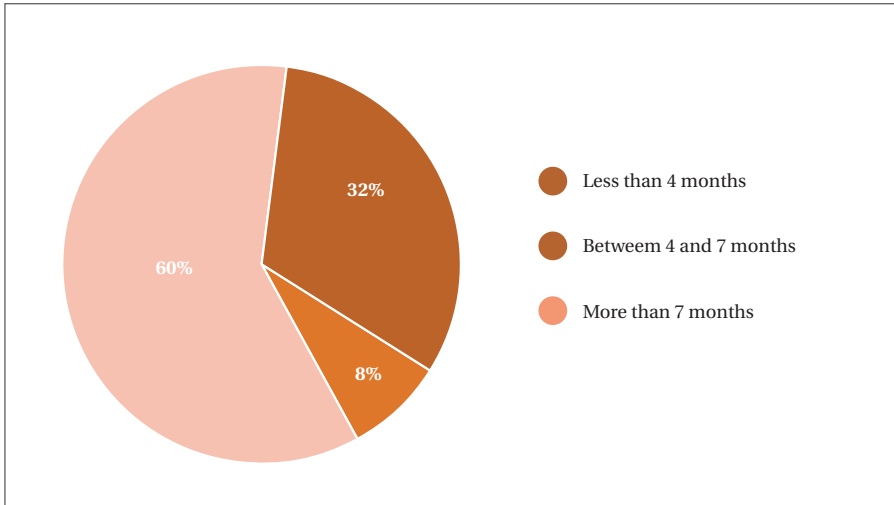
Rabat	1	1
Safi	2	-
San Ġiljan	2	1
San Ġwann	7	3
San Pawl il-Baħar	8	8
Santa Luċija	5	-
Santa Venera	3	-
Siggiewi	5	3
Sliema	5	20
Swieqi	6	3
Ta' Xbiex	4	1
Tarxien	4	9
Valletta	1	2
Xghajra	1	2
Żabbar	4	6
Żebbuġ	6	6
Żejtun	9	4
Żurrieq	3	5
Gozo	18	11
Other	13	4
Overseas	13	4
Total	239	188

TABLE 1.13 – AGE PROFILE OF OPEN CASELOAD AT END 2022

Age	Cases in hand
Less than 2 months	19
Between 2 and 3 months	4
Between 3 and 4 months	6
Between 4 and 5 months	4
Between 5 and 6 months	2
Between 6 and 7 months	1
Between 7 and 8 months	5
Between 8 and 9 months	3
Over 9 months	48
Total Open files	92

Table 1.13 and Diagram 1.14 show the number of cases still under investigation that stood at 92 at the end of 2022.

DIAGRAM 1.14 – PERCENTAGE OF OPEN COMPLAINTS BY AGE (AT THE END OF 2022)



**TABLE 1.15 – OUTCOMES OF FINALISED COMPLAINTS
2021-2022**

Outcomes	2021	2022
Sustained cases	21	12
Cases not sustained	61	49
Resolved by informal action	29	16
Investigation discontinued (not undertaken, given advice/assistance, withdrawn, etc)	89	87
Outside Jurisdiction	20	9
Declined (time-barred, trivial, etc.)	70	40
Total	290	213

DIAGRAM 1.16 – OUTCOMES OF FINALISED COMPLAINTS 2022

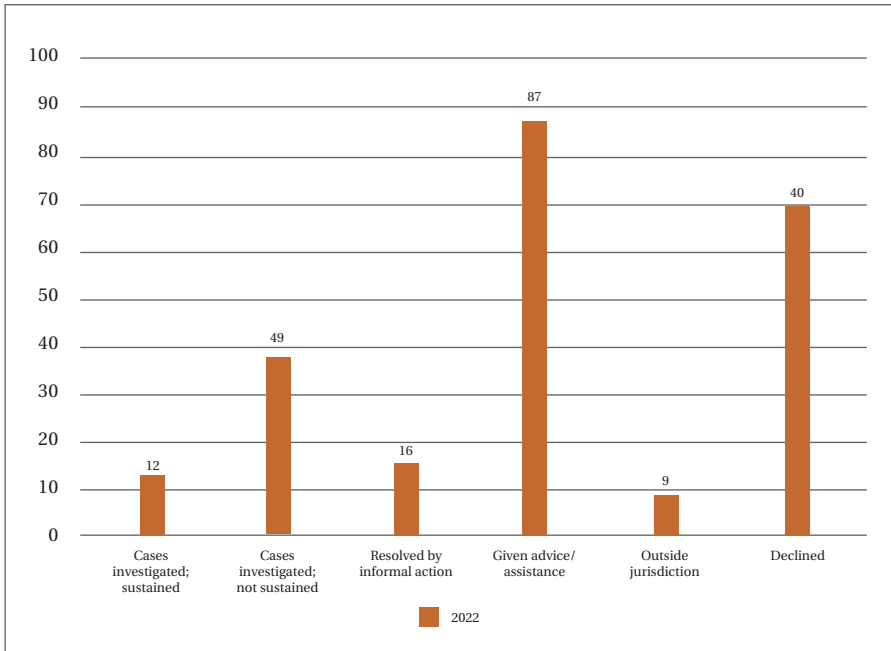


Table 1.15 and Diagram 1.16 represent the outcome of the finalised complaints.

In 2022, 12 (6%) of the finalised complaints were sustained by the Ombudsman with a satisfactory result for the complainant. Additionally, 87 (41%) cases were finalised by giving advice or assistance without the need to conduct a formal investigation. There were also 16 (8%) cases that were resolved through informal action, while there were 9 (4%) cases that were outside the Ombudsman's jurisdiction.

**TABLE 1.17 – TYPE OF MALADMINISTRATION IN JUSTIFIED COMPLAINTS
2021-2022**

Grounds of Complaints	2021	2022
Contrary to law and policies or rigid application of legislation, regulations and policies	4	2
Improper discrimination	4	3
Lack of transparency	-	-
Failure to provide information or to provide a reply	4	3
Undue delay/failure to act/waiting lists	14	7
Unfair treatment/lack of equity	17	11
Unfair selection process/promotion/grading	5	-
Issues of quality of life/special needs	-	-
Improper attitude of staff or management	-	-
Shortage/Inadequate supply of equipment/services	-	-
Issues of privacy, dignity and confidentiality	-	-
Personal matters/staff issues/student issues	2	2
Review of Commissioners' decision	-	-
Other	-	-
Shortage/Inadequate supply of medicines	-	-
Continuing care/follow-up issues	-	-
Total	50	28

Table 1.17 illustrates the type of maladministration of justified complaints. Of the 28 justified complaints, 39% concerned allegations related to unfair treatment/lack of equity. The second most common type of complaints were those concerning undue delay or failure to act/waiting lists (25%).

Commissioner for Education

ANNUAL REPORT 2022



COMMISSIONER FOR EDUCATION

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The Commissioner for Education handles complaints directed against public providers of further and higher education. The Commissioner is also tasked by the Ombudsman with investigating complaints against the public education authorities, notably the Department of Education within the Ministry responsible for education, in respect of complaints intimately connected with the provision or reception of education.

The year 2022 saw a small decrease in the number of new complaints received and which were assigned to the Commissioner (45, compared to 50 in 2021). The bulk of complaints, however, remained as in previous years directed against the Department of Education (26 complaints, 20 in 2021), with the University of Malta (UOM) in second place (13 complaints, 19 in 2021), followed by the Malta College of Arts, Science and Technology (MCAST) (only 5 complaints, 10 in 2021).

The trend, observed in the report for last year, of improvement in the communication process between the Ombudsman's Office and the Department of Education persisted throughout 2022. Likewise, there was a marked improvement in communication with MCAST, with the College even promptly agreeing to implement recommendations (interim or final) made by the Commissioner.

The Office's relations with the University temporarily took a downward trend when the University, pursuant to a final report on a complaint by a student, attempted to suggest that academic decisions by the University Senate were beyond the pale of the Ombudsman's jurisdiction or investigative powers (see Case Notes 2022, Edition 42, pgs. 50-53), notwithstanding the clear wording of the law on 'evidence of maladministration'.

The bulk of complaints directed against the Department of Education came from members of staff (18 complaints in 2022, 14 in 2021). These were mainly complaints dealing with alleged unfair deployment of staff. Students' complaints against the said Department (7 in 2022, 4 in 2021) dealt mainly with the outcome of applications for scholarships or with the payment of stipends.

77% (compared to 62% in 2021) of the total number of complaints directed against all institutions within the Commissioner's remit were in the categories 'unfair treatment/lack of equity' and 'unfair selection process/promotion/grading'. Apart from deployment and scholarship issues, these included complaints about discipline with regard to a student found guilty of 'constructive copying' during a MATSEC examination, failure to effect refund of tuition fees, excessive course work within some faculties of the UOM, and promotions in general.

Two cluster of complaints directed against the UOM deal with promotions from associate to full professor, and with the extension of appointment of a full professor beyond the statutory retirement age. As regards the promotions issue, the inordinate length of time which some of these applications take until they are finally decided by the competent University body remains a serious problem. In connection with the extension of appointment beyond the statutory retirement age, the Commissioner has in two cases which were investigated in 2022 highlighted (in interim opinions submitted in 2023) one particular feature of arbitrariness which needs to be rectified. It is hoped that the UOM will deal with this issue globally (that is, with regard to all similar pending cases) to obviate the need for a final opinion on the matter.

A substantial proportion of complaints (37%, compared to 16% in 2021) were resolved by informal action. To achieve this the Commissioner has resorted to alerting significant persons within the respondent institution in parallel with, or sometimes ahead of, the formal and statutory requirement of Article 18(1) of the Ombudsman Act. In this way the formal communication served by email upon the institution, instead of being pushed from post to pillar, is generally picked up immediately and a first reply is received within forty-eight hours.

The Commissioner notes with satisfaction that in the vast majority of cases not sustained (25% in 2022, compared with 26% for 2021) complainants react favourably to the reasons given to them in justification of the dismissal of their complaint. This suggests that in most cases the underlying problem was not one of maladministration by or within the institution, but rather one of lack of proper communication and dialogue between the complainant and the institution concerned.

During the period under consideration, the Commissioner, after consultation with the Ombudsman, initiated and concluded one 'own initiative investigation'. This concerned the lack of teachers at the Young People's Unit at Mount Carmel Hospital. The recommendation made by the Commissioner was immediately implemented by the Department of Education.

During 2022 the Commissioner and the Ombudsman referred four cases to the Speaker of the House of Representatives in terms of Article 22(4) of the Ombudsman Act. In these cases, the recommendation/s made by the Commissioner was/were rejected by the respondent institution or not implemented or not fully implemented.

**Table 2.1 - Complaint intake by institution
2020 - 2022**

Institutions	2021	2022
University of Malta	19	13
MCAST	10	5
Institute of Tourism Studies	1	1
Education Authorities	20	26
Outside Jurisdiction	-	-
Total	50	45

**Table 2.2 - Complaints by Institution classified by complaint type
2020- 2022**

	University of Malta		MCAST		Institute of Tourism Studies		Education Authorities		Total	
	2021	2022	2021	2022	2021	2022	2021	2022	2021	2022
Staff	11	6	5	1	1	-	14	18	31	25
Students	8	7	5	4	-	1	4	7	17	19
Others	-	-	-	-	-	-	1	-	1	-
Total complaints by students and staff	19	13	10	5	1	1	19	25	49	44
Own initiative cases	-	-	-	-	-	-	1	1	1	1
Total	19	13	10	5	1	1	20	26	50	45

**Table 2.3 - Outcomes of finalised complaints
2021 - 2022**

Outcomes	2021		2022	
Sustained cases	11	22%	9	18%
Cases not sustained	13	26%	13	25%
Resolved by informal action	8	16%	19	37%
Investigation discontinued (not undertaken, given advice/ assistance, withdrawn, etc)	13	26%	10	20%
Outside Jurisdiction	-	-	-	-
Declined (time-barred, trivial, etc.)	5	10%	-	-
Other		-	-	-
Total	50	100%	51	100%

**Table 2.4 - Complaint Grounds
2021 - 2022**

Grounds of Complaints	2021		2022	
Contrary to law and policies or rigid application of legislation, regulations and policies	6	12%	2	4%
Improper discrimination	4	8%	-	-
Lack of transparency	1	2%	-	-
Failure to provide information or to provide a reply	2	4%	4	9%
Undue delay/failure to act/waiting lists	1	2%	2	4%
Unfair treatment/lack of equity	22	44%	28	63%
Unfair selection process/promotion/grading	9	18%	6	14%
Issues of quality of life/special needs	1	2%	2	4%
Improper attitude of staff or management	1	2%	1	2%
Shortage/Inadequate supply of equipment/services	-	-	-	-
Issues of privacy, dignity and confidentiality	-	-	-	-
Personal matters/staff issues/student issues	-	-	-	-
Review of Commissioners' decision	-	-	-	-
Other	3	6%	-	-
Shortage/Inadequate supply of medicines	-	-	-	-
Continuing care/follow-up issues	-	-	-	-
Total	50	100%	45	100%

Commissioner for Environment and Planning

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Commissioner for Environment and Planning

ANNUAL REPORT 2022

Although the environment remains susceptible to various challenges from various fronts, including construction, transport and waste, bold measures that help in its safeguarding were introduced during the year. These include free public transport, the beverage container refund scheme, the establishment of Project Green, improvements in the management and collection of household waste and the regulating of building contractors that is in the pipeline.

Transport remains the main polluter, adding forty additional cars on the road every single day. This was compared to piling dishes in a kitchen sink with a blocked drain, where one will expect the sink to get blocked again within a relatively short period after cleaning the drain. Planning properly various roadworks and developing underground links whilst benefiting from the extracted resource is akin to using a bucket instead of the blocked drain and reusing the water in order to solve the sink clutter. There is no need to start with a full-fledged metro system. Underground clean transport systems and pedestrian/cycle links still help. The advantages of having rock foundations and short distances are not being exploited well enough.

Project Green is a great initiative. Rather than constructing elevated gardens that are less accessible and enjoyable and are very challenging both in their design and in their upkeep, one should consider investing some of the allocated funds in acquiring centrally located properties on the market. Prices of properties that might have a restricted access and sited at a significant depth from the street might attract similar long-term public green initiatives due to development limitations. With an average allocated fund of about ten million Euros for each locality, apportioning part of this amount to permanently acquire an open space for the public might prove more effective when it comes to the long-term sustainability of similar schemes.

Another issue of concern relates to footpaths. Since 2018, the Commissioner raised the concern on the difficulty the public continuously faces when using footpaths, whether these consist in a pavement along the carriageway or located in the countryside. On many occasions, pedestrians have to dangerously walk along the

carriageway because pavements are blocked with all sorts of obstacles including poles, service boxes, damaged covers, waste bags and shrubs. The Commissioner is also tackling the issue of the appropriation of pavements by commercial establishments and construction works where pavements are blocked for a number of months, and sometimes even years, without any action whatsoever by the regulating entities. Is it fair that a person who parks the car on the pavement for some minutes to unload the shopping bags gets a hefty fine, whereas a commercial establishment or developer who blocks a pavement or encloses it with a wall for various months without any permit whatsoever from the relative entity almost always manages to get away with it? When it comes to footpaths in the countryside, the Commissioner had recommended the regulation of fixed signs impeding access to so-called private property and direct action on illegally installed gates that are to be removed even during sanctioning procedures.

When it comes to planning, or rather the lack of it, difficulties related to permitting and enforcement persist. Public participation is paramount in keeping authorities in check and throughout the year the public and NGOs did achieve significant wins against decisions by the Planning Authority. It is about time that similar public initiatives are rewarded much in the same way as developers are rewarded with permits for developments that would have probably been revoked had similar public initiatives been taken on board in time. One can start considering relating this compensation with the Development Permit Fees paid. On the same note, citizens should start making a habit of spending ten minutes sifting through the Government Gazette published every Wednesday very similar to the daily habit of listening to the daily news. Unfortunately, once an application is pending and the permit is approved, the Commissioner is restricted to act under the Ombudsman Act and usually recommendations are general in nature and include revocation/ modification that is more of an extraordinary procedure.

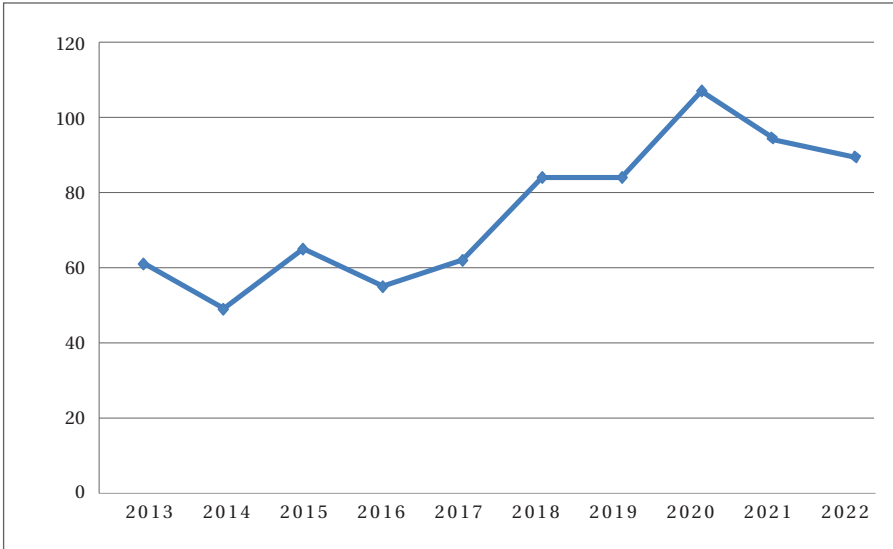
CHART 3.1: NEW CASES 2013-2022

Chart 3.1 shows the number of new cases since the establishment of the Office of the Commissioner for Environment and Planning. The number of cases reaching the Office appears to have stabilized throughout the years.

TABLE 3.2: NUMBER OF CASES

	2021	2022
Pending cases from previous years	29	26
New requests for investigation	95	88
Total	124	114

Pending cases from previous years stand at 26, and although all cases are unique and sometimes tend to be more complicated, the utmost effort is made to conclude cases in the shortest period of time without, however, compromising any pending cases in front of the relative entity or the Law Courts and Tribunals. When Government entities don't collaborate within the period granted by the Commissioner, the Commissioner considers a no-reply to mean that the relative entity does not have anything to submit, and whenever possible, issues the Final Opinion on the information made available. This is a big notch down from the stands taken by certain entities that rather transpose a no-reply into an acceptance or a no-objection. It is expected that Government entities reply within the established time-frame and whenever this is not possible, they do at least submit a justified

request for an extension of time. It is imperative that the public administration not only improves the way it reacts to the Commissioner's reports but also that it ameliorates its level of participation during the investigation process.

During this year the Commissioner opened five own-initiative investigations. One related to discrepancies in building sanitary requirements under two distinct laws, another related to the lack of opportunity to appeal against regularisation permits and another related with the approval of the installation of musical instruments in public gardens. The Commissioner also opened another two cases in connection with the irregular extension of a pavement in front of a commercial establishment and regarding the condition of a public garden. The first two cases are a bit more complicated because they require changes to the law, whereas one of the other cases is due to be hopefully concluded at the time of writing.

TABLE 3.3: CLOSED CASES

	2021	2022
Pending cases from previous years	23	21
New requests for investigation	75	62
Total	98	83

As in previous years, the number of closed cases tally with the number of cases received during the corresponding year. This shows that the pending case load at any one time is kept at a constant low throughout the year so that the Office can concentrate its resources on the current investigations, new complaints that are flowing in, and on other general issues that arise during the year.

TABLE 3.4: GOVERNMENT ENTITIES SUBJECT TO COMPLAINTS

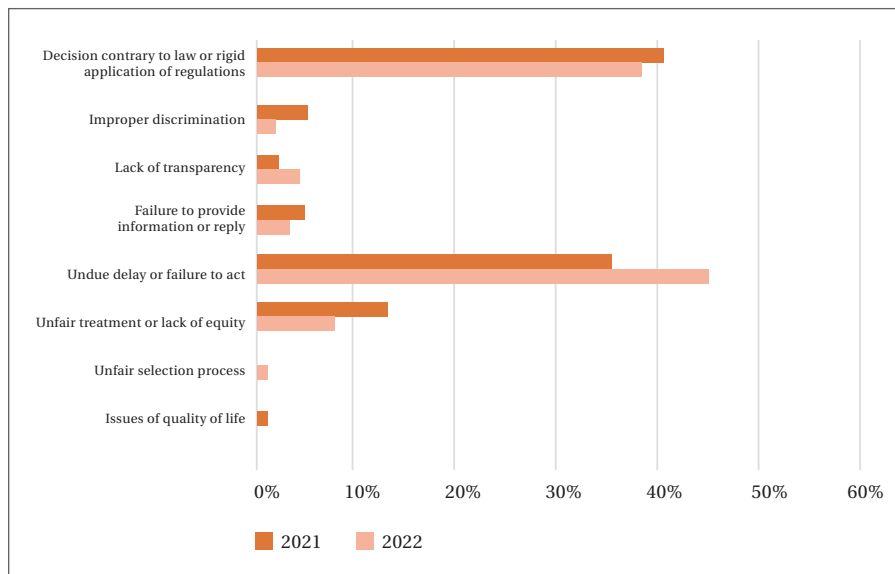
	2021	2022
ARMS Ltd	1	-
Building Construction Agency	3	1
Building Regulation Board	1	-
Enemalta	1	2
Environment and Resources Authority	7	2
Environmental Health	-	1

Health Services	-	1
Housing Authority	1	1
INDIS Malta	-	1
Infrastructure Malta	19	9
Lands Authority	7	4
Local Council	4	10
Local Enforcement Systems Agency	1	-
Local Government	1	-
Malta Tourism Authority	-	1
Ministry for Environment, Climate Change and Planning	1	-
Ministry for Environment, Energy and Enterprise	-	1
Ministry for Public Works and Planning	-	1
Ministry for Transport, Infrastructure and Capital Projects	-	1
Occupational Health and Safety Authority	-	1
ORNIS Committee	1	-
Planning Authority	41	43
Police	-	1
Regulator for Energy and Water Services	-	1
Restoration	-	1
Transport Malta	4	5
Water Services Corporation	2	-
TOTAL	95	88

Holding half the annual case load, the Planning Authority kept the Commissioner busy as much. This year we saw an increase in the number of cases against various Local Councils on issues related mainly to roads and public gardens. Infrastructure Malta, the Lands Authority and Transport Malta hold a fair share of the number of complaints received during this year, whereas only isolated complaints were addressed against the other entities.

TABLE 3.5: CASELOAD BY NATURE OF COMPLAINT

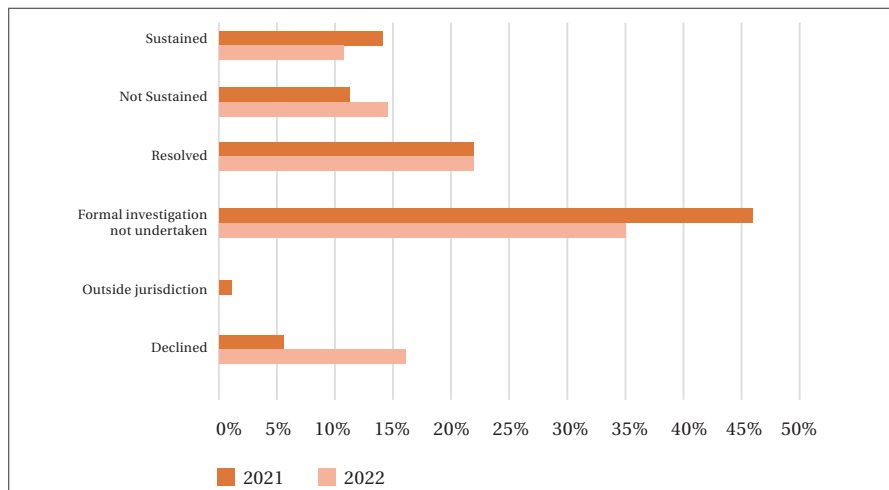
	2021		2022	
	Count	Percentage	Count	Percentage
Decision contrary to law or rigid application of regulations	39	41%	34	39%
Improper discrimination	4	4%	2	2%
Lack of transparency	2	2%	3	3%
Failure to provide information or reply	4	4%	3	3%
Undue delay or failure to act	34	36%	38	44%
Unfair treatment or lack of equity	11	12%	7	8%
Unfair selection process	0	0%	1	1%
Issues of quality of life	1	1%	0	0%
Total	95	100%	88	100%

TABLE 3.5: CASELOAD BY NATURE OF COMPLAINT

Decision contrary to law or rigid application of regulations and undue delay or failure to act continue to cover almost 80% of all complaints received. The law, regulations, policies, and guidelines, are there to be followed in order to achieve the best possible balance between conflicting issues such as those between the environment and the economy, on social and environmental considerations, or even issues between neighbours. This does not mean that if the law, regulations, policies and guidelines do not mention something, then one can assume that it can be done. To give some examples on planning issues, the highest roof level and the surrounding one metre parapet wall was always intended for services such as water tanks and solar panels, however as planning policies do not prohibit splash pools or roof gardens at this level, these are being approved with all the repercussions on bad neighbourliness and the structural integrity of the underlying building. The same can be said for parapet walls on the street elevation. As the planning policy only refers to the parapet wall on the receded elevation, permits are being approved with the street elevations having no parapet wall at all resulting in front terraces that cannot be utilised. Decision-makers should keep in mind that similar commitments will not only affect the individual proposal that is being assessed but also the various other potential similar proposals located around Malta.

TABLE 3.6: OUTCOME FOLLOWING CLOSURE OF CASES

	2021		2022	
Sustained	14	14%	9	11%
Not sustained	12	12%	12	14%
Resolved	21	22%	18	22%
Formal investigation not undertaken	45	46%	29	35%
Outside jurisdiction	-	-	1	1%
Declined	6	6%	14	17%
Total	98	100%	83	100%

TABLE 3.5: CASELOAD BY NATURE OF COMPLAINT

Out of the nine sustained cases, in three cases involving the Planning Authority and two cases involving the Lands Authority, the Commissioner's recommendations were not accepted. In the two Lands Authority cases, the Lands Authority did not even bother to participate during the investigation by submitting its views for consideration before the Final Opinion. In the other four sustained cases, one involving the Lands Authority, one Transport Malta and two Infrastructure Malta, the recommendations were accepted and implemented. It is pertinent to note that this year the Planning Authority did not implement a single recommendation out of the three sustained cases that involved errors in development permits that asked for revocation/modification procedures and the processing of representations following the receipt of fresh plans. This lacks in comparison to the years 2021 and 2020, where the Planning Authority implemented the recommendations in five and seven cases respectively. Nevertheless, one must also mention that this year there were four cases against the Planning Authority that were resolved during the course of the investigation.

CONCLUSION

Although the public generally gets to know from the media about Commissioner recommendations that are not accepted by the relative entity, there are various instances where issues are resolved with the intervention of the Office of the Commissioner. The Ombudsman Act only provides for the publication of non-implemented opinions as, rightly so, one can only improve on mistakes and where things are going right, the intervention of the Commissioner is only required for cross-checking. In fact, out of the 83 cases concluded this year, the relative entity did not accept the Commissioner's recommendations in only five cases.

On a final note, one cannot but deplore the attitude of certain public entities that don't even bother to reply and submit comments during an investigation. There were some instances where the public authority only submitted its views after the case was closed following months of investigations and even more than two months after the Final Opinion when the Prime Minister and the House of Representatives would have already been involved. It is definitely not the right option to choose not to reply when required, and to reply after the case is closed, as this is completely the opposite of how public entities should react to investigations by the Office of the Ombudsman.

Commissioner for Health

ANNUAL REPORT 2022



COMMISSIONER FOR HEALTH

ANNUAL REPORT 2022

Introduction

In 2022 the term of office of the first Commissioner for Health, Mr Charles Messina came to an end in September. I was sworn in as Commissioner for Health on the 13th September 2022. The transition was a smooth one. Both the pending cases as well as the new cases continued to be dealt with uninterrupted. It is important that an office such as ours continues to function in a consistent manner irrespective of the Commissioner of the day. The main function of this Office has always been to provide individuals with the fundamental right to good administration and to defend citizens against maladministration, abuse of power and improper discrimination. The Commissioner for Health has the responsibility of investigating those complaints related to health issues. These are referred to him by the Parliamentary Ombudsman after such complaints are brought to his attention by aggrieved citizens.

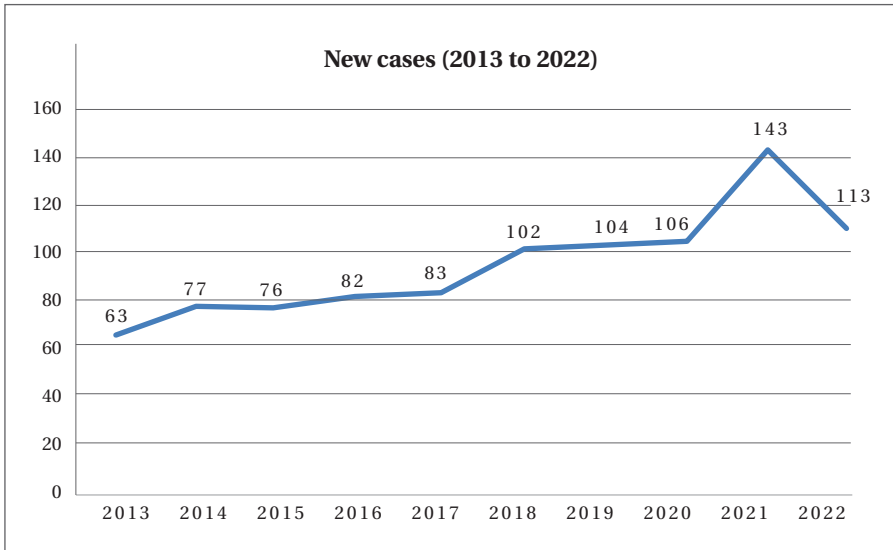
All issues lodged are important to the claimants, Health being no exception. If anything, some of the issues that are dealt with under this subject are extremely important and at times can be rather urgent in nature especially when it comes to treatment or lack thereof of medical conditions.

Most of the work carried out is one of mediation between the aggrieved citizen and the relevant public authority. After receipt of the complaint a confidential investigation is usually undertaken, during which either a solution is obtained or after the investigative process a final opinion with formal recommendations to redress the justified complaint is formed. The aim of this Office is to try to offer just and fair recommendations. These will then be communicated to the relevant entity in expectation that they are accepted by them so as to solve the complaint present. This unfortunately is not always the case but in most cases some form of redress can be achieved. This Office always tries to attain as many solutions as possible to the citizens' justified grievances. The work of this Office should also hopefully cause a shift in the mentality of how this Office is perceived by public officers, as sometimes some Ministries are still not fully aware of what Administrative Justice is about and hence the importance of the Office of the Ombudsman. All stakeholders have to work together in order to try to correct this shortfall in the best interest of our citizens.

New Cases in 2022

In 2022 the Commissioner for Health received 113 complaints. Over the last 10 years there has been an overall gradual increase in the number of cases.

Figure 4.1: Total Number of cases lodged with the Commissioner for Health over the last 10 years



Although this was 21.4% lower than 2021 it still represents a 6.6% increase on 2020. The 34.9% increase noted in 2021 over 2020 was probably due to situations arising from the Covid-19 pandemic as the sharp increase was mainly originating from the general public.

This can be seen when the new cases are divided into those originating from the general public and those originating from the Healthcare workers and, staff employed with the various government Ministries. The greatest majority was represented by those employed within the Ministry for Health.

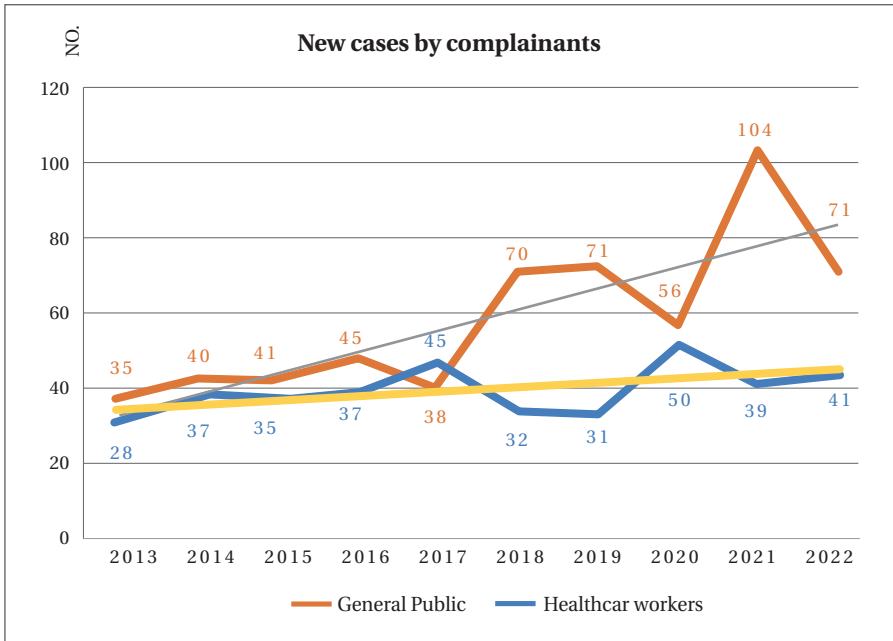
In 2022 these were divided as shown in Table 4.2

Table 4.2: Number of new cases in 2022 by claimants

General Public	71
Healthcare workers	41
Own Initiative	1
Total	113

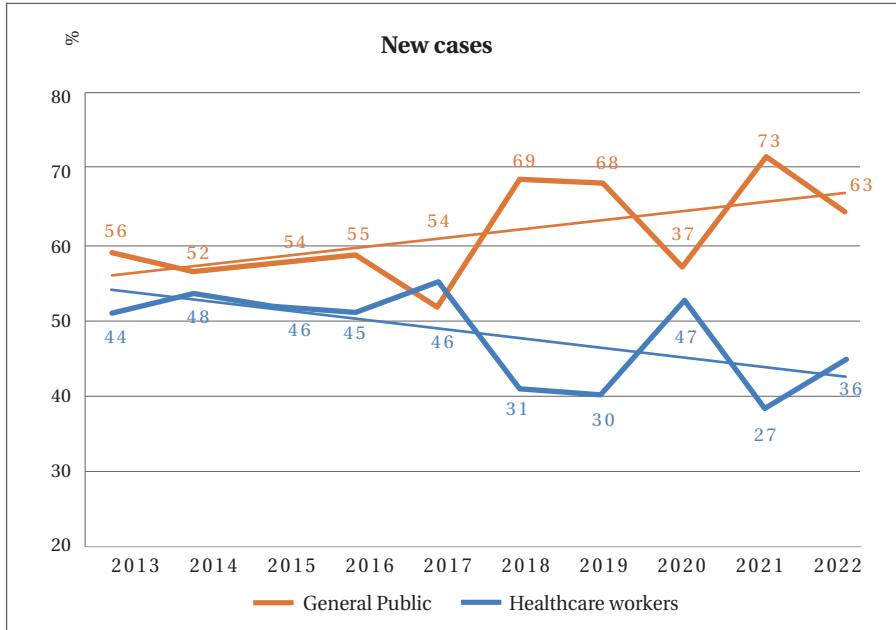
The claims have increased throughout the 10-year period especially those being lodged by the general public. These have more than doubled over the 10-year period (35 in 2013 to 71 in 2022) while those claims lodged by the Health Care employees have increased by 46.4% (28 in 2013 to 41 in 2022). This shows a progressive increase in the complaints lodged with this Office by the general public.

Figure 4.3: Number of cases lodged with the Commissioner for Health over the last 10 years by the general public and by healthcare workers with the respective trendlines.



This becomes more evident when the data is analysed as a percentage of the whole number of new complaints lodged per year. When the percentages are considered (Figure 4.3) the difference between the two major subdivisions, general public and Healthcare workers becomes more evident. This is also reflected in the trendlines in Figure 4.3 which clearly indicate that the complaints lodged by the healthcare workers are decreasing as a percentage of all claims received by this Office but in actual fact the absolute number is still increasing. The number of claims registered by the general public are increasing both in absolute numbers as well as in the percentage of all cases.

Figure 4.4: Percentage of cases lodged with the Commissioner for Health over the last 10 years by the general public and by healthcare workers with the respective trendlines.



Entities involved

As expected, the entity which had the highest number of claims registered against it was the Ministry for Health (Figure 4.5).

Figure 4.5: Number of cases lodged with the Commissioner for Health by entity

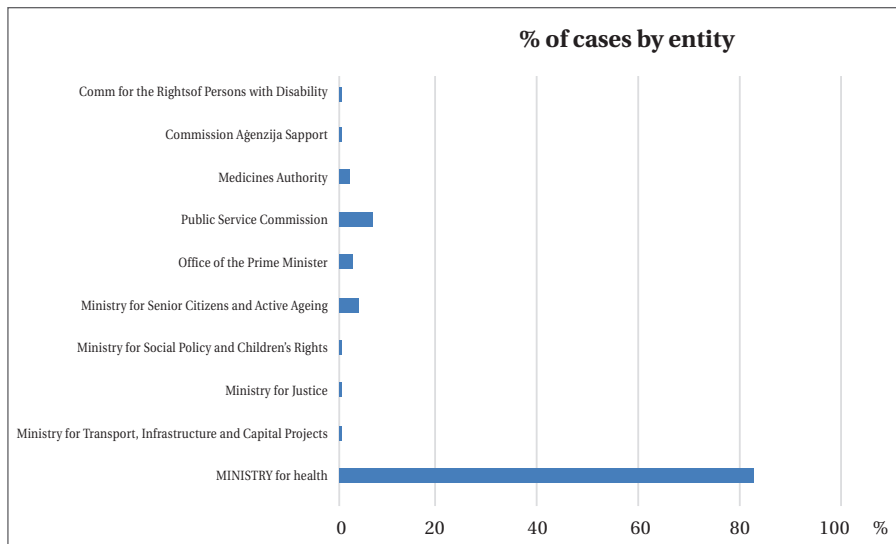


Table 4.6: Entities involved in claims

Entity involved in claim	No.
Ministry for health	84
Ministry for Transport, Infrastructure and Capital Projects	1
Ministry for Justice	1
Ministry for Social Policy and Children's Rights	1
Ministry for Senior Citizens and Active Ageing	7
Office of the Prime Minister	3
Public Service Commission	10
Medicines Authority	4
Aġenzija Sapport	1
Commission for the Rights of Persons with Disability	1
Total	113

Complaints by category

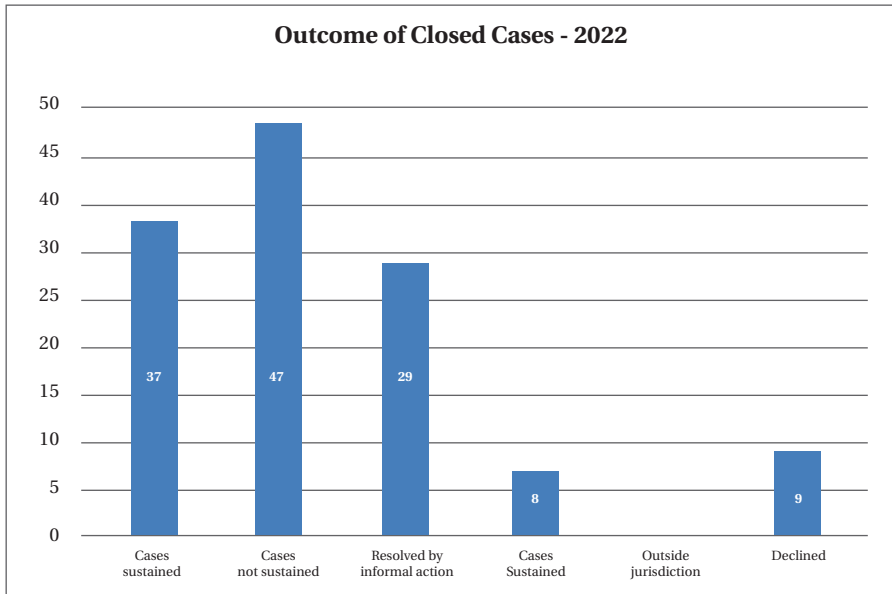
The nature of the complaints that were received in 2022 varied with the most frequent category being *Personal matters/staff issues/student issues* followed by *Continuing care/follow-up issues* and *Contrary to law and policies or rigid application of legislation, regulation and policies*.

Table 4.7: New cases in 2022 by category.

Categories	No.
Personal matters/staff issues/student issues	19
Continuing care /follow-up issues	16
Contrary to law and policies or rigid application of legislation, regulation and policies	13
Unfair selection process/promotion/grading	10
Shortage/ Inadequate supply of medicine	12
Undue delay/failure to act/waiting lists	9
Improper discrimination	8
Improper attitude of staff or management	7
Unfair treatment/lack of equity	7
Failure to provide information or to provide a reply	3
Shortage/Inadequate supply of equipment/services	3
Lack of transparency or accountability	1
Issues of quality of life/special needs	1
Others	4
Total	113

Outcome of Closed Cases – 2022

Figure 4.8: Final outcome of the cases closed in 2022.



In 2022 there were 9 or 6.9% cases that this Office declined to investigate. Of the remaining ones 37 or 28.5% were sustained and 47 or 36.1% were not sustained. Another 29 or 22.3% were resolved through informal action. In the remaining 8 or 6.2%, the investigation was discontinued. This is shown in Table 4.9.

Table 4.9: Outcome of cases closed

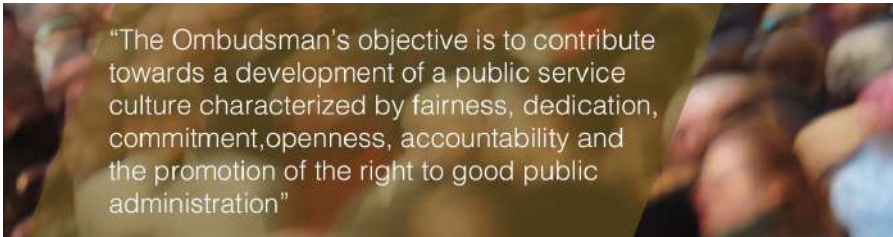
Outcome	No.
Cases Sustained	37
Cases not Sustained	47
Resolved by informal action	29
Cases Sustained	8
Outside Jurisdiction	-
Declined	9
Total	130

Conclusion

The year 2022 has been a busy year for this Office and the work load has gradually increased over the years, as shown by the data. Yet there is still scope of further

growth. It is worth noting that in the majority of cases the entities involved are cooperative in providing the requested information and this facilitates our role. Hopefully we will be able to improve on this in the coming year.

The perception of the citizens regarding the Office of the Ombudsman can and should be developed further. This public awareness should be one of our main targets for the coming year. Communication methods should be utilised further and to their full potential so as to get this message across to the general public. People have to be made more conscious of the services that this Office can provide them with in important instances where they feel aggrieved by the public authority and when they feel helpless in such circumstances. After all..



Professor Ray Galea
Commissioner for Health

Farewell Message by Mr Charles Messina

COMMISSIONER FOR HEALTH

2012 – 2022



FAREWELL MESSAGE BY
MR CHARLES MESSINA,
COMMISSIONER FOR HEALTH UNTIL
13TH SEPTEMBER 2022

**Achievements and Challenges in ensuring a just
and patient-centred Healthcare System in Malta**



I am pleased to present a farewell message since my tenure as Commissioner for Health in the Office of the Ombudsman. It ended on 13 September 2022 after two terms of five years. During my tenure, the Office received 968 complaints, averaging eight per month, of which 46% were upheld, 34% were not upheld, and the remaining 20% were either withdrawn by complainants or could not be investigated for various reasons, or were still pending. The latter will be taken care of by my successor.

During these ten years, the Office has brought about positive changes in the healthcare system, such as the amendment of the Social Security Act, which enabled cancer patients who were in the hospital for three days or less to benefit from sick leave regulations. We also ensured that employees suspended from work on half pay and not found guilty by the Courts or Disciplinary Board would receive the full remuneration they were entitled to had they not been suspended.

We also advocated for the screening of neonates for hearing, which is crucial for early detection of hearing impairments. We worked towards ensuring that the Cyclotron machine, which had been idle for some four years, became operational for the preparation of treatment for cancer patients.

This Office is proud to have been instrumental in including a number of medicinals previously unavailable to patients in the Government Formulary List.

However, I must admit that there were disappointments during my tenure. For example, despite our repeated requests, the Department of Health failed to provide unredacted versions of the Vitals/Steward contracts.

The Exceptional Medicinal Treatment Committee (EMTC) also failed to abide by the Terms of Reference spelt out by the Act, and the issue of branded medicines persisted since 2016. I repeatedly called for the amendment of the Protocols that regulate the

supply of medicines as they discriminate between one illness and another, which is a breach of the Social Security Act. Unfortunately, despite our efforts over the past eight years, the Department of Health has not taken the necessary steps to amend these protocols. Unfortunately, the supply of Continuous Glucose Monitors is still not being provided to all patients suffering from Type 1 Diabetes who would benefit immensely from their use. It is unfortunate that the Committee (EMTC) and the Central Procurement and Supplies Unit (CPSU) prioritise factors other than the patient's needs, precluding patients from receiving the medicines they require.

It is disappointing that the Office of the Prime Minister did not respond to the cases referred to them in terms of the Ombudsman Act, where the Department of Health failed to implement our recommendations.

In conclusion, I hope that this report serves as a call to action for all relevant stakeholders to address the issues outlined herein. I am confident that my successor will continue the work towards ensuring that the healthcare system in Malta is just, equitable, and patient-centred.

I would like to take this opportunity to express my gratitude to my colleagues and staff at the Office of the Ombudsman for their unwavering support throughout my tenure.

Charles Messina
Commissioner for Health
(2012 – 2022)



Group photo at Mr. Charles Messina's farewell event

Annex I

REPORT AND FINANCIAL STATEMENTS



REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2022

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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.

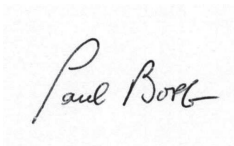
The Office of the Ombudsman is responsible for ensuring that:

- a. proper accounting records are kept of all transactions entered into by the Office, and of its assets and liabilities;
- b. 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



National Audit Office
Notre Dame Ravelin
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Report of the Auditor General

To the Office of the Ombudsman

Opinion

We have audited the accompanying financial statements of the Office of the Ombudsman set out on pages 6 to 17, which comprise the statement of financial position as at 31 December 2022, 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.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Office of the Ombudsman as at 31 December, 2022, its financial performance and its cash flows for the year then ended, in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with the Ombudsman Act, 1995.

Basis for Opinion

We conducted our audit in accordance with International Standards of Supreme Audit Institutions (ISSAIs). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are independent of the Office of the Ombudsman in accordance with the International Ethics Standards Board of Accountants' Code of Ethics for Professional Accountants (IESBA Code). We have also fulfilled our ethical responsibilities as required by the Accountancy Profession (Code of Ethics for Warrant Holders) Directive issued in terms of the Accountancy Profession Act (Cap. 281) in Malta. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

The Office of the Ombudsman's Responsibility for the Financial Statements

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

In preparing the financial statements, the Office of the Ombudsman is responsible for assessing its ability to continue as a going concern, disclosing, as applicable, related matters and using the going concern basis of accounting unless it is either intended to cease operations, or there is no realistic alternative but to do so.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISSAIs, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal controls relevant to the audit 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 entity's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the entity.
- Conclude on the appropriateness of the entity's use of going concern basis of accounting and based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.



Auditor General

13/4/23

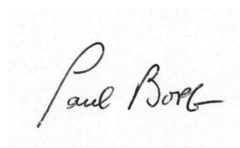
STATEMENT OF COMPREHENSIVE INCOME

		2022	2021
	Schedule	€	€
Income			
Government grant		1,420,000	1,352,000
Non-operating income (note 3)		108	107
		1,420,108	1,352,107
Expenditure			
Personal Emoluments (note 4i)		(1,181,066)	(1,156,678)
Administrative and other expenses	1	(232,949)	(241,650)
		(1,414,015)	(1,398,328)
Surplus / (Deficit) for the year		6,093	(46,221)

STATEMENT OF FINANCIAL POSITION

		2022	2021
	Notes	€	€
Assets			
Non-current assets			
Property, Plant and Equipment	5	417,122	505,269
Current assets			
Receivables	6	36,479	33,825
Cash and cash equivalents	7	470,355	377,516
		506,834	411,341
Total assets		923,956	916,610
Equity and Liabilities			
Accumulated surplus		918,133	912,040
Payables	8	5,823	4,570
Total Equity and Liabilities		923,956	916,610

The financial statements on pages 5 to 16 were approved by the Office of the Ombudsman on 12th April 2023 and were signed on its behalf by:



Paul Borg
Director General



Gordon Fitz
Finance Manager

STATEMENT OF CHANGES IN EQUITY

	Accumulated Fund Total
	€
At 1 January 2021	958,261
<i>Statement of Comprehensive income</i>	
(Deficit) for the year	(46,221)
At 31 December 2021	912,040
<i>Statement of Comprehensive income</i>	
Surplus for the year	6,093
	(page 82)
At 31 December 2022	918,133

STATEMENT OF CASH FLOWS

	2022	2021
Notes	€	€
Cash flows from Operating activities		
Surplus / (Deficit) for the year	6,093	(46,221)
Depreciation	92,482	98,741
Disposal of tangible fixed assets	10,863	12,079
Non-operating income	(108)	(107)
	<hr/>	<hr/>
Operating surplus before working capital changes	109,330	64,492
(Increase) in receivables	(2,654)	(48)
Increase in payables	1,253	2,194
	<hr/>	<hr/>
Net cash generated from operating activities	107,929	66,638
Cash flows from Investing activities		
Payments to acquire tangible fixed assets	(15,198)	(24,318)
Non-operating income	108	107
	<hr/>	<hr/>
Net cash used in investing activities	(15,090)	(24,211)
Net increase in cash and cash equivalents	92,839	42,427
Cash and cash equivalents at beginning of year	377,516	335,089
	<hr/>	<hr/>
Cash and cash equivalents at end of year	470,355	377,516
	<hr/>	<hr/>

7

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 12th April 2023.

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.

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.

Notes to the financial statements (continued)

3	Non-operating income	2022	2021
		€	€
	Bank interest receivable	108	107
		<u>108</u>	<u>107</u>
4i	Personal Emoluments		
	Wages and salaries	1,138,180	1,114,871
	Social security costs	42,886	41,807
		<u>1,181,066</u>	<u>1,156,678</u>
ii	Average No. of Employees	<u>23</u>	<u>24</u>

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 2021	864,580	36,644	35,952	53,999	134,500	120,872	81,919	1,328,466
Additions	-	2,135	6,622	13,039	-	2,522	-	24,318
Disposals	(20,000)	(1,251)	(2,143)	(36,400)	(21,500)	(761)	(1,444)	(83,499)
At 31 December 2021	844,580	37,528	40,431	30,638	113,000	122,633	80,475	1,269,285
Depreciation								
At 1 January 2021	391,449	31,341	26,596	42,826	70,356	92,208	81,919	736,695
Charge for the year	55,409	2,913	5,342	7,178	19,719	8,180	-	98,741
Release on disposals	(8,000)	(1,251)	(2,143)	(36,400)	(21,500)	(682)	(1,444)	(71,420)
At 31 December 2021	438,858	33,003	29,795	13,604	68,575	99,706	80,475	764,016
Net book value								
At 31 December 2021	405,722	4,525	10,636	17,034	44,425	22,927	-	505,269

5.iii. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2022	844,580	37,528	40,431	30,638	113,000	122,633	80,475	1,269,285
Additions	-	1,584	8,303	2,254	0	2,077	980	15,198
Disposals	(20,000)	(1,147)	(2,525)	(1,164)	-	(923)	(2,108)	(27,867)
At 31 December 2022	824,580	37,965	46,209	31,728	113,000	123,787	79,347	1,256,616
Depreciation								
At 1 January 2022	438,858	33,003	29,795	13,604	68,575	99,706	80,475	764,016
Charge for the year	53,285	1,926	6,815	7,450	14,809	8,034	163	92,482
Release on disposals	(9,333)	(1,042)	(2,525)	(1,164)	-	(832)	(2,108)	(17,004)
At 31 December 2022	482,810	33,887	34,085	19,890	83,384	106,908	78,530	839,494
Net book value								
At 31 December 2022	341,770	4,078	12,124	11,838	29,616	16,879	817	417,122

Notes to the financial statements (continued)

6 Receivables	2022	2021
	€	€
Stocks (stationery)	11,928	10,409
Trade receivables	3,654	2,679
Prepayments	20,897	20,737
	36,479	33,825

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:

	2022	2021
	€	€
Cash at bank	469,534	377,266
Cash in hand	821	250
	470,355	377,516

8 Payables	2022	2021
	€	€
Trade payables	910	451
Accruals	4,913	4,119
	5,823	4,570

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

9 Fair values

At 31 December 2022 the fair values of assets and liabilities were not materially different from their carrying amounts.

Schedule 1

Administrative and other expenses

	2022	2021
	€	€
Utilities	17,106	16,762
Materials and supplies	8,958	8,041
Repair and upkeep expenses	7,591	6,245
Rent	6,730	6,720
International membership	2,100	2,100
Office services	8,156	7,628
Transport costs	13,591	11,195
Traveling costs	8,874	559
Information Services	3,713	3,583
Outreach	4,927	2,881
Contractual Services	56,132	63,120
Professional Services	8,916	20,940
Training expenses	661	1,275
Hospitality	1,733	499
Incidental expenses	416	282
Depreciation	92,482	98,741
(Profit) on Disposals	(9,137)	(8,921)
	<u>232,949</u>	<u>241,650</u>



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Office opens to the public as follows:

October – May 08:30am – 12:00pm

01:30pm – 03:00pm

June – September 08:30am – 12:30pm

Website: www.ombudsman.org.mt

Facebook: Ombudsman Malta