

Report on Case No CEDUC-25-6488

The complaint

1. The complainant was, until the end of August of this year, employed as a lecturer within the Institute of Engineering and Transport (IET) of the Malta College of Arts, Science and Technology (MCAST). He joined MCAST 23 years ago, having previously worked as an instructor for many years in the Building Trade, including Building Restoration, at the Ġilormu Cassar Building Trade School.

2. He reached retirement age – 64 – in August of last year (2024). Last year he was granted a one year extension up to August of this year (2025). When he applied for a further extension this year, this was refused. When he sought reconsideration of the decision he was simply told that:

“Further extensions are only considered in exceptional circumstances where they are directly required by operational needs. After careful consideration, I regret to inform you that MCAST is not in a position to consider your request for an extension of your employment beyond retirement age. Consequently, MCAST’s decision to terminate your contract as at 31st August 2025 remains unchanged” (email of Director of Human Resources to the complainant dated 20th August 2025).

3. In his complaint to this Office of the 25th August 2025 the complainant alleged that the non-renewal or non-extension of his contract was unfair and improperly discriminatory given that no valid reasons were given to him for the refusal to renew or extend, and also because other lecturers in his same line of teaching and who are older than he is did have their teaching contract renewed or extended.

The investigation and findings

4. Notice of the investigation was served upon the Principal and CEO of MCAST on 25th August 2025 according to the procedure laid down in Article 18(1) of the Ombudsman Act. In the same notification the undersigned also requested the “*detailed views*” of the respondent entity, and in particular to explain what were the “*exceptional circumstances*” referred to in the H.R Director’s email of the 20th August (see para. 2, above) and “*whether there have been, or whether there are, others in a relevantly similar situation as the complainant who have had their definite contract extended for several years beyond retirement age*”. Also requested was a copy of any “*minutes of the meeting at which it was decided not to accede to the complainant’s request*” for extension or renewal beyond the 31st August 2025. On the 28th August 2025, the undersigned further informed the respondent entity that from preliminary investigations already undertaken, two persons in a relevantly similar situation to that of the complainant – and who were, indeed, older than the complainant by two years – had had their contract renewed (names were supplied).

5. Before proceeding further, the undersigned wishes to make it pellucidly clear that when a request for information in connection with an ongoing investigation is directed to a respondent entity, the Office of the Ombudsman expects that entity to provide clear, precise and correct information, without obfuscation or circumlocution or stating the obvious. This Office will necessarily take a dim view – which will have a bearing on issues of credibility – if the substance of the information requested has to be extracted (sometimes in repeated bouts) by the *tire-bouchon* method.

6. On the 10th September 2025, the Office of the Principal (MCAST) replied by referring to paragraph (a) of the third *proviso* of sub-article (14) of Article 36 of the Employment and Industrial Relations Act (Cap 452) – a provision of law which is not in issue in this case. The Office of the Principal continued by stating that employment beyond statutory retirement age “*lies entirely at the discretion of management, subject to agreement with the employee, and operational requirements*”. That is not in dispute. However, where there is an element of “*discretion*”, there must be a counterbalancing process which is transparent enough to ensure accountability for acts or omissions pursuant to that discretion; otherwise the discretion exercised morphs into arbitrariness. It is precisely this counterbalancing transparent process which the undersigned has struggled to find – and which, it is now clear, does not exist at all.

7. The communication of the 10th September goes on to state:

*“Exceptionally, a limited number of full-time employees were retained beyond retirement age, but solely on the grounds of operational continuity. **A thorough assessment was conducted within each institute to establish whether retention of employees over the age of 65 on the public payroll is necessary, based strictly on justified operation (sic!) reasons ...**”* (emphasis in bold by the undersigned).

8. On the 15th of September 2025, the undersigned, after making it clear that the communication of the 10th September had not shed any light on the substance of the complaint, again requested a copy of the “thorough assessment” made in respect of the complainant and the two other named lecturers (see para. 4 *in fine*, above). Also requested was a copy of the published internal procedure by which MCAST examined and assessed requests for extension beyond retirement age. A reminder was sent on the 17th October 2025.

9. Having received no reply from the Office of the Principal, the undersigned resorted to summoning – on the 28th October 2025 – the Director of Human Resources at MCAST in terms of Article 19 of the Ombudsman Act. The said Director gave evidence on oath on the 31st October 2025. In her evidence the said Director stated that MCAST, unlike the University of Malta, has no specific published procedure dealing with extension/s beyond retirement age, but follows the procedure outlined in paragraph 1.13.4 (under “In all other cases”) of the PSMC Manual on Resourcing, Policies and Procedures. She explained that the normal procedure is for the Head of the respective Institute to send to her the names of those employees who have reached retiring age or who have applied for an extension, indicating those whose employment is to be extended and those whose employment is not to be extended. Asked for a copy of the minutes of the

meeting or meetings at which the “thorough assessment” of the request for extension is made, the witness produced two short single page documents, one in respect of the complainant and the other in respect of the other two named lecturers. Asked whether these were copies of official minutes, the Director HR explained that she approached the Institute in question for this information after she received the summons. In other words, there is nothing to show or suggest that these documents were drawn up *a tempo vergine*, that is, at the time of the “thorough assessment”, and everything indicates that they were concocted by others as a narrative of convenience for the purpose of her evidence.

10. The ten line document referring to the complainant, starts with this opening shot: “[The complainant] does not have qualifications or experience in masonry heritage skills but only in stone work”. The undersigned has carefully examined all the complainant’s certificates accumulated over the years, as well as testimonials provided by third parties. He has also seen a list of all the stone restoration projects in which he has actually participated as well as his teaching portfolio from 2019 to 2025, and can only qualify this allegation of lack of qualification or experience in masonry heritage skills as preposterous – unless, of course, MCAST is prepared to admit that over the years it has allowed an ‘unqualified’ and/or ‘inexperienced’ lecturer to teach and coach its students. This parting shot is followed by a convoluted reasoning as to why some of the courses which the complainant was teaching are this year not being offered or are being assigned to the two lecturers (*vide* above) whose request for extension beyond retirement age has again been approved even though they are two years older than the complainant.

11. The second, two-line, paragraph of this document says simply: “Unsatisfactory work tied to a lack of initiative in developing new projects and initiatives. Was not involved in Razzett tas-Selmun and collaborations in Raħal Ġdid and Żabbar”. In his entire career as a lecturer at MCAST, the complainant has never been confronted with any complaint, formal or informal, of unsatisfactory work. He may not have been involved in “Razzett tas-Selmun and collaborations in Raħal Ġdid and Żabbar”, which, for some reason appear to be the Holy Grail for the Institute in question, but he has worked on countless restoration projects, both as site manager and as contractor, including St Helen Gate (Cospicua) and the Cospicua Bastions, Villa Bighi, Senglea Old Gate, St Angelo Bastions, St Michael Bastions, Red Tower, Wignacourt Tower, Ġhallis Tower, the Gudja Chapel and many others. It beggars belief that an academic institution of further education like MCAST should dismiss all this with a spurious allegation of unsatisfactory work and lack of involvement. Moreover, the undersigned is still none the wiser – because no information was forthcoming from the Office of the Principal or from the evidence of the HR Director – as to who was consulted and how for the purpose of the “thorough assessment”. The person or persons conducting said “thorough assessment” and who (if any) was/were consulted in the process remains/remains a closely guarded secret. This in turn means that anyone with the slightest grudge against the complainant – or indeed, against any person applying for an extension beyond retirement age – can make a negative comment or allegation having a bearing on the outcome of the request, without the slightest possibility for the applicant to contest it.

Conclusion and recommendation

12. For all the above reasons the complaint is fully justified, and is therefore sustained, both from the substantive aspect as well as from the procedural aspect, since the decision not to renew complainant's contract was unreasonable and unjust, and was reached by relying in part on irrelevant grounds and irrelevant considerations in violation of Article 22(1)(b)(2) of Cap. 385, and was also wrong in principle in violation of Article 22(1)(d).

13. In the particular circumstances of the instant case, the undersigned cannot recommend a proper reconsideration of applicant's request for an extension of his contract, since any possible working relationship between him and the Institute of Engineering and Transport has now been poisoned by this whole affair. However, the undersigned recommends (*ex nunc*) that MCAST adopt as soon as may be a transparent and accountable procedure for the examination of requests for extension of contracts beyond retirement age for all members of its teaching staff. This procedure should include the requirement to give full, truthful and cogent reasons when such requests are rejected, and also allow an applicant to contest negative comments by the administration which are or may be determinative of the outcome of the application for extension.

Vincent A De Gaetano
Commissioner for Education

7 November 2025