Case Notes 2024

PARLIAMENTARY OMBUDSMAN MALTA

OMBUDSMAN

FOR THE PERIOD
JANUARY - DECEMBER
2024

Edition 44

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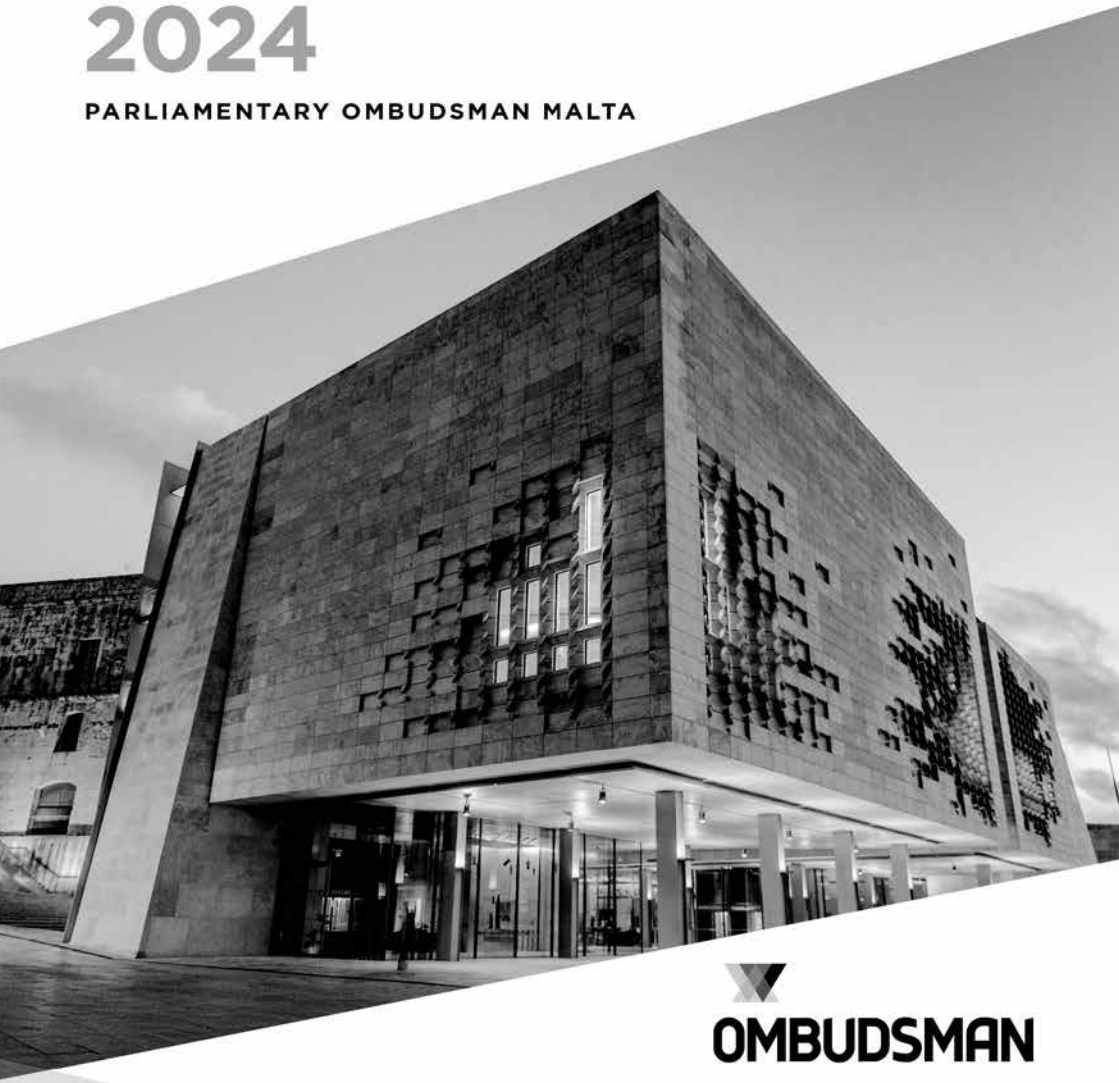

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October – May	08:30am – 12:00pm
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Foreword

This is the 44th edition of the Case Notes published by the Office of the Ombudsman since the institution was established by the Ombudsman Act (Act XXI of 1995 – Chapter 385 of the Laws of Malta).

The publication highlights the principal investigations carried out by the Office during the twelve months of 2024. The work comprises a selected compendium of 36 cases that were managed, investigated and concluded by the Office. The collection of cases is designed to reach a very wide readership. It embraces a broad spectrum of grievances, that are of significant interest to the general public and public bodies alike. The work comprises a summary of the investigation, the core issues that were identified, and the outcome which is explained in a manner for all to understand and consider, including where recommendations are submitted.

On a wider level, I would point out that the Case Notes help the reader to appreciate better the need for good governance in public service and public administrative practices. An investigation by the Ombudsman should not be considered as a a hostile encounter but should be treated as part of the accountability loop. By means of the Case Notes, and in his role as external reviewer of actions of the civil service and of the public administration, the Office of the Ombudsman can stimulate public bodies to establish (where absent) or strengthen (where already present) internal quality control procedures including by means of effective internal complaint review units.

The Office is of the view that public bodies should use Case Notes as learning tools and as means to engage better, fairly and more efficiently with the public and address effectively their concerns and grievances. The Case Notes can in real terms assist public bodies to raise their standards of good governance and also avoid being on the wrong side of an Ombudsman`s report. By raising their standards, public

bodies would be better equipped to self-correct their methods and procedures. The contents of Case Notes could also be adopted internally by public bodies in the compilation of staff manuals in an effort to illustrate to their staff what to, and especially what *not* to do.

I extend my appreciation and gratitude to everyone at the Office of the Ombudsman who was involved in the finalisation and publication of the Case Notes.

Judge Joseph Zammit McKeon
Parliamentary Ombudsman of Malta

Note: Case notes offer a brief overview of the complaints reviewed by the Parliamentary Ombudsman and the Commissioners. They aim to highlight key principles or the Ombudsman's approach to specific cases.

The term 'he/she' does not indicate the complainant's gender. This wording is chosen to preserve the complainants' anonymity as much as possible.

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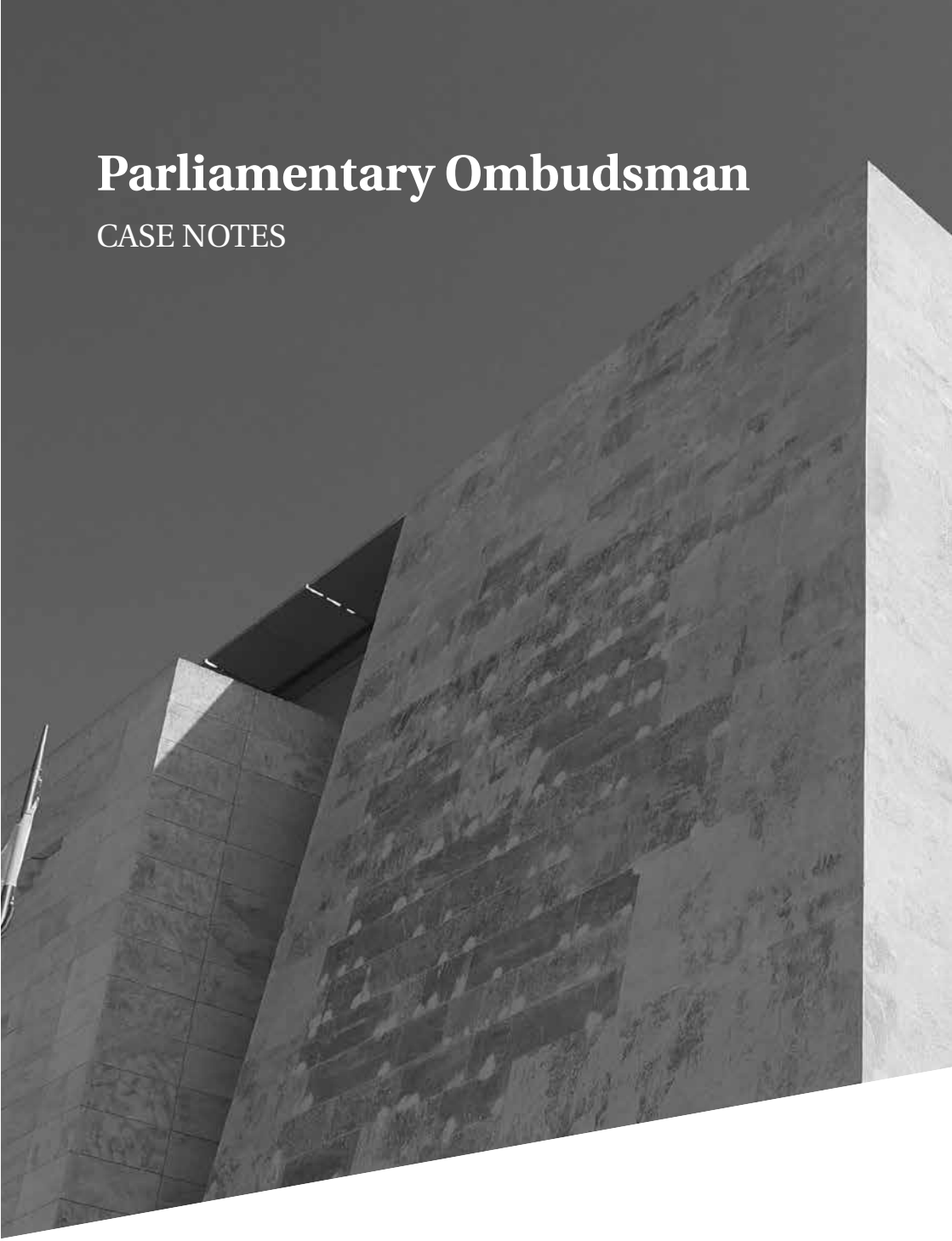

Local Enforcement System Agency (LESA)

Defective notification procedures when a vehicle is towed

The complaint

Complainant's vehicle was towed away on 22 March 2023 at 12:35 p.m. Complainant stated that despite having registered with LESA's (Local Enforcement System Agency) online portal, he was not informed prior to the vehicle being towed. Neither was complainant notified of the towing action. Upon not finding the vehicle in its parking space, complainant went to seek information from the local Police Station only to be told that there were no reports concerning his vehicle. It was only on the third day that complainant upon visiting the Police Station once again was informed that the vehicle was towed away. He collected his vehicle and paid a total of €260 (€200 towing fine plus €60 storage costs) to have his vehicle released.

Complainant appealed the imposition of the fine plus storage fees using LESA's internal appeal mechanism. His appeal was, however, summarily dismissed by LESA. Not satisfied with the outcome, he made enquiries with LESA's helpline to determine why he was not notified prior to the towing action. He was informed that according to IT logs, he failed to complete the online process through which LESA is granted consent to contact him.

Complainant considered the outcome of the internal appeal and explanation provided as regards the online portal as unsatisfactory and proceeded to file a complaint with this Office. He argued that his vehicle was unfairly towed away and additionally incurred supplementary storage fees through no fault of his own. He argued that given he had saved his settings after he had ticked the consent box on the online portal, he should not be penalised for a 'glitch' in the online system, that failed to record the said settings.

Facts and findings

This Office was provided with evidence that confirmed that appropriate notices were affixed in a prominent position in the area in question 48 hours prior to the towing action. As complainant parked his vehicle in a tow-zone and was therefore illegally parked, the vehicle's removal was legitimate.

This Office requested that it be provided with a breakdown of notification procedures adopted where vehicle owners were not registered with the LESA online portal. It was informed that where vehicles are not collected by the owner, the Agency proceeds to publish a notice in the Government Gazette or the Agency's website, in line with Article 7 of Subsidiary Legislation 65.13 (Clamping and Removal of Motor Vehicles and Encumbering Objects Regulations), informing the public of the towing action and in particular describing the vehicle towed, where the vehicle was towed from, which enforcement agency caried out the towing action and where the vehicle is being stored. Moreover, in a bid to ensure that the concerned party is notified of the towing action, LESA takes it upon itself to: inform registered clients of towed vehicles through SMS (provided they provide their contact number), within two hours of the vehicle being towed:

1. immediately following the towing, lodge a report with the police, so that information is circulated; and
2. when vehicles remain uncollected, letters are sent out requesting owners to retrieve their vehicles.

This Office enquired whether in complainant's case a notice as described in Regulation 7 above was published on the entity's website or in the Government Gazette. It was informed that no such notice was published as the vehicle had been collected by the owner.

As far as the police report is concerned, for some reason or other, upon making enquiries at the local Police Station, complainant stated that no record of the said report could be found. Indeed, the report was seemingly traced only two days later. This Office observes that the point of LESA making the said report was to make information of the towing action readily available - which it clearly was not. As a result of an investigation on a separate issue, this Office was informed that a

streamlined system common to all towing cases would be put in place to inform vehicle owners of the possibility and method of appeal (to the said action).

As far as registration is concerned, this Office observed that there are many who choose not to register their details with the LESA online portal for a variety of reasons, others who are unable to do so due to issues of computer literacy. It was noted that as things stand today, for those unregistered vehicle owners making use of our roads, notification options are so inefficient as to be ineffective - as this case has amply shown. Delays in towing action notification is to the distinct disadvantage of vehicle owners – the longer the delay, the higher the storage fees incurred. In this instance the lack of notification or indeed readily available information on the towing action, resulted in complainant being charged storage fees at a daily rate of €15 amounting to a total of €60 and him being denied use of his vehicle for days.

As far as the IT side of things is concerned, this Office was given the same information that was previously given to complainant, that is, that he failed to complete the process to update his account granting LESA consent to contact him. This outcome could have been the result of two possible scenarios: a) due to an alleged glitch, the update was not recorded; or b) due to an oversight, he failed to complete the updating process. Complainant did not provide any concrete evidence to substantiate the 'glitch' argument. This Office could not determine whether the issue arose due to lack of proper 'sign posting' or general user unfriendliness of the website or for any other reason. There appears, however, that there is definite room for improvement in the 'usability' of the portal.

Conclusions and recommendations

Following the conclusion of its investigation, the conclusions drawn by this Office on the three aspects of the complaint are listed below:

1. **Towing Action**: this Office considered that the towing action was legitimate and therefore no act of bad administration was identified.
2. **Storage fees**: the notification procedure adopted 'on the ground' in this case was completely ineffective resulting in storage fees being unfairly levied against complainant. The effect of inefficiencies of the public administration should not be borne by the road user. Moreover, this very real distinction between

registered and non-registered users is unfair and improperly discriminatory with regard to non-registered users. This Office, therefore, recommended that:

a) complainant be reimbursed the storage fees; and
b) notification procedures for non-registered users be reviewed to eliminate inefficiencies and put registered and unregistered users on an equal footing.

Online portal: this Office recommends that the online registration process be reviewed in order to prevent issues, such as the one experienced by complainant, from reoccurring.

Outcome
Complainant was refunded the €60 in storage fees.

LESA, however, objected to the notion that it discriminated between vehicle owners. It informed this Office that it had undertaken a significant promotional exercise across various media platforms and events informing the public of the option to subscribe to the LESA portal and its advantages. The Agency argued that while everyone has the same opportunity to subscribe, whether that opportunity is availed of is up to the individual.

Local Enforcement System Agency (LESA)

Towing Action based on Local Council's administrative error

The complaint

On Saturday 22 July 2023 complainant, parked her vehicle in a parking zone reserved for customers of a department store. Complainant worked at the said store and parked just before the start of her 7.50 hrs shift. She took note of various posters which were affixed around the perimeter wall of the parking area which indicated that a musical event was due to be held later on in the day. She also took note of 'tow zone' notices similarly affixed to the perimeter wall that indicated that the parking area would change its status to a 'tow zone' as from 19.00hrs on the same day. As complainant's shift was due to end at 15.30hrs, she proceeded to park the vehicle. Once her shift was over, to her surprise, she was informed by a LESA official that there was a change to the parking restriction hours which resulted in the change of status of the parking area occurring earlier in the day and consequently her vehicle had been towed 30 minutes prior to her arrival. Complainant proceeded to pay the fine and retrieve the vehicle.

An appeal was lodged using LESA's internal appeal mechanism which was rejected by means of a letter dated 23 August 2023. As complainant was dissatisfied with the outcome, she proceeded to file a complaint with this Office arguing that the towing action was grossly unfair.

Facts and findings

As is standard practice, this Office made enquiries with the Ministry responsible for Home Affairs (the Ministry), LESA (the Agency) and the Local Council concerned. This Office was informed that the change of status was 'announced' by means of a notice in the Government Gazette published on 27 June which read as follows:

"Suspension of Traffic and Parking

The … Local Council notifies that the [department store] *parking facility will be closed for parking from Friday, 21 July, 2023, from 7.00pm, till midnight of Saturday, 22 July, 2023.*
…"

The Agency stated that a notice providing different information to the one noted by complainant was also put up on site. This Office was provided with a non-time stamped photo showing said notice affixed side by side with the event flyer. Said notice stated that a 'tow zone' was in force as from 14.00hrs to 23.59hrs on 22 July 2023. This Office enquired whether the notices were put up 48 hours prior to the towing of complainant's vehicle. It was informed that this requirement was 'superseded' as the notice was published in the Government Gazette.

This Office makes reference to Article 52 of the Traffic Regulation Ordinance (Chapter 65 of the Laws of Malta) which reads as follows:

"*(1) The Commissioner of Police shall have power to make orders by notice in the Gazette, for controlling, restricting or prohibiting temporarily the passage or stopping of vehicles of any description through or in any street on the occasion of processions, religious ceremonies or other public solemnities or celebrations, or in connection with the repair of streets, laying of sewers or water mains and other works; signs shall be appropriately placed to indicate the prohibition or other restriction, unless a Police officer is present to control traffic.*

(2) Such power may also be exercised by the Authority for Transport in Malta in connection with the repair of streets, laying of sewers or water mains and other works; signs shall be appropriately placed to indicate the prohibition or other restriction, unless a Police Officer is present to control traffic."

This Office notes that this 'power' is granted exclusively to the Police Commissioner and Transport Malta and only applies in certain specific situations - the law appears to provide a closed list which does not include 'public shows'. No mention is made of Local Councils. When requested to provide references to legal provisions extending the same powers to the Local Councils, the Ministry and Local Council failed to do so. The Council, however, informed this Office that the concert, being a one-time event, required a permit in line with the Local Councils Regulations.

This Office provided the Council with photos showing the conflicting tow zone notices put up in the area. This Office was informed that the event in question was organised by the Local Council itself. It elaborated that it had affixed a number of 'tow zone' signs on site with specific dates and times, 48 hours in advance prior to the said event and not, as was claimed, at the eleventh hour. The Council failed to provide an explanation as to why different conflicting notices (as evidence by the photos provided) were found on site.

Considerations

Following the investigation carried out by this Office two central issues were identified - the first dealing with the effect of the Government Gazette notice and the second with the notices that were affixed on location on the day the towing action occurred.

As far as the first issue is concerned, the Local Council notified the public by means of a notice published in the Government Gazette on 27 June that the parking facility would be closed from Friday, 21 July 2023 between 19.00hrs and midnight of Saturday, 22 July 2023. Whilst the Commissioner of Police/Transport Malta may **order** restrictions on vehicular access by notice in the Gazette, there appears to be no legal provision that bestows a similar power onto the Local Council. The publication of a notice by the Local Council does not have the same effect as an order.

The notices that were affixed to the perimeter wall at the time the driver parked the vehicle clearly indicated that there was no restriction up until 19.00hrs. Complainant informed this Office that she was told by a LESA official on site, at the time of her discovering the vehicle had been towed, that the restricted hours had been changed. The Council proceeded to deny said change and elaborated that it placed the tow zone notices on site 48 hours in advance prior to the change in status of the area. This declaration did not deny the fact that conflicting tow zone notices were found on site - as evidenced by the photos provided to this Office. It is observed that it would be unreasonable to expect vehicle owners/drivers to check multiple notices to ensure that they all stated the same thing. Even if for the sake of argument an individual did check all notices, there is the question as to which should be followed as there is no date of issue on the said notices. Whatever the situation, due to an evident administrative error complainant was placed in

an impossible situation through no fault of her own which resulted in the vehicle being towed away.

Conclusions and recommendations

Following the conclusion of its investigation, the conclusions drawn by this Office on the two issues identified are listed below:

a) No compelling legal argument was brought forward by the authorities demonstrating that a notice published in the Government Gazette by the Local Council has equal standing to that of an order published by the Commissioner of Police in terms of Article 52 of the Traffic Regulation Ordinance (Chapter 65 of the Laws of Malta). This Office, therefore, could not accept the argument put forward by the Ministry that the notice published in the Government Gazette took precedence over the notices subsequently put up on site.

b) The investigation showed that there was an obvious administrative error that resulted in conflicting versions of the same notice being put up on site, resulting in complainant's vehicle being unfairly and unjustly towed away. This Office, therefore recommended that the towing fine be reimbursed to complainant.

Outcome

Complainant was reimbursed the €200 euro towing fee.

The Ministry for National Heritage, the Arts and Local Government informed this Office that necessary measures would be taken to instruct Local Councils to refrain from publishing 'orders' in the Government Gazette in view of the fact that the law does not give Councils said power.

Transport Malta

Rules applicable to vehicles being driven in Malta that are owned by Maltese citizens and registered abroad

The complaint
A Maltese citizen, residing abroad, came to Malta for a short period and brought over his foreign registered vehicle. His vehicle was however impounded by Transport Malta (TM) officials while he was driving it the day after his arrival here.

Facts of the case and complainant's contentions
Complaint brought his vehicle into Malta on a Friday in August 2023 after having boarded the Virtu Ferries from Pozzallo. He intended to leave here after a stay of about two weeks. The day after his arrival in Malta, he was stopped in a road block and even though he had explained that he was not resident in Malta and was here for a short break, his vehicle was impounded due to the fact that his vehicle was registered abroad and he was in possession of a legally valid Maltese identification card.

Complainant claimed that the TM Official executing the vehicle's impounding failed to fully consider that, he had failed to abide by Article 18(1)(g) of Chapter 368 in terms of which he was required to notify the Authority upon arrival of the vehicle and 'obtain, upon payment of the relative fee, a temporary circulation permit' as he had arrived late on a Friday evening and the Authority's offices are only open on weekdays. He contended that he could only have notified TM of his arrival and obtained the relative permit the Monday following his arrival. He stated that he had been informed by a TM Officer within the Legal Affairs Department of the Authority that drivers who find themselves in this situation were given a two-

day grace period due to their having arrived in the weekend. In his opinion, the relative application further provides that the application 'shall be submitted to the Authority for Transport by not later than one (1) working day after the arrival of such vehicle in Malta' and therefore on the day when his vehicle was impounded it had been in Malta for zero working days.

Complainant therefore sought assistance from this Office, arguing that once the impounding of the vehicle was irregular, he should be granted a refund of any administrative fees paid.

As per procedure this Office sought the Authority's comments about the grievance and was informed that:

a) when the vehicle was being driven in August, 2023, it was being driven by a Maltese resident, that is, in possession of a residence document which was still valid; and
b) in line with Article 2A of the Motor Vehicles Registration and Licensing Act (CAP 368) no person shall have in his possession or charge any motor vehicle which has not been registered with the Authority, and on which the applicable registration tax has not been paid, unless such vehicle is registered in another country and may be used temporarily on the roads in Malta in accordance with the provisions of Article 18 of the same Act.

Article 18(1)(a) of Cap. 368 provides that a vehicle which is brought into Malta may only be used on the road without payment of registration tax and without the need to register the vehicle with the Authority, if the person in possession or in charge of the vehicle satisfies **all** the below conditions:

- does not have a legally valid identification document issued in terms of the Identity Card and other Identity Documents Act;
- is a person who normally resides outside Malta; and
- the vehicle is brought temporarily into Malta for a period, consecutive or otherwise, not exceeding seven months in any twelve-month period.

Taking into consideration the above, once complainant failed to satisfy the provisions laid down in Article 18, the vehicle was confiscated as he was in breach of the law.

The vehicle was impounded as complainant was not in possession of a 30-day permit issued by the Authority. According to Chapter 368, a 30-day permit grants a person who has his normal residence in Malta permission to use a foreign registered vehicle for a period of not more than thirty consecutive calendar days which are to be reckoned from the date of arrival of such vehicle in Malta. The procedure and conditions on how to apply for the temporary permit/licence are regulated by Regulation 6A of Subsidiary Legislation 368.02 which provides that:

"*6A.'(1) A person who has his normal residence in Malta may apply with the Authority for an exemption in terms of article18(1)(g) of the Act to make use on the road in Malta of a vehicle*

registered in another country for a period not exceeding a maximum of thirty consecutive calendar days to be reckoned from the date of the vehicle's arrival in Malta.

(2) The application for the said exemption shall be submitted to the Authority on the prescribed form by not later than one working day after the arrival of such vehicle in Malta upon –

(a) the payment of an administrative fee of twenty euro (€20) payable to the Authority; and

(b) the presentation of a valid motor insurance policy and any other document which may be prescribed by the Authority:

Provided that the thirty day permit shall commence from the date of the vehicle's first arrival in Malta.

(3) Where an exemption is granted, the Authority shall issue to the applicant a temporary licence disc which is to be fixed on the windscreen of the vehicle or on the left side of the motor cycle, motor tricycle or quad bike in terms of these regulations.

(4) The temporary licence disc shall indicate the period, commencing from the date of the vehicle's first arrival in Malta, for which such temporary licence shall be valid and the exemption granted shall cease to have effect upon the expiration of the period indicated on the temporary licence disc."

Complainant must have misunderstood the information provided by the officer mentioned as although the Authority may issue a 30-day permit even after one working day from date of arrival of the vehicle (as mentioned in the applicable form), in cases when the vehicle happens to enter in Malta during the weekend, this does not mean that the owner is allowed to drive it prior to the issue of such permit.

A driver can in fact apply for the 30-day Temporary permit/licence prior to the vehicle's arrival in Malta. Had complainant filed such an application he would have been in a position to drive the vehicle on the road upon entry in Malta.

Complainant submitted an application on the Monday following his arrival and after the vehicle had been confiscated, and obtained a 30-day permit for circulation. In view of the above, he had to pay the amount of €265 in order to reclaim his vehicle. This included a towing fee of €200, €35 administrative fee and €30 rental fee (€15 per day). All fees are calculated according to the provision of Subsidiary Legislation 65.13.

The Ombudsman's considerations

This Ombudsman, having taken cognisance of complainant's submissions, the replies provided by the Authority and the applicable legislation concluded that complainant's request could not be upheld. In terms of the applicable Regulations no person can be in possession or in charge of a vehicle which has not been registered with the Authority, and on which the applicable registration tax has not been paid, unless such vehicle is registered in another country and may be used temporarily on the roads in Malta in accordance with the provisions of Article 18 of the same Act. Moreover, in terms of Article 2A(2) no vehicle "*shall be used on the road without a circulation licence issued by the Authority unless that vehicle is the subject of an exemption under this Act or has a valid circulation licence issued by the competent authority in another country.*" In the case under review, once complainant did not satisfy the criteria established in Article 18(1)(a), he was required to be in possession of the thirty day permit for his vehicle to be able to circulate on the road (Article 3), and this independently of the fact that he arrived on a weekend. Once he was aware that the vehicle would be arriving late on a Friday (outside office hours), it was his duty to ensure that the application was submitted prior to the date of arrival (and not later than one working day from date of arrival of the vehicle) so that he would be in line with legal requirements while driving in

Malta. Once he had not as yet obtained the necessary permit/licence on the date of his arrival he should not have been driving his vehicle on the local roads and should have garaged it upon arrival until the submission and attainment of the respective permit. The Ombudsman therefore opined that the Authority had acted in line with applicable provisions and procedures and that no refund of costs was due.

Transport Malta

Lack of proper action on the failure to transfer the registration of vehicle

The complaint

A complaint was lodged as the complainant was receiving bills for dues owed to Transport Malta (TM) biannually in respect of a vehicle which, although sold to a third party, was still registered in complainant's name as the purchaser had failed to carry out the necessary transfer. Complainant had made several attempts to ensure that the transfer was carried out, and in 2006 had to resort to the Courts so that the said vehicle and any pending fees would be transferred onto the purchaser's name. In May 2023 complainant had asked Transport Malta to confirm that: i) the records regarding the said vehicle had been updated; and that ii) any pending arrears had been allocated to the purchaser of the vehicle as per judgement of the Court of Magistrates, but reverted to this Office as no reply was provided.

Facts and considerations

Complainant had agreed to sell the vehicle in December 1999 to a certain DG. It appears that eventually another person (CC) acquired the vehicle and complainant left it up to this latter to register its transfer. CC remained non-compliant and did not proceed to register the vehicle onto his name. Thus, complainant contacted TM, as well as, the Police seeking assistance so as to ensure that the vehicle was no longer registered in complainant's name. The Police filed a case in front of the Court of Magistrates (as a court of Criminal Judicature) accusing CC that he had failed to give written notice of the change of ownership within seven days from the purchase to the relevant authorities. In April 2008, the Court found the purchaser CC guilty of not registering the vehicle onto his name and the latter was granted one month's time to affect the transfer in line with the provisions of Article 377(3) of the

Criminal Code. The Court further decreed that on the lapse of the one-month term, CC would incur €10 penalty for each day in which he remained in default.

When requested for comments about this grievance, TM informed this Office that it had not been a party to the case although a representative of the Authority had been summoned to testify as a witness of the prosecution.

Complainant claimed to have gone several times to TM offices in Lija and Fgura over the past couple of years so as to sort out this issue without any success, and had been merely told by TM officials that they would be reviewing the respective case file and contacting complainant. The matter therefore remained pending.

Following a review of the scarce documentation available, the Office established that:

- There had been a sporadic exchange of correspondence between Transport Malta officials and complainant's legal advisor between late 2015 and 2018. In December 2015, complainant's legal advisor had resent all the documentation already sent by complainant in October 2014 to the Senior Manager (Regulatory), within the Authority's Land Transport Directorate. Complainant's legal advisor had informed the said officer that his client could not submit a form that had been sent by TM (presumably, the form related to the Regularisation of Accumulated Road Licence Arrears Scheme launched by TM in 2012) as complainant was not aware of what had happened to the vehicle since its sale.
- On the 24th October 2018, the Authority had forwarded correspondence and a Fees' Notice which it had previously sent to CC (the vehicle's purchaser) to complainant's legal advisor. In the said correspondence CC had been given a fifteen-day period within which to pay pending dues in respect of the said vehicle.
- TM issued a request for payment of licence arrears and administrative fines to complainant in June 2021, for the amount of €3,719.89.
- Complainant provided this Office with a copy of 'Form VEH 44 – 'Collection of accumulated arrears regularisation form in line with LN 22 of 2012 and 85 of 2013', which complainant contended had been submitted to a TM official in July 2021 when she had visited TM offices with her daughter. Complainant added that on the day a sworn affidavit had been provided about this matter.

> Complainant claimed to have paid some fees in respect of said Form VEH44, but remarked that no receipt for the payment made had been provided.

A review of the said documentation indicated that the copy of the form provided to this Office by complainant was blank except for the complainant's details in Section 1. The Sections intended to be filled by a TM official were blank and Section 3 was not signed by the complainant or by a TM Official as required.

When this Office sought clarification from TM about complainant's contention that a filled Form VEH 44 had been submitted to TM in 2021, the Authority informed that the official who complainant claimed to have spoken to did not recollect speaking to complainant, and that TM was not in possession of the said documentation.

The Authority's stance throughout the investigation

The Authority observed that when the vehicle was sold, complainant failed to register its transfer with the Authority, but left it up to the buyer, to register the transfer who did not proceed to register the transfer onto his name, even though he had been given a short period within which to carry out the said transfer by the Court of Magistrates in 2008. However, in terms of Regulation 27 of Subsidiary Legislation 368.02[1] the obligation to register the transfer with the Authority is of the vehicle registered owner - in this case, complainant. The Authority stated that it does not have the authority to oblige the buyer to register the transfer onto his name.

TM remarked that after the expiry of the one-month term given by the Court, complainant should have informed the Police that the transfer was still pending for the Police to take the necessary measures according to the law in view of CC's non-compliance with the Court's decision.

The Authority elaborated that in January 2012, it had launched the Regularisation of Accumulated Road Licence Arrears Scheme which was regulated by Subsidiary Legislation 65.24. It added that from the trail of emails available, it transpired that complainant had been informed of the possibility of using this scheme and scrapping the vehicle in line with Regulation 7 which reads as follows:

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1 Registration and Licensing of Motor Vehicles.

"*7. Any person who submits a form in respect of a licence pertaining to a vehicle which such person intends to scrap in accordance with the provisions of Part VIII of the Registration and Licensing of Motor Vehicles Regulations shall –*
(a) benefit from a full exemption from the payment of all arrears in circulation licence fees due in respect of the said vehicle,
(b) be exempt from criminal liability if and when he fulfils the requirements set out in regulation 10 of the Registration and Licensing of Motor Vehicles Regulations, and
(c) be exempt from the payment of any outstanding administrative fines which are due in terms of article 21(5) of the Motor Vehicles Registration and Licensing Act and Regulation 14(2) of the Registration and Licensing of Motor Vehicles Regulations.

(2) The form mentioned in sub-regulation (1) shall be accompanied by a sworn statement confirming that the vehicle was not used on the road:

Provided that if the vehicle has been transferred on another person without such transfer having been registered with the Authority, the form mentioned in sub-regulation (1) shall be accompanied by a declaration confirming that the registered owner does not know where such vehicle is."

Thus, had complainant taken up this opportunity within the period of validity of the scheme, the vehicle would have been scrapped and subsequently cancelled from complainant's name. However, complainant had informed TM through her legal advisor that she/he was opting not to avail herself/himself of this scheme because she/he was not willing to present a sworn declaration as per provisions of the said Subsidiary Legislation. As per Regulation 4, the regularisation period for this scheme ended on the 15th of October 2022.

TM further clarified that it had sought to communicate with CC, but it transpired that CC had passed away and had therefore not been notified with the Fee's notice sent to his address by the Driver & Vehicle Licensing Unit in October 2018. Upon becoming aware of this, the Authority imposed a note in its database just in case CC's heirs called at the Authority's offices enquiring about this vehicle. In this case, the Authority would have asked them to regularise their position vis-à-vis this vehicle.

The Authority clarified that the arrears notices which complainant occasionally received were computer-generated notices as the Authority's database still had a record of the unpaid road licence and therefore licence arrears were due.

TM maintained that considering that complainant was legally required to register the transfer, the Authority sought to assist and direct her/him to a solution. It insisted that there were no provisions in the law or any procedures that may apply to cater for situations like the one under investigation and therefore complainant has to resort to the Courts through the institution of an *ad hoc* case, against the presumed heirs of CC, if any, for the Authority to be able to obtain a court decree to have the vehicle de-registered/transferred.

Considerations and comments

The Ombudsman acknowledged that in terms of Regulation 27 of SL 368.02, it was complainant's legal duty, as seller and owner of the vehicle, to ensure in the first place that the transfer of the vehicle was effected simultaneously with the said sale or within the time-frame stipulated in the Regulations. Clearly, complainant had been naive and unwise when she/he failed to insist with the buyer that the transfer be carried out immediately and that evidence thereof be provided. Complainant, not having had any previous experience with the sale of a vehicle, and lacking knowledge about the obligations related to said sales, did not appreciate the serious consequences which such a fault brings about, as clearly evidenced in Regulation 24(4) which stipulates that:

> "*The sale or transfer of a motor vehicle shall imply the transfer of the motor vehicle* ***but the original licensee shall for all intents and purposes of law remain responsible until such licensee has complied with sub-regulation (1) and the notice by such licensee so given shall have been found by the Authority to be true and correct***."

It was further noted that when in 2006 complainant finally sought the assistance of the Executive Police so as to compel CC to effect the necessary change in vehicle registration, complainant once again failed to follow up on the decision of the Court of Magistrates and to verify whether CC had abided by the time-frame specified by the Court. This lack of follow-up with the competent entities, regrettably resulted in the Police taking no further action against CC for his lack of compliance with the

Court's decision. In this regard, the Ombudsman iterated that ignorance of the law cannot be used as an excuse by a complainant so as not to abide with applicable legislation or to avoid the effects/consequences stipulated therein.

The Ombudsman acknowledged that TM does not have the authority to oblige the buyer to register the transfer onto CC's name. The legislator imposed this obligation on the seller of the vehicle for an obvious reason – it is in the seller's interest to ensure that a vehicle, which is no longer in his possession and control, is no longer registered in his name. If complainant was not aware of said obligations at law, or of the manner in which the transfer was to be carried out, complainant should have enquired with the Authority to ensure that all was being done in line with applicable regulations. It was however noted that the Authority in line with Regulation 14(4) of the Registration and Licencing of Motor Vehicles, is not only empowered to charge an administrative fee where the owner of a vehicle, licensed by the Authority, fails to renew the applicable licence for that vehicle within three months from the expiry of the said licence, but may also take any other action which is permissable in terms of the Clamping and Removal of Motor Vehicles and Encumbering Objects Regulations[2] – presumably this would entail the removal of the vehicle if this is parked or placed on the road while the annual circulation fee remained unpaid. The Authority appeared to have failed to take such action.

The Ombudsman further noted that in January 2012 the Authority had launched the Regularisation of Accumulated Road Licence Arrears Scheme and that complainant had been informed by the Authority of the possibility of using this Scheme, but was unwilling to sign the declaration required as she/he was not aware of the vehicle's whereabouts since 1999. In its reply to this Office the Authority has implied that complainant was to blame if the matter was still pending as had complainant chosen to take up this opportunity the vehicle would have been scrapped and cancelled from complainant's name. The Ombudsman however noted that following the 2015 correspondence, the Land Transport Directorate was still following up on the matter and in fact became aware that CC had passed away in 2017. The Authority therefore amended the data contained in its data base and imposed a note in respect of the said vehicle so that it could ask any of CC's heirs who might have enquired about the vehicle with TM to regularise their position vis-a-vis the said vehicle. It however

2 SL 65.13

failed to contact complainant and enquire whether she was willing to take up the Scheme in view of CC's death.

Complainant insists that she/he reverted to Transport Malta offices on numerous occasions about this matter in the past years without any success and that TM Officials has promised to review the file and contact complainant, but they never did. Complainant further alleges to have filled Form VEH 44 and to have presented said form and paid the respective fee at Transport Malta offices in 2021 – a statement which is contested by Transport Malta and which is not corroborated by the evidence provided to this Office by complainant.

The Ombudsman remarked that he could not comprehend how the Land Transport Directorate and TM officials posted in its customer care office who, one reasonably presumes, could view the note imposed in the Authority's database, did not relay further correspondence/chasers to complainant or call her/him about the possibility to avail herself/himself of the Scheme, the validity of which had been extended until the 15th October 2022 by Legal Notice 425 of 2020. The Ombudsman did not concur with TM's contention that it had "*made the utmost to assist and direct Ms ... to a solution*". He considered that it was administratively wrong on the part of the Authority, the regulator of the sector, to allow this issue to procrastinate for so long, particularly when the Directorate had become aware that CC had passed away and when a scheme through which complainant could regularise her/his position had been available for so many years. Requiring complainant to initiate legal proceedings for the de-registration/transfer of the vehicle, is unfair and will only burden complainant with unnecessary financial hardship, particularly when a proper follow up about this situation was not carried out by the appropriate Directorate following the repeated non-payment of dues owed to the Authority by way of vehicle licences. Issuing a request for payment of arrears and administrative fines without taking the measures envisaged in Article 14(4) indicates a lack of monitoring and follow up by the Regulator.

Conclusion and Recommendations

The Ombudsman therefore concluded in line with pertinent regulations that it was the complainant's duty to ensure that the transfer of the vehicle sold to a third party was effected. Undoubtedly, the situation complainant was complaining about was primarily the result of her/his conduct.

The Ombudsman however could not conclude that TM had sought to assist and direct complainant to find a solution to her/his predicament. TM officials were not proactive in their monitoring of unpaid dues owed to the Authority by way of vehicle licences and merely limited their action to the sending of payment notices notwithstanding the lapse of so many years. Concrete action should have been taken once the Authority became aware that CC had passed away, particularly because TM itself admitted that the situation could have been resolved through the application of the Scheme launched by TM in 2012. Had complainant's file been reviewed, and complainant contacted as promised, she/he could have benefitted from the Scheme, which was available until 15th October 2022.

In view of the aforementioned, the Ombudsman recommended that complainant be allowed to avail herself/himself of the terms of the said Scheme, following the payment of any administration fees or dues owed in line with the said Scheme.

Outcome
Transport Malta implemented the said recommendations.

Transport Malta

Transfer of Temporary Mooring Permit

The complaint

The complainant, along with the seller of a boat registered as MFC (recreational fishing category), sought to transfer its ownership to the former along with its mooring. Transport Malta (TM/the Authority) informed them that the boat transfer had to be done through the Fisheries Department and, allegedly, that once the new logbook is issued, the mooring would then be transferred to complainant through TM. However, the boat transfer took three months to be completed, and when they returned to TM with the new logbook for the mooring transfer, they were informed that mooring transfers were no longer being processed. The complainant felt misled and treated unfairly by TM since it changed its policy without prior notice, causing issues with the mooring. In his complaint, he requested that the mooring in question be transferred to him.

The investigation

Transport Malta informed this Office that moorings for MFC boats cannot be transferred and are tied to a waiting list system, even if ownership of the boat changes. When an MFC boat is sold, the mooring permit is revoked from the seller, and TM allocates it to the next person on the waiting list. The new boat owner must apply for a temporary permit and join the relevant waiting list. Mooring transfers are only allowed for boats registered as MFA (full-time fishermen) or MFB (part-time fishermen), and in cases of inheritance or donation between direct relatives. TM emphasized that it is enforcing existing rules and procedures to curb abusive practices previously identified by the Authority and prioritize those on the waiting list, ensuring fairness by reallocating moorings via this list and not automatically to new boat owners.

The 'Mooring of Small Ships and Boats Regulations' (Subsidiary Legislation 499.11) allow mooring holders to request use of the same mooring for a replacement boat but not to transfer moorings between owners. These Regulations restrict the concept of transferring moorings in cases involving the sale of a boat. Sellers of boats must notify TM and relinquish their mooring permits upon sale if they do not purchase a suitable replacement boat. According to these Regulations, the Authority has the final decision to approve and grant permission for the owner to moor a different boat. Additionally, the permit will not be granted if the new boat is not in the same category as the one sold.

This Office was also informed that on 2 September 2022, TM published a notice on social media to clarify any doubts, incorrect practices, or misunderstandings regarding moorings under the Authority's ownership ('Notice 02/2022 - Sale, Hire or Advertising of Moorings and Berths'). This notice is also available on TM's website:

> "*The Authority would like to inform and remind the public that, in terms of the Mooring and Small Ships and Boats Regulations (S.L.499.11), moorings and berths on quays managed by the Authority as well as moorings and buoys at sea are the property of the Authority and therefore no sale or hire (including advertising) or any type of transfer of such property belonging to the Authority is allowed.*
>
> *The Authority urges the public to abide by such rules and regulations. Failing this, the mooring or berth in question shall be immediately withdrawn, permit revoked and all the necessary and legal actions shall be taken against the individual in accordance with the law.*"

Conclusion

In the case under review, it was established that mooring transfers, in cases like the complainant's boat sale, are not automatically linked to the boat's sale. Transport Malta's policy mandates that such transfers occur based on the relevant waiting list. Boats registered as MFC (recreational fishing) are not eligible for transferable moorings.

Authorizing the transfer requested by the complainant would go against TM's regulations and policies. Even if the complainant claimed he was misinformed by TM, that the mooring permit would be transferred to him along with the boat — a claim unsupported by evidence and contested by TM — this does not justify granting his request. Past exceptions or previous instances where similar requests may have been approved do not establish grounds for approval in this case. TM's current procedures for mooring and berthing transfers align with legal provisions and aim to reduce abuses previously identified by the Authority.

For these reasons, this Office rejected the complainant's request for the mooring transfer.

Recommendation
In order that the issue regarding transfers of moorings/berths be explained more clearly to the public, this Office recommended that Transport Malta publishes an additional notice on its website and social media, which should:

1. specify the instances where moorings and berths can be transferred;
2. clarify that boats not falling under transferable mooring/berth categories are subject to the waiting list procedure; and
3. clarify the instances where a boat owner with a valid Temporary Mooring Permit wishes to replace their boat and use the same mooring.

This additional notice would help ensure greater public understanding of the regulations and procedures.

Outcome
The recommendation was accepted and implemented by Transport Malta.

Lands Authority

Incorrect application and interpretation of the eligibility criteria

The complaint
Complainant, who had been in the employ of the Lands Authority for many years submitted a complaint about the outcome of the selection process held for the position of Senior Manager – Credit Control, where she had been informed that she had not obtained the required pass mark.

Complainant felt aggrieved by the marks awarded to her and claimed that the selected candidate (X) was not in possession of the eligibility requirements stipulated in the Call for Applications. She therefore filed an appeal in terms of the internal redress mechanisms available at the Lands Authority contesting the marks awarded to her and insisting that she possessed the relevant experience. She further remarked that the appointee had some years before been put in charge of another section without having any experience whatsoever and without the issue of a call for applications, denying other employees within the Section the possibility of career advancement. She stated that the call had required applicants relying on work experience as a basis for eligibility, to demonstrate that they possessed at least fifteen years' experience in business administration and finance or a similar area. While she possessed more than the required years of experience, X did not meet said requirement as X had only occupied the position of Manager for a couple of years, and X's previous work experience was technical and never business or financial in nature.

The Selection Board informed complainant that the Authority required someone who was confident to lead a team, is solutions oriented and possessed both the managerial and technical skillset to carry out the role and that although she

possessed the technical background required to complete some of the main responsibilities of the position, during the interview it transpired that she lacked the right managerial skillset.

Complainant felt aggrieved by the feedback provided, claiming that she is a hard-working employee and has served the Department with dedication for several years. She further rebutted the board's statements about the replies she had provided during the interview. She subsequently resorted to this Office insisting that the selection process was vitiated since the appointee failed to satisfy the eligibility criteria, but did not ask the Ombudsman to investigate the assessment made by the Selection Board of her performance during the selection process.

The investigation

In terms of the call for applications, applicants could only proceed for an interview if they were in possession of the following alternative essential '*Person Specification*' eligibility criteria by the closing date of the call:

- **"*Qualifications***
  MQF Level 7 in a Finance or Management Related Field.

  OR

- ***Experience***
  Must have worked directly in Business Administration and Finance or a similar field for at least fifteen (15) Years."

According to complainant, the appointee (X) did not satisfy the eligibility criteria in that he did not possess the academic qualification or experience stipulated in the aforementioned call for applications and had occupied a technical position prior to his appointment as Manager. This Office therefore, requested the Authority to provide it with the documentation related to the selection process under examination in terms of the powers granted by Article 19 of the Ombudsman Act, which confirmed that the appointee was not in possession of an academic qualification in a Finance or Management related field. It therefore sought the comments of the Selection Board - composed of the Chief Officer - Finance, the then Acting Chief Officer - Legal and Corporate Services, and the Senior Manager

HR - as to how the Board had concluded that X satisfied the experience criterion established in the call, since the documentation provided to this Office did not record how the two applicants had been considered eligible.

Six months later, this Office was informed by the Board that the appointee had been working at the Authority for several years and had occupied a technical role where X was responsible for record keeping on plans, property, and acquisitions. It was elaborated that in the said roles X acquired administrative experience as his roles involved the drafting of technical reports, monthly evaluations of Legal Notices and keeping an updated record of data required in Local Council tenements. He the refore had gained diverse exposure to Business Administration. X then moved to another position gaining direct experience working on Finance, Accounts, Utilities, and Credit Control for five years. His duties involved chasing monthly debtors, the approval of stop rents and refusal of payments, and ensuring the collection of arrears and transfers of utility bills. X was tasked with liaising with other Authorities and inventory record-keeping. The Board further remarked that X worked as a realtor on a part-time basis which required good verbal and written communication skills, great administrative document management, and a good financial understanding to assist clients with their property needs. The Board explained that having considered X's years of experience managing Business Administration and Finance in his numerous roles, while working within the Lands Authority, X was deemed eligible.

A meeting, attended by two members of the Selection Board was subsequently held to discuss the feedback provided. The said members explained that the eligibility of the applicants was considered prior to the holding of the interviews, with the initial vetting being undertaken by the Authority's HR Consultant, who had concluded that both applicants satisfied the eligibility criteria. The Board members clarified that notwithstanding the initial vetting at HR level, had it transpired during the interview, that any of the applicants did not satisfy the eligibility criteria, this would have been indicated in the marking sheet and a decision about eligibility would have been taken there and then. They explained that since both applicants did not possess the required qualification, they had looked at the experience garnered by the said candidates in the roles they held, so as to establish whether they satisfied the fifteen years' experience required in the areas of 'Business Administration and Finance or a similar field'. The Chief Officer - Finance, remarked that both applicants had been posted within her Directorate and she could thus confirm that

both satisfied the eligibility requirement since she is cognisant of the experience they possess. When it was pointed out by this Office that although the appointee possessed the required experience as of 2014 in view of the managerial positions held, but that the said seven years' experience were insufficient, a Board Member remarked that every role entails the performance of administrative tasks. Moreover, it was clarified that the requirement of fifteen years' experience in business administration and finance would have been satisfied if the applicant possessed a number of years of experience in business administration and additional years of experience in finance, provided that these together added up to fifteen years. According to the Board, during the years when the appointee occupied a technical position X was performing also business administration duties. Consequently, considering the years of experience he had acquired in finance related duties and the years of experience in business administration, the Board had decided that X had garnered the fifteen years' experience required in the call. The Chief Officer – Finance further remarked that the appointee performed impeccable work in previous managerial roles and that X acted as an estate agent during his free time, but remarked that the Board's decision about X's eligibility had not been based on X's experience in the real estate business, but on the years of experience he had gained while in the employ of the Authority. The Board members further remarked that they had discussed the eligibility requirement with the Authority's Consultant before the interviews were held and that the latter had observed that the insertion of the phrase 'or a similar field' implied that an applicant's experience need not be related to business administration and finance.

A meeting was held with the then HR Consultant who confirmed that he had drafted the call which was subsequently approved by senior management, clarifying that the internal call did not specify that the years of experience were to be limited to the applicant's employ with the public sector/public service. He further confirmed that applicants were not required to possess fifteen years' experience in finance and fifteen years' experience in business administration, but required that the applicant's experience in these areas added up to fifteen years. The HR Consultant explained that after vetting the applications upon their receipt he had no doubt that complainant possessed the required years of experience but could not conclude that X possessed the required years of experience in finance and business administration from his employment history in the public sector, and therefore asked for further

elaborations from X. Following a meeting with X, the HR Consultant considered X to be eligible in view of the following additional information:

- X had attended to his family's business affairs and accounts for many years;
- X acted as a property broker; and
- X coached basketball and administered the financial affairs of the basketball's nursery, and had been engaged for a very brief period by a football club to administer the club's affairs.

The Consultant however admitted that he had not requested documentation from X in support of the experience he alleged to possess, remarking that other employees of the Authority had recommended X as a property broker. The Consultant affirmed that the Selection Board members had not spoken to him about the appointee's eligibility or otherwise and that the Board could have overturned his decision.

This Office met X in conformity with Article 22(6) of the Ombudsman Act. The appointee acknowledged that the experience garnered from the employment at the Lands Authority did not meet the eligibility requirements stipulated in the call for applications. X maintained to have acted as a broker for many years and to have worked with a real estate company for a year and a half. X also mentioned family-owned property where they organised events and X together with a relative were responsible for the financial matters relating thereto. Moreover, X had been responsible for managing a basketball nursery for several years, overseeing the financial issues and the employment of coaches, which had thrived under his direction. Following a request by this Office written documentation was provided by the former president of the basketball club confirming X had been given full autonomy and management of the nursery.

Considerations

The grievance raised by complainant refers to the initial examination which should have been carried out by the Selection Board once the applications submitted by all applicants were provided to the Board by the Authority's HR Department following the closing date of the call. The Selection Board was bound to determine, before proceeding with an evaluation of the applicants and of their aptitude for a proficient performance of the functions of the position during the interview, that all candidates satisfied the minimum eligibility criteria stipulated in the call. Selection Boards are not empowered to deviate from, or make exceptions to the requirements

set out in the call and must strictly adhere to the eligibility requirements determined prior to the issue of the internal call. Consequently, any applicant who failed to satisfy the said criteria should not have proceeded to the next step of the selection process – the interviewing process.

In terms of the call for applications, by the closing date of the call applicants must have been in possession of either of the following:

- an MQF Level 7 Degree in a Finance or Management Related Field; or
- had worked directly in Business Administration and Finance or a similar field for at least fifteen years.

The Ombudsman observed that in terms of the call for applications, candidates whose application was grounded on the experience criterion, were required to have "*worked directly in Business Administration and Finance or a similar field for at least fifteen years*". The wording used in the call, particularly the use of the phrase 'or similar field' is somewhat ambiguous, and left the selection board with a margin of discretion to interpret, to some extent subjectively, which experience could be considered as satisfying this requirement. The call failed to define what is meant by experience in "*business administration and finance*", or give further details, such as whether the experience had to be at the level of a specific grade, whether the experience claimed was obtained in the public or private sector, and which areas of expertise were to be considered similar/comparable/analogous to experience in business administration and finance.

A review of available literature describes the term 'business administration' as referring to the work of managing an organisation's resources, time and people. Business administration professionals are described as professionals who seek to ensure that businesses and organisations are run effectively, efficiently and profitably. Those involved in business administration usually require a basic understanding of accounting, finance, marketing, human resources and information technology as they oversee the general operations of an organisation or a department therein. Their duties may include supporting and overseeing teams, problem solving, developing and implementing targets and meeting objectives set, so as to enable the organisation/department to become more efficient. 'Financial experience' refers to the person's knowledge and understanding of financial concepts and

practices, and requires one to have a grasp of financial principles and to possess the aptitude to apply them in everyday situations. Experience in finance includes the management of funds and debt-collecting and may arise from past employment in finance or accounting, professional certification in accounting or comparable experience which endows an individual with know-how in financial matters.

This Office examined the appointee's experience, as evidenced by X's CV and Jobsplus Employment History and the further information provided by X during the meeting held at this Office and reflected considerably on the discussions it had with the Selection Board and the HR Consultant. The Ombudsman acknowledged that the wording of the call left a measure of discretion to the Board, particularly the insertion of the phrase '*or similar to*'. It however considered that the Board was bound to exercise the said discretion conscientiously, seeking documentation and further clarifications where the information provided in the application was unclear and inadequate to prove an applicant's claimed experience. Having reviewed the wording of the call, this Ombudsman had no qualms about the decision of the HR Consultant to consider the appointee's experience in the private sector. However, in view of the senior managerial role to which the vacancy refers, and bearing in mind the qualification level required in the said application so as to qualify for an interview - a Level 7 Degree in a Finance or Management related field – it was considered that the experience which should have been taken into account by the Board was experience acquired at an executive/managerial level and not ordinary administrative duties, as implied by one of the members of the board during the meeting held at this Office. Moreover, the experience as a broker or in the administration of a sports nursery/club could not be considered as experience 'similar' to experience in business administration and finance at the required level.

The Ombudsman held that the stand taken by the Selection Board that the appointee's work in a technical role amounted to experience in business administration was mistaken. Consequently, its decision that the appointee was eligible, which decision the Board states that it made having considered the administrative experience that X had garnered in his technical role and the almost seven years' experience he had in the managerial roles he occupied at the Authority, was erroneous. The duties carried out by the appointee in previous technical roles were principally technical in nature and any administrative duties he carried out were related to the technical role X occupied and were certainly not at the level required in this senior managerial

position. The appointee conceded not to possess the fifteen years' experience required by the call in the roles occupied with the Authority, but claimed to have attained the required years of experience through work carried out in the private sector. This was also confirmed by the HR Consultant who had called a meeting to discuss X's experience in the private sector and concluded that X was eligible in view of the said work, without however requesting any form of corroboration from the appointee about X's experience in business administration and finance – experience which the Ombudsman held as insufficient to meet the requirements of the call for applications.

In this regard this Office emphasises that the employment experience which a candidate claims to have obtained with other employers should be proved to having been obtained: a) within the formal economy (therefore it should result from Jobsplus employment history or from other similar local authorities); and b) that the said duties were performed in an entity with similar operational activities as those carried out by the Authority. In the case at hand, there is no doubt that the appointee possessed almost seven years relevant experience. However, this Office cannot support the decision taken by the selection board or the HR Consultant with respect to the remaining years of experience as it does not consider that the appointee's technical experience, nor his role as a broker or in the management of a nursery of a local sports club can be equated with experience in business administration and finance at the level of operations required at the Lands Authority. It is moreover noted that no documentary evidence was sought by the Selection Board or brought by the appointee about his claim that he was involved in the management of the finances of a family business, an activity which does not feature in X's employment history.

Conclusions and recommendations

The role of eligibility criteria in every selection process is to ensure that only those who meet the minimum requirements are allowed to proceed further in the selection process and to sit for an interview. Following an investigation carried out by this Office, it transpires that the eligibility criteria were interpreted and applied **incorrectly** by the Board and the HR Consultant, and that the complainant is correct when claiming that the appointee was not eligible in terms of the internal call for applications. In this regard this Office notes that complainant did not obtain a pass mark in this selection process and was therefore not directly impacted by the

decision of the Board. This Office further acknowledges that the appointee is not at fault and should not be negatively affected by the Board's mistake.

This Office therefore recommended that:

- measures be put in place to ensure that eligibility criteria are adhered to and that accordingly a proper and thorough 'preliminary' screening of applicants is always carried out at submission of application stage by the selection board;
- where calls are issued with multiple eligibility criteria, records are to be kept indicating the specific criterion each candidate is found to be eligible under and to indicate, particularly in case of applicants who are found eligible/ineligible in terms of their experience/lack of experience, how each candidate satisfies or otherwise the eligibility criteria set for the specific call;
- eligibility criteria should not be generic or vague. The areas of qualifications or experience required should be clear so that the Selection Board will not face a hurdle to verify whether or not a candidate satisfies the eligibility criteria. The use of ambiguous terms such as 'similar', 'comparable' or 'analogous' should be avoided in the interest of transparency and certainty; and
- during the review of the documentation made available to this Office in regard to this selection process, it was noted that the selection process file did not contain any minutes of the board regarding the performance of each applicant. In the interest of transparency, notes/minutes of the performance of each applicant are to be retained and to form an integral part of the selection board report in addition to the marking sheet of the marks awarded to candidates by the selection board.

Outcome

The Lands Authority informed the Ombudsman that his recommendations were accepted and will be implemented.

Lands Authority

Uncoordinated Management of Public Concession

Complaint lodged by a consortium of NGOs and private individuals (complainants) in connection with the shipyard concession granted to a group of shipyard companies.

The complaint
The complaint centred on the two shipyard concessions granted by Government over public land to two companies (the Companies). The complaint listed a number of issues which complainants wished this Office to investigate, however for the purposes of this case note, focus will be placed on the following grievance.

This Office was informed by complainants that according to the terms of the Concession Agreement, compliance reviews are to be carried out bi-annually. Complainants elaborated that the purpose of the reviews is to "… *address contractual obligations such as whether the docks have been effectively operational with full financial investments, labour and environmental compliance to professional standards throughout the duration of the concession*". Particular emphasis was placed on noise and air pollution and possible employment law breaches. Complainants informed this Office that the last review was carried out in 2013 and another review was meant to be conducted in 2019. No information was made available as to: a) whether the review was carried out; and b) the outcome of the said review.

Facts and findings
This Office had the opportunity to peruse the Concession Agreements and noted that there are various paragraphs governing how Government is to oversee the use of the land in question. In particular an obligation is placed on Government or any entity/persons as delegated by Government to **annually certify** that the Companies are abiding by all their obligations and commitments as set out in the

Concessions (the Compliance Paragraphs). In addition, Government also has the right to demand a condition report (the Condition Report Paragraphs) of the land from the Companies **once every two years**.

During the investigation this Office was made aware that the 2019 review was carried out by a Government Entity (Entity A). The said Entity informed this Office that whilst the Concessions provide for yearly compliance certification to be carried out by Government or its delegate, the Concessions themselves do not specify which entity in particular is to be tasked with the role of carrying out said certification. Entity A was given an 'ad hoc' assignment by the Ministry responsible for Economy (Government) to carry out the latest review (2020). It elaborated that many of the issues raised by the complainants fell within the direct competence of several regulatory authorities which have the function of monitoring compliance within specific legal frameworks. On completing the review, the findings were submitted to the Ministry. Entity A stressed that:

> "*Any decision whether or not to make public the outcome of the review is outside our remit and will have to be addressed to Government authorities* ."

This Office proceeded to direct its enquiries to the Ministry in question and in particular requested that it confirms whether it had 'ownership' of the Concessions and, therefore, had responsibility to ensure implementation of both the Compliance and Condition Report paragraphs. After months of delay, this Office was simply directed to the Lands Authority.

This Office noted that Article 7 of the Lands Authority Act places the task of the administration of public land onto the Lands Authority. This Office proceeded to raise enquiries with the said Authority and in particular: a) requested details on how the annual certification obligation was being implemented and whether findings were being submitted to a particular Ministry/and or Parliament; and b) whether the right to demand a condition report was ever exercised, and if there was the intention to exercise said right in the near future.

After further delays this Office was once again informed that the Concession Agreements did not designate any specific department or entity with the responsibility of carrying out the yearly certification. It also pointed out that

the Companies' obligations under the said Concessions were wide in scope and encompassed (amongst others) specialist areas that fell outside the Authority's remit and were regulated by separate specialised regulators. It, therefore, could not carry out a comprehensive compliance review as described in the Concession Agreements. This Office was further informed that the Lands Authority could take action only if it was formally notified by regulatory bodies (charged with overseeing their specific specialised areas) of non-compliance/breaches by the Companies. This Office enquired if there were any formal channels set up between the Lands Authority and other regulators. The Authority confirmed that as at May 2023 there were no formal channels of communication in place between the Authority and the regulatory bodies.

This Office observes that in the feedback provided by the Lands Authority, no reference was made to the right granted in terms of the Concessions for Government to demand a status report of the tenement in question.

Environment and Resources Authority (ERA)

As complainants' main and possibly most pressing concern was environmental pollution, in the interest of completeness, this Office also made enquiries with the Environment and Resources Authority (ERA). It was informed that the Authority was actively monitoring (including through announced/not announced inspections) qua regulator the operational activity of the Companies. As far as the regulation of emissions from stacks of vessels are concerned, ERA informed this Office that this fell within the remit of Transport Malta. Moreover, the type and quality of fuels used by vessels within the Maltese territorial waters including ports fell within the remit of the Regulator for Energy and Water Services. This Office notes, that the replies provided indicate that the regulatory framework impacting the environmental status of the harbour areas is complex and fragmented.

Confidentiality and Freedom of Information Requests

As far as, legislation dealing with obtaining information from public authorities is concerned, this Office makes reference to the Freedom of Information Act (Chapter 496 of the Laws of Malta) and the Freedom to Access to Information on Environment Regulations (S.L. 549.39). While the latter deals specifically with environmental information and names ERA as the 'competent authority', the Freedom of Information Act has much wider application with no specific public

authority being identified as such. This Office notes that an FOI request must be directed to the public authority in possession of the required information. The law also provides for the possibility of the original public authority to transfer the request to another authority. This Office observes that knowledge of which public authority (both from the person requesting the information and the public authority that may have received the request but may not have the information) is in possession of the required information is key.

Considerations

The first port of call in the investigation were the Concession Agreements and in particular the Compliance Paragraphs. This Office notes that these are very widely drafted with a view of ensuring that the Companies not only comply with their obligations and commitments as found in the Concessions themselves, but also with any other obligation arising generally in consequence of the laws regulating the various aspects of their operations. The Condition Report Paragraphs takes the oversight of the land a step further by granting the right to Government to demand a condition report every two years.

Given the vast array of contractual and regulatory obligations placed on the Companies, Government prudently imposed upon itself the obligation to annually certify, "*… that such obligations and commitments are being properly fulfilled and maintained.*" The Concessions also give Government the faculty to delegate this certification obligation to any entity or person it deems fit. Whilst the paragraph as drafted allows Government ultimate flexibility, it also created a situation where unless said delegation is unequivocally made, the performance of this obligation runs the risk, on the face of it, of falling through the proverbial cracks – in that no named ministry/department or entity has the responsibility of carrying out the obligatory compliance review or demand a condition report.

The investigation was, therefore, necessarily further widened to determine:

- which ministry/department/entity had 'ownership' of these Concessions;
- which entity was entrusted with the yearly certification; and
- whether a Condition Report was ever requested from the Companies.

In its replies Entity A informed this Office that it received its instructions from the Ministry for Economy. The Ministry in turn referred this Office to the Lands

Authority. The latter Authority despite its role as the administrator of public land refused to take 'ownership' of the concessions citing the issue of companies' operations falling within the purview of various specialised regulatory regimes which are in turn regulated by specific authorities.

The wording used in the Compliance Paragraphs implies that the intention was for one entity to have ultimate oversight over the Companies' compliance obligations. It is noted that at the time of the granting of the Concessions there was undoubtedly already an awareness of the complex regulatory landscape governing the Companies' operations. As such, certification as envisaged in the Compliance Paragraphs would arguably require a two-level approach. The first being the regulatory work carried out by the individual specialised regulators and the second being the coordination and amalgamation of the initial regulatory work to create a holistic picture of the Companies' compliance status.

During the investigation it was noted that, coordination amongst the various regulatory bodies 'policing' one aspect or other of the Companies' operations was limited at best. This Office noted that the lack of coordination only fostered a silo mentality, where the proverbial right hand did not know what the left hand was doing, resulting in inadequate oversight over the use of a commercially highly valuable tract of land and facilities to the distinct disadvantage of not only Government, but also tax payers more generally. This Office also noted a distinct reluctance by the public administration to confirm or otherwise to complainants whether it satisfied its own obligations in terms of the Concessions – arguably because of the said silo mentality and the lack of awareness within the public administration itself as to which ministry/department/entity had ultimate responsibility for the Concessions. This state of affairs significantly hindered any efforts to obtain any information by the public including complainants, on the management of the said Concessions, which in turn created significant accountability issues.

Preliminary conclusions and recommendations

Principles of good public administration dictate that public assets should be managed in a clear and transparent manner to ensure proper accountability. While this Office appreciates that the proper management of public assets such as the shipyards in question requires significant expertise and logistical effort, this Office

cannot but observe that during its investigation there was a distinct lack of initiative to shoulder responsibilities as set out by Concessions by the public administration.

It appears that whilst safeguards were put in place in the Concessions themselves to ensure that Government had the tools necessary to truly monitor the Companies' operations – proper use of the said tools remained elusive.

The lack of clarity as to which entity or ministry bore responsibility for the Concessions also rendered accountability somewhat problematic. Which in turn also caused issues for interested parties to exercise their rights to access of information.

This Office, therefore, recommended that:

a) the central public administration, take it upon itself to unequivocally name which ministry/entity has overall responsibility for the Concessions and make said information public;
b) the central public administration appoints the ministry/department/entity responsible to carry out the annual certification and also make said information public;
c) the central public administration or the ministry/entity having overall responsibility for the Concessions publish on a yearly basis:
    i. whether the annual certification exercise was carried out;
    ii. whether a condition report was requested and handed over to Government; and
    iii. information on any other action taken by Government in consequence of a right or obligation emanating from the Concessions for the purposes of carrying proper oversight over Companies' use of the land.

Interim Report and outcome.

Given the implementation of this Office's recommendations necessarily required the coordination of a number of regulators falling under the purview of different Ministries, this Office opted to include the above findings in an Interim Report, (which also included the above quoted preliminary recommendations), addressed

to the central public administration for its feedback. A copy of the Interim Report was also forwarded to the primary entities/ministries.

This Office was subsequently informed that the said report was discussed at length with all stakeholders involved and the following feedback was provided:

a) The Lands Authority was deemed to have 'ownership' and overall responsibility for the Concessions.
b) With regards to the annual certification this Office was informed that, '*…despite there not being any formal delegation in carrying out the respective annual certification, this requirement was completed*'.
c) Any '*Requests for information will be treated and addressed within the ambit of the Freedom of Information Act, Chapter 496 (Laws of Malta)*'.

The reply provided addressed one of the major issues highlighted by this Office, in that it clearly identifies the Lands Authority as the entity that has overall responsibility for the Concessions. As already commented above, this is to the advantage of both the public administration, which now had a clear referral point for these Concessions, as well as the general public whose ability to file FOI requests has been greatly facilitated.

The feedback provided, however, appears to place all the onus of ensuring transparency and accountability of the public administration's management of the Concessions on FOI requests. While said requests are useful, in that, they are a means through which information may be obtained, they have limitations. Said requests require positive action by an interested party which may or may not result in the information being provided. In other words, they are an information 'gatekeeping' tool which effectiveness may be greatly reduced if not made use of correctly.

Final conclusions and recommendations

Transparency and accountability of the public administration actions or inactions in the management of these Concessions, should not be simply dependent on the possibility of filing FOI requests. True transparency and accountability require a hybrid approach consisting of the latter as well as publicly available information.

This Office, therefore, recommended that information pertaining to the Government's performance of its compliance/oversight obligations be published

and be made readily available to the public without the latter needing to take any further steps including the publication of the following on a yearly basis:

a) whether the annual certification exercise was carried out;
b) whether a condition report was requested and handed over to Government; and
c) information on any other action taken by Government in consequence of a right or obligation emanating from the Concessions for the purposes of carrying proper oversight over the Companies' use of the land.

Furthermore, should overall responsibility of the Concessions be moved to another ministry/department/entity, then this should also be made public without delay.

Outcome

This Office was informed that Government has formally delegated the Environment and Resources Authority, Transport Malta and the Department for Industrial and Employment Relations to assist the Lands Authority in carrying out the necessary compliance emanating from the said concession agreements. The Lands Authority, being the owner and overseer of these concession agreements, has been tasked to commence coordination in this regard.

Land Registry Agency

Practices imposing fees on the basis of geographical location deemed unfair

The complaint
Complainant was in the process of obtaining a loan granted by a local banking institution. In order to secure the said loan, a charge needed to be registered with the Land Registry against two immovable properties, one situated in Malta and the other in Gozo. On making enquiries on his behalf, complainant's Notary informed him that since one the properties is located on a different island, he would incur the full cost for the registration of said charge twice over. This would not have arisen had both properties been situated in either Malta or Gozo.

Complainant found this grossly unfair and discriminatory and proceeded to file a complaint with this Office. In his complaint he argued that locally there is one Land Registry as such there should be no distinction between properties situated in Malta and those situated in Gozo. He, therefore, requested that the costs levied for the registration of the charge be the same as those charged had both properties been located on the same island.

Facts and findings
Schedule II to the Land Registration Rules (Subsidiary Legislation 296.01) provides a list of tariffs for the registration of various registration applications. Tariff No 7 specifically prescribes the cost of an application to register a charge against an immovable property and is reproduced hereunder for ease of reference.

7.	*Application for a charge on a registered title, for every one thousand euro (€1,000) or part thereof*	€1.00
	Where the charge includes several properties and different applications and the value of the charge is declared as a whole, the full fee shall be charged for the first application while any additional applications shall be charged a fee of:	€20.00
	Minimum charge	€30.00

As is standard practice, this Office requested that the Land Registry Agency provide its views and comments on complainant's grievance and in particular why the registration of the same charge on two properties situated on the two different islands cost almost double that for the registration of a charge on two properties situated on the same island.

This Office was informed that in terms of the Land Registry Act, the Land Registry consists of two branches, one in Malta where titles to land found on that island are registered and one in Gozo were titles to land in Gozo are registered. The Agency further elaborated that given the above, the interpretation of the Land Registration Act (Chapter 296 of the Laws of Malta) has to date been that a charge on a Malta property would similarly be registered in Malta while a charge on a property in Gozo would be registered in Gozo, even if this one and the same charge burdening two separate properties. It, therefore, followed that a full registration fee had to be levied for the two registrations. In its replies the Agency also made reference to the Public Registry Act which mandates multiple registrations (for the same property) depending on the residence of the Notary and location of the said property. The Agency stated that parallels could, therefore, be drawn with the way the Public Registry functions. Attention was also drawn to the fact that when the Land Registry was set up (the law was promulgated in 1981) it was wholly dependent on analogue systems which had their own limitations. This meant that in practice, the two administratively separate branches were set up. This historic separation continued till this day. That said, the Agency informed this Office that it was in the process of putting in place an online platform for registrations, thus, facilitating the creation of an administratively unified registry for the whole archipelago. The

Agency, however, added that this would also require amendments to the current legislative framework.

Considerations

This Office noted that the Public Registry and Land Registry are two distinct registries. The former governed by the Public Registry Act (Chapter 56 of the Laws of Malta) and the latter by the Land Registry Act (Chapter 296 of the Laws of Malta). This Office did not, therefore, agree with the stance adopted by the Agency whereby decisions on Land Registry matters are influenced by a law governing a completely separate registry. It did, however, acknowledge that if the law governing the Land Registry, made reference to the Public Registry Act, then it is the legislator that mandated that said 'connection' be made. If no specific reference is made then any interpretative parallels are unjustified.

This Office noted that the Land Registration Act refers to the Land Registry as one office, with one Land Registrar, having two branches. No reference is made to two separate registers of title one for Malta and the other for Gozo even though in practice these are currently administratively separate. The legal notice setting out the tariffs to be levied, specifically caters for the instance when a charge must be registered against more than one immovable property (which in and of itself requires the submission of multiple applications). In such instances the full fee is only paid once and any additional applications referring to other immovable properties against which the same charge needs to be registered attract a flat fee of €20. No reference is made to different registers or to the separate branches of the registry. The focus is placed on the registration of the **one charge**. If the legislator intended there to be two full fees levied in instances such as the one currently being examined, then this would have been stated in the law.

Conclusions and recommendations

This Office was of the opinion that the interpretation adopted by the Agency on how the tariffs should be levied was not in line with what is stated in Tariff No 7. It elaborated that the current administrative set up should not result in the tariffs as set out by the law being overridden to the net disadvantage of the service user. The current interpretative stance was considered to be singularly unfair.

While this Office commended the initiative of an online register, which would undoubtedly facilitate matters for all service users, it is aware that such a change could not occur overnight. In the meantime, this Office, therefore, recommended that Tariff No. 7 be applied as found in the law without distinction on whether properties against which the charge needs to be registered, are situated on one island or on both Malta and Gozo.

Outcome
In its reply the Land Registry Agency stated that in view of the current separation of branches of the Land Registry, the present legal framework and the administrative set-up of the Agency it was not willing in the short-term to change its established practice of charging a second full fee when a charge was registered on a second property found on a different island to the first property. It did however, reiterate its commitment in the medium-term to put in place an online platfrom where all submission of all registration requests would be done through one online portal. The introduction of this new system would be tied to changes in the current legislative framework including realignment of processes.

Since the recommendation of this Office was not implemented, in line with Article 22 of the Ombudsman Act, it brought its Final Opinion with its recommendation to the attention of the Prime Minister. This sparked further discussions within the public administration until it was finally decided to clarify the interpretation of Tariff 7 and eliminate current anomalies by means of an amendment to the Land Registration Rules. To this end, Legal Notice 156 of 2004 was published on 12 July 2024 whereby it was clarified that where a charge is registered against multiple properties situated on different islands, a full fee will only be levied once against the first property and any additional property will attract a nominal flat fee.

Ministry for Home Affairs, Security, Reforms and Equality

Reserve duties not recognised for the award of the medal

The complaint
A retired Police Officer lodged a complaint with the Ombudsman regarding his eligibility for the Long and Efficient Service Medal after serving as both a Regular and Reserve Police Officer in the Malta Police Corps. His grievance was that despite his extensive service of almost thirty-three years, including six years as a Reserve Police Constable, he was unjustly denied the Long and Efficient Service Medal and its clasps.

The investigation
'The Rules for Honours, Awards, and Decorations' stipulate that the medal is awarded after 18 years of efficient service with irreproachable character and conduct, with additional clasps awarded for further service.

The Ministry for Home Affairs, Security, Reforms and Equality denied the grant of the medal due to complainant's disciplinary record. Complainant had indeed been disciplined for six offences, yet the last one had occurred more than ten years previously. According to policy approved by the Commissioner of Police ten years had to pass without further offenses for the Police Officer to be eligible for an award. As the authorities did not count the reserve service towards the medal, the stipulated ten years did not elapse according to their reckoning. This denied him the appropriate number of years in service to obtain the award.

Conclusion and recommendation
The Ombudsman found this unreasonable maintaining that reserve duties were similar to regular police duties and should be recognized for the award of the medal. After all, regular and reserve Police Officers carried out complementary work and each served the public.

The Ombudsman concluded that complainant suffered an injustice and recommended that his total service be recognized, making him eligible for the medal and clasps.

Outcome

The Ministry and Prime Minister did not implement the Ombudsman's recommendation. The report was sent to the House of Representatives on the 4th of June 2024.

Care must be taken with eligibility and selection criteria

Complaint
Complainant submitted an application for the post of Personal Assistant to the Director General within an Authority on the basis of an internal call for applications but was unsuccessful. Complainant was of the opinion that the whole process was irregular and unfair and therefore proceeded to file a complaint with this Office.

The complaint covered various issues:
1. The call failed to clearly identify in which Directorate the successful candidate would work in. Indeed, information was conflicting.
2. Complainant questioned whether other candidates satisfied the eligibility criteria.
3. Complainant held that the selection criteria used did not reflect the actual skills and competences needed for the role as set out in the call.
4. Complainant challenged the marks she received for certain individual criteria as she believed these did not reflect her performance during the interview process.

Preliminary Considerations
This Office does not as a rule substitute a subjective assessment/decision, taken by a Selection Board, for its own. Unless any action/decision of the Selection Board was manifestly wrong in respect to the candidates' interviews, there is no room for a differing opinion from this Office.

Facts and findings
Complainant's first grievance centred on the call document itself; an extract of the contents is hereunder reproduced for ease of reference:

"***Position Description***

Title:	*Personal Assistant to DG*	***Grade:***	7
Entity:	*N/A*	***Responsible to:***	Director General

Self-improvement

- *Attending office computer and report writing courses*
- *Keeping abreast on best practices in the area of [Sector B] through research and training*

Knowledge/Skills/Qualifications

- *Having the ability to communicate in the Maltese and English languages*
- *A minimum of 5 years proven experience in [Sector A] and as a personal assistant*
- *A minimum of 5 years proven experience working as a personal assistant*
- *Experience in [Sector B] handling*
- *Proven track experience in minute taking*
- *Proven track experience in report writing*"

This Office was informed that the Authority was composed of various directorates with different portfolios under the direction of a Director General. Sector A fell within the responsibility of one Director General while Sector B fell under remit of a separate Director General. The Office observed that the call document appeared to require experience in both Sector A and Sector B. The call, therefore, lacked clarity on whether the applicant would be assigned to the Director General for Sector A or Sector B.

On this Office making enquiries on this particular point, the Authority confirmed that the vacancy was for the post of Personal Assistant to the Director General Sector A. The Authority stated that the reference to Sector B in the call was the result of a typing error. It elaborated that the Director General Sector A was the only DG who had no personal assistant and the entity's staff was aware of this. It added that applicants could have contacted the Authority's HR for any clarifications on the wording of the call.

Complainant's second grievance centred on the eligibility of other candidates. This Office noted that the eligibility criteria were not specifically referred to as such but appeared to be those listed under the '*Knowledge/Skills/Qualifications*' section of the call. Complainant argued that while she fully satisfied all criteria, she expressed strong doubts on the eligibility of other candidates. This Office noted, that whilst there was no qualifications requirement, the eligibility criteria specifically required '*proven track experience*' in minute taking and report writing and a "*minimum of 5 years proven experience in …* [Sector A] *and as a personal assistant*" without specifying what would be accepted as 'proven experience'. As the call was silent on the matter, this Office queried how said 'proven' experience (with particular reference to Sector A) was assessed by the Selection Board for the purposes of eligibility. This Office was informed that candidates were remiss in providing acceptable evidence of said proven experience at application stage. This Office observed that it is possible that candidates, being employees of the Authority, relied on the information already available to the Authority in their personnel files. This Office further noted that the Director HR was a member of the Selection Board.

In her complaint, complainant objected to the assessment criteria used to assess candidates during the selection process. She argued that the said criteria did not match the skills set as delineated in the eligibility criteria listed in the call. As such, candidates were not properly assessed. The Authority informed this Office that standardised assessment criteria were used to evaluate the candidates. The Authority further elaborated that this standardised template is used across the board for all recruitment processes ranging from professionals to secretaries, clerical and minor staff. This Office observed that the bulk of the said criteria were subjective in nature meaning that marks were awarded on the basis of the individual candidate's performance and how said performance was evaluated by the Board.

The list of standardised assessment criteria also included '*Relevant qualifications*' and *'Additional degree (Bachelors/Masters/MBA/PhD)'* sub-criteria under the '*Qualifications and Personal Qualities*' criterion. This Office, however, observed that the Board chose to bestow marks onto candidates under the '*Additional Degree*' sub-criterion on the basis of qualifications pegged at MQF 5 when first cycle degrees are pegged at MQF 6. This Office noted, that the Board opted to adapt this standard assessment criterion to the circumstances of the particular selection process.

Considerations

Complainant's first grievance concerned the conflicting information found in the call document which the Authority admitted were the result of typos. Given this was an internal call the Authority deemed this mistake as obvious. Moreover, as the Authority correctly pointed out, there was nothing stopping applicants from contacting HR to clarify any issues they may have had in connection with the terms of the call. That said, the errors could have been easily avoided with a minimum of care and attention. Applicants were able to navigate the said call thanks to knowledge they possessed qua employees. It is indeed fortunate that, in this instance, applicants were not adversely affected.

It is the opinion of this Office that the more significant issue concerned the eligibility criteria that required applicants have a "*proven track experience*" and "*a minimum of 5 years proven experience in …* [Sector A] *and as a personal assistant.*" The purpose of eligibility criteria is to carry out a preliminary screening ensuring that only candidates who possess the minimum requirements proceed to the next stage of the process. As far as these particular eligibility criteria are concerned, no parameters or details were provided as to what would have been acceptable as 'proven experience'. This lacuna rendered these criteria virtually impossible to put into operation. The Board, therefore, opted to implement remedial measures and in effect assessed these eligibility criteria within the context of the assessment criteria. In effect two assessment processes were merged into one. This Office noted, that given the Director HR was on the Selection Board, the assumption is that the Board also had access to information found in personnel files on candidates' previous work experience which could have corroborated claims made in applicants' CVs.

In her complaint, complainant challenged the assessment criteria used in the selection process. She argued that they had little relevance to the functions of the post in question. The Authority used standard assessment criteria, which given their broad nature however, allowed the Board to carry out its evaluation of candidates bearing in mind the skills and competences of the post.

Whilst this Office does not normally comment on the choice of assessment criteria, in this instance, it is compelled to comment due to the potentially unfair situation said criteria created. As already mentioned above, the Authority used standardised assessment criteria which were used across the board for all selection processes

ranging from minor staff to professionals. Arguably using standard criteria, underscores the fact that the criteria do not favour any particular candidate and ensures a level of homogeneousness. The latter is desirable but only up to a certain point. This Office observed that the skills/competences required of administrative staff is vastly different to those required of professionals and senior management. This becomes particularly apparent where qualifications are assessed at interview level. This Office draws attention to the '*Additional degree (Bachelor's/Masters/MBA/PhD)*' sub-criterion. Whilst candidates for highly technical posts or senior management are almost expected to have additional (not required at eligibility stage) degrees (pegged at MQF 6 or higher) the same cannot be said for clerical/administrative staff such as the vacancy in question. Qualifications targeting particular skills needed for these jobs and which would be far more desirable to the employer are generally pegged at lower levels of the MQF scale. If one had to abide strictly with the terms of this sub-criterion, candidates at administrative, clerical or minor level would never be awarded marks for additional qualifications which though relevant are not pegged at a high enough level. This would be grossly unfair to candidates who are in possession of said qualifications. In this instance the Selection Board, chose to adapt this assessment criterion to the particular selection process, by awarding marks to candidates who were in possession of a diploma. In so doing the Selection Board sought to correct an unfair situation to the advantage of all candidates. This Office is of the opinion that a one size fits all approach to assessment criteria was putting candidates applying for jobs at levels not pertaining to technical or higher management classes at a disadvantage whilst also placing Selection Boards in a challenging position.

In her complaint, complainant stated that the marks she received for the criteria, which due to their nature were subjectively assessed, did not reflect her performance during the interview. This Office would like to point out that there is often a mismatch between the candidate's performance during the interview and how said candidate perceives said performance. This mismatch, however, does not necessarily equate in the results being unfair or unjust unless said criteria were not assessed in a uniform manner. This Office has not found any evidence to suggest that this was the case or that one candidate was favoured over another.

Conclusions

This Office found the call document to have been riddled with avoidable errors. Furthermore, it failed to provide pertinent information which rendered the assessment of eligibility criteria inoperable. The remedial action taken by the Selection Board, though unorthodox, salvaged the situation where the eligibility assessment was moved to interview stage of the selection process. On analysis of the documentation provided, this Office did not find clear and objective evidence that the selection process was discriminatory, neither could it conclude that the process as a whole was manifestly unjust. As such, this Office did not disturb the result of said process. This notwithstanding, this Office did find areas that could be improved and to this end made the following recommendations:

1. Greater care should be taken when drafting call documents not only as regards 'typos' but also as regards the actual content. Adequate information should be provided to candidates so that any requirements at application stage may be abided by without, as far is possible, external intervention by HR team or Selection Board.
2. MCCAA should consider adopting another set of standard assessment criteria to cater for the posts other than the highly technical/senior management which are very degree focused.

Outcome

The Authority informed this Office that future calls would be drafted with greater care and it would ensure that adequate information is provided to candidates at application stage. Moreover, where the call requires candidates to demonstrate 'proven experience' candidates will be given specific parameters within which to demonstrate said experience.

The Authority implemented two sets of standard assessment criteria one being for the management/professional grades and one for technical/administrative grades.

Identità

No violation of right to respect of privacy and family life

The complaint
A Maltese citizen complained with the Ombudsman that Identità had acted unjustly when it had refused to renew the identity card of his wife, an Ethiopian citizen, when this expired.

The marriage was celebrated in Ethiopia and registered in the Public Registry of Malta. Complainant's spouse had the right to reside and work in Malta on the strength of her marriage to a Maltese citizen and was issued with an identity card. Before its expiry, Identità officials notified the couple that it wanted to meet them separately to ascertain that they were still living together as a married couple pursuant to Section 4(1)(g) of the Immigration Act. After this verification her identity card would be renewed.

Complainant refused to meet any Agency official insisting that the request for the meeting and the meeting itself would violate their human rights, specifically Article 8 of the European Convention on Human Rights – the right to respect for private and family life.

Facts and findings
The Agency explained to the Ombudsman that it had to ascertain that the spouses were not *de jure* or *de facto* separated by law. The law imposed this obligation. Hence, the necessity of the meeting.

In his deliberations, the Ombudsman considered that the complainant's spouse is an Ethiopian citizen and, as such, without any legal right to reside and work in Malta if it were not for her marriage to a Maltese citizen. Non-EU citizens or Third Country Nationals can only be allowed to reside and work in a Member State of

the European Union if they have specific permission. Yet, the mere fact of being married to an EU national is not sufficient to stay in the country and receive the benefits as EU citizens receive. Identità had the right to check whether the marriage was extant and the spouses were living with each other. Checking this necessitated meeting the spouses.

The Ombudsman found that Identità did not infringe complainant's rights and, in particular, its insistence for a meeting to establish the objective criteria of Section 4(1)(g) of the Immigration Act did not violate his right to respect for privacy and family life as enshrined in Article 8 of the European Convention on Human Rights.

Conclusion
The complaint was not sustained because Identità acted correctly.

Malta Tax and Customs Administration

Due diligence by tax authorities was fair and correct

The complaint
Complainant alleged that the Malta Tax and Customs Administration had reached an erroneous and unfair decision when it rejected his application under the 'Global Residence Programme Rules, 2013'.

His application, with the requisite information and documents was processed by the tax authorities. Eventually, the Commissioner for Revenue informed complainant that the department could not proceed with the application process because complainant did not have sufficient funds to maintain himself and his family without risk of burdening the social assistance system in Malta. Despite his objections, the decision was not overturned.

The investigation
Pursuing this complaint, the Ombudsman received the response of the tax authorities wherein they explained that complainant had failed the 'receipt of stable and regular resources' test, a requisite of the 'Global Residence Programme Rules'. The authorities were not convinced that the level of income which complainant had declared could actually be sufficient to remove the likelihood of being a burden on the State meaning that there could be the possibility, even if not the probability, that he would have recourse to social assistance.

The aim of the 'Global Residence Programme' was to attract high net worth individuals coming from outside the EU, EEA or Switzerland to Malta. They could work in Malta if eligible and, in return they enjoyed a special tax regime. However, they had to prove sound financial stability and security and that they are not likely to require social assistance. Complainant could not give this assurance.

The 'Global Residence Programme' gives beneficial advantages taxwise to those who qualify. It is a benefit that does not accrue to Maltese or EU citizens and, understandably, the tax authorities must be vigilant that the rules are applied strictly. The tax authorities must be able to assess the best applications it receives, or at least, those which may be the most advantageous to the Maltese economy. The Commissioner for Revenue has the discretion to refuse or accept applications brought before him after the due diligence process is completed.

Conclusion

The Ombudsman found that the tax authorities acted fairly and correctly. As such the complaint could not be sustained.

Gozo Channel Ltd

Discriminatory ferry fare policy treatment regarding EU 60+ nationals who are non-Maltese

The case concerns what the Ombudsman found to be the unfair treatment of a 60+ national from an EU country, who was charged a higher fare than Maltese nationals in the same age bracket.

The complaint

The complainant, a Portuguese national over 60 years old, was on holiday in Malta and travelled on a Gozo Channel ferry from Ċirkewwa to Mġarr. Despite informing the ticketing staff that he was aged 60+ and that he was a national of an EU Member State, he was charged the full passenger fare. The cashier did not request his identification to verify his age and nationality, asserting that the discounted fare was only available to Maltese nationals aged 60 and over. A witness, a Maltese national acting on behalf of the Portuguese national, filed a complaint with the Ombudsman, requesting that the ferry company change this discriminatory policy.

Facts and findings

Gozo Channel Company Limited (the Company) did not dispute the facts of the case. Instead, the company defended its position by referring to the Gozo Passenger and Goods Service (Fares) Regulations (S.L. 499.31), arguing that the discounted fare applied exclusively to holders of the '*Karta Anzjan*' (Senior Citizen Card), which is issued only to Maltese nationals.

Upon investigation, the Ombudsman found that the company's interpretation of the regulations was restrictive and incorrect. He noted that Malta became a Member State of the EU on the 1 May 2004 and that the Regulations to which

the Company refers came into force on the 1 June 2004 and were subsequently amended multiple times.

In support of its position, the Company had referred to **Regulation 4** which states as follows:

> *"A commuter may be requested to produce his **legally valid identification document or "Karta Anzjan**" at the time of the issuing of the ticket, or at any other time of boarding the vessel or during the trip, so as to establish his identity as a Gozo resident **or senior citizen** respectively."* (emphasis by this Office)

The Company further referred to the provision no 4 of the First Schedule of S.L. 499.01 which provides that *the Senior Citizen Subsidised Fare is" …applicable to all holders of the 'Karta Anzjan'."*

It argued that since only Malta residents hold the *Karta Anzjan*, the subsidised fare is only applicable to Malta residents. It further contended that a restrictive interpretation of the said provisions should be adopted as a contrary application could have financial implications on the company.

The Ombudsman maintained that the reason given by the Company had not been proven even at a *prima facie* level and was not plausible. He referred to a precedent that *mutatis mutandis* did not give comfort to the position of the Company – Petition no. 1317/2012.

In this case, Oisin Jones-Dillon, a national of the Republic of Ireland (an EU Member State) had presented a complaint to the European Parliament regarding an alleged breach by Malta of the rules of the Internal Market in the public transport system, alleging to have sustained discrimination on grounds of nationality when he was charged a different bus transport tariff. The matter was referred to the Commission.

The Commission had made an inquiry with regard to possible discrimination on several grounds: a) nationality and/or residence on the one hand; and b) appearance and language.

Within the framework of that inquiry, the Maltese authorities had explained the reasons for differential fares for residents and non-residents of Malta and *inter alia* claimed that the reduced fare was conditional upon the presentation of proof of residence, but could in no way be based on physical appearance and language.

As the Commission was not satisfied with the justifications of differential treatment of residents and non-residents, infringement proceedings were instituted against Malta in January 2013 for indirect discrimination based on nationality. Malta replied to the letter of formal notice on 15 March 2013 and the Commission assessed the Maltese reply.

On 15 February 2013, the Commission sent the petitioner a closure letter with regard to his formal complaint, informing him of the on-going infringement proceedings, and explaining that following the concrete steps taken by the Maltese Government to address and prevent any cases of discrimination based on physical appearance and language, the procedure had been closed as far as physical appearance and language were concerned.

The Commission then continued with a formal notice to Malta that its inquiry would proceed on the issue of discrimination on grounds of nationality. The Malta authorities had meanwhile amended the Regulations in force until then, removing the discriminatory element through Legal Notice 94 of 2014, the Passenger Transport Services (Amendment) Regulations. The Commission therefore closed the infringement case.

The Ombudsman opined that the restrictive interpretation of the provisions of S.L. 499/31, invoked by the Company simply and allegedly to cater for its balance sheet, is erroneous as it has no right to apply a restrictive interpretation of current legislation to favour its position to the detriment of all 60+ citizens of EU Member States. He pointed out the Company is not just a limited liability company, but an entity that, by virtue of **Sec 12(1)(b) of Chapter 385** falls under the remit of the Office of the Ombudsman, and has important social and public functions and objectives.

The Ombudsman held that relying on possession of the 'Karta Anzjan' is wrong and that the Company's website itself disproves this argument as a matter of fact. The 'Karta Anzjan' could have been relevant in earlier times but not anymore with the

reform of the Maltese Identity Card. In fact, in the new Identity Cards the feature 60+ is borne on the face of the card itself thereby eliminating completely the need to produce any 'Karta Anzjan' when producing the Identity Card as evidence of any sort. Moreover, holders of Maltese Identity Cards that had as yet not been renewed and which do not bear the 60+ feature printed on the face of the card, can clearly prove their age through a quick calculation of the holder's age based on the last two digits of the number borne on the Identity Card. It is an uncontested matter of fact that today **all** Maltese holders of Identity Cards who wish to avail themselves of non-payment of the passenger fare because they are 60+ in practice only show their Identity Card to the booth cashier.

What S.L. 499.31 describes as a ***legally valid identification document*** includes Identity Cards or Passports issued by EU Member States, which are valid all over the EU for travel purposes. Therefore S.L. 499.31 applies to EU Member States citizens as well. Any treatment by the Company of these persons that differs from those applicable to Maltese nationals is illegal, irregular and unacceptable.

The Ombudsman held that when a senior citizen of an EU Member State is using the Company's services and is asked to produce a ***legally valid identification document*** he has the right to be treated in the same way as any holder of a Maltese Identity Card who is 60+ years of age, if from that document it results that the person concerned is actually a senior citizen, that is, who is over 60 years of age.

Conclusions and recommendations

The Ombudsman concluded that the complaint was justified. The Company's policy of charging different fares to elderly EU nationals based on nationality was found to be contrary to law, unjust, and improperly discriminatory. The company's argument that extending the subsidised fare to all EU citizens over 60 would have financial implications was deemed irrelevant and unsubstantiated.

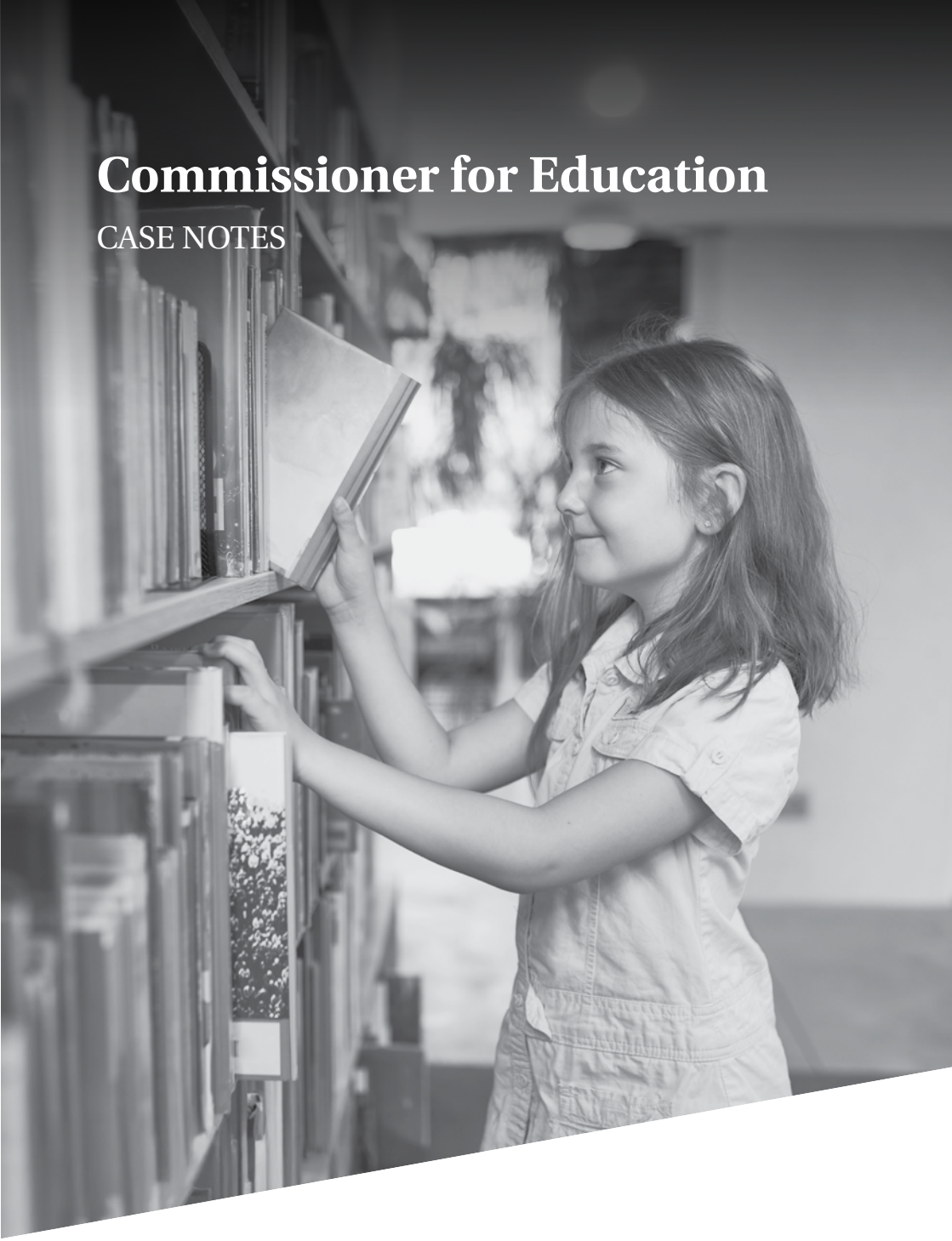
The Ombudsman recommended that Gozo Channel Company Limited revise its policy to ensure that all EU nationals aged 60 and above be entitled to the same discounted fare as Maltese nationals in the same age bracket. The company was given one month to implement the recommendation.

Outcome

Since no feedback was forthcoming from Gozo Channel Limited, the Ombudsman brought the matter to the attention of the Prime Minister in the hope that it could be resolved through his good offices, thus avoiding the need for further procedures under Section 22(4) of the Ombudsman Act. However, as the Prime Minister did not remedy this injustice, the Ombudsman forwarded the report to the House of Representatives.

Commissioner for Education

CASE NOTES



University of Malta

Promotion Granted After Court Confirms Ombudsman's Findings

The complaint

On the 24th October 2022 the complainant, an associate professor at the University of Malta, applied for the post of full professor. The Promotions Board considered his application as 'premature', holding that he was not eligible for promotion since he had not yet served for eight years at Senior Lecturer and Associate Professor level. The Board, both in its initial decision and upon a request for reconsideration, refused to consider that part of the Collective Agreement which states that "*the applicant's direct contribution to the University, society, culture and the economy at large and the international community, will also be taken into consideration, and where extensive evidence may be seen, at the discretion of the promotions Board, to partially compensate for other criteria.*" According to the complainant, the University had in effect decided that the only criterion on the basis of which the application for promotion could move forward was that of the time served in the previous post or posts.

The investigation and findings

The Commissioner carefully examined the minutes of the Promotions Board's meetings of the 11th January 2023 and 21st June 2023, and also spoke to one member of the Promotions Board. From all the evidence at hand, it was quite clear that 'the practice' – probably one of convenience – adopted by the said Board was that the criterion of years in the previous post (8 years for promotion to full Professor, 6 years for promotion to Associate Professor) was the crucial and only determining criterion as to whether a person 'would be eligible for promotion' (something which was different from whether a person 'would eventually be promoted'). However, a careful and exegetical reading of para. (*d*) of Article 26.8 of the Collective Agreement

showed quite clearly that the 'other criteria', for which partial compensation may be found in the applicant's contribution "*to the University, society, culture and the economy at large and the international community*", included the criterion of years in one's current post or grade. Any other interpretation simply would not make sense. The criteria for promotion were all those mentioned in paragraph (*d*) (and, in the case of promotion from Senior Lecturer to Associate Professor, in paragraph (*c*)), and there was absolutely nothing in the wording of the Collective Agreement which suggested a distinction between the criterion of years in one's current post and the other criteria. The Collective Agreement was law between the parties and *ubi lex voluit, dixit*. It was true that everything was "*at the discretion of the Promotions Board*", in the sense that the Board 'had to apply its mind to the facts as brought to its attention by the applicant', and come to a proper decision, but the Promotions Board could not foreclose the matter and rely solely on the criterion of years in order to declare the application for promotion as inadmissible.

In the instant case, the 'compensatory criteria' were specifically brought to the attention of the Promotions Board, if not with the original application certainly with the request for reconsideration, but these were again summarily ignored, with nothing to show either in the Board's minutes or in the Rector's letters to the applicant that they had even been considered. Such arbitrariness gave rise to unreasonableness as envisaged in para. (*b*) of Article 22(1) of the Ombudsman Act, an arbitrariness compounded by the absence of proper reasons for the Promotions Board's decisions (Art. 22(2) *in fine* of the Ombudsman Act).

Conclusion and recommendation

For the above reasons, the complaint was allowed by the Commissioner for Education since the decisions of the Promotions Board taken at its meetings of 11th January 2023 and 21st June 2023 ran foul of Article 22(1) and (2) of the Ombudsman Act.

The Commissioner recommended that the complainant's application be re-examined by the Promotions Board (which should not include the same persons who had deliberated on the 11th January and 21st June abovementioned) and that specific and proper consideration should be given to the compensatory criteria invoked by the applicant (the complainant).

Subsequent developments

The University of Malta refused to comply with the Commissioner's recommendation, holding that it had acted correctly. In compliance with Article 22(4) of the Ombudsman Act, the Commissioner's final report was eventually brought to the attention of the Speaker of the House of Representatives and was laid on the table of the House.

In the meantime, the associate professor sought judicial review before the courts of justice. By judgement of the First Hall of the Civil Court delivered on the 25th March 2024, it was decided that the University of Malta had acted *ultra vires* by failing to take account of all the applicable criteria for promotion, and held that the University's decision to refuse to consider the application for promotion was null and void.

The University of Malta appealed that decision. However, the appeal was subsequently abandoned.

A differently constituted Promotions Board then considered the application, which was duly processed, and the opinion of two independent peer reviewers appointed by the Association of Commonwealth Universities was also sought, as is the established practice.

On the 22nd November 2024 the complainant was informed that the University Council had ratified the recommendation of the Promotions Board and that he was being promoted to full professor with retroactive effect from the date of his original application, that is, from 24th October 2022.

University of Malta

Alleged unfair practices in the assessment of *practicums*

The complaint

The complainant was reading for a Masters in Teaching and Learning at the Faculty of Education of the University of Malta. She failed two *practicums*, was withdrawn from the course and was awarded the PGCE exit certification. She alleged several irregularities in the assessment process during her teaching practice, including bias on the part of one examiner. She also alleged an irregularity on the part of the University in the appointment of an 'external examiner' which, she contended, was in breach of University Regulations, thus implying that the entire examination process was null and void.

The investigation and findings

In his report, the Commissioner for Education began by pointing out the limitations imposed on him by law through Rule 18 of the Commissioners for Administrative Investigations (Functions) Rules 2012 (as amended – today S.L.385.01). He explained that he could not exercise 'academic jurisdiction' or investigate issues concerning, *inter alia*, examination results, grades and grade review and the academic supervision of students, unless there was evidence, not simply mere suspicion, of maladministration. Maladministration was exhaustively described in Article 22(1)(2) of the Ombudsman Act. In concrete, practical and lay terms, and with reference to the complainant's case in particular, the Commissioner was precluded from querying the examiners' assessment of the complainant's teaching practice unless that process of assessment was tainted with illegality or displayed something manifestly wayward. The reason for this limitation on his jurisdiction stemmed from common sense: neither the Ombudsman nor the Commissioner for Education was an expert in the subject matter being examined – what the Ombudsman or Commissioner could, and was obliged to, look into was whether established examination procedure (including, where available, re-sits in the case

of practicums) had been followed, to ensure that nothing was done which tainted the overall fairness of the process.

In line with the above, one of the issues that was given special attention in the investigation was whether Ms A.B. could be appointed as 'external examiner'. The Commissioner thoroughly examined all the documents submitted both by the complainant and by the respondent Faculty of Education. He also went through the examiners' reports in connection with the complainant's teaching practice, as well as the relative Department's request for Additional Examiners as eventually approved by the Senate.

The Commissioner's conclusion was that everything had been done *rite et recte* in connection with the complainant's assessment (or examination) of her teaching practice. It was true that, unfortunately, sometimes Ms A.B. was referred to as an 'external examiner' or 'external assessor'. It was clear, however, that Ms A.B. had never been appointed as an 'external examiner' by the Senate but only as an 'auxiliary examiner' in line with Regulation 17 of the University Assessment Regulations (S.L.327.88) as amended by L.N. 150/2022. This amendment had come into force as of the 1st of April 2022 and had in effect removed the reference to 'external examiner' in sub-paragraph (*e*) of paragraph (1) of Regulation 17. In reality, even this amendment was immaterial to the complaint regarding the procedure adopted by the University, since in effect Ms A.B.'s appointment was always as 'auxiliary examiner'. It was, indeed, the practice that 'external examiners' were generally appointed to examine dissertations at Masters or higher level, but not for the assessment of practicums (the procedure being somewhat different within the Faculty of Medicine and Surgery).

In sum, there was no irregularity in the examination process by which the complainant was examined and graded. Nor did the investigation find any indication, much less evidence (direct or circumstantial) of any conflict of interest or of verbal harassment as alluded to in the complaint.
The complaint was, therefore, dismissed.

University of Malta

Formal Graduation Parchments – refusal to issue in current (maiden) surname

The complainant, a member of one of the three branches of the legal profession in Malta, is in possession of several degrees from the University of Malta. Three of these degrees were obtained before 2012 and had been issued in her surname as a married person (then using her husband's surname).

By deed of separation authorised by the First Hall of the Civil Court (Family Division) sometime after 2012, the complainant reverted to her maiden surname for all intents and purposes of law, and the graduation scrolls with reference to two further subsequent degrees she obtained after that date were issued by the University in her maiden surname.

When she requested that the graduation scrolls of the first three degrees be re-issued in her maiden surname, the request was at first refused on the ground that the persons who had originally signed those scrolls had since moved on and were not available.

Following informal discussions between the Commissioner for Education and the Academic Registrar of the University, the University agreed to re-issue those three graduations scrolls in the complainant's maiden surname and under the signature of the current Academic Registrar. A formal investigation by the Ombudsman's Office was thus averted.

MCAST

Constructive dismissal of Principal and CEO of the Malta College of Arts, Science and Technology

The complaint

The complainant, who was the Principal and CEO of MCAST, lodged a complaint with the Office of the Ombudsman on 16th July 2024. He alleged that his impending dismissal, effective from the end of August 2024, was both unlawful and politically motivated. The complainant's contract had been extended in March 2021 until 31st May 2026, and he contended that his dismissal prior to this date breached the terms of his contract.

Investigation and findings

The investigation, initiated by the Commissioner for Education, revealed that the complainant's impending dismissal was in breach of the provisions of sub-articles (1) and (2) of Article 22 of the Ombudsman Act in that it would undermine the notion of a definite contract of service under the Employment and Industrial Relations Act, as well as because no cogent reasons were given to the complainant for his dismissal ahead of the stipulated date of the end of the contract of service. The key findings were:

- The Board of Governors had acted within its legal remit when renewing the contract until 2026.
- No valid reason was provided by the Ministry of Education or its representatives to justify the termination of the complainant's contract before the agreed-upon date.

- The Ministry's claim that after a certain age public officers required the annual approval of the Ministry to remain in office undermined the main law governing employment.
- The education authorities failed to provide cogent reasons for the constructive dismissal of the complainant, relying on vague and irrelevant considerations in breach of Article 22(2) of the Ombudsman Act.

Conclusion and recommendation

The Commissioner concluded that the complainant's forthcoming dismissal would amount to an act of maladministration. The education authorities' failure to respect the decision of the MCAST Board of Governors and to subject the complainant's contract of employment to an arbitrary condition of annual renewal breached the provisions of Article 22 of the Ombudsman Act. The Commissioner, therefore, recommended that the education authorities refrain from proceeding with the dismissal scheduled for 31st August 2024.

Outcome

On 2nd September, the Permanent Secretary of the Ministry for Education, Sport, Youth, Research and Innovation informed the Commissioner for Education that they did not agree with his conclusions and recommendation and would, therefore, proceed with the termination of the complainant's employment. The Ombudsman and the Commissioner brought the case to the attention of the Prime Minister on 9th September 2024 and subsequently forwarded a report to the House of Representatives for its consideration.

Update (23 January 2025)

On 23rd January 2025, the Commissioner for Education updated The House of Representatives with further correspondence between himself and the Principal Permanent Secretary (PPS). In his reply to the PPS's letter of 7 January, the Commissioner stated that the government's justification merely confirmed the constructive dismissal of the complainant, "*under the guise or pretext of not renewing his appointment.*" He noted that any law "*may in itself not be oppressive, unjust, or improperly discriminatory, but be so in the way it is applied in a concrete case.*" The Commissioner also highlighted MCAST's admission before the Industrial Tribunal, acknowledging that the complainant's contract was terminated prematurely. Both the PPS's letter and the Commissioner's response were forwarded to the Speaker of the House of Representatives for the information of the Members of the House.

MCAST

Procedural unfairness in recruitment at MCAST

The complaint

The complaint was submitted on 28th November 2023 by a non-academic staff member at MCAST. The complainant expressed concerns about the outcome of an interview held on 13th September 2023 for the post of Human Resources Director. He alleged that he was unfairly evaluated, resulting in low marks that led to his failing to reach the required pass mark. He considered that this treatment was linked to his history of raising concerns over procedural irregularities within MCAST.

The complainant raised concerns also about potential bias, noting that two members of the interviewing panel – the College Principal and the Deputy Principal Administration – had close professional relationships with him, which he felt had affected their impartiality. Moreover, when he appealed the interview outcome, he found that two members of the Appeals Board were also senior members of MCAST's management whose direct line relationship was with the College Principal, creating what he perceived to be a conflict of interest and procedural unfairness.

Facts and findings

The Commissioner for Education conducted a thorough investigation, obtaining all necessary documentation and assistance from MCAST. The information included detailed scoring by each panel member across seven applicants for the position for which the complainant had applied. Upon review, the Commissioner found no objective evidence of unfairness or of any malpractice in the allocation of marks. Of the seven applicants, only three achieved a passing score, with the complainant ranking the highest among three others who did not obtain a passing mark.

However, the lack of video recordings of such interviews made it impossible to assess whether all candidates were dealt with fairly and equitably.

Regarding the composition of the interview panel, the Commissioner observed that it is standard practice for senior administrative staff, such as the College Principal and Deputy Principal Administration, to participate in panels for posts that require close collaboration with them. Therefore, their presence on the interview panel was considered justified.

However, the Appeals Board's composition raised serious concerns. The Commissioner noted that it is a fundamental principle of natural justice that any right of appeal must be practical and effective and not merely theoretical or illusory. Consequently, the members of the Appeals Board must be independent of the parties involved. In this case, two of the Appeals Board members had a direct line relationship with, and their posts were dependent upon, the College Principal, creating a clear conflict of interest. Although there was no evidence of intentional bias or subjective partiality, the lack of objective independence in the Appeals Board's composition rendered the appeal process procedurally unfair.

Conclusions and recommendations

The investigation revealed that MCAST's recruitment practices lacked sufficient transparency and safeguards against procedural unfairness. The Commissioner concluded that, while there was no concrete evidence of bias during the interview of the applicant, the composition of the Appeals Board and its lack of objective independence, compromised the fairness of the entire recruiting process, leading to procedural injustice.

To address these issues, the Commissioner recommended that MCAST implement the following measures to ensure greater transparency and accountability in future recruitment processes:

- that in the recruitment for senior administrative posts within MCAST, the composition of the interviewing panel should be communicated in advance to all applicants to enable them to challenge for cause any member of the panel (the final decision whether to abstain or otherwise to rest with the panel collectively);
- that all such interviews as well as interviews for teaching posts should be fully video-recorded; and

- that any and every Board of Appeal set up by the College to hear appeals from any administrative decision, including recruitment to senior administrative posts, should be effectively and in practice independent of the parties.

Outcome and follow-up

MCAST informed the Commissioner for Education of their decisions as to the recommendations. Regarding advance notification of the interview panel composition, MCAST stated that it disagreed with the recommendation and would not disclose in advance the identities of Interviewing Board members to candidates. With regard to the second recommendation on video recording of interviews, MCAST responded that it would not permit any recordings under any circumstances. However, as to the recommendation for an independent Appeals Board, MCAST indicated that it would amend its Appeals Board composition procedure to ensure independence and impartiality.

The Commissioner for Education responded to MCAST, emphasising that the three recommendations were aimed at enhancing transparency and accountability in MCAST's recruitment process. He further noted that adhering to a previous practice, even a practice followed by the Ministry for Education, Sport, Youth, Research and Innovation itself, is not a valid reason for rejecting improvements directed towards enhancing transparency and accountability. Since two recommendations were not being accepted, the Parliamentary Ombudsman and the Commissioner for Education wrote to the Prime Minister. When no action was taken, the Ombudsman and the Commissioner forwarded the Final Opinion and related correspondence to the Speaker of the House of Representatives for further consideration by the Members of the House.

Ministry for Education, Sport, Youth, Research and Innovation

Discriminatory practice against union members in the education sector

The complaint

The Union of Professional Educators (UPE), in its own name and on behalf of its members, filed a complaint against the Ministry responsible for education on 23rd February 2024. The union alleged that its members faced discriminatory treatment when following UPE-issued directives. Specifically, some heads of school were requesting written proof of UPE membership before allowing members to follow the directives. This occurred notably in primary schools in San Ġwann, Dingli, Ħal Għaxaq, and Żejtun A.

The union further claimed that no such requirement was imposed on members of the Malta Union of Teachers (MUT) or any other union. Additionally, an incident at one school allegedly involved harassment of UPE members during a staff meeting, which the union argued was discriminatory and in breach of the right to freedom of trade union association.

Investigation and findings

The Commissioner for Education began by noting that the Office of the Ombudsman took a very dim view of union directives – by any union – which, while ostensibly intended to promote, secure and improve the working conditions of its members, ended up causing disproportionate harm particularly to the most vulnerable in society. If such a directive or directives issued by a union is or are unlawful, then the authorities have the means at law to hold the union in question accountable. But unless such directive or directives is or are held to be illegal by the competent courts, then they must be regarded as legal by all concerned, including the 'employer'. In the instant case, the Education Authorities did attempt to obtain a warrant of

prohibitory injunction against the complainant union, but the request was rejected by the First Hall of the Civil Court (Mizzi, J.) on the 11th March 2024, and the matter was not pursued further in the courts.

From all the evidence – witness statements and documents – examined by the Commissioner for Education, it did, indeed, result that in one particular school there was, during a staff meeting, a heated exchange between the Head of School and one particular UPE member, and words were uttered which can be interpreted as snide remarks. However, this incident was blown out of all proportion by the complainant union. Nothing that happened or that was said by the Head of School in this short exchange can be considered as reaching the threshold required to trigger Article 22(1)(b) of the Ombudsman Act. Of course, it was unwise for a Head of School to lose his cool, but that fact by and of itself, and even in the specific context of the incident in question, did not amount to any harassment or to an act of maladministration. This leg of the complaint was, therefore, not pursued further.

There remained, however, the issue of the production of what the Education Authorities are calling 'a personalised union directive'. From the evidence received it transpires that when a member of UPE decided to follow a directive issued by this Union, he or she was being requested by the Head of School to produce from the said Union a note or letter stating that he or she was a member of UPE and was following its directive. From the evidence received, no such 'personalised union directive' was ever requested when any teacher – whether a member of the MUT or of some other union, or indeed not affiliated to any union – followed a directive issued by the MUT.

The Education Authorities seem to be basing their stand on what they perceive to be 'collective directives', a term which was nowhere to be found in the Employment and Industrial Relations Act (Cap. 452). That law referred to and mentions 'collective agreement', 'collective bargaining' and even 'collective redundancy', but nowhere was there any reference to 'collective directives'. The Commissioner for Education noted that it was embarrassing to read, in the Permanent Secretary's letter of 2nd May 2024 addressed to the Office of the Ombudsman, that: "*It is established practice in industrial relations that collective directives are issued only by the union which enjoys bargaining recognition. Other unions can issue directives but on individual issues and not on collective issues.*"

One struggled to find the rationale of this in the law. Indeed, the practice had always been to the contrary: even a minority union could issue directives to its members and these could be followed also by employees who were not members of that minority union – this was implicit in the use of the expressions 'a person' and 'one or more persons' (and therefore without reference to union membership) in Articles 64 and 65 of Cap. 452. The Education Authorities further relied on Regulation 5 of the Recognition of Trade Unions Regulations 2016 (S.L. 452.112). Even here, the expression 'collective directives' was conspicuous by its absence. Regulation 5 was simply intended to protect the recognised union (or, as explained in the second proviso to Regulation 2(1), the joint recognised unions) from attempts by another union or unions to bargain collectively. No more and no less.

The stance taken by the Education Authorities in requiring the so called 'personalised union directive' from the UPE was – apart from issues of privacy and GDPR – *prima facie* in breach of the law (Art. 22(1)(a) of Cap. 385); moreover it was, both as regards the complainant union and as regards its members, unreasonable and unjust in that it had a chilling effect on free and unhindered union membership as recognised by Article 11 of the European Convention on Human Rights.

Conclusion and recommendation

The complaint was therefore upheld only to the extent that the requirement of producing a 'personalised union directive' when a member of the complainant union followed any of the union's directives was in breach of Article 22(1) and (2) of Cap. 385. The Commissioner recommended that the Education Authorities stop and desist forthwith from insisting on the so-called 'personalised union directive' (as per directive/circular DG DES 14/2024).

Follow-up

Through its Permanent Secretary, the Ministry responsible for education indicated that it did not intend to abide by the recommendation to cease and desist from insisting on a 'personalised union directive' in respect of members of the UPE.

Consequently, after that the Commissioner's Final Opinion was sent to the Prime Minister and no action was taken, the Parliamentary Ombudsman and the Commissioner for Education forwarded the same, together with the correspondence exchanged between the Office of the Ombudsman and that of the Permanent Secretary post Final Opinion, to the Speaker for further consideration by the House of Representatives.

Ministry for Education, Sport, Youth, Research and Innovation

Investigation into visits to schools by prospective election candidates

The complaint

The complainant – a prospective candidate for the 2024 elections to the European Parliament – alleged "*a partisan attitude*" by the Education Authorities in connection with a visit, carried out to a primary school in Gozo, by another prospective candidate on the list of another party. Photos of this visit were uploaded on the school's Facebook page.

The complaint was lodged on the 9th April 2024. Notice of the investigation for the purposes of Article 18(1) of the Ombudsman Act was served upon the ministry responsible for education and upon the Permanent Secretary at the aforementioned ministry on the 10th April 2024. The Commissioner for Education requested to be informed on "*the current policy on visits to school by politicians or prospective candidates to elections as well as on the use of school halls for political activities by political parties or prospective candidates*".

The thrust of the complaint was to the effect that it is 'wrong' (Article 22(1)(*d*) of the Ombudsman Act), to expose school children, particularly primary school children, to party politics; and, moreover, that the act by which the prospective candidate on the list of the other party was allowed to enter and speak to members of staff at the particular school in question amounted to 'improper discrimination' (Article 22(1)(*b*) of the Ombudsman Act). In the complaint, the complainant suggested that the minister himself had stated, on taking up office as minister responsible for education, that "*there should be no politics in school*".

The investigation and findings

On the 12th April 2024 the ministry replied by confirming that, indeed, the current incumbent had given "*clear instructions and directives relative to visits to schools by politician and respective [sic] candidates to elections*" upon his appointment as minister responsible for education. It was further stated that these directions "*are very clear in the sense that politicians and prospective candidates should not be present at school during school hours unless such presence is deemed to be needed and directly related to the educational path of the students.*" According to the ministry, "*this system [had] worked well … where a clear structure of approval to be given by the ministry has been in place since 2022.*" The ministry also added that requests by politicians to be present in school during school hours had been turned down whenever it was deemed that they were not related to educational purposes. As regards the use of school premises the ministry pointed out that "*the policy relative to activities within the school premises is that in cases where there is nothing that disrupts the school operations, facilities and available space may be rented to third parties.*" It was stated that "*the determining factor in the evaluation of the respective requests for the use of such premises is always based upon the presence or otherwise of students in the school premises. This avoids unwanted discrimination.*" As to the specific incident complained of, the ministry stated that "*no such request was made for approval or otherwise to the ministry.*"

On the same day that the above information was received, the Commissioner for Education wrote back to the ministry and to the Office of the Permanent Secretary requesting a copy or copies "*of the emails or circulars by which these instructions and policy were transmitted down the line, including the date/dates when they were meant to effectively percolate.*" It was pointed out by the Commissioner that, while not doubting that the instructions and directives had been given, and that a policy on the use of school halls existed, it was crucial to determine whether these had been communicated with sufficient clarity to the people on the ground, namely Heads and Assistant Heads of Schools. A reminder was sent on the 18th April 2024. Up to the date of the drawing up of the Final Opinion in this case – that is, on the 3rd May 2024 -- no such copy or copies had been provided by the ministry or by the Office of the Permanent Secretary to the Office of the Ombudsman.

From the evidence heard by the Commissioner, the only documents on the subject matter under examination which appear to have come to the attention of Heads of Schools were:

A. Circular DG DES 13/2024, circulated on the 18th of April 2024, with effective date 15th April 2024 (that is well after the date of the lodging of the complaint); and
B. Letter Circular DSR 3/2015 on the use of school facilities. This bears the date of the 21st May 2015.

As to the first document – '*Policy on the Regularisation of Political Presence During School Hours*' – this was circulated after the complaint by the prospective candidate was communicated in terms of Art. 18(1) of the Ombudsman Act. No other document was brought to the attention of the Commissioner showing that ministerial directives or instructions issued on the matter at hand way back in 2022 had been transmitted, by whoever was responsible to do so, in written form down the line. The Commissioner for Education noted that it was hardly necessary to underscore in this connection, that it is of paramount importance for the rule of law that any directives given on such a delicate issue should be (and should have been from day one) accessible to Heads and Assistant Heads of Schools, as well as to the general public, and that these should have been clear, intelligible and predictable in outcome. Moreover, such directives, involving as they necessarily must, a measure of discretionary power to grant or refuse access to schools, should also be implemented in good faith, fairly, for the purpose for which those powers were conferred, and in compliance with overriding legal norms proscribing improper discrimination.

A careful reading of the contents of DG DES 13/2024 revealed that whereas emphasis was placed on the need to ensure that visits to schools "*by those politically elected or prospective candidates are to take place exclusively if the activity is related to the national curriculum*", no reference whatsoever was made to the need for even-handed treatment of requests with a view to avoiding improper discrimination, or indeed, even the appearance of improper discrimination. This deficit was, in the view of the Commissioner, exacerbated or compounded by a clause which exempted (or appeared to exempt – the wording was far from clear) from "*such policy … events … originating from the Ministry for Education, Sport, Youth, Research and Innovation.*"

As regards the visit to the primary school mentioned in the complaint, the evidence heard in the course of the investigation clearly showed that no deliberate attempt was made by the school in question – that is, by the Head or any Assistant Head – to give any political advantage to the prospective candidate singled out in the complaint. The school in question, even under previous heads, had attempted for many years to secure funds to convert and use parts of its open and unused grounds for some educational purpose. A member of staff knew a person who had worked with the E.U. institutions in Brussels – the person shown on the Facebook page mentioned in the complaint by the complainant – and he was invited to visit the school to advise on the possibility of tapping E.U. funds. The Head of School was not aware that he was a prospective candidate for any elections – local or otherwise. At no time did the person in question address children or disrupt any lesson. As he was being shown around by the Head of School, another member of staff took some photos which were then uploaded onto the school's Facebook page. At no time was any reference made in the uploaded photos to the political connections and/or aspirations of the visitor in question. Of course, with the benefit of hindsight it is easy to say that it was an unwise decision to post those photos. However, if any blame was to be ascribed, it certainly was not be to be ascribed to the school staff but rather to the administration within the Education Division which had delayed passing on the minister's clear message by over two years.

Finally, as regards the use of school premises for political activities, the only official document provided – not by the ministry or by the Office of the Permanent Secretary, but by witnesses heard – was Letter Circular 3/2015. According to this Letter Circular, the use, against payment, of school premises was subject to an overriding condition: "*In all cases, schools are to ensure that school facilities are only used for activities that befit an educational establishment.*" How party-political activities, such as those advertised in the press and on Facebook, which took place at the Kirkop Secondary School and the Qawra Primary School (see Parliamentary Questions 17230 and 17231, and the replies thereto) could be said to 'befit a primary or secondary educational establishment' was beyond the pale of comprehension of the Commissioner. Moreover, it was of course imperative that the Education Division treat all substantially similar requests from whatever political quarter in the same manner to avoid acts or omissions giving rise to improper discrimination.

Conclusion

For all the above reasons, the complaint was allowed in so far as, and only to the extent that, clear guidelines as to visits by politicians and prospective candidates to elections had only been communicated to Heads and Assistant Heads of Schools more than two years after the minister had expressed his views thereon; and in this connection no specific recommendation was necessary.

However, the investigation had also revealed issues which needed to be urgently addressed by the ministry in question. The Commissioner therefore recommended, in the interests of transparency and accountability, that Circular DG DES 13/2024 be made accessible to the general public after that paragraph 3 thereof ("Visits to Schools") is clarified or amended to eliminate the possibility of improper discrimination by subterfuge in view of the existing vague exemption of activities 'originating from the Ministry for Education, Sport, Youth, Research and Innovation'.

MQRIC Appeals Board

MQRIC Appeals Board left not constituted and not functioning

The complaint

The complainant in this case was a Maltese citizen with a Master's degree in Arts and Cultural Management from the Rome Business School. Sometime in July of 2024 the MQRIC unit within the Malta Further and Higher Education Authority refused to recognise this foreign degree. He appealed within the prescribed time to the MQRIC Appeals Board using the dedicated email address provided by the Education Authorities, but up to the date of filing the complaint with the Ombudsman's Office he had not received no indication that his appeal was being considered. Attempts to contact the Board by the only means available – the dedicated email address for appeals – elicited no response whatsoever.

The complaint was filed with the Ombudsman's Office on the 27th August 2024.

The investigation and findings

On 4th September 2024, the Permanent Secretary at the Ministry responsible for Education was served with the notice of investigation as required by Article 18(1) of the Ombudsman Act (Cap.385). In that communication the Commissioner for Education drew the attention of the Education Authorities to the fact that the issue of the functioning (or rather, non-functioning) of the MQRIC Appeals Board had also been the subject of correspondence in a previous case upon a complaint brought by a third country national. In the correspondence in that other case, the Commissioner had repeatedly requested information about the Board in question but the only communication of substance was an email of the 12th July 2024 to the effect that MEYR had nominated a person for the chair of the Board but was "currently awaiting approval from the respective authority".

On the 13th September 2024, the Commissioner was informed by email that on the 6th September 2024 the MQRIC Appeals Board had been re-constituted "with effect from 4th September 2024 for a period of one (1) year" as per Government Notice No. 1135 of the 6th September 2024 (published in the Government Gazette of the same date).

Upon further investigation it transpired that the last meeting of the Board in question had been held on 11th January 2024. During the period when the Board was not properly constituted, it amassed a grand total of 175 appeals, which were now pending before the newly re-constituted Board.

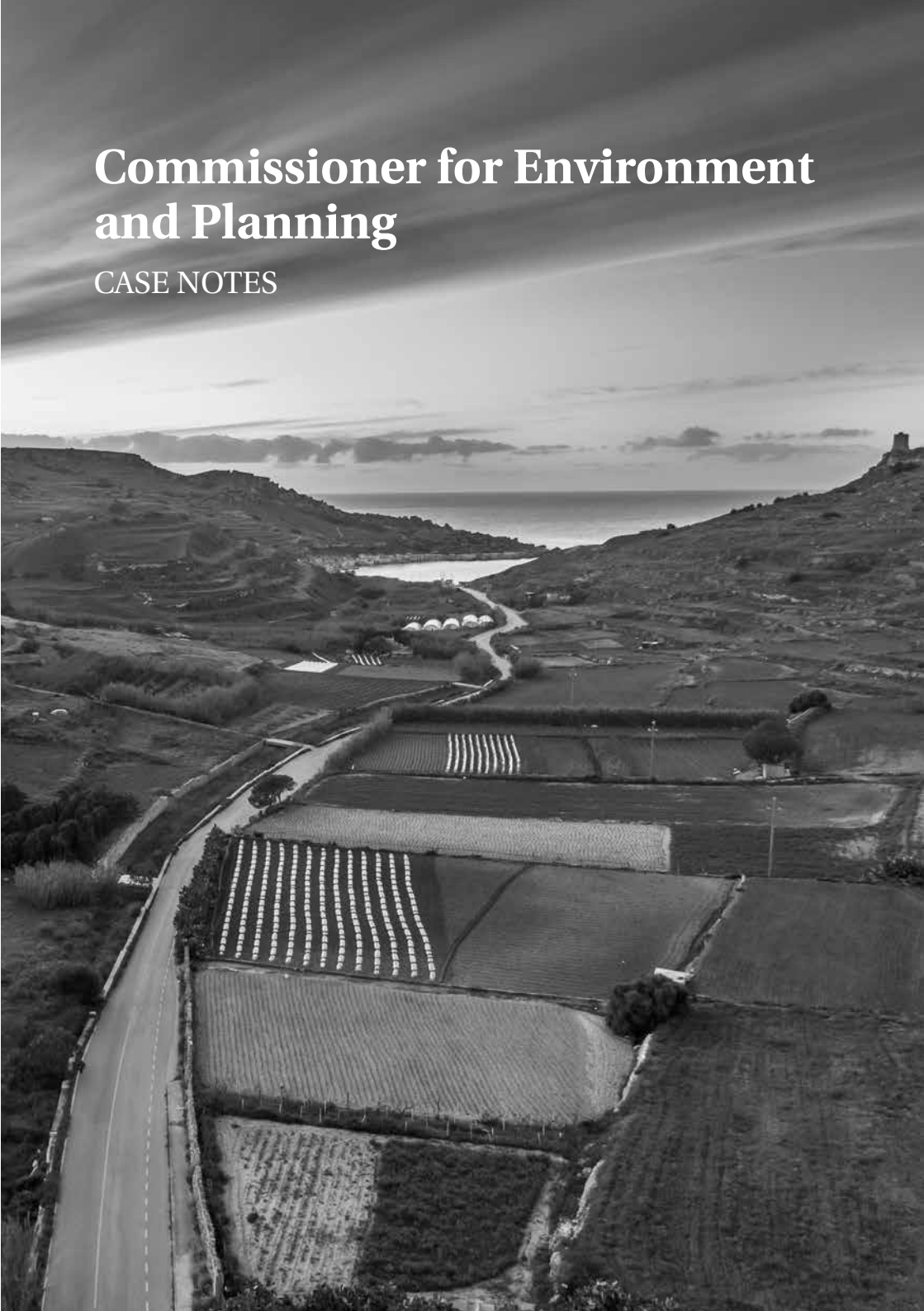
In the very words of the Commissioner for Education in his Final Opinion on this complaint: *"It beggars belief how a statutory Board with an important role in the education system can be left un-constituted for just under seven months. During this period the complainant – and no doubt others – could not even properly enquire about the state of his appeal, a situation which flies in the face of the Directive 4.2 of the Standards for Service Excellence offered by the Public Administration to the Public and to Public Employees (issued by the Principal Permanent Secretary on 3rd November 2022). Such gross public maladministration is deplorable".*

Conclusion

In light of the findings, the complaint was perfectly justified and was sustained (upheld). As had already been stated by the Commissioner for Education in other reports on the same issue (i.e. on the non-constitution of the Board in question), it was superfluous for the Office of the Ombudsman to make any recommendation – this was a case of res ipsa loquitur. The Commissioner for Education limited himself to noting – as he had done in others reports – that the Public Administration remained responsible at civil law if it were shown in the appropriate forum that the complainant, or any other person for that matter, had suffered damages as a result of the non-functioning of the MQRIC Appeals Board.

Commissioner for Environment and Planning

CASE NOTES



Ministry for Public Works and Planning

Third-party appeals against regularisations

The complaint
The Commissioner conducted an investigation into the issue concerning third parties' inability to contest regularisation permits issued by the Planning Authority before the Environment and Planning Review Tribunal.

The investigation
While third parties are allowed to submit representations against regularisation applications under the Development Planning Act, the Tribunal Act does not grant them the right to appeal regularisation decisions. This legal discrepancy was confirmed in a 2022 Court of Appeal ruling. The Commissioner deemed this situation unjust, highlighting that third parties do not have the same rights as applicants when it comes to challenging regularisation decisions. In contrast, for development permissions, both applicants and third parties can submit appeals.

Conclusions and recommendations
To address this imbalance, the Commissioner recommended amendments to the Tribunal Act, ensuring that third parties can also appeal Planning Authority regularisation decisions, and called for these changes to be reflected in the relevant regulations.

Outcome
After a prolonged period without action from the responsible authority, the matter was escalated to the Prime Minister and later brought before the House of Representatives, in accordance with the Ombudsman Act.

Planning Authority

Revocation of regularisation permit

The complaint
The Office investigated a complaint alleging errors in the approval of a regularisation permit for the subdivision of a fully detached villa into ten residential units.

The investigation
Although the complaint addressed five issues related to the extension of the footprint, the presentation of the deeds of transfer, the disturbance to neighbours, missing documents and breach of planning policies, the Commissioner decided that only the first issue merits an investigation.

The Commissioner found that the Case Officer report did not consider the issue relating to the building extensions that were carried out after the year 2016 even though this issue was flagged during the representation period. Neither did the Planning Commission treat this matter in line with the Regularisation of Existing Development Regulations even though it had a material bearing on the final decision.

The existing photos and the approved plans clearly show that there are differences in the footprint, particularly in three areas, and a correct assessment of this application should have first concluded appropriately about this situation.

The Commissioner also found that a Planning Commission hearing date that was set following the non-executable decision notice was irregular since it preceded the established date for further submissions by the representees.

Conclusions and recommendations

The Commissioner found the complaint to be justified and recommended the cancellation of the mentioned Planning Commission hearing, and the revocation of the regularisation permit by the Planning Board due to an error on the face of the record.

Outcome

The Planning Commission hearing was cancelled and following the recommendation of the Executive Chairperson to revoke this permit for the reasons mentioned in the Commissioner's final opinion and also due to the missing deed of transfer of the property, the Planning Board decided to revoke the Regularisation Permit in question.

Planning Authority

No action against irregularities

The complaint
The Office investigated a complaint alleging lack of action by the Planning Authority against irregularities consisting of roof services and tables and chairs at a commercial outlet in front of the Mellieħa sanctuary.

The investigation
The Planning Authority did not reply to a request by the Commissioner whether it considers the outside catering area as irregular and the services on the roof to run against the condition of the permit that states that all services shall not extend beyond the height of the approved parapet wall. On noting the recent submission of a development application proposing an outside catering area and a minor amendment application to regularise the roof services, the Commissioner highlighted the fact that the proposed application does not include sanctioning and that any attempt to regularise the services through a minor amendment application does not in any way overrule the relative permit conditions.

Conclusions and recommendations
After the Planning Authority failed again to submit an official reply, on 22 January 2024 the Commissioner recommended the issue of a stop and enforcement notice since no sanctioning application was submitted for the regularisation of the existing illegal developments consisting of an outside catering area and roof services that extend beyond the height of the approved parapet wall.

Outcome
Although the applicant changed the pending application to sanctioning on the same day that the Commissioner issued the recommendations, the Commissioner considers the way the Planning Authority acted in this case as an encouragement for contraveners to do as they please since the Planning Authority will not only take no action but it will also help them in avoiding such action. The use should

have immediately been stopped in line with Article 73(1) of the Development Planning Act whereas an enforcement notice should have been issued against the services on the roof.

This case was then referred to the Prime Minister and to the House of Representatives in line with the Ombudsman Act.

Planning Authority

Reactivation of planning application following withdrawal

The complaint
The Office investigated the regularity of the reactivation of an application for a development of a hotel after this was withdrawn by the Planning Authority.

The investigation
The application in question, dating back more than a decade, was withdrawn and reactivated three times during its processing by the Planning Authority even though no reactivation request was ever submitted by the applicant. Furthermore, no justification request behind the reactivation results from the proceedings.

The Development Planning Regulations 2016 clearly state that failure to fully answer a call for information following the enactment of these regulations, the planning application in question should be considered as tacitly withdrawn by the applicant. The call procedure was correctly followed by the Planning Authority, however the Planning Authority reactivated the application through a procedure that is not allowed by the regulations. Neither did the Planning Authority inform the representees that were notified about the withdrawal, that the mentioned application was reactivated.

The Commissioner found that any eventual confirmation of this application at decision level can only lead to uncertainties and difficulties for the applicant through the anomaly of obtaining a decision on a tacitly withdrawn application. Furthermore, any further processing might set a serious precedent for withdrawn applications since this would mean that withdrawn applications can then be reactivated at the whim of the Planning Authority against regulations.

Conclusions and recommendations

The Commissioner concluded that any further processing of this application is irregular since this application was tacitly withdrawn by the applicant in line with regulations. The Commissioner recommended that the Planning Authority should immediately halt any further processing of this application, which process should have stopped following withdrawal.

Outcome

The planning application in question was withdrawn in line with the Commissioner's recommendations.

Planning Authority

Action against irregular motorcycle repair shop

The complaint
The Commissioner for Environment and Planning investigated a complaint regarding the lack of action against a motorcycle repair shop operating without a permit. As a sanctioning application was under review by the Planning Authority, the investigation focused solely on the enforcement notice issued for ongoing irregular works at the site.

The investigation
The investigation revealed that the Planning Authority had issued a stop and enforcement notice addressing the unauthorized change of use from a shop to a motorcycle showroom and workshop. Despite the continued irregular use, the Executive Chairperson failed to record this non-compliance in the relevant sanctioning application, contrary to the provisions of the Development Planning Act. The Act mandates that the processing of such applications be suspended until the irregular activity ceases. Furthermore, the Planning Authority did not impose daily penalties or fines, citing the submission of a trading license for the activity as justification.

Conclusions and recommendations
The Commissioner concluded that daily fines are applicable under the regulations, as the Development Planning Act was breached by the continued irregular use following the issuance of the enforcement notice. Notably, the enforcement notice was neither contested nor appealed.

The Commissioner recommended that the Executive Chairperson submit a report for any pending application, explicitly stating that the irregular use is ongoing, to ensure that any decision by the Planning Board or its delegate aligns with the

Development Planning Act. Additionally, the Commissioner advised that the Executive Chairperson enforce daily penalties and administrative fines on the Stop and Enforcement Notice in accordance with the applicable regulations.

Outcome

The Planning Authority accepted the first recommendation but opposed the second, arguing that the activity was being conducted legally under a valid trading license. Nonetheless, the Commissioner expressed satisfaction that the Planning Authority imposed a significant fine tied to the sanctioning permit, which had been approved in the interim.

Planning Authority

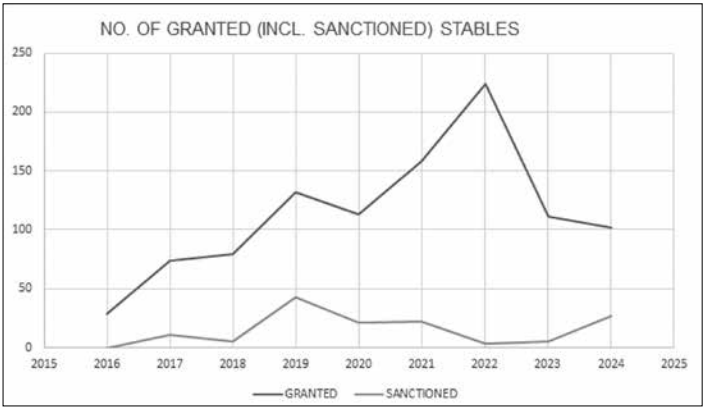
Permits for stables

The complaint

The Commissioner for Environment and Planning investigated the number of stables approved by the Planning Authority (PA) since its inception in 2016 after various articles appeared in the media alleging multiple stables for the same horse or even for horses that are deceased, including allegations about unofficial equine ownership transfers.

The investigation

The Commissioner perused all applications and permits issued until the end of August 2024 (the Final Opinion was issued on 23 September 2024) and found that in the eight years between 2016 and 2024, the PA approved a total of 1022 stables in 298 separate permits (average 3.4 stables per permit). 39 of these permits sanctioned 137 stables that were already constructed. There are a further 88 applications for 328 stables (including 16 applications to sanction 61 stables) awaiting a decision by the Planning Authority and 10 applications for 50 stables (including 1 application to sanction 5 stables) awaiting a decision by the Environment and Planning Review Tribunal (EPRT).



Almost all of these permits approved the construction of new stables in the Outside Development Zone (ODZ). No permits for the change of use from stables to dwellings were traced.

With about 5200 equines registered with the Veterinary Regulation Directorate (VRD) since 2016, one would expect to receive such a high number of requests for the development of stables in the ODZ, particularly when the Rural Policy Design Guidance 2014 (RPDG) establishes that new stables should be located away from the development zone.

The following is a list (as at August 2024) of the number of stables approved by locality each year, together with the number of applications (per stable) that are pending in front of the PA and the EPRT.

Location	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**Total**	**Pending**	**Grand total**
Attard			4	4	5	2				**15**	6	21
Birżebbuġa				4	8	13	8			33		33
Dingli	6	1		9		1	18	7	7	**49**	7	56
Gudja					1			3		4		4
Għargħur				2	12	2	7			23		23
Għarb						2	4			6		6
Għajnsielem		2	4	15	3	11	8	6	8	**57**	14	71
Għasri					2	1			4	**7**	2	9
Għaxaq	2	4	6	9			7			**28**	8	36
Ħamrun		2								2		2
Iklin	6		4				2			**12**	3	15

Kerċem		4				10	6	5		**25**	6	31
Kirkop		1								1		1
Lija		1				3				4		4
Luqa	4	6					4	8	1	**23**	12	35
Mġarr				1	4	2	3			10		10
Mellieħa		2								2	4	6
Munxar							1			**1**		1
Mqabba						2	5		4	**11**	4	15
Marsa			1	2	11					**14**	25	39
Marsascala		8	1			6	7	7		**29**	11	40
Mosta		4		5	5	3		7	4	**28**		28
Marsaxlokk					10				5	**15**	12	27

Location	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**Total**	**Pending**	**Grand Total**
Naxxar		4	4	10	4	11	2		3	**38**	17	55
Nadur										**0**	2	2
Paola				4		2				**6**	8	14
Qala		2	3		3	4	2			**14**	3	17
Qrendi						2	3	5		**10**	11	21
Qormi		5	9	3	5		4	9	7	**42**	18	60
Rabat		1	12	19	5	11	20			**68**	18	86
Safi										**0**	4	4

San Ġwann						5			5	**10**	10	20
Siġġiewi		6	4	6	16	19	34	14	11	**110**	30	140
Sta Luċia									5	**5**		5
San Lawrenz										**0**	2	2
Sannat		3	4			6	9	12		**34**	2	36
St Paul's Bay			3	2		2	5			**12**	23	35
Swieqi					3					3		3
Victoria								2		**2**	4	6
Xgħajra							5			**5**	2	7
Xewkija				2	7	2	14	4		**29**	29	58
Xagħra			5	6	3	10	2	3	8	**37**	6	43
Żebbug	4	10	12	14	3	21	23	9	8	**104**	25	129
Żabbar	3	3		3	3	5	4	1	6	**28**	13	41
Żebbug, Gozo		5					11			**16**	18	34
Żurrieq	4			6			3	5	14	**32**	8	40
Żejtun			3	6			7		2	**18**	11	29
Total	**29**	**74**	**79**	**132**	**113**	**158**	**228**	**107**	**102**	**1022**	**378**	**1400**

Although the RPDG does not require the applicant to be a registered owner of equines, the PA has established a procedure whereby the applicant submits a list of equines that are registered in the applicant's name, with the number of equines generally corresponding to the number of stables being proposed. This procedure is in line with the Strategic Plan for Environment and Development (SPED), particularly Thematic Objective 1 that limits the take up of land within

the rural area, Thematic Objective 1.10 that requires rural areas not to be exploited by uses which are not legitimate or necessary and Rural Objective 3 that guides development which is justified to be located in the rural area.

Initially the PA did not request the applicant to be a registered equine holder, and in actual fact there are about 60 permits that were issued in the early years without any reference to a list of equines and without any conditions related to the same list. In this respect, eventually the PA introduced the list of registered equines as a supporting document in each relevant permit and also introduced conditions in each permit that refer to the same list. These conditions are:

1. Proof from the VRD that equines listed or their replacement are still registered with VRD on site. If in the interim any of the registered equines are no longer registered on the site approved in this development permission, their replacement is to be communicated to the PA within one calendar year. If no such information is submitted, the approved stables or part thereof is to be dismantled, and the land made good at the applicant's expense.
2. Proof from the VRD that equines listed are still registered with VRD on the name of applicant.
3. Certification from a qualified veterinary surgeon reporting that the equines registered with VRD are still present on site.
4. These conditions were never challenged nor contested and have generally been accepted, so much so that some applicants even submit the list of equines at the initial stages of the application.

These conditions show that each stable permit is temporary in nature since the stables are only allowed to be retained subject to conditions relating to the life and ownership of the relative equine. However, these conditions were generally never followed neither by the applicants nor by the PA and no certification in line with these conditions has ever been submitted or eventually requested. Furthermore, once a permit expires one cannot even enforce such a condition that has thus also expired. Therefore, in line with the first condition, the relative development is no longer permitted since the same condition states that failure to provide the certification, the approved stables should be dismantled. Only in a handful of applications a declaration stating that the equines are in good health has been submitted by the applicant and in only one case did the PA ask the applicant to change this declaration in line with the conditions.

Although another condition states that following the issuing of the Final Compliance Certificate (also certifying compliance with the conditions imposed), the applicant shall annually submit certification confirming that the equines are still registered with VRD on site and that failure to submit this information the approved stables have to be dismantled, the relative Compliance Certificate is nowhere to be found in each PA file. Hence, the Compliance Certificate must be uploaded by the PA in the relative file in order to be able to verify compliance with the permit conditions. In order to confirm dismantling in line with conditions, one cannot solely rely on enforcement and similar permits that are temporary in nature and one should either introduce a bank guarantee to ascertain removal or else, similar permits should be issued for a temporary period of time, requiring renewal on each expiration. The latter is a more practical option when considering the regular certification required from the VRD. A validity period of three years should be adequate considering the nature of the development and development application submission requirements. The minor amendment procedure can then be utilised to change the list of registered equines - that should be included as an approved document rather than as a supporting document - during the validity period of the permit.

On another note, the Commissioner also noted certain inconsistencies in the relative equine list declarations:

1. Permits did not include a common method of certification and some included certificates issued by private veterinary surgeons, some by the Marsa Racing Club, some by the VRD and others issued by foreign agencies or private architects. In some cases, the PA also accepted only photos of the equines.
2. The declarations included distinct information such as the name, the microchip number and transponder code, the unique life number and freezemark or the passport number.
3. Two or more declarations on the same equine may refer to different applicants due to the same equine being co-owned.

The PA does not check whether the equine was already registered under a previous permit so much so that 36 stables were permitted for equines that already had a permit on their name. In two instances, three permits were issued for the same equine and other permits referred to equine details that are illegible. Whether this

equine list checking should be done by the Agricultural Advisory Committee or the PA is irrelevant since the PA is bound to verify all the information it receives in line with SPED as otherwise what's the use of asking for the equine list in the first place. The number of stables approved since 2016 comprise the construction of structures with a total area of around 25,000 square metres for stables alone in ODZ since the RPDG allows a total area of 25 square metres per stable. This coverage of 25 square metres per stable (irrespective of the number of stables being approved) should be modified. Firstly, 20 square metres for a similar ODZ development should cover the necessities of equines considering that the actual stall only requires half this area and considering also that the RPDG only allows a 15 square metre store for agricultural implements serving 10 Tumoli of agricultural land. This 20 square metres limit should only apply for the first three stables (figure based on the average number of stables in each development application as mentioned earlier). For additional stables, this area should be further reduced to 15 square metres per stable. This will lead to a reduction of the total site coverage allocated for stables in ODZ by about 20-25%. As an example, the resultant 135 square metres (3x20+5x15=135) total coverage for 8 stables in ODZ makes more sense than the extensive area of 200 square metres allowed under the current policy.

Conclusions and recommendations

The number of stables in ODZ that have been approved by the PA since 2016 is found to be excessive, against the spirit of SPED and definitely unsustainable. Furthermore, the PA failed to control compliance with the conditions the PA itself imposed in the same permits.

Various amendments to the permitting procedures and policy are being recommended:

1. The PA should ascertain that no application for stables is validated unless it includes the number of stables being proposed and a list of equines (name and standard number such as microchip number) registered under the applicant issued by the VRD (number of stables in the application should always be equal or less than the number of equines in the list).
2. This VRD registration list should be included as an approved document (not as a supporting document) in the relative permit.
3. Permits should be issued for a definite period of three years on condition that the structures should be dismantled unless permit is renewed.

4. The PA should keep a list of the details of all equines in order to ascertain that only one permit is issued for each equine. This list should be updated following the approval of minor amendments to the equine registration list.
5. The RPDG should be modified so that:
   a) these recommendations are confirmed and endorsed; and
   b) an area of 20 square metres per stable for the first three stables and an area of 15 square metres per each additional stable applies on all new applications
6. The PA should ascertain that all permit conditions are complied with and when a condition imposes the submission of certain information within a specified period, the PA system should bring up the relative PA file for examination accordingly.
7. The Final Compliance Certificate should be uploaded in the relative PA file.

Outcome

After the PA was given an additional extension of one month to reply, the Final Opinion was referred to the Prime Minister in early December 2024.

Following this, the PA replied that it does not have any issues with recommendations 6 and 7 and it will implement them within the least possible time. The PA raised certain issues in relation to the other points, namely that for certain recommendations to be applied, there needs to be a change in the RPDG or support/collaboration with the VRD. The PA added that abstracts from certain points and points 3 and 5 will be put forward for consideration in the review of the RPDG and if taken onboard will be adopted in the revision of the policy. Following the Final Opinion, the PA and the Ministry for Agriculture have engaged in discussions involving cooperation in the management, control and collating data and sharing for better control measures from the VRD side and in conditions of permits issued. The PA concluded that it is committed to introduce a more meticulous regime in the issuing and monitoring of these permits.

The Commissioner welcomed the acceptance of recommendations 6 and 7 and in this regard the PA was asked to provide information within a month about which permits have followed the relative condition so that this information may be taken into consideration if this case is then referred to the House of Representatives. Regarding the other recommendations, the Commissioner conveyed that it is not acceptable that the first four rather simple recommendations are not implemented

with immediate effect and that in relation to the fifth recommendation, although it is acknowledged that this would require changes in the RPDG, the PA is bound to move the relative changes as soon as possible as the statistics found are not sustainable.

Following no reply from the PA to the latter request indicating no changes for effective enforcement of the relative permits conditions and following the publication of further permits not respecting findings and recommendations in the Final Opinion, the case was referred to the House of Representatives in line with the Ombudsman Act.

Infrastructure Malta

Hindered access to a field

The complaint
The Commissioner for Environment and Planning conducted an investigation into a complaint regarding restricted access to a field. The issue arose after a lay-by was introduced, which was separated from the main thoroughfare by barriers.

The investigation
After conducting a site inspection, the Commissioner observed that the barriers and changes to the field's access implemented by the Agency significantly restricted the ability to reach the field with a van or heavy machinery necessary for tilling the land. To address the issue, the Commissioner recommended removing a build-out located between the affected access point and a nearby third-party access, thereby creating sufficient space for manoeuvring as shown below.

Outcome
After multiple discussions, the Agency agreed to the Commissioner's proposal and completed the necessary works, resolving the issue to the satisfaction of the complainant.

Water Services Corporation and Infrastructure Malta Agency

Construction of new road at Mellieħa

The complaint

The Commissioner conducted an investigation into a complaint regarding prolonged delays in the construction of Triq Tabib Joseph Grech Attard in Mellieħa. The complainant had been raising concerns with the relevant authorities for several years, citing significant safety hazards for pedestrians. These included the road's rough surface, scattered debris, open manholes, and the substantial height disparity between the pavement and the road surface.

The investigation

The investigation revealed that the proximity of this road to a water reservoir delayed road levelling works, as these could not commence until the reservoir connections beneath the finished road level were completed. The Water Services Corporation confirmed that it was actively coordinating with Infrastructure Malta Agency so that once trenching, pipe-laying, reservoir connections, and backfilling works are finalized, the Agency will proceed with road formation and asphalting.

Conclusions and outcome

The Water Services Corporation commenced works within two months of the investigation's initiation and completed them within an additional two months. After finalizing the water works, the Corporation conducted the necessary testing and handed over the site to the Agency for completion.

All works were successfully concluded, and the case has been officially closed.

Malta Tourism Authority

The recreational use of Mellieħa Bay

The complaint
The Office investigated a complaint alleging limitations in the use of Mellieħa bay for recreational purposes due to various concessions for the placing of sunbeds and umbrellas.

The investigation
The Malta Tourism Authority (MTA) replied that a beach management initiative was introduced a number of years ago leading to a Blue Flag certification for Mellieħa Bay. This type of management includes supervisors, lifeguard service, beach code of conduct, water quality testing and environmental activities among others.

There are eight operators that are allowed to place sunbeds/umbrellas at Mellieħa Bay, two on each of the smaller beaches on the sides and four on the main beach. Originally, the agreements stipulated an area of 1340sq.m for each operator allowing a public area in the middle of each beach. However, since the sandy area varies annually, each year MTA surveys the beach and the area is designated depending on the actual size of the beach resulting in a drastic reduction in the overall designated area to 700sq.m for each operator. Furthermore, a decision at ministerial level increased the depth of the free shoreline from 3 metres to 7 metres.

MTA marks the designated areas physically with timber poles embedded in the sand and it monitors this set-up on a daily basis through the presence of beach management supervisors and enforcement officers. Although operators are allowed to set up their sunbeds from early morning, any member of the public may still access the designated areas.

Conclusion
Following receipt of this information, the Commissioner closed this case since the actions taken by the MTA are laudable.

This summary report has also been forwarded to the Hon. Prime Minister, the Commissioner of Police and the CEOs of the Lands Authority, the Planning Authority and Transport Malta as it shows how a very positive balance can be achieved in managing public land that is also used for commercial purposes, with particular reference to the ongoing issue of tables and chairs that are placed on public roads and squares.

Commissioner for Health

CASE NOTES

Department of Health

Ensuring appropriate ADHD treatment when switching from branded to generic Methylphenidate

The complaint

A complaint was lodged by a parent in connection with the side effects experienced by his son, who suffers from Attention Deficit Hyperactivity Disorder (ADHD), when the branded Concerta® (Methylphenidate) treatment was changed to a generic preparation.

The investigation

This Office requested further information regarding this case from the Department of Health. The Department eventually replied that:

i. according to the policy, as drafted by the expert assigned for the purpose, clearly states that new patients are not entitled to be started on branded Concerta®;
ii. any patients who prefer to have branded items because they have bought them when they were started on this medication by their specialist can continue their procurement through the Pharmacy of Your Choice.
iii. the Ministry for Health and Active Ageing was not obliged to either reimburse the expenses or provide the branded item to new patients.

The findings

During the investigation of this particular case, it was noted that the child had adverse events when he was switched to the generic preparation. This was well documented by two consultant Psychiatrists that were taking care of the child.

The International literature seems to suggest that when generic psychiatric drugs are used, these seem to be safe and effective in most patients. However, individual patient differences are possible and can cause adverse events in some patients. This small minority is exactly the cohort which will benefit from the branded preparation, in this case Concerta®. An expert report commissioned by the Department of Health in 2019 refers to this. This report looked at the complex issue of transition of patients with ADHD from brand named to generic preparations. The literature related to this issue is scarce even more so in the case of Concerta®.

There exist genuine cases where Concerta® administration is essential as other methylphenidate preparations may cause problems.

Conclusion

In the vast majority of cases, starting treatment with a generic is an acceptable and safe process that is being adopted worldwide. However, exceptions do exist and these are well documented in the medical literature. There definitely are genuine cases where Concerta® administration is essential, as other methylphenidate preparations may cause problems.

The matter was discussed with the Ministry, as other similar cases existed. It was recommended that an adequate structure was to be created or identified that would deal with the individual cases that suffer adverse events when on any particular treatment, in this case generic methylphenidate.

An expert group was to be set up by the Ministry to look at the individual cases and decide on their individual merit.

Outcome

This recommendation was accepted, and a Psychiatric Expert Group was set up in order to look into these cases.

Ministry for Health and Active Ageing

When infertility demands specialised care abroad: ensuring equal treatment in Malta's healthcare system

The complaint

The complainant is a gentleman who had a past medical infective condition, for which he received successful treatment. He now had a fertility problem and the Ministry for Health and Active Ageing through the Assisted Reproductive Technologies (ART) clinic, claimed that they could not offer fertility treatment locally because of his potential infectivity. The Ministry for Health and Active Ageing, through the ART clinic, offered him a solution through Cross Border Health Care treatment, but this resulted in a situation where not all the costs involved were going to be refunded.

The investigation

The complainant confirmed with our Office that he and his partner had been seen at the ART clinic within Mater Dei Hospital, where they were informed that they could not be offered any treatment as his infectivity was still a potential issue. The ART clinic suggested treatment for their fertility problem through Cross Border Health Care. They were also informed that they should not postpone treatment, as it may become more difficult for them to get pregnant if they waited too long. Through Cross Border Health Care, they realised that this would not cover all the expenses involved.

The Ministry for Health and Active Aging confirmed that the complainant's medical condition did not fit the parameters governing the procedures carried out at the ART clinic in Mater Dei Hospital due to the risk of cross contamination and so the

ART clinic suggested a foreign centre where the fertility treatment could be given. This, they suggested, could be done through Cross Border Health Care.

Considerations

The Embryo Protection Act was promulgated in 2012. In 2013, the Embryo Protection Authority (EPA) was set up to regulate fertility services in Malta, and free in vitro fertilisation (IVF) services started to be offered at Malta's public hospital. This basically meant that this service became part of the Malta's Health Care package, as much as other medical interventions. This was even indirectly confirmed by the Ministry, as if the claimant were to seek planned health care service or treatment in another European Union/European Economic Area or through the socalled Cross Border Health Care, he would qualify. This only applies as long as the medically necessary treatment was available under the publicly funded national health package of Malta, provided that the patient met certain criteria. The EU Directive on Cross Border Health Care came into force on the 25th October 2013. The main aim of this Directive is to clarify the rules on access to safe and good quality treatment across EU member states. In fact, one of the things to be considered when seeking possibility of treatment abroad under this scheme is that the healthcare service/ treatment being sought forms part of the Maltese Register of healthcare that includes all the services offered by the Maltese public healthcare system. So, if the ART clinic has suggested and facilitated this modality of treatment for the complainant and his partner, it was confirming that this treatment/condition actually forms part of Malta's Health Care package.

Had the complainant been suffering from a surgical or medical problem that needed special medical expertise or equipment not available locally (for example transplants, or special oncological treatment) then he would have been referred abroad without any problem through the local National Highly Specialised Overseas Referrals Programme. In these cases, the Ministry for Health and Active Ageing sends the patient to a specialised foreign centre for the necessary treatment. The patient does not make the arrangements. These are done by the Ministry for Health and Active Ageing and in fact the department pays the centre for all the treatment directly. The Ministry for Health and Active Ageing also provides the patients with a daily allowance for the days the patients are not in hospital. In this case, unfortunately, the complainants' medical condition (infertility) was not being treated at par as a medical condition necessitating treatment. The Ministry

for Health and Active Ageing, on one hand, acknowledges that fertility problems should be treated, and that is why it has included these interventions in the Health Care Package yet, on the other hand, is not willing to send such cases for treatment abroad as it would do with any other surgical or medical condition.

When deciding to send a patient for treatment abroad, the Treatment Abroad Advisory Committee evaluates each referral for treatment abroad principally on the following criteria:

i. **The service cannot be provided locally.**
   In this case, the claimant and his partner were told that the service that they need could not be provided by the ART clinic locally.
ii. **The service being requested forms part of Malta's Health Care Package.**
   Following recent legislation, In-vitro Fertilisation (IVF) is one of the services that is being provided through the Maltese Health Care Service (as already described above).
iii. **The service that is being requested is clinically proven and is not in its trial phase.**
   The assisted fertility techniques that were being proposed are nowadays considered to be well proven techniques in assisted conception.
iv. **The case has been discussed with other local Consultants and thus it has been ascertained that all the treatment that is available locally has been used.**
   The consultants at the ART clinic had decided that at that stage no further treatment was possible locally.

This case satisfied all these 4 conditions, rendering it suitable for consideration for treatment abroad under the local National Highly Specialised Overseas Referrals Programme. The medical service that is guaranteed under our Maltese Health Care package could not be offered to this gentleman, through no fault of his own, but simply because the service is not available locally, mostly due to logistical reasons. As already mentioned, certain medical/surgical conditions such as lung transplants or oncological conditions necessitating treatment that was not available locally are referred abroad without any problems. Maybe in this case the authorities perceive no imminent risk to life. This however should not be a deciding factor, since infertility is still a medical condition. So much so that the competent authorities decided to include infertility as part of the Maltese Health Care package.

Recommendations

The complainant needed treatment for his fertility problem, and since this could not be offered locally by the ART clinic within Mater Dei Hospital due to logistical reasons, then he should have been referred abroad for the necessary treatment. This treatment should be on the same lines as that offered to other patients who are sent abroad for treatment through the National Highly Specialised Overseas Referrals Programme after the approval of the Treatment Abroad Advisory Committee and not through the Cross Border Health Care route. Failure to do so, amounts to negative discrimination in regards to the complainant and his partner.

It is up to the Ministry for Health and Active Ageing to determine where treatment should be given for the complainant's condition and identifying this centre would be the remit of the Treatment Abroad Coordination Office, in conjunction with the respective clinical healthcare professionals.

Outcome

The Ministry for Health accepted the recommendation, and all expenses incurred were fully reimbursed.

Ministry for Health and Active Ageing

When a second opinion abroad becomes a shared cost: A case of miscommunication in overseas referrals

The complaint
The complaint was lodged with our Office by a mother on behalf of her son, requesting that they are reimbursed by the Ministry for Health and Active Ageing all the expenses incurred during a medical consultation and investigations carried out abroad on her son.

The background
The complainant's son suffered from a rare medical condition since birth. He was being seen regularly, both locally, as well as, in a UK medical centre. He was operated on in the UK for his condition while still a child and since then was actively followed up.

Due to some issues that occurred during the treatment, the parents expressed their wish to obtain a second opinion. This was initially refused by the local consultants but eventually this was agreed too.

The investigation
The complainant lodged a complaint with our Office claiming a refund of the expenses incurred when the parents took their son for a consultation and investigations to a UK hospital. This followed an initial refusal by the local consultants to have a second opinion regarding their son's medical condition and prognosis. The parents asked for this second opinion after a consultation with the foreign consultant, who was taking care of their son, was considered unsatisfactory.

When the local consultants did not agree with the need of a second opinion, the mother made some enquiries with a foreign expert on the specific condition her son was suffering from but did not proceed further at that stage.

Some months later the local consultants reassessed the medical condition and agreed that her son would benefit from a consultation in the UK. The relevant centre was contacted. This was the same centre that the mother had contacted previously when she made the enquiries regarding her son's condition. When the local consultant contacted the foreign medical expert regarding this case and requested an appointment, the foreign consultant, basing himself on the enquiry the mother had done some months before seemed to assume that this would be a private case and not within the UK NHS system.

Unfortunately, the patient was not referred to the Treatment Abroad Committee to be a part of the National Highly Specialised Overseas Referrals Programme. When the mother took her son to the foreign medical institution she had to pay for the consultation and investigations carried out.

Conclusion

This appeared to have been a case of miscommunication or misinterpretation. The local consultants had eventually agreed that the patient was to be seen by a different foreign consultant but unfortunately the protocol to send patients abroad through the National Highly Specialised Overseas Referrals Programme was not properly instituted. They left it in the mother's hands to make the necessary arrangements. However, following the initial refusal by the local consultants for a second opinion the mother had made prior enquires for her son to be seen privately. When the local consultants agreed on getting the second opinion and the mother contacted the UK hospital, the latter proceeded on those lines by offering her private care instead of treatment under the UK NHS as per normal procedure when a patient is sent for treatment abroad under the local National Highly Specialised Overseas Referrals Programme. Since this was not the first time that the patient travelled abroad for medical treatment the mother should have been aware of the procedures that were to be followed yet no one raised any queries.

Recommendations

This whole unfortunate issue arose from a miscommunication between the two parties. On the one hand the local authorities should have initiated the protocol for the National Highly Specialised Overseas Referrals Programme by referring this case to the Treatment Abroad Committee and not left it up to the parents to make the necessary arrangements. On the other hand, the parents had already experienced referral through the National Highly Specialised Overseas Referrals Programme and so they were aware of the procedure that was usually followed. Yet they did not question the procedure adopted this time around.

It was therefore recommended that the expenses incurred were to be shared between the two parties.

Outcome

The Ministry for Health and Active Ageing agreed to refund half of the expenses incurred by the complainant for the consultation and investigations carried out abroad.

Ministry for Health and Active Ageing

Ensuring equity in IVF Treatment: Aligning medication refunds for Public and Private Care

The complaint

The complaint was lodged by a couple who were undergoing subfertility treatment who had registered with the Assisted Reproductive Therapy (ART) clinic at Mater Dei, but they were informed that there was a long waiting list. They then decided to hasten the process by opting to go for treatment at a private clinic in Malta. The couple lodged a complaint that they were having to pay for the medications as opposed to others who, being treated at the ART clinic within Mater Dei Hospital, were refunded for the medications cost.

The investigation

From the investigation carried out it became immediately apparent that when the procedure for subfertility was provided at the ART clinic within Mater Dei hospital the cost of the medications was fully refunded by the National Health System but this was not the case for those individuals who opted to do the intervention in a local private facility. The complainants had also consulted the Embryo Protection Authority on the matter and the latter confirmed that only those patients undergoing treatment at the ART clinic in Mater Dei hospital qualify for the medication refund. The Ministry for Health and Active Ageing also confirmed that "*the current refund procedure for IVF medication will continue to remain as is. Therefore, IVF medication will only be refunded to those receiving treatment on the NHS at the Mater Dei Hospital ART Clinic and by those who are sent abroad through cross border / treatment abroad committee. Therefore, patients undergoing treatment at a Maltese private facility are not entitled to IVF medication refund.*"

Considerations

After considering the information collated during the investigation of this case, this Office could not find a valid justification for difference in the refunds, policy that was being used. This difference seems to have been solely and exclusively based on whether the treatment is given at the ART clinic at MDH or else in a local private clinic with the former being refunded for the medications but not the latter. One should also consider that the health service is in fact saving money when the patients opt for private care, as the private professional and the clinic fees are completely borne by the patients themselves.

Recommendations

This Office therefore recommended that patients undergoing fertility treatment in the local private sector should have the same rights as those who undergo the treatment within the ART Clinic at Mater Dei Hospital, that is they should receive a refund (against receipts) of the expenses incurred in buying the medications as part of their fertility treatment.

Outcome

This Office was pleased to note that the Ministry for Health and Active Ageing in a Press Release of the 15th April 2024 stated that refunds of IVF medicines to patients had also been extended to patients undergoing fertility treatment in the Private Sector. This refund on IVF medicines has been extended for prospective parents who undergo IVF treatment in Malta as well as IUI, IVF or Embryo transfer in private clinics from the 1st January 2023.

Ministry for Health and Active Ageing

Expanding corneal transplants through overseas procurement

The complaint
The complaint was lodged by the son of an elderly lady who required a corneal transplant.

The complainant informed our Office that his mother, who suffered from a rare genetic disease required a corneal transplant as part of her treatment. Due to the lack of donors the waiting time for the operation was very long and entirely unpredictable. His mother's eyesight was deteriorating.

The investigation
When this case was investigated it transpired that the patient had already had a similar transplant in 2016 and now, she had been waiting for the other transplant since 2018. The Ministry for Health and Active Ageing also confirmed that the patient had been on the operations waiting list since 2019. The main hurdle in this case appeared to be the lack of donors. The availability of organs for transplant purposes was totally outside the control of the Ministry. The Ministry also noted that unfortunately, post-pandemically Mater Dei Hospital registered a decrease in organ donations but work was being done on creating strategies to increase donations. These strategies were still in the planning stages.

When the matter was investigated further it transpired that these operations were readily available in the local Private Sector. The corneas that they were utilising originated from abroad.

Considerations
When all this information was gathered it became apparent that the best way forward would ideally be to promote local organ donation through the various

means possible. However, until such a time that organs shall be available locally other solutions should be considered. One such option would be for the National Health System to acquire such transplant tissue from abroad, something that was already being done in the local private sector.

Recommendation

This Office recommended that the Ministry should try to explore the possibility of procuring corneas from abroad. The National Blood Transfusion Services (NBTS) who would be responsible for this procurement should try to procure such tissue. In that manner the patients that require such corneal transplants would be treated as necessary.

Outcome

This Office was informed that the NBTS identified and eventually managed to draw up an agreement with a foreign institution through which such corneas could be procured. The corneal transplant operation on this patient was done. The efforts of the NBTS to recruit more cornea donors also went to fruition and a record number of donations was experienced in 2024. This would hopefully decrease the necessity of having to 'import' such tissues.

The Ministry for Health and Active Ageing

Ensuring equitable access to Blood Glucose Monitors for diabetic patients

The complaint

This case was lodged with our Office by a diabetic patient who was asking to be provided with a blood glucose monitor and test strips through Pharmacy Of Your Choice scheme (POYC).

This diabetic patient had applied through POYC for a blood glucose monitor and test strips to control his blood glucose levels. His consultant had applied for this monitor but this request was turned down.

The investigation

From our investigation it appeared that the patient was entitled for free Medical Assistance for an indefinite period, according to Part III, Schedule II Social Security Act Kap 318, the so-called Pink card. He was also in possession of a Yellow entitlement card as per Part II Schedule V for chronic diseases.

Through his diabetes consultant he applied to the Ministry for Health and Active Ageing to be provided with a blood glucose monitor and test strips through POYC but this request was not even acknowledged let alone acceded to.

The Ministry for Health and Active Ageing informed this Office that since 2017 Type II diabetic patients who opted for the Schedule V card (Yellow Card) and decided to return their Schedule II (Pink) card were also entitled to a blood glucose monitor and test strips. Since this patient opted to retain the Schedule II (Pink) card he was not entitled to a blood glucose monitor and test strips.

Conclusion
Blood glucose monitors are useful in helping patients maintain normal blood glucose levels. Since Type II diabetes is classified as a chronic condition its treatment is available free of charge through POYC under the Schedule V system.

This Office considered that since the blood glucose monitor was a useful device that the patient needed it was not fair for the Ministry for Health and Active Ageing to withhold this in this case. The complainant was in possession of both cards yet he was still being denied of the blood glucose monitor.

Recommendation
The Ministry for Health and Active Ageing was informed that this situation should be reassessed. It was recommended that all Type II diabetics should be provided with blood glucose monitors and the corresponding test strips.

Outcome
This recommendation was accepted by the Ministry for Health and Active Ageing and a circular was published on 1st November 2024 in which it was confirmed that diabetic patients who opted to retain their Schedule II (Pink) card would retain the same rights they currently have but will also benefit from the measures which were introduced in 2017 for those who had opted to switch over to the Yellow Schedule V card.

In the case of this complainant a blood glucose monitors, and corresponding strips were provided through POYC.