

Report on Case No CEDUC-24-4612

The Complaint

1. The complaint was filed with the Ombudsman's Office on 23rd March 2024. The complainant is a male Government School teacher of Maltese, who holds a Masters in Teaching and Learning. In February of 2019 he undertook a course with the University of Malta leading to a Certificate in Maltese Proof Reading, which he successfully completed a year later (that is, in February 2020).

2. The complainant subsequently applied for an allowance which other teachers in a relevantly similar position (as regards qualifications) as his were at the time receiving (and some are still receiving, as will be explained). He claims that he received no reply by email, but that sometime in 2021 he was verbally informed over the phone that his application was on a waiting list. Having still received no qualification allowance, he enquired more recently as to what was the issue which was holding up this payment, and was told that his application for an allowance could not be traced. The complainant resubmitted his application, and finally on 17th January 2024 he was informed by email from the Human Resources Directorate, People Management Department that he was not eligible for the allowance “*for this particular qualification as it is an MQF level 5 certificate ... and your current appointment as Teacher required a higher MQF level qualification – at MQF 6.*” The email contained an excerpt from the PSMC Manual of Allowances.

The investigation and findings

3. The complaint was communicated, for the purposes of Art 18(1) of the Ombudsman Act, to the Permanent Secretary at the ministry responsible for education on 4th April 2024. On 16th April 2024 the Permanent Secretary replied to this Office by quoting the exact same provision of the PSMC Manual of Allowances as had been sent to the complainant in January (see para. 2 above).

4. In this Office's communication to the Permanent Secretary of 4th April 2024, attention was drawn to the similarity between the instant complaint and that decided by Final Opinion of 3rd April 2023 in the case CEDUC-22-2985. A copy of the report in *that* case was laid on the Table of the House of Representatives in July 2023. In *that* case the issue was that a teacher (a female) had also commenced a course in Maltese proof reading at a time when the relative allowance was automatically paid to teachers who had been originally engaged at MQF level 6. The undersigned quotes verbatim from *that* final report.

3. While at face-value this explanation [based on the PSMC Manual of Allowances] would appear justified, further investigation showed that the complainant appears to have been the first person to whom a new policy was applied just after she graduated, the practice having been different at the time when the complainant commenced her course in 2021 [recti: 2020] with the full knowledge of the Education Authorities.

4. In fact, from correspondence with this Office from the Directorate for Human Resources (18th November 2022) and from the legal adviser to the Ministry (2nd December 2022), no less than from a meeting held with Education Division officials on the 25th November 2022, it clearly results [that] the complainant's problems began in November 2020. Pursuant to a Compliance Assessment Audit by the People and

Standards Division (P&SD) at the Office of the Prime Minister (OPM), two Heads of School were found to be receiving an MQF Level 5 allowance in breach of the abovementioned Clause 3.3.1 (b)(ii). As stated in the communication of 2nd December 2022, “**Following this compliance assessment**, officers applying for an MQF Level 5 qualification allowance, and whose appointment required a higher MQF level qualification, **have since been, considered ineligible** for receipt of the qualification allowance in respect of qualifications at MQF Level 5 and have been notified accordingly.” (emphasis added).

5. It is clear from the above that that, irrespective of what the Manual of Allowances said, the practice within the Education Division was different at the time that the complainant commenced the proofreading course. She invested effort, time and money in pursuing it and therefore had a legitimate expectation that, having successfully completed it, she would be paid the allowance as she had previously been told would be the case.

6. But there is more. From the meeting of the 25th November 2022, it also resulted that there were at least 175 other persons in a position analogous (and therefore not necessarily identical) to that of the complainant, that is with an MQF Level 5 qualification (and therefore an undergraduate qualification) who were being paid, and presumably to date are still being paid, the qualification allowance as per clause 3.3.1. para (b)(ii) above mentioned, even though they have a higher degree (see Interim Opinion of 7 December 2022). Although in the tabulated list supplied to this Office, all these teachers are listed as having a ‘Diploma Level 5’, this is still an undergraduate qualification, and whether you call it a certificate, a diploma or higher diploma is immaterial. All these 175+ teachers have been regularly paid this allowance after having applied for it, and the application was approved by the Education Division. The point of regular application and approval by the Education Division is being emphasised to underscore that none of these teachers should be considered in any way to be at fault for being in receipt of the allowance in question since they followed proper procedure.

5. Exactly the same considerations apply in the instant case. The complainant here commenced the course in 2019. He therefore had a legitimate expectation to be treated in the same way that all his colleagues had been treated up to that time. Under the Ombudsman Act, one of the forms of maladministration envisaged is when an act or omission is improperly discriminatory or is in accordance with a practice that is improperly discriminatory or which results in such discrimination, or which is wrong (Article 22(1)(b)(d)). The blanket decision taken some time in 2020 to stop paying MQF level 5 qualification allowances where the appointment required a higher MQF level qualification created this glaring improper discrimination and injustice vis-à-vis persons who, like the complainant, had commenced the course when the position was *de facto* different.

6. For the avoidance of doubt, even in the instant case, (that is, CEDUC-24-4612) the Director General of the People and Management Department confirmed the above-mentioned time line.

“P&SD had carried out an audit in December 2020, whereby amongst others, qualification allowance at MQF level 5, in cases where requisite qualification for appointment to the grade, was of a higher MQF level, the MQF level 5 qualification allowance was stopped and recouped from their date of appointment accordingly.”

The ‘recoupment’ refers to the two Heads of School referred to in para. 4.4, above. It also resulted from the evidence that the HR Office (Administration), Strategy and Support Division, had attempted to inform – on 26th November 2021 – the complainant that he was (now) no longer entitled to the allowance. However, from the documents supplied by the Ministry itself, this email (sent by the same person who sent the email of 17th January 2024 mentioned in para.

2 above) had a wrong email address, with the result that it never reached the complainant. All this, of course, does not change anything in connection with the improper discrimination and injustice issue.

Conclusion

7. For all the above reasons, the complaint is sustained.

8. The Commissioner, therefore recommends that the complainant be paid the MQF Level 5 allowance (with effect from the date on which he would have received it in accordance with the practice followed by the Education Division at the time he commenced the course and before the ‘blanket decision’ (taken some time in 2020)) in view of his legitimate expectation when he commenced the course and of the improper discrimination currently in force.

Vincent A De Gaetano
Commissioner for Education

17 May 2024