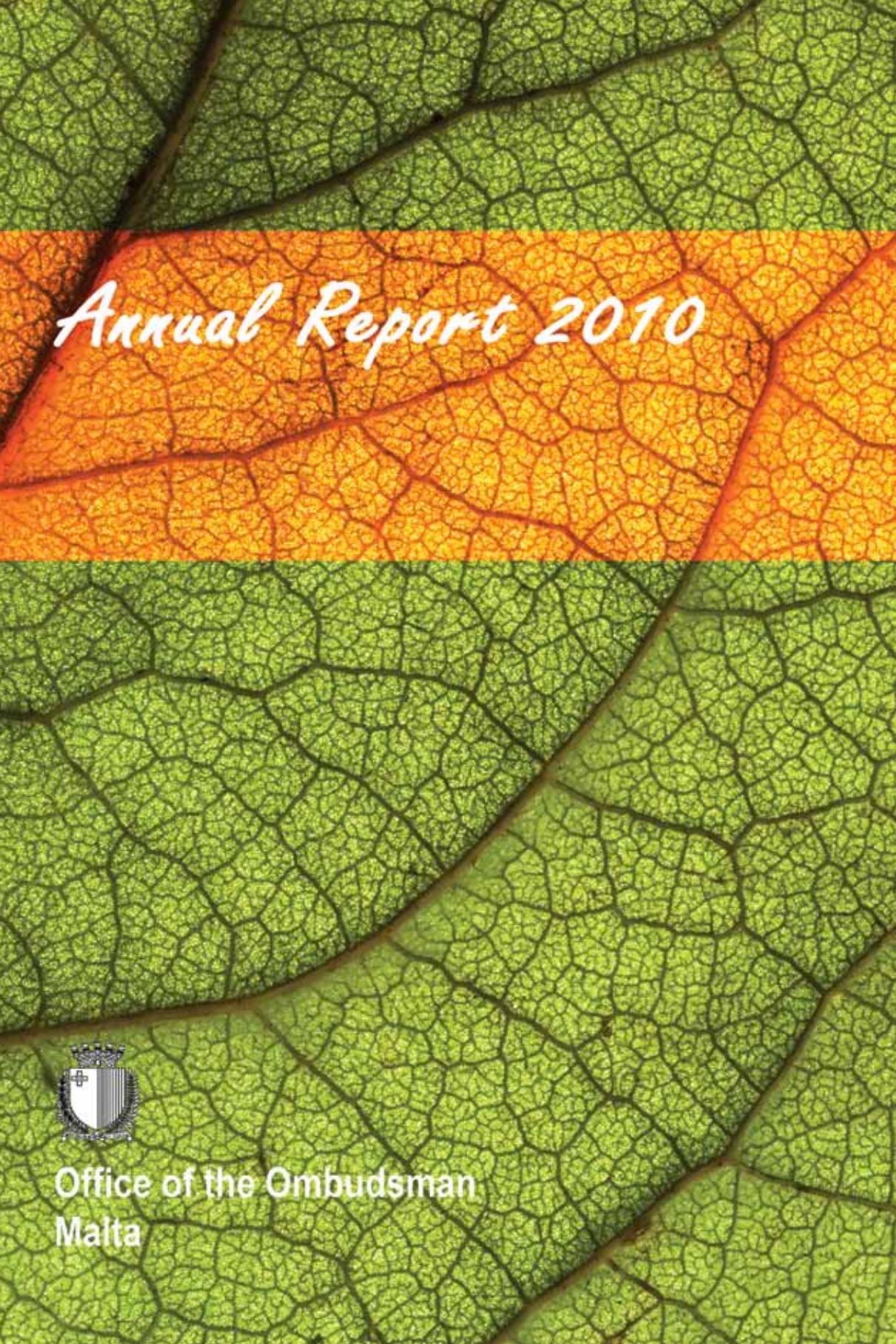

Annual Report 2010
Office of the Ombudsman
Malta

Parliamentary Commissioner for Administrative Investigations

Malta

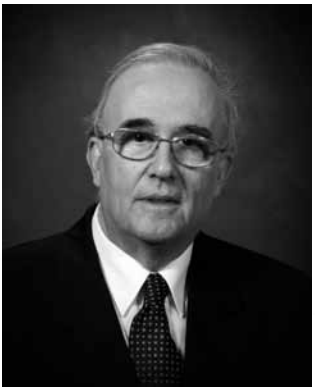
Annual Report

for the period
January - December 2010

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

Ombudsman

MALTA



August 2011

The Hon Dr Michael Frendo
Speaker
House of Representatives
The Palace
Valletta

Mr Speaker,

I am pleased to present my **Annual Report** covering the period January to December 2010 pursuant to section 29 of the Ombudsman Act, 1995.

This is the fifteenth annual report submitted on the work of the Office of the Ombudsman since it was established in 1995.

Yours sincerely

Joseph Said Pullicino
Parliamentary Ombudsman

11, St Paul Street, Valletta, VLT 1210 Malta
e-mail: office@ombudsman.org.mt
Tel: 21247944/5/6 Fax: 21247924
Website: www.ombudsman.org.mt

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I THE YEAR IN REVIEW

Introduction

When all is said and done, 2010 was by and large a year of contrasting fortunes for the Maltese public administration. It was on the whole a year of bright and dark shades.

As is wont and true to its classical inspiration, the Office of the Ombudsman continued to respond to the call of hundreds of citizens who felt that they got a raw deal or that they had been treated dismissively by a government department or by a public authority or other. At the same time the process to unify the Maltese ombudsman service by the convergence of a number of sectoral ombudsmen within the mainstream of the Office of the Parliamentary Ombudsman gathered further momentum and the setting up of a unified ombudsman structure drew closer.

This generally positive performance on the front of administrative scrutiny was, however, to some extent dampened by episodes in different areas of the Maltese public administration that sent palpable waves of discontent and frustration throughout the country at large and particularly among the sectors of the population mostly hit by these adverse developments. Understandably, such events serve to erode and diminish confidence levels among several citizens of the standards of performance and the degree of commitment to the duty of care and due process in the defaulting institutions and, possibly, also beyond in the wider public service. When this happens, it is the Ombudsman's duty to intervene to stem this erosion and restore confidence in the public administration.

On several occasions during the reporting period the Ombudsman issued public reports to take up the cudgels on behalf of groups of citizens who found themselves in distress under the impact of actions and decisions by public authorities which, in the opinion of the Ombudsman, had undermined their

right to a correct and transparent public service that should at all times be mindful of its responsibilities towards all members of the community. This aspect of the Ombudsman's work sought to protect the interests of particular groups of society who found themselves largely defenceless against the might of officialdom and were considered to need the authoritative backing of the ombudsman institution to ensure that their rights would be restored forthwith.

On the international front the Office of the Ombudsman continued to attach particular importance to its participation in the work of the *Association des Ombudsmans de le Méditerranée* (AOM) since it believes that this organization captures the true spirit of ombudsman involvement in different aspects of social, political, economic and administrative good order at the national level and that can be further transposed beyond national boundaries and frontiers to a regional level. This Office subscribes fully to the concepts and principles that sustain the AOM and the invitation by this Office to the Association to host its fifth meeting in Malta in mid-2011was meant to confirm the country's commitment to promote standards of good governance as the bedrock of public administration and to champion human rights on a regional level.

This Office was also actively involved in collaboration with the Public Sector Ombudsmen of the British and Irish Ombudsman Association (BIOA), regularly exchanging views on matters of mutual interest in periodical meetings that have taken place for years. These exchanges are proving to be extremely fruitful in exploring ways and means of furthering institutional development and in strengthening personal friendships with eminent colleagues who share common aims and ideals.

During the year under review this Office continued to demonstrate its strong commitment to European standards of ombudsmanship as expressed in the various activities and pronouncements of the European Ombudsman. The Ombudsman participated in meetings of the European Ombudsman Institute (EOI) and other EU meetings and contributed his opinion not only by expressing an academic viewpoint on the themes under discussion but also by expounding the Maltese experience in promoting the right of citizens to good public administration. During these meetings, informal exchanges with other European counterparts continue to prove of great value in putting the Maltese ombudsman institution in its proper European perspective.

Office overview

In line with its calling the Office of the Ombudsman during 2010 continued to receive and process hundreds of complaints from citizens who felt that in one way or another they had received unfair treatment at the hands of some Maltese public authority.

After the admissibility of each case was weighed under the mandate that was assigned to the institution under the Ombudsman Act of 1995, complaints that were considered to warrant investigation received individual attention and were subjected to scrutiny by the Ombudsman's team of investigating case officers. This assessment allowed all the parties involved to present their submissions to the Ombudsman and even gave them the opportunity to present their views and to comment on the position adopted by the opposite side. Once this stage to collect all the necessary relevant information came to an end, the Ombudsman was in a position to reach a decision on the merits of the issues under consideration.

This process, conducted in a non-adversarial setting, did not seek to apportion blame or to serve as a means of advocacy for citizens at the expense of the public authority involved. The Ombudsman's probe sought to establish fairly and squarely and in an independent and autonomous manner whether maladministration had in fact occurred and whether any of the administrative rights of complainants had been breached.

In instances where the Ombudsman was of the opinion that a complainant had actually been subjected to unfair treatment or to improper discrimination or was aggrieved by an action or decision that was wrong or that appeared to have been contrary to law or was based wholly or partly on a mistake of law or fact, the Ombudsman proposed remedial action aimed mainly at putting the aggrieved person back in the same position in which this person would have found himself if the wrongdoing that fell under his scrutiny had never taken place at all.

It is widely known that the Ombudsman has no executive power to follow through the implementation of his recommendations by a defaulting public authority. This Office does not, however, consider this to be a deterrent in the proper performance of its mandate. The main strength and the driving force behind its recommendations is the moral authority of the Ombudsman

and his standing among citizens as a staunch guardian of the basic values of transparency, accountability and fair decision-making that should lie at the core of each public administration and constitute the essence of good governance. At the same time, however, it must be acknowledged that although by far most of the Ombudsman's recommendations are accepted and duly put in place and that only a handful of sustained complaints go by the wayside, this situation remains a matter of anxiety to this Office.

On several occasions this Office publicly expressed its concern that even though relatively insignificant in terms of numbers especially when compared to its overall caseload, the few complainants who are found to have a just cause by the Ombudsman but remain bereft of an appropriate remedy, continue to weaken the institution's mission to promote good governance as a basic right of all citizens.

This Office again laments the fact that when amendments to its founding legislation were discussed and approved by the House of Representatives in October and November 2010, this opportunity was again allowed to pass by and the suggestion by this Office for the establishment of a mechanism so that Parliament would be able to reach a final political decision on such cases failed yet again to receive due consideration.

This institution has repeatedly declared that it has no claim to any supremacy over the viewpoints and the stand taken by public authorities in their response to recommendations issued by the Ombudsman in complaints that he regards as justified. These authorities may have their own valid reasons for doing so; and this Office does not call into question their prerogative to do so.

It is, however, worth reiterating that this Office firmly holds the view that instances that are perceived by the Ombudsman to constitute maladministration but that for some reason or other are not put right in due time and that, in his opinion, so merit should be brought to the attention of the House of Representatives in full session or in front of one of its Committees. In this way, after a proper airing of the whole situation including the opinions of all the parties involved, a binding political decision will be taken that will pull down the final curtain on the matter and at the same time justify the ruling that would have been reached.

In similar instances the Ombudsman's main concern is to ensure that the right of citizens to administrative justice is upheld while the duty of public authorities

to provide a good and sound management of public affairs that are entrusted to their charge subject to overriding policy considerations and constraints is equally respected. To the extent that the proposed parliamentary mechanism considers legitimate and is prepared to sanction the stand taken by a public authority that persists in turning down the Ombudsman's recommendations in the case of a citizen who harbours a justified grievance, this Office would feel that it would have discharged its mandate and its responsibilities honourably and to the hilt.

In this respect this Office cannot but express its disappointment that although its *Annual Report 2009* gave adequate coverage to this situation and even made reference to the position taken by the Public Administration Select Committee of the House of Commons on this issue late in 2009, the House again failed to take decisive action on the matter and the issue remains unresolved.

The process to develop a unified ombudsman structure: progress during 2010

It will be recalled that in its second interim report dated 14 December 2009 the Select Committee of the House of Representatives had, among other issues, referred at some length to an improved system and to new legislative provisions regarding the scrutiny and the audit of administrative action in the public service as well as in the public sector. By and large this work by the Select Committee was based on and reflected the proposals that had been submitted by this Office.

This proposed strengthening of the Maltese ombudsman institution envisaged the launching of a process aimed at convergence between the Office of the Parliamentary Ombudsman and the various sectoral scrutiny mechanisms that were set up under various laws in recent years. This process provided for the appointment of Commissioners for Administrative Investigations in specialised areas of the public administration; a guarantee of full independence and autonomy to these Commissioners in the exercise of their respective powers and functions in areas falling under their jurisdiction; and the application of the investigative processes and procedures as well as other legal provisions that regulate the work of the Parliamentary Ombudsman so as to ensure a more homogenous and uniform investigative process.

The *Annual Report 2009* provided the full text of the relevant sections of this report by the Parliamentary Select Committee and also gave an indication of the initial reaction of this Office to the new ombudsman framework that was being proposed.

In this regard this Office has always been consistent in its advice to the Government that in the design of the new legislative framework to sustain the revamped Maltese ombudsman structure it was important to ensure that the allocation of material and financial resources for the new extended service that was being unfurled would follow the basic tenets that appear in the Paris Principles. Of crucial importance in this connection is the observance of the Annex captioned *Principles relating to the status of national institutions* in Resolution 48/134 *National institutions for the promotion and protection of human rights* that was approved by the General Assembly of the United Nations on 20 December 1993 with particular reference to paragraph 2 of the section entitled *Composition and guarantees of independence and pluralism* which states that:

"*The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*"

This Office holds the view that the various decisive moves that were made during 2010 in favour of a unified scrutiny mechanism following a relatively long period of deliberation and discussion should be considered as the first rather than the last step in this process for the convergence of institutions for the protection and enhancement of citizen rights *vis-à-vis* the public administration. Indeed it is known that other administrative scrutiny bodies overseas are moving in the same direction – and a case in point is the French ombudsman institution – and this may be taken as confirmation and as a positive indication that the path that is being followed in the country should be further pursued.[1]

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1 In this connection it is also interesting to note that similar developments have recently taken place in Hungary where the convergence of a number of institutions with the Office of the Parliamentary Commissioner for Human Rights, including the Commissioner for Children, required an amendment to the Constitution. This reform was proposed by the Hungarian Ombudsman, also in the light of discussions and advice given by his Maltese counterpart.

At this stage the Office of the Ombudsman firmly believes that that this overall process should be viewed in its longer-term perspective and that the momentum that was gained by this process during 2010 should continue to inspire the longer-term vision of the institution and its development in the years ahead. This will entail the further widening and consolidation of the ongoing exercise so that other scrutiny bodies that have been established particularly in recent years and that are actively engaged in efforts to sustain and uphold citizen rights in specific sectors of the public administration will be brought under one roof.

This is not in any way to be taken as a plea for the aggrandizement of the Office of the Ombudsman or of its officeholder. It should be regarded rather as a plea in favour of the rationalization of structures that are aimed at enhancing protection to the community and at further empowering citizens in the face of the stronger force and weight that are wielded by public authorities notwithstanding efforts to diminish the role and influence of these bodies in the daily life of citizens.

In its sitting on 25 January 2010 the House of Representatives approved unanimously a motion by the Prime Minister for the first reading of Bill No. 48 entitled the Ombudsman (Amendment) Act, 2010. Published in the *Government Gazette* on 12 March 2010, the Bill aimed "*to empower the Ombudsman to provide administrative and investigative services to specialised Commissioners for Administrative Investigations, and to designate such Commissioners as Officers of Parliament.*"

In his reaction to this Bill the Ombudsman again recommended to the Government, among other things, that as an Officer of Parliament and since he is ultimately responsible to Parliament, in deserving cases it should be Parliament itself that will take a final political decision on the implementation of recommendations by the Ombudsman to resolve and redress a situation of injustice resulting from an act of maladministration. In similar instances reference to the House of Representatives can only be done at the express bidding of the Ombudsman and only with regard to cases that are considered to be deserving of this consideration and subsequent decision by a permanent commission of the House that is endowed with competence on such issues.

Another amendment to this Bill that was suggested by the Ombudsman envisaged that the service provided by his Office should also be extended to

cover activities that are meant to provide an essential service to citizens, which formerly used to be provided by the Government or by a public authority or body. The Ombudsman found no problem to admit that as a direct consequence of the country's privatisation programme of various economic sectors and services, in recent years the right of citizens to the shield offered by his Office in the protection of their rightful interests against maladministration was to some degree being eroded.

The Ombudsman noted that this development was occurring in particular in areas where these services are being provided by private entities in which the Government no longer has any direct influence or any controlling interest such as the country's postal service. He pointed out that it was up to the House of Representatives to establish whether it was in agreement that his mandate should be widened so as to cater also for this newly-arising situation and that the amendment that he had proposed was meant to ensure that it would be possible to cover any such developments without the need to resort to any new legislation.

The Parliamentary Ombudsman also proposed that due consideration be given to the introduction of an enabling provision in the Ombudsman Act whereby public administrative bodies that enjoy a measure of autonomy and that were set up to oversee a specific area of social activity but which at the same time lack the facilities to carry out investigative work entrusted to them statutorily under their specific mandate will be allowed the necessary space within the Ombudsman's operational framework to resort to his Office for the provision of these functions on their behalf.

Under these arrangements the Ombudsman's Final Opinion would be referred to the bodies that would have entrusted him with these investigations although the final decision with regard to the merit of cases under consideration would always remain in the hands of the body concerned. In such cases these bodies would continue to retain their autonomy and independence while the Office of the Ombudsman would simply provide them with a service to improve their operations, if they so deem fit.

While placing the experience and the investigative resources that are available at the Office of the Ombudsman at the disposal of any such bodies would ensure that procedures that are laid down in the Ombudsman Act would also apply to these situations, this process would serve as another building

block that would contribute towards consolidation of the administrative scrutiny system in the country and the further enforcement of the role of the Parliamentary Ombudsman in the vigilance of citizen rights *vis-à-vis* the public administration.

A roundup of the debate on the second reading of the Ombudsman (Amendment) Act, 2010 in the House of Representatives

The discussion on the second reading in the House of Representatives on the Bill entitled the Ombudsman (Amendment) Act, 2010 took place in five sittings on 12, 13, 18, 19 and 20 October 2010. This discussion not only confirmed that both sides in Parliament are appreciative of the work that is done by the Office of the Parliamentary Ombudsman in the defence of the right of citizens to good administration but also allowed several Members of Parliament to express their views on various aspects of the Ombudsman's work and operations and on several underlying principles that are worthy of consideration particularly in view of the plan to converge the various strands of the existing scrutiny mechanism in the Maltese public administration with the ombudsman system.

Some of the points that were raised throughout the second reading of the Bill are touched on below.

The widening of the Ombudsman's jurisdiction

Section 12 of the Ombudsman Act, 1995 lays down that this Act applies to the Government including any government department or other authority of the Government, any Minister or Parliamentary Secretary, any public officer and any member or servant of a public authority; to any statutory body and any partnership or other body in which the Government has a controlling interest or over which it has effective control including any director, member, manager or other officer of such body or partnership or of its controlling body; and to local councils including Mayors, Councillors and members of staff of all local councils.

The amendments to the Ombudsman Act envisaged the widening of the Ombudsman's jurisdiction to "*any agency established as provided by article 36 of*

the Public Administration Act"; "*any foundation established by the Government or by any statutory body and any partnership or other body referred to in article 12(b)*" (of the Ombudsman Act); and "*chairmen and members of boards, committees, commissions and any other decision making bodies, whether established by law or by an administrative act, which can take decisions affecting any member of the public .....*"

This aspect of the widening of the Ombudsman's jurisdiction was generally welcomed by the House and rests on the belief that whenever citizens' lives and destinies can be affected by any measure that may be taken by any new government agency that may be set up in future by or under any law or by order of the Prime Minister in the *Gazette* and which makes use of public funds, any such authority is duly subject to scrutiny by the Parliamentary Ombudsman. Some Members, however, expressed their concern at the fact that in their view this widening was not enough.

The proposed unified structure for administrative review

Members of the House were largely in favour of the proposed unified structure for administrative review that would do away with the hitherto fragmented system and agreed that under these arrangements Commissioners for Administrative Investigations would have adequate tools and resources at their disposal to enable them to function in an efficient manner.

Members also shared the view that the weight and autonomy of Commissioners would be strengthened by the provision in the Bill regarding their full immunity from any disciplinary, administrative or civil action for any act arising from the execution of their official duties.

The House acknowledged that the autonomy of the new national ombudsman structure being proposed would greatly benefit from the fact that the provisions of the founding legislation of the Office of the Ombudsman that are applicable to the Ombudsman in the exercise of his functions under this Act shall also apply to Commissioners. This would in turn enable investigative procedures to be homogenous and uniform and Commissioners shall have full access to all available information relating to their investigations on complaints that fall under their specific domain.

While Members showed agreement on the proposal to nominate a Commissioner for Health, at the same time a call was made for the appointment

of a Commissioner for Consumer Affairs as a means of empowering Maltese consumers with regard to their rights and responsibilities; intervening in disputes between consumers and providers of goods and services; and promoting a fair and competitive trading environment for consumers. It was claimed that this proposal arose especially in the light of the treatment to which power and water consumers had been subjected earlier in the year by Automated Revenue Management Services (ARMS) Limited with regard to their water and electricity bills.

There was also adverse criticism during the debate on the Bill on some operational aspects of the proposal to promote the Office of the Parliamentary Ombudsman as the focal point for the convergence of administrative scrutiny mechanisms. Doubts arose whether the full operational independence allowed to the Audit Officer of the Malta Environment and Planning Authority (Mepa) under the terms of the Development Planning Act would, with his movement towards the Office of the Parliamentary Ombudsman, be curtailed or even removed.

It was claimed, for instance, that although the Bill states that Commissioners will retain their full autonomy and independence in the exercise of their respective functions, it was possible that the right enjoyed so far by the Mepa Audit Officer to publicly criticize actions and decisions by the Authority that he considered unfair and his freedom to publicise his findings and recommendations to the Authority by such means as press conferences and interviews on the media could henceforth be withdrawn and could be regulated by the Parliamentary Ombudsman in a way that might inhibit the national profile and the status that the Audit Officer of the Authority has up to now enjoyed among citizens.

Reference was also made to another aspect of the Bill that was considered likely to curtail the operational competence enjoyed to date by the Audit Officer. Whereas under the time limit for the submission of complaints under section 14(2) of the Ombudsman Act a grievance shall not be entertained by the Parliamentary Ombudsman unless it is made not later than six months from the date on which the complainant first had knowledge of the matters that gave rise to the complaint, no such limitation circumscribes the work of the Audit Officer of the Malta Environment and Planning Authority and his power to review and investigate the functions and workings of the Authority at will.

Since under the Bill this time constraint for the submission of grievances applies also to the Commissioner entrusted with the duties of the Audit Officer in environment and planning, this was considered by some Members of the House as tantamount to the introduction of a new constraint on administrative scrutiny in these fields that could possibly render the whole system less effective. To counter this shortcoming, the extension of this time window and, possibly, even its removal was suggested throughout the full range of scrutiny operations in the public administration.

In the closing stages of the debate, however, the Government indicated that it was not in favour of this proposal and while claiming by way of example that even an appeal before the Court of Justice of the European Union has to be submitted within a prescribed time limit of six months, argued that any such extension was not considered in the best interest of the ongoing process to reinforce and invigorate the Maltese ombudsman system.

Procedures for the appointment of Commissioners for Administrative Investigations

The provision in the Bill whereby a Commissioner for Administrative Investigations in a specialized area shall be appointed by the Parliamentary Ombudsman following a joint communication to him in writing by the Prime Minister and the Leader of the Opposition as the person to be appointed to the post, was upheld by most Members of the House and was considered to represent the best way forward. At the same time, however, whereas some Members backed the other proposal that in the absence of any communication within three weeks from the date when the Ombudsman would inform in writing both the Prime Minister and the Leader of the Opposition of the decision to appoint such Commissioner or from the date when a vacancy arises in any such office, the appointment of a Commissioner shall be made directly by the Ombudsman acting in accordance with his own deliberate judgement, there were also several dissenting views on this proposal by other Members of the House.

In this connection the view was put forward that in similar circumstances persons being considered for nomination to these positions by the Parliamentary Ombudsman should be summoned before a parliamentary committee so that Parliament would be provided with the necessary justification for any such nominations that could possibly contribute

towards an agreement on these nominations. Given that Commissioners for Administrative Investigations are designated as Officers of Parliament, it was felt that it would be more appropriate to follow this process also as a means of promoting a common approach to the configuration that was being shaped for the new ombudsman house in Malta.

Reference was also made at this stage to the provisions in the Bill for the selection and appointment by the Ombudsman of Commissioners for Administrative Investigations "*in specialized areas as may be determined by him, with the concurrence of the Prime Minister... from amongst persons knowledgeable and well versed in those specialized areas for which they shall be appointed to investigate*" and for approval by the Ombudsman of "*the functions of the Commissioners ..... after consultation with the Prime Minister*" and the publication of these functions by way of rules in the *Gazette*.

In this regard the point was made that once the Ombudsman and the Commissioners are Officers of Parliament, it would perhaps be more appropriate if Parliament itself or a parliamentary committee or even the Leader of the Opposition were to be involved in this process of consultation for the determination of these important features of the ombudsman house that was being constructed, also as a means of ensuring that it will be Parliament that will continue to sustain the Maltese ombudsman institution in its defence of citizen rights.

Review by the Parliamentary Ombudsman of work done by Commissioners for Administrative Investigations

There was general agreement by Members of the House on the provision whereby the Parliamentary Ombudsman shall only review any final report that is submitted by a Commissioner in cases where the Ombudsman feels that there are points of law or principles of equity or natural justice involved.

There was also general acceptance of the provision whereby the Parliamentary Ombudsman shall not accept requests for a review of the report of any Commissioner once any such report has already been communicated to the Government or to any public body or authority or to any person or official to whom the Act applies or to the complainant except in cases where the Parliamentary Ombudsman considers that there are issues related to a breach of the rules of natural justice or that points of law or principles of equity are involved.

While Members agreed that the proposed new design for the Maltese ombudsman service was bound to result in improved resource provision to the chosen specialized areas of administrative scrutiny, contrasting views were aired on the follow-up of reports submitted by Commissioners. It was observed, by way of example, that the Audit Officer of the Malta Environment and Planning Authority is required to transmit a copy of all his reports to the Board of the Authority which is in turn to transmit a copy of these reports to the Minister responsible for the environment and planning and inform the Minister of any action taken by the Authority in connection with the Audit Officer's reports. Furthermore, where no such action as recommended by the Audit Officer is taken, the Authority shall inform the Minister of the reasons why no action has been taken.

The Bill, however, envisages that Commissioners would communicate their final reports on issues that are considered to warrant an investigation to the Government or other authority, body or person to whom the Act applies and to the complainant and that whenever no action as recommended by a Commissioner is taken within a reasonable time from the date that the Commissioner has sent his report to the Government or to the public authority involved or to the complainant, or where the Commissioner is informed that no action will be taken or that only partial action will be taken on his recommendations by the Government or by the public body involved, the Commissioner shall inform accordingly the Ombudsman, the competent Minister and the complainant within a reasonable time of the receipt of any such outcome. The Bill makes provision that in any such event the complainant may request the Ombudsman to review the Commissioner's report and the objection thereto raised by the Government or the public body concerned.

Some Members observed out that these arrangements could not be regarded as being particularly reassuring and supportive of complainants whose concerns, although considered justified by a Commissioner, remained unaddressed by the public authority that has been found in the wrong. This was considered merely as a throwback to the situation faced by complainants whose grievances were sustained by the Parliamentary Ombudsman but were not remedied by the party at fault.

These Members of the House were of the view that since Parliament has so far failed to act in similar cases that were raised by the Ombudsman, on this aspect of operations by Commissioners the provisions in the ombudsman

legislation merely replicated what is arguably a blatant weakness in the way that the Ombudsman can wield his power in the defence of citizens.

On the inclusion of new scrutiny bodies in the proposed unified ombudsman structure

During the discussion it emerged that the Select Committee of the House had agreed during its meetings that at least at this stage the Office of the Commissioner for Children with its limited investigative role and the Police Board set up under the Police Act should not be included in the new unified ombudsman structure.

On the selection of new areas for scrutiny, however, the two sides in the House were in agreement on the appointment of a Commissioner for Health particularly at a time of sustained development in the country's national health system and in efforts to promote the accessibility, quality and sustainability of public health services and resources. Both sides agreed that the appointment of a Commissioner for Health would give a strong boost to the promotion of patients' rights in health service provision by the national health authorities in state hospitals, health centres, pharmacies, day centres and residential homes for elderly persons as well as in the case of other health providers where the service is paid for out of public funds.

Expiry of the term of office of Commissioners

The new legislative framework for the unified national structure for ombudsman operations provides that "*the term of office of all persons appointed to such office shall lapse on the same day*." It was agreed that under this arrangement it was more likely for the Government and the Opposition to agree on the wholesale nomination and appointment of Commissioners at the expiry of their term of office on the same date instead of a piecemeal approach that would invariably result with appointments that would expire and offices that would be vacated at different dates.

The submission of annual reports by Commissioners

The House expressed its agreement that as a result of the convergence of administrative review mechanisms with the Office of the Parliamentary Ombudsman, the annual reports on the work done by Commissioners in

specialized administrative areas would be incorporated in the annual report on the performance of his functions that the Parliamentary Ombudsman is bound to present to the House of Representatives under subsection(1) of section 29 of the Ombudsman Act.

Members of the House suggested that in the discussion on the work and activities of the Parliamentary Ombudsman by the House Business Committee of the House of Representatives in connection with the *Ombudsplan* that is presented annually by the Ombudsman, Commissioners should also be invited to attend so as to provide any information that would be requested of them.

Members agreed that since it would be the duty of the Parliamentary Ombudsman to ensure that Commissioners for Administrative Investigations would be provided with the full range of administrative and investigative services that are necessary to enable them to carry out duties as may be assigned to them by law, it was also proper to make these Commissioners accountable to Parliament for their work.

On complaints that are deemed justified by the Ombudsman but remain without appropriate remedy

Most Members of the House were in agreement that the Parliamentary Ombudsman should not be awarded any executive power since this would run counter to the very nature of the ombudsman institution as a force for good that rests its case on the Ombudsman's moral authority and integrity, his independence and autonomy of the public authorities that fall under his mandate and his sustained search for accountability and transparency based on the principles of equity and legality. There were, however, other Members who were of the opinion that the Ombudsman's recommendations on justified cases should at all times be accepted and implemented and that he should be given the necessary tools to enforce his proposals for remedial action.

At the same time it was recognized that despite the Government's interest to ensure that the conduct of the public administration serves society and follows the values of democratic governance, the Government should still retain the right not to accept any recommendations that may be put forward by the Parliamentary Ombudsman in sustained grievances. It was also felt that it would also be useful if on regular occasions the House Business

Committee would discuss complaints that fall in this category and consider the reasons why the remedial action being proposed in these grievances remains unattended.

This was the topic that received by far the greatest share of discussion during the debate in the House of Representatives and was allied on several occasions by reference to the need to establish the relationship between the Office of the Ombudsman and Parliament on a stronger footing. There was broad agreement among Members that although in 2007 the House of Representatives had agreed to bestow constitutional status upon the office of Ombudsman, this move was not, however, followed by a closer and deeper involvement by the House in the work of the Parliamentary Ombudsman.

It was also pointed out that it was likely that once the Maltese ombudsman institution had been launched and had managed to win national acclaim particularly during the initial years of its establishment, the further development of the institution had been taken for granted by the House and the Office had been left practically on its own, without any formal and direct support and any reassurance by the House.

Other Members admitted that to a large extent this relationship had languished because the House does not have enough time and resources that could be allocated to a careful review of the operations that are carried out by the Ombudsman and his Office. The House had never discussed in plenary session the work done by the Ombudsman and the lack of importance that the House seems to give to the Ombudsman and to the reports that he issues on a regular basis only serves to give the impression that the institution has been allowed to take a backseat even at a time when the right of citizens to good administration continues to acquire a sharper focus in the context of the national commitment in favour of more efficient service provision by the public administration.

It was observed that this relative sidelining of the Maltese ombudsman institution by Parliament was also evident in the way that the *Ombudsplan* was discussed annually by the House Business Committee with hardly any coverage at all being given to this event and to the Ombudsman's vision for subsequent years. Some Members argued that the House has a moral obligation to find the time to discuss in a meaningful manner the role of the Ombudsman in the context of service provision to citizens by the public administration that would be sustained by accountability, fairness and transparency.

There were contrasting views among Members of the House with regard to the Ombudsman's recommendations for remedy in sustained grievances that, for some reason or other, are not implemented by the public authority involved. The attention of the Ombudsman was drawn to the need to ensure that his recommendations are both practical and applicable since certain public bodies, despite their goodwill and their intention to respect the Ombudsman's recommendations, might not find it possible to put them into practice.

At the same time it was pointed out that the number of justified complaints that remained unresolved was minimal and while disagreement with the views and recommendations of the Parliamentary Ombudsman should not necessarily be equated with any sign of disrespect towards the Ombudsman and his institution or with any lack of appreciation for his work, the Government should retain the right to choose to refuse to implement any recommendations issued by the Ombudsman on matters of principle or on grounds of policy and in turn shoulder the political responsibility for any such decisions.

In this connection it was pointed out that as long as the Government puts forward sound, cogent and well-grounded reasons for its decision not to implement any recommendations by the Parliamentary Ombudsman, there would be no hint of disrespect towards the ombudsman institution. If all the Ombudsman's recommendations were to be accepted unquestioningly and in an uncritical manner by the Government, this would be tantamount to the elevation of the Ombudsman to the rank of super Ombudsman or plenipotentiary – an advancement that even the Parliamentary Ombudsman himself is not in favour of.

In contrast with these views it was pointed out that in the context of the need to promote further a national integrity system – of which the ombudsman institution is merely one component – that would safeguard in full citizen rights at all times, it is important to ensure that all citizens whose claims of injustice, unfair treatment or discrimination are vindicated by the Ombudsman's findings and recommendations should be awarded fair and proper redress. Failure to implement the Ombudsman's proposals for redress in sustained cases – regardless of the small number of these cases – is considered to undermine the integrity of the ombudsman system and to lower the expectations of citizens in the power and ability of the Ombudsman to resolve instances of injustice by the public administration.

Throughout the debate other Members maintained that the exercise to amend the ombudsman legislation should have served not only to widen the range and extent of the scrutiny of administrative action by the Ombudsman and his team of Commissioners in the new ombudsman structure being established but also as an occasion to give stronger weight to the Ombudsman in the enforcement of his recommendations. The fact that the Ombudsman remained toothless in the face of recalcitrant public bodies that resisted his recommendations was considered by these Members as possibly a shortcoming at a time when the institution was being provided with a wider and more effective range of tools to undertake its mandate.

The winding up to the debate by the Leader of the House charted the way forward on this aspect of ombudsman operations. This proposal drew its inspiration from the Ombudsman's declared wish that in the case of sustained complaints that remain unresolved his main concern is not to have his way by means of an uncritical acceptance of his judgement but to have an open and structured discussion on these grievances including the motivation behind the decision by a public authority to reject his recommendations with a view to a political decision on these cases. Referring to earlier arrangements whereby parliamentary representatives from both sides of the House were entrusted to review similar cases and in turn report to the House on their findings, the Leader of the House proposed in this connection that consideration should be given to the revival of this system.

The Leader of the House also suggested that in similar instances the Parliamentary Ombudsman could bring pressure to bear on the authorities concerned by giving coverage to these grievances in the media. Besides affirming the stand taken by his Office, the Ombudsman would provide full information on the position adopted by the public authority involved and then allow public opinion to draw its own conclusions, with the House of Representatives free to take up discussion and examine these cases in order to reach a final decision. It was explained that in this way it would be possible to exert pressure on the administration with a view to ensuring that the number of such complaints is kept to a minimum and that a distinction will be made between circumstances where the public administration, even though not sharing the Ombudsman's recommendations, would proceed to implement these proposals and other cases where the issue under scrutiny would have far-reaching repercussions or considerable financial implications

that would render its implementation impracticable or downright impossible In these latter cases the Government would in turn be prepared to accept full responsibility for its decision to desist from observing the Ombudsman's recommendations.[2]

Subsequent developments

On 26 October 2010 the Consideration of Bills Committee of the House of Representatives met to consider the Bill entitled the Ombudsman (Amendment) Act, 2010 and agreed to delete sub-clause 3 of clause 6 which referred to the method for the investigation of complaints that were pending before the University Ombudsman and the Audit Officer of the Malta Environment and Planning Authority prior to the eventual entry into force of the Act and also to re-number the subsequent sub-clauses in clause 6. The third reading of the Bill was approved *nem. con.* by the House in its sitting number 284 on 15 November 2010 and Act No. XVII of 2010 received the assent of the President of the Republic on 19 November 2010. By the end of the year, however, the Bill had still not taken effect.

Observations on the new ombudsman structure

Subsequent to the approval by Parliament of the new ombudsman legislation, the Office of the Ombudsman immediately took the necessary action to draw the attention of the Government to the steps that needed to be followed under the programme for the convergence of sectoral administrative scrutiny offices within the wider canvas of the new structure embedded in the amended ombudsman legislation. This proposal was based primarily on the Paris Principles which emerge from Resolution 48/134 adopted by the General Assembly of the United Nations on 20 December 1993 and which is entitled *Principles relating to the status of national institutions* and in particular paragraph 2 of this section captioned *Composition and guarantees of independence and pluralism* to which reference has been made in an earlier section in this Report.

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2 It is the view of the Office of the Ombudsman that these proposals could serve to pave the way for the launching of a system aimed at the resolution of a situation that has long been considered to diminish the full force of its mandate in the service of citizen rights.

In its submission to the Government the Office of the Ombudsman emphasized that in order to fulfil its functions properly, the new ombudsman structure needs to be given appropriate assurances regarding higher resource provision that this assembly of scrutiny offices is due to bring in its wake. In particular this means the allocation of increased financial, material and human resources that would permit the gathering under one roof of the Commissioners for Administrative Investigations envisaged under the amended legislation with special reference in particular to the Commissioner for Environment and Planning (who will take over the role and functions of Mepa's Audit Officer) and to the Commissioner for Health.

Another important development in this regard concerns the formal inclusion of the Commissioner for Higher Education in the new ombudsman house although it has to be recalled that since the appointment of Professor Charles Farrugia as University Ombudsman in November 2008, in addition to being given wider powers and a broader jurisdiction, the mechanism to oversee complaints in the field of tertiary and higher education has already successfully been ingrained in the Office of the Ombudsman.

Other important aspects of the new Maltese ombudsman formation envisage additional qualified investigative staff to ensure that investigations are carried out with the highest possible degree of acumen and sound judgement as well as the build up of a strong research capability that will enable the Maltese ombudsman institution to keep abreast of the latest developments in ombudsman concepts and thinking in association with democratic development, good governance and the right to good administration in line with the circumstances and ideas of the contemporary world.

At the same time preliminary work got under way on the drafting of rules regarding the functions of Commissioners for Administrative Investigations which, by virtue of the powers conferred by article 17A of the amended ombudsman legislation, the Ombudsman is required to issue after consultation with the Prime Minister and to publish by way of rules in the *Gazette*. The main aim of these rules is to determine the entities that are covered by the legislation and the services to whom the Act applies; to establish the functions that are applicable to all Commissioners including the assignment of complaints by the Parliamentary Ombudsman; the regulation of own initiative investigations; the process of consultation among Commissioners; the delegation of functions by the Ombudsman; the determination of situations

that may give rise to conflict of interest; and the powers of Commissioners. These rules are also intended to ensure a uniform, integrated and seamless investigative and administrative service that is to be provided by the Office of the Parliamentary Ombudsman while also ensuring the full autonomy of Commissioners as required by law.

In this connection it is also felt that the need to house the new ombudsman configuration in centrally located premises in Valletta that are also well appointed and equipped cannot be overlooked. In the Maltese psyche, the capital city Valetta continues to be considered as the hub for the public administration and it is therefore only reasonable that the newly joined-up Maltese ombudsman system should continue to oversee standards of service provision from a location that has traditionally served as the seat of the Maltese public administration and that is generally associated with the day-to-day operations and activities of the central government.

This Office feels that here it is opportune to sound a note of warning. The impending development of the Maltese ombudsman structure and the subsequent need of higher annual resource outlays takes place at a time of financial stringency when the allocation of financial resources by the Government needs to be tightly controlled, perhaps even more than ever before, in order to meet rising community needs and increased service demands. Of its very nature, however, ombudsman funding can obviously only be sourced through direct annual government subventions to the institution.

At the same time it is obvious that the ability of the newly integrated Maltese ombudsman service to respond to its role to assist citizens in their daily contacts with government departments and public agencies, authorities and bodies hinges largely on the level of resources that are placed at its disposal. As a key stakeholder in the ongoing drive in favour of improved service delivery and efficiency, it is essential that adequate funding will continue to be made available to support the Maltese ombudsman programme as a whole.

At this stage this Office would like to comment on the situation that developed with regard to resource provision for 2010 to enable it to carry out its functions, activities and duties and that might be considered not to conform fully to the letter and spirit of the relative provisions of the institution's founding legislation.

Section 10 of the Ombudsman Act lays down that the financial resources that are necessary to meet the salary and allowances of the Parliamentary Ombudsman and the salaries and wages of his officers and employees as may be required to permit his Office to carry out its functions, powers and duties under the Act together with the finances needed for the level of capital equipment, furnishings, materials and administrative activities that are approved by the Ombudsman "*shall not exceed a maximum amount indicated in an Ombudsplan approved by the House of Representatives and shall be a charge on the Consolidated Fund without any further appropriation other than this Act … … provided that the Ombudsman shall present to the House by the 15th day of September of each year, an Ombudsplan which will indicate the ensuing year's activities.*"

Since the Office of the Ombudsman was established in 1995, the House Business Committee has been entrusted to monitor its activity and workings on an annual basis on behalf of the House and in turn to report to the House on the way forward. This system allows for a clear and direct relationship between the Maltese ombudsman institution and the House of Representatives in terms of the sanctioning and approval of programmes and plans for the year ahead as well as the quantum of the funding allocation that is required for these activities. For several years these arrangements served their purpose well.

Experience in 2010, however, marked a departure from the practice of previous years when the Budget Affairs Division of the Ministry of Finance, the Economy and Investment requested the Office of the Ombudsman not to make full use of the funds that were appropriated by the House of Representatives for the institution but to resort instead to allocations of previous financial years that had remained unspent and that represented funds in the Office's bank account in order to finance at least in part its funding requirements for the year. In a spirit of cooperation with the financial authorities, this Office found no objection to meet a share of its 2010 outlays directly out of its own internal resources as a token gesture of solidarity with national economic and financial objectives.

This Office would, however, like to put on record that its acceptance of this request should not be regarded as having created a precedent or that in subsequent years it would again be prepared to acquiesce or to forego its direct approach to the House of Representatives for its funding allocation as

detailed in its annual *Ombudsplan* and instead replace this system by a process of discussion and negotiation with the Budget Affairs Division.

While this Office is not in any way averse to dialogue on funding issues with officials from this Division in a spirit of cooperation, this should not, however, be taken to mean that this institution is prepared henceforth to accept an alternative route for the determination of its annual budgetary allocation that would give rise to conflict with the Ombudsman Act. Neither can this institution allow its autonomy and independence in the management of its financial affairs to be undermined.

The Ombudsman's oversight of service provision that is of strong public interest

Reference has been made earlier in this chapter to the widening of the Ombudsman's mandate that results from the amended ombudsman legislation. This concerns the extension of the Ombudsman's jurisdiction over any public agency that may be established under article 36 of the Public Administration Act; over any foundation that may be established by the Government or by any statutory body and any partnership or other body referred to in the founding legislation; and over chairmen and members of boards, committees, commissions and other decision-making bodies whether established by law or by an administrative act and which can take administrative actions and decisions that affect citizens.

Throughout the debate in the House of Representatives in October 2010, however, mention was also made of another possible avenue for the broadening of the terms of reference of the Ombudsman, namely by means of an extension of his jurisdiction over areas that for several years fell under direct government control and management but that with the advent of the privatisation process were excluded from his reach.

This Office has on several occasions in the last few years expressed its views on this subject and has put forward proposals so that activities that are now provided by the private sector but that invariably still comprehend a strong public service obligation should fall under the scrutiny of an independent overseer. This authority will be fully entitled to investigate levels of service provision to citizens and to inquire into complaints on quality standards

with a view to ensuring that these obligations are respected and that citizens' interests are placed foremost.

To date, however, this proposal remains largely on the shelf although the 2010 amendments to the ombudsman legislation left the door ajar and served to register the first inroad into areas that were hitherto out of bounds for the Maltese ombudsman institution. The fact that the amended legislation allows scope for review by Commissioners for Administrative Investigations in the context of public-private partnerships in the field of higher education and in the provision of healthcare services is considered by this Office as marking a step in the right direction.

Although confined to the scrutiny of the behaviour of government departments and public authorities and bodies, as is widely known the Ombudsman's mandate was largely influenced in recent years by the release of several areas from the public domain. The management and control of these areas has been handed to private organizations despite the fact that these activities retain a strong dimension of public service interest and have a longstanding tradition of service to citizens.

This shift in service delivery and in the status of these service providers which took the form both of the sale of public assets and the contracting out of selected services provided by the state, was meant to achieve an improvement in the delivery of these services coupled with the release of government resources towards more essential areas and activities in the wake of economic liberalization and reform programmes. It was also accompanied in turn by the escape of these sectors and their migration away from the Ombudsman's purview.

With this lack of access by the Ombudsman to the operations of these organizations, even though some of these activities are still funded out of government resources whereas others are subject to the scrutiny of regulatory organizations that are generally of recent origin, the mantle of citizen protection in these sectors, hitherto vested in the Ombudsman, has admittedly grown rather thin. These developments led the Parliamentary Ombudsman on several occasions to comment publicly and to express his views on the wisdom and on the feasibility of this cutback in the level of protection to citizens.

According to the Ombudsman this limitation on his mandate is somewhat incongruous. This occurred especially at a time when, as European citizens,

Maltese consumers have, perhaps more than ever before, earned the right to service provision in specific areas of public interest where considerations based on the economic return to the operator, greater efficiency and more cost effective operations should not be allowed to blur or to ignore the social aspect of the service being provided. The Ombudsman showed his concern at this diminished access by citizens to his Office as a means of ensuring a customer focus by private service providers in areas traditionally associated with, and directly bound to, national development, living standards and an improved quality of life for citizens.

In the last few years the Maltese ombudsman institution has featured prominently on the agenda of the House of Representatives on two occasions. In both instances, however, the proposal by the Ombudsman that his mandate be extended to cover delivery by non-government organizations of services that have a distinctly public mission and that the Government has a public responsibility to safeguard, went unheeded. This Office would, however, again like to take this opportunity to suggest that this issue be given the attention that it deserves by the House of Representatives.

This proposed updating of ombudsman jurisdiction is justified for various reasons. Contacts between citizens and government authorities or non-government organizations happen at frequent intervals in various aspects and events of daily living and in several stages of life. Nonetheless, despite deregulation and the withdrawal of the boundaries of state involvement and control, it remains fully in the interest of citizens to have their rights safeguarded by an independent and effective watchdog authority such as the Ombudsman.

At the same time this adaptation of the role of the Government by the introduction of automated processes, privatisation and the sharing of responsibilities by public-private partnerships has served to distance service provision by the Government and rendered public services impersonal and at times removed from genuine contact with citizens. This has led to the emergence of no-go areas for the Ombudsman where operators are allowed to perform their functions with apparent relative freedom and ease from an independent scrutiny mechanism and where citizens are left largely to their own destiny.

In these circumstances it is likely that private bodies which have been contracted to perform these functions on behalf of the Government and

which are financed largely by state funding or which have taken over services previously extended to citizens by government service providers continue to act and to take decisions that affect citizens while remaining beyond the reach of the Ombudsman.

The Ombudsman believes that this situation needs to be addressed. It is not considered acceptable that although the administrative landscape has undergone a radical change since the enactment of the institution's founding legislation in the mid-90s and there has been a paradigm shift of responsibilities, the overall ombudsman function has failed so far to respond to this new environment. Once the framework within which public service providers now operate stands apart from the arrangements in force in 1995 when the Ombudsman Act was approved by Parliament, it is felt that both the focus and the span of the Ombudsman's oversight ought to reflect this new situation.

Following the positive steps registered in 2010, the Ombudsman's strategy in the years ahead will also include efforts aimed at urging the authorities to counter the erosion of his jurisdiction to provide an efficient oversight of service provision that has been divested in favour of private operators. This Office views these efforts to recall within its purview its oversight of activities that have an eminent public interest as the crucial next step in the vision of the Maltese ombudsman institution to update the span and range of its jurisdiction and gain even further confidence among citizens.

The extension of the mandate of the Office of the Ombudsman to serve as a national human rights institution

By and large the country's legal and administrative structures to safeguard human rights are in play and operate effectively.

The 1964 Constitution of Malta includes entrenched provisions for the protection of fundamental rights and freedoms of the individual while the European Convention Act that was enacted by the House of Representatives in 1987 makes provision for the substantive articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms to become, and be enforceable as, part of the laws of Malta with the same legal effect as a national law.

Malta has been a member of the Council of Europe since 1965 and the enforcement of fundamental human rights in the country has been subject to the Council's scrutiny ever since. Furthermore, upon Malta's accession to the European Union in 2004 human rights protection was strengthened by acceptance of the jurisdiction of institutions of the European Union, most importantly the European Court of Human Rights.

On the international front Malta is also a party to several human rights treaties including the European Social Charter, the European Convention for the Prevention of Torture or Degrading Treatment or Punishment and its Protocols and the Council of Europe Convention on Action against Trafficking in Human Beings.

In addition over the years the Government has taken legislative initiatives relating to the protection of human rights for specific sections of the population while there are also several human rights institutions established in Malta to safeguard such issues as gender equality, equality of opportunity for persons with disabilities and the rights of children.

The Office of the Ombudsman too has an important role, albeit indirectly, to ensure the correct application by the Maltese public administration of the rules and principles of human rights and fundamental freedoms set out in the European Convention by means of the investigation of allegations of infringements or abuse of these rules in the exercise of the fundamental right of every individual to good administration. The Ombudsman Act in effect incorporates these rules and reflects these principles although subsection 13(1) limits the functions of the Ombudsman to the investigation of "*any action taken by or on behalf of the Government, or other authority, body or person to whom this Act applies, being action taken in the exercise of their administrative functions.*"

In recent years the United Nations, the Council of Europe and the European Union have strongly advocated that a distinct national authority in Member States is charged with the duty to monitor the human rights situation. To date, however, Malta's response to this demand has been that in view of its existing legislative framework and institutional setup, it is not considered necessary to establish an authority specifically for this purpose and that effective judicial procedures are preferable to a human rights institution although this matter is kept under regular review by the Maltese authorities.

As the call for an *ad hoc* national human rights institution gains stronger momentum worldwide, this Office is of the opinion that the time has now come for Malta to set up its national human rights institution. Given the need to make the best use of available resources and to build on existing structures, this Office suggests that its functions be widened to allow the Ombudsman not only to promote the observance of fundamental human rights in situations that concern the public administration but also to assume an explicit mandate in this respect, if and when so required. In this way the Ombudsman's role to promote fundamental human rights that serves to guide his investigation of administrative action will be underpinned by a new duty whereby he has to ensure that all such administrative action conforms to the basic principles of human rights.

The international call in favour of an explicit human rights mandate for the ombudsman institution has been sounded in recent years especially by the Office of the High Commissioner for Human Rights of the United Nations and the Office of the Commissioner for Human Rights of the Council of Europe as well as the European Union. These organizations have sought to promote the view that national and regional Ombudsmen should take on a positive dimension and that it should be mandatory for the Ombudsman to have an explicit human rights mandate.

National human rights institutions (NHRIs) are considered as central planks in national human rights protection systems and play a crucial role to promote and monitor the effective implementation of international human standards at the national level, a role which is increasingly recognized by the international community. In addition to their work on core protection issues – such as the prevention of torture and degrading treatment, summary executions, arbitrary detention and disappearances and the protection of human rights defenders – NHRIs play a role in advancing all aspects of the rule of law including with regard to the judiciary, law enforcement agencies and the correctional system. Over the past two decades these considerations have led the United Nations General Assembly and other bodies to issue various resolutions that are of direct relevance to the development of the work and functions of NHRIs.[3]

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3 These resolutions include Resolution 48/134 that was adopted by the General Assembly on 20 December 1993; Human Rights Resolution 2005/74 adopted by the Commission on Human Rights of the United Nations on 20 April 2005; Resolution 63/169 adopted by the General Assembly of the United Nations on 18 December 2008 and captioned *The role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights*; Resolution 63/172 adopted by the General Assembly on 18 December 2008; Resolution 64/161 adopted by the General Assembly on 18 December 2009; and Resolution 65/207 adopted by the General Assembly on 21 December 2010.

In the context of his efforts to promote the development of national human rights structures, the Commissioner for Human Rights of the Council of Europe cooperates closely with national Ombudsmen, national human rights institutions and other structures entrusted to protect human rights. The Commissioner also maintains close working relations with the Ombudsman of the European Union and organizes biennial round tables with the Ombudsmen and national human rights institutions of Council of Europe Member States. In his *Viewpoint* dated 18 September 2006 the Commissioner wrote that he regards ombudsman offices as "*key partners in the struggle for a practical implementation of European human rights standards*."

Under Article 228 of the Treaty on the Functioning of the European Union, the European Ombudsman is empowered to investigate complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies of the Union with the exception of the Court of Justice of the European Union acting in its judicial role. From the very start the word "*maladministration*" was given a wide interpretation that made it possible to include respect for the rule of law, for the principles of good administration and for fundamental rights in the mandate of the European Ombudsman. In this way allegations that EU institutions have breached an individual's fundamental rights fall within this mandate.

The entry into force on 1 December 2009 of the Lisbon Treaty and the legally binding nature of the Charter of Fundamental Rights strengthened the EU commitment to human rights. As a result, respect and promotion of the rights guaranteed under the Charter and, in particular, the interpretation and application of the right to good administration as laid down in Article 41, gained a wider dimension in the remit of the European Ombudsman.

Throughout the years both the role and the vision of the ombudsman institution have been extended and widened. Originally tasked with the scrutiny of administrative action by public authorities, in recent years several Ombudsmen, especially those that were established after the collapse of dictatorships and communist regimes in Europe and the introduction of democracy and the rule of law, were appointed to serve as Ombudsmen or Defenders or Commissioners for Human Rights and given a special mission to protect and promote these rights. This extension of the Ombudsman's

scope of action beyond administrative decisions further served to bestow upon Ombudsmen a stronger role in the protection of the fundamental human rights of citizens.

As a result of these developments, there is now a stronger trend towards convergence in most ombudsman institutions as European Ombudsmen increasingly base their work on three overlapping and mutually supportive elements: legality; principles of good administration; and human rights. In this regard Ombudsmen can play a valuable role in giving empowerment to citizens, raising the quality of public administration and serving as an alternative non-judicial avenue of redress when the rights of citizens are not respected.

Mindful of this reinforcement of the role of Ombudsman, this Office is in favour of the widening of its original mandate as laid down in its founding legislation to serve also as Malta's national human rights institution. The Office therefore plans in the short run to submit a formal proposal to the Government on the establishment of a Maltese national human rights institution. This proposal envisages the designation of the Office of the Ombudsman as the Maltese NHRI that will also encompass and be required to work in consultation with other local institutions with a human rights component in their functions. This mechanism would need to operate fully in accordance with the Paris Principles and also seek accreditation with the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) of the Office of the United Nations High Commissioner for Human Rights.

Among its main tasks the Maltese national human rights institution would be expected to:

- promote understanding and awareness of and protect the basic values and principles of human rights of persons in Malta including the rights, liberties and freedoms that are guaranteed under the Constitution of Malta and under the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- act as a source of information and advice to enable people to stand up for their rights with regard to age, disability, gender, race, religion, belief and sexual orientation;
- ensure that human rights legislation in such areas as work, education, health and social care service provision is applied fairly and without any

discrimination and that existing obligations and responsibilities in these fields are duly enforced;

- collaborate with the Government so that human rights issues are given due importance in the legislative process and that human rights standards and norms are adequately upheld in Maltese legislation, policy and practice;
- in the event of evidence that human rights are not being upheld or not properly respected, to take appropriate action including enquiries and the publication of reports to recommend to the Government to take the necessary remedial action; and
- issue regular reports on the human rights situation in Malta and disseminate knowledge and assist public opinion on human rights issues by means of studies and the organization of public seminars, discussions and educational programmes.

The Maltese national human rights institution will be able to work with public, private and voluntary organizations and agencies to promote a culture at various levels of society that will be based on respect for the various civil, political, economic, social and cultural rights that together constitute the whole wide spectrum of fundamental human rights.

System failures during 2010

The reform programme of the Maltese public administration system that was pushed ahead with vigour in the last twenty five years or so has achieved on the whole positive results and was fairly successful. A smaller public service headcount that benefited from resort to private sector operators to provide a range of services hitherto associated with government involvement and the outsourcing of these activities; emphasis on the need to give value for money; the introduction of technology; and the setting of service standards together with a new service culture based on accountability, openness and good governance undeniably contributed towards all-round improvement in the quality of the Maltese public service.

This progress was accompanied by the allocation of increased resources and wider service provision in areas such as education, environment, health and social security that in turn gave rise to higher expectations of the level and standards of service that citizens deserve and should rightfully expect as customers of government departments and public bodies. By and large these

relationships between citizens and government have succeeded in meeting people's needs although clearly more still remains to be done so as to establish this association on a more even keel.

It was therefore disappointing that the broader public sector performance during 2010 was clouded by episodes of service failure including neglect of the core principles of good customer care that fuelled public discontent on a generally large scale. These instances of maladministration inevitably undermined the strenuous efforts of recent years to develop a credible, modern and responsive public service and it will surely require strong efforts to put these experiences behind and move forward.

In this regard it is felt that at this stage some observations on customer care standards and procedures for service users would not be out of place. Especially in the last few years customer care and help desk services in the public sector have relied increasingly on automated telephone response systems instead of direct personal contact with the caller. At the same time contacts between citizens and government departments and public bodies and authorities on various aspects of service provision and delivery are also being managed more and more by means of automated and electronic systems. To a large extent the performance and the response of these systems determine the expectations of citizens and stakeholders and their level of satisfaction with regard to the quality of these services.

It is the view of this Office that in each and every contact between citizens as taxpayers who are ultimately responsible for the funding of public services and those who are responsible for the operation and management of government departments and public agencies involved in the provision and delivery of these services, the most important principle that needs to be upheld is efficient delivery allied with helpful and courteous service. Particularly in present times in all these contacts a balance must be sought between the impellent need to be responsive to citizens' requirements and the resources that can be allocated to these demands.

In the context of efforts to further promote good management in quality customer service, it is important to ensure that operational decisions and proposals to widen accessibility give due consideration to such aspects as an awareness of the fact that certain segments of the community such as the elderly, the infirm and the disadvantaged might not be familiar with these

systems. They would consequently find themselves at a loss when they are required to navigate through them to reach out for their entitlements. Similarly, providing information to customers solely by means of a website or by means of telephone inquiries and automated replies is not considered appropriate for all citizens because all customers regardless of age, educational background or abilities have a right to be fully informed of their entitlements in a way that they can easily understand.

This Office would like to take this opportunity to recommend that the stage has now been reached for a critical evaluation of the full range of customer services that are being provided to citizens by government departments and public sector organizations alike. This study will review overall performance against standards that were set for service delivery; measure the current level of customer satisfaction; assess the expectations of stakeholders; determine the extent to which delivery standards are consistent across service providers; and gather the views and feedback from frontline staff on their experience.

On the basis of the results of this exercise it should be possible to raise the bar in standards of customer care service and achieve a higher level of support to customers that would aim to meet their rightful expectations to the fullest possible extent.

Maladministration at the local level

The various allegations and episodes of maladministration and misconduct at the local level that surfaced somewhat abruptly in 2010 also served as an eye-opener to all the stakeholders in the Maltese public administration.

These events gave rise to mounting concern throughout the country as regards the methods of operation and compliance with management systems and audit procedures by some Local Councils. They also invariably led to the view that despite strenuous efforts to inject and promote a culture of good governance, good practice and respect for the rule of law throughout administrative structures at the national level, these initiatives had not adequately filtered to organizations that operate at a local level.

Whereas government departments and public authorities and bodies that lie at the core of the Maltese public administration system are generally aware of the values and notions of good governance, these episodes gave rise to doubts,

and rightly so, as to whether service providers that, as it were, operate at the periphery are similarly geared to observe these principles and to attain these objectives. As a result, questions arose concerning the extent to which the national commitment to the basic tenets of sound administration that is pronounced forcefully in Valletta as the heart of the Maltese public administration has succeeded in reaching with equal force operators who exercise their functions in outlying localities and beyond.

Since these events provided evidence that these operators may consider themselves somewhat detached from the national focus on good governance, this Office would like to recommend that greater efforts be urgently made to remedy this shortcoming.

There can be no doubt that Local Councils have in the last few years established themselves as essential partners and participants in management at district level. They have also emerged as main actors in the devolution process and in local decision-making by means of their sustained efforts to promote the social, cultural and environmental well being of their communities.

Local Councils have also played their part in making the areas that fall under their responsibility better places for residents of these localities by their interest and initiatives in a wide range of public services including street cleaning, waste management, recreation, traffic management, enforcement of building regulations, transport, local historical and cultural heritage, etc. They have in many instances been a determining factor in improving the quality of life in an upgraded environment. Furthermore huge financial resources from the central government budget are allocated annually to enable Local Councils to improve municipal services in their locality and ensure adequate and appropriate facilities for the community.

All Local Councils should therefore invariably exercise their functions in full observance of the relevant laws, rules and regulations without fail and should also account for and manage in a responsible manner assets that fall under their overall charge and direction. Their responsibility to promote and uphold the good governance of their communities entails first and foremost a staunch and unwavering commitment to the basic principles of good governance and efficient management of the community coupled with a responsive attitude to the achievement of national objectives, plan and policies.

The experience of recent years has shown that for various reasons some individuals who have been elected as Mayors and Councillors have been unable to deliver in their localities the quality services that are expected of them. Others are at times unable to ensure that their vision for their locality is synchronized with overall wider national objectives and standards despite the fact that their endeavours are financed by taxpayers' money.

In order to ensure that local governance will achieve its purpose, all the people's representatives at this level need to grasp and to be guided continuously by the principles of good governance and to have in place adequate control mechanisms. Experience has shown that accountability at the local level needs to be strengthened further if the main aim behind the setting up of Local Councils to extend support to communities and enhance their quality of life is to continue to be pushed forward.

Recent amendments to the Local Councils Act, meant to strengthen the accountability of these Councils, at the same time radically reform the status and functions of the Executive Secretary in a Local Council who has now become a public officer and is no longer to be considered as an employee of the Council that he serves. By virtue of these amendments the Executive Secretary has now assumed even more the role of watchdog on the legality of decisions taken by his Council and their implementation thus contributing towards a more correct and transparent local administration. This Office now expects that the effects of these amendments, prompted largely by a Final Opinion that it issued some time ago, will be closely monitored and that corrective measures will be taken to improve them even further, if and when found to be necessary.

In this regard it might be worthwhile for this Office, together with other key stakeholders that are involved in governance arrangements at the local level, to consider the organization of training programmes and courses for persons who are involved in local management. These activities will be meant primarily to instil among participants a strong awareness of the basic principles of good governance that underline local public accountability including reliance on procedures that permit an efficient management of public funds that will stand up to scrutiny without fail.

International relations

During 2010 the Office of the Ombudsman continued to keep track of developments in international ombudsman thinking and of contemporary issues that have engaged other ombudsman institutions. This process to a large extent involved attendance at international conference and meetings for representatives of ombudsman institutions as a means of keeping in touch with matters of interest in areas that fall under the general purview of the Ombudsman and of ensuring that the Office undertakes its core activity related to its investigative workload at the same pitch as other counterpart offices.

As in previous years during the reporting period the Office of the Ombudsman continued to attach particular importance to the Association of Mediterranean Ombudsmen (*Association des Ombudsmans de la Méditerranée* – AOM) as a vehicle for the promotion of ombudsman values and respect for human rights in the Mediterranean region. Equally important were the Office's links with the Public Sector Ombudsmen (PSO) of the British and Irish Ombudsman Association (BIOA) largely in view of the fact that the Maltese ombudsman institution that was based largely on the New Zealand model upon its establishment in the mid-1990s, was moulded on British standards of practice.

The Office's commitment toward the regional strengthening of common ombudsman values based on democracy, respect for human rights, justice and equity and its keen sense to promote international cooperation with other ombudsman and mediator institutions in the Mediterranean region was put to the fore during the fourth meeting of the AOM that was held in Madrid on 14-15 June 2010. During this meeting the Maltese ombudsman institution expressed its willingness to host the Association's fifth meeting in 2011 on the understanding that there would be an equitable sharing of the costs that would be incurred in the organization of this conference.

Upon acceptance of this proposal, the Office took in hand the initial preparatory work regarding the logistical and organizational aspects of the conference together with representatives of ombudsman and mediator institutions of France, Morocco and Spain that had pledged to co-sponsor the Malta event.

During a meeting that took place in Malta in November 2010 by members of the organizing committee, it was agreed that the main topic for discussion

during the conference would be the role of the Ombudsman in reinforcing good governance and democracy. Topics that were selected for the plenary sessions encompassed several issues that are directly related to the role, functions and actions of the Ombudsman in the context of different Mediterranean cultures and traditions and of a changing political, economic and social environment.

Also following acceptance of an invitation by the Ombudsman to the Public Sector Ombudsmen of the British and Irish Ombudsman Association to hold one of its meetings scheduled for 2011 in Malta, late in the year the Office of the Ombudsman commenced preliminary work on the preparations for this conference. It was at this stage that the proposal was put forward that during their visit to Malta for the PSO conference, participants would meet Members of the House of Representatives during a round table in order to discuss issues that are relevant to the relationship that should be nurtured on an ongoing basis between the ombudsman institution and the national Parliament.

Coinciding with the fifteenth anniversary of the setting up of the Maltese ombudsman institution, these two events are a fitting way to mark this milestone in the history of this Office.

II PERFORMANCE REVIEW

Statistical analysis of work done in 2010

Total caseload

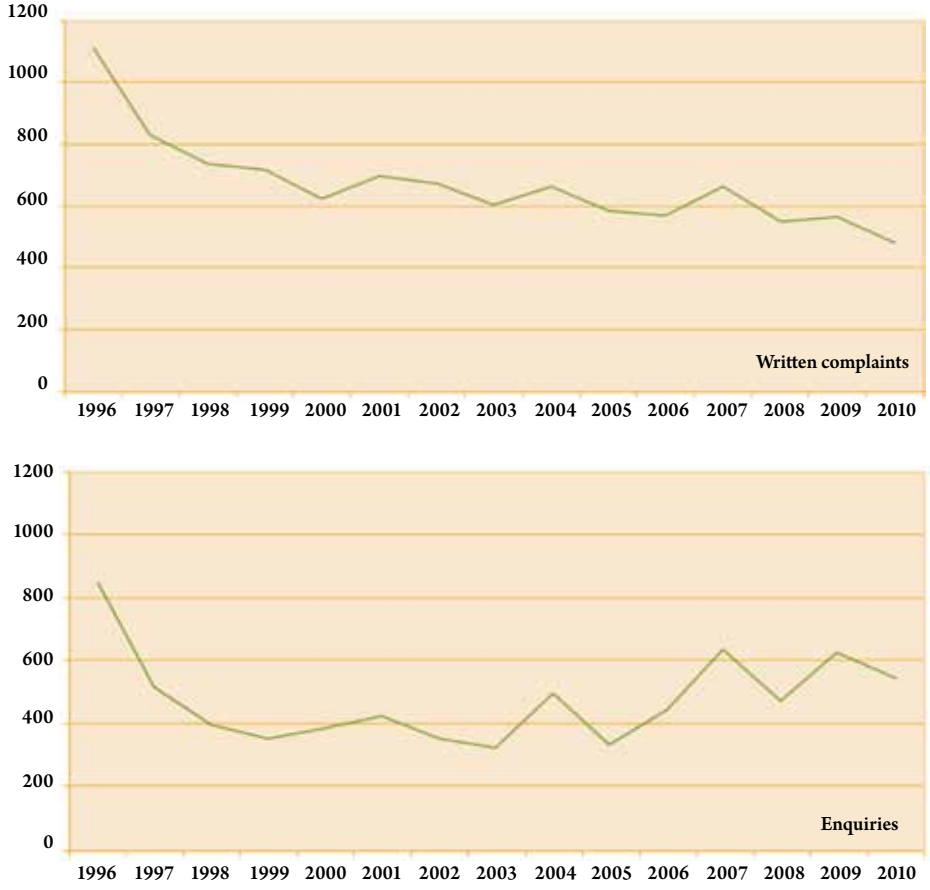
The total caseload of written complaints during 2010 (482) showed a drop of 84 (15%) compared to the previous year (566).

Table 1: Complaints and enquiries received 1996-2010

Year	Written complaints	Enquiries
1996	1112	849
1997	829	513
1998	735	396
1999	717	351
2000	624	383
2001	698	424
2002	673	352
2003	601	327
2004	660	494
2005	583	333
2006	567	443
2007	660	635
2008	551	469
2009	566	626
2010	**482**	**543**

Verbal inquiries resulting mainly from telephone calls and walk-ins by people who come to the Office in person went down as well: from 626 in 2009 to 543 in 2010, a decrease of 83 (13%).

Diagram A: Office of the Ombudsman: workload 1996-2010



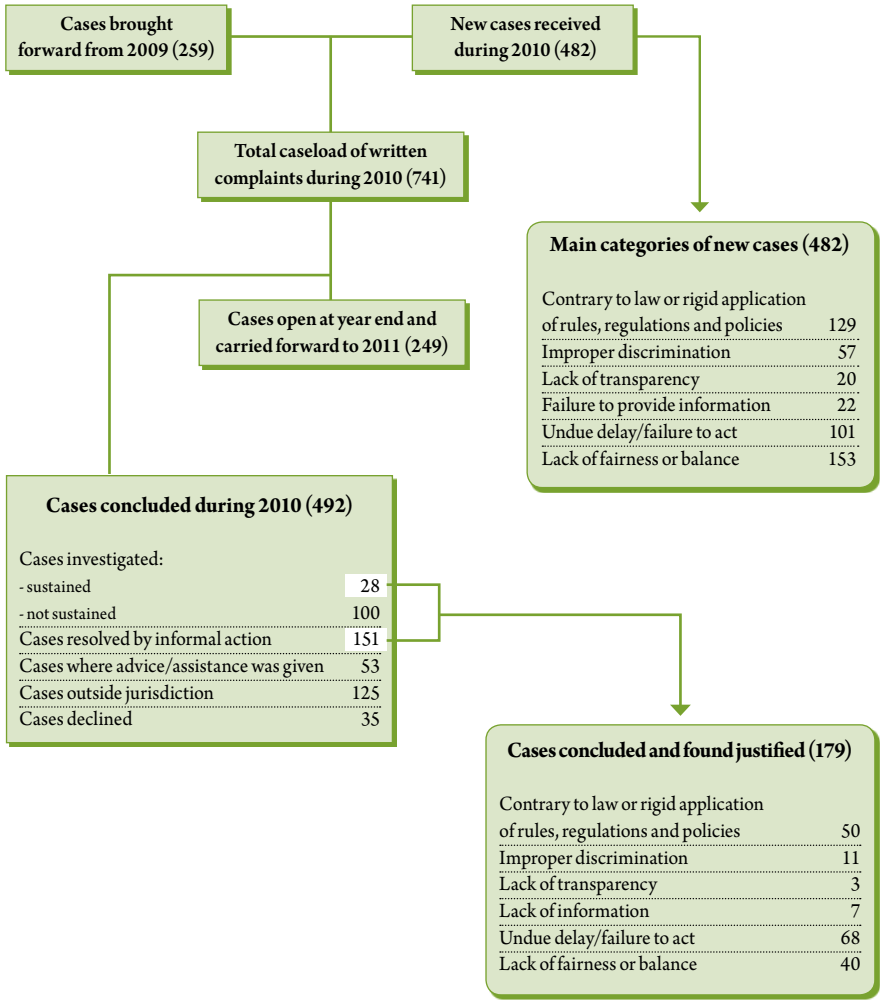
A snapshot of office case activity: the processing of incoming complaints and outcomes

Chart A provides a flowchart of activity at the Office of the Ombudsman from the beginning of 2010 to the end of the year.

When added together, cases brought forward from 2009 (259) and the new intake received during 2010 (482) brought the total caseload of written complaints to 741. When account is taken of cases that were still pending on 31 December 2010 and transferred to 2011 (249), the total number of

cases concluded during the year amounted to 492. Of these, 128 cases were substantively processed and investigated with 28 being declared substantiated while findings in respect of the 100 other complaints led the Ombudsman to consider them as unjustified.

Chart A
Overview of written complaints during 2010



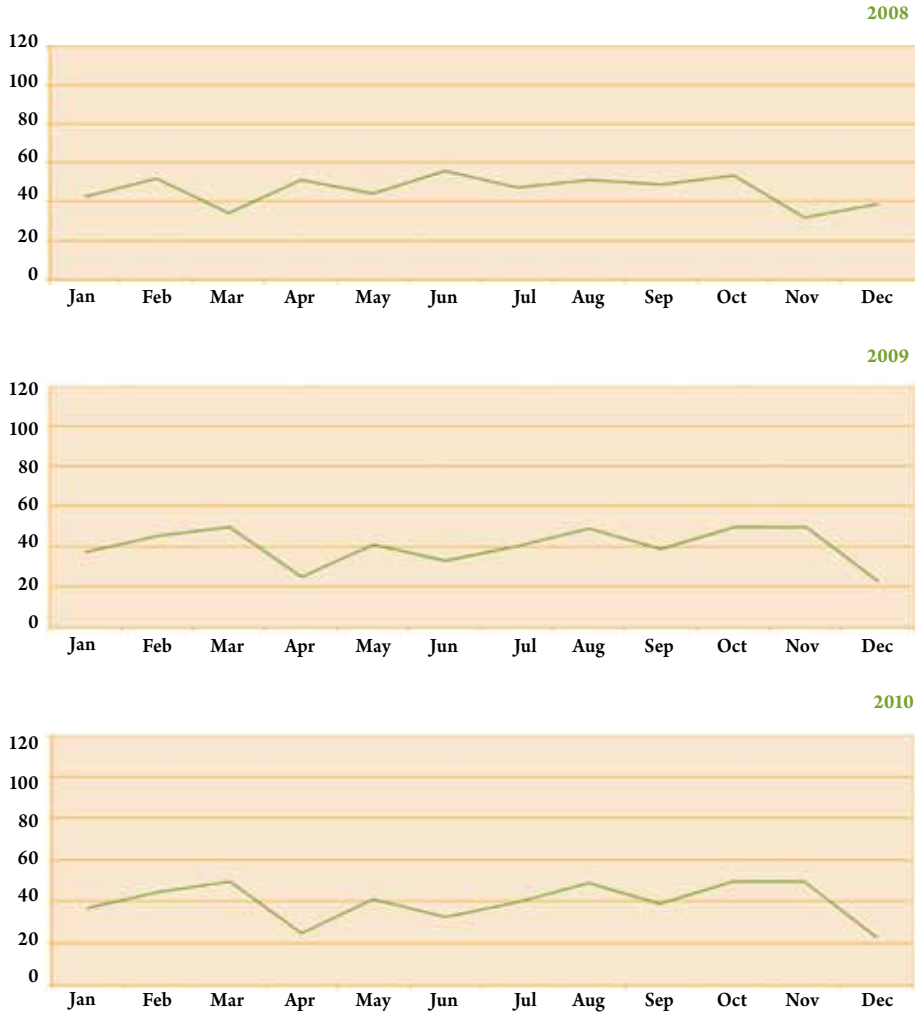
Monthly complaint intakes and closures

Table 2: Complaint statistics by month 2008-2010

	2008			2009			2010		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
Brought forward from previous year			254			246			259
January	43	38	259	55	49	252	37	26	270
February	52	51	260	74	106	220	45	32	283
March	34	53	241	35	32	223	50	85	248
April	51	40	252	49	37	235	25	29	244
May	44	31	265	62	39	258	41	51	234
June	56	27	294	39	42	255	33	26	241
July	47	43	298	38	57	236	40	37	244
August	51	114	235	42	38	240	49	46	247
September	49	41	243	38	33	245	39	43	243
October	53	48	248	52	40	257	50	35	258
November	32	32	248	42	39	260	50	47	261
December	39	41	246	40	41	259	23	35	249
Total	**551**	**559**		**566**	**553**		**482**	**492**	
Enquiries	**469**			**626**			**543**		

Whereas the total number of completed cases between January and December 2010 slipped to 492 from 553 a year earlier (down by 61 or 11%), pending cases at the end of the year under review stood at 249, virtually at the same level as in the previous year (259).

Diagram B: Monthly complaints received 2008-2010



Distribution of public service sectors and authorities subject to investigation in 2010

Possibly in view of its wide jurisdiction in the fields of maritime and land transport, civil aviation and roads as from 1 January 2010 when it commenced operations following the enactment of the Authority for Transport Act in

Table 3: Complaint numbers by type of public service sector 2008-2010

Sector	2008	2009	2010
Armed Forces of Malta	54	54	41
Agriculture	4	5	1
Air Malta	5	7	7
Corradino Correctional Facility	3	2	-
Courts	6	7	4
Customs	4	6	1
Education	38*	38	27
Elderly	2	4	3
Enemalta Corporation	19	29	6
Health	40	36	12
Housing	1	-	-
Housing Authority	16	16	20
Inland Revenue	30	12	22
Joint Office	4	12	5
Land	18	13	16
Local Councils	20	20	21
Malta Maritime Authority	2	5	-
Maltacom	2	-	-
Malta Enterprise	2	1	2
Malta Shipyards	1	1	1
Management & Personnel Office, OPM	17	7	6
Public Broadcasting Services	1	-	-
Malta Environment & Planning Authority	31	15	11
Police Force	19	16	6
Public Service Commission	11	16	8
Roads	11	-	-
Social Security	27	25	27
Tourism	1	2	2
Transport Malta**	26	52	45
Treasury	7	2	2
University of Malta	8	2	2
VAT	1	4	9
Water Services Corporation	13	25	29
Works	1	-	-
Others	106	132	146
Total	**551**	**566**	**482**

* Adjusted.

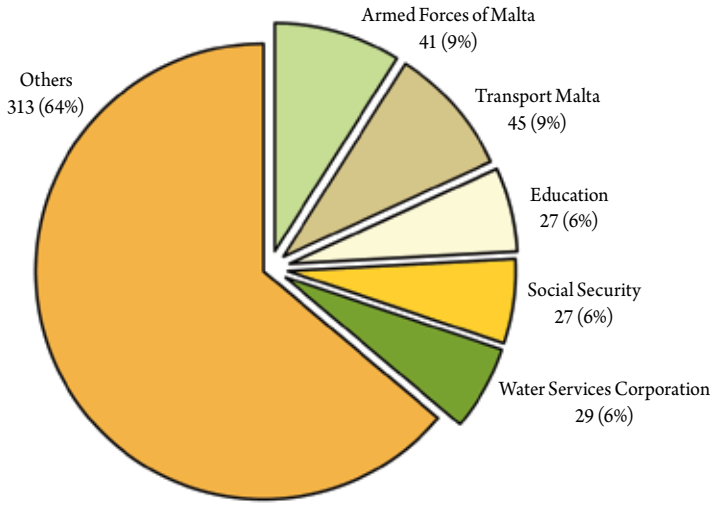
** Transport Malta commenced operations on 1 January 2010 instead of Malta Transport Authority and took over responsibilities for maritime and land transport, aviation and roads.

Malta (Act XV) of 2009, Transport Malta topped the list of public authorities and bodies that were subject to the Ombudsman's investigation in 2010 with 45 complaints (9% of the total intake).

The Armed Forces of Malta was another main institution that came under the Ombudsman's scrutiny with 41 complaints (9%) compared to 54 (10%) in 2009 while other leading areas of scrutiny were education, social security and water service provision.

In this regard it should also be pointed out that during the year under review there were 17 complaints in the field of environment and planning that were received in the first place by the Parliamentary Ombudsman but that were transferred straightaway without any further consideration to the Mepa Audit Officer for any action that he deemed appropriate. This amount is not included in the number of complaints that appears in Table 3 under the Malta Environment and Planning Authority.

Diagram C: Shares of complaints received 2010

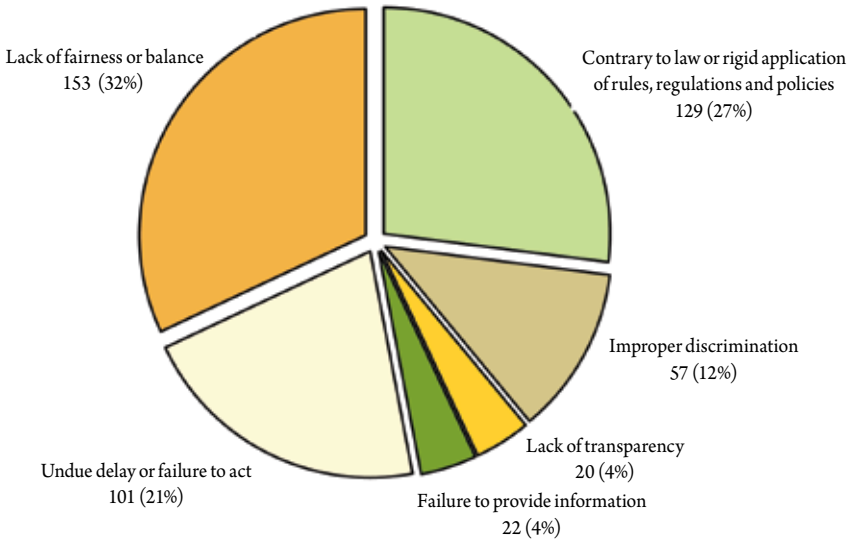


Reasons why complaints were lodged with the Office of the Ombudsman

Table 4: Complaint grounds 2008-2010

Grounds of complaints	2008		2009		2010	
Contrary to law or rigid application of rules, regulations and policies	89	16%	123	22%	129	27%
Improper discrimination	94	17%	96	17%	57	12%
Lack of transparency	33	6%	23	4%	20	4%
Failure to provide information	29	5%	23	4%	22	4%
Undue delay or failure to act	95	17%	123	22%	101	21%
Lack of fairness or balance	211	39%	178	31%	153	32%
Total	**551**	**100%**	**566**	**100%**	**482**	**100%**

Diagram D: Categories of complaints received (by type of alleged failure) 2010



The new complaints that the Ombudsman dealt with during 2010 were again to a large extent attributable to acts and decisions by public bodies and authorities that were unfair or unbalanced (153 or 32%) or that were considered to violate the law or based on a rigid application of rules, regulations and policies (129 or 27%). Several other cases arose as a result of undue delays or failure to take appropriate action (101 or 21%).

Distribution of incoming complaints by ministerial portfolio 2010

*Table 5: Complaints received (classified by ministry) 2010**

Ministry	2010
Office of the Prime Minister	109
Ministry of Finance, the Economy and Investment	133
Ministry for Justice and Home Affairs	23
Ministry of Education, Culture, Youth and Sport	3
Ministry of Education, Employment and the Family	83
Ministry for Resources and Rural Affairs	22
Ministry for Gozo	4
Ministry for Health, the Elderly and Community Care	15
Ministry for Social Policy	8
Ministry for Infrastructure, Transport and Communications	64
Ministry of Foreign Affairs	7
Outside jurisdiction	11
Total	**482**

* *This classification reflects changes in portfolios that took place in February 2010.*

Distribution of incoming complaints by locality 2008-2010

Table 6: Complaints by locality 2008-2010

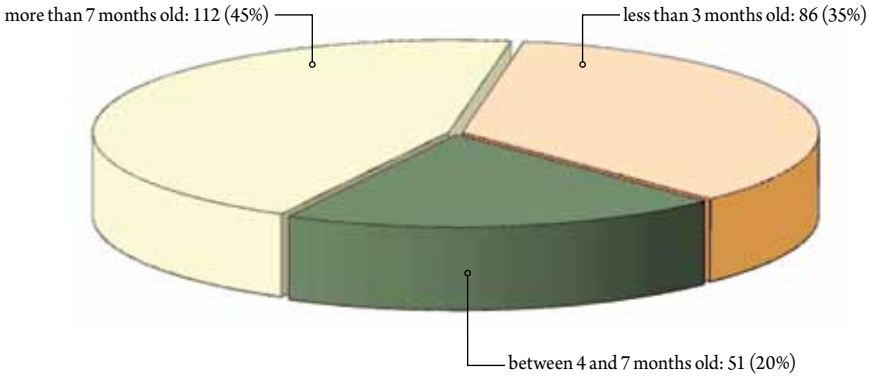
Locality	2008	2009	2010
Attard	24	18	28
Balzan	8	5	4
Birgu	3	2	1
Birkirkara	31	33	26
Birżebbuġa	15	12	17
Bormla	6	3	6
Dingli	1	6	2
Fgura	13	20	9
Floriana	1	1	3
Għargħur	1	1	5
Għaxaq	6	7	5
Gudja	5	3	2
Gżira	5	6	9
Ħamrun	6	14	9
Iklin	6	5	2
Isla	2	1	1
Kalkara	2	2	3
Kirkop	3	2	1
Lija	10	-	5
Luqa	5	6	3
Marsa	4	4	6
Marsaskala	20	18	15
Marsaxlokk	2	4	5
Mellieħa	9	11	8
Mġarr	3	2	3
Mosta	37	22	23
Mqabba	-	7	3
Msida	13	11	4
Mtarfa	2	4	-
Naxxar	15	16	16
Paola	8	14	9
Pembroke	4	7	5
Pietà	7	4	1
Qormi	21	20	10
Qrendi	4	6	2
Rabat	15	11	8
Safi	4	1	1
San Ġiljan	10	10	7
San Ġwann	15	12	12
San Pawl il-Baħar	24	21	19
Santa Luċija	4	3	2
Santa Venera	8	10	8
Siġġiewi	12	6	15
Sliema	22	23	19
Swieqi	15	15	8
Ta' Xbiex	3	2	-
Tarxien	8	15	14
Valletta	10	15	15
Xemxija	-	1	-
Xgħajra	1	3	-
Żabbar	16	20	16
Żebbuġ	13	10	10
Żejtun	12	7	15
Żurrieq	10	14	9
Gozo	39	44	39
Other	1	10	7
Overseas	7	16	7
Total	**551**	**566**	**482**

Number of files open at year-end

Table 7: Age profile of open caseload at end 2010

Age	Cases in hand
Less than 2 months	47
Between 2 to 3 months	39
Between 4 to 5 months	34
Between 6 to 7 months	17
Between 8 to 9 months	21
Over 9 months	91
Total open files	**249**

Diagram E: Percentage shares of open complaints by age (at end 2010)



The number of files still pending on the Ombudsman's agenda on 31 December 2010 were 249, of which 129 (52%) were open for more than five months. Given that responses from complainants and the relevant public authorities are generally submitted to the Ombudsman and his team of investigating officers in due time, this age distribution of open files seems to confirm the view that issues that are being presented to the Ombudsman for his scrutiny are becoming increasingly complex and necessitate a deeper investigative focus which in turn entail a longer average case processing time.

Completed cases: outcomes and results

During the period under review there were in all 160 cases (32.5%) that were not investigated and that were rejected by the Ombudsman since they concerned issues that fell outside his mandate or were lodged too late or were considered frivolous and files were closed soon after intake. At the same time the Ombudsman's mediatory role was brought to the fore in 151 cases (31%) that were resolved in an informal manner while advice or assistance rendered to complainants in 53 complaints (11%) brought these cases to a satisfactory conclusion.

Cases that were considered to warrant a formal investigation and whose files were closed once the Ombudsman's investigation was completed during 2010 stood at 128 (26%): of these, 28 (6%) were substantiated while 100 (20%) were not substantiated.

Diagram F: Outcome of finalised complaints 2008-2010

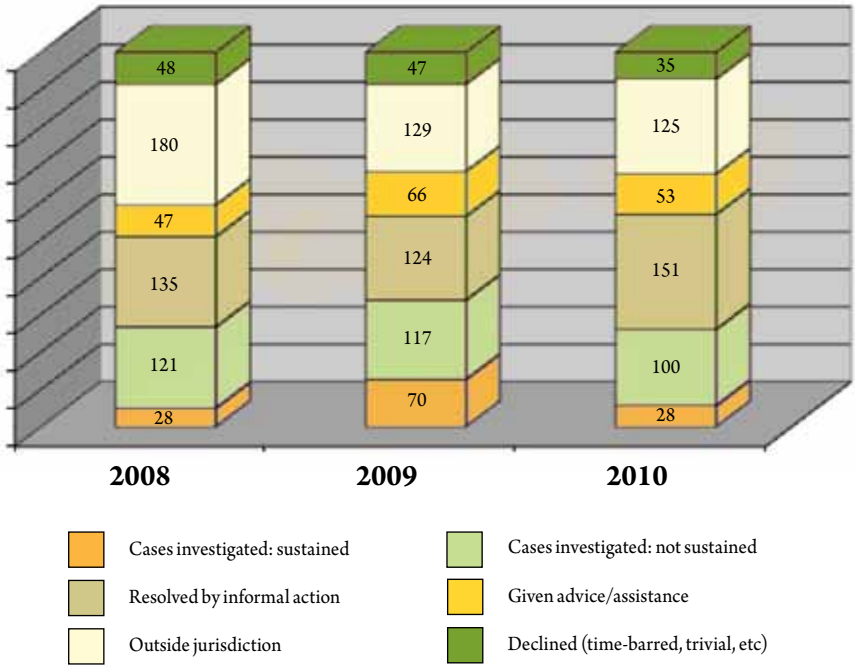


Table 8: Outcomes of finalised complaints 2008-2010

Outcomes	2008	2009	2010
Cases investigated *of which:* sustained not sustained	149 [28] [121]	187 [70] [117]	128 [28] [100]
Resolved by informal action	135	124	151
Given advice/assistance	47	66	53
Outside jurisdiction	180	129	125
Declined (time-barred, trivial, etc)	48	47	35
Total	**559**	**553**	**492**

Findings in sustained complaints

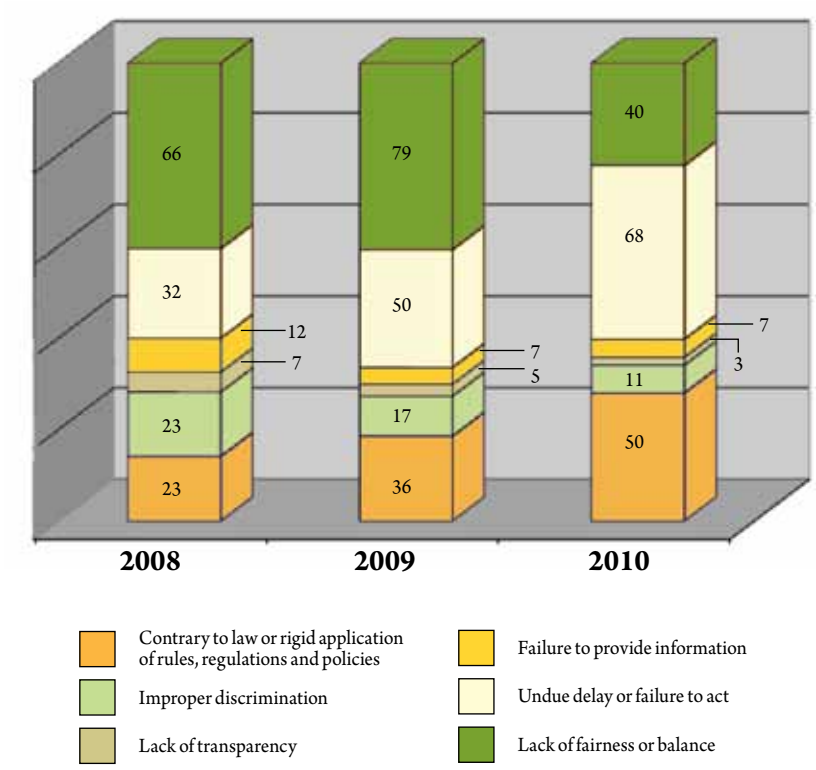
Complaints that were found justified by the Ombudsman during the period under review consisted of cases that were investigated to conclusion with a satisfactory outcome for the respondent (28) and those that were resolved by informal action (151) without the need to undergo a full-scale investigation.

The main reasons for acceptance by the Ombudsman of complainants' stand were undue delay or failure to act by the state authorities in 68 cases (38%); actions and decisions by public officials that were contrary to law or that were based on an inflexible interpretation and application of rules, regulations and procedures in 50 complaints (28%); and a proven lack of fairness or balance in 40 instances (22%).

Table 9: Type of maladministration in justified complaints 2008-2010

Closing status	2008		2009		2010	
Contrary to law or rigid application of rules, regulations and policies	23	14%	36	19%	50	28%
Improper discrimination	23	14%	17	9%	11	6%
Lack of transparency	7	4%	5	2%	3	2%
Failure to provide information	12	7%	7	3%	7	4%
Undue delay or failure to act	32	20%	50	26%	68	38%
Lack of fairness or balance	66	41%	79	41%	40	22%
Total	**163**	**100%**	**194**	**100%**	**179**	**100%**

Diagram G: Cases concluded and found justified



III CASE STUDIES

Parliamentary Ombudsman

An apparent storm in a teacup with hidden implications on mantras such as "*management prerogative*" and "*the exigencies of the service*"

In a complaint with the Ombudsman an employee alleged that the Chief Executive Officer of the Management Efficiency Unit (MEU) acted in an abusive manner when he instructed him to vacate his room and to move instead to a shared office so as to make way for a new Managing Consultant. Since he claimed there was unutilized space in the MEU premises that could have been used for this purpose, complainant asked the Chief Executive Officer (CEO) to justify his decision but he remained without a proper explanation. He also accused the CEO of failing to address his request in good time in order to find a solution.

After working at the MEU for around twelve years, complainant was engaged as Consultant with the Unit on a definite three-year contract in September 2006, a position that he retained when his contract expired and there were two years left for him to reach retirement age. In 2009 he was assigned an office where he could work on his own when its previous occupant left the organization.

In April 2010, a full three months before a new Managing Consultant was due to be take up his post in the Unit, the CEO of the organization instructed complainant to leave his room and join his colleagues in a shared office. Feeling annoyed by the proposed new arrangements, complainant asked to speak to him but when this meeting eventually took place, his principal insisted that his instructions were to stand because of the exigencies of the service. The CEO also insisted that he was free to organize office space in the Unit on his terms not only because complainant's contract of service did

not include any condition that he had to be assigned his own office but also because the allocation of office space is a prerogative of management.

When the Ombudsman asked the MEU to comment on this version of events given by complainant, the CEO merely submitted a copy of his employment contract and gave the same explanations that he gave earlier to complainant. He added that even though the organization was not obliged to give any reasons for its actions, the rationale behind this decision had already been given to complainant who apparently remained unimpressed by these explanations.

While explaining that his Office recognizes that certain decisions fall within the ambit of management prerogative, at the same time the Ombudsman pointed out that management is expected, in terms of good administration that any public organization is bound to respect, to exercise this prerogative fairly and reasonably. It is therefore unacceptable to refer to "*management prerogative*" and to "*the exigencies of the service*" and to appear to hide behind or to use these mantras as a standard and vague excuse for actions by management that give rise to discontent among employees. The exigencies of the service must be real, valid and genuine and cannot be used merely to hide the true motives behind decisions that might at best be debateable and not go down well with the employees concerned.

In turn the CEO gave other reasons that led him to refer to the exercise of his prerogative. While admitting that in the past complainant shared an office with his peers in the Unit's consultancy stream and that for almost a year he was allowed to work in an office on his own, he added that that besides himself, only Managing Consultants are allowed an office for their own sole use although even this practice is subject to the overall exigencies of the Unit. The CEO went on to point out that although the impending appointment of a new Managing Consultant was communicated to complainant three months in advance to give him enough time to vacate his office, he still failed to obey these instructions.

The Ombudsman found that six days before the CEO submitted his first comments to his Office on this complaint, the head of the agency informed complainant that in order to meet the exigencies of the Unit his office had been evicted and his new desk was located in room number 32. The CEO recalled that matters came to a head this way because despite instructions issued sufficiently in advance to vacate his office, complainant failed to do so.

In his reply complainant objected to this action and expressed his concern that matters had been allowed to simmer until they finally reached this stage.

To the Ombudsman the core issue in this case centred on whether the instructions by the CEO to complainant to vacate his office amounted to a legitimate order and whether the issue of these instructions could be considered as an act of maladministration.

In the first place the Ombudsman observed that in practical administrative terms for any instructions to amount to a legitimate order the officer issuing these instructions must be mandated, in terms of the office that he holds, to issue such instructions and there must at least be *prima facie* administrative grounds for his action. In the absence of any such grounds that would justify the order, any such instructions could amount to abuse of power. The Ombudsman commented that there is also a need, in terms of good administration, to explain the reasons behind any such order, if asked to do so.

The Ombudsman went on to state that there was no doubt that the instructions issued to complainant were fully within the mandate and the prerogative of the head of the Management Efficiency Unit. Complainant was not entitled to his own office in terms of his contract conditions; none of his fellow colleagues in the grade of Consultant had such an office but made use of a shared room; and, perhaps more importantly, a new Managing Consultant – whose grade was higher than complainant's and was entitled to occupy an individual office – was being recruited. Taken together, these circumstances led the CEO to allocate complainant's room to this new employee and to ask complainant to share an office with other colleagues as he did before.

The Ombudsman commented, however, that taken on their own these facts do not constitute adequate grounds on which to conclude that the CEO's instructions did not amount to a legitimate order. Whereas on his part the CEO proclaimed that he was exercising his prerogative in respect of the allocation of office space to employees – a prerogative that the Ombudsman upheld – he went on to plead that in the exercise of this prerogative he was not obliged to give reasons to complainant. The Ombudsman remarked, however, that the exercise of a prerogative by any person in authority must in all instances and in terms of good administration be fair and reasonable. Similarly, the exigencies of the service must be real, valid and just and not an excuse for high-handed action.

The Ombudsman also observed that although the CEO believed that the exigencies of the service justified his decision, at the same time he found no difficulty to explain to complainant the reasons that led him to issue the instructions that he had taken so badly. For reasons of his own complainant did not seem to relish the idea of having to move from an office that he was allowed to occupy by himself for the last year. Not only was he a few months away from retirement but he was also upset at the thought of having to make arrangements for the removal of his files, office furniture, documents and papers to another room. Furthermore, being aware that there were vacant rooms at the Unit where the new Managing Consultant could be accommodated without any disruption to other employees, he sought to meet the CEO to convince him to adopt this solution.

Pleading other urgent commitments, the CEO took his time before holding this meeting but when it eventually took place, he continued to insist on the prerogative of management and on the exigencies of the service and that complainant's employment contract made no mention that he had to be assigned a single office. In the meantime even as the days went by, complainant refused to vacate his room and sought refuge in the Ombudsman.

When viewing all these events in their chronological order the Ombudsman found that soon after receiving the complaint, his Office – in line with its procedures for complaint handling – sent a copy of this grievance to the CEO of the Unit and asked for his comments. Records showed that the CEO took more than six weeks to reply even though he seemed to regard the issue merely as a storm in a teacup. The Ombudsman felt this delay was further aggravated by the fact that the CEO only sent his reply after complainant had already been evicted from his office while he was away on leave.

The Ombudsman pointed out that although *prima facie* the timing of complainant's eviction from his office seemed justified on the grounds that despite sufficient advance notice he had not vacated his room by the time the new Managing Consultant was due to commence his assignment, complainant's attitude was to some extent understandable. He had already in the meantime referred his concerns to the Ombudsman who was waiting for the CEO's comments on the matter, a reaction that was long overdue.

The Ombudsman declared that if the CEO of the Unit needed urgently to find suitable space for the new Managing Consultant while at the same time aware

that his ruling to complainant to move out of his room was under scrutiny by the Ombudsman, the least that he could have done was to reply promptly to the Ombudsman's request for information and ask for an urgent resolution of the matter. The CEO, however, failed to do so and delayed his reply while in the meantime he went on with a decision that could rightly be considered as controversial and that was labelled as improper by complainant.

The Ombudsman unhesitatingly declared that in his view this action by the CEO could not but give the impression of lack of respect for his Office and his authority regardless of the plea that no such offence was ever intended. This attitude by the CEO was unacceptable and merited criticism from his Office. Nonetheless, despite this criticism, this was not considered as a proper reason to invalidate his action.

The Ombudsman noted that complainant did not claim any entitlement to an office that would be assigned for his own exclusive use or challenge management's prerogative. He merely contended that there was an administrative failure by the agency's CEO who ignored the human element in this case and took administrative action to evict him out of his office. He had expressed concern at this lack of respect towards him after his long years of service at the Unit as well as the lack of consideration for his impending retirement. He also felt aggrieved at the CEO's failure to find a compromise solution since he believed that alternative unutilized space in the MEU building could be put to better use to solve the problem and made it clear that he was hurt by the way in which the eviction was carried out while he was on leave.

Upon probing further these claims regarding vacant office space the Ombudsman found that a room that was indicated by complainant was allocated to a new Project Manager who was considered to merit an office on his own by virtue of the confidential aspect of his assignment. At the same time the status of the new Managing Consultant entitled him to a single office space.

The Ombudsman commented that his Office does not interfere with management prerogatives and admitted that while it is the management of the Unit that knows best its priorities, he should not intervene in such matters. Undoubtedly it is the duty of management to ensure the best allocation and use of available resources including office space unless there exists inconfutable evidence that such action was based on ulterior motives; and in this instance

there was no evidence whatsoever to this effect. The Ombudsman stated that he could not in any way fault the CEO's reasoning behind these decisions since it is management that should act in the best interest of the Unit.

With regard to the issue whether the proposed new arrangements for the allocation of office space in the MEU premises could have waited for a few months until complainant's retirement, the Ombudsman stated that this was not for him to decide.

Having examined the merits of the case the Ombudsman agreed that there were no valid grounds to sustain the allegation of abusive action by the CEO when he instructed complainant to vacate his room and make way for the new Managing Consultant. This was a perfectly legitimate order that fell within the mandate and the responsibility of the CEO who gave sound arguments to back this decision. The CEO had also clarified in a convincing manner why he was unable to reach the compromise solution that complainant hankered for.

For the Ombudsman these were purely and simply administrative decisions that pertain exclusively to management which is in the best position to know the priorities of the Unit; and since he has no mandate to get involved in such decisions in the absence of inconfutable evidence of any maladministration or ulterior motives – and there was absolutely no such evidence in this case – he felt that his involvement was unwarranted.

The Ombudsman, however, took this opportunity to add a critical note on the CEO's action to evict complainant from his office and, more importantly, while the decision that gave rise to the grievance was under the Ombudsman's scrutiny. In his opinion even if the eviction of complainant's office was urgent because he failed to vacate his room and time was of the essence, prudence and respect for a constitutional authority such as the Office of the Ombudsman would still dictate that the CEO ought to have responded swiftly to the Ombudsman's request for information on the complaint raised by his employee. It was not at all acceptable for the CEO to delay his answer unduly while he went ahead with his decision regardless of the Ombudsman's intervention that he was fully aware of.

Despite this parting comment the Ombudsman made it perfectly clear that this critical observation on the CEO's action did not in any way affect the validity of his instructions that were not considered to have constituted maladministration.

The woes of a first time applicant for the extension of the electricity supply to a remote area

A property owner expressed his reservations to the Ombudsman about the policy by Enemalta Corporation on the supply of electricity to an area that is at a considerable distance from the nearest electricity supply line. Complainant considered as manifestly unjust the policy that it is the first time applicant who has to pay all the costs that are necessary to bring the electricity supply to such an area without any refund of his expenses from other consumers.

Complainant explained that when a building is located more than 150 metres from the existing power grid, Enemalta Corporation refuses to supply the electricity service unless the consumer who first applies for this service agrees to meet the full cost of the works and installations that are necessary. To add insult to injury, once this infrastructure is in place the Corporation allows subsequent consumers who apply for an electricity service in the area to take advantage of these installations and connects them to the national grid without requiring them to refund their share of these expenses to the first time applicant.

Contesting Enemalta's demand for payment of €40,000 on the basis of this policy, complainant urged that consumers who benefit from expenses incurred by a first applicant should contribute proportionately to these costs and that the Corporation should not discriminate between a first time applicant and other consumers who apply next for the electricity service. He pleaded that all applicants should contribute towards their share of these costs and the Corporation should not expect the first applicant to shoulder the full burden on his own.

Complainant told the Ombudsman he understood that in similar instances the Water Services Corporation (WSC) refuses to provide a connection to the public water system unless all other consumers would meet their share of the costs paid by the first applicant. He also understood that the WSC refunds any such payments by these consumers to the first applicant and urged that Enemalta Corporation too should follow this policy.

Complainant explained that as a result of this policy, owners and residents in remote areas are perhaps understandably reluctant to be the first to apply for an extension of the electricity service since they would be hesitant to let

their neighbours take advantage of this unfair practice by Enemalta. Once the Corporation enjoys a monopoly for the supply of electricity to the whole country, complainant believed that it is reasonable to expect its infrastructure not be configured in a way whereby certain consumers are able to connect to the national electricity grid at a reasonable charge while others have to face hefty charges.

Complainant argued that if first time applicants continue to meet all the costs for infrastructural works, equipment and installations that are necessary to bring the electricity service to a residence in a faraway area and the Corporation is free to use this infrastructure to supply electricity to other consumers, first time applicants would in this way be partly financing Enemalta's development.

The Malta Resources Authority (MRA) is entrusted by law with the regulation of practices, operations and activity in the energy, water and mineral sectors. As a regulator the Authority ensures the correct application of Enemalta's policies and is empowered to provide remedy in instances where the application of rules and regulations is found to have prejudiced consumers' rights and interests. However, when complainant addressed his concerns in the first place to the Authority but received no reply, the Ombudsman intervened on his behalf.

The Ombudsman's investigation kicked off by a meeting between Enemalta Corporation and complainant that was brokered by his Office. Complainant insisted that Enemalta should ensure that any connection by consumers to facilities and installations for the provision of electrical service that a first time applicant would have met out of his own pocket would be conditional upon payment by these consumers of a proportionate share of these costs and a refund of these payments to this applicant. Although he argued that in the absence of these arrangements the Corporation's position is contrary to the general principles of law and grounded on unjustified enrichment and maladministration, Enemalta insisted that its position was based on the Electricity Supply Regulations (ESR) that regulate the supply of electricity to consumers. The Corporation also revealed that at that time the issue was under discussion with the Malta Resources Authority.

Soon after this meeting the MRA informed the Ombudsman that in its view the best way forward in similar instances would be to amend the Electricity Supply Regulations. Detailed proposals on these lines that were generally

favourable to complainant's viewpoint had been formulated and submitted to the Ministry for Investment, Industry and Information Technology, the Ministry for Resources and Infrastructure and Enemalta Corporation and efforts to resolve this impasse were at an advanced stage.

This was confirmed a few weeks later when both ministries informed the Ombudsman that consideration was being given to a change in the existing legislation and that studies were in hand to examine the financial implications of various alternative scenarios. Ultimately, however, this was a matter where a Cabinet decision would be required.

Despite the Ombudsman's efforts to reconcile complainant's predicament with the need to update the relevant provisions in the Electricity Supply Regulations, matters came to a head a few months later when Enemalta admitted that it was not in a position to propose any changes to these Regulations to address this situation although it would abide by any decision by the MRA on the issue. At this stage the Ombudsman felt that it was opportune to present a Preliminary Opinion.

Recalling complainant's stand that Enemalta's policy on first time applications for the extension of the electricity supply to remote areas amounts to abuse of power, the Ombudsman referred to regulation 14.1(d) of the Electricity Supply Regulations.[1] This regulation leaves no room for doubt regarding the requirement that it is the first applicant who should bear the brunt of expenses incurred on any such extension since if the legislator intended to grant this applicant some form of title over the infrastructure that he would finance or any right to compensation, the regulation would have been worded differently.

The Ombudsman interpreted the legislator's silence on this matter as intending that the first applicant has no right to a refund or to any other form of compensation. This meant that even if Enemalta Corporation were to decide to finance an extension beyond the 150-metre limit, it might be acting contrary to the ESR. On the other hand, any attempt by Enemalta to demand compensation from subsequent users, if challenged in court, may be found to lack the necessary legal basis.

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1 Regulation 14.1(d) of the Electricity Supply Regulations stipulates that *"where the route length is beyond 150 metres from the nearest suitable low voltage source of supply the applicant will have to pay for the full amount of the extension less the connection fees …"*

On these grounds the Ombudsman felt that Enemalta Corporation does not act abusively when it asks first time applicants to meet the whole outlay incurred on the extension of electricity service to a location that is further than the statutory limit from the nearest low voltage source of supply. Once the ESR allow no room for manoeuvre, in this situation Enemalta has no legal alternative but to demand payment from the first applicant and the Ombudsman concluded that it does not act unfairly by doing so.

The Ombudsman observed, however, that given Malta's size and the extent of the national electricity grid, it is rare for the property of a first time applicant to be as far away from the nearest low voltage source as in this case and for the Corporation to demand such a hefty payment from first time applicants. Even so the fact remained that the payment requested by Enemalta from complainant was unfair and a remedy was warranted since even though this request might not technically amount to unlawful enrichment, it would certainly qualify as an unjust one. He insisted that the law and the ESR needed to be amended to ensure a just and equitable distribution of the financial burden involved in similar situations.

In his Preliminary Opinion the Ombudsman referred to indications that the two ministries involved in this issue were at that stage considering an amendment to the legislation while studies were under way to examine the financial implications of alternative scenarios. This implied that both ministries acknowledged that the situation in which complainant had been embroiled was unfair and morally, if not legally, wrong and were seeking to strike a balance between resolving this unfairness while keeping in mind the financial implications of any such amendments to the ESR.

The Ombudsman suggested that a possible solution to this problem could be an *ex gratia* agreement between Enemalta Corporation and first time applicants for a partial set-off of any such costs against future electricity bills. An alterative, and possibly more acceptable, solution would be to introduce a scheme based on burden sharing by way of an amendment to the Electricity Supply Regulations.

The Ombudsman considered as evasive the reaction to his Preliminary Opinion by the Ministry for Infrastructure, Transport and Communication (as the Ministry was known by then) that "*the relative charge is regulated at law following the approval of the regulatory authority which is the Malta Resources*

Authority". This case concerned a citizen who claimed to be a victim of administrative injustice as a result of manifestly unfair regulations and who was left without redress to his grievance for more than three years – and this reply was neither here nor there.

In his Final Opinion on this case the Ombudsman declared that his Office is in duty bound to respect authorities entrusted with a particular sphere of public administration and not to impinge unduly in the exercise of their functions so long as their procedures and processes are fair and the powers that are exercised fall within their jurisdiction. At the same time his Office is mandated to investigate the workings of these authorities when they fail to observe the rules of due process; their decisions are manifestly unfounded or unjust; or where there is undue and unjustified delay.

The Ombudsman pointed out that in this instance there was evidence that the MRA took cognizance of the complaint that was by and large justified and had presented its submissions to the authorities on the way that the perceived injustice could be resolved, or at least remedied, although the authorities had not acted upon this report. In view of these circumstances the Ombudsman could not therefore rule that the MRA failed to exercise its functions since although the relative charge is regulated at law following approval by the MRA, the ultimate solution rests with a policy decision at Cabinet level that is not itself subject to the Ombudsman's scrutiny.

Taking these factors into account the Ombudsman admitted that he could not possibly find Enemalta Corporation responsible of maladministration when it insists that it has to observe the Electricity Supply Regulations. The law is legally binding and its binding force cannot be disputed while the Corporation is not empowered to bypass these Regulations.

The Ombudsman also stated that, contrary to complainant's claim, the Water Services Corporation adopts the same policy as Enemalta in similar cases. A first time applicant is required to meet all the costs to link a new residence or property to the water supply system and receives no refund while it was also incorrect to state that the WSC refuses to connect any subsequent consumers to the water supply system unless these consumers meet their share of the costs paid by the first applicant. This led the Ombudsman to comment that in this case there was therefore no issue of discrimination or of lack of uniformity in the application of rules.

The Ombudsman then passed on to determine whether the decision by Enemalta that gave rise to the complaint was based on any law or regulation that could be considered unreasonable, unjust, oppressive or improperly discriminatory under subsection 22(1)(b) of the Ombudsman Act, 1995. While accepting that public authorities do well to ensure that public funds are spent properly and in the national interest, the fact that the public administration has the right and the duty to ensure adequate recovery of expenses incurred for the provision of services to consumers is equally uncontested.

The Ombudsman observed that it is legitimate for the public administration to provide for a different scale of payment for the provision of new services applicable to different circumstances; and on this basis complainant could not rightfully expect to pay the same amount as persons whose property is only a short distance away from a suitable low voltage source of supply or even to enjoy the same terms and conditions as these consumers. The existing regulations whereby a customer has to pay all the expenses that are necessary for a first installation that is more than 150 metres away from the nearest source of supply are not unjust and can be justified from an administrative viewpoint.

What is, however, not justifiable is that a first time applicant is not compensated by consumers who subsequently make use of the supply service brought to the locality at his expense. In such a situation consumers who make use of this connection and indeed, even Enemalta Corporation, could be considered as enriching themselves unjustly, if not unlawfully, at the expense of a first applicant.

On the other hand the Ombudsman appreciated that the Electricity Supply Regulations have to ensure that all extensions within the electricity grid have to become and to remain the property of the authority that supplies the service, irrespective of who pays for these installations. These arrangements are necessary to guarantee a constant and uninterrupted supply to consumers under the exclusive control of Enemalta Corporation.

The Ombudsman clarified that as a rule Enemalta installs and pays for extension services within an accepted distance and later charges consumers an established rate to connect to the service that it provides. It is only in exceptional cases that the ESR expect consumers to pay for an extension of the

service that leads to their property or residence. It is even more exceptionally that the law provides that the Corporation automatically becomes the owner of installations that are paid by a consumer. Nonetheless, the Ombudsman admitted that the regulations that cover this situation are manifestly unjust insofar as they do not provide for a fair apportionment of costs needed to provide such service between all consumers but put the onus on the first applicant. In such a situation the Ombudsman had no difficulty to declare that in this respect the Electricity Supply Regulations are unreasonable, unjust, oppressive and improperly discriminatory.

The Ombudsman observed that although in truth there seemed to be agreement on this interpretation of the ESR as evidenced by the declarations of the MRA and the attempt by the authorities to find an equitable solution, a final solution was still pending despite the passage of years since this complaint first saw light. The Ombudsman declared that a manifestly unjust situation should not be allowed to fester. Appropriate remedies should be found forthwith and public authorities should adequately safeguard the rights of citizens at all times.

The Ombudsman stated that it is not up to his Office to suggest technical solutions. Without any safeguard that in similar situations applicants will not be able to take advantage from a first time applicant, it could well happen that other persons living in the neighbourhood would simply await the first applicant to shoulder the full cost for an extension of the electricity system so as to get the service virtually for free or next to nothing at his expense. The Ombudsman considered this situation as manifestly unjust that needed to be remedied at an early opportunity.

Taking everything into account the Ombudsman concluded that the complaint was justified and recommended that steps be taken to amend the ESR. This would enable complainant as well as others in his situation to recover costs incurred to bring the electricity supply to their locality and ensure that consumers who apply at a subsequent stage to make use of the service brought to their reach by a first time applicant would pay their fair share of these costs.

The Ombudsman recommended that regulations should provide that consumers who benefit from an earlier application for the provision of electricity supply to their locality would be required to share in the outlay

made by a first time applicant by the payment of proportionate amounts that would reflect their share of the initial costs.

The Ombudsman understands that despite his recommendations the matter is still outstanding even though the original complaint was lodged in 2006 and his Final Opinion was issued in March 2010.

The employer who wanted to recruit a third country national at all costs

The owner of a massage parlour complained with the Ombudsman that he was aggrieved by a decision by the Employment and Training Corporation (ETC) to turn down his application for the issue of a licence for the employment of a third country national to work as a Masseuse/Interpreter in his establishment.

Complainant explained that upon filing this application, the ETC asked him to submit a profit and loss account of his business for at least one financial year but since he was unable to do so once his business had only been in operation for eight months, the Corporation rejected his application. The Corporation also linked this refusal to an employment licence that was issued to him earlier for another third country national to work as Masseuse on condition that any renewal would only be considered provided fiscal evidence was brought of a turnover at least equivalent to the salary of this employee plus 20%.

Complainant insisted that this was a new application for a different employee and the Corporation could not hide behind this excuse to refuse his application. He also claimed that this refusal was causing loss of income because he had to turn down clients as a result of shortage of staff in his establishment.

Documents that were seen by the Ombudsman showed that the third country national at the centre of this grievance turned out to be the daughter of complainant's partner. These documents also showed that complainant filed several applications in respect of this national during the previous two years for various different posts.

In his first application, as Director of A … A …. Services Limited, complainant asked for an employment licence for this third country national to work as Secretary. The application, however, was turned down because ETC records showed that complainant's company had no employees on its books while there was no shortage of secretaries in Malta. Even the Reconsideration

Board of the Corporation turned down the appeal by complainant against this decision.

A few months later complainant, this time as Director of S..... H..... Cuisine Limited, requested an employment licence for the same third country national as Hostess at a Chinese restaurant that he owned. This application was accompanied by a statement that he planned to marry the mother of this Chinese girl after the annulment of his first marriage. He added that since this national had no relatives in her home country, it would be a humanitarian act to allow the Chinese mother and her daughter to live together in Malta. Before long the Corporation issued a licence for one year for this applicant.

An inspection a few months later by the Compliance Unit of the ETC found, however, that although licensed as a restaurant, the premises were used as a gaming shop. Soon afterwards complainant decided to close this business and cancelled the licence.

Not one to be outdone complainant filed yet another application, this time as Director of C.... C..... Massage Centre, for the issue of an employment licence for the same Chinese national as Hostess in his massage parlour. The ETC rejected this application on the grounds that licences for Hostesses are not issued to massage parlours.

Refusing to give up, complainant sent another application, this time for the position of Receptionist in the same parlour to welcome guests and introduce clients to the Chinese Masseuse employed at the massage parlour and to translate documents in the Chinese language into English. Once again, the ETC turned down this application on the grounds that since no shortage of receptionists exists in Malta, the post was open only for Maltese and EU citizens. Notwithstanding a request for reconsideration in view of the dual tasks covered by this position, the Reconsideration Board confirmed this decision.

The Ombudsman noted that another application for an employment licence, this time for a Masseuse/Interpreter, sent to the ETC in January 2010 gave rise to the complaint lodged with his Office. Complainant insisted that this post was justified because of an increase in the number of clients.

The Ombudsman commenced his investigation by an examination of the vetting process undertaken by the ETC to evaluate applications for an

employment licence for third country nationals and by asking for the reasons that led to the rejection of this application. The Corporation provided all the details requested by the Ombudsman and a full list of documents that a prospective employer needs to submit in such cases including a copy of qualification certificates and accreditation, if considered relevant to the post applied for.

With regard to qualifications and accreditation the Ombudsman found that where the institution that issues a qualification is not well known, it is the responsibility of the prospective employer to obtain recognition of any such qualification from the Malta Qualifications Recognition Information Centre (MQRIC). Although possession of certificates would normally assist in the favourable consideration of an application it does not guarantee a positive outcome to an application. Another condition regarding third country nationals is that an applicant who lacks formal qualifications in the occupation appearing in the application would need to possess at least three years experience.

In similar instances the ETC would also demand evidence that the applicant tried to identify EEA/Swiss nationals including copies of adverts, efforts to use ETC matching services and the outcome of these efforts together with evidence that an advert was placed on the European Employment Service network (EURES).

The Corporation also retains the right to request any further information considered necessary to assist its officials to determine the authenticity of an application.

The ETC added that once an application includes all the relevant documentation as well as evidence of payment of the respective fee, its officials undertake enquiries on the operations of the company submitting the application and company staff lists registered with the Corporation. The application would then be considered from a labour market perspective including the situation in the country in respect of any shortage in a particular occupation or skill and the employer's history regarding recruitment and redundancy permits, business investments and contractual commitments.

The Corporation would also generally assess the skills level of the foreign national as well as the employee's relevant experience and overall suitability for the post in question.

The Ombudsman's review of ETC files concerning the application that complainant filed in January 2010 and the application for the Masseuse who was at that time already employed at the massage centre, showed no maladministration on the part of the Corporation in the processing and refusal of complainant's latest application for an employment licence. Since the law entrusts the ETC to vet and assess whether applications are *bone fide*, the Corporation is entitled not to issue an employment licence if it retains any doubt that a proposed position is not truly required or that the employee does not truly possess the skills necessary to perform the job applied for.

The Ombudsman observed that once an assessment of an application by a prospective employee for a licence to work in Malta is carried out by the ETC in accordance with standard policies and regulations, it could not be replaced by his own assessment. This is not his function.

The Ombudsman's investigation revealed that upon receiving complainant's application in January 2010 for an employment licence for the Chinese national in question, ETC officials went through this request with a fine-tooth comb since complainant had already lodged various applications in respect of the same individual over a short span of time through several companies. The Ombudsman agreed that these applications gave rise to a justified suspicion among these ETC officials that the position being applied for was not a *bona fide* position but served as a pretext for the Chinese girl to stay in Malta. These suspicions were fanned by the fact that complainant himself told the Corporation that the girl on whose behalf he applied for an employment licence was his partner's daughter and that for obvious reasons both he and his partner wished the girl to remain in Malta.

Other investigations by the ETC found that the girl did not possess the necessary qualifications and experience to work as Masseuse in Malta as laid down in the document entitled *Guidelines for Clients* issued by the Employment Licences Unit of the ETC in 2010 to guide foreign nationals wishing to work in Malta. Although she followed a Home Massage Course organized by a local institute for business studies from September 2009 to January 2010, the ETC learnt that this institute was not even registered with the Directorate for Quality and Standards in Education as required under the Education Act. This led the ETC to ask complainant to have these qualifications assessed by MQRIC but no such accreditation seems to have been obtained and passed on to the ETC.

The Ombudsman also found that the employee mentioned in the grievance not only lacked the three-year work experience that is necessary under the *Guidelines for Clients* when a formal qualification is missing but she seemed to have little or no experience at all. In fact complainant himself admitted that the girl had been attending at his shop for just five months to assist the Masseuse employed there at a time when the girl did not even have the necessary permit to do so.

The Ombudsman also considered the plea by complainant that the certificate of the girl was issued by the same institution that issued the certificate to the Chinese Masseuse who was already authorised by the ETC to work in his establishment. The Ombudsman, however, disregarded this appeal because whereas this Masseuse obtained her recognised qualifications from China in 2006, the applicant did not possess any such qualifications at all as had been revealed by enquiries made by the ETC with the Maltese Embassy in Beijing.

The Ombudsman also turned down complainant's assertion that the Corporation was bound to issue an employment licence because if his customers would not be satisfied with the level of service at his establishment, his business would suffer. An employer's judgement of what might happen to his business is not relevant in an assessment made by the ETC of whether or not to accept an application for an employment licence since in its consideration of any such request what is relevant is only the evaluation by the ETC of the extent to which any such application is in line with its *Guidelines for Clients*.

The Ombudsman referred to the fact that the licence issued early in 2010 for the employment of a Chinese Masseuse in complainant's parlour for a year was subject to the condition that any eventual request for renewal would only be considered if there was evidence of turnover at least equivalent to the salary of this employee plus twenty per cent. The Ombudsman stated that it was evident that this condition was meant to ensure that there was enough activity in his establishment that would justify any eventual request for a renewal of this licence. This condition was in line with established practice by the ETC to request the audited accounts or fiscal evidence of sufficient activity and profitability in an establishment that would warrant the renewal of the work permit for a foreign national should the employer submit any such application at a subsequent stage.

From his investigation the Ombudsman was convinced that the ETC took all necessary safeguards so that in the event of an application for an employment

licence for the engagement of another Masseuse for complainant's parlour, satisfactory evidence would need to be presented that his establishment was generating enough activity and was profitable. The Ombudsman was also convinced that complainant's application to employ the Chinese girl as Masseuse/Interpreter was turned down because she did not possess any accredited and recognized qualifications to work as a Masseuse and had insufficient experience while complainant submitted inadequate information on the level of business activity in his parlour that would sustain the presence of a second Chinese employee.

In its assessment of complainant's applications the ETC also ruled that he failed to give adequate reasons why he had not tried to fill the vacancy by an EEA/Swiss national but merely stated that it was not feasible to find a Maltese individual since this post also covered interpretation services from the Chinese language. On this issue the Ombudsman stated that since the application was only for one post that combined the work of a Masseuse and an Interpreter and not for two different positions, he acknowledged the ETC's stand that it had no alternative but to turn down the application as a whole.

The Ombudsman also pointed out that at the same time it was rather difficult to reconcile complainant's request for an Interpreter in his parlour when the *curriculum vitae* of his first Masseuse that was included in his original application for this employee stated that she could understand, speak and write English.

In view of these considerations, the Ombudsman concluded that he could not detect any act of maladministration by the ETC on the whole issue and did not uphold the complaint.

A trivial incident that gave rise to repeated calls for an apology

An employee at Heritage Malta (HM) alleged that he was embroiled by a colleague in a false report that he did not follow the proper procedures when he accompanied a group of Italian visitors to the National Museum of Archaeology in Valletta. When his efforts to get a written apology were to no avail, this employee accused Heritage Malta management of leaving him in the lurch and reported the matter to the Ombudsman.

Accompanied by twelve students and three adults, one day in August 2010 complainant entered the National Museum of Archaeology and presented

to the front office staff a group complimentary entry ticket issued earlier by the agency's Operations Manager allowing free access to the Museum by this group. The person on duty at the front office at that time, a temporary worker student who happened to be on her own, scanned this ticket to allow these visitors to enter the Museum without a paid entry ticket but then in error again registered their entry by using the front office's bar coded pass ticket normally used for non-paying visitors and VIPs and also to allow HM staff to enter or leave the building.

The student worker also recorded this entry in the logbook that is kept at the front office of the Museum to keep track of visitor movements. She wrote that complainant, with a group of foreign visitors, had used the pass to enter the Museum through the visitor turnstile but failed to mention that he had also presented the group complimentary ticket issued to him. This system to register visitors to the Museum was introduced a year earlier by Heritage Malta following a report by the Internal Audit and Investigations Division on the management of museums and historical sites including procedures to record the admission through the turnstiles of non-paying visitors.

Later on in the same day, again in accordance with established agency procedures regarding visitor entry to museums, Heritage Malta's Coordinator Operations whose duties include the coordination of front office desk staff in the four museums in Valletta, reported to the Operations Manager about complainant's visit to the National Museum of Archaeology with a group of foreign visitors. Unaware that complainant had presented at the front office his group complimentary ticket since the worker student had not included this information in her note on the logbook, he reported that in the absence of a valid ticket, complainant entered the Museum using a guide's pass although, in order to put the record straight, he pointed out that he had earlier informed the Museum's Principal Curator about this visit.

Although the Operations Manager knew that complainant was in possession of a group complimentary ticket since he issued it himself, he still raised the matter with complainant particularly in the light of a memo issued in 2009 that the passage of staff, guests and visitors through turnstiles at HM sites was only possible by means of a bar-coded ticket available at each front desk and that these entries should be recorded on a logbook at the front office desk in each site. The Operations Manager also forwarded the Coordinator's report to complainant and asked for his comments.

Upon receiving this report complainant did not take it too kindly since he felt that this was an unjust accusation and that the entry on the logbook blemished his integrity. Objecting to the report, he demanded a written apology from the Coordinator Operations.

On the same day of the incident the agency's Principal Curator sent an email to her superiors and to complainant to explain that after having investigated what had happened, she felt that the incident had arisen due to a misunderstanding. She wrote that upon arriving at the Museum complainant presented a group complimentary ticket that was scanned by the student worker manning the front desk at that time but that even after doing so, she still used the guide's pass to open the turnstile with the result that in terms of visitor numbers, the group was registered twice. Clearly this was a mistake by this junior employee since she should have scanned the pass at the turnstile.

The Principal Curator went on to point out that later during the day the Coordinator Operations, while checking the logbook to ensure that all visits to the Museum were entered correctly, saw the employee's written entry and sent an email to the Operations Manager that sparked off this controversy. The Principal Curator stated that it is normal practice to inform the Operations Manager whenever the guide's pass is used and that this is usually done by personnel manning the front desk.

Despite this explanation and to the dismay of those involved in this trivial incident, the explanation by the Principal Curator failed to defuse the situation and complainant continued to insist on an apology from the Coordinator Operations. He charged the management of Heritage Malta with seeking to defend the action of this employee and when no apology was forthcoming, asked the Ombudsman to establish whether the agency was guilt of maladministration.

The Ombudsman explained that the main issue in this case was whether the Coordinator Operations intentionally accused complainant of bad faith or otherwise acted not in line with his duty to the detriment of complainant. If this was the case, according to complainant, he deserved an unqualified apology that would clear him of any abusive action.

Following his investigation of these events the Ombudsman was of the opinion that what gave rise to this unusual case was a genuine failure by the

student worker who was otherwise described as a good and conscientious worker. Although complainant presented a group complimentary ticket issued to him earlier, however, the entry by the worker student in the logbook at the front office desk, no doubt unintentionally, gave the impression that he used a guide's pass instead of this ticket to get through the turnstile. Since she failed to mention in her entry on this logbook that he did in fact show his complimentary ticket, this led the Coordinator to understand that this group ticket had not been presented at all. Obviously, had normal procedures been followed, this incident would have been avoided easily.

Having considered what caused this incident in the first place, the Ombudsman observed that he had no valid grounds on which even to consider that there was any ulterior motive on the part of the Coordinator Operations as complainant alleged in his grievance. The Coordinator declared that he was unaware that complainant had a complimentary ticket in his possession but stated that after complainant raised his objection, the worker student confirmed that a complimentary ticket had in fact been presented and he immediately relayed this information to the Operations Manager. Taking this statement of facts into account, the Ombudsman was on the whole satisfied that the email by the Coordinator Operations to his Manager was a routine report that was submitted by the Coordinator in line with his duty.

On the basis of this evidence the Ombudsman stated that despite complainant's conviction, the allegation of ulterior motives on the part of the Coordinator was not substantiated and neither was there any indication of any maladministration that called for a written apology on his part or for any disciplinary action from his superiors. The Ombudsman also commented that the Heritage Malta management could not be faulted for taking the position that a written apology from the Coordinator Operations was not warranted despite complainant's insistence.

The Ombudsman went on to observe that notwithstanding this sequence of events, the fact remained that once there was a genuine failure by an employee in a public institution as a result of which a person, rightly or wrongly, felt aggrieved, it would not have been amiss if, besides clarifying matters, Heritage Malta management had concluded its explanation with an expression of regret, if not outright apology, for any inconvenience caused to complainant by the incident. According to the Ombudsman, it would have been better for all the persons concerned if, besides an explanation of the way in which events

unfolded, the Principal Curator had expressed regret for this incident to complainant. The Ombudsman observed, however, that at the same time one must also understand that complainant insisted on an apology by a Heritage Malta employee who was deemed by his superiors to have acted in good faith and in line with his duty and therefore, strictly speaking, owed no apology at all to anyone.

At this stage the Ombudsman recalled that despite the clarification by Heritage Malta management, complainant continued to demand a written apology from the Coordinator Operations and to accuse him of making a false statement in his regard. However, feeling satisfied as to where the mistake originated, the Ombudsman admitted that he was at a loss to understand who in fact owed an apology to whom.

The Ombudsman observed that although the Principal Curator put the whole sequence of events in their proper perspective, complainant continued to hold the Coordinator Operations responsible for the error – an allegation that this Office considers unfair and cannot sustain. Complainant argued that even if for the sake of argument the fault was attributable to the worker student, the Coordinator Operations ought still to apologise for his mistake, regardless of the fact that it was based on wrong information given to him.

The Ombudsman stated that he could not agree with complainant's insistence on an apology. If anything, an apology for this incident should have been issued by the agency itself rather than by its Coordinator Operations since the system failure was caused by a third party and not by this person. According to the Ombudsman, although complainant accused the Coordinator Operations of bad faith in the implementation of his duties, in truth this employee merely submitted a routine report to his superior in the course of his day-to-day duties about an incident that had taken place although, admittedly, this report was based on incomplete and wrong information that he received and that appeared on the logbook of the Museum.

The Ombudsman expressed his opinion that there was no evidence that would give any weight to this accusation and as a result, it could not be sustained. The accusation was based on a wrong assumption and complainant's insistence on an apology when this was not due, was misplaced. It was perhaps more appropriate for complainant himself to issue an apology for having levelled an accusation against a Heritage Malta employee who had acted in line with his duties.

In view of these considerations the Ombudsman concluded that complainant's claim for an apology from the Coordinator Operations was not justified since there was no evidence that the latter's report to his Operations Manager was anything other than what he was obliged to do in accordance with his duties.

The Ombudsman, however, went on to point out that if any action by an employee of a public body is not fully correct and is perceived as having effected a citizen negatively, it is only proper for the institution involved to express its regret for any inconvenience that might have been caused after having duly issued an appropriate clarification. The Ombudsman believed that had any such expression of regret been issued at the time when the incident happened and had this regret accompanied the explanation that was given to complainant on the same day that the incident happened, there would probably have been no grounds for this incident to escalate.

Despite the clarification by management as to how this incident had arisen and where the mistake originated, complainant was adamant on a personal apology from the agency's Coordinator Operations. In doing so he even made personal accusations against this person that did not withstand the test to which they were subjected and that were unfounded and baseless and only reflected complainant's personal convictions and, probably, his prejudices. Having regard to complainant's insistence on an apology from his colleague, the Ombudsman stated that it was perhaps opportune to look at another direction in order to establish to whom an apology was in fact due.

The Ombudsman concluded that complainant would be right to insist on an expression of regret from Heritage Malta management for what had happened as long as he would himself acknowledge that he had been wrong to accuse the agency's Coordinator Operations of improper behaviour when the latter merely acted in accordance with his duties and was probably the one to whom an apology was due in the first place.

The relocation of a licensed pharmacy in the main village square

In a complaint lodged with the Office of the Ombudsman the owner of a licensed pharmacy claimed that both the Medicines Authority and the Licensing Authority wrongly interpreted the provisions of the law when they turned down her application for the relocation of this pharmacy to new and larger premises in the same street in the main village square. This refusal of

her application, even following a request for reconsideration, took place on the grounds that the premises earmarked for this relocation were less than 300 metres away from another licensed pharmacy.

Complainant challenged the method in which the authorities measured this distance at 289 metres. She was further aggrieved that she was not informed when these measurements were due to take place and as a result she was unable to witness the proceedings at first hand.

Complainant based her grievance on the fact that the walking distance specified by law was measured in a way that was manifestly contrary to the law in the sense that these measurements were taken from a section in the square where cars are allowed to park and not from the pavement where pedestrians should walk.

The Ombudsman found that after the Licensing Authority reconsidered complainant's application and confirmed the original decision, the Authority informed her that all possible routes for pedestrian movements in the main square of the village had been considered by physically observing pedestrian crossings on the spot. Since during this exercise it was noted that the absolute majority cross the square in the way as originally measured by its architect, the Authority went on to confirm that "*the shortest walking distance, even as defined in Legal Notice 279 of 2007, is less than the minimum 300 metres from the nearest pharmacy as required by law*."

Regulation 6 of the Pharmacy Licence Regulations, 2007 (Legal Notice 279 of 2007) published under powers conferred by the Medicines Act states as follows:
"*6. A licensee may apply for the relocation of a pharmacy as long as the relocation is within the same town or village and the proposed new premises:*
(a) offer better facilities in terms of these regulations than the existing premises;
(b) are situated no less than three hundred metres walking distance from any other existing pharmacy or not more than 50 metres from the current premises;
(c) are situated no less than three hundred meters walking distance from any premises in respect of which an application for a licence is pending."

In terms of article 16 of the Medicines Act it is the function of the Medicines Review Board:
"*(a) to hear an appeal submitted by the applicant of a marketing authorisation on any recommendation of the Medicines Authority in relation to the safety, quality and efficacy of a medicinal product;*

(b) to provide advice and make its recommendations to the Licensing Authority regarding any appeal or request made to it."

Given that in terms of this article of the law an appeal from a rejection of an application lies with the Medicines Review Board, complainant was directed by the Ombudsman to have recourse to this Board. However, since this Board was not yet set up, it was the Licensing Authority established under the Medicines Act that reconsidered this request. The Authority in turn confirmed the original decision.

In the course of its contacts with the Office of the Ombudsman the Licensing Authority pointed out that the function mentioned in sub article 16.1(b) of the Medicines Act has always been interpreted to refer to appeals or requests made by applicants of marketing authorisations since this function appears in the part of the Regulations that deals with marketing authorisations that are recommended by the Medicines Authority. The Ombudsman stated, however, that he did not share this interpretation since in his view the wording of this sub article leaves no doubt as to the intention of the legislator: the functions of the Medicines Review Board include the submission of advice and recommendations to the Licensing Authority *"regarding any appeal or request made to it."*

In this regard the Ombudsman went on to observe that if the legislator meant to link this sub article to the preceding sub article or to appeals by an applicant of a marketing authorisation on any recommendations by the Medicines Authority in respect of the safety, quality and efficacy of any medicinal product, the text in sub article (b) would have been different and would not have referred to "*any appeal or request*" made to the Medicines Review Board. Moreover, article 16 provides for a non-judicial appeal, as do many laws that transpose EU directives, on any decision of a public authority.

The Ombudsman urged that the failure by the authorities to set up the Medicines Review Board despite the passage of several years since the enactment of the Medicines Act should be remedied with urgency. However, this failure does not in any way vitiate decisions taken by the Licensing Authority in the exercise of its functions.

The Ombudsman commented that this complaint revolved mainly around the interpretation of regulation 6 of the Pharmacy Licence Regulations, 2007 and

specifically item (b) which is one of the conditions that must be satisfied by an applicant for the relocation of an existing licensed pharmacy to new premises within the same locality. The divergence of opinion between complainant as the pharmacy licensee and the Licensing Authority concerned the method how to measure the minimum 300 metres walking distance of the new premises where complainant intended to relocate her pharmacy from another existing pharmacy belonging to a third party.

The Ombudsman found that the Licensing Authority reached its conclusion by measuring the distance after having made observations and concluded a facts-based picture on how the vast majority of pedestrians actually traverse the area in question when crossing the square. In the course of its on-site monitoring of pedestrian movements the Authority observed that in respect of one small area in the street where there is a recess intended for on-street car parking, pedestrians rarely use the pavement but simply walk straight across and bypass the pavement around the recess. Acting on this notion of pedestrian flows the Licensing Authority measured the distance as 289 metres or just 11 metres short of the minimum laid down in the Regulations.

On her part complainant contended that the pavement in the street that lined the recessed parking area was meant to be used by pedestrians for their own safety and it was irrelevant to the issue at stake if they chose to ignore it. She argued that if the distance to be measured took into account the pavement that lined the recessed parking area, the walking distance would in fact exceed even the 300 metre limit laid down by law and her application for the relocation of her pharmacy would have satisfied the regulation.

The Ombudsman was of the view that a definite ruling regarding the interpretation of the law can only be given by the courts of justice. His role in such a case is only to determine whether the decision by the Licensing Authority in the exercise of its functions at law to accept or to refuse complainant's application for the relocation of her pharmacy according to the applicable regulation, was acceptable in terms of good administration or whether it amounted to maladministration. In case of disagreement on the interpretation of a provision of the law, the yardstick to be used by the Ombudsman is whether the administration's application of the law was reasonable and, where precedents can be used as a reference or benchmark, whether it followed existing practice. The Ombudsman understood, however, that no similar situation ever arose in the past.

In his assessment whether the decision by the Licensing Authority was reasonable, the Ombudsman considered that the purpose of regulation 6 of the Pharmacy Licence Regulations, 2007 is to allow the relocation of a licensed pharmacy while ensuring that the business and other interests of other existing pharmacies in the area are not unduly prejudiced. For this purpose the regulation specifies a minimum distance of 300 metres that must be respected.

The Ombudsman commented that as a guiding light in this complaint he would observe the principle that in order to act correctly and to avoid unnecessary litigation the Authority should ensure strict compliance with the law. In stating that the new premises must be not less than 300 metres away from an existing pharmacy, the Regulations specifically mention "*walking distance*" and refer to it as "*the shortest walking distance*" but fail to specify how this distance is to be measured.

Although it is reasonable to consider safety aspects as complainant pointed out in the defence of her position, in practice, however, considerations regarding safety in a non-work environment are more often than not guided by a subjective assessment by an individual of a particular situation that may or may not be considered to present or to constitute a risk. In the case of a pedestrian who is crossing a busy thoroughfare or a partly deserted street or using a pelican crossing, safety considerations depend on the level of prudence and care that is exercised by the pedestrian whose mind is set on avoiding incoming traffic for his own safety.

According to the Ombudsman the regulations could reasonably be interpreted as laying down that the distance could strictly be measured by including the length of the pavement around the recessed area. However, if – as in this case – the recessed parking space is deemed safe enough to permit pedestrians to cross directly without any real risk subject to minimal precautions by going straight through and bypassing the pavement around the recessed space, any such measurement could also be considered as reasonable and possibly in line with the original intention of the legislator.

The Ombudsman noted that the Licensing Authority had actually observed pedestrian movements in this area and noted that the vast majority of passers-by do not use the pavement to go round the parking area. These observations led the Authority to believe that the more reasonable way to apply the

provisions of the Regulations was in this way – and this method resulted in a distance that was less than the statutory 300 meters.

Looking at the whole issue in this way the Ombudsman concluded that the decision by the Licensing Authority was not unreasonable; nor did it amount to bad administration. He went on, however, to point out that complainant was free to challenge the Authority's decision in the courts and obtain a definite ruling.

In his Final Opinion on this complaint the Ombudsman concluded that failure to set up the Medicines Review Board in accordance with the Medicines Act amounted to an administrative failure and called for urgent action on the part of the authorities to comply with the law.

At the same time he observed that he did not consider that the interpretation by the Licensing Authority of regulation 6(b) of the Pharmacy Licence Regulations, 2007 was unreasonable in the context of allowing the relocation of a pharmacy provided that a minimum distance of 300 meters is respected. Nor did the Ombudsman agree that the relative decision amounted to maladministration.

On this basis he concluded that there were no sufficient grounds to uphold this complaint.

All's well that ends well ... anyway, after two and a half years

When a lawyer expressed his dismay with the Ombudsman that the Commissioner of Police, for some unknown reason, failed to honour a recommendation by the Police Board to send him a letter of apology, the Ombudsman took up the cudgels on his behalf and inquired with the Commissioner about the action that he had taken subsequent to the issue of this recommendation.

The Ombudsman referred the Commissioner to the issue that complainant had raised with the Police Board where the Board concluded its work by stating in its report dated 27 September 2007 that it was obvious that most of the difficulties that had arisen were attributable to overzealousness by a Police Inspector who although showing a strong sense of responsibility was at the same time unfortunately inadequately prepared and lacked a basic legal

training for the investigation that he had been assigned to carry out. This conclusion led the Board to suggest that besides sending a letter of apology to complainant, the Commissioner of Police should also consider the possibility of holding a meeting where all the parties involved would be able to sort out the matter and provide all the necessary explanations.

The Ombudsman pointed out to the Commissioner that in mid-January 2009, in other words more than fifteen months after the issue of the report by the Police Board, complainant reported to his Office that the remedy proposed by the Board was still outstanding. Subsequent to the Ombudsman's intervention, on 11 February 2009 the Commissioner wrote that he planned to call complainant for a meeting in order to clear the air; and the Ombudsman understood that this meeting took place on 13 April 2009.

On 25 April 2009 complainant reported to the Ombudsman that although during this meeting the Commissioner personally made a verbal apology in front of two officials from the Police Force for what had happened, complainant continued to insist on an apology in writing since this was what the Police Board had recommended in its report. Notwithstanding this, the Commissioner of Police still failed to issue a written apology.

On 5 May 2009 the Ombudsman drew the attention of the Commissioner to complainant's situation and asked for an explanation about how he intended to proceed. He subsequently issued various reminders to the Commissioner on 29 May 2009, 30 June 2009 and 18 November 2009 while in the meantime there were several telephone contacts with high-ranking officials in the Police Force with a view to eliciting a reply about how the Force meant to address this situation.

When this impasse remained unresolved, on 12 January 2010 the Ombudsman sent a personal reminder to the Commissioner of Police about this issue but when this letter too met the same fate that had befallen earlier correspondence, the Ombudsman decided to issue a deadline of 19 February 2010 within which the Commissioner had to send a written explanation for this delay. He also pointed out to him that in the absence of a reply he would proceed to issue his Final Opinion. This deadline too passed by without any reply from the Commissioner.

In his Final Opinion the Ombudsman declared that he could not but deplore in the strongest possible terms the fact that the Commissioner of

Police systematically chose to ignore his Office even though the institution is established under the Constitution of Malta to protect citizens against all forms of maladministration including high-handedness and abuse.

The Ombudsman commented that the Commissioner's persistent failure to justify his action with regard to complainant despite the warning issued by his Office was, in the Ombudsman's own words, a clear-cut message that the Commissioner was unwilling to implement the recommendation that was issued by the Police Board on this particular case, namely that a written apology was in order and due to complainant.

The Ombudsman recalled that the Police Board was set up under the Police Act to safeguard citizens against unfair action by the Police Force. The Board operates in full independence and gives its impartial evaluation on any action or decision by the Police Force that gives rise to contestation by citizens. The Ombudsman insisted that this meant that any decision by the Board should be respected and accepted unless tenable aspects are brought forward that would justify why a recommendation by the Board cannot be implemented.

The Ombudsman observed that for a considerable length of time the Commissioner of Police persistently failed to bring forward any evidence or any justification that he submitted to the Police Board in order to explain his failure to implement its recommendation on time and to defend his attitude towards complainant. Neither had he ever expressed any reservation that he might have harboured with regard to any aspect of this recommendation by the Police Board.

This led the Ombudsman to observe that in the circumstances he saw no reason or justification why the Commissioner failed to implement forthwith of his own accord and in full the recommendation issued by the Police Board. The Ombudsman insisted that once the Police Board concluded that a written apology by the Commissioner of Police was in order, a verbal apology was inappropriate and failed to respect the decision reached by the Police Board.

The Ombudsman stated that is an accepted principle that the issue of an apology by the public administration to citizens with regard to a justified act of maladministration does not imply or constitute an admission of guilt. It is merely a sign of proper and correct behaviour. At the same time the Ombudsman warned that it was clearly not in the interest of the parties

concerned, and especially the Police Force, to allow this simple episode to escalate especially when it could be considered as a matter of relatively no consequence.

For these reasons the Ombudsman concluded that complainant's grievance was justified and recommended that within fifteen days from the issue of his Opinion the Commissioner of Police would comply with the suggestion put forward by the Police Board for the issue of an unequivocal written apology to complainant. He also urged the Commissioner to send a copy of any such written apology to his Office while warning that if the Commissioner would still not have issued this apology by the end of this deadline, he would proceed according to the relevant provisions of the Ombudsman Act.

Shortly afterwards the Ombudsman was pleased to note that his Final Opinion achieved its purpose and finally in line with the original recommendation by the Police Board, on 18 March 2010 the Commissioner of Police sent a formal written apology to complainant for any shortcoming that had taken place in his regard by the Police Force.

University Ombudsman

The student who bit off more than he could chew

A graduate alleged with the University Ombudsman that he was subjected to unfair treatment when the university authorities refused to allow him to sit again for an examination that he failed and to accept his dissertation and also withheld him from continuing his studies for a Master of Arts in Financial Services at the University of Malta.

Complainant was irked that the University unceremoniously turned down his request to give a personal explanation about the circumstances that led him to fail his examination and the reasons for the delay in the submission of his dissertation. He maintained that this refusal to give him an appropriate hearing ran counter to the principles of natural justice.

Finally complainant alleged that the University was guilty of discrimination when he was not allowed the same opportunity as another student in the same course who was able to muster considerable political strength that she used to her advantage to have her way with the university management.

The investigation by the University Ombudsman revealed that after graduating as a lawyer, complainant joined a full-time course at the University of Malta leading to the award of the degree of M.A. in Financial Services in October 2007. This was a taught course that lasted till June 2008 when students sat for their final examination that consisted of four papers. Students also had to submit their dissertation between July and December 2008. Complainant failed the third paper of his examination and also failed to present his dissertation by the closing date for its submission.

With regard to candidates' performance in their examinations, section 8(5) of the relevant course regulations[2] states that a candidate who fails in not more than two of the four examination papers shall be allowed to re-sit the paper/s failed once only. Course regulations also state that dissertations by candidates must be submitted not later than six months after the final examinations and that the Board of the Faculty of Laws may at its discretion grant a candidate an

2 Master of Arts in Financial Services M.A. – Degree Course Regulations, 1997 published as Legal Notice 193 of 1997.

extension of the submission date up to a maximum of six months. Furthermore under these regulations a candidate whose dissertation is rejected or whose corrections or re-writing are considered inadequate or have not been submitted within the prescribed time limit shall not be awarded the degree.

When complainant sat for his re-sit for the third paper in September 2008 and was again unsuccessful, he requested the Board of the Faculty of Laws to be allowed a second re-sit. Since a similar opportunity had been given earlier to other students, the Board accepted complainant's request and allowed him to sit for a special supplementary examination in June 2009.

In October 2008 complainant also requested the Board to extend the date for the submission of his dissertation from December 2008 to March 2009 on the grounds that he needed more time to conduct an in-depth study of the subject and finalize the text. At a subsequent stage when complainant realized that he was unable to meet this closing date, he asked for another extension to June 2009.

The Dean of the Faculty of Laws accepted this request but informed complainant that he had to submit his dissertation by not later than 30 June 2009. He also warned complainant that no further extensions would be possible and that if he did not present his dissertation by the new deadline he would be unable to complete the course.

When shortly afterwards complainant requested the postponement of his special supplementary examination to September 2009 so that the submission of his dissertation and the examination would not both fall at the same time, the Board felt, however, that he had already been given enough extensions and rejected this request.

Records seen by the University Ombudsman showed that complainant again failed his special supplementary examination and did not submit his dissertation by the end of June 2009. This led the Course Coordinator on 1 July 2009 to inform him that no further extensions could be granted for the presentation of his dissertation.

Other file records showed that one day before the deadline for the submission of his dissertation the secretary to the Dean of the Faculty of Laws emailed complainant to urge him to submit his dissertation straightaway. When

complainant replied that he planned to do so on the following day, the secretary reminded him to submit two softbound copies and the letter of approval for the submission of his thesis from his Supervisor and a receipt for the payment of €233 to cover the cost for the correction of his thesis. Complainant presented his thesis on 8 July 2009 but failed to attach the letter of approval from his Supervisor.

Upon considering complainant's position the Board of Studies administering the course agreed that he should no longer be allowed to proceed with his studies because he failed the third paper of his final test and did not submit his thesis on time.

The Board did not mince its words when it considered the way in which this situation developed and the minutes of its meeting on 4 August 2009 state that not only was it unclear how the student was allowed a third re-sit but that it was also unprecedented for a person to be allowed to sit for a core examination four times. Since the rules made no provision for a student to sit beyond the second attempt and although the Faculty Board had conceded a third attempt which the student again failed, the Board of Studies ruled out a fourth attempt. The Board of Studies also agreed that the student's position was aggravated since he failed a compulsory study unit and submitted his dissertation late even after two extensions while his work was not approved by his Supervisor.

Upon being made aware of this decision, complainant asked the University Registrar for an explanation. On her part the Registrar pointed out that once he did not submit his dissertation by the extended deadline allowed by the Faculty Board and also failed his re-sit examination, he did not satisfy the requirements for the award of the degree and his studies in the course were terminated. The Registrar also told complainant that his case was referred to the Students' Requests Committee and to Senate which confirmed that his studies were to be terminated.

Complainant, however, would not take no for an answer. In October 2009 he met the University Registrar to discuss his position but the Registrar stood her ground and gave him a point-by-point explanation of the reasons laid down in the General Regulations for University Postgraduate Awards and in the Degree Course Regulations for the degree of M.A. in Financial Services why he failed his course.

Still dissatisfied, complainant wrote to the Rector on 25 February 2010 and on 23 April 2010. The University Pro-Rector for Student and Institutional Affairs replied on 9 June 2010 but feeling that he had been hard done by, complainant approached the University Ombudsman.

At the outset of his investigation the University Ombudsman considered complainant's allegation of discrimination by the University in comparison to another student who allegedly received more favourable treatment on the strength of her political contacts. He noted, however, that complainant never corroborated or ever offered proof of any discrimination that he alleged to have suffered in comparison to the other student but merely ascribed his grievance to hearsay. Besides, the university management faced this allegation squarely and explained that although the student who was brought into the picture was allowed exactly the same concessions as complainant, she had met the end June 2009 deadline for the submission of her dissertation whereas he had not.

The University Ombudsman established that although university regulations allow students who fail an examination only one chance for a re-sit, complainant was allowed two chances – the normal re-sit and the special supplementary re-sit – on the grounds that a similar precedent was established earlier with other students in his course; and this meant that there had been no discrimination whatsoever in his regard. However, once he was unsuccessful in both re-sits, the Faculty Board agreed that complainant did not deserve another chance since in this way he would be given preferential treatment over other candidates in the same situation.

In his Final Opinion the University Ombudsman pointed out that under regulation 1.2 of the University Examinations Regulations, 1997,[3] students should take their re-sit in the first examination session that is due to take place: either the June or the September session. This meant that the University merely followed its own regulations when it insisted that complainant should take his re-sit in June 2009 after he failed his examination in September 2008 and he had no claim to expect to be allowed to skip this session and take instead the September 2009 session.

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3 "*1.2 Unless otherwise provided in the regulations for a particular course:*
(i) examinations shall be held in two sessions: normally in June and in September;
(ii) candidates shall be required to complete their examinations for the particular academic year in these two sessions;..."
(University Examinations Regulations, 1997).

In this regard the University Ombudsman observed that although the Faculty Board had the discretion to take a different decision, it decided not to do so. While the University Ombudsman is not empowered to enter into the merits whether the university authorities should have exercised their discretion, on the other hand the Board was fully entitled to decide not to avail itself of its discretion since these decisions pertain exclusively to the university authorities.

When the University Ombudsman looked at the grievance regarding the date for the submission of his dissertation, he noted that complainant benefited from no less than two extensions. On this score the Faculty Board agreed that complainant was allowed enough opportunities including extensions for a maximum of six months as allowed by course regulations and should not be given an additional chance.

The University Ombudsman understood that complainant believed that he deserved to be allowed treatment that was different from that given to other students on the grounds that in June 2009 he was passing through a rough patch. He admitted that while he was preparing for the two parts of the course, he was also studying to acquire the warrant of a lawyer and a diploma from the Curia; making preparations to get married; and for some time he was feeling generally unwell. Notwithstanding these explanations the University felt that complainant was not justified to claim that he deserved different treatment.

The University Ombudsman also found that the university authorities turned down complainant's claim that he was unable to cope with his studies because he was also at the same time a full-time employee. Under university regulations, as a full-time student he ought not to have been in full-time employment and neither was he allowed to have a double registration concurrently for two different university courses.

The University's academic records showed that complainant's Supervisor had on several occasions insisted that he should complete and submit his dissertation on time but despite these urgings he dithered till the very end and eventually presented his work without the approval of his Supervisor.

Complainant's position was further compromised by the Final Report on his dissertation by his Supervisor who was highly critical of the quality of his work and remarked that several sections that he presented in the last week of

June and the first week of July were of poor quality even though the deadline for the submission of his dissertation was over. This seemed to indicate that complainant tried to finish his work in a fortnight when he was unable to do so in a whole year. This was confirmed by the report on his dissertation by his Supervisor who stated that although during the year she kept in touch with complainant, he seemed extremely hectic and was sitting for a number of exams both within and outside of his course while also working on a full-time basis.

In her Final Report his Supervisor also wrote that a few days before the June 2009 deadline complainant told her that he planned to start working on this study and hoped to complete it before this deadline. She expressed her concern that complainant was not well focused on his topic possibly because he was under too much pressure to submit his study and pointed out that despite his assurance that he would revise his work and send it back by mid-July 2009, he failed to do so.

The University Ombudsman stated in his Final Opinion that the Board of Studies, the Board of the Faculty of Laws, the Students' Requests Committee and Senate all considered carefully whether complainant was given enough opportunities to complete his work and there was general consensus that he did not deserve any more extensions. There was also a unanimous decision that since he failed to observe course provisions and regulations, he should not be allowed to proceed with his studies.

In the circumstances once it was clear that all these university bodies had followed consistently all the relevant regulations and provisions related to the course, the University Ombudsman had no basis on which to contest these decisions particularly since there was evidence that complainant was treated in the same way as other students.

The University Ombudsman also took note of complainant's plea for a personal hearing in front of the university authorities to explain to them the circumstances in which he found himself when he was studying for his special supplementary examinations while also writing his dissertation. When this request was turned down, complainant felt that the University denied him a fair hearing – and in his view this refusal ran counter to the rules of natural justice.

For the University Ombudsman, however, this allegation was unfounded. The Faculty Board gave full consideration to all his requests and, with the

exception of his last one, had accepted them. This took place after the Dean of the Faculty of Laws advised him in mid-April 2009 that the Faculty was not prepared to allow him any more concessions.

The University Ombudsman also established that complainant discussed his case with the University Registrar where he gave a detailed explanation of his personal circumstances whereas the Registrar explained to him course regulations as well as regulations regarding his assessment that were relevant to his case. Furthermore, his concerns were given a proper airing by the Students' Requests Committee and by the University Senate while the Pro-Rector for Student and Institutional Affairs made an in-depth review of complainant's requests and her detailed reply showed clearly why the university authorities felt that there was no need for him to appear in front of them to give further explanations.

The University Ombudsman explained that his mandate does not allow him to consider the merits of the case including whether complainant should have been allowed to continue his course or not. His mandate enables him to review decisions by the university authorities and whether these decisions are in line with course regulations and with established provisions regarding examinations in the course followed by complainant. The mandate of the University Ombudsman also permits him to examine whether complainant had been treated fairly or not and whether he was subjected to discrimination and to any treatment that was not similar to that given to other students who were in the same situation.

After having examined the reactions by the University to complainant's grievances, the University Ombudsman concluded that the complaints were not justified. The University had followed strictly its own regulations and treated complainant in exactly the same manner as it treated other students and had shown no discrimination whatsoever and no injustice towards complainant; always gave due consideration to all the issues that he raised; and always gave proper and adequate replies within a reasonable time to all his correspondence.

Finally the University Ombudsman recommended that since complainant paid the sum of €233 to cover costs associated with the correction of his thesis and this had not been done, the University should give him back this amount by way of a refund; and the University found no objection to honour this recommendation.

An academic selection process characterized by poor record keeping

When his application was turned down, a candidate for a full-time academic post in a department in the Faculty of Engineering of the University of Malta lodged a complaint with the University Ombudsman. He claimed that he was unfairly denied of this post although he was better qualified than the successful applicant and also had a wider work experience.

Accusing the University of discrimination, complainant alleged that the chosen candidate MS was identified for the post before the selection process got under way. He also alleged that the letter to inform him that his application had been unsuccessful was issued even before the University Council approved the appointment of MS to fill the post.

To back his claim that the selection process was flawed, complainant stated that the Head of Department in the area where this academic opportunity had arisen could not have been impartial during the selection process since he had earlier acted as Supervisor during the final year of the selected applicant's first degree course. Besides, it was known that a close friendship existed between these two persons.

The investigation by the University Ombudsman revealed that the call for applications by the University of Malta in July 2009 for a resident full-time academic post in the Faculty of Engineering stated that the ideal candidate "*must be in possession of a research based doctorate*" in an area related to the subject matter of the call for applications and that preference would be given "*to candidates having research/development work experience*" in this area.

The investigation confirmed that after obtaining his doctorate from the University of Malta in 2001, complainant worked in industry for six years and as a freelance consultant for four years. He also delivered a series of lectures and conducted several seminars at the University while he was a PhD student.

The career path of the successful candidate MS was different. After having worked for three years as a research and development technician, he qualified with a first class honours degree in Engineering at the University of Malta in 2008 and subsequently worked for one year as an R&D engineer. During the academic year 2008-2009 he served as Part-Time Visiting Lecturer in the Faculty of Engineering and was also awarded a scholarship for a

PhD in Electrical Engineering but had turned down this scholarship for personal reasons. The University Ombudsman ascertained that the Head of Department had been the Supervisor of the final year project in connection with the first degree of MS.

The selection board that interviewed applicants in September 2009 was chaired by the Rector of the University and had as members the Dean of the Faculty of Engineering, the Head of Department with the vacant position in his academic staff complement; two other academics and a member of the University Council. The board based its selection on candidates' relevant academic qualifications; academic and industrial experience; suitability; aptitude; and performance during the interview.

The University Ombudsman found that in its report on the selection process, the board gave no details on the performance of the candidates who were interviewed. The report merely gave information on the composition of the selection board; the list of applicants; the list of short listed candidates and the dates of their interviews; and the criteria on which the choice was based. At the end the report simply concluded that " ... g*iven the above criteria the board unanimously agreed to recommend to Council that* ... (MS) ... *be appointed Assistant Lecturer*."

Faced with this dearth of information, the University Ombudsman asked the university authorities to provide him with marks given under each assessment criterion to candidates who were interviewed by the selection board. The Secretary of the University replied that each criterion was allocated 25 points and that marks obtained by each candidate under these criteria had not been retained.

Records seen by the University Ombudsman confirmed that the University Council approved the appointment of MS on 10 September 2009 and that six days later the University's Director for Human Resources Management and Development informed complainant that his application for the post had not been successful.

Complainant's first allegation that the Director for Human Resources Management and Development notified him that his application had been rejected before the University Council had even endorsed the appointment of MS implied that his elimination was a foregone conclusion. According to the

University Ombudsman, however, this allegation was unfounded since events unfolded in a manner that was at odds with this claim. The selection board interviewed short-listed candidates on 4 September 2009; Council approved MS's appointment on 10 September 2009; and the letter to complainant that he was unsuccessful was sent six days later.

Complainant sought to justify his allegation that the successful applicant was already chosen before interviews took place by referring to the webpage of the department concerned which showed names and photographs of its full-time academic staff members, including MS. According to complainant the *Properties* details showed that these photos were taken on 26 and 28 August 2009 – in other words, prior to the date of interviews by the selection board.

In this connection the University Ombudsman noted that following his meeting with the Head of Department in the first week of May 2010 on the allegations raised by complainant, the *Properties* section on the photos that appeared on the internet was modified to show the "*created*" date as the current date on which the site is opened.

Complainant also alleged that the presence of the Head of Department on the selection board corrupted the selection process because this person was the Supervisor of the successful applicant and the two persons were known to be close friends. To support this allegation he submitted a second set of images taken from a website on the internet that showed the Head of Department together with MS and provided details about their joint academic research activity. This page was created on 7 August 2009.

Upon being asked to comment on these claims, the Head of Department admitted to the University Ombudsman that he was unaware of the contents of this website and undertook to establish the date when MS was first listed among the department's full-time staff on the website and why the details on the webpage were later altered. Three weeks later the Head of Department told the University Ombudsman to route all future correspondence regarding this case via the University Secretary.

The University Ombudsman flatly rejected this stand and expressed his dismay at this request. As University Ombudsman he is at liberty to communicate directly with the University Secretary, on behalf of the Rector, on matters related to institutional policy, decision-making and documentation whereas

on other matters he is free to deal directly with individual university staff members whenever he deems it necessary to do so. His remit empowers him to do so since it is often more appropriate to obtain information directly from individuals who are involved in issues that are under investigation. Although this objection was eventually overcome, the initial uncooperative attitude by the Head of Department did not help to dispel complainant's allegation but unnecessarily prolonged the conclusion of this case.

At this stage the University Ombudsman warned that despite these obstacles, one has to be careful not to speculate unduly about conspiracy theories or to read anything sinister about the presence of the Head of Department on the selection board even though he served as Supervisor of the successful applicant. Academics in a small institution such as the University of Malta have to be multifunctional and in this case the presence of the Head of Department was crucial since he knew best the academic needs of his department. Besides, it is common in a university environment for a tutor/student relationship to evolve into a mentor/researcher contact and eventually into collegial friendship.

In this regard the University Ombudsman observed that in instances where an applicant's Supervisor happens to serve as a member of a selection board, a possible solution would be for this person to serve as non-voting advisor to the board.

In a letter on 1 December 2009 to reassure complainant that no member of the selection board was a referee for any of the short-listed candidates, the University's Director of Human Resources Management and Development echoed the observations made by the University Ombudsman. He remarked that having a former Supervisor of an applicant as an interviewer is not unusual in an academic environment and that complainant ought to acknowledge that once this person formed part of a selection board that consisted of six persons, this served to eliminate any hint of bias that complainant referred to.

The University Ombudsman shared this view. He expressed his conviction that the five other members of the board, all experienced members in their own right, would have prevailed over any possible bias by the Head of Department, especially if they were aware of his potential conflict of interest given that in the covering letter attached to his application MS had referred to the role of the Head of Department as his Supervisor.

On his part the Head of Department explained that the author of the article that appeared on the website had interviewed the successful candidate about his final year undergraduate thesis and also interviewed him about the research activity in his department and concluded his article by including short descriptive summaries of both of them. He claimed that by no stretch of the imagination could this article be taken as evidence of any bias on his part towards MS. The University Ombudsman stated that he had no reason to doubt these explanations.

With regard to complainant's main grievance that the selection board was unfair when it chose a candidate with inferior qualifications and with less work experience, the University Ombudsman pointed out that his mandate does not allow him to interfere with the conclusions of the board that complainant did not possess all the necessary credentials for the post even if his qualifications and work experience were manifestly higher than those of MS. While admitting that as an outside observer he could assess complainant's qualifications and years of experience as objective criteria, he was, however, unable to assess him on the yardsticks of S*uitability/Aptitude* and *Performance in Interview* as the board had done. The evaluation of these criteria depended exclusively on the subjective judgement of individual members of the board during the interviews of candidates and the University Ombudsman has no role whatsoever to play in these assessments.

In a letter dated 1 December 2009 the Director of Human Resources Management and Development explained to complainant that while qualifications are an important factor in every selection process, an interview serves to assess whether an applicant is suitable to fill the post in question and, in the case of academic posts, to determine whether a candidate has the aptitude and relevant skills to work in a university environment. While the selection board recognised complainant's PhD qualification and his work experience, there were other criteria, however, to determine the most suitable candidate for the position.

At this stage the University Ombudsman observed that due to lack of information, he was not in a position to sustain or to dispel complainant's claims. In the absence of evidence to show that the assessment of complainant's credentials and the evaluation of his performance during the interview were unreasonable or based on incorrect data or manifestly unjust, he would choose to respect the unanimous decision of the board.

The University Ombudsman commented that although the absence of records on the work done by the selection board was a serious shortcoming, this did not invalidate the selection process. He went on to state that he would be guided by the fact that the board unanimously found complainant unsuitable for the post and did not even include him, or any other candidate for that matter, in the final order of merit.

Faced with the issue as to whether MS was qualified for the post once he lacked a research based doctorate, the University Ombudsman noted that the call for applications included the following proviso:

"*The University of Malta may also appoint promising and exceptional candidates into the grade of Assistant Lecturer, provided that they are committed to obtain the necessary qualifications to enter the Resident Academic Stream. Such candidates will either have achieved exceptional results at undergraduate level, be already in possession of a Masters qualification, or would have been accepted for or are already in the process of achieving their PhD.*"

The University Ombudsman agreed that MS achieved exceptional results with his first class honours engineering degree although it did not result that he possessed or was registered for a Masters degree. Furthermore, although he claimed that he was offered a scholarship leading to a PhD, it was only during a meeting with the University Ombudsman that he showed a provisional letter of acceptance as a PhD student signed by the Head of Department on 13 June 2009.

The University Ombudsman referred to the laconic statement by the selection board in its report that "*given the above criteria the board unanimously agreed to recommend to Council that* ... (MS) ... *be appointed Assistant Lecturer.*" He regretted that this terse statement gave no indication whether board members were aware of this provisional letter of acceptance or of the affinity between the Head of Department and a potential future member of his department.

The University Ombudsman observed that the final report by the board made no mention of other crucial aspects of the selection process. He remarked by way of example that it would have been desirable for the board to give a full explanation why two candidates, both in possession of a doctorate, were rejected while MS was selected despite manifestly lower qualifications and experience.

The University Ombudsman declared that once the selection board opted to apply the proviso in the call for applications regarding "*promising and exceptional*" candidates, its report should have explained why it had chosen MS and should also have given full reasons why this proviso could not be applied to the other candidates. He observed that the omission of these details could have been expected to give rise to suspicions of bias and that these explanations would have nipped in the bud any suspicion of an unfair assessment of applicants by the board.

The University Ombudsman commented that the selection board should have retained records regarding points awarded to each applicant under the approved selection criteria. If these records were kept, any complaint against the selection process would have been dealt with on the basis of proper documentation to reassure all and sundry that marks awarded to each applicant were fair and to confirm that the selection of MS was the best choice. As things stood, without any reference to records to justify the way in which marks were awarded, the board shot itself in the foot and eliminated any possibility of verification that its task was carried out fairly and squarely. This rendered the whole process bereft of transparency.

After a careful study of this case, the University Ombudsman decided that complainant was incorrect to claim that the letter to reject his application was sent before the Council confirmed the nomination of the successful candidate. Moreover, the assertion that the selection process was flawed because the Head of Department was the final project Supervisor of the successful applicant and because the two individuals were close friends was not necessarily correct. These facts did not automatically lead to the conclusion that the involvement by the Head of Department corrupted the process or that he was biased. The Head explained convincingly that his rapport with MS was based exclusively on a typical tutor/student relationship while the University Ombudsman agreed that inputs by the other five members of the selection board would have served to outweigh any possible bias that the Head of Department might have had during the selection process. These considerations led the University Ombudsman to state that the claim of bias was unsubstantiated.

The University Ombudsman felt that the change of data on the department's webpage and the initial reluctance by the Head of Department to give clear answers to certain issues only served to confuse the case. However, since eventually the Head of Department provided adequate assurances that the

information on the department's webpage appeared only after the appointment of MS and on the strength of advice by an independent IT expert that the date when photographs are "*created*" could be totally unrelated to the date when these photos first appear on a website especially since the date on a camera is an option that could be manually altered, the University Ombudsman stated that he could not sustain the complaint that the choice of MS was a forgone conclusion. He therefore ruled that there was no evidence that the name and photograph of the chosen candidate appeared on the department's website as a full-time lecturer before the interviews were even held.

The University Ombudsman pointed out that there was no proof that complainant's failure to be selected amounted to unfair treatment or discrimination since a properly appointed selection board had evaluated his academic and professional credentials which, with the exception of his academic qualifications and work experience, were found lacking. This led him to conclude that he had no reason to challenge the conclusion by the board and that despite the absence of essential information on the selection process itself, he was unable to sustain complainant's claim of unfair treatment and negative discrimination against him.

The University Ombudsman regretted the lack of information in the report by the board which failed to provide evidence that the selection process was transparent, accountable and justified and gave no details on the determining factors that distinguished the successful candidate from the rest or even between the unsuccessful candidates themselves. He insisted that no matter how distinguished and experienced the members of a selection board might be, the final report of every board should contain all the information that is crucial in a manpower selection process. Any such report should give proper coverage to all the motivations behind decisions reached by members especially when the final choice might not appear to an outside observer to be so clear cut and straightforward.

In this instance the University Ombudsman recalled that in an earlier complaint the Parliamentary Ombudsman cautioned in his Final Opinion that "*Subjective opinions, even if unanimous, devoid of objective assessments are not the most transparent way in which selection processes are conducted and could easily lead to suspicions of abuse, favouritism or malpractice.*" He observed that it was incomprehensible why the University persisted in ignoring recommendations made earlier by the Parliamentary Ombudsman and by himself stressing the institution's obligation

to provide detailed reports on all its staff selection processes. By ignoring these recommendations the University was only perpetuating the perception that rankled in the mind of several people that the selection of employees at this institution could be biased and lacked transparency.

The University Ombudsman strongly recommended that reports by all university selection boards should contain a full and clear evaluation of candidates' credentials when assessed against criteria published in the original call for applications as well as in relation to the credentials of other applicants. To quote again from the Final Opinion of the Parliamentary Ombudsman:

"*Candidates who apply for an advertised post and submit themselves to necessary procedures, including interviews by a selection board, have the right to be informed of the true reason why their application was being refused. They have the right to be given information not only on the board's assessment on their performance but also how that compared with that of other applicants. This should be the standard practice. It is a basic principle of good administrative behaviour.*"

The University Ombudsman recalled that in an earlier complaint in an analogous case he had made it known that providing clear information on the performance of each candidate interviewed by a selection board "*goes beyond the requirement to satisfy candidates' need to know. An unambiguous justification of the decisions taken encourages good practice to demonstrate and reinforce a sense of fairness, transparency and accountability in a complex and potentially controversial exercise. It would also strengthen the University's reputation as an objective and impartial employer.*"

The University Ombudsman concluded his Final Opinion by reference to the views expressed by Margot Wallström, Vice President of the European Commission, in the European Parliament on 20 January 2009 when she referred to the citizen's right to know which is embedded in EC Regulation No 1049/2001 and the declaration on the right of access to information that is attached to the Final Act of the Maastricht Treaty: "*To me, the right to know is just as important to democracy as the right to vote … Transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration.*"

The University Ombudsman concluded by pointing out that if the University agrees to shed the "you have to trust us because we know best" syndrome, the

institution would not erode but would, on the contrary, fortify its autonomy. Once university authorities render their decision-making processes more open, transparent and accountable, they would in fact strengthen the institution's moral authority.

Following consideration, the university management assured the University Ombudsman that it would implement his recommendation so that reports by selection boards would provide full details on the evaluation of applicants and ensure that all selection processes at the institution would be more transparent and credible. The University has yet to agree, however, to the recommendation by the University Ombudsman that candidates should be provided with the marks of their performance under the board's selection criteria in the event that they ask for this information.

The student whose absence was not always covered by a medical certificate

The University Ombudsman received a complaint from a student who claimed that after her theoretical and practical work at the Institute of Tourism Studies (ITS) had been marked unfairly, she would have to repeat her first year in the Institute's *Food Preparation and Service* programme of studies.

Complainant alleged that her mark at the end of her first year in study unit *FBF13: Beverage Service Basic Theory* (43%) was unfair and that she failed because she had missed a test due to illness. She also referred to her mark in study unit *FBF14: Beverage Service Basic Practical* (59%) which was inadequate because she needed 65% to proceed to the second year. Complainant expressed her misgivings about this study unit and raised doubts about her course mark of 45% since she claimed that her Lecturer never issued her with any activity sheets.

Complainant joined the two-year study programme in *Food Preparation and Service* in October 2009. Her first year academic transcript showed that she completed 13 study units with good results but failed in units FBF13 and FBF14 and had to repeat her first year. During the year complainant suffered from a recurrent ailment and was sporadically absent from lectures although except for two occasions, her absence was covered by medical certificates.

During his investigation the University Ombudsman found that in study unit FBF13 where complainant obtained 60% in the final examination and

32% in her coursework, this latter mark was the average of a 64% mark for a test held earlier in the academic year and a 0% mark that she received since she was repeatedly absent for a second test at the end of the year. Originally due to take place on 14 May 2010 when complainant was absent, this test was postponed to the following week but even on this occasion she failed to attend. Although the re-sit session was postponed by a few days for a second time, complainant again did not turn up although this time she backed her absence by a medical certificate. Since it was not possible to schedule another re-sit because the academic year had by then come to an end and coursework marks had to be handed to the Institute's academic management, the ITS Board of Studies which considered complainant's appeal agreed that her mark of 32% for coursework should stand because she had only fulfilled half of the coursework material.

The University Ombudsman also found that when complainant initially failed study unit FBF14 (44%) and asked for a revision of her coursework, the ITS academic authorities discovered that her original assessment had erroneously included two evaluations that were both marked at 0% even though her absence for both practical sessions was covered by medical certificates. Following this review the module's average mark was raised to 59% but complainant was still unable to proceed to her second year because she needed a 65% mark or higher.

The ITS management rejected the claim by complainant that the Lecturer mentioned in her grievance rarely gave her any negative feedback on her work. It was explained that coursework is generally assessed through ongoing practical sessions where feedback to students' performance is personal and instantaneous. In addition the ITS authorities insisted that the tutor at the centre of this dispute was known as a very conscientious person with a most caring rapport with his students while his track record at the Institute was second to none.

In his scrutiny of this case the University Ombudsman took note of complainant's explanation that due to illness she could not attend lessons and sit for her test on 14 May 2010 although for some unknown reason she did not present a medical certificate to cover her absence. Complainant also explained that because of her absence on this occasion she was not even aware that the test had been postponed to a later date although she added that in any case she was still too ill to attend. Although there was no medical certificate to back

this second absence, the University Ombudsman noted, however, that when complainant did not turn up for the third session, again due to illness, she presented a medical certificate to cover this absence.

From records at the ITS the University Ombudsman found that the Lecturer at the centre of this case had confirmed to the Registrar of the Institute that after complainant missed her test, he advised her to sit for this test on another day. These records also showed that on two occasions towards the end of the academic year, this Lecturer had even prepared a test paper to give to complainant but again she failed to turn up because she was unwell.

The University Ombudsman stated in his Final Opinion that although one plausible reason for complainant's absence on three separate occasions could be that she purposely meant to avoid sitting for the second test of study unit FBF13, there were several mitigating factors against reaching this conclusion: firstly, complainant had performed well in the earlier test (64%) and had registered a mark of 60% in the final examination on the same subject; secondly, the various medical certificates that she presented during May indicate that she was genuinely ill at that time; and, thirdly, ITS staff considered complainant as a conscientious rather than an absconding student – and this was confirmed in a letter to the University Ombudsman on 22 November 2010 by the Registrar of the Institute who referred to her as "*a good student*" who always studied hard and whose performance during her first year at the Institute was on the whole quite creditable.

The University Ombudsman also observed that the ITS Lecturer who was involved in this complaint was generally known to be very fair with all his students and always tried his best to help them achieve a good mark. Indeed, he was even prepared to postpone complainant's practical test at least twice and was unable to effect a third postponement only because of the closure of the Institute for the summer holidays. In fact were it not for the end of the academic year, it would have been illogical of him to effect two postponements for absences that were not covered by a medical certificate but would then not postpone this session when complainant's absence was backed by a medical certificate.

In his Final Opinion the University Ombudsman concluded that since the ITS management conducted its evaluation and revision of course procedures for study unit FBF14 in a correct manner, the final mark awarded to complainant

for this module should stand. He also referred to his observations regarding the circumstances surrounding the tests for study unit FBF13 and remarked that it cannot be stated that complainant was not genuinely ill at the time of her tests. At the same time the University Ombudsman gave due weight to the fact that ITS academic staff considered her as a good student – a description that was amply confirmed by her academic transcript.

Taking everything into account the University Ombudsman proposed that the Board of Studies at the ITS may wish to reconsider its decision and give complainant the benefit of the doubt by accepting her claim that her absence on 18 May 2010 was justified because she was truly unaware of this new date while her absences on 14 and 25 May 2010 were genuinely due to illness.

The University Ombudsman also suggested that in the circumstances the Board might consider allowing complainant a once-only opportunity to sit for the second test within a month. The mark obtained in this test would then be computed with those already obtained in the study unit resulting in a final *Pass* or *Fail* mark as the case may be.

The ITS Board of Studies accepted the recommendation by the University Ombudsman and agreed to allow complainant to sit for the second test of study unit FBF13 on the understanding that this was her last opportunity to acquire a pass in this module.

Appendices

Appendix A

Office of the University Ombudsman

Annual Report 2010

Whenever I am asked about the purpose of my job, I reply that I aim to render my services redundant. The ultimate purpose of the Office of the University Ombudsman is to reach the ideal peak where students, staff and the authorities of tertiary education institutions in Malta operate in such harmony that all causes for complaints are eliminated. Since we do not live in an utopia, it is unlikely that the optimum goal of zero complaints will ever be reached.

Nevertheless, statistical data presented hereunder show a reduction in the number of complaints reaching the Office of the University Ombudsman – from 80 in 2009 to 62 in the year under review (vide Tables 1 and 2). Two potential causes can explain this development: a first negative, pessimistic signpost would point to a situation where the constituents of this Office have found its services ineffectual and as a result have ceased to seek its intervention.

Table 1: Complaint intake by institution 2009-2010

	University of Malta	MCAST	Institute of Tourism Studies	Total
2009	61	14	5	**80**
2010	46	10	6	**62**

This interpretation of the facts is invalid since continuous feedback from our stakeholders clearly points to the conclusion that this Office provides an efficient and effective service.

An alternative explanation for the reduction of complaints reaching the University Ombudsman presents a more plausible rationale. Evidence shows that the three institutions involved – namely, the University of Malta (UoM), the Malta College of Arts, Science and Technology (MCAST) and the Institute of Tourism Studies (ITS) and the Office of the University Ombudsman have been working in tandem to reduce the roots that lead to complaints by students and staff.

Table 2: Complaints by institution classified by gender and status of complainant 2009 - 2010

	University of Malta		MCAST		Institute of Tourism Studies		Total	
	2009	**2010**	**2009**	**2010**	**2009**	**2010**	**2009**	**2010**
Students:								
male	28	27	2	4	1	1	31	32
female	21	10	1	2	-	1	22	13
Staff:								
male	9	8	8	3	3	3	20	14
female	3	-	3	-	1	-	7	-
Total complaints by students and staff	**61**	**45**	**14**	**9**	**5**	**5**	**80**	**59**
Own-initiative cases	-	1	-	1	-	1	-	3
TOTAL	**61**	**46**	**14**	**10**	**5**	**6**	**80**	**62**

Equally effective has been the constructive dialogue between these four institutions where the heeding of my recommendations has encouraged officials to tackle and resolve many complaints in-house thus eliminating the need for my direct intervention. This is confirmed by the increase in the number of cases that were resolved by informal action (vide Table 3); many other complaints never reached my Office because internal action sufficed.

Table 3: Outcomes of finalised complaints 2009 - 2010

Outcomes	2009		2010	
Resolved by informal action	11	19%	15	24%
Sustained	2	3%	5	8%
Partly sustained	3	5%	6	9%
Not sustained	23	39%	15	23%
Formal investigation not undertaken/ discontinued	17	29%	16	25%
Investigation declined	3	5%	7	11%
Total	**59**	**100%**	**64**	**100%**

Cases involving students with special needs illustrate the point. In the past, complaints from this sector of our constituents formed a high percentage of the Office caseload (Table 4). There were none in 2009 and just one complaint falling in this category in 2010 that was not sustainable. The University's *ACCESS – Disability Support Committee* (ADSC) made all the difference when it dealt with requests and complaints that fell within its remit and resolved them to the satisfaction of the individuals concerned.

A similar situation evolved at the Malta College of Arts, Science and Technology with equal success. On my recommendation MCAST established an Appeals Board to deal with complaints pertaining to staff promotions

Table 4: Complaint grounds 2009 - 2010

Grounds of complaints	2009		2010	
Unfair marking of academic work	15	19%	16	26%
Special needs not catered for	-	-	1	2%
Promotion denied unfairly	8	10%	2	3%
Post denied unfairly (filling of vacant post)	4	5%	5	8%
Unfair/discriminatory treatment	41	51%	27	44%
Lack of information/attention	12	15%	8	13%
Own-initiative	-	-	3	4%
Total	**80**	**100%**	**62**	**100%**

and career progression with the result that this Board resolved most of the complaints thus eliminating the need to seek the intervention of my Office.

A similar outcome emerged at ITS following the adoption of procedures for the filling of academic posts as proposed by the University Ombudsman. Furthermore, my urging to the education authorities contributed to the acceleration in the establishment of a more robust administrative and management structure at the Institute leading to the appointment of an Academic Director and Vice-Director and that of Registrar. The new structure, headed by a new Chairperson, allows for a regimen to deal with student and staff grievances and appeals before they need to seek my intervention.

One also notes with satisfaction that the UoM has adopted my recommendations on the selection of students to courses with a *numerus clausus* and to courses with a strong oral component such as the course for interpreters.

However, progress still needs to be registered especially in two main areas of concern. The first issue relates to the time taken by the three tertiary education institutions to deal with complaints (Table 5). I do appreciate that their management has a multitude of other matters to deal with besides the University Ombudsman's cases and the administrative work these entail. Still, it is incomprehensible, for example, why one section of the UoM administration provides the requested data within a matter of days while another section of the same institution takes months. The level of annoyance

Table 5: Age profile of closed cases at end 2010

Age	Cases in hand
1 month or less	15
2 months	20
3 months	9
4 months	7
5 months	5
6 months or more	8
Total closed files	**64**
Carried forward to 2011	**19**

and frustration increases when one knows that the information is readily available and can be referred to my Office without delay.

In this regard it may serve well to quote Article 17 (1) of *The European Code of Good Administrative Behaviour* which states that: "*The official shall ensure that a decision on every request or complaint to the Institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt.*"[1]

The Office of the University Ombudsman cannot respect this deadline if any of the institutions does not deliver the requested information in time. Therefore, I earnestly urge the officials concerned not to delay or procrastinate when my Office seeks reactions or information from their sectors. It is a hackneyed but still a valid maxim that *"Justice delayed is justice denied."*

The second area of concern is more complex because it relates to the need for greater transparency and accountability. Malta's tertiary education institutions jealously guard their academic autonomy and professional independence against unwarranted intrusions. And so they should! However, they do not foster these attributes through a dearth of administrative openness or lack of accountability based on the old fashioned and out-dated *"we know best"* syndrome.

No one, least of all the University Ombudsman, should question the institutions' right to decide on purely academic issues. I have consistently refused to rule, for example, on whether a student has reached the required academic standards to pass or fail a course or whether an applicant possesses the qualifications to take up an academic or administrative post. Nobody should interfere with an institution's decisions that student A should be awarded one degree classification while student B deserves a higher or lower one.

Similarly, the prerogative to decide that candidate X is more suitable for an advertised post than candidate Y lies with a properly appointed staff selection board. Its decisions should be respected by all once it was legally constituted and it operated according to the institution's rules, regulations and accepted practices.

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1 The European Ombudsman (2005): *The European Code of Good Administrative Behaviour,* The European Communities, Brussels.

Conversely, no long-standing traditions can deny students, staff, prospective employees, or indeed the public at large, such information as the criteria for degree classification, staff selection processes and the basis for awarding or withholding promotions. In all such cases the individual's, and the public's, "*right to know*" prevails and the three tertiary level education institutions this Office deals with are duty bound to provide the individuals concerned with all the information that impacts on their lives and their future provided personal data protection legislation is protected.

In this regard, Margot Wallström,[2] Vice President of the European Commission, declared: *"To me, the right to know is just as important to democracy as the right to vote. For that we need proper and functional tools for democracy: openness, transparency, public access to documents."* She went on to quote from the Maastricht Treaty which states: *"Transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration."*

Institutions, young and old, providing tertiary level education will strengthen the public's trust, and consequently their autonomy, when they demonstrate in no uncertain way that they have nothing to hide, that their decisions are taken without fear or favour. Their high moral ground is strengthened when their students and staff feel confident they will not be treated discriminatorily or with bias. In my dealings with complainants I am amazed at the number of people who, *a priori* and without justification, assume that the University acts unjustly or arbitrarily. When pressed to substantiate their claims these complainants invariably reply *"Everyone knows!"* and *"It has always been the case"*.

As an ex-high University official myself, I know that this is certainly <u>not</u> always the case because the institution genuinely endeavours to act as a model employer as well as a caring *Alma Mater.* Yet, its past obsession with confidentiality and its habitual tendency to reach decisions without a willingness to furnish justifications or explanations, have earned it an unfortunate and unjustified reputation.

This is where my role as University Ombudsman comes in. I am not an employee of the Malta's tertiary level education institutions and therefore

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2 Wallström, Margot (2009): *The citizen's right to know – time to improve openness, transparency and access.*

it is not my function to defend or justify their decisions. Neither do I act as a lawyer engaged to act on complainants' behalf against the institutions concerned. I serve as, what has been called *'an honest broker'*, seeking to remove misunderstandings, resolve conflicts and, where appropriate, offer solutions in situations where previously disagreements and clashes reigned.

In this respect my duties as University Ombudsman are to endorse good governance and to ensure administrative procedures which do not impinge on the rights of students and staff. My role is to support open and transparent measures that demonstrate justice and fairness and a belief in the principle of accountability. I promote the dissemination of information that renders students and staff conversant with academic regulations, conditions of work and other decisions that impact on their lives. I encourage students and staff to keep themselves well informed about their duties as well as their rights to ensure that they have justifiable grounds when lodging complaints against their respective institutions.

The evidence shows that when the institutions, their students and staff take note and act in accordance with my endeavours, the causes for complaints recede and the need for my interventions declines. The fact that the number of complaints has decreased this year in contrast to last year is a positive indicator that the Office of the University Ombudsman is reaching its aims.

The achievements are not coincidental but result from teamwork by all the personnel at the Office of the Parliamentary Ombudsman. I thank Chief Justice Emeritus Joseph Said Pullicino for his unstinting support and encouragement in carrying out my duties. I also acknowledge with thanks the valuable advice by the Ombudsman's Consultant and the assistance from the management team as well as the Investigating Officers.

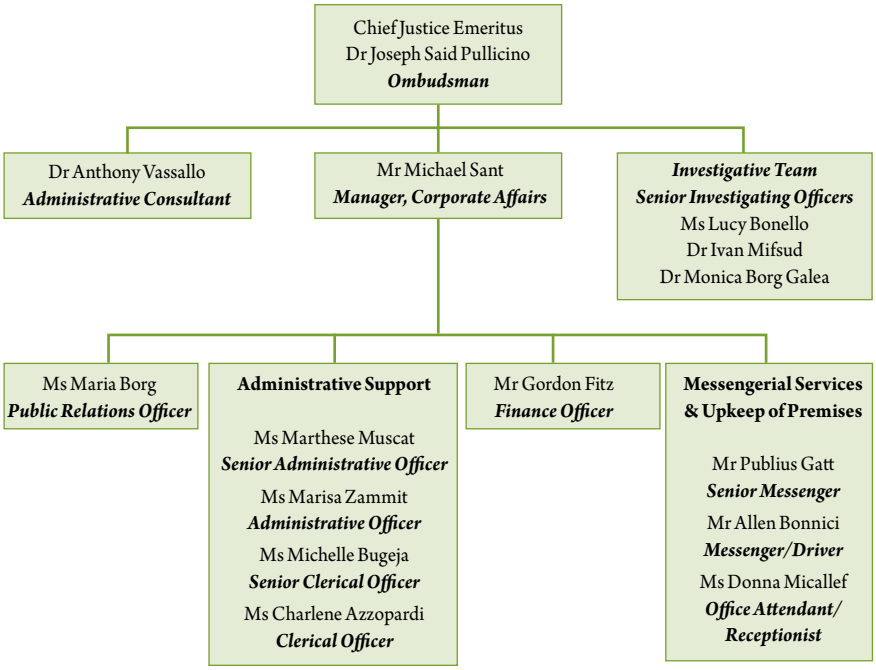
My appreciation also goes to the hard work put in on my behalf by the administrative and clerical staff who, with their ever-present cheerfulness and great efficiency, manage to reach even the most demanding deadlines. I also thank the support staff for whom my requests for assistance are never too onerous.

Charles Farrugia
University Ombudsman
28 September 2011

Appendix B

Office of the Ombudsman

Staff organisation chart (as on 31 December 2010)



Appendix C

Office of the Ombudsman: Report and financial statements for year ended 31 December 2010

Statement of responsibilities of the Office of the Ombudsman

The function of the Office of the Ombudsman is to investigate any action taken in the exercise of administrative functions by or on behalf of the Government, or other authority, body or person to whom the Ombudsman Act 1995 applies. The Ombudsman may conduct any such investigation on his initiative or on the written complaint of any person having an interest and who claims to have been aggrieved.

During the year of review the Office of the Ombudsman continued to provide investigative and administrative support services to the M.E.P.A. Auditor against payment of a fixed annual sum as agreed with M.E.P.A. in 2008. Similar services were provided to the University Ombudsman however related expenditure was refunded by the Ministry of Education which retains the Government funds voted for the University Ombudsman.

The Office of the Ombudsman is responsible for ensuring that:

a. proper accounting records are kept of all transactions entered into by the Office, and of its assets and liabilities;
b. adequate controls and procedures are in place for safeguarding the assets of the Office, and the prevention and detection of fraud and other irregularities.

The Office is responsible to prepare accounts for each financial year which give a true and fair view of the state of affairs as at the end of the financial year and of the income and expenditure for that period.

In preparing the accounts, the Office is responsible to ensure that:
- appropriate accounting policies are selected and applied consistently;
- any judgments and estimates made are reasonable and prudent;
- International Financial Reporting Standards are followed;
- the financial statements are prepared on the going concern basis unless this is considered inappropriate.

Statement of income and expenditure

	Notes	2010 €	2010 €	2009 €
Income				
Government grant		**373,000**		472,990
Mepa Auditor grant	2	**23,293**		23,293
University Ombudsman services	2	**5,564**		-
Non-operating income	3	**652**		1,652
			402,509	497,935
Expenditure				
Personal emoluments	4	**(397,477)**		(378,428)
Mepa Auditor expenses		**(783)**		(1,510)
Administrative and other expenses (Schedule 1)		**(100,014)**		(101,461)
			(498,274)	(481,399)
Surplus/deficit for the year			**(95,765)**	16,536

Statement of affairs

	Notes	2010 €	€	2009 €
Non-current assets				
Property, plant and equipment			**62,505**	64,672
Current assets				
Receivables	5	**34,375**		36,234
Cash and cash equivalents	6	**87,847**		183,627
		122,222		219,861
Current liabilities				
Payables	7	**(10,401)**		(14,442)
Net current assets			**111,821**	205,419
Net assets			**174,326**	270,091
Reserves				
Accumulated surplus			**174,326**	270,091

The financial statements were approved by the Office of the Ombudsman on 14th January 2011 and were signed on its behalf by:

Gordon Fitz
Finance Officer

Michael Sant
Manager
Corporate Affairs

Statement of changes in equity

	Accumulated surplus €
At 1 January 2009	253,555
Surplus for the year	16,536
At 31 December 2009	270,091
Deficit for the year	(95,765)
At 31 December 2010	**174,326**

Cash flow statement

	Notes	2010 €	2009 €
Operating activities			
Surplus/deficit for the year		**(95,765)**	16,536
Adjustments for:			
Depreciation		**13,076**	13,302
Gain/Loss on disposal of tangible fixed assets		**245**	173
Interest receivable		**(652)**	(1,652)
Operating surplus before working capital changes		**(83,096)**	28,359
Decrease/(Increase) in receivables		**1,859**	(18,235)
Increase/(Decrease) in payables		**(4,041)**	6,553
Net cash from operating activities		**(85,278)**	16,677
Cash flow from investing activities			
Payments to acquire tangible fixed assets		**(11,154)**	(5,364)
Proceeds from sale of equipment		**-**	-
Interest received		**652**	1,652
Net cash used in investing activities		**(10,502)**	(3,712)
Net increase in cash and cash equivalents		**(95,780)**	12,965
Cash and cash equivalents at beginning of year		**183,627**	170,662
Cash and cash equivalents at end of year	6	**87,847**	183,627

Notes to the financial statements

1 Presentation of financial statements

The financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS).

These financial statements are presented in Euro (€).

2 Summary of significant accounting policies

The financial statements have been prepared on the historical cost basis. The principal accounting policies are set out below:

Revenue recognition

Revenue from government grants is recognised at fair value upon receipt. Other income consists of bank interest receivable and payment by Mepa for investigative and administrative services provided by the Office of the Ombudsman. Similar services are being provided to the University Ombudsman however, all expenditure made is charged to the Ministry of Education.

Tangible fixed assets

Tangible fixed assets are stated at cost less accumulated depreciation. Depreciation is charged so as to write off the cost of assets over their estimated useful lives, using the straight line method, on the following bases:

	%
Property improvements	7
Office equipment	20
Computer equipment	25
Computer software	25
Furniture & fittings	10
Motor vehicles	20
Air conditioners	17

Receivables and payables

Receivables and payables are stated at their nominal value.

Notes to the financial statements (continued)

		2010 €	2009 €
3	**Non-operating income**		
	Bank interest receivable	**652**	1,652
	Proceeds from sale of equipment	**-**	-
		652	1,652
4i	**Personal emoluments**		
	Wages and salaries	**378,814**	360,307
	Social security costs	**18,663**	18,121
		397,477	378,428
4ii	**Average number of employees**	**15**	15
5	**Receivables**		
	Bank interest receivable	**98**	-
	Trade receivables	**13,743**	15,302
	Prepayments	**20,534**	20,932
		34,375	36,234

6 Cash and cash equivalents

Cash and cash equivalents consist of cash in hand and balances with bank. Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

Cash at bank	**87,587**	183,613
Cash in hand	**260**	14
	87,847	183,627

Notes to the financial statements (continued)

		2010 €	2009 €
7	**Payables**		
	Trade payables	-	14
	VAT payable on Mepa grant	**2,096**	2,096
	Accruals	**8,305**	12,332
		10,401	14,442

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables. As at 31 December 2009 the Office had no unrecognised financial liabilities.

8 Fair values

At 31 December 2009 the fair values of assets of assets and liabilities were not materially different from their carrying amounts.

Schedule 1

Administrative and other expenses

	2010 **€**	2009 €
Utilities	**13,502**	14,033
Materials and supplies	**4,722**	3,818
Repair and upkeep expenses	**4,226**	4,166
Rent	**2,166**	2,166
International membership	**1,370**	1,110
Office services	**6,225**	6,185
Transport costs	**7,771**	9,245
Travelling costs	**4,927**	7,740
Information services	**12,210**	8,084
Contractual services	**26,972**	25,884
Professional services	**(422)**	3,375
Training expenses	**1,899**	264
Hospitality	**837**	1,653
Incidental expenses	**117**	37
Bank charges	**171**	226
Depreciation	**13,076**	13,302
Disposals	**245**	173
	100,014	101,461

National Audit Office
Notre Dame Ravelin
Floriana FRN 1600
Malta

Phone: (+356) 22055555
Fax: (+356) 21220708
E-mail: nao.malta@gov.mt
Website: www.nao.gov.mt

Auditor General

Our Ref: NAO 56/2010
Your Ref:

1st April 2011

The Ombudsman
Office of the Ombudsman

Report of the Auditor General

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Ombudsman set out on pages 5 to 14, which comprise the balance sheet as at 31 December 2010, and the income statement, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

The Office of the Ombudsman's responsibility for the financial statements

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

Auditors' responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the preparation of financial statements of the Office that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal control of the Office. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Office of the Ombudsman, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the financial position of the Office of the Ombudsman as at 31 December 2010, and of its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with the Office of the Ombudsman Act, 1995.

Auditor General
1st April 2011

Office of the Ombudsman
11 St Paul Str
Valletta VLT1210 Malta