

# Annual Report 2012

The Office of the Ombudsman, Malta



**Parliamentary Ombudsman  
for Administrative Investigations**

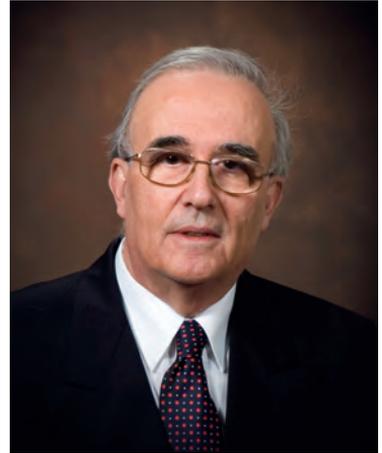
**Malta**

**ANNUAL REPORT**

**for the period  
January - December 2012**

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





December 2013

The Hon Dr. Anglu Farrugia  
Speaker  
House of Representatives  
The Palace  
Valletta

Mr. Speaker

I hereby submit my Annual Report covering the period January to December 2012 pursuant to the provisions of section 29 of the Ombudsman Act, 1995.

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

Yours sincerely

A handwritten signature in blue ink, consisting of several vertical strokes and a horizontal line at the bottom, representing the name Joseph Said Pullicino.

Joseph Said Pullicino  
Parliamentary Ombudsman

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# A year in retrospect

## Introduction

### A year of careful planning

2012 was a year of careful planning by the Parliamentary Ombudsman to chart the way forward to improve the services that his Office is bound to provide to citizens to ensure a clean, transparent and accountable public administration.

It was the year in which the Ombudsman identified the objectives he meant to achieve during his second five-year term, not only to improve internal practices and procedures to attain greater efficiency in the workings of his Office, but also and perhaps more importantly, to lay the foundations for the setting up of a strong, unified institution that would result in a consolidation of the Maltese Ombudsman service. An institution to whom citizens could turn to advance their complaints against the public administration in its various manifestations and to seek adequate redress for injustices they suffered.

The aim remains that of realising the project made by the Ombudsman some years back for the convergence of sectorial scrutiny mechanisms within the Office of the Parliamentary Ombudsman. Through this the Office would gain added value in technical expertise and valuable experience in the investigation and resolution of complaints in the most important areas of social activity.

This proposal was finally realised and given birth on 15 November 2010, with the approval of the third reading, by consensus of the House of Representatives, of the Bill entitled the Ombudsman (Amendment) Act 2010, which was assented to by the President of the Republic on 19 November 2010 as Act No XVII of 2010.

This law empowers the Ombudsman to provide administrative and investigative resources, available at his Office, to specialised Commissioners for Administrative Investigations appointed by him and designates these Commissioners as Officers of Parliament.

This major institutional reform was given substance and brought into effect, in the second half of the year under review with the appointment of the Commissioner for Health and the Commissioner for Environment and Planning. It was clear from the outset that the appointment of these Commissioners, who were to exercise their functions autonomously but within a unified structure at the Ombudsman's Office, would require a major upheaval of its investigative and administrative services that the Office undertook to provide support for them. Not only was an increase in the workload anticipated, but also the specialised areas of remit within the Commissioners' jurisdiction would necessitate different Case Management Systems, tailored to their particular needs.

Moreover, a matter of concern was the fact that no external organisational and operational review of the Office of the Ombudsman had ever been made since it was set up in 1995. The Ombudsman and senior management rightly considered that this was the proper time to conduct such a review. The exercise would aim to identify the strengths and weaknesses of the different sections of the administration and to recommend ways and means of improving it, to make it more efficient to adequately meet the growing needs of an expanded service.

It was also obvious that the project would necessarily require not only an increase, even if marginal, in human resources but also a major expansion in the infrastructure of the Office. Office space had already become extremely restricted before these developments took place. If the Ombudsman was to provide a better, modern and comprehensive service to citizens, more office areas and improved facilities had to be provided. Its IT systems had to be restructured and strengthened and its website revamped.

This entire project required major capital expenditure and an increase in the recurrent financing of the Office. Plans and projections were submitted to the competent authorities. When they were finally approved the Office could move forward to realise the whole project in a comprehensive and holistic manner. By the end of the year much had been realised but a lot still needed to be done. Hopefully by the end of 2013 the project should be on its way to completion.

While all these developments were taking place in a concerted effort to realise a vision for an expanded Ombudsman service suited to the country's needs, the Office continued to exercise its statutory functions from day to day in the defence of citizens' rights. It continued to process and investigate complaints of citizens seeking justice and action from the public administration. Even in this respect however, the Ombudsman remained forward looking.

He continued to press forward his conviction that his Office had a dual function. The primary function to defend the citizen against maladministration, injustice and abuse of power.

A secondary but just as important function is the Ombudsman's task to contribute towards and improved public administration that is correct, transparent and fully accountable. During his investigation on a particular complaint, systemic failures that require to be assessed are often identified. It is the Ombudsman's duty in such cases to make appropriate recommendations on how these failures could be rectified for the benefits of citizens. 2012 was a significant year also in this respect.

### Four major trails of development

This brief introduction leads to a short review of four major trails of development in 2012 on which it is appropriate to report.

- I. *The institutional reform of the Office* - The Commissioners for Administrative Investigations in specialised areas were appointed and started functioning.
- II. *The administrative reform* - Major initiatives were undertaken to improve the investigative and administrative structures of the Office.
- III. *Structural development* - Preliminary steps were taken in the process of physically restructuring the Office to provide more spacious and modern offices, fully equipped to the required standard that would adequately house the Office for the Parliamentary Ombudsman and his Commissioners while allowing space for further expansion if required.
- IV. *Promoting the dual function* of the Office of the Ombudsman as an effective tool to improve the public administration.

## I. The institutional reform A year of convergence and consolidation

### Unavoidable delay in milestone year

The year 2012, has been a milestone year for the institutional development of the Office of the Parliamentary Ombudsman. With the appointment of the first Commissioners for Administrative Investigations on 1 August 2012 the project to provide the structure for a comprehensive, unified and coherent national ombudsman service, that would provide the citizen with a single channel to the various existing scrutiny mechanisms of administrative conduct, was finally brought to fruition.

Unfortunately, there had been months of unavoidable delay following the approval, by both sides of the House of Representatives, of the empowering legislation in November 2010. This was mainly due to the difficulties encountered by the previous administration to make available additional office space necessary to house the new Commissioners. In fact, the building adjoining the main office in 12, St Paul's Street, Valletta, that had been earmarked for the expansion of this institution, could only be vacated by the Planning and Priorities Coordination Division of the Office of the Prime Minister in March 2012 after months of unavoidable delay.

The Parliamentary Ombudsman had consistently maintained that he would not consider kick starting the implementation of the project for a unified ombudsman service before he had, at least, the possibility of adequate housing, albeit temporarily, for the new Commissioners. He was of the opinion that the lack of proper accommodation and decent facilities might give an impression of indecisiveness and ambiguity regarding the national commitment in favour of strengthening the constitutional authority that guarantees good governance.

Once the premises were vacated and handed over, the Ombudsman could proceed to request the Prime Minister to appoint the Commissioners in terms of the amendments approved in 2010.

### Legal Notice 250 of 2010 - A landmark event

Once the Ombudsman was assured that the necessary infrastructural facilities could be realised, that the project had been put in motion and the funds were available, he took immediate steps to initiate procedures for the appointment of the Commissioners.

## A YEAR IN RETROSPECT

The landmark event that cleared the way for their appointment was the publication of Legal Notice 250 of 2012 that lays down the rules that regulate the functions generally applicable to all Commissioners for Administrative Investigations and that makes specific provisions that apply to the Commissioner for Education, the Commissioner for Environment and Planning, and the Commissioner for Health.

The Prime Minister accepted the Ombudsman's request that these three Commissioners should be appointed on the coming into effect of the amendments to the Ombudsman Act 2010, in so far as it was mutually agreed that in the exercise of their functions, the Commissioners would be providing citizens with added protection to safeguard their rights in three vital areas of the country's social development.

This Legal Notice was published by the Ombudsman in the exercise of the powers conferred upon him by Article 17(a) of the Ombudsman Act, after consultation with the Prime Minister. The rules came into force on 1 August 2012, with the exception of those Articles that concern the appointment of the Commissioner for Education that will come into force in 1 November 2013.

Much thought and effort were spent on the drafting of these rules since the success of the project depended on the creation of a proper and correct working relationship between the Commissioners and the Ombudsman. Regulations had to ensure not only that the Commissioners could operate in a free and autonomous environment that would allow them to conduct their investigations, conclude their final opinions and make their recommendations independently and without undue interference, but also that they could do so within the framework of a unified Office in which cooperation and consultation with the Ombudsman would be the order of the day.

The Rules aim at providing such an environment while ensuring that the new Commissioners would be able to fully utilise the investigative services and administrative support that the Office is bound to provide. The Rules therefore provide for a central focal point within the Office that receives all complaints with the Parliamentary Ombudsman assigning them to the Commissioners when the subject matter falls within their competence.

The Rules also provide that Commissioners could conduct own initiative investigations, with the concurrence of the Parliamentary Ombudsman. They provide when and how the Commissioners are bound to consult the Ombudsman and one another and the limited cases when the citizen could ask the Ombudsman, in certain well defined circumstances, to review an opinion of the Commissioners.

## **A system of checks and balances**

It is interesting to note that the amendments introduced in the Ombudsman Act in 2010, as well as the consequential Rules governing the functions of the Commissioners, have created a system of checks and balances in good governance that is perhaps unique in Malta's legislative framework. The procedures, established after intense negotiations with Government, not only reflect the respect that the administration had for the institution but it also manifested its trust in an institution that has for years been an effective instrument to improve the standard of good administration by giving a voice to citizens to ventilate their grievances.

The procedures unanimously approved by Parliament in effect highlight the autonomy of the Parliamentary Ombudsman and recognises him as an authoritative player in the mechanisms intended to regulate the audit of the administrative acts of the public administration.

## **Mechanisms worthy of note**

Worthy of note are the working mechanisms that are established by law for the setting up of the office of the Commissioners and the appointment of their incumbents. These mechanisms, in the enabling legislative provision, clearly show that the House of Representatives did not intend to provide that the Government should be the only arbiter on whether there was need to have a Commissioner to investigate a given area of the public administration. The Ombudsman was to remain the prime mover in this process. It was he who had to request the setting up of the Office of a new Commissioner if, in his considered opinion, this was necessary. The Government could not, of its own motion, initiate such procedures. However, the setting up of the Office of a Commissioner, recommended by the Ombudsman, had to be approved by the Prime Minister.

On the other hand, the Ombudsman initially has no say in the choice of the person to be appointed as Commissioner. The law reserves that right in the first place to the Prime Minister and to the Leader of the Opposition who are, by law, given a three-week period from the date when the Ombudsman makes such a request to agree on a competent person to occupy the position. This procedure is proper and appropriate since the Commissioner is by law an Officer of Parliament. It was therefore right that the holders of the two most senior offices of the House of Representatives are given the opportunity to agree on the choice of the Commissioner. When this happens, they are bound by law to inform the Ombudsman in writing of their choice, and the Ombudsman is bound to accept their decision and proceed to appoint the Commissioner.

If, on the other hand, the Prime Minister and the Leader of the Opposition fail to agree within the stipulated period, the law gives the Ombudsman the right to appoint the Commissioner himself, acting in accordance with his own deliberate judgement, without the need for any further consultation. His decision would be binding on the House of Representatives that was bound to recognise the new Commissioner as one of its officers.

### **Unique mechanism**

The uniqueness of this ingenious mechanism lies in the fact that the law seeks to recognise the right and the duty of the legislative organs of the State to appoint its officers by consensus, while at the same time ensuring that in default, the Ombudsman, who is himself one of its officers, will stand in and do so himself. The law thus avoids the possibility of a vacuum in appointment being created and the entire process being stultified through lack of agreement between the Prime Minister and the Leader of the Opposition. The fact that the law binds the Government and the Opposition to accept the choice of the Ombudsman could be seen as an incentive to encourage consensus. It could also be, as it in fact was in the case of the appointment of one of the first Commissioners, a rapid means to avoid deadlock. It successfully seeks to provide a delicate balance between the functions of different constitutional authorities to ensure the smooth and continuous operation of the Office of the Commissioners.

It is with a sense of pride and satisfaction that the Ombudsman recalls the pragmatic approach that the outgoing administration had in drafting the amendments to the Ombudsman Act 2010, as well as subsequent Rules issued in 2012. There was close collaboration with the Office of the Ombudsman. It was clear from the outset that the Government had willingly accepted the Ombudsman's proposal on the restructuring of the Office to ensure a measure of specialisation in its investigations. The aim was and remains the strengthening of the institution to increase the breadth and width of the service it offers to citizens, to strengthen its autonomy and independence and to enhance the authority of the Ombudsman as a constitutional body to audit the actions of the public administration.

This welcome, extremely positive approach was underscored and enhanced by the unanimous approval of the 2010 Amendments by the House of Representatives. An approach that continued to permeate Government's actions in the drafting and approval of the Rules issued by Legal Notice 250 of 2012. The law consistently aims at achieving consensus between the Executive and the Ombudsman to ensure the smooth realisation of the objectives of the amendments, while fully respecting the hierarchical relationship of these authorities established by the Constitution.

Thus as stated, the law provides that the functions of the Commissioners shall be approved by the Ombudsman, after consultation with the Prime Minister. On the other hand, it lays down that the Commissioners shall be paid such salary and allowances which shall be a charge of the Consolidated Fund, as may be determined by the Ombudsman with the concurrence of the Prime Minister.

These mechanisms and others have been well tried and tested with the appointment of the first Commissioners. They have served their purpose extremely well because they are carefully balanced and are in many respects novel.

One could consider that a similar mechanism could be adopted to make appointments to other sensitive key positions for which it is advisable to obtain the highest degree of political consensus possible. In such cases, one could consider the President of the Republic being given residual powers to make a final decision on the person to be appointed to these posts in case of disagreement between the Prime Minister and the Leader of the Opposition.

## The appointment of the First Commissioners

This mechanism for the appointment of Commissioners was tried and put to the test after that the Ombudsman by letter of 26 June 2012, informed the Prime Minister that he felt it was opportune to appoint a Commissioner for Environment and Planning and a Commissioner for Health, in terms of Article 17(a) of the Ombudsman Act. The Prime Minister replied that he agreed with this proposal and that he would be taking steps to consult the Leader of the Opposition to identify suitable persons, acceptable to both, that could act as Commissioners in these fields.

The Prime Minister informed the Ombudsman, within the statutory time limit, that there was agreement on the Commissioner for Health. He had agreed with the Leader of the Opposition that Mr Charles Messina could be appointed to that post. The Prime Minister also informed the Ombudsman that no agreement had been reached on a person to fill the post of Commissioner for Environment and Planning and that therefore, in terms of subsection 2 of Section 17(a) of the Ombudsman Act, the appointment of this Commissioner could be made by the Ombudsman, acting in accordance with his own deliberate judgement.

The Ombudsman took note of the fact that in respect of this Commissioner he had not been informed in writing by the Prime Minister and the Leader of the Opposition that they had reached agreement for a person to fill the position. He therefore proceeded to appoint Architect David Pace as Commissioner for Environment and Planning. The impasse was thus speedily resolved. That showed clearly, and at the first available opportunity, the validity of the mechanism set out by law that ensured a smooth and

seamless process for the setting up of the office of Commissioner as well as for choosing a competent person to fill the position.

### **The University Ombudsman and the Commissioner for Education**

Concurrently the Ombudsman considered requesting the Prime Minister to appoint a Commissioner for Education. That decision had however to be postponed.

The Rules issued by the Ombudsman in terms of the 2010 Amendments provide for the appointment of a Commissioner for Education and regulate the functions of that office within the framework of a unified Ombudsman Office. This Commissioner is intended to incorporate the post of University Ombudsman appointed under the Education Act. Since the term of the present incumbent, Professor Charles Farrugia, is bound to expire on 1 November 2013, the Parliamentary Ombudsman felt it was just and prudent that the provisions abolishing this post should not come into effect before that date. In this way, Professor Farrugia would be allowed to finish his full term of office thus enabling him to conclude cases in hand and prepare for a proper hand over to the new Commissioner.

In these circumstances, the Parliamentary Ombudsman informed the Prime Minister, who agreed, that he had decided not to ask for the appointment of the Commissioner for Education when the 2010 Amendments came into effect and that he would be doing so immediately before the office of the University Ombudsman was abolished in November next year. Meanwhile, the office of the University Ombudsman had already been, for all intents and purposes, converged administratively with that of the Parliamentary Ombudsman.

The Ministry of Education had agreed with the Ombudsman's suggestion that the jurisdiction of the University Ombudsman should be extended, by delegation of the Ombudsman, to cover complaints concerning other institutions of tertiary education like MCAST and ITS. The University Ombudsman has been working closely with the Office of the Ombudsman since his appointment, making full use of its investigative services and administrative staff. Working in an integrated office, fully supported by qualified and trained staff and having the opportunity of consulting the Ombudsman and Commissioners on topics of common interest regarding the conduct of investigations, enable the University Ombudsman to provide a much better service than hitherto.

## Working in an integrated system

During the first weeks since their appointment a lot of administrative changes had to be made to provide the Commissioners with the necessary support to enable them to perform their functions. Case Management Systems, tailored to their needs, had to be modelled as required by the nature of the complaints they expected to receive from the fields of their specialisation. These systems had to follow the general pattern in place for the Parliamentary Ombudsman, and had to be integrated with it to allow not only for the proper and efficient management of cases but also, retrieval needs and procurement of statistical data.

The Commissioners were given individual logo identification providing a colour trail for all correspondence and documents to be issued by the Office. Steps are being taken to provide publicity material to make their office known to the general public.

The Commissioners had to acquaint themselves not only with the way the office was managed but also and more importantly, with the mission statement of the Office of the Ombudsman of which they now form an integral part. Their mind-set had to change to one of a defender of citizens' rights. They had to familiarise themselves with the method of investigation, the way the office approached and dealt with government authorities, and the style and content of the final opinions and recommendations made. They had to gain a working knowledge of the laws governing the institution and the rules regulating their functions.

Finally, the Commissioners within the Office of the Parliamentary Ombudsman and the University Ombudsman are obliged by their founding legislation, to make an Annual Report to the Ombudsman to be included in his Annual Report for the scrutiny of Parliament. These reports are included in this publication. It is the first ever report for the Commissioner for Environment and Planning and for the Commissioner for Health and naturally, covers only part of the year under review.

## Project a success

The project to achieve a measure of convergence of audit officers focusing on specific areas of the administration within the Office of the Ombudsman and to endow it with a good degree of specialisation has been realised and can safely be considered to be a success. It should be brought fully to fruition next year, when the impact of the Commissioners' work could be properly assessed after completing their first full year in office.

## A YEAR IN RETROSPECT

Undoubtedly the 2010 amendments to the Ombudsman Act have laid down the foundations on which a centralised but specialised Ombudsman service, capable of effectively scrutinising the public administration and of providing adequate protection to citizens against maladministration and abuse of power, can be built. The systems now in place allow for further expansion in the services of specialised investigation provided by the Office of the Ombudsman to cover other areas of the public administration in a wide sense.

This without unduly burdening the exchequer with additional and recurrent expenditure that could, if well planned, be reasonably absorbed within the annual budget proposed in the Ombudsplan to the House of Representatives.

## II. Major initiatives in administrative reform

### Internal administrative structures - 2012 a year of soul-searching

The year under review marked the start of an important initiative to restructure the way that the Office operates in the exercise of its functions and to assess how best to maximize the use of its human resources to provide a better and more efficient service to citizens. It was felt that after fifteen years in operation and in view of the major developments being planned, it was time to conduct an in-depth study of work practices, processes and procedures at all levels from senior management to minor staff. A study that had to be conducted by competent persons, specialised in this field, who could conduct an investigation that would identify administrative problems and systemic failures and make appropriate recommendations.

Senior management insisted that such an exercise was needed because it was clear that in certain areas there was room for an effective reform that would lead to the provision of a more efficient service to the public, that would tighten up internal systems and that would ensure an improved support service both to the Ombudsman and the newly appointed Commissioners.

The exercise was also meant to evaluate the tasks allotted to each and every employee and to recommend appropriate changes where necessary, while providing the necessary incentives consonant with additional duties they are required to perform.

#### **Pricewaterhouse Coopers Report**

An expression of interest was published in the local papers and quotes were requested from firms who were interested to undertake this commitment. A number of reputable firms expressed interest and, after a proper evaluation, the Ombudsman and senior management identified Pricewaterhouse Coopers as the firm best placed to conduct this task. A letter of engagement was issued to it on 17 September 2012, instructing it to conduct an organisational and operational review of the Office.

Their report was presented to the Ombudsman on 31 October 2012 within the stipulated time-frame. In their report, Pricewaterhouse Coopers analysed the current organisational structures, operational processes and work methods of the Office and identified weaknesses and constraints that could be considered to hinder the effectiveness of the Office. They made recommendations on alternative structures and work systems that could be regarded as more appropriate to the needs of the Office.

## A YEAR IN RETROSPECT

Their review, as per instructions given, also took into consideration, the impact of the additional workload on the Office that could be brought about by the appointment of two new Commissioners of Administrative Investigations. In conducting their research, Pricewaterhouse Coopers were instructed to interview all the employees of the Office to obtain hands-on information on whether the tasks being performed entered into their job description, whether they are doing work above their grade, whether there are deficiencies in performance and generally to listen to their complaints and expectations.

Pricewaterhouse Coopers were also instructed to conduct research on organisational structures and operations of Ombudsman offices in other countries, including an analysis of key performance indicators of these countries.

The report identifies a number of important issues that need to be addressed not only in relation to the organisational structure, but also regarding the processes adopted, including use of the Case Management System and the lack of a proper auditing of the treatment of cases within acceptable timeframes. The report also deals with issues that could be affecting staff motivation, the need of staff training and of improving internal communication between staff, management and the Ombudsman.

It is the Ombudsman's opinion that generally speaking, the report correctly identifies the issues that need to be tackled and the areas of internal administration of the Office that need to be tightened up. Considering the tight timeframe given to Pricewaterhouse Coopers, the complexity of their mandate, the peculiar structure of the Ombudsman's Office and the goals it seeks to attain, the report makes assessments and remarks that are essentially correct.

### **Valid reference document**

The report will remain a valid reference document that will help management to draw up a roadmap for an improved administrative structure, capable of providing a transparent and efficient service to help the Ombudsman realise his objectives in the exercise of his functions as a defender of the citizens' rights. The report makes a large number of recommendations that the Ombudsman and management are considering.

The recommendations will not be taken on lock, stock and barrel. They will be analysed and implemented if they are considered to contribute towards an improvement of existing structures and the services provided. In certain areas, the report fails to appreciate the peculiar requirements of the Office which is small in size but complex in its operations. In other aspects, it recommends the introduction of systems that might be more appropriate

for larger organisations, or that do not adequately appreciate the peculiar nature of the investigations carried out. The need for discretion and secrecy during all the stages of the investigation, from the receipt of correspondence to the publication of the final opinion, have to be secured. Mostly however, these are matters of detail. Essentially the recommendations made seek to propose remedies for the failures that have been correctly identified in the report.

### Mixed reaction - staff reassured

Understandably but not surprisingly, the report had a mixed reaction from staff who were naturally apprehensive at some of the radical recommendations made that could affect the way they are used to work and also their prospects for career progression. The staff was however reassured that it was not the Ombudsman's intention to implement the report's recommendations wholesale. The reform would be gradual, along the suggested lines, and only those measures that were considered to be beneficial to the organisation and to the staff themselves would be implemented. Care would be taken to ensure that the reform in progress would not demotivate employees. It should, on the contrary, provide them with incentives to perform better and to get rewarded in the process. That work will mostly be carried out in the coming months.

### III. Structural development

#### Planning of a major logistic operation

While all this activity was going on, senior management was facing the headache of providing the Office with temporary accommodation that could adequately house all staff, including suitable offices for the Commissioners that had to be fully furnished and equipped. This major logistic operation needed to be carried out because of the proposed expansion of the offices and the integration of the existing building with an adjoining one that had just been made available to the Ombudsman.

This operation required not only the clearing up of this new premises and a general clean up to make the rooms usable but also the extension of existing IT services to the new offices. This work was competently and efficiently carried out in record time. All this and more, required weeks of intense work by all concerned. To everybody's credit the whole process was carried out very smoothly. Systems were in place within weeks and the Commissioners could start functioning without much difficulty. As a result, the Office can boast of temporary facilities that are not only usable but also provide a decent, more than acceptable, working environment. The Ombudsman insisted that this should be so since it became obvious by the end of the year, that the structural project, as planned, would be taking more than the time initially projected for its completion.

A word of thanks and appreciation is due to all the staff for their patience, appreciation and enthusiastic cooperation. They have all adapted themselves to the new situation admirably and this augurs well for the future.

#### The refurbishing works saga

At this stage it is fair to put on record the difficulties that senior management have had to face and are still facing, in the implementation of the project, due to the various delays to obtain the necessary building permits from the competent authorities. Delays that, at times, seem to be unreasonable and that resulted in the inevitable postponement of the project for months on end. Obtaining the required permits for what are, objectively, essentially minor structural alterations, has turned out to be a veritable saga. Putting the record straight makes interesting reading. It also justifies the unfortunate delay in commencing the works due to technical, bureaucratic obstacles the Office has had to face to obtain the go ahead from the competent authorities.

## **Difficulties that have not as yet been completely resolved**

The first major problem was the identification of suitable premises that could house the whole operation in one building and that was, as required, within the Valletta area.

A new and larger premises was originally offered to the Ombudsman in early 2011 but this offer was withdrawn six months later by the Government because of a change of plans. An alternative offer was eventually made. Three floors above the present Ombudsman's Offices in no.11, St Paul Street as well as, the building next door (no 12) was to be vacated by the Planning and Priorities Coordination Division of the Office of the Prime Minister and made available to the Office of the Ombudsman. The additional premises, which substantially increased the office space of the Ombudsman's Office, was in fact handed over during the first week of July 2012. Part of it was immediately used to house the temporary offices of the Environment and Planning Commissioner and the Health Commissioner in the beginning of August.

It was immediately clear that a substantial amount of structural and refurbishing works was required to link the two buildings and provide improved and adequate working space that can accommodate the new set-up of the Office. Once the premises were vacated and handed over, the Ombudsman could proceed to request the Prime Minister to appoint the Commissioners in terms of the amendments approved in 2010 as he in fact did.

As soon as the required additional space was provided by Government, a firm of architects was commissioned to survey the entire property and to finalise plans for its restructuring and renovation.

The brief given to Architect Mr Vincent Cassar was to convert both buildings into a modern, functional, homogeneous structure that could provide a comfortable working environment both for the Ombudsman and the Commissioners, while allowing room for further expansion. The building is to provide for other basic requirements that are lacking to date, including a board room, library space and a fully equipped conference room. The Architect was also instructed to make the necessary temporary arrangements that would allow the Office to function normally, while structural and other works were being carried out.

These plans were finalised and submitted for the required approval of MEPA.

## **Tendering Process**

In September 2012 a civil engineering consultant and mechanical and electrical engineering firm were contracted to prepare plans and tender documents for works that had to be carried out. In October 2012, after the plans were approved by the Ombudsman, two separate calls for tenders were published in the local press and the Government gazette. The first was for: masonry and concrete works, structural and other alterations and finishes. The second was for the supply and installation of mechanical, electrical and extra low voltage works to cover the entire building.

### **Transparent tendering for structural, mechanical and electrical works**

Apart from the construction of two rooms, the masonry tender mainly involves the opening of doors to interconnect the two buildings, widening of the lift entrance on all floors and the building of ramps for wheelchair accessibility, replacement of floor and bathroom tiles and of inadequate wooden apertures, plastering and painting. The mechanical and electrical tender is mainly concerned with the installation of new plumbing and electrical systems, air-conditioning and ventilation, a computer and telephone network and the provision of platform lifts for the disabled.

Tenderers had up to 3 December 2012 to submit their offer and whilst six submissions were received for the masonry tender, nine were made for the mechanical and electrical tender. In February 2013, the tender adjudication committee made up of officials of the Office of the Ombudsman and an external expert contracted for each tender selected the offer made by AX-UDJV (a joint venture between AX Construction Ltd and Unique Décor Ltd) for the masonry works at € 254,940 which was the cheapest offer. For the mechanical and electrical tender the adjudication committee selected the offer made by Titan International Ltd which although at € 313,194 was not the cheapest offer, fully met the tender specifications. In line with tender stipulations all unsuccessful tenderers of both tenders were informed of the adjudication committee's choice and given a period of ten calendar days to present a notice of objection in the event that they believed that they had been harmed or risked being harmed by the proposed award. No formal objection was received by the Office of the Ombudsman before or after the ten day period.

### **A further tender call**

Apart from these two tenders a third public call was made earlier in March 2012 for the supply, installation and commissioning of a passenger lift at the premises of the Office

of the Ombudsman. Three offers were received and with the assistance of a consulting engineer, it was agreed that the offer made by Panta Marketing Services Ltd which, although at € 38,174 was not the cheapest offer, conformed to the tender requirements. In June 2012 the company was informed that it was selected and an agreement was made to have the lift replaced after major structural works in the premises were concluded.

### **MEPA permits delayed**

The necessary MEPA permit for the works was expected to be issued in mid-2013. Meanwhile internal works which did not require a permit such as the removal of services, tiles, etc. commenced in March 2013. As required by law a Health and Safety firm was contracted to ensure that the statutory safety procedures were being followed by the project contractors.

Although the planned refurbishment of the premises included the building of restrooms for the disabled on every floor, ramps or platform lifts where necessary and the replacement of the office lift with one of a better size to accommodate a wheel-chair, the MEPA permit was delayed for months due to objections raised by the National Commission Persons with Disability (KNPD). The Commission's objection concerned the main entrance of the office which had already been refurbished years ago. The problem was the height of the step in front of the main door and the incline of an internal ramp which, in the opinion of the Commission, hindered access for persons on a wheelchair. The Architect acting on behalf of the Office of the Ombudsman requested permission from the Valletta Local Council to have the pavement in front of the Office slightly raised to minimise the height of the step in front of the Office main door however, this was denied. New plans were submitted to MEPA and the KNPD which included the restructuring of the main entrance of the Office to make it more user-friendly to wheel-chair bound persons. It is expected that the KNPD will approve the new plans and it would then be up to the MEPA Board to review the application and approve the permit. Since the Board has already viewed the application and had raised no objections other than the KNPD issues, an approval of the permit is expected, probably and hopefully during the last week of November or the beginning of December 2013.

As a result of this delay the project is now expected to re-commence in January 2014 and be completed by October or November of the same year. The works have been planned in a way as to cause the least disruption to the service provided to the public by the Office of the Ombudsman. It is not anticipated that the Office will have to temporarily shut down for any period of time.

## A YEAR IN RETROSPECT

Although some inconvenience has to be endured by the staff at the Office of the Ombudsman and possibly by the public whilst the project is in progress, the end result should be a premises which would adequately house, under one roof, most of the island's scrutiny sector of the public administration.

### A one-stop shop

The aim is to ensure that when the project is finally realised the Ombudsman's House would provide a one-stop shop to citizens who feel aggrieved by the actions of the public administration and who seek redress or just satisfaction. The House should provide a modern, functional and fully accessible building, well equipped to the required standards. It should ensure a welcoming environment both to citizens and the staff whose duty is to serve them.

## IV. The Ombudsman

### An effective tool to improve the public administration

#### The Ombudsman as a mediator

The Ombudsman has in recent years strongly striven to instil and promote the culture that it was also a function of his Office, to act as an effective tool to improve the public administration. He has repeatedly emphasized that his Office should not be seen merely as a means of redress for complainants, who feel they have been wronged through the actions of the public administration. It was not only concerned with investigations, that necessarily were confrontational in nature. Nor were the Ombudsman's functions adversarial in character, limited to bringing the public authority to account when maladministration results. It also has the function of mediating between the citizen and the public administration whenever, as a result of investigations conducted either following a complaint or on his own initiative, the Ombudsman identifies areas within the public administration in which practices and procedures need to be improved to ensure justice, transparency and accountability.

In these instances the actions of the Ombudsman, that need not necessarily lead to formal final opinions or specific recommendations, are to be seen as the contribution of an objective, authoritative, independent and constitutional authority for the improvement of the public administration in a wide sense and for the common good.

#### Positive results

Exercises of this nature have been carried out in these last years and have continued, with increased vigour, in the year under review. It must be said that it has been possible, in most cases, to attain very positive results because most government departments and public authorities have not only appreciated the good intentions of the Ombudsman in promoting such developments but they have also recognised the usefulness of introducing new practices and procedures that could limit complaints in specific areas of the administration and provide, where necessary, an effective and acceptable internal means of redress.

The crafting and drafting of such new practices and procedures to improve faulty areas of the public administration often require lengthy discussions between the Ombudsman and the top management of departments and authorities. In these meetings the Ombudsman seeks to convince that a given situation needed to be

## A YEAR IN RETROSPECT

revisited, that remedial measures should be taken to ensure that the citizen is given a just and fair deal. He suggests ways and means on how this can be achieved and, more often than not, there is agreement on what steps should be taken to achieve the desired result.

The Ombudsman does not in such cases expect that his recommendations are necessarily entertained or accepted. The final decision rests with management. It has however been his experience that management was always receptive to his suggestions and there are many instances in which these discussions led to meaningful measures of reform that had the desired effect. These include the setting up of new internal complaints mechanisms.

### **Marked reduction in number of cases**

It should be noted that as a direct result of such initiatives and after that the projected reform was put in place, there was a marked reduction of the number of complaints received by this Office concerning claims that were made in connection with matters that fell within the purview of the new internal complaints mechanism set up on the recommendation of the Ombudsman. This can also be noticed in the analysis of cases received carried in another section of this annual report.

Such reduction in the number of cases does not unduly worry the Ombudsman. As Sir John Robertson, a former New Zealand Ombudsman and mentor of Malta's Ombudsman Act, wisely and cryptically stated *"the main function of the Ombudsman was to run himself out of a job"*.

Similar initiatives by the Ombudsman have and are being taken in two distinct identifiable areas of the public administration;

- a) in cases involving the provision of a service to consumers by a public authority; and
- b) in cases which involve the exercise of administrative discretion by government or public authorities, that affect the citizen who has the right to be assured that decisions are taken fairly, transparently and without improper discrimination.

### **The strengthening of internal complaints mechanisms**

It has been the policy of this Office for the last years to directly encourage the setting up of internal complaints mechanisms by public authorities and corporations that provide a

service to the public. These mechanisms are different from the customer service that are normally the first point of reference consumers have to complain about the service given.

Experience has shown that, it is not uncommon for this Office to identify a systemic failure in the provision of a service during the investigation of an individual complaint. Such a failure could provoke a number of complaints that were in essence similar, if not identical. They would very often contain a strong element of technical factors, that require expertise to determine whether a complaint was justified or not.

### **Setting up of internal boards**

In these cases this Office has been recommending, with some success, that the authority or corporation should set up an internal Board to carry out an investigation into the complaint, report on its findings and make its recommendations accordingly. The Board would be made up of independent persons and include technical members, who could competently determine whether the complaint was justified. The Board would make its report to the authority or corporation that was not however bound to accept its conclusions. Clearly, that report would carry much weight since it was the authority or corporation itself that appointed the members of the Board and it could be safely assumed there was no doubt on their integrity and technical competence.

Setting up such a mechanism is an added tool for the amicable resolution of disputes that favours both the consumer and the service provider. Ascertaining technical data and analysing evidence by competent technical persons is often beyond the capacity of the Office of the Ombudsman, that would have in such cases, to rely on the appointment of experts to determine such complaints.

The setting up of internal complaints mechanisms in no way limits the right of complainants to have recourse to the Office of the Ombudsman if they are not satisfied with the way their complaint was dealt with by the authority or corporation or its internal Board. This Office would still have the right of review of the complaint as a last means of resort for redress. This Office would however, have the added advantage of the technical opinion on the facts submitted in evidence before the Board as well as the benefit of the Board's opinion and conclusions.

Such systems, overseen by the Ombudsman, have been set up in a number of authorities and corporations. They function well and are giving the desired results.

## **Boards not a Tribunal**

These Boards cannot be qualified as tribunals set up by law. Nor can they be said to conform to the basic requirements of the Paris Principles, insofar as they essentially remain an internal complaints mechanism, appointed by and dependent on the authority or corporation that sets them up and to whom they report. Their recommendations are not binding either on the authority or corporation itself or indeed on the consumer. Obviously however, the greater the autonomy and independence the Board enjoys and the greater the competence and technical expertise of its members, the greater authority and respect it would enjoy. When the Board's decisions are well motivated and technically documented, it would be difficult for the authority or corporation to ignore or discard its conclusions and recommendations.

The Ombudsman too has to take due note of such reports if the complainant, as is his right, decides to have recourse to this Office when the Board declines his request. It needs to be stressed that such boards are not intended to substitute the protection that the citizen has, as of right, under the Ombudsman Act. This new positive development should be seen as an added safeguard for the consumer and the Board as an additional means of redress within the authority's or corporation's structure.

If the consumer is not satisfied, he still retains the right to complain to this Office that would fully investigate the case, taking into consideration the findings of the internal investigation made by the Board, if the Ombudsman considers that proceedings before it were conducted fairly, competently and independently. The Ombudsman is not in any way bound to accept the board's findings or to implement its recommendations.

## **Duty of accountability and transparency**

The setting up of such Boards is having the important side-effect of raising the awareness of public authorities to their duty of accountability and transparency in their dealings with their clients and consumers when providing a service. They are starting to recognise and to accept their obligation that, when taking decisions that determine the rights of consumers, they cannot act high-handedly or arbitrarily. Slowly but surely, they are being made to realise that their consumers and clients have the right to a fair deal and to be given an adequate reason for decisions that directly affect them. These are the fundamentals of the right of good governance that the Ombudsman has been promoting and fostering in an area that, prior to the enactment of the Ombudsman Act, was completely grey. Till then, most authorities approached consumers' complaints high-handedly if not arrogantly, often adopting a take it or leave it approach. That mentality

is being gradually dismantled as citizens are increasingly becoming more aware of their rights as consumers. They are getting to know that Maltese and European legislation recognise the right of the citizen to good public administration. Citizens are learning to make good use of the legal instruments put at their disposal to vindicate this right.

## Ombudsman a Defender of Citizens' Rights

The institution of the Ombudsman has the duty to shelter and protect this newly found emancipation of citizens. It has also to be alert to any initiatives taken by public authorities that tend to undermine the right to good governance through administrative arrogance that is at the root of all abuse of power. It is towards this end that this Office directs its efforts to introduce new mechanisms empowering citizens to vindicate their rights.



# Performance Review

## 2012

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## Performance Review 2012

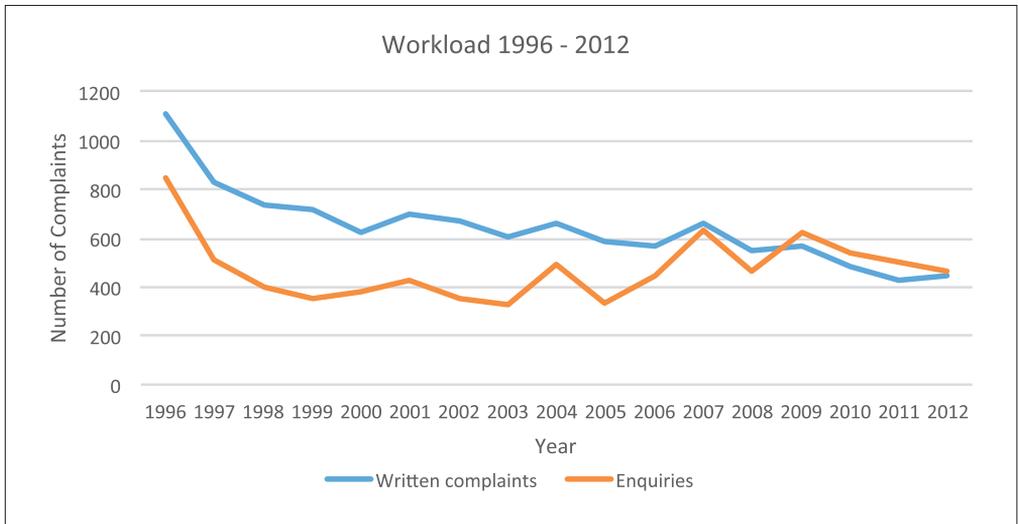
### Total Case Load

The total caseload of written complaints during 2012 (443) showed a marginal increase of 17 (4%) cases compared to the previous year (426).

**Table 1.1 - Complaints and enquires received  
1996 - 2012**

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
2011	426	504
2012	443	462

**Diagram 1.2 - Office of the Ombudsman - workload  
1996 - 2012**



Verbal enquiries resulting from telephone calls and personal visits to the Office went down: from 504 in 2011 to 462 in 2012, a reduction of 42 cases (8%).

Although there was a marginal increase in grievances reported to this Office, Diagram 1.2 confirms a downward trend which was experienced in the past years. This can be mainly attributed to two main factors:

1. the contraction in recent years in the range of public authorities that fall in the jurisdiction of the Ombudsman under the impact of privatisation and policies such as outsourcing and public private partnership; and
2. the independent regulatory and supervisory boards that were established in the last few years to exercise authority over the oversight functions on behalf of the citizens.

With the aim of improving the overall operations of the Office and to raise the profile of the institution, the Office is currently undergoing a restructuring process. This includes the appointment of a Director General and a key management team to oversee the restructuring process, improves efficiency and the promotion of an all-round awareness of its function and duties towards citizens.

## Incoming Complaints

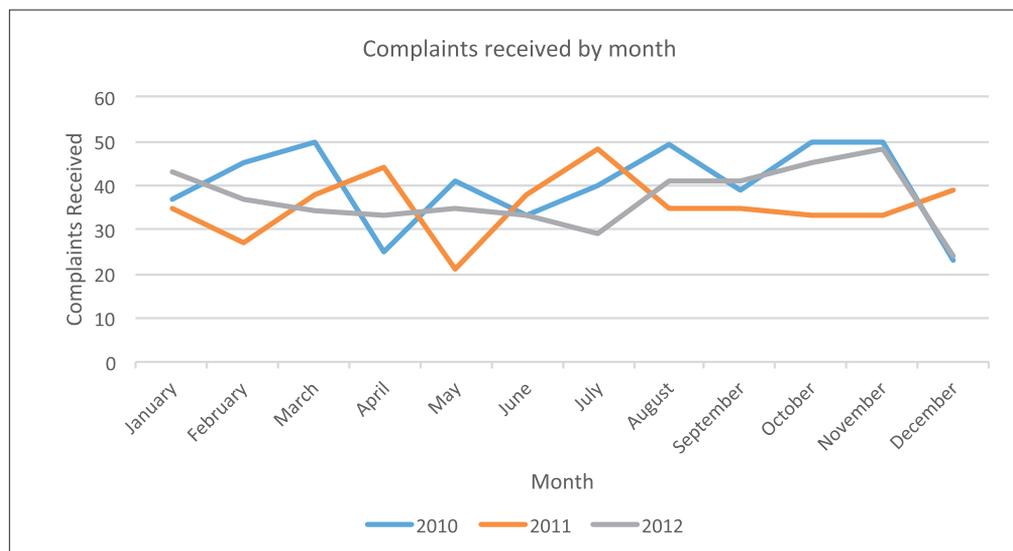
### Monthly complaints intakes and closures

**Table 1.3 - Complaints statistics by month  
2010 - 2012**

Brought forward from previous year	2010			2011			2012		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
			259			249			238
January	37		270	35	30	254	43	41	240
February	45	32	283	27	37	244	37	33	244
March	50	85	248	38	29	253	34	37	241
April	25	29	244	44	33	264	33	29	245
May	41	51	234	21	29	256	35	44	236
June	33	26	241	38	23	271	33	27	242
July	40	37	244	48	30	289	39	31	240
August	49	46	247	35	24	300	41	21	249
September	39	43	243	35	33	302	41	25	265
October	50	35	258	33	83	252	45	50	260
November	50	47	261	33	557	228	48	35	273
December	23	35	249	39	29	238	24	34	263
<b>Total</b>	<b>482</b>	<b>466</b>		<b>426</b>	<b>437</b>		<b>443</b>	<b>418</b>	
<b>Enquiries</b>	<b>543</b>			<b>504</b>					

Whereas the total number of completed cases between January and December 2012 slipped to 418 from 437 the previous year (down by 19 or 4%), pending cases at the end of the year under review stood at 263, an increase of 11 (5%) cases from the previous year.

**Diagram 1.4 - Complaints statistics by month  
2010 - 2012**



### Distribution of public service sectors and authorities subject to investigation in 2012

Table 1.5 provides a breakdown of incoming complaints by areas of government and policy initiative.

This table shows that the Water Services Corporation including cases received by ARMS Ltd, topped the list of the top five public authorities by number of complaints received. Cases concerning this corporation amounted to 44, an increase of 19% from 2011.

Followed by Social Security with 33 cases, a considerable increase of 65%. Third on the list are Education related grievances with 31 cases, an increase of 24%.

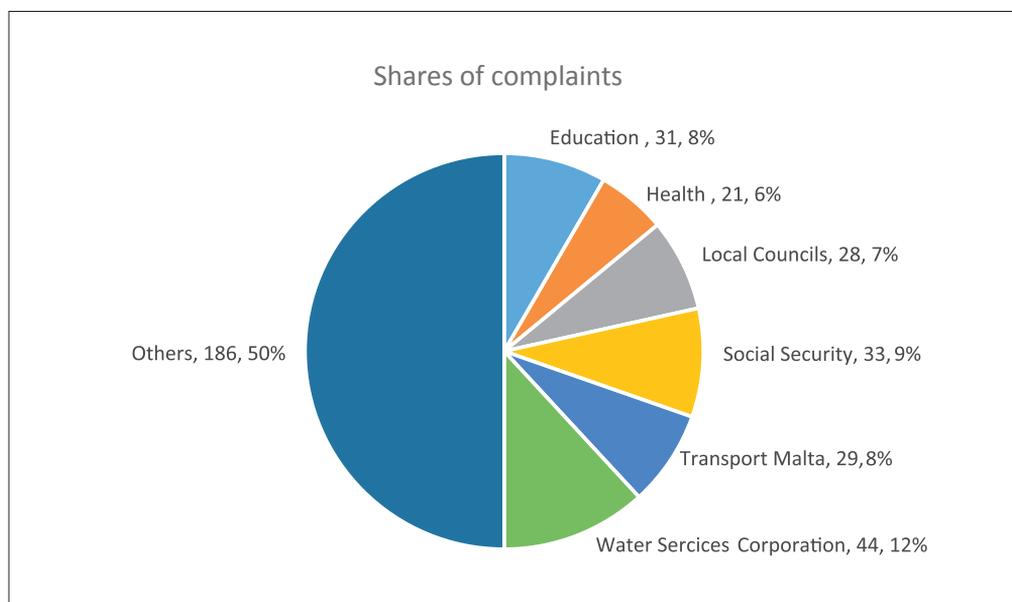
Although Transport Malta still features in the top five list at the fourth position, it is pertinent to note that during 2012, this Office received 29 cases concerning this authority, a decrease of 23% from the previous year. Transport Malta has topped the list in the past two years.

Another considerable increase in complaints received by this Office concerned the Local Councils, placed in fifth position with 28 cases, an increase of 55% from the previous year.

**Table 1.5 - Complaint numbers by type of public service sector  
2010-2012**

Sector	2010	2011	2012
Armed Forces of Malta	41	6	15
Agriculture	1	1	2
Air Malta	7	1	16
Corradino Correctional Facility	-	3	-
Courts	4	4	4
Customs	1	-	-
Education	27	25	31
Elderly	3	-	6
Enemalta Corporation	6	-	14
Health	12	32	21
Housing Authority	20	12	14
Inland Revenue	22	28	14
Joint Office	5	2	4
Land	16	11	17
Local Councils	21	18	28
Malta Enterprise	2	-	-
Malta Shipyards	1	-	-
Public Administration HR Office	6	9	15
Malta Environment & Planning Authority	11	19	7
Police Force	6	18	15
Public Service Commission	8	5	7
Social Security	27	20	33
Tourism	2	2	2
Transport Malta	45	38	29
Treasury	2	2	-
University of Malta	2	2	6
VAT	9	3	5
Water Services Corporation	29	37	44
Others	146	128	94
<b>Total</b>	<b>482</b>	<b>426</b>	<b>443</b>

**Diagram 1.6 - Shares of complaints received  
2012**



In all, the top five entities attracted 165 complaints or 37.2% of the total amount of written complaints.

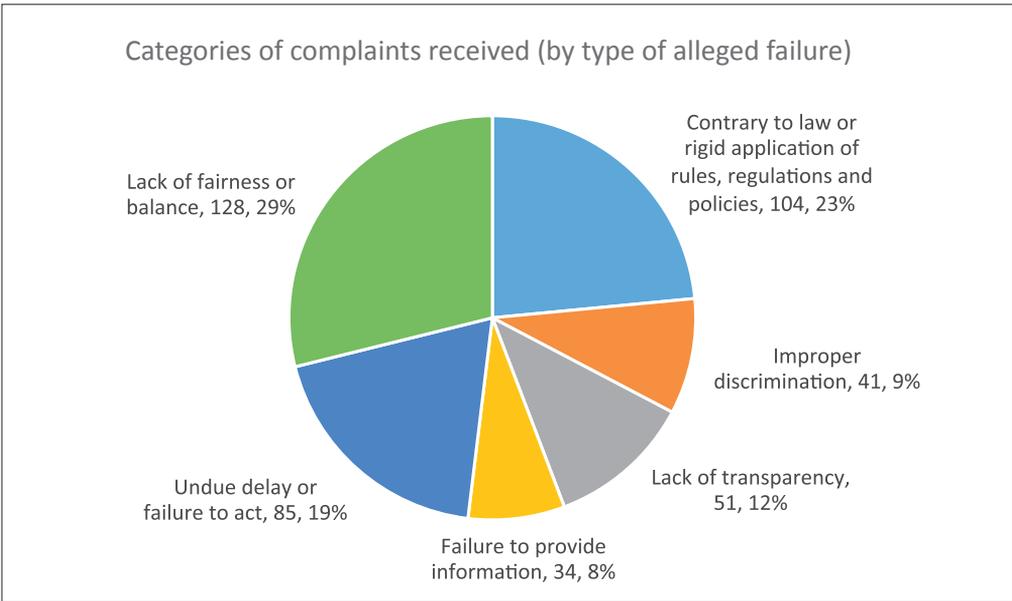
## Complaint grounds

**Table 1.7 - Complaint grounds  
2010 - 2012**

Complaints grounds	2010		2011		2012	
Contrary to law or rigid application of rules, regulations and policies	129	27%	100	23%	104	24%
Improper discrimination	57	12%	50	12%	41	9%
Lack of transparency	20	4%	30	7%	51	11%
Failure to provide information	22	4%	32	8%	34	8%
Undue delay or failure to act	101	21%	89	21%	85	19%
Lack of fairness or balance	153	32%	125	29%	128	29%
<b>Total</b>	<b>482</b>	<b>100%</b>	<b>426</b>	<b>100%</b>	<b>426</b>	<b>100%</b>

Table 1.7 shows a detailed breakdown of complaints that were dealt with during 2012 by the Office of the Ombudsman according to the type of maladministration that was alleged by complainants. This shows that as the previous year, the most common complaint is about lack of fairness or balance which amounts to 29% (128) of the total incoming caseload in 2012.

**Diagram 1.8 - Categories of complaints received (by type of alleged failure) 2012**



In the period under review there was a slight increase in the number of complaints attributed to lack of transparency from 30 (7%) in 2011 to 51 (11%) in 2012. At the same time there was a reduction in the number of complaints attributed to improper discrimination from 50 (12%) in 2011 to 41 (9%) in 2011; and in the number of complaints attributed to undue delay or failure to act from 89 (21%) in 2011 to 85 (19%) in 2012.

## Complaints received classified by Ministry

**Table 1.9 - Complaints received by Ministry**

	<b>2012</b>
Office of the Prime Minister	68
Ministry of Finance, the Economy and Investment	111
Ministry for Fair Competition, Small Business and Consumers	15
Ministry for Justice and Home Affairs	1
Ministry for Home and Parliamentary Affairs	21
Ministry for Justice, Dialogue and the Family	54
Ministry of Education and Employment	52
Ministry for Resources and Rural Affairs	17
Ministry for Gozo	3
Ministry for Health, the Elderly and Community Care	29
Ministry for Infrastructure, Transport and Communications	37
Ministry for Tourism, Culture and the Environment	14
Ministry of Foreign Affairs	3
Outside jurisdiction	18
<b>Total</b>	<b>443</b>

Table 1.9 shows the complaints received classified by the Ministries responsible of the department or entity on which the public complained. The Ministry of Finance, the Economy and Investment tops the list of ministries with the highest number of complaints - 111 complaints or 25% of the total case load. Followed by the Office of the Prime Minister having 68 cases or 15% of the total case load.

## Complaints received classified by Locality

**Table 1.10 - Complaints by locality**

Locality	2010	2011	2012
Attard	28	34	40
Balzan	4	4	8
Birgu	1	3	3
Birkirkara	26	29	31
Birżebbuġa	17	8	5
Bormla	6	4	5
Dingli	2	2	7
Fgura	9	9	6
Floriana	3	4	3
Għargħur	5	-	1
Għaxaq	5	8	2
Gudja	2	4	3
Gżira	9	7	4
Ħamrun	9	5	10
Iklin	2	2	1
Isla	1	3	-
Kalkara	3	1	3
Kirkop	1	1	3
Lija	5	4	8
Luqa	3	6	7
Marsa	6	4	-
Marsaskala	15	8	8
Marsaxlokk	5	2	4
Mellieħa	8	4	4
Mġarr	3	2	4
Mosta	23	14	13
Mqabba	3	4	3
Msida	4	10	4
Mtarfa	-	1	1

Naxxar	16	15	11
Paola	9	8	5
Pembroke	5	3	5
Pieta'	1	3	6
Qormi	10	8	5
Qrendi	2	2	2
Rabat	8	9	7
Safi	1	3	2
San Ġiljan	7	5	7
San Ġwann	12	14	11
San Pawl il-Baħar	19	23	21
Santa Lucia	2	2	4
Santa Venera	8	8	5
Sigġiewi	15	5	3
Sliema	19	19	13
Swieqi	8	9	9
Ta' Xbiex	-	3	2
Tarxien	14	7	10
Valletta	15	9	15
Xemxija	-	1	1
Xgħajra	-	2	-
Żabbar	16	15	11
Żebbuġ	10	10	8
Żejtun	15	9	15
Żurrieq	9	10	12
Gozo	39	19	26
Other	7	9	31
Overseas	7	9	5
<b>Total</b>	<b>482</b>	<b>426</b>	<b>443</b>

### Age profile of open cases

**Table 1.11 - Age profile of open caseload  
At end 2012**

Age	Cases in hand
Less than 2 months	59
Between 2 to 3 months	49
Between 4 to 5 months	33
Between 6 to 7 months	28
Between 8 to 9 months	20
Over 9 months	74
<b>Total open files</b>	<b>263</b>

**Diagram 1.12 - Percentage shares of open complaints by age  
At end 2012**

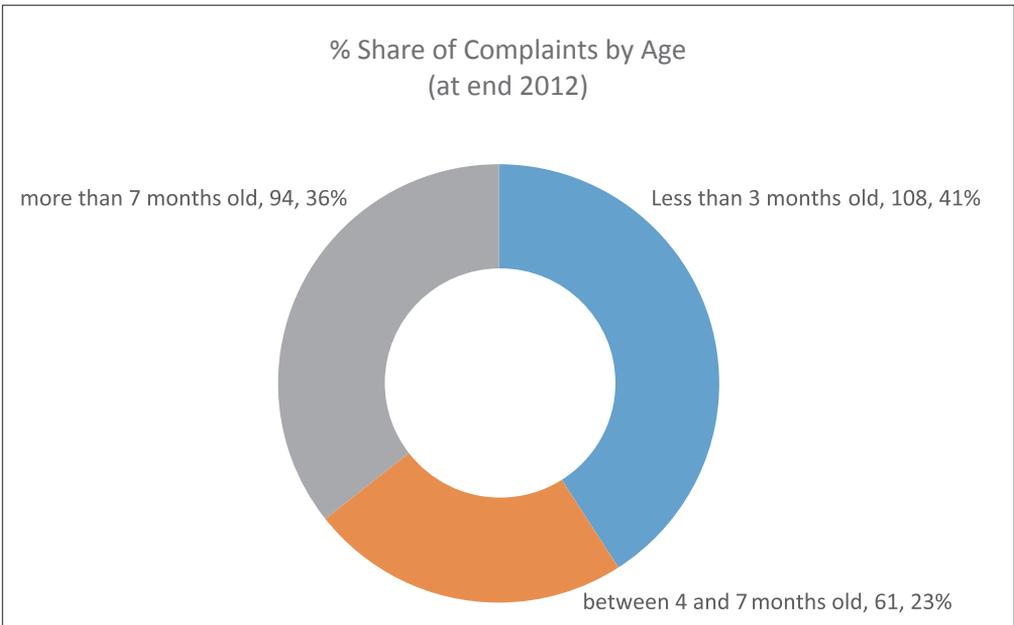


Table 1.11 shows the number of cases still under investigation that stood at 263 at the end of 2012, an increase of 25 cases or 10% from the previous year.

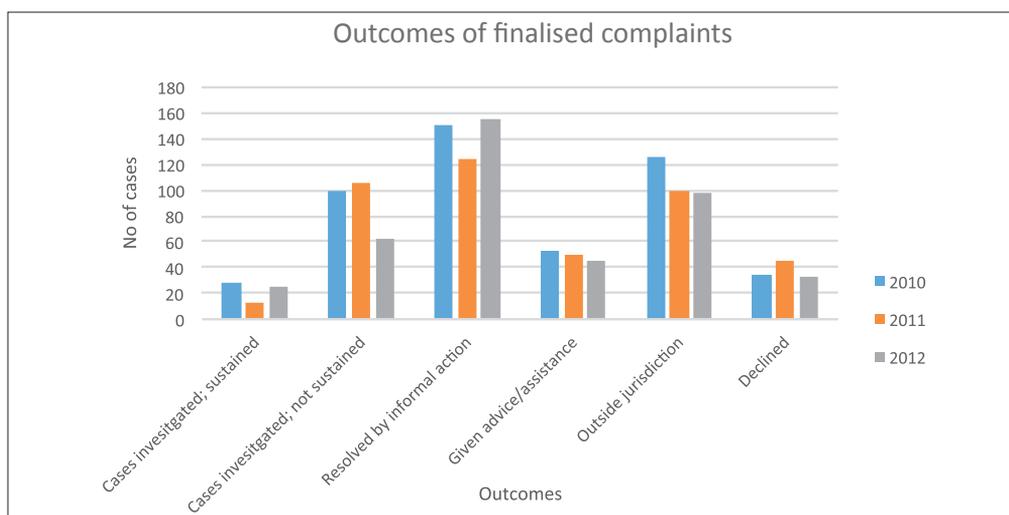
## Outcome of finalised complaints

**Table 1.13 - Outcomes of finalised complaints  
2010 - 2012**

Outcomes	2010	2011	2012
Cases investigated	128	118	87
- sustained	[28]	[13]	[25]
- not sustained	[100]	[105]	[62]
Resolved by informal action	151	124	155
Given advice/assistance	53	50	45
Outside jurisdiction	125	100	98
Declined (time-barred, trivial, etc.)	35	45	33
<b>Total</b>	<b>492</b>	<b>437</b>	<b>418</b>

As shown in Table 1.13, complaints that were found justified by the Ombudsman during the period under review consisted of cases that were concluded with a satisfactory outcome for the respondent (25) and those that were resolved by informal action (155) without the need to undergo a formal investigation.

**Diagram 1.14 - Outcomes of finalised complaints  
2010 - 2012**



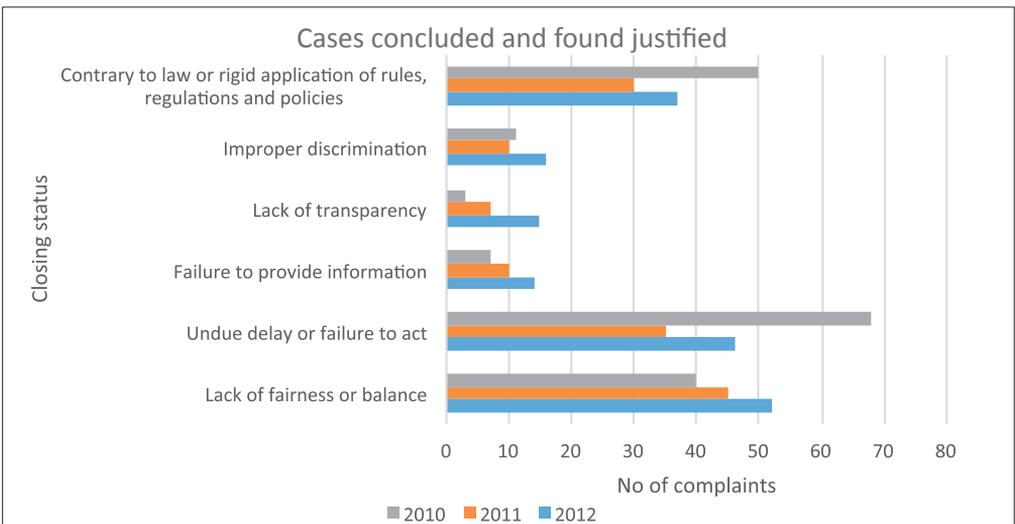
## Type of maladministration in justified complaints

**Table 1.15 - Type of maladministration in justified complaints 2010 - 2012**

Closing Status	2010		2011		2012	
Contrary to law or rigid application of rules, regulations and policies	50	28%	30	22%	37	21%
Improper discrimination	11	6%	10	7%	16	9%
Lack of transparency	3	2%	7	5%	15	8%
Failure to provide information	7	4%	10	7%	14	8%
Undue delay or failure to act	68	38%	35	26%	46	25%
Lack of fairness or balance	40	22%	45	33%	52	29%
<b>Total</b>	<b>179</b>	<b>100%</b>	<b>137</b>	<b>100%</b>	<b>180</b>	<b>100%</b>

The main reasons for acceptance by the Ombudsman of complaints' stand (Table 1.15) were lack of fairness or balance in 52 cases (29%); undue delay or failure to act by the state authorities in 46 complaints (25%); actions and decisions by public officials that were contrary to law or that were based on a rigid interpretation and application of rules, regulations and procedures in 37 cases (21%) and improper discrimination in 16 instances (9%).

**Diagram 1.16 - Cases concluded and found justified 2010 - 2012**



## Cases handled by the Office of the Ombudsman

**Table 1.17 – Cases handled by the Office of the Ombudsman 2012**

Sector	No of cases
Parliamentary Ombudsman <i>*(Total incoming complaints 442 of which 8 were transferred to the Commissioner for Environment and Planning for investigation)</i>	435*
University Ombudsman	56
Commissioner for Environment and Planning <i>(August - December 2012)</i>	92
Commissioner for Health <i>(August - December 2012)</i>	32
<b>Total</b>	<b>615</b>

**Diagram 1.18 – Cases handled by the Office of the Ombudsman 2012**

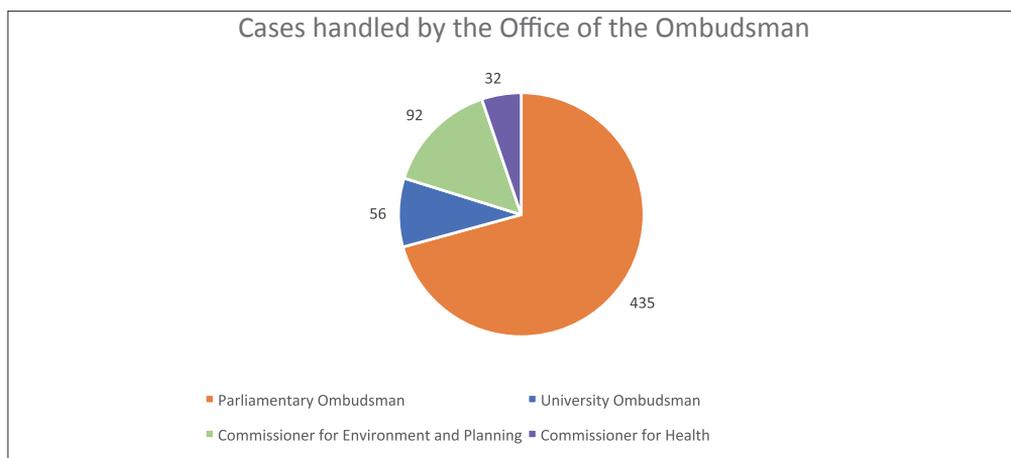


Table 1.17 and Diagram 1.18 show that during 2012, the Office of the Ombudsman handled 615 cases, of which 435 were investigated by the Parliamentary Ombudsman; 92 by the Commissioner for Environment and Planning; 56 by the University Ombudsman; and 32 by the Commissioner for Health.



# Annual Report by the University Ombudsman 2012

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**OMBUDSMAN**

UNIVERSITY OMBUDSMAN

## Annual Report by the University Ombudsman 2012

### Annual Report for 2012 by the University Ombudsman

This is the fourth report since the appointment of the current University Ombudsman in November 2008. It contains three sections: the first deals with the rights of the individual and those of society; the second section contains three case summaries; while the third provides information and data in graphic form of the complaints dealt by the Office of the University Ombudsman in the year under review.

### The rights of the individual and those of society

Two contemporary politicians, both women, both renowned for their impact on the international scene, had different, even conflicting views on the dynamics that interplay between the rights of the individual in contrast to the demands of society. Upholding as sacrosanct the entitlements of the individual, Margaret Thatcher, surprisingly in view of her earlier treatment of British miners, said:

*“There is no such thing as society: there are individual men and women, and there are families”.*

In contrast, Hillary Clinton maintained that there are many occasions when the rights of the individual have to be sacrificed for the needs of society. Again, surprisingly because the US Bill of Rights is based on humanist writings of John Locke and David Hume, the once second most powerful person on earth, wrote:

*“We must stop thinking of the individual and start thinking about what is best for society.”*

Who is right? The sociologist Emile Durkheim has argued extensively and persuasively that people’s sanity, stability and harmony rely on a balance between the two needs: the demands and requirements of a social group that are counterweighed by safeguarding the rights and legitimate wishes of the individual. I regard my work of University Ombudsman as fulfilling the role of the mediator who strives to provide the balance between the claims of the individual student or staff member and the decisions reached by those who run the institutions where the persons concerned study or work.

Let me put things into perspective. The University Ombudsman does not deal with the world-shaking issues that Margaret Thatcher and Hillary Clinton have had to tackle.

Similarly, the senior executives of the University of Malta (UoM), Malta College of Arts, Science and Technology (MCAST) and the Institute of Tourism Studies (ITS) do not decide on the weighty and complex problems faced by administrators of international organisations. However, the issues raised by complainants are most real to them, in some cases potentially health threatening. I have interviewed complainants who became most distraught while describing their predicament. Invariably they were convinced that the outcome of their case would shape their future in profound ways.

I am also aware that senior officials of the three institutions I deal with, face difficult dilemmas when asked to retract decisions that have been taken. It is also a difficult process to modify regulations as a result of my recommendations following the investigation of a complainant's claims. Such occurrences are rare, but they do happen. The choices available can generate complications especially where long established practices are concerned. The implementation of recommendations becomes most demanding when they have institution-wide repercussions. Fear of creating precedents is often the major obstacle.

Observers have argued that senior officials of these institutions should not be encumbered with an individual's complaint. Should the problem of a MATSEC examinee detract the Rector from the important task of negotiating with colleagues of internationally renowned academic institutions to ensure that our Alma Mater's future will match its glorious past? How reasonable is it to expect the Principal of MCAST to devote time to an individual's unmet claim for a promotion when he has the mammoth responsibility of building the academic and physical structures of Malta's future second university? The CEO at the Institute of Tourism Studies endeavours to reach the ambitious objective of transforming a fledging organisation into one that will provide the personnel to sustain one of the Islands' most important industries. Can he afford the time and effort to ensure that a minor member of staff has had his fair share of overtime?

The answer to the three questions is a resounding 'YES'. The highest officials need not become involved in the spadework. The institutions employ others who can carry out investigations, seek out the facts with the details, and make recommendations. Ultimately, however, the officials at the topmost echelons in these education institutions should be the final decision-makers. After the initial hiccups, in my fourth year as University Ombudsman, I have been fortunate to work with officials, the majority of whom, have come to understand and embrace this principle. As a result, our relations during the past year have been harmonious and productive.

I opened this report with quotes from two renowned politicians. I close it with quotations from two, this time male, but equally celebrated world statesmen. The first,

by Ronald Reagan, emphasises most forcibly the values, which the Office of the University Ombudsman promotes among the institutions it deals with. He said:

*“Protecting the rights of even the least individual among us is basically the only excuse the government has for even existing.”*

The second quote, from Mahatma Gandhi, should guide our respective organisations in all our dealings and endeavours. He said:

*“I claim to be a simple individual liable to err like any other fellow mortal. I own, however, that I have humility enough to confess my errors and to retrace my steps.”*

A professional working relationship between the Office of the Ombudsman, the University, MCAST and ITS based on such principles and sentiments will ensure that the rights of the individuals they cater for will be safeguarded while at the same time, fulfilling the needs of the society they serve.



The University Ombudsman, Professor Charles Farrugia in one of the regular meetings with the Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino

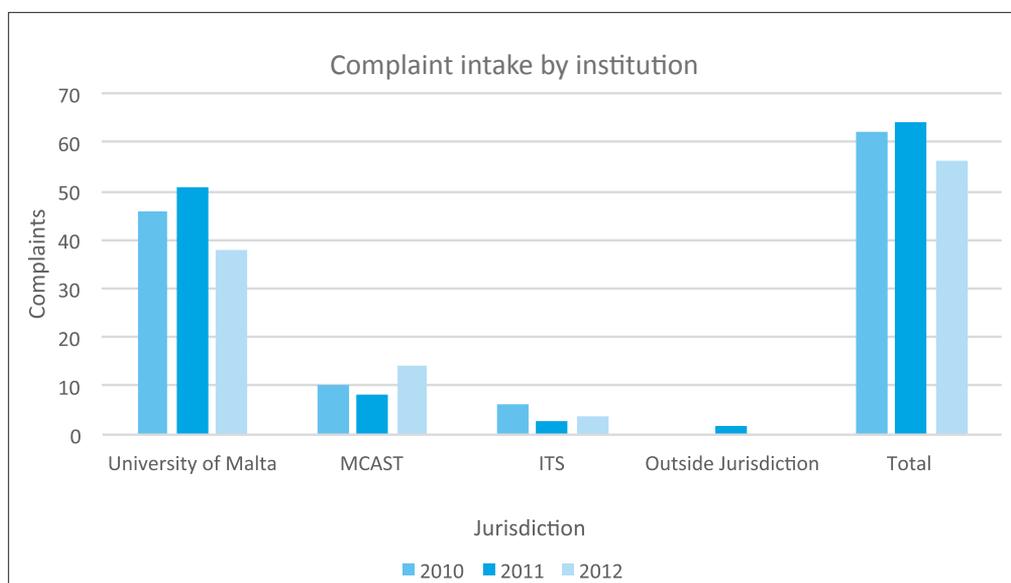
## Data and Tables

This section of this report presents the data emanating from the cases dealt with by the Office of the University Ombudsman in 2012. The information presented in tabular and graphic forms is self-explanatory. The data illustrates the number, variety and source of complaints received by this Office as well as the eventual outcomes of the investigations.

**Table 2.1 - Complaint intake by institution  
2010 - 2012**

Outcomes	2010	2011	2012
University of Malta	46	51	38
MCAST	10	8	14
Institute of Tourism Studies	6	3	4
Outside Institution	0	2	0
<b>Total</b>	<b>62</b>	<b>64</b>	<b>56</b>

**Diagram 2.2 - Complaint intake by institution  
2010 - 2012**



Data shown in table 2.1 and graph 2.2 replicate the trends set in previous years, namely that students and staff at the University of Malta lodged the highest number of complaints. The reasons for the drift are twofold. First, the University has by far the highest number of students and staff. Second, the Office of the University Ombudsman has served the University since 1969, while the service became available to MCAST and ITS in 2008. Consequently, individuals at this institution are better acquainted with the function of the University Ombudsman.

**Table 2.3 - Complaints by institution classified by gender and status of complainant 2010 - 2012**

	University of Malta			MCAST			Institute of Tourism Studies			Total		
	2010	2011	2012	2010	2011	2012	2010	2011	2012	2010	2011	2012
Students												
- male	27	13	11	4	1	5	1	3	0	32	16	16
- female	10	29	15	2	2	3	1	0	0	13	31	18
Staff												
- male	8	5	6	3	2	3	3	3	4	14	8	13
- female	0	4	7	0	3	2	0	0	0	0	7	9
Total complaints by students and staff	45	51	39	9	8	13	5	6	4	59	62	56
Own-initiative cases	1	-	-	1	-	-	1	-	-	3	-	-
Outside jurisdiction	-	-	-	-	-	-	-	2	-	-	2	-
<b>Total</b>	<b>46</b>	<b>51</b>	<b>39</b>	<b>10</b>	<b>8</b>	<b>13</b>	<b>6</b>	<b>8</b>	<b>4</b>	<b>62</b>	<b>64</b>	<b>56</b>

Data in diagram 2.2 and table 2.3 demonstrate a reduction in the number of complaints lodged during the year under review. It will be incorrect to interpret the data as a loss of interest in the services offered by the University Ombudsman. A careful analysis of the reasons leading to the decrease points to two developments. The first reflects greater attention taken by the institution’s officials to avoid causes for complaint. The second results from procedures that this Office and the three institutions have set to deal with and solve complaints in-house. As a result, fewer grievances reach the University Ombudsman thus contributing to the utopian dream to render his services redundant.

**Table 2.4 - Outcomes of finalised complaints  
2010 - 2012**

Outcomes	2010		2011		2012	
Resolved by informal action	15	24%	21	33%	12	22%
Sustained	5	8%	4	6%	10	19%
Partly sustained	6	9%	3	5%	6	11%
Not sustained	15	23%	16	26%	11	20%
Formal investigation not undertaken/ discontinued	16	25%	12	19%	12	22%
Investigation declined	7	11%	7	11%	3	6%
<b>Total</b>	<b>64</b>	<b>100%</b>	<b>63</b>	<b>100%</b>	<b>54</b>	<b>100%</b>

**Diagram 2.5 - Outcomes of finalised complaints  
2010 - 2012**

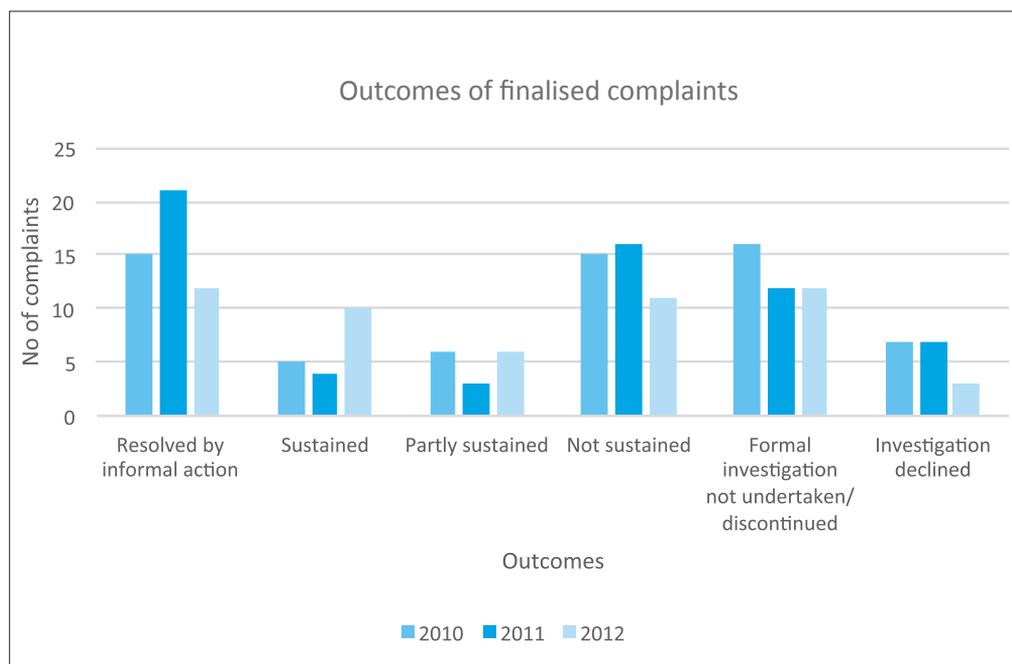
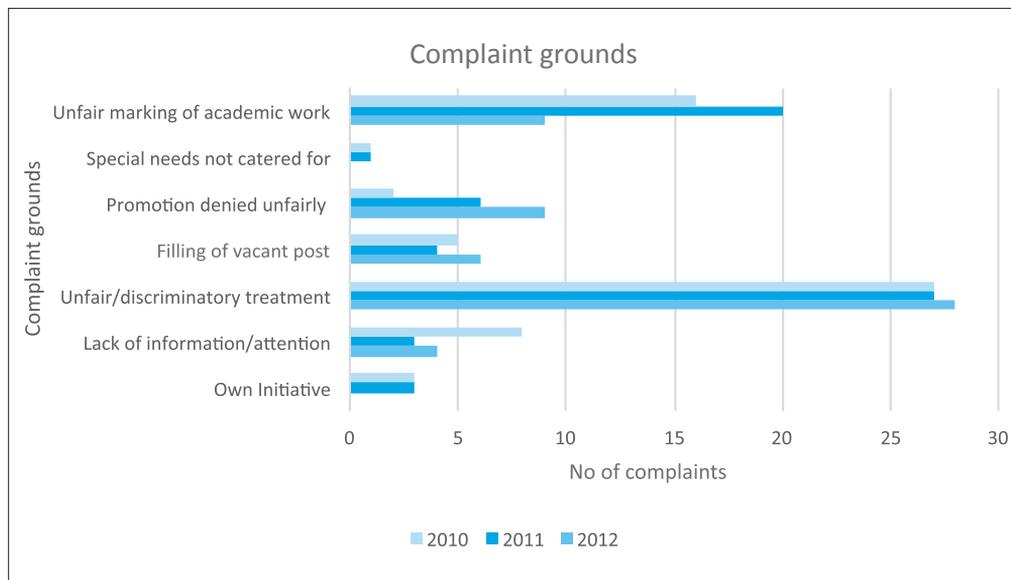


Table 2.4 and Diagram 2.5 show a closer insight into the data provided by this table will justifiably combine the numbers falling under two categories labelled ‘Resolved by informal action’ and ‘Formal investigation not undertaken/discontinued’ into one. It often happens that through the intervention of the University Ombudsman, officials at the institution concerned will see the complaint in a different light than they did originally. This leads to a different interpretation with positive result to the parties concerned. More frequently, when the University Ombudsman explains the intricacies of the issues involved, the complainant withdraws the case with such expression as: “Had I known this before, I would not have lodged the complaint.”

**Table 2.6 Complaint grounds  
2010 - 2012**

<b>Outcomes</b>	<b>2010</b>		<b>2011</b>		<b>2012</b>	
Unfair marking of academic work	16	26%	20	31%	9	16%
Special needs not catered for	1	2%	1	2%	0	0%
Promotion denied unfairly	2	3%	6	9%	9	16%
Filling of vacant post	5	8%	4	6%	6	11%
Unfair/discriminatory treatment	27	44%	27	42%	28	50%
Lack of information/attention	9	13%	3	5%	4	7%
Own-initiative	3	4%	3	5%	0	0%
<b>Total</b>	<b>62</b>	<b>100%</b>	<b>64</b>	<b>100%</b>	<b>56</b>	<b>100%</b>

**Diagram 2.7 Complaint grounds  
2010 - 2012**



Data presented in table 2.6 and diagram 2.7 show the obvious information that only students lodged complaints falling in the 'Unfair marking of academic' category. Those in the 'Unfair/discriminatory treatment' were lodged mainly but not exclusively by staff. University officials may wish to note that complaints lodged against the institution under the 'Lack of information/attention' category total more than those from the two other institutions combined. No doubt the growth of the University is a major fact, but as this institutions expands further, it needs to improve communications between the administration and the people studying or working on campus.

### Personal Note

Once again, I thank all the members of staff at the Office of the Ombudsman for their advice and assistance. They give these gladly with much generosity, and I appreciate them greatly. Without their support, as well as that of many officials at UoM, MCAST and ITS, my work would not have been possible.

**Professor Charles Farrugia**  
University Ombudsman



# Annual Report by the Commissioner for Environment and Planning 2012

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**OMBUDSMAN**

COMMISSIONER FOR ENVIRONMENT AND PLANNING

## Annual Report by the Commissioner for Environment and Planning 2012

This is the first report since the appointment of Perit David Pace as Commissioner for Environment and Planning in August 2012. This report will provide a summary of the work conducted by the Commissioner for Environment and Planning in his first four months in office.

### The Commissioner for Environment and Planning

The Ombudsman Act, 1995 was amended by Act No. XVII of 2010 makes provision for the appointment of Commissioners for Administrative Investigations for specialized areas as may be determined by the Parliamentary Ombudsman with the concurrence of the Prime Minister.

The Commissioner for Environment and Planning replaced the MEPA Audit Officer.

Perit David Pace, was appointed as the first Commissioner for Environment and Planning on the 1st of August 2012, with the aim stated in Paragraph 22 of Legal Notice No 248/2012 to *“investigate complaints related to environment and planning.”*

David Pace, a Perit, graduated from the University of Malta in 1971. He worked in the private practice and for a time was a member of the Development Control Commission at the planning authority. He was also involved in the MEPA reform.

### The Role of the Commissioner for Environment and Planning

#### Investigating complaints

The Commissioner for Environment and Planning is empowered to conduct investigations of alleged maladministration and complaints presented against MEPA in the exercise of its functions. These can range from allegations of erroneous interpretation or application of policies, lack of enforcement or follow-up of enforcement action, to allegations of unjust treatment in promotions or allowances to staff.

The Commissioner has also the role of an assessor in ensuring the correct applications of policies in the processing of applications for development. This, however, will allow him to steer decision-making towards greater sustainable development.

## Own Initiative Investigations

From time to time, the Commissioner for Environment and Planning, may initiate own initiative investigations which can relate to shortcomings which have been highlighted in publicity or matters which have emerged, for example, in the course of the investigations.

Matters chosen for investigation on the Commissioner's own initiative are examined in the same way as ordinary complaints. Investigation leads to a decision in which the Ombudsman adopts a position on shortcomings in the same way as he does in his decisions on complaints.

## Autonomy

The Commissioner for Environment and Planning is autonomous and independent from government. As the Parliamentary Ombudsman, the Commissioner for Environment and Planning is an Officer of Parliament and carries out his duties in full independence. He operates within the legal framework of the Office of the Parliamentary Ombudsman which enables him to use the same administrative and investigative resources.



The Commissioner for Environment and Planning, Perit David Pace taking oath of office from the Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino - 1 August 2012

## Assumption of duties

On taking office in August 2012, the process for the handover of all pending cases held by the MEPA Audit Officer was commenced. The matter was given priority in order to expedite the conclusion of pending investigations and close the cases.

Discussions were also held with the Audit Officer and MEPA's CEO for the complete transfer of the Audit Officer's files to the Ombudsman's Office for reference and safekeeping and the process was completed by the end of the year.

A system of regular meetings with senior MEPA officials was initiated and continues to date. This includes meetings with the MEPA Chairman, CEO and Directors, where cases under review are discussed. This has resulted in a more efficient processing of the cases handled. The cooperation of all MEPA officials in responding to requests for information in an expeditious manner is to be commended.

As the Audit Officer's premises were to be vacated, and the existing electronic link with the Ombudsman's Office taken down, it was decided to replace the system by a dedicated link to the MEPA's Case Management System. Besides providing a swift and direct link for examining files, this system has all eliminated the need for requesting the physical MEPA file to be delivered to the Ombudsman's Office, resulting in greater efficiency and reduced risk of loss of documents.

A different approach was set in place with regards to the response from the MEPA during investigations. Until then the procedure was that on concluding the drafting of his report, the Audit Officer, would send it to the MEPA Chairman for his response. When the response was received the Audit Officer would include this in his final report, together with any rejoinders or further remarks he deemed appropriate, and the report would then be circulated to the interested parties. In cases where the Chairman did not reply the Audit Officer proceeded with the publication of his report, on the assumption that the Chairman agreed with his findings.

This procedure was substituted by one where the MEPA is advised immediately that an investigation was being opened on a particular complaint. Details of the complaint are given and the MEPA is requested to provide its response to the complaint, for it to be evaluated together with the rest of the evidence collected during the investigation. The MEPA will then receive the final report as one of the interested parties.

It was felt that this procedure provided a more level playing-field, with the MEPA and the complainant given equal status in the process, thus giving a more equitable image to case-handling.

## Case load

These system changes led to increased efficiency, and contributed to a number of cases being resolved without the need for a formal investigation to be conducted and a report issued. As a matter of fact, a substantial amount of closed cases falls within this category as illustrated later in Table 3.1. Besides these cases there were other cases which were declined since they did not qualify for investigation in terms of the Ombudsman Act.

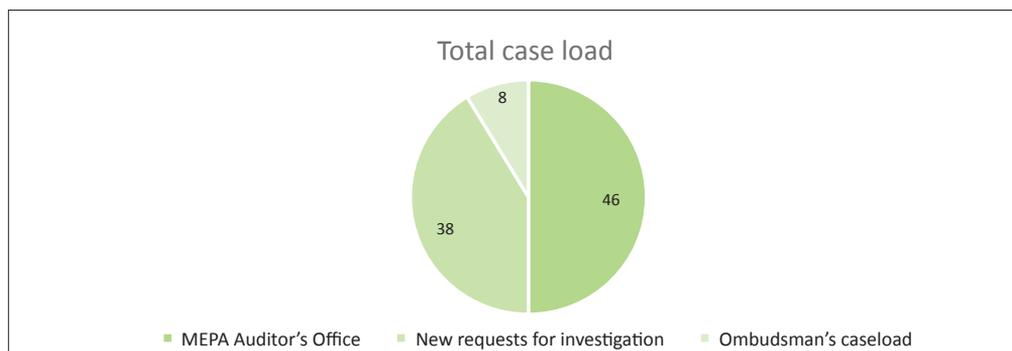
Between August and December 2012 forty six (46) cases were taken over from the Audit Officer's case-load. In addition to the Audit Officer's caseload, thirty eight (38) new requests for an investigation were received within the same period, while eight (8) cases which were being handled directly by the Ombudsman's Office were transferred to this caseload.

The total caseload handled therefore amounted to ninety two (92) cases.

**Table 3.1 - Case load  
August - December 2012**

Case load	2012
Taken from the MEPA Auditor's Office	46
New requests for investigation	38
Transferred from Ombudsman's caseload	8
<b>Total</b>	<b>92</b>

**Diagram 3.2 - Total case load  
August - December 2012**



From this caseload, eleven (11) cases formerly on the Audit Officer’s list, nineteen (19) new cases, and three (3) cases transferred from the Ombudsman’s Office were closed making a total of thirty three (33) closed cases in the period under review.

**Table 3.3 - Closed cases  
August - December 2012**

Closed cases	2012
Taken from the MEPA Auditor’s Office	11
New requests for investigation	19
Transferred from Ombudsman’s case load	3
<b>Total</b>	<b>33</b>

**Diagram 3.4 - Total closed cases  
August - December 2012**

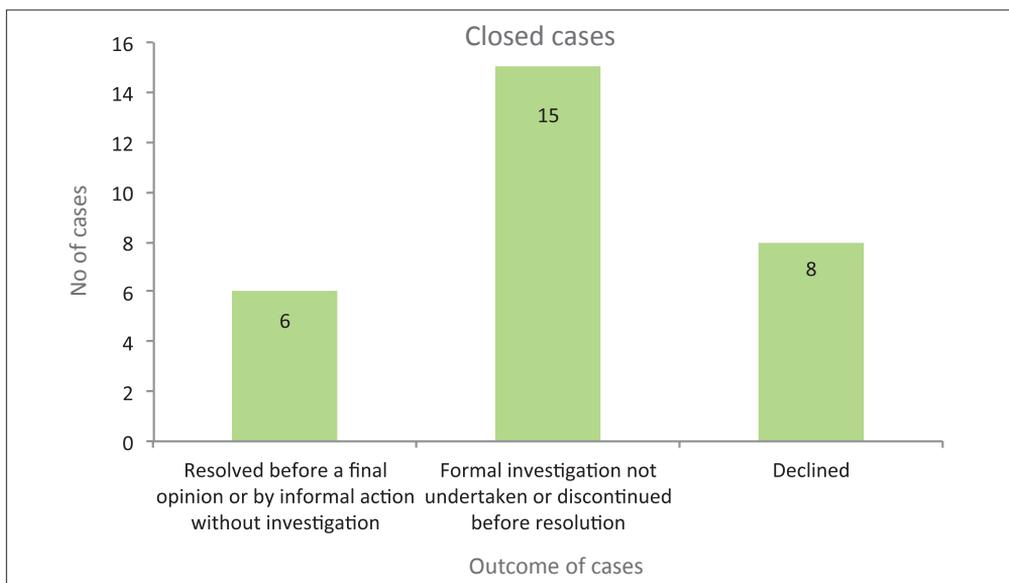


As shown in Table 3.3, a substantial number of cases were closed without the need of a final report being prepared. In fact, these amount to twenty nine (29) cases, or seventy four (74%) percent of the total number of cases closed. Of these six (6) were resolved before a final opinion was drafted or by informal action without a formal investigation being undertaken, fifteen (15) where a formal investigation was not undertaken or discontinued before resolution while eight (8) were declined outright.

**Table 3.5 - Outcomes of finalised complaints  
August - December 2012**

Outcomes	2012	
Resolved by informal action	6	21%
Formal Investigation not undertaken/discontinued	15	52%
Investigation declined	8	25%
<b>Total</b>	<b>29</b>	<b>100%</b>

**Diagram 3.6 - Cases closed before report between  
August - December 2012**



The declined category merits further comment. Cases falling within this category regrettably had to be declined from the outset, as the complaint had either been filed outside the legal time limit, or had not exhausted all legal means of redress or the issue had been already determined by a Tribunal or Court of Law. Complainants sometimes found it difficult to understand how the Ombudsman's Office declined taking up a case because all legal means of redress available had not yet been exhausted, yet when they did exhaust all means of redress they found that the request for an investigation was still declined as the matter had now been dealt with by a Tribunal or Court of Law. A perfect Catch 22 situation.

The explanation lies in the fact that this Office is precluded by law from reviewing a decision taken by such authorities. Where the issues forming the merits of the complaint were found not to have been dealt with, then the investigation was taken up.

It is general policy that persons who feel aggrieved and file a complaint at this Office are invariably advised to seek all available means of redress at law in order to protect their interests as this Office is one of last resort.

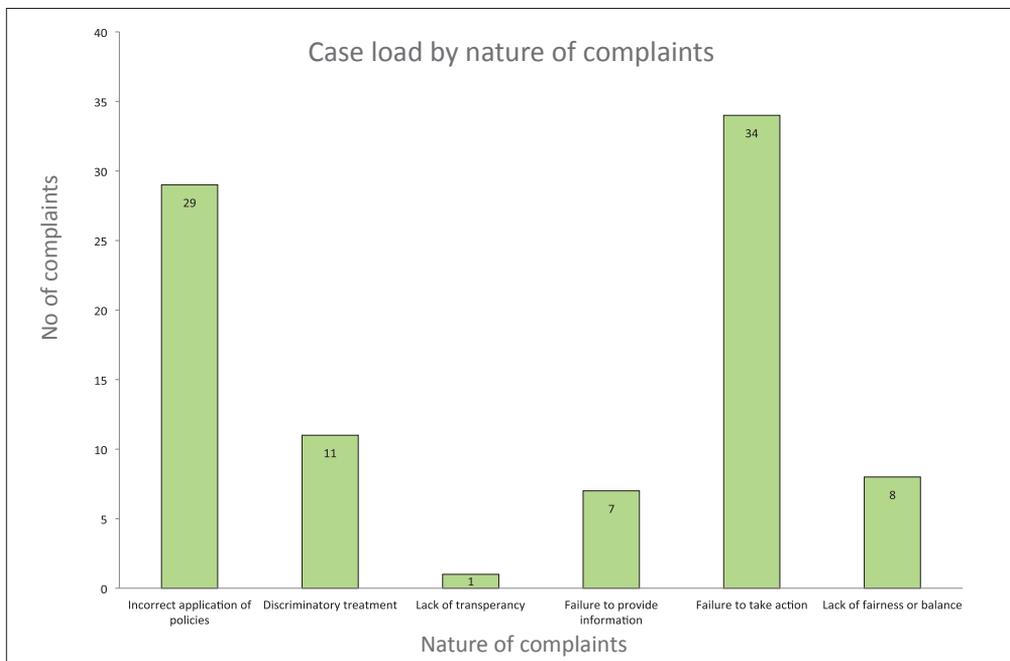
### Case typology

An analysis by category of the complaints received, reveals that the majority of complaints - thirty four (34), amounting to thirty eight (38%) percent of the total caseload - were for undue delay of failure to act. These complaints were mainly aimed against the MEPA's Enforcement Section. These were followed by twenty nine (29) complaints or thirty two percent (32%) of the total caseload against decisions which were contrary to law or rigid application of rules, regulations and policies. Once more these complaints were against the MEPA, this time the decision-making bodies. There were eleven (11) complaints against discriminatory treatment, eight (8) against lack of fairness or balance, seven (7) against failure to provide information, and one (1) against lack of transparency.

**Table 3.7 - Case load by nature of complaint  
August - December 2012**

Outcomes	2012	
Undue delay of failure to act	34	38%
Decision contrary to law or rigid application of rules	29	32%
Discriminatory treatment	11	12%
Lack of fairness or balance	8	9%
Failure to provide information	7	8%
Lack of transparency	1	1%
<b>Total</b>	<b>90</b>	<b>100%</b>

**Diagram 3.8 - Case load by nature of complaint  
August - December 2012**



### Personal Note

Building upon the experience gained during this relatively short but intense period, there is a need for ‘externalizing’ the services offered by this office, by means of more publicity and interfacing with the public.

The policy of tackling issues before they become problems has borne positive results, as evidenced by the statistics shown above. This approach will definitely be resorted to as much as possible during 2013. Whether this service could be formalized by the use of Alternative Dispute Resolution methods is an issue worthy of debate. As a fact, this service is already offered in some Ombudsmen offices abroad.

The year 2013 could therefore be a year of consolidation accompanied by planning for further changes aimed at enhancing the quality of service available to citizens seeking assistance from this Office.

**Perit David Pace**  
**Commissioner for Environment and Planning**



# Annual Report by the Commissioner for Health 2012

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**OMBUDSMAN**

COMMISSIONER FOR HEALTH

## Annual Report by the Commissioner for Health 2012

### Annual Report for 2012 by the Commissioner for Health In the Office of the Parliamentary Ombudsman

This is the first report since the appointment of Mr Charles Messina as Commissioner for Health in August 2012. This report will give the opportunity to provide a comprehensive outline of the work conducted by the Commissioner for Health in his first five months in office.

#### The Commissioner for Health

The Ombudsman Act, 1995 which was amended by Act No. XVII of 2010 makes provision for the appointment of Commissioners for Administrative Investigations for specialized areas as may be determined by the Parliamentary Ombudsman with the concurrence of the Prime Minister.

In line with national development objectives, the healthcare sector was one of the first areas selected for administrative scrutiny under the new unified ombudsman structure.

Mr Charles Messina, was appointed as the first Commissioner for Health on 1 August 2012, with the aim stated in Paragraph 22 of Legal Notice No 248/2012 to *“investigate complaints related to a health service”*

Mr Charles Messina, has a very long and distinguished career in the Maltese civil service where he became largely synonymous with the organisation and management of various aspects of the government healthcare service including the administration of St Luke’s Hospital.

#### The Role of the Commissioner for Health

##### Investigating complaints

The Commissioner for Health is empowered to conduct investigations into administrative actions and decisions in the healthcare services provided by the Government, whether this service is preventive or curative.

These actions and decisions are taken in state hospitals and establishments that are run

under the government health service and in a pharmacy, laboratory service, community healthcare service, clinic and any other service that forms part of the public health service.

The Commissioner, cannot investigate any action taken by healthcare professionals in the exercise of their medical and clinical judgement for the diagnosis of illness or for the treatment of patients.

### **Own Initiative Investigations**

From time to time, the Commissioner for Health, may initiate own initiative investigations which can relate to shortcomings which have been highlighted in public or matters which have emerged, for example, in the course of the investigations.

Matters chosen for investigation on the Commissioner's own initiative are examined in the same way as ordinary complaints. Investigation leads to a decision in which the Ombudsman adopts a position on shortcomings in the same way as he does in his decisions on complaints.



The Commissioner for Health, Mr Charles Messina, taking oath of office from the Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino – 1 August 2012

## Autonomy

The Commissioner for Health is autonomous and he is not part of government. As the Parliamentary Ombudsman, the Commissioner for Health is an Officer of Parliament and carries out his duties in full independence. He operates within the legal framework of the Office of the Parliamentary Ombudsman which enables him to use the same administrative and investigative resources.

## Complaints and the process of investigation

The Commissioner for Health, deals with two types of complaints:

- a. **complaints from individuals** who allege that they had been treated unfairly or had received poor service.
- b. **employees working in the sector** affected by decisions, actions or the lack of actions, by Health Institutions.

As an initial step, the public have first to complain to the institution they are unhappy about before bringing their complaint to be investigated by the Office of the Ombudsman. When the Office of the Ombudsman receives a complaint related to the health sector the Ombudsman refers it to the Commissioner for Health, who initiates the investigation. There were instances where the Commissioner for Health, spoke directly to the organisation concerned, and resolved the complaint without initiating an investigation.

During the first five months in Office, between 1 August and 31 December 2012, the Commissioner for Health investigated 32 cases, 18 coming from individuals and the remaining 14 coming from employees working in the Public Health Sector.

Table 4.1 shows the classification of these complaints by institution:

**Table 4.1 - Complaints received by institution  
August - December 2012**

Institution	Public	Employees	Total
Mater Dei Hospital	3	4	7
Department of Health	8	7	15
Karen Grech Rehabilitation Hospital	1	-	1
Mellieha Home	1	-	1
Ministry for Health, Elderly & Community Care	1	1	2
Health Promotion and Prevention of Disease Directorate	1	-	1
Gzira Health Centre	1	-	1
Sir Paul Boffa Hospital	1	-	1
Ministry of Foreign Affairs	-	1	1
Private Clinic	1	-	1
Appeals Committee for Health Care professions	-	1	1
<b>TOTAL</b>	<b>18</b>	<b>14</b>	<b>32</b>

By the end of the year, out of the 32 cases received during the first five months of operation, 19 were concluded. The remaining 13 were still being investigated by the end of year. Table 4.2 analyses the outcome of the concluded cases.

**Table 4.2 - Outcome of concluded cases  
August - December 2012**

Outcome	No of cases
Sustained	6
Not sustained	6
Partly sustained	2
Could not be investigated	2
Advice given	1
Withdrawn	2
<b>TOTAL</b>	<b>19</b>

The complaints coming from the general public varied from issues related to free medicines to compensation for suffering disability following surgical operation. Table 4.3 shows a categorised list of the complaints received from the general public, which shows that the problems on which people felt aggrieved with, are vast.

**Table 4.3 - Categories of complaints by the general public  
August - December 2012**

Nature of complaint	No of cases
Failure to be given free medicines	4
Failure to be provided with information	3
Failure to be given urgent out-patient appointment	2
Alleged forced discharged from Home for the Elderly	1
Alleged lack of attention to a patient at Karen Grech Rehabilitation Hospital	1
Deduction in pension by Home for the Elderly	1
Lack of information of medicines on the internet	1
Poor knowledge by Customer Care Staff at MDH	1
Payment requested by a private clinic for tests carried out at MDH	1
Undue delay to send Schedule V application	1
Payment of air fare by patient sent for treatment abroad	1
Compensation for suffering disability following surgical operation	1
<b>TOTAL</b>	<b>18</b>

**Table 4.4 - Categories of complaints by employees within the Public Health Sector  
August - December 2012**

<b>Complaint</b>	<b>No of cases</b>
Promotion not given	3
Rejection of allowance	3
Not allowed to sit for an interview	2
Unjust transfer/failure to take disciplinary action by the Department of Health	1
Parking at MDH not given	1
Refusal of medical expenses	1
Doing duties above grade	1
Irregularity in employment	1
Refusal of teleworking	1
<b>TOTAL</b>	<b>14</b>

Whereas the complaints coming from the employees working within the public health institutions varied from promotions to other employment issues such as refusal of teleworking, Table 4.4 shows a categorised list of the complaints received from employees.

## Own initiative investigations

In terms of section 6(1) of Legal Notice No 250/2012, *“Own Initiative investigations that fall within the functions of a Commissioner shall be carried out by such Commissioner following consultation with the Ombudsman”*. During the first five months of his tenure, the Commissioner for Health, following consultation with the Ombudsman, started procedures on seven own initiatives investigations. These investigations involve time consuming interviews with the departments, entities and institutions concerned.

The following are the own initiatives investigations initiated during 2012:

### 1. Customer Care Offices within the Health Sector

Customer care centres play a critical role in the overall success of the health services provided by the Government. Effective customer care is vital in health care due to the delicate and personal nature of the service.

The Commissioner for Health initiated an own initiative investigation with the aim of taking stock of the services provided and to recommend improvements in this area.

During the year 2012, the Commissioner was in constant contact with all Customer Care Offices in the different health institutions. To be able to take stock of the situation, the Commissioner asked for specific information about the work force, accessibility of the offices, what type of complaints they deal with, the amount of complaints and the customer’s rate of satisfaction.

At the end of 2012, the Commissioner was evaluating all the information submitted by all customer care offices in order to establish the strengths and weaknesses of the system.

### 2. Waiting Lists for new case out-patient appointment at Mater Dei Hospital, Sir Paul Boffa Hospital and Health Centres

There has been considerable debate about the adequacy of waiting lists and times for new cases at the Out Patient Departments at Mater Dei Hospital, Sir Paul Boffa Hospital and Government Health Centres.

Based on this debate, the Commissioner for Health started an own initiative investigation to examine and identify the weaknesses and problems faced by this area, with the aim to recommend good practice in waiting list management.

In August 2012, the Commissioner obtained the concurrence of the Parliamentary Ombudsman to initiate this investigation in terms of Article 6(1) of the Regulations of 2012 regarding the functions of the Commissioners for Administrative Investigations.

All health institutions which offer out patients services were requested to submit a list showing the first available out-patient appointment for new cases for every consultant.

Following an evaluation of the information received by each and every out patients department, the Commissioner, requested more specific information according to the data provided.

Due to the complexity of the area, at the end of 2012, this investigation was in the compiling of information stage. If all the requested information will be given on time and all departments in question collaborate with this Office, this investigation would be completed by the end of 2013.

### **3. Waiting time for patients to be seen at the Accident and Emergency Department - Mater Dei Hospital**

A problem that was already in evidence at the emergency care service at St Luke's Hospital but aggravated since the opening of Mater Dei Hospital in 2007, concerns the dissatisfaction with prolonged waiting times, overcrowding and the concentration of patients at the Accident and Emergency Department (A&E).

Misgivings about the delays in the initial assessment of patients together with the generally long time for transfer to an inpatient ward raised doubts in the minds of citizens regarding the efficiency of the A&E service at Mater Dei Hospital and the extent to which this service is patient focused and effectively managed.

Taking into consideration the public outcry and the legitimate demand by citizens for a quality service in the national healthcare, especially in the waiting time for patients using the A&E at Mater Dei Hospital, the Commissioner for Health decided to carry out an own initiative investigation following consultation with the Parliamentary Ombudsman.

The investigation started at the last quarter of 2012. The aim of this investigation is to be able to submit recommendations to the Health Authorities, to cut down on waiting times for patients who check into hospital's A&E areas and towards the development of an improved framework within the same department.

By the end of 2012, this investigation was still ongoing. In order to have a long term solution in this particular area, the Commissioner for Health intends to explore further possibilities to be able to make his final recommendations. Therefore, it is expected that this investigation will be concluded by the middle of 2013.

#### **4. Waiting lists at the Child Development Assessment Unit (CDAU) and Child Guidance Clinic (CGC), St Luke's Hospital**

Child developmental assessment is the process of mapping a child's performance compared with children of similar age.

In Malta, these services are offered by the Child Development Assessment Unit (CDAU) and the Child Guidance Clinic (CGC) which are situated at St Luke's Hospital. These units assess, diagnose and treat children on out-patient basis. The children are assessed by a multi-disciplinary team which includes Nurses, Psychologists, Physiotherapists, Occupational Therapists and Speech Language Pathologists.

With the aim of improving these services and also reducing the waiting lists in the Department of Psychology, the Commissioner for Health, initiated an own initiative investigation.

Prior to this own initiative investigation, the Ministry for Health, Elderly and Community Care, had commissioned a Task Force to look into the challenges faced in this area. The Commissioner also wrote to the Minister for Health requesting the report of this Task Force. The then Minister replied that the Department for Health had set up a working group on 'community paediatric healthcare services' which included a review of the service provision at the CDAU and CGC. He explained that the intention was that both entities will form part of a holistic health care service provision for children within community. The final working document of this working group would be presented by the end of April 2013.

It is hoped that the report will be finalised by the end of 2013.

#### **5. Out of Stock Medicines, Medical Materials and Surgical Devices within the Government Sector**

It is common knowledge that the provision of medical supplies, especially but not exclusively medicines, has always been problematic. It is not uncommon for medicines to be out of stock with the result that patients are constrained to purchase them from the

retail pharmacies if they can afford it. There were instances when surgical interventions had to be postponed due to shortage in medical supplies.

This is unacceptable not only from the perspective of good public administration but also, and more importantly, because the Authorities have to ensure sound and efficient public health management. The Commissioner for Health felt the need to focus on this sensitive and problematic area soon after taking on his functions.

The procurement of medicines, medical materials and surgical devices by the Health Authorities is the lifeline to an efficient, smooth and adequate health service that has, as its mission statement, the aim to provide a free public health of excellence. That standard of excellence is prejudiced whenever medicines and other medical supplies are not available. More importantly, hardship and sometimes serious hardship is caused to those in urgent need of receiving prompt medical attention.

The problem of out of stock medicine is a recurrent one and it features prominently and it attracts criticism from many quarters. In the year 2011, the Health Authorities acknowledged this problem and in fact they appointed a Chief Executive Officer to lead the unit that deals with procurement of medicines, medical supplies and surgical devices.

The problem seems to have been aggravated by the increase from 38 to 79 of the diseases in the Fifth Schedule of the Social Security Act. The introduction of the Pharmacy of Your Choice covering all localities in Malta and Gozo added further burden on the system. This makes it easier and more convenient for patients to go to the pharmacy nearer to their homes rather than having to go to the Health Centres or to Mater Dei Hospital to collect their medicines. Both these decisions therefore led to a substantial impact on the stocks situation.

This has also contributed to a greater expenditure which the Central Procurement Supplies Unit had to face and had to ask for additional funds.

Members of the public rightly expect to receive what they are entitled to by law and to be given free of charge the medicines for their ailments.

The Commissioner started the investigation in November 2012, with the aim of analysing the situation and then submit his recommendations about the administrative aspect of the problem vis-à-vis Government procedures. As part of this investigation, the Commissioner requested detailed information about the procedure adopted for procurement including the issuing of tenders.

By the end of the year 2012, the investigation was still ongoing with several meetings between the Commissioner and the Central Procurement and Supplies Unit and other relevant sections. During these meetings, the Commissioner explained the purpose of this initiative and discussed what could be done to facilitate the process to ensure that the problem of out of stock medicines be minimised and possibly solved.

This investigation should be completed and the Commissioner's conclusions and recommendations submitted during 2013.

## 6. Waiting time to operate upon Orthopaedic Trauma patients

According to the Annual Surgical Operations Report 2012, there were 5313 orthopaedic surgical operations of which 1952 were registered as emergency operation episodes.

After reports that patients were not being operated within the first 24 hours as advised in the NHS Guideline 2011, the Commissioner for Health, decided to conduct an own initiative investigation on this matter. The investigation started in December.

In these reports, it was alleged that Orthopaedic Trauma patients were being operated after quite some time, at times patients were being put on preoperative fasting unnecessarily. As part of this investigation, the Commissioner held meetings with the Department of Orthopaedics, Department of Geriatrics, the Nursing Directorate, the Rehabilitation Consultant, and the Department of Anaesthesia.

These meetings helped to identify the challenges and deficiencies of the area. The problems perceived most often were the unavailability of the Operating theatres, shortage of Orthogeriatric beds, the need for more orthopaedic nurses and the need for more rehabilitation beds.

By the end of 2013, the conclusions and recommendations to improve the waiting time for Orthopaedic Trauma operations will be submitted.

## 7. Infants and Adults with hearing problems

An article, published by the Times on 6 November 2012, titled Deaf Children not being diagnosed early enough, prompted the seventh own initiative investigation, carried out by the Commissioner for Health during the first five months of his appointment. Other articles on the subject were also published later.

The article stated that according to the Deaf People Association, the children were not being diagnosed early enough since babies were not screened for any hearing impairment before they left hospital. Another point raised by the Association was that, unfortunately, months and even years pass before parents realise their child has a hearing difficulty. They argued, that another factor is the exaggerated delay for an appointment to be set for a hearing test. Appointments were being scheduled some six to eight months after the child was referred to hospital. The Association also called on the authorities to ensure that the hearing aids be provided to all deaf people and that their quality be improved and delay tackled.

Investigation was still ongoing by the end of 2012, with the aim of having this investigation concluded during 2013.

## Preliminary Investigations

During the year 2012, the Commissioner for Health initiated a preliminary investigation about the waiting lists at the Department of Medical Imaging at Mater Dei Hospital, before deciding whether to open an own initiative investigation.

The Commissioner for Health requested the Medical Imaging Department details about the first available appointment for each of the various medical imaging investigations that are carried out at Mater Dei Hospital.

From the data sent by the Medical Imaging Services, it resulted that the problem varies depending on the type of investigation, from one week waiting time for an Angiography or a Planar Imaging to one year for an MRI.

The Commissioner requested also for specific information on the Bone Density tests. From the information given it transpired that 55 Bone Density tests are done daily. The first 15 are reserved for new cases, with a waiting time of 8 months, and the remaining are reserved for follow ups and urgent cases.

After evaluating the information, the Commissioner recommended how the appointment slots, in his opinion should be restructured and allocated. In order to schedule the appointments better, the department will conduct a sampling exercise to determine the better distribution of the type of cases. This problem seems to be under control and will continue to be monitored.

## Other Investigations

Apart from the dealing with investigations at his own initiative, the Commissioner, investigated and concluded other cases from individuals that have been treated unfairly or have received poor service.

During the course of these investigations, the Commissioner exchanged his views with the Health Authorities on various subjects.

Among the subjects, the Commissioner exchanged correspondence with the health entities about:

### 1. Rights of Patients to health documents

Following a request, about the right of patient to his/her health documentation by the Slovakian Liaison Officer, to all members of the European Network of Ombudsman, the Commissioner for Health requested the Chief Executive Officer of Mater Dei Hospital to explain the procedure followed in Malta for his comments.

The Chief Executive Officer of Mater Dei Hospital confirmed that patients are given the rightful access to their documentation in line with the Data Protection Act. There were no written protocols that regulate the requests.

### 2. Free supply of medicines for patients suffering from Hepatitis B and C

In February 2012, Hepatitis B and C, were included in the revised list of the Schedule V of the Social Security Act. This entitled patients suffering from these conditions, to receive the medication free of charge.

Months later, it transpired, that the medicines were still not available. The Commissioner requested the Department for Health for an update about the situation and was in constant contact with the Chief Medical Officer, the Superintendent for Public Health and the CEO of the Central Procurement and Supplies Unit.

From the correspondence and information related to this situation, it was discovered that the medicines in question were not available apparently due to lack of funds.

More details about this case are found in the Case Notes 2012 publication.

### 3. Free supply of medicines for patients suffering from Dementia

An article published on The Times on Thursday, 8 November 2012, titled No Free dementia medicines yet, stated that *“dementia sufferers are still not being given the free medicines they have become eligible for in February of the same year.”*

The Commissioner for Health asked the Department for Health to inform him with the action taken to procure the indicated medicines for Dementia patients.

The Department for Health explained that the medicines used for the treatment of Dementia were reviewed and discussed by the Government Formulary List Advisory Committee (GFAL) and they recommended the inclusion of Donepezil 5mg and 10mg onto the Government Formulary List. The procurement process was initiated and patients would be able to have the medicines in January 2013.

### 4. Donation of Organs for Transplant Purposes

Following a meeting to discuss the matter of the compensation to non-related live organ donors for loss of income incurred, like loss of work, when donating organs for transplant purposes, the Commissioner for Health followed up the matter with the Permanent Secretary for the Ministry for Health, the Elderly and Community Care.

It was suggested that the compensation to donors should not be made by the patient or his/her relative because the patient should not be burdened with financial affairs related to such transplants. This, apart from the fact, that there may be patients who would not be able to afford the expense not least those out of work or in receipt of Social Assistance.

The Superintendent of Public Health, explained that he will review all the systems and parameters adopted in other countries. The information, would then be presented to the Live Organ Transplant Advisory Committee. Following that, when the systems and procedures to be adopted locally would be established, they would be forwarded to the Ministry for approval. This investigation will be followed up and concluded in 2013.

### 5. Children on waiting list for Refraction at Health Centers

In August 2012, the Commissioner for Health came to know that there were a number of children who were awaiting to be examined at Health Centers mainly with a view to

be given a prescription for glasses. Such children had a problem to follow lessons in the classroom. The Commissioner initiated an own initiative investigation by requesting the Department of Primary Health Care for more information about the practices adopted in this area.

In his reply, The Chief Executive Officer explained that the situation worsened because there was a lack of optometrists. However he informed that the department had contracted a full time ophthalmologist who would surely make an impact on the waiting lists. The Commissioner for Health will follow up closely the developments in this area during 2013.

### Personal Note

As can be seen, my first five months in Office were quite hectic and challenging. Investigations were time consuming especially when replies were awaited from complainants or from the Department for Health.

During the year (2013) I will strive to finalise all the pending complaints within the shortest time possible and will also conclude the Own Initiative investigations that were taken in hand during the past year.

**Mr Charles Messina**  
**Commissioner for Health**



# Appendices

## Appendix A

### A Constitution to serve the people

Speech by the Parliamentary Ombudsman  
Chief Justice Emeritus Joseph Said Pullicino  
at the Third President's Forum  
25th April 2013

### The right to good public Administration

*"Il vero potere é il servizio"* - Pope Francis

#### Introduction

I shall start my short contribution with a personal opinion.

I do not believe that it is wise to make much emphasis in introducing this forum as an exercise in the preparation of a so called "*second republic*". At this stage that is a political slogan that could eventually be recognised as valid by historians if the Constitutional changes brought about warrant it. It is a term that would be appropriate only in the case where the Constitutional changes approved signalled a major and clean break from the previous rules governing the country's democratic, parliamentary republican system. The term "*second republic*" is not a legal concept. It should not therefore condition our critical considerations when discussing if, how and to what extent our present Constitution requires to be updated to meet present needs.

To date, I do not perceive any urgency in the country to radically change the institutional framework on which the Malta Constitution is based and that has secured for the country a republican, democratic State in which the rule of law and respect for fundamental freedoms prevail. Neither is the existing constitutional order, based on the separation and interdependence of the legislative, executive and judicial powers of the State, being put in doubt.

Essentially our Constitution with the wise amendments made to it from time to time has served the country well for fifty years. Notwithstanding excessive political polarisation and severe ideological confrontation that are themselves a sign of democratic vitality, the Constitution has evolved into an effective legal instrument that guarantees a relatively stable legislature, a good level of administrative governance and an independent judiciary.



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino addressing the third edition of the President's Forum - 25 April 2013

It is my belief that we can continue building on well-trying existing structures that have proved to be built on solid institutional foundations. There is however much that could be reviewed to meet the new challenges the country is facing, seen from a solidly independent, post colonial perspective.

## Consensus

There is general agreement in the country today that the time was ripe to re-examine the Constitution, to verify and determine what provisions needed to be changed, improved, added or deleted to make the supreme law of the country a more effective legal instrument that will continue to ensure a stable, adaptable, accountable, open and representative government that provides for the exigencies of an ever evolving, modern society.

There is no need to stress that any changes made have to be the result of mature thinking and wide consultation that lead to a high degree of consensus. They can only be implemented within the framework and according to the provisions of the present Constitution and amended in accordance with the inbuilt provisions for its revision.

## APPENDIX A

Changes should be forward looking to provide for the future. They should also be respectful of past tradition to ensure continuity. This forum is a manifestation of that consultation. Any revision of the Constitution should not be entrusted solely to the House of Representatives which exercises legislative power, even if amendments have, in some respects, to be approved by a qualified two-thirds majority. It should also be ratified by the popular vote mechanism that the Constitution itself provides.

Referring the proposed amendments to the people for approval is not just a matter of political convenience. It is a matter of fundamental principle because the Constitution of the country is there to serve the people; it is not there to serve the State.

### Core Issue

This point brings me to the core issue of my contribution.

To develop my argument I require to refer briefly to basic concepts. Simply defined, a Constitution is the legal framework of the State. It lays down how power is acquired, exercised and lost. It establishes the structure and functioning of the organs of State, defines and guarantees rights and freedoms. The Constitution prevails over any other norm. Approaching the subject from a purely legal perspective and not from the much wider focus of political science, it is clear that the operative word in this definition is *power*. We are here concerned not only about how that power is exercised but also, and more importantly, how the exercise of that power affects the people, namely the subjects subjected to it.

The present Constitution is based on the Westminster model in which executive authority is exercised in the name of the Head of State who is, theoretically, its original source. Under the present Constitution, the Prime Minister and his Executive, though representing the people through an election by universal suffrage, receive their mandate to govern from the Head of State who, with some notable exceptions, is bound to act on the advice of his Prime Minister.

### Power cascades

Power cascades from the top downwards. Those who still favour the Westminster model in its original mode maintain that Parliament, like the sovereign, is not only omnipotent, it can also do no wrong. It is a system of Government that favours the concentration of power in the hands of the Prime Minister, the Cabinet and the Executive. Once elected

there is little to bind Government and indeed Members of Parliament on all sides to the will of their electors. They do not necessarily feel bound either to abide by the promises made during the election campaign or by the electoral program of the party of which they formed part. Indeed they do not need to acknowledge that the power they temporarily obtained on election was given to them by the people and that they had to be accountable to those who elected them to administer the country according to their specific mandate. An issue that has to be debated.

The only real curbs on the exercise of power by the Prime Minister and his Cabinet are public opinion and, to a lesser extent, the balance of party membership in the House of Representatives. Fortunately the drafters of our Constitution recognised the risk of an excessive concentration of power in the hands of the Prime Minister and his Cabinet. It was for this reason that they introduced a number of constitutional authorities meant to restrain the exercise of these powers in certain delicate areas of the public administration. These include the Office of the Auditor General, the Public Service Commission, the Broadcasting Authority, the Employment Commission and lately the Office of the Parliamentary Ombudsman.

It must be said that most of these authorities were originally set up to ensure a smooth and correct public administration or to avoid political discrimination and create a level playing field in employment and public broadcasting. With the notable exception of the Office of the Ombudsman these authorities were not set up with the specific purpose of empowering the people. Though these authorities are undoubtedly meant as a break on the manner how power is exercised by the Executive and, when they function well, certainly benefit the people, they are not built in the Constitution as effective instruments to empower the people to ensure that they have an efficient, clean, transparent and accountable public administration.

## Redrafting needed

Those provisions of the Constitution that establish the origins of State authority, in my opinion, require rethinking and redrafting. The Constitution should do away with the outdated and archaic concept that the authority of the State emanates from the Sovereign or the President. In truth, this concept is not explicitly stated but only tacitly assumed throughout the Constitution. The Malta Constitution should clearly recognise, like many modern ones, that all State authority emanates from the people who, through free elections choose those who are to govern them, according to the Constitutional instruments approved by them. The people delegate their power to the persons they choose so that that they can administer the country, in their name, for the common good.

They are not there to govern them. They are there to serve them. They are bound to serve them according to the supreme law of the land, that is a norm above all others and that can only be changed according to procedures that it itself establishes.

## Power exercised by the people

It is therefore from the power exercised by the people that the Constitution attains its supremacy. The Constitution is not there to serve the State; it is there to serve the people. This is why the President himself and the State in all the ramifications of its powers are subject to the Constitution. That is why the Constitutional court is given jurisdiction to determine a right of action on the invalidity of laws. An action that can be brought forward by any person, even though he has no personal interest in its outcome (*actio popularis*). That is why article 6 of the Constitution provides that if any other law is declared by that Court to be inconsistent with the Constitution, it was the Constitution that should prevail and the other law, shall, to the extent of the inconsistency, be void. This is one of the very rare instances where the Constitution recognises the right of the individual, to seek to uphold the values enshrined in it against the powers of the legislature when enacting a law which was inconsistent with the Constitution.

It is unfortunate that the case law of the Constitutional Court has not adequately recognised the supremacy of the Constitution. Nor has it properly exercised its inbuilt powers to protect the country from legislation that it had itself declared to be inconsistent with the Constitution. It seems to have accepted that Parliament had powers that went beyond the Constitution or indeed that it could act outside, if not indeed in violation, of the norms it lays down.

My erudite colleague Judge Giovanni Bonello will no doubt be presenting you with an in-depth analysis on this aspect of the question.

## The real source of power

Power is conferred by the electorate on its representatives so that they could use it according to their mandate for the common good. It is not given to be abused of according to their whims, for their personal agenda. Power is given to them to be of service to others. In the simple wise words of Pope Francis "*il vero potere é servizio*".

It is therefore necessary to ensure that the real source of power is enshrined in the Constitution, that accountability of the State for the actions or inactions of its public

servants is clearly assured and that the people are empowered through appropriate mechanisms, most of which already exist in the Constitution but need to be strengthened, to guarantee to the individual the exercise of his right to a good public administration.

The Constitution of the Italian republic in its very first article, graphically but poetically declares that *“La Sovranita` appartiene al popolo che la esercita nelle forme e nei limiti della costituzione”*. The Italian people, when declaring their country to be a democratic republic, recognised that, from that day onwards, sovereignty belonged to them and not to their king, sovereign or president. Similarly, Article 20 the Basic Law of the Federal Republic of Germany, in a more precise, even if in a typically prosaic fashion, states in sub-clause 2 that *“All State authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies”*. Sub-clause 3 states that *“the legislator shall be bound by the constitutional order, the executive and judiciary by law and justice”*.

## Defence of the Constitution by the People

Moreover the Basic Law, conscious of the country’s negative historical experience, declares the right of *“all Germans ... to resist anybody attempting to do away with this Constitutional order should no other remedy be possible”*. The supremacy of the Constitution, from which all public authority emanates, needs to be defended by the people from any attempt by anybody to subvert it. The sovereignty of the State is vested in the people and not in the hands of those who wield power in whatever form, including that derived from a democratically elected majority.

The time is ripe for such constitutional provisions to be included in our Constitution. These are concepts that underline the accountability of the Executive towards the people. Indeed, an inevitable corollary to the principle that all public authority emanates from the people, is that public officers, who act in the exercise of the mandate given to them by the people, have to be held accountable to the people.

## State to assume responsibility

Moreover the State has to assume responsibility when the actions of public officers cause harm to the people. It is precisely for this reason that Article 34 of the Basic Law of Germany states that *“Should anybody in exercising a public office, neglect their duty towards a third party, liability shall rest in principle with the State or the public body employing them. In the event of wilful intent or gross negligence, remedy may be*

*sought against the person concerned. In respect of claims for compensation or remedy, recourse to the ordinary courts shall not be precluded.”* Similarly Article 28 of the Italian Constitution lays down that *“I funzionari e dipendenti dello Stato e degli enti pubblici sono direttamente responsabili secondo le leggi penali, civili e amministrative degli atti compiuti in violazione di diritti. In tali casi, la responsabilita civile si estende allo Stato e agli enti pubblici”*.

Though the wording and emphasis in the German and Italian constitutions are different, with the former seemingly putting the State primarily and directly responsible for damage caused by its public officers in the performance of their duties, while the latter apparently holding public officers primarily responsible and the State *in subsidum*, the substance of both provisions is essentially the same. Both constitutions and indeed many others - declare that the State has to assume responsibility for damage caused by its public officers in the performance of their duties, when they exceed their mandate and abuse the power given to them by the people within the terms of the Constitution.

## The principle of State liability

This liability of the State is a necessary corollary of the right of the individual to a good administration. There is no such provision in the Malta Constitution. What is even worse is that legislation in Malta, even since independence, has been very reluctant to accept the principle of State liability. For many years, the prevalent mentality of successive governments has been over-protection of the Government’s powers to govern. The old colonial mentality that governments were there to decree and administer while the people had to follow and obey without questioning, still prevailed. Successive public administrations in republican Malta remained essentially autocratic. Government had all the power and the people were expected to obey without questioning.

Indeed for many years the official line was that Government was not even bound to give any explanation for its actions. If ever it was called upon to grant compensation for damages resulting from the actions of public servants, it would only do so grudgingly and against a declaration by the injured party that it was being paid *ex-gratia* and not out of any admission of responsibility or guilt. It has taken Malta the best part of fifty years to start creating dents in the thick armour of Government’s protection of itself and its public officers.

Legislation in Malta, even up till today, has been very reluctant to accept the principle of State liability. Most laws, intended to provide a service to citizens either by a government department or public entity, almost invariably contain provisions that totally or partially

exempt the Government from liability. The State is often protected by provisions that allow it and its officers to put administrative hurdles in the path of citizens who claim they were not treated justly and fairly by the public body providing the service. Until fairly recently the Government would even claim the right not to disclose, even in Court, official information that materially affected the rights of citizens.

The authorities set up in the Constitution itself with the function to verify and report on the actions of the Executive, like the Public Service Commission, the Office of the Auditor General, the Employment Commission and others are more meant as checks and balances to control administrative malpractice and abuse than as tools in the hands of aggrieved persons to seek redress against injustice and abuse of power.

## The Ombudsman Act

Perhaps the only major law that was specifically intended to empower persons to seek redress against maladministration that affected them personally, was the Ombudsman Act (Act XXI of 1995). It was then that the House of Representatives finally resolved that individuals should be served by a workable system of administrative justice that would put right those things that were badly managed and provide appropriate redress to individuals who have experienced delay and inefficiency and the distress that often results from maladministration.

The setting up of the Office of the Ombudsman provided the first step for this need and established a new mechanism that would respond directly to the House of Representatives and promote the proper behaviour of the public administration. The Act not only promotes good governance. It also underlines the accountability of the State and its officers in the proper execution of the mandate they received from the electorate. Up till then the legislator was very wary of effectively assuming the role and responsibility of a *bonus paterfamilias*. Even less was it prepared to open itself up to an external audit of its actions by an Ombudsman, whose Office has been given constitutional recognition in 2007.

The Ombudsman Act was perhaps the first major tangible sign that things were changing. In fact since the late 1980's, there has been a marked shift towards the promotion of an open and transparent administration fully accountable in the various levels of national management. A number of major legislative initiatives intended to create the necessary structures and mechanisms to improve the public administration were taken. These included major laws like the Freedom of Information Act, the Data Protection Act, the Public Administration Act, the Administrative Justice Act, the law setting up the Commission for Investigation of Corruption, the 1987 law setting up Commissions for Investigation of Injustices and others.

## Radical change

This radical change in mentality in favour of ensuring a transparent and accountable administration to ensure that the public is treated justly, fairly and without improper discrimination was undoubtedly the result not only of the country's total exposure to modern concepts on good governance, that have developed in post cold war Europe and elsewhere. It was also dramatically spurred on by Malta's decision to attain full membership of the European Union and consequently to adopt and maintain fully the basic values of transparency, accountability and fair decision making that should lie at the core of the public administration and that constitute the essence of good governance. Those basic values are incorporated in the European Code of Good Administrative Behaviour that translates in a tangible and comprehensible manner the right to good administration acknowledged and defined in the Charter of Fundamental Rights of the European Union (article 41) to which Malta is a signatory. That Charter was incorporated by the Union in the Treaty of Lisbon on the 1 December 2009. A Treaty to which Malta subscribed and that in the words of the Union's President Barroso "*puts citizens at the centre of the European Project.*"

## The right to good administration

That article in the Charter expressly lays down that "every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union".

In sub article 2, the Charter lays down that the right to good administration includes;

- i. The right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- ii. The right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- iii. The obligation of the administration to give reasons for its decisions;

It is very pertinent to point out that sub article 3 of article 41 of the Charter declares that "every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the law of the Member States".

A clause that expressly recognises the principle of the State's - (the Union's) liability for the actions of its officers and the right of the individual to seek redress against the State for damage suffered.

## State's Duty of Care

A provision that is completely in harmony with the recognition of the State's duty of care in many progressive European constitutions and which I am proposing should be included in our Constitution.

It was in this spirit and with this background that, during the debate on the Bill put forward by the Government to entrench the Office of the Ombudsman in the Constitution way back in 2006, I had proposed that the right of every individual to good administration should be recognised as a basic right in the Constitution. In fact, at that time, I had submitted that the formal recognition of the right to good administration in the Constitution would not only strengthen the right of citizens to a just and transparent administration. It would also motivate and justify the decision of the House of Representatives to entrench the Ombudsman in the Constitution as a guardian of that right. It should be clear that recognising the people's right to a good public administration was a necessary corollary of the principle that the Constitution should be an instrument to serve the people to ensure good governance.

Incorporating that right in the Constitution means that the individual is given an effective legal tool to exercise that right by keeping the public authority accountable for its actions through judicial and other processes.



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino addressing the third edition of the President's Forum - 25 April 2013

## Keeping the Executive accountable

If we are agreed that the sovereignty of the State lies with the people who exercise their power to be governed by their elected representatives, it is obviously a natural and necessary corollary for the people to recognise their right to be properly governed in their Constitution. This is the right by which, in the first place, the people hold their elected representatives accountable. It is against this yardstick that the actions of their Government should be gauged.

Good governance encompasses generally the whole spectrum of the organs of the State. The right to good administration specifically empowers the people to keep the Executive accountable to it in the exercise of its functions. Its recognition by the Constitution would be a material, tangible manifestation of that empowerment.

Although the Ombudsman's proposal in 2006 to include this right in the Constitution was not included in the Act to amend the Constitution of Malta (Act XIV of 2007), the House of Representatives approved the Public Administration Act which affirms "*the values of public administration as an instrument for the common good to provide for the application of these values throughout the public sector*". This Act incorporates the basic principles of a code for good administrative behaviour in a binding law.

I strongly believe however that the fundamental right of the individual to a good public administration should be enshrined in the Constitution.

## Reassessment of Administrative controls

Although the Constitution does not recognise the right to a good administration as a fundamental right, it does provide, as stated, a number of authorities and commissions with the function to regulate, verify and control specific areas of the public administration.

I think that there is scope to reassess these authorities and commissions in a holistic manner from the perspective of the rights of the people to be well administered, emphasising the protection that the individual should have against public maladministration, improper discrimination, abuse of power and violations or threats to their fundamental freedoms. I believe that this reassessment should be made in the context of creating a strong bond between Parliament and these constitutional bodies that are essentially intended to scrutinise the actions of the Executive.

The Constitution already provides that these bodies do not form part of the Executive.

They generally conform with the Paris Principles regarding their administrative and financial autonomy. They are not accountable to any ministry and they are bound to report to the House of Representatives. The Auditor General, the Ombudsman and Commissioners appointed under the Ombudsman Act, are considered to be Officers of Parliament. However, apart from having the right to submit reports to Parliament, which are rarely followed up, the link with the House of Representatives is very tenuous indeed. Certainly, the individual cannot really feel that he has access in the present setup to have his grievances brought to the attention of Parliament to seek redress against injustice, maladministration and abuse of power.

## Structural review

I believe there is need for a structural review of these provisions of the Constitution. It is suggested that a new chapter be included after the one dealing with “*Parliament*” to provide for the “*Scrutiny of Executive Actions*”. This Chapter would deal primarily with the financial audit carried out by the Auditor General and the administrative audit entrusted to the Parliamentary Ombudsman. Both authorities would retain their autonomy and continue to exercise their functions under separate laws as hitherto. However the Constitutional provisions entrenching them should be streamlined, harmonised and improved.

## Points to ponder

I refer to some points that easily come to mind in this respect:

1. Both the Auditor General and the Ombudsman should enjoy the same constitutional protection. This is not the case to date. While the Office of the Ombudsman has been entrenched, the Ombudsman himself does not enjoy constitutional protection. The constitutional provisions regulating the method of appointment and removal of the Auditor General, his term of office and guarantees of security of tenure have not been constitutionally extended to the Ombudsman. Similarly, provisions in the Constitution regulating the funding of the Auditor General’s office and establishing his conditions of service, equiparating them to those of a Judge of the Superior Courts, have not been extended to the Ombudsman though they are secured by ordinary law in the Ombudsman Act.
2. These discrepancies should be removed to ensure full protection of the Ombudsman, even though it has to be stated that there has never been any problem with

## APPENDIX A

any administration in this respect. The streamlining of this constitutional recognition and the protection of these and other officers of Parliament is necessary to emphasize the principle that they have to be allowed to exercise their functions in full freedom and that they should be accountable only to an autonomous Parliament, without any allegiance either to Government or Opposition.

3. Both the Auditor General and the Ombudsman hold office for a period of five years from the date of their appointment and are eligible for reappointment for one further period of five years. Experience has shown that there is very often a hiatus between the lapse of the first term and reappointment for reasons unrelated to the Office or its incumbent. In an effort to ensure more transparency, many countries have opted for a system of a one, long term period of between seven or nine years. This would not only avoid any risk of undue influence but also would allow the incumbent adequate time to execute his vision and policies for the high office he occupies.

4. A need is felt for both these authorities to be given the means not only to communicate to the House of Representatives the results of their investigations on instances they perceive to constitute maladministration but also to ensure that proper procedures are in place to have them debated by the appropriate Committee of the House to which they relate, other than the Public Accounts Committee in the case of the National Audit Office. In this way Government's actions would be subjected to the scrutiny of public opinion. The reports and findings of these parliamentary officers would become more effective even though not enforceable. What is necessary from a constitutional point of view is to establish, materially and tangibly, the link and synergy between Parliament and its officers.

5. One should also examine carefully whether there is still need to retain the Employment Commission in the form set out in Article 120 of the Constitution. One should study whether the present state of the country's democratic development justifies the retention of a Commission specifically to enquire into cases of alleged political discrimination in employment. One should examine whether that task could validly be taken over by another constitutional authority with widened functions. Similarly the functions and powers of the Public Service Commission should be reviewed to establish whether they need to be adapted to meet the exigencies of an evolving public service. There have, for example, been instances when the Government was unable to implement a recommendation of the Ombudsman to rectify an injustice against a public servant because the Commission disagreed with it. Such conflicts of jurisdiction need to be ironed out. Transparency requires that acts of maladministration that cause injustice to public officers must be redressed.

6. I have recently proposed that the constitutional functions of the Parliamentary Ombudsman should be extended so that his Office could be recognised as a National Human Rights Institution (NHRI).

7. I have been pushing forward a proposal for the setting up of such an Institution as a tangible confirmation of the national commitment in favour of and respect for the observance of human rights and fundamental freedoms.

8. Under this proposal the Maltese human rights institution would be entrusted with the responsibility to ensure the effective implementation of the national human rights standards in the country and also with the task to develop and promote public awareness of these rights and freedoms. The Office would serve as a catalyst for other authorities, institutions and NGOs with a human rights content in their functions. The setting up of a Commission for Human Rights would be an added safeguard for the civil, political, economic, social and cultural rights of citizens in the country.

9. These are some suggestions that could, in my view, help to improve and strengthen the exercise of the citizen's right to a good administration mostly utilising existing constitutional provisions. Undoubtedly many more can be put forward.

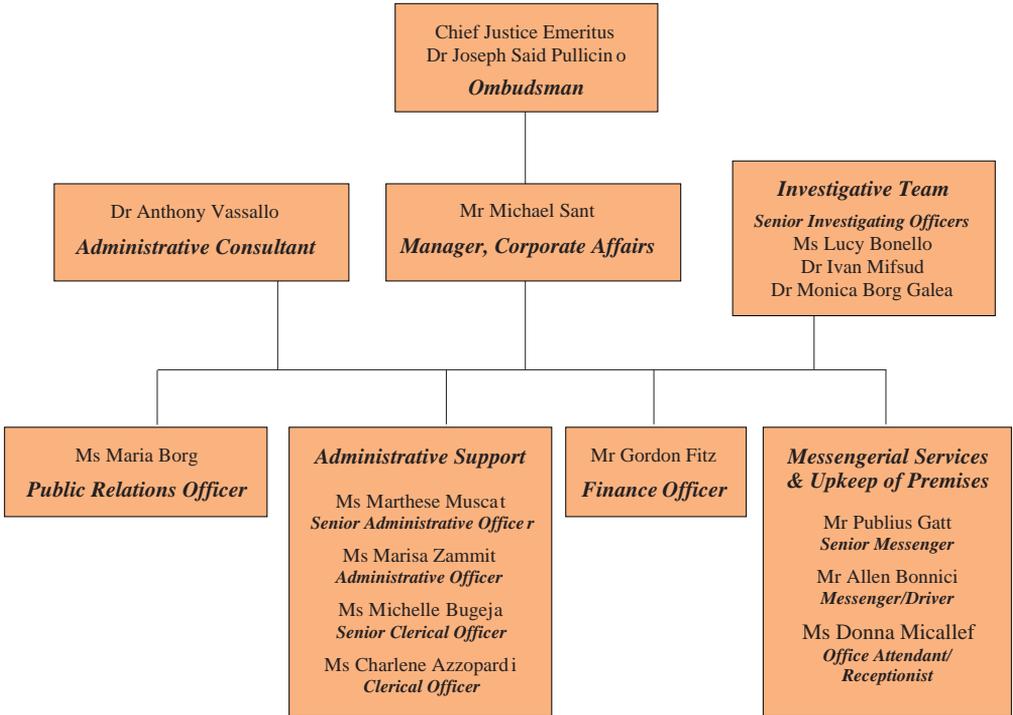
## Conclusion

In conclusion, one has always to keep in mind that the Constitution needs to meet the aspirations of the people to have a direct say in the administration of their Country. The individual and not the State has to be at the centre of constitutional reform. Constitutional amendments should not be the result of hasty, superficial conclusions based on populist slogans or political convenience. They should be the fruit of an in depth debate on the principles and values on which our democratic republic should be based. They should aim at strengthening the Country's democratic credentials in full respect of the rule of law, of fundamental rights and freedoms and the principles of solidarity and subsidiarity. They should be the result of consensus reached after meaningful consultation not only with all shades of political opinion, but also with all strata of civil society.

# Appendix B

## Office of the Ombudsman

Staff organisation chart (on 31 December 2012)



## Appendix C

### Office of the Ombudsman

## Report and financial statements for the year ended 31 December 2012

### 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. This agreement lasted until the end of July 2012 when the position of M.E.P.A. Auditor was abolished and on 1st August 2012 the Ombudsman (Amendment) Act, 2010 came into effect. On that date the post of Commissioner for Environment and Planning as well as the post of Commissioner for Health were set up within a unified ombudsman structure that would operate under the overall direction of the Office of the Parliamentary Ombudsman but at the same time allow these sectoral branches to operate autonomously and independently. Whereas the first position replaces the post of Audit Office at Mepa, the second position is an entirely new one. The position of the University Ombudsman was unchanged. However during the year of review funds for his Office were incorporated in the subvention of the Office of the Ombudsman.

At the same time in view of the decision to co-locate the offices of both these Commissioners in the same building as the Office of the Parliamentary Ombudsman, the premises at 12 St Paul Street, Valletta adjoining the Office of the Ombudsman were vacated and released by the Planning and Priorities Coordination Department of the Office of the Prime Minister. Conversion and adaptations works are due to commence in early 2013 so as to link the two buildings and provide improved and adequate working space that can accommodate the new set-up of the Office.

## APPENDIX C

The Office of the Ombudsman is responsible for ensuring that:

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

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

In preparing the accounts, the Office is responsible to ensure that:

- Appropriate accounting policies are selected and applied consistently;
- Any judgments and estimates made are reasonable and prudent;
- International Financial Reporting Standards are followed;
- The financial statements are prepared on the going concern basis unless this is considered inappropriate.



**Paul Borg**  
**Director General**



**Gordon Fitz**  
**Finance Officer**

## Statement of Comprehensive Income

	Schedule	2012		2011
		€	€	€
<b>Income</b>				
Government grant		<b>782,997</b>		499,988
M.E.P.A. Auditor grant (note 2)		<b>13,455</b>		23,136
University Ombud. services (note 2)		-		7,161
Non-operating income (note 3)		<b>1,915</b>		518
AOM Conference grants (note 2)		-		49,000
			<b>798,367</b>	579,803
<b>Expenditure</b>				
Personal Emoluments (note 4)		<b>(495,535)</b>		(397,712)
Administrative and other expenses	1	<b>(139,013)</b>		(100,406)
Conferences expenditure (note 5)		<b>(2,000)</b>		(67,999)
			<b>(636,548)</b>	(566,117)
<b>Total Comprehensive</b>				
<b>Income for the year</b>			<b>161,819</b>	13,686

Statement of Financial Position

	Notes	2012		2011
		€	€	€
<b>Assets</b>				
Non-current assets				
Property, Plant and Equipment	6		66,524	<u>71,057</u>
<b>Current assets</b>				
Receivables	7	4,749		19,985
Cash and cash equivalents	8	310,283		<u>106,630</u>
		<u>315,032</u>		<u>126,615</u>
<b>Total assets</b>			<b><u>381,556</u></b>	<b><u>197,672</u></b>
<b>Equity and Liabilities</b>				
Accumulated surplus			349,831	188,012
Payables	9		31,725	9,660
<b>Total Equity and Liabilities</b>			<b><u>381,556</u></b>	<b><u>197,672</u></b>

The financial statements on pages 6 to 14 were approved by the Office of the Ombudsman on 23rd September 2013 and were signed on its behalf by:



**Paul Borg**  
Director General



**Gordon Fitz**  
Finance Officer

## Statement of Changes in Equity

		Accumulated Fund Total €
At 1 January 2011		174,326
<b><i>Statement of Comprehensive income</i></b>		
Surplus for the year		13,686
At 31 December 2011		188,012
<b><i>Statement of Comprehensive income</i></b>		
Surplus for the year		161,819
At 31 December 2012		349,831

## Statement of Cash flows

	Notes	2012 €	2011 €
<b>Cash flows from Operating activities</b>			
Surplus for the year		161,819	13,686
Adjustments for:			
Depreciation		17,254	17,775
Interest receivable		(945)	(518)
Operating surplus before working capital changes		178,128	30,943
Decrease in receivables		15,236	14,390
Increase / (Decrease) in payables		22,065	(741)
Net cash from operating activities		215,429	44,592
<b>Cash flows from Investing activities</b>			
Payments to acquire tangible fixed assets		(12,721)	(26,327)
Interest received		945	518
Net cash used in investing activities		(11,776)	(25,809)
<b>Net increase in cash and cash equivalents</b>		<b>203,653</b>	<b>18,783</b>
<b>Cash and cash equivalents at beginning of year</b>		<b>106,630</b>	<b>87,847</b>
<b>Cash and cash equivalents at end of year</b>	8	<b>310,283</b>	<b>106,630</b>

## Notes to the financial statements

### 1 Legal Status

In 1995, the Maltese Parliament enacted the Ombudsman Act and established the organization and functions of the Office of the Ombudsman. The main objective of the Office of the Ombudsman is to investigate complaints by the public against any action taken in the exercise of administrative functions by or on behalf of the Government or other authority, body or person to whom the Ombudsman Act 1995 applies. The Office of the Ombudsman is situated at 11, St Paul's Street, Valletta.

These financial statements were approved for issue by the Finance Officer and Manager, Corporate Affairs on the 23rd September 2013.

### 2 Summary of significant accounting policies

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been consistently applied to all the years presented, unless otherwise stated.

#### Basis of preparation

The financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS) and their interpretations adopted by the International Accounting Standards Board (IASB). The financial statements have been prepared under the historical cost convention.

The preparation of financial statements in conformity with IFRS requires the use of certain critical accounting estimates. Estimates and judgements are continually evaluated and based on historic experience and other factors including expectations for future events that are believed to be reasonable under the circumstances.

In the opinion of the Finance Officer and the Manager, Corporate Affairs, the accounting estimates and judgements made in the course of preparing these financial statements are not difficult, subject or complex to a degree which would warrant their description as critical in terms of requirements of IAS 1. The principal accounting policies are set out below:

## Materiality and aggregation

Similar transactions, but which are material in nature are separately disclosed. On the other hand, items of dissimilar nature or function are only aggregated and included under the same heading, when these are immaterial.

## New and revised standards

During the year under review, the Office of the Ombudsman has adopted a number of standards and interpretations issued by the IASB and the International Financial Reporting Interpretations Committee, and endorsed by the European Union. The Office of the Ombudsman is of the opinion that the adoption of these standards and interpretations did not have a material impact on the financial statements.

There have been no instances of early adoption of standards and interpretations ahead of their effective date. At the date of statement of financial position, certain new standards and interpretations were in issue and endorsed by the European Union, but not yet effective for the current financial year. The Office of the Ombudsman anticipates that the initial application of the new standards and interpretation on 1 January 2012 will not have a material impact on the financial statements.

## Property, plant and equipment (PPE)

Property, plant and equipment are stated at historical cost less accumulated depreciation and impairment losses. The cost of an item of property, plant and equipment is recognized as an asset if it is probable that future economic benefits associated with the item will flow to the group and the cost of the item can be measured reliably.

Subsequent costs are included in the asset's carrying amount or recognized as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the group and the cost of the item can be measured reliably. The carrying amount of the replaced part is derecognized. All other repairs and maintenance are charged to the income statement during the financial period in which they are incurred.

Depreciation commences when the depreciable amounts are available for use and is charged to the statement of comprehensive income so as to write off the cost, less any estimated residual value, over their estimated lives, using the straight-line method, on the following bases.

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

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount. The carrying amount of an item of PPE is de-recognised on disposal or when no future economic benefits are expected from its use or disposal. The gain or loss arising from derecognition of an item of PPE are included in the profit and loss account when the item is de-recognised.

## Receivables

Receivables are stated at their net realizable values after writing off any known bad debts and providing for any debts considered doubtful.

## Cash and Cash equivalents

Cash and cash equivalents are carried in the Statement of Financial Position at face value. For the purposes of the cash flow statement, cash and cash equivalents comprise cash in hand and deposits held at call with banks.

## Payables

Payables are carried at cost which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Office.

## Revenue recognition

Revenue from government grants is recognised at fair value upon receipt. Other

income consists of bank interest receivable, payment by M.E.P.A. for investigative and administrative services provided by the Office of the Ombudsman up to end July 2012.

## Foreign currencies

Items included in the financial statements are measured using the currency of the primary economic environment in which the Office operates. These financial statements are presented in €, which is the Council's functional and presentation currency.

Transactions denominated in foreign currencies are translated into € at the rates of exchange in operation on the dates of transactions. Monetary assets and liabilities expressed in foreign currencies are translated into € at the rates of exchange prevailing at the date of the Statement of Financial Position.

## Critical Accounting Estimates and Judgements

Estimates and judgements are continually evaluated and based on historical experience and other factors including expectations of future events that are believed to be reasonable under the circumstances. In the opinion of the Finance Officer, the accounting estimates and judgements made in the preparation of the Financial Statements are not difficult, subjective or complex, to a degree that would warrant their description as critical in terms of the requirements of IAS 1 - 'Presentation of Financial Statements'.

## Capital Management

The Office's capital consists of its net assets, including working capital, represented by its retained funds. The Office's management objectives are to ensure:

- that the Office's ability to continue as a going concern is still valid and
- that the Office maintains a positive working capital ratio.

To achieve the above, the Office carries out a quarterly review of the working capital ratio ('Financial Situation Indicator'). This ratio was positive at the reporting date and has not changed significantly from the previous year. The Office also uses budgets and business plans to set its strategy to optimize its use of available funds and implements its commitments.

## Notes to the financial statements (continued)

<b>3 Non-operating income</b>	<b>2012</b>	<b>2011</b>
	<b>€</b>	<b>€</b>
Bank interest receivable	945	518
	<u>945</u>	<u>518</u>
<b>4i Personal Emoluments</b>		
Wages and salaries	476,307	379,662
Social security costs	945	18,090
	<u>495,535</u>	<u>397,712</u>
<b>ii Average No. of Employees</b>	<u>18</u>	<u>15</u>
<b>5 Conferences expenditure</b>		
<p>The Office contributed € 2,000 to the Association of Mediterranean Ombudsman for the annual Association conference held in Paris in June 2012.</p>		
Association of Mediterranean Omb.	-	65,227
British & Irish Ombudsman	-	2,772
Contribution for 2012 Paris conference	2,000	-
	<u>2,000</u>	<u>67,999</u>

## Notes to the financial statements (continued)

## 6i. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
	€	€	€	€	€	€	€	€
<b>Cost</b>								
At 1 January 2012	77,083	20,411	31,153	27,321	37,852	50,008	12,173	256,001
Additions	-	625	3,496	4,897	-	3,703	-	12,721
Disposals	-	(75)	(2,315)	(356)	-	-	-	(2,746)
At 31 December 2012	77,083	20,961	32,334	31,862	37,852	53,711	12,173	265,976
<b>Depreciation</b>								
At 1 January 2012	36,846	20,223	27,708	22,770	20,652	44,918	11,827	184,944
Charge for the year	5,116	219	2,734	3,126	4,300	1,538	221	17,254
Release on disposals	-	(75)	(2,315)	(356)	-	-	-	(2,746)
At 31 December 2012	41,962	20,367	28,127	25,540	24,952	46,456	12,048	199,452
<b>Net book value</b>								
At 31 December 2012	35,121	594	4,207	6,322	12,900	7,255	125	66,524

## Gii. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
Cost	€	€	€	€	€	€	€	€
At 1 January 2011	77,083	20,505	30,665	23,622	16,352	50,008	12,173	230,408
Additions	-	-	1,128	3,699	21,500	-	-	26,327
Disposals	-	(94)	(640)	-	-	-	-	(734)
At 31 December 2011	77,083	20,411	31,153	27,321	37,852	50,008	12,173	256,001
<b>Depreciation</b>								
At 1 January 2011	31,732	20,184	24,919	19,462	16,352	43,750	11,504	167,903
Charge for the year	5,114	133	3,429	3,308	4,300	1,168	323	17,775
Release on disposals	-	(94)	(640)	-	-	-	-	(734)
At 31 December 2011	36,846	20,223	27,708	22,770	20,652	44,918	11,827	184,944
<b>Net book value</b>								
At 31 December 2011	40,2377	188	3,445	4,551	17,200	5,090	346	71,057

Notes to the financial statements (continued)

<b>7 Receivables</b>	<b>2012</b>	<b>2011</b>
	€	€
Bank Interest receivable	<b>112</b>	68
Trade receivables	<b>3,026</b>	15,508
Prepayments	<b>1,611</b>	5,059
	<b>4,749</b>	20,635

**8 Cash and Cash Equivalents**

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

	<b>2012</b>	<b>2011</b>
	€	€
Cash at bank	<b>310,177</b>	106,249
Cash in hand	<b>106</b>	381
	<b>310,283</b>	106,630

<b>9 Payables</b>	<b>2012</b>	<b>2011</b>
	€	€
Trade payables	<b>18,638</b>	-
V.A.T. payable	-	3,385
Accruals	<b>13,087</b>	6,275
	<b>31,725</b>	9,660

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables. As at 31 December 2012 the Office had no unrecognised financial liabilities.

## 10 Fair values

At 31 December 2012 the fair values of assets and liabilities were not materially different from their carrying amounts.

### Schedule

#### Administrative and other expenses

	2012	2011
	€	€
Utilities	18,278	12,966
Materials and supplies	5,455	4,990
Repair and upkeep expenses	9,582	2,179
Rent	3,366	2,166
International membership	1,735	1,370
Office services	8,404	6,513
Transport costs	8,961	9,132
Traveling costs	3,282	5,278
Information Services	13,029	10,057
Contractual Services	26,441	25,263
Professional Services	22,537	1,559
Training expenses	-	620
Hospitality	462	362
Incidental Expenses	91	17
Bank charges	136	159
Depreciation	17,254	17,775
Disposals	-	-
	<u>139,013</u>	<u>100,406</u>



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*Auditor General*

Our Ref: NAO 56/2010  
Your Ref:

30 September 2013

**Report of the Auditor General**

To the Office of the Ombudsman

**Report on the financial statements**

We have audited the accompanying financial statements of the Office of the Ombudsman set out on pages 6 to 14, which comprise the statement of financial position as at 31 December 2012, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

**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.

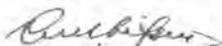
**Auditors’ responsibility**

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 2012, 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  
30 September 2013





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