

## 2. PERFORMANCE REVIEW

### Overall performance

Incoming complaint statistics show that the number of written grievances that reached the Ombudsman rose marginally by 15 (2.7%): from 551 in 2008 to 566 in 2009. This performance was in sharp contrast with the experience of the previous year that had registered a rather sharp decline and brought the complaint intake at par with that recorded in 2006 (567). On this basis the annual incoming complaint caseload in recent years seems to have fairly stabilised in the 550-650 bracket.

In the context of a shrinking ombudsman jurisdiction under the impact of the ongoing privatisation programme but at the same time aware of the growing rightful expectations of Maltese citizens to receive prompt, efficient and good service in their regular contacts with the public service not least as a result of the country's membership of the European Union, the emergent pattern of a relatively subdued demand for the ombudsman service in Malta gives rise to several questions:

- are Maltese citizens sufficiently aware of their right to complain against perceived instances of maladministration and of their right to good public administration particularly in the light of the inclusion of the Charter of Fundamental Rights of the European Union in the Treaty of Lisbon that entered into force on 1 December 2009?
- are Maltese citizens reluctant, for some reason or other, to stand up for their rights when they believe that as a result of negligence, maladministration, delay or unfairness they have been given a raw deal or that they have been let down in the day-to-day provision of public services that are due to them as of right?
- are Maltese citizens adequately served by the customer care services and by the in-house complaint handling systems that now abound in most, if not all, government departments and public bodies and authorities even though this Office continues to harbour some reservations about the quality, depth and efficiency of some of these customer services to consumers of public services?
- is the Maltese ombudsman institution sufficiently accessible and are users of local public services adequately aware of the role, functions and power of the Office of the Ombudsman?
- has the Office of the Ombudsman been successful in impressing on public service providers the need to show commitment at all times to the core value of a person-centred approach to their service provision including the acknowledgement of failure whenever it occurs and the issue of an apology and making amends whenever circumstances so warrant?

- has the culture of appreciating the value of legitimate complaints as an inexpensive means of identifying service weakness and launching the appropriate remedial measures gained sufficient root among public sector operators?
- should the Maltese ombudsman institution continue to be a demand-led Office or should it demonstrate a more proactive stance and venture forth more forcefully in the defence of citizen rights with emphasis on vulnerable sections of the population who would lie at the mercy of officialdom unless they are given tangible forms of assistance to stand up for their rights?
- are Maltese citizens adequately aware of the values of integrity, good governance, legality, accountability and transparency as determinants of the quality of public administration and of the role that the Office of the Ombudsman can play towards achieving these objectives with consequential benefits on the fabric and on the quality of people's lives?

The extent of the involvement of the Maltese ombudsman institution in the local public administration landscape in the years ahead is inextricably linked to the responses that are given to these various issues.

This Office remains firmly of the view that in all tiers of government, both in issues that are of direct interest to an individual citizen as well as issues that have a distinctly wider appeal to the public at large, the accountability framework needs to be extended further and to be embraced unreservedly by all public authorities. At the same time all citizens should be aware of their right to demand proper administration from the public authorities and should not be reticent to draw the attention of the Office of the Ombudsman to any erosion of this right and to any administrative arrangements, actions or decisions which in their view constitute unlawful, improper or unacceptable administration.

In the context of a relatively static level of demand for the Maltese ombudsman service that has set in recent years this Office ought not to show any complacency. A citizen who feels aggrieved by any administrative decision by a public authority that falls under the Ombudsman's jurisdiction but for some reason or other refrains from approaching the Office of the Ombudsman for a fair evaluation of his concerns represents an instance of a citizen who has fallen through the cracks of the ombudsman system. It is ultimately the duty and the responsibility of an authoritative institution such as the Office of the Ombudsman to sound the call at regular intervals so that all citizens will cherish the steadfast defence of their rights.

Although in recent years several ombudsman jurisdictions worldwide have seen their functions widened and their remits expanded in particular by added reference to a human rights dimension in their work, it is of course important to

recall that the primary aim of the Ombudsman remains that of defending citizens as users of public service from the harmful clutches of sheer maladministration, incompetence, and administrative injustice. If the relatively depressed level of demand for the ombudsman service in evidence in recent years can be taken as an indication of generally acceptable all-round standards of good governance in the Maltese public sector, this Office would be duly heartened by its contribution towards this state of affairs. It is likely, however, that out there the general perception among citizens at large of the Maltese public sector and its commitment to good governance might not quite be so reassuring.

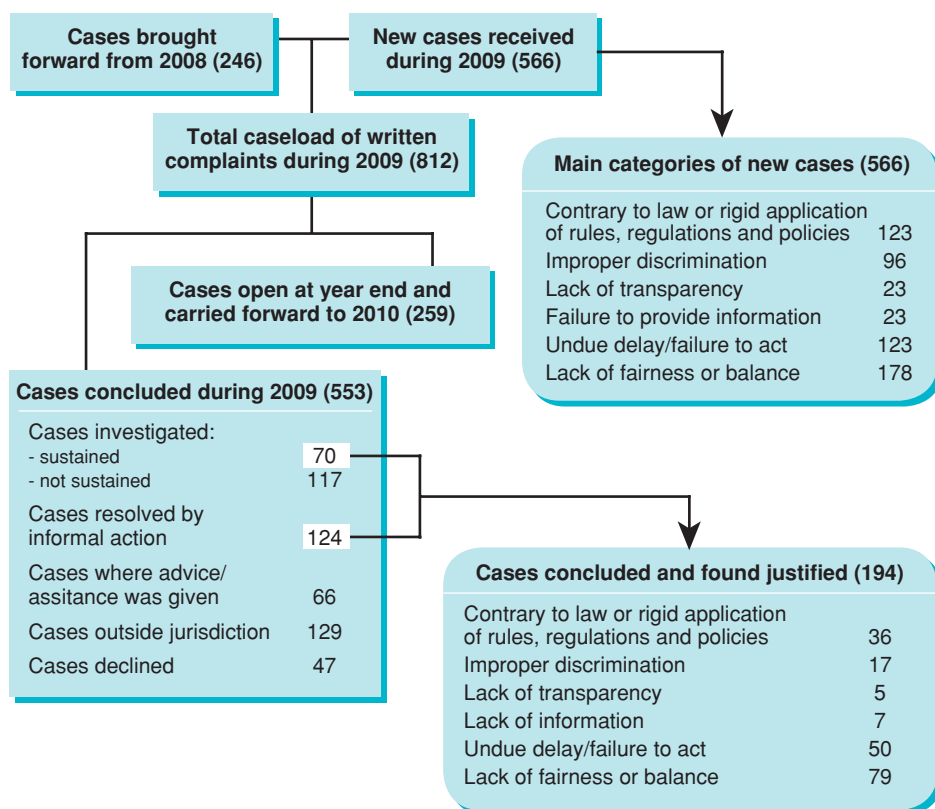
In this situation the Office of the Ombudsman has to make a stronger contribution to the national objective of a more transparent, accountable and just administrative structure and to show more muscle, drive and determination since in the Maltese context a steady and sustained annual incoming caseload would serve to effectively confirm and enhance the institution's commitment to a more efficient public sector in the country. In this regard the proposal by this Office to nominate dedicated Commissioners for the investigation of specific sectors of the public administration should also be viewed in this perspective since it should serve to promote a wider awareness of the right of citizens to complain when things go wrong in their relations with public officials; and indeed the performance that was registered by the University Ombudsman during 2009 is a case in point.

### Incoming caseload

While no particular trend is noticeable in the number of written complaints that are lodged yearly with the Ombudsman and the intake varies from year to year without any discernible pattern, an equally irregular pattern emerges from the number of verbal enquiries that are serviced by the Public Relations Officer of this institution. These approaches, which had ebbed drastically to 327 by 2003 (the lowest ever recorded), have swung back and forth in recent years in a somewhat irregular manner and without any apparent motive. As a result, the sharp increase in inquiries by members of the community that was registered in 2007 – up by 192 or 43.3% to 635 – was followed by an equally sharp drop to 469 in 2008 (down by 166 or 26.1%) and again by a hefty rise of 157 (33.5%) to 626 in 2009. On the strength of these flows, overall citizen contact during the year under review stood at 1192 (Table 1).

It would not be amiss here to refer to the good work that continued to be done throughout 2009 by the Public Relations Officer of the Office whose duty is to provide guidance, support and assistance to citizens who call personally at the Office or who phone to inquire about pending issues with the public administration that can often give rise to concern, anxiety and distress unless they are resolved fairly and in a timely manner. The range of concerns brought to the attention of

**Chart A**  
**Overview of written complaints during 2009**



the PRO during the reporting period was as usual broad and varied and covered such matters as the grant of residence permits and citizenship; deduction of tax; discrimination at the place of work; working conditions in the public service; delay in the adjustment of pensions; property valuation; compensation for land expropriation; inadequate customer care; land registration; treatment of employees in local councils; the approval of permits, licences and regulations; discrimination in the filling of vacant positions in the public service; the award of unemployment benefits; conditions for the award of alternative accommodation; staff transfers; and strategic planning and developmental issues related to building permits and environmental enforcement.

Other routine matters on which callers were directed by the Office or on which clarification was sought from an individual public body also with a view to settlement at the initial stage without the need to involve the Ombudsman

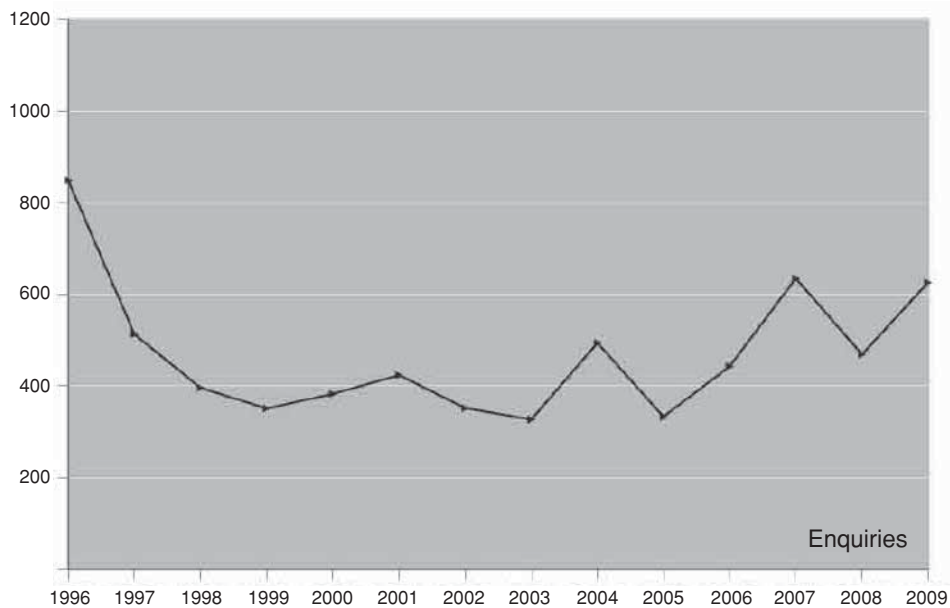
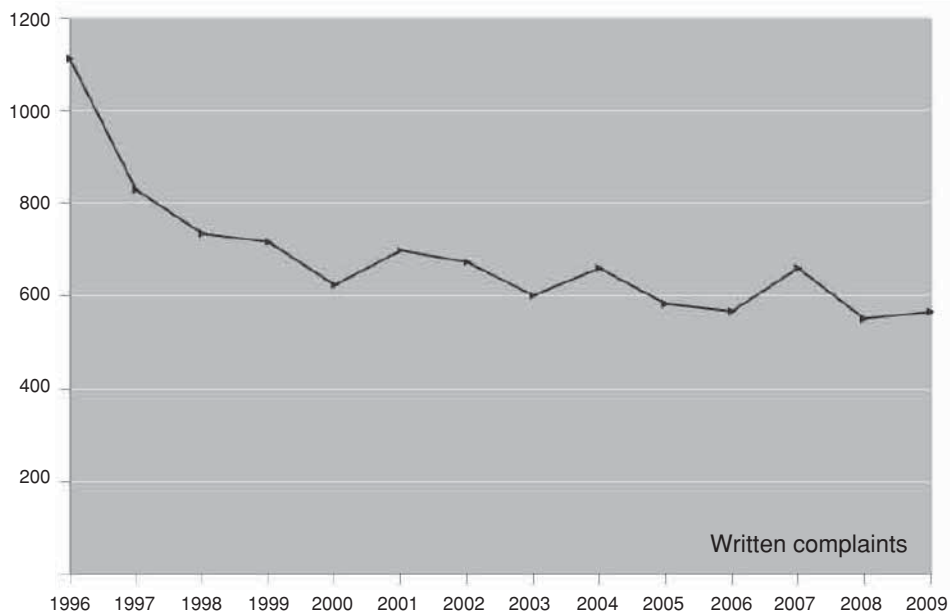
**Table 1**  
**Complaints and enquiries received**  
**1996-2009**

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
<b>2009</b>	<b>566</b>	<b>626</b>

included the award of social benefits including invalidity pensions; discrimination in working conditions between male and female officers carrying out the same duties; standards for the provision and delivery of community services; the termination of water services to households; harassment at the place of work; injury while on duty; inaction by public officials; access to educational services; record keeping; leave entitlement; maintenance of government-owned property; parking; hospital patient rights; misconduct by public officers; access to information; the payment of refunds for solar water heaters; the termination of employment of public officers during the probationary period; lack of enforcement action to stop construction by third parties on government-owned land; lack of consultation; denial of admission to diploma courses in nursing; refusal to grant parental leave; refusal to accept a request for a facilitator; failure to give the right of first refusal in a call for tenders; suspension from work; discriminatory treatment to foreigners; and conditions for the allocation of alternative accommodation.

A look at the distribution of incoming complaints by public service area on the office-wide electronic database for complaints and document management that tracks performance on individual grievances shows that the top five areas under

Diagram A  
Workload 1996-2009



**Table 2**  
**Complaint statistics by month**  
**2007-2009**

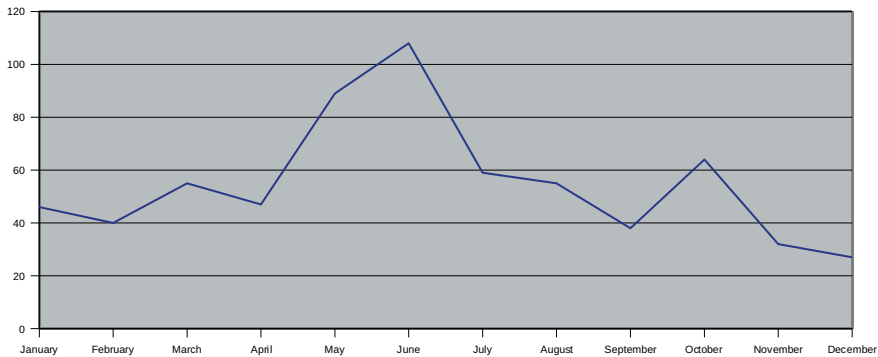
	2007			2008			2009		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
Brought forward from previous year			154			254			246
January	46	55	145	43	38	259	55	49	252
February	40	46	139	52	51	260	74	106	220
March	55	53	141	34	53	241	35	32	223
April	47	66	122	51	40	252	49	37	235
May	89	50	161	44	31	265	62	39	258
June	108	23	246	56	27	294	39	42	255
July	59	40	265	47	43	298	38	57	236
August	55	41	279	51	114	235	42	38	240
September	38	36	281	49	41	243	38	33	245
October	64	75	270	53	48	248	52	40	257
November	32	44	258	32	32	248	42	39	260
December	27	31	254	39	41	246	40	41	259
<b>Total</b>	<b>660</b>	<b>560</b>		<b>551</b>	<b>559</b>		<b>566</b>	<b>553</b>	
<b>Enquiries</b>	<b>635</b>			<b>469</b>			<b>626</b>		

the Ombudsman's scrutiny that people mostly complained about throughout 2009 (Table 3) were the Armed Forces of Malta (54 or 9.5%); the Malta Transport Authority (52 or 9.2%); education (38 or 6.7%); health (36 or 6.4%); and Enemalta Corporation (29 or 5.1%). Taken together these five subject matters accounted for 209 complaints (or 36.9% of the total) whereas the top five sectors had a combined list of 309 grievances (46.8%) in 2007 and 193 grievances (35%) in 2008.

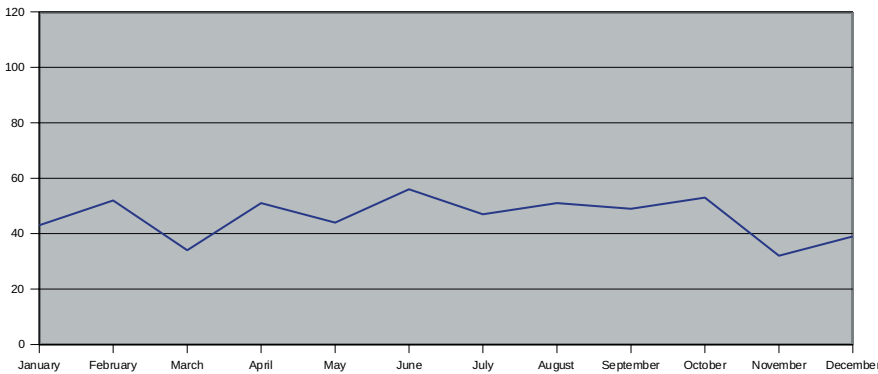
In keeping with the experience that was registered in the previous two years, the highest number of complaints was directed against the Armed Forces of Malta although in this regard it should be pointed out that at 54 in both 2008 and 2009 the number of grievances in this area contrasted sharply with the peak of 164 complaints in 2007 that was the highest ever recorded in any one year against any one sector.

Characteristically, discontent regarding the award of promotions to members of the Force was a recurrent topic in most of the AFM complaints. There is evidence

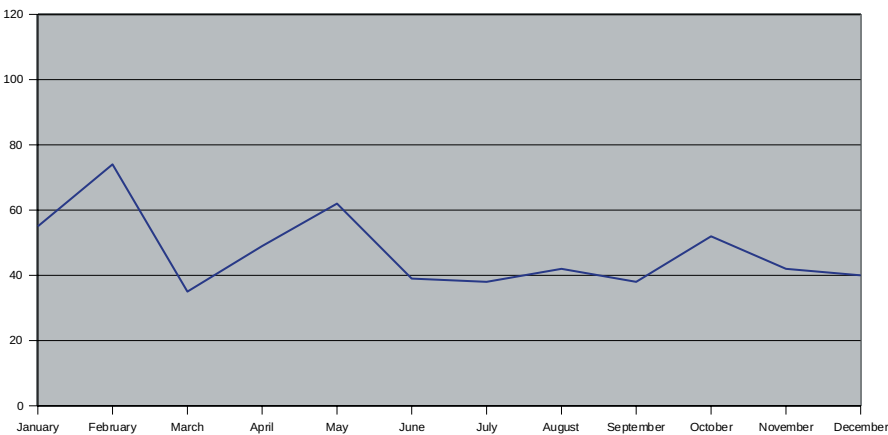
**Diagram B**  
**Monthly complaints received**  
**2007-2009**



**2007**



**2008**



**2009**



**Table 3**  
**Complaint numbers by type of public service sector 2007-2009**

Sector	2007	2008	2009
Armed Forces of Malta	164	54	54
Agriculture	6	4	5
Air Malta	14	5	7
Corradino Correctional Facility	-	3	2
Courts	3	6	7
Customs	-	4	6
Education	26	38*	38
Elderly	5	2	4
Enemalta Corporation	20	19	29
Health	29	40	36
Housing	10	1	-
Housing Authority	7	16	16
Inland Revenue	32	30	12
Joint Office	5	4	12
Land	15	18	13
Local Councils	33	20	20
Malta Maritime Authority	6	2	5
Maltacom	1	2	-
Malta Enterprise	2	2	1
Malta Shipyards	3	1	1
Malta Transport Authority	36	26	52
Management & Personnel Office, OPM	25	17	7
Public Broadcasting Services	-	1	-
Malta Environment & Planning Authority	44	31	15
Police Force	27	19	16
Public Service Commission	2	11	16
Roads	-	11	-
Social Security	26	27	25
Tourism	-	1	2
Treasury	6	7	2
University of Malta	3	8	2
VAT	1	1	4
Water Services Corporation	17	13	25
Works	1	1	-
Others	91	106	132
<b>Total</b>	<b>660</b>	<b>551</b>	<b>566</b>

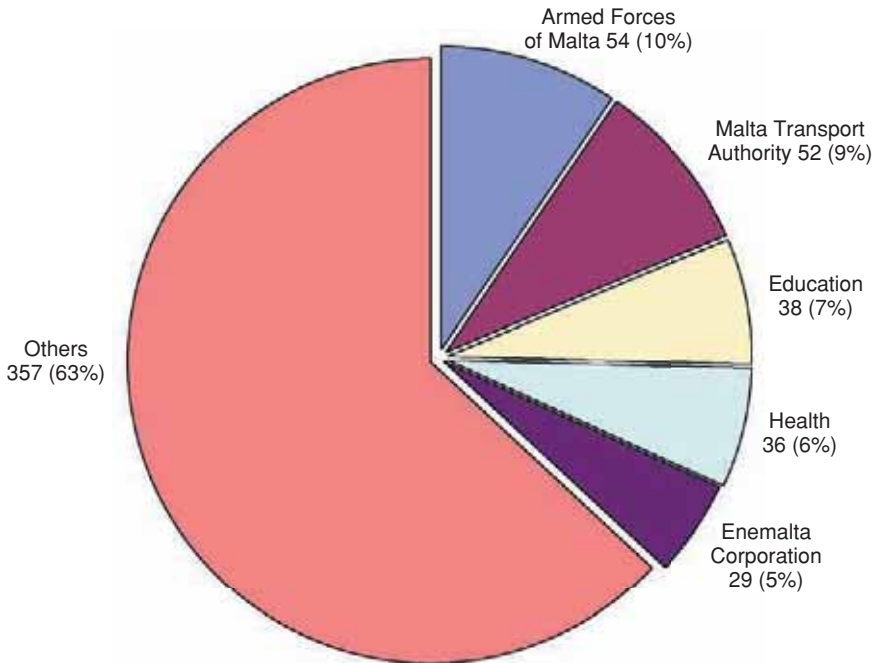
\* Adjusted.

to suggest, however, that as soldiers, non-commissioned officers and warrant officer ranks became increasingly aware of the career development process within the AFM and of the requirements for AFM personnel to be considered eligible for promotion including qualifications, experience, knowledge and time in rank, these criteria became more widely understood. At the same time as the

assessment of personnel for promotion to the next higher rank was based on more transparent guidelines, this in turn left less scope for conflict and allegations of discrimination and injustice.

The Malta Transport Authority followed close behind the Armed Forces of Malta in terms of complaint numbers as grievances against the Authority rose sharply and doubled from 26 in 2008 to 52 in the course of 2009. The nature of these complaints varied from issues related to the payment of registration tax on vehicles; requests for the payment of compensation for damages sustained by owners of vehicles due to the bad state of repair of roads; traffic contraventions; and the issue of licences and permits by the Authority.

**Diagram C**  
**Shares of complaints received**  
**2009**

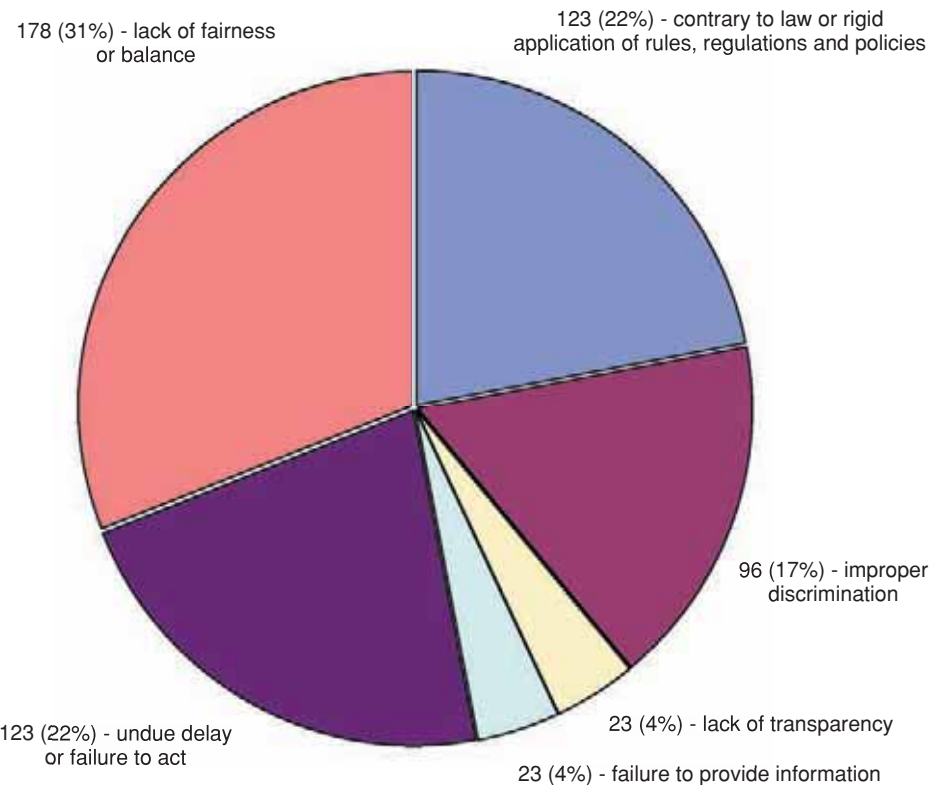


Education was the third sector that attracted most complaints during 2009 with a total of 38 grievances. The subject matter in most of these complaints was in respect of unfair treatment in the choice of staff to fill teaching posts; protests regarding the results of interviews; staff transfers; the payment of stipends and qualification allowances; and the issue of permanent teaching warrants.

To a large extent administrative shortcomings raised by complainants under the health category (36) concerned appointments and promotions to the Deputy Nursing Officer grade; staff transfers; entitlement to medicines and medical devices; and delays in surgical operations, procedures and medical investigation in the state healthcare sector. At the same time complaints that arose against Enemalta Corporation (29) were mainly characterized by requests for compensation by consumers for damages sustained by power surges; personnel matters; and fees and charges for water and electricity consumption that were considered to be based unfairly on commercial tariffs.

Table 4 which provides a breakdown of the grounds for complaints that reached the Office of the Ombudsman during the year under review shows that while allegations of maladministration based on lack of fairness or balance

**Diagram D**  
**Categories of complaints received**  
**(by type of alleged failure)**  
**2009**



**Table 4**  
**Complaint grounds**  
**2007-2009**

Grounds of complaints	2007		2008		2009	
Contrary to law or rigid application of rules, regulations and policies	69	11%	89	16%	123	22%
Improper discrimination	97	15%	94	17%	96	17%
Lack of transparency	31	4%	33	6%	23	4%
Failure to provide information	31	4%	29	5%	23	4%
Undue delay or failure to act	117	18%	95	17%	123	22%
Lack of fairness or balance	315	48%	211	39%	178	31%
<b>Total</b>	<b>660</b>	<b>100%</b>	<b>551</b>	<b>100%</b>	<b>566</b>	<b>100%</b>

**Table 5**  
**Complaints received (classified by ministry)**  
**2008-2009**

Ministry	2008	2009
Office of the Prime Minister	127	126
Ministry of Finance	15	-
Ministry of Finance, the Economy and Investment	56	79
Ministry for Justice and Home Affairs	42	30
Ministry of Education, Youth and Employment	11	-
Ministry of Education, Culture, Youth and Sport	45	41
Ministry for Tourism and Culture	3	2
Ministry for Competitiveness and Communications	2	-
Ministry for Resources and Infrastructure	5	-
Ministry for Resources and Rural Affairs	17	20
Ministry for Gozo	4	3
Ministry of Health, the Elderly and Community Care	16	-
Ministry for Social Policy	81	106
Ministry for Information Technology and Investment	11	-
Ministry for Rural Affairs and the Environment	12	-
Ministry for Urban Development and Roads	2	-
Ministry for Infrastructure, Transport and Communications	56	125
Ministry for the Family and Social Solidarity	9	-
Ministry of Foreign Affairs	10	8
Outside jurisdiction	27	26
<b>Total</b>	<b>551</b>	<b>566</b>

**Table 6**  
**Complaints by locality**  
**2007-2009**

Locality	2007	2008	2009
Attard	24	24	18
Balzan	7	8	5
Birgu	8	3	2
Birkirkara	41	31	33
Birżebbuġa	19	15	12
Bormla	11	6	3
Dingli	3	1	6
Fgura	14	13	20
Floriana	2	1	1
Għarghur	3	1	1
Għaxaq	4	6	7
Gudja	9	5	3
Gżira	10	5	6
Hamrun	10	6	14
Iklin	9	6	5
Isla	3	2	1
Kalkara	6	2	2
Kirkop	3	3	2
Lija	7	10	-
Luqa	6	5	6
Marsa	4	4	4
Marsaskala	21	20	18
Marsaxlokk	6	2	4
Mellieħa	12	9	11
Mġarr	1	3	2
Mosta	29	37	22
Mqabba	5	-	7
Msida	14	13	11
Mtarfa	3	2	4
Naxxar	24	15	16
Paola	14	8	14
Pembroke	6	4	7
Pietà	8	7	4
Qormi	20	21	20
Qrendi	3	4	6
Rabat	13	15	11
Safi	3	4	1
San Ġiljan	15	10	10
San Gwann	20	15	12
San Pawl il-Baħar	18	24	21
Santa Luċija	5	4	3
Santa Venera	4	8	10
Siġġiewi	14	12	6
Sliema	29	22	23
Swieqi	8	15	15
Ta' Xbiex	3	3	2
Tarxien	9	8	15
Valletta	16	10	15
Xemxija	-	-	1
Xgħajra	2	1	3
Żabbar	39	16	20
Żebbuġ	10	13	10
Żejtun	17	12	7
Zurrieq	20	10	14
Gozo	39	39	44
Other	1	1	10
Overseas	6	7	16
<b>Total</b>	<b>660</b>	<b>551</b>	<b>566</b>

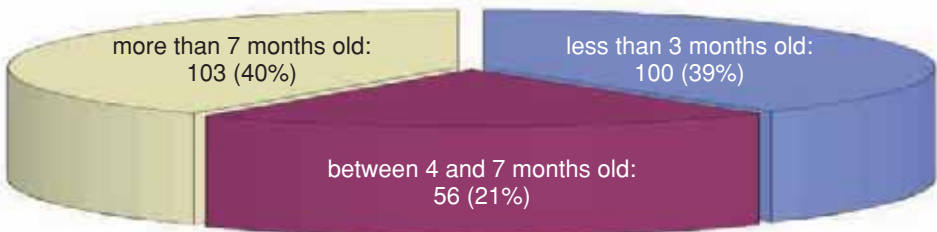
continued to account for the larger proportion of incoming complaints, the relative share of these allegations eased further: from 48% in 2007 to 39% in 2008 and 31% in 2009. On the other hand, grievances that took root from complainants' opinion regarding administrative failings allegedly based on actions and decisions that were contrary to law or based on a rigid application of rules, regulations and policies, continued to climb from 69 (11%) in 2007 to 89 (16%) in 2008 and 123 (22%) in 2009. At the same time avoidable delay or tardy action during 2009 contributed to an increasing share of the year's complaint intake – up from 95 (17%) in 2008 to 123 (22%) in 2009 while complaints founded on administrative action that was regarded as improperly discriminatory remained pegged to the share of the previous year: 94 (17%) in 2008 and 96 (17%) in 2009.

Yet again complainants attributed by far the lowest share of their misgivings regarding the public administration to lack of transparency and inadequate access to information with each category contributing 4% of the total complaint intake.

**Table 7**  
**Age profile of open caseload at end 2009**

Age	Cases in hand
Less than 2 months	66
Between 2 to 3 months	34
Between 4 to 5 months	27
Between 6 to 7 months	29
Between 8 to 9 months	21
Over 9 months	82
<b>Total open files</b>	<b>259</b>

**Diagram E**  
**Percentage shares of open complaints by age (at end 2009)**



### Complaint outcomes

In the last few years the number of complaints finalised by the Ombudsman has more or less stabilized and at 553, cases that were closed in 2009 were only marginally lower than in 2007 and 2008 (560 and 559 respectively). In each of these cases that were brought to an end the Office provided to complainants adequate reasons and explanations that underpinned the Ombudsman’s course of action in his pursuit and resolution of complaints that were subjected to an investigation or that were resolved in an informal manner or else in his decision not to follow up particular grievances. This approach helped to assure citizens of the transparency and fairness of the institution’s complaint handling techniques and its fair and credible decision-making processes.

Table 8 captures the Office’s workflow with regard to complaint resolution for the years 2007 to 2009. The table shows that complaints that were finalised at the end of a formal investigative process that would involve the painstaking gathering of evidence from the parties concerned and that would generally run for several weeks followed by its evaluation in a most comprehensive and impartial manner, were markedly higher in the year under review than in the previous two years: 187 (or 34% of total completed complaints) in 2009 compared to 146 (26%) in 2007 and 149 (27%) in 2008. In turn this higher number of investigations was accompanied by a much larger turnout of grievances with outcomes that were favourable to complainants: 37 (7%) in 2007; 28 (5%) in 2008; and 70 (13%) in 2009. This Office is unable to provide any particular reason to explain this somewhat sharp turnaround in terms of upheld cases relative to finalized complaints particularly when compared to the experience of 2008 when the number of complaints whose substance was corroborated was the lowest ever recorded both

**Table 8**  
**Outcomes of finalised complaints**  
**2007-2009**

Outcomes	2007	2008	2009
Cases investigated	146	149	187
of which: sustained	[37]	[28]	[70]
not sustained	[109]	[121]	[117]
Resolved by informal action	145	135	124
Given advice/assistance	69	47	66
Outside jurisdiction	157	180	129
Declined (time-barred, trivial, etc)	43	48	47
<b>Total</b>	<b>560</b>	<b>559</b>	<b>553</b>

in absolute and in relative terms since the Office of the Ombudsman was set up in the mid-90s.

At the same time the relative share of complaints that were not substantiated and where there was no evidence of any wrong or unacceptable conduct remained virtually at the same level of the last two years – 109 (19%) in 2007; 121 (22%) in 2008; and 117 (21%) in 2009.

In his formal investigation of these complaints the Ombudsman did not delve into the merits of decisions or actions that were brought to his attention or into any discretionary powers that were exercised by the public bodies that were involved since this is specifically excluded from his functions. The Ombudsman's role in these investigations was to inquire whether there were any administrative shortcomings in the way that these decisions were reached and whether discretionary powers were used reasonably and fairly.

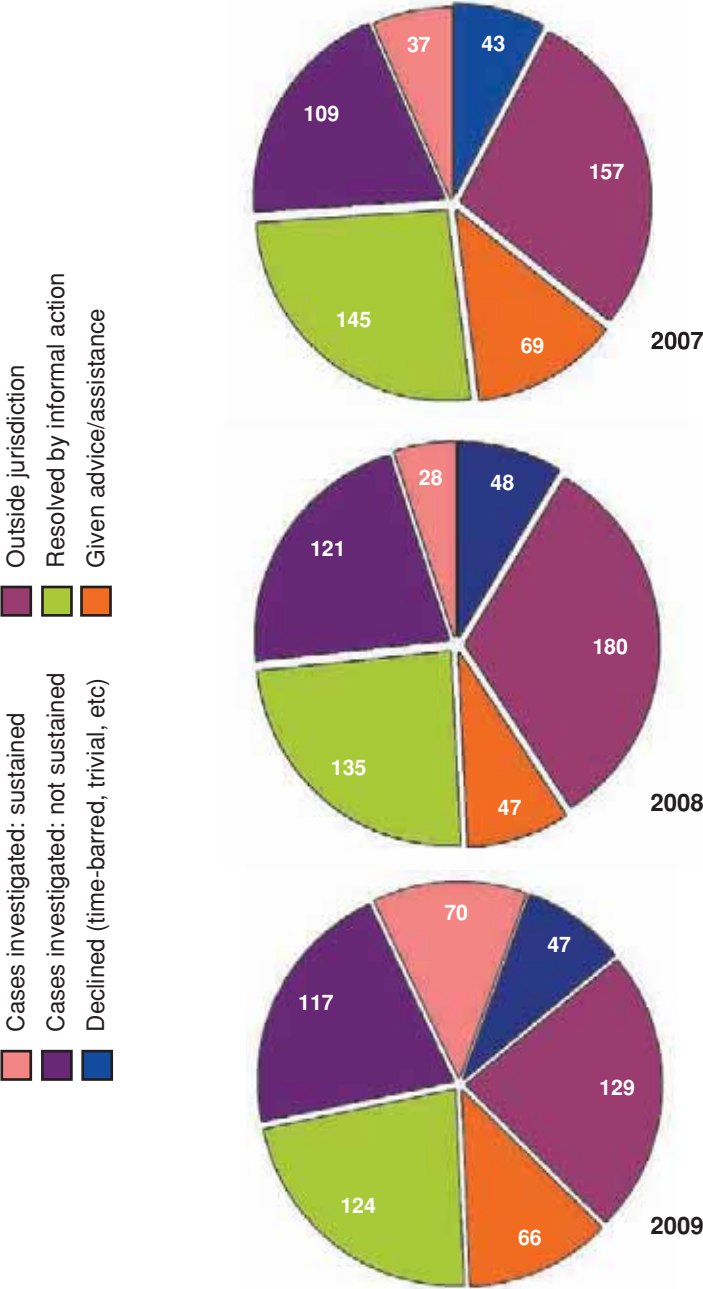
The conciliatory approach that is a characteristic feature of the ombudsman institution worldwide came again to the fore in 2009 as a total of 190 finalised complaints (34%) were resolved in an informal manner by the Ombudsman without the need to launch a full and formal investigation since the preliminary information that was gathered was considered adequate to lead to a resolution during this early phase. Several of these grievances were addressed and resolved either by referral to the relevant public body or by means of advice, assistance and explanations that were furnished to complainants by the public body that was involved with a view to reaching an amicable solution that would be acceptable to all the parties concerned. It should be pointed out that this informal action by the Ombudsman takes place in respect of written complaints that reach his Office and that are deemed to lend themselves to this type of solution and that these grievances are not to be considered in the same basket as verbal enquires that are tackled on an ongoing basis by the institution's front office staff.

Not unlike other ombudsman offices elsewhere, a relatively large number of complaints are rejected straightaway upon reaching the Office of the Ombudsman. In the year under review the number of cases that were declined on jurisdictional grounds and were out of remit amounted in all to 176 (32%). The comparable figures for 2007 and 2008 were 200 (36%) and 228 (41%) respectively.

The findings of the Ombudsman with regard to the type of maladministration in sustained cases that appear in Table 9 show that there were 79 files where the public authority involved was found responsible for an unfair decision or action or lack of balance; and at 41% these grievances accounted for what was by far the largest share of justified complaints. This level matched the relative share of the previous year and ensured that for the third year running complaints that



**Diagram F**  
**Outcome of finalised complaints**  
**2007-2009**



**Table 9****Type of maladministration in justified complaints  
2007-2009**

<b>Closing status</b>	<b>2007</b>		<b>2008</b>		<b>2009</b>	
Contrary to law or rigid application of rules, regulations and policies	21	12%	23	14%	36	19%
Improper discrimination	26	14%	23	14%	17	9%
Lack of transparency	7	4%	7	4%	5	2%
Failure to provide information	9	5%	12	7%	7	3%
Undue delay or failure to act	58	32%	32	20%	50	26%
Lack of fairness or balance	61	33%	66	41%	79	41%
<b>Total</b>	<b>182</b>	<b>100%</b>	<b>163</b>	<b>100%</b>	<b>194</b>	<b>100%</b>

were classified under this category constituted the largest single source of maladministration.

For several years the Ombudsman identified undue delay and failure to act by public authorities as the leading type of maladministration afflicting the Maltese public service. Since 2007, however, this category eased its overall position and now represents the second highest contributor towards administrative malpractice. At the same time unlawful administrative action and processes that were based on an inflexible and intransigent application of rules, regulations and policies that caused dissatisfaction along citizens were responsible for 36 justified complaints or 19% of these grievances. Improper discrimination led to 17 substantiated complaints in 2009 (9%) while on a smaller scale failure to provide information and poor communication together with lack of transparency were other contributory factors, being jointly responsible for 12 cases or 5% of the total number of justified grievances.

In these successful grievances positive outcomes for complainants were largely based on recommendations for remedial action that took the form of apology; the admission of failure and correction of errors; and financial compensation. Subsequent to the issue of the Ombudsman's final opinion on sustained cases, the Office continued to track the level of compliance of its recommendations by the public bodies involved in these complaints to ensure that a fair remedy would be provided to persons who were adversely affected by sustained instances of maladministration. In these cases the Office also took the necessary follow up action so that there would not be a recurrence of the same administrative failure and to ensure that procedures, policies and decisions that were identified as wrong or unacceptable by the Ombudsman would be reviewed by the public body concerned in line with his recommendations.

**Diagram G**  
**Cases concluded and found justified**  
**2007-2009**

