PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS MALTA

ANNUAL REPORT

for the period
January - December 2008

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

Ombudsman
MALTA

October 2009

The Hon Dr Louis Galea
Speaker
House of Representatives
The Palace
Valletta

Mr Speaker,

Pursuant to section 29 of the Ombudsman Act, 1995 I am pleased to present my **Annual Report** covering the period January to December 2008.

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

Yours sincerely

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Chief Justice Emeritus Dr Joseph Said Pullicino, Parliamentary Ombudsman, presents a copy of the *Annual Report 2007* to Dr Louis Galea, Speaker of the House of Representatives.

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1. THE YEAR IN REVIEW

Introduction

It is widely recognized that one of the most decisive steps to underpin a modern Maltese public service that would support the country's growth process and further enhance its democratic values and credentials consisted in the establishment of the Office of the Ombudsman.

Ever since the Maltese ombudsman institution first opened its doors with the enactment of the Ombudsman Act,1995 to entwine a new culture of transparency and accountability in the Maltese public administration around the concept of efficiency and improved service delivery to citizens, there have been tangible signs of a renewed ethos in the country's public officials, also driven no doubt by other initiatives aimed at public sector reform and modernization.

The core mission of the Office of the Ombudsman corresponds to that of other similar ombudsman institutions worldwide – that of promoting administrative justice and fairness in the myriad of decisions and countless actions that are taken round the clock by public servants and that influence the day-to-day lives and destinies of innumerable citizens. These individuals may range from pensioners in a residential home for the elderly to applicants under a social welfare programme; contractors engaged to provide goods and services to public bodies; candidates who respond to a call for applications to join the public service; employees who believe that their prospects for career advancement have been thwarted or that they are entitled to a qualification allowance; and a returned migrant who is frustrated that he has been led a merry dance by the customs and road licensing and testing authorities before he can register the car that he has brought back with him from Australia.

Taken out of the context of their impact on the lives of citizens who are directly influenced by these episodes, these instances of involvement by the Ombudsman may seem remote, irrelevant and faceless. To the individuals concerned, however, these experiences often have a determining and lasting influence on their lives and it is by virtue of the Ombudsman's intervention that steps can be taken to remedy the administrative shortcomings that are identified by his investigation.

Guided by the key values of impartiality, reasonableness and integrity and led by the principles of equity and natural justice, the Ombudsman conducts his investigations into allegations of maladministration in order to put right those cases where he finds that the public service has chipped a person's dignity and unjustly denied access to rights and entitlements that are due to the individual concerned.

Beyond the provision of mere personal remedy, however, the Ombudsman also looks at a wider picture. Unfair bureaucratic practices, procedures, policies or regulations that appear on the radar screen of his scrutiny and that are found to have given rise to administrative unfairness, bias, injustice or inefficiency or as having contributed towards service failure and that may be relevant to citizens at large are brought to the attention of the authorities concerned with a view to ensuring that similar acts of maladministration will not recur.

As he fans out from individual complaints to grievances with more general implications, the Ombudsman encourages further the right to good governance among citizens. In this way he protects individual rights among society as a whole and underscores his commitment to serve as a link between citizens and public authorities, especially those which exercise considerable influence over their daily lives.

Covering as it does the resolution of sustained individual complaints and the provision of advice and recommendations to public bodies on the basis of lessons learnt from these grievances as a means of lessening the impact of potential acts of maladministration on a wider scale, the loop of the Ombudsman's investigation is acknowledged to underline the value of the institution and its validity as an instrument of greater administrative accountability.

The strategic development of the Maltese ombudsman institution – recent developments

When the Office of the Ombudsman took its rightful place in the Maltese constitutional landscape with the approval by the House of Representatives on 18 July 2007 of Act No XIV of 2007 to amend the Constitution of Malta and the assent by the President of the Republic on 24 July 2007, this did not

signify the end of the road of the process to ensure that the institution would respond better to the times. The momentum for change has not been lost.

As this constitutional pledge enshrined and elaborated the right of citizens to the continued existence of an independent and autonomous institution that safeguards their interests against maladministration by public authorities, action got under way for the launching of the next step. This was meant to secure a more effective mandate by providing the Ombudsman with a wider and broader sweep by means of powers to cooperate and work more closely with other different sectoral guardians of citizen rights in specific fields of public administration while allowing them at all times full independence and autonomy in their evaluation and judgement of matters falling under their respective jurisdictions.

The proposal to consolidate the ombudsman movement and to set up a new unified structure for the Maltese ombudsman institution is meant not only to raise its profile among citizens but also to provide a single port of call to potential complainants and easier access to the guardians of their rights in particular areas of public administration. These arrangements should enable a more consistent approach to the conduct of investigations and a more uniform scale of remedial measures as well as a more forceful voice whenever the public body concerned, for reasons of its own, does not follow the recommendations put forward by the body that is entrusted to verify its actions.

At the same time scale economies by the coordination of manpower resources including a more effective deployment of investigative, administrative and executive staff would represent an added advantage in a national unified ombudsman structure.

Laying the foundations for a unified ombudsman service

The spark that provided the initial impetus to the initiative that was launched by the Ombudsman to promote the unification of the ombudsman service in the country is widely known.

Early in 2007 the first Commissioner for Children publicly voiced her concern at the inadequacy of the resources that were put at her disposal and at her perceived lack of independence when she was dependent for her own resource

provision on the same public authorities that she was entrusted to scrutinize. This was followed by a similar lament some time later by the Audit Officer of the Malta Environment and Planning Authority (Mepa) who too complained publicly that he was finding it difficult to check allegations of service failure and to probe actions and decisions by Mepa that raised discontent among citizens when the issue of his reappointment after the expiry of his first term of office was unduly protracted and the investigative resources at his disposal were no longer made available by the Authority itself for reasons that he did not share.

It was evident that the thread that linked the fate of these officeholders was the inability of two *ad hoc* review mechanisms of government action to assert their autonomy and independence from the institutions that were subject to their scrutiny. This prompted the Ombudsman in an open letter to the Prime Minister and to the Leader of the Opposition on 19 July 2007 to attribute this impasse to disregard of the principles that are affirmed in Resolution 48/134 *National institutions for the promotion and protection of human rights* approved in the 85th plenary meeting on 20 December 1993 by the General Assembly of the United Nations (the Paris Principles) and in particular in the section entitled *Composition and guarantees of independence and pluralism.*[1]

The Ombudsman recommended that key to a solution to this problem lay in the setting up of a unified public sector ombudsman structure under the overall direction of his Office that would remove these review mechanisms with specific functions in designated administrative areas from the clutches, real or perceived, of the institutions and authorities that they are required to investigate. This move would allow them to operate in fuller control of their actions and enable them to exercise their powers and functions autonomously and independently and work in consultation and collaboration with the Parliamentary Ombudsman insofar as investigative practice and procedures and principles for complaint handling and for the award of remedy are concerned.

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1 Article 2 of this section states as follows: "*The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence*."

This initiative by the Ombudsman was instrumental in launching the Maltese ombudsman system towards what may be rightly considered as the next step in its modernisation process. In the context of a generally broad approval of his proposal that the public sector ombudsman system in Malta should further strengthen its role as the national leader in the field of guidance and advice on good administration to all those who are involved in the delivery of public service to citizens, the Prime Minister by means of a letter dated 26 July 2007 requested the Ombudsman to work towards establishing in the short term a single, unified institution and lay the foundations of a new and wider role for his Office. In this new role the Office would serve as the anchor of an effective administrative scrutiny mechanism that would underpin and collaborate closely with other structures of specialised administrative audit and at the same time allow these stakeholders to retain full autonomy and guarantee their independence in their evaluation of complaint issues falling under their respective jurisdiction and in their ultimate judgements and recommendations.

It was also recognised that this step to strengthen these institutions at both entity and national level would in turn broaden the commitment in favour of transparency, openness, accountability and respect for the right of all citizens to good and efficient public administration and ensure a more consistent level of protection to citizens.

To a very large extent this roadmap by the Government set the agenda for the work plan by the Office of the Ombudsman for 2008. It was a task which the institution embarked upon with vigour since it was fully in line with its vision of a reorganized public sector ombudsman service that would be even more responsive than hitherto to citizens' aspirations of a public service that would be fit to lead the country into the 21st century.

This process to reform and consolidate the Maltese ombudsman system was guided by the recognition that the relative proliferation of different Ombudspersons in various areas of public administration, each with their own separate jurisdictions, complaint handling systems and methods for the evaluation, adjudication and resolution of grievances, even though well-intentioned, could possibly lead to uncertainty about the respective roles and remits of each officeholder and give rise to confusion as to where complaints should be addressed in the first place.

Allied to other initiatives by public authorities to provide improved levels of service to citizens such as customer care facilities and internal complaint handling arrangements, this bonding of public sector ombudsman schemes, while helping to promote a uniform set of values and accountability criteria across the broad spread of the public service, would ensure that each Ombudsperson would maintain his independence both of the executive and of the Parliamentary Ombudsman in the exercise of his discretion and of his judgement on issues falling under his primary jurisdiction that are brought to his attention. This process would also subject the institutions falling under the Parliamentary Ombudsman's aegis to overall control by the House of Representatives in terms of reporting obligations and accountability standards. At the same time the role of the different watchdog mechanisms participating in this unified structure would be clearly defined with a view to ensuring that the conduct of investigations and the processing of complaints would be fully in line with established standards of complaint handling.

By latching on to the Parliamentary Ombudsman this additional role of overseer of citizens' rights in other specific administrative jurisdictions, his Office would provide a higher value added service to citizens and further enhance its credibility status. This role gains added significance with the establishment of the Office of the Parliamentary Ombudsman as a constitutional authority with the main function to investigate administrative actions taken by or in the name of the government or by any authority or body set up by law and the residual function to scrutinize administrative action falling under the specific competence of other institutions that were also set up by virtue of special *ad hoc* legislation.

Collaboration with the Audit Office of the Malta Environment and Planning Authority

Responding to the Prime Minister's directive, the Office of the Ombudsman entered into discussions with the Malta Environment and Planning Authority and with its Audit Officer in the latter half of 2007 in order to lay down a set of guidelines that would shape the relationship within the proposed new ombudsman structure between the Parliamentary Ombudsman and the audit mechanism in the field of development planning even in advance of the legislative amendments necessary to put this process into effect.

The arrangements to bring on board the Authority's Audit Officer while

allowing him to retain his full powers and functions and to maintain full rein over his discretion were anchored on the acceptance of several basic principles and envisaged, among other things, that responsibility for resource provision to the Audit Office in terms of investigative, administrative and other related back-up and support services should no longer fall upon the Authority itself since this could give rise to perceptions of collusion between the parties and of a deliberate block of the resources necessary to sustain this function.

In a similar vein, the premises housing the Audit Officer should, if feasible, be physically distinct, separate and removed from the building occupied by the Authority so as to dispel any lingering doubts in the minds of citizens regarding the respective roles of the Authority and of the body authorised to scrutinize its actions.

It was also important to ensure, however, that despite the process aimed at convergence between the Office of the Ombudsman and the Audit Office and the obligation for the two sides to cooperate and to co-ordinate their actions in a constructive manner, each institution would retain its own identity. This distinction was crucial especially in view of the fact that the Parliamentary Ombudsman could at any time be required to intervene in cases that were already determined by the Audit Officer and to give his Final Opinion on these instances and in this way allow citizens to continue to benefit from recourse of last resort to his Office.

While accepting that until such time as statutory amendments are introduced in the provisions in the Development Planning Act that concern the scrutiny of the Authority's affairs, the operations of Mepa's Audit Office would still be regulated by this Act and that this Office would still need to operate within the terms of the existing legislation, the agreement signed on 27 December 2007 between the Parliamentary Ombudsman, the Chairman of the Malta Environment and Planning Authority and Mepa's Audit Officer was meant to kick-start the process to detach the Audit Office from Mepa.

This agreement included a range of measures designed to keep the Audit Officer's powers of investigation intact and enable him to discharge his functions under the law by making use of investigative and administrative resources placed at his disposal by the Office of the Ombudsman. It was agreed that grievances raised by citizens against Mepa would as a rule first be addressed directly to the Authority's Complaints Office which was also

at that time reorganized and that grievances would only be allowed to migrate to the Audit Office as a last resort if complainants remain dissatisfied with the response by the Complaints Office. At the same time the front desk at the Office of the Parliamentary Ombudsman would serve as a point of contact and guide and assist citizens needing to approach the Audit Office with their complaints.

The agreement also envisaged that staff from the Office of the Parliamentary Ombudsman deployed on investigative work on behalf of the Audit Office would be directly answerable to the Audit Officer for their work and would only receive instructions and directives from the Audit Officer himself.

Other arrangements that featured in this agreement included modalities for the registration of incoming complaints at the Audit Office on an *ad hoc* case management system that would respond to the needs of this Office and operate independently of the case management system at the Office of the Ombudsman but to which this latter Office would have access; the continued availability of an office at the Mepa premises where the Audit Officer would still be able to hear evidence and, where necessary, examine and review voluminous and bulky documentation at his full discretion in connection with the scrutiny of cases brought to his attention; and the possibility for the Parliamentary Ombudsman to investigate any complaint that would already have been reviewed by the Audit Officer should he consider it necessary to do so.

It is therefore with some disappointment that this Office would like to put on record that although this agreement, due to take effect from 1 January 2008, was considered to provide a platform for the launching of a unified and cohesive review structure with the Authority's Audit Office, the uptake during 2008 by the Audit Office of most of the innovative aspects of the proposed new system was generally low. Only sporadic resort was made of the facility to use investigative staff from the Office of the Ombudsman to assist the Audit Officer in his assignments to scrutinize Mepa's performance; the issue of removing the Audit Office from inside the Mepa building in Floriana and locating it within the Office of the Ombudsman in Valletta remained outstanding; while the proposal that Audit Office staff would be loaned to the Office of the Parliamentary Ombudsman too remained pending.

This Office understands that this attitude might have reflected an initial hesitation to recognize that the detachment of the Audit Office from the

Authority and its inclusion within the Office of the Ombudsman in fact represented an essential component of the programme to strengthen the overview function of the Audit Office itself and enhance its independence. It is likely that this proposal gave rise to fears of a transfer of the powers of the Audit Office and of its absorption into the Office of the Ombudsman that would divest the institution of its autonomy; that the investigative staff at the Office of the Ombudsman lacked the necessary experience in the field of physical planning and building development; and that this new setup would bring to an end the system that was in operation for several years whereby the Audit Office would review complaints on technical grounds while the Office of the Ombudsman would examine cases in order to determine whether the evaluation by the Audit Office was procedurally correct.

This Office is of the view that particularly at a time when the Audit Officer himself claimed that the decision by the Board of the Authority not to renew the appointment of his sole investigating officer in 2007 made it virtually impossible for him to process incoming complaints within a reasonable time with the result that the backlog of pending cases increased substantially, there was no reason why it was only late in 2008 that collaboration between the two Offices in the field of investigations started to gain ground.

Although in the months immediately after the December 2007 agreement came into force the cooperation between the two Offices covered several administrative areas including information technology, it was not before November 2008 that the Audit Office approached the Office of the Ombudsman and requested assistance in its investigative work. As a result, a Senior Investigating Officer from the Office of the Ombudsman was designated to carry out investigative work on behalf of the Audit Officer and began to attend the Audit Office on a regular basis and to contribute to the resolution of complaints on the basis of the investigative techniques and procedures that have been in use at the Office of the Ombudsman for several years.

Despite these teething problems, it is encouraging to point out that as these arrangements progressed and contributed to ease the backlog of pending cases, this collaboration served as further reassurance of this Office's commitment in favour of a single unified ombudsman system based primarily on a consistent approach in complaint handling and on uniform standards in the evaluation of grievances. As this new system gained ground and proved generally successful, confidence grew that the independence of the Audit

Office would be enhanced as it distanced itself from the Authority and fears that this Office would lose its identity and be subsumed with the Office of the Ombudsman under the wider functions and responsibilities being assigned to this institution soon subsided.

By the end of 2008 there were indications that this bridgehead would lead to more fruitful collaboration in the handling and resolution of complaints across the wide spectrum of activity carried out by the Authority and in the best interest of citizens who rightly expect that development applications are processed fairly and without any discrimination, excessive delay or abuse of power.

The launching of a successful new association with the Office of the University Ombudsman

On the other hand it is most reassuring to recall the positive experience that was immediately registered by the initiative to develop an effective partnership in the provision of a vigorous and robust ombudsman service in the field of higher and further education during the latter half of 2008 by means of close working between the Office of the Parliamentary Ombudsman and the Office of the University Ombudsman that is established under subarticle 74(15) of the Education Act.

This Act allows the Parliamentary Ombudsman to nominate the University Ombudsman for a term of five years but then the officeholder is virtually left out on a limb and can only suggest redress in any sustained complaints to the university authorities while the legislation makes no provision for any reporting sequence or obligations. Virtually bereft of any supporting structures and with meagre resource endowment, it is hardly surprising that over the years this institution barely ever made any impact, lacked visibility, was characterised by a scant demand for its services and was virtually unknown by students as well as by their representatives, possibly also as a result of failure to relate well with their concerns and aspirations.

In this situation the proposal to develop a more coherent ombudsman service in Malta may be considered to have provided a double-edged stimulus to this institution. Propped by the muscle of a unified ombudsman service rather than working in isolation as a separate office, the Office of the University Ombudsman was able to derive a strong impetus from its association with

the Office of the Parliamentary Ombudsman not only in terms of stature and standing but also in terms of resource allocation to handle its new role and functions. The institution was also able to gain an advantage in terms of guidance on the practical aspects and requirements of good governance from the Office of the Parliamentary Ombudsman without any loss of the right of the University Ombudsman to reach autonomous judgements in his consideration of complaint issues lodged with his Office.

The appointment of Professor Charles Farrugia as University Ombudsman as from 1 November 2008 came at the right moment. Deeply experienced in university management issues and fully supportive of the proposal to establish collaborative systems and processes with the Office of the Ombudsman, the new University Ombudsman was also strongly receptive towards the proposal to widen the jurisdiction of his Office and by way of delegation in terms of section 27 of the Ombudsman Act[2] and in agreement with the Minister responsible for education, his remit was extended by the

The Parliamentary Ombudsman presents the letter of appointment to Professor Charles Farrugia to serve as University Ombudsman for a term of five years from 1 November 2008.

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2 Section 27 of the Ombudsman Act, 1995 states as follows:

"(1) The Ombudsman may delegate in writing to any person holding any office under him any of his powers under this Act, except this power of delegation.

(2) A delegation of functions under this Act shall be without prejudice to the exercise of those functions by the Ombudsman, and shall be revocable by the Ombudsman at will."

Parliamentary Ombudsman to cover the investigation of complaints in the field of further education as the Malta College of Arts, Science and Technology (MCAST) and the Institute of Tourism Studies (ITS) were added to his jurisdiction. This development considerably increased the number of persons, both students and employees in these institutions, who are covered by this Office and was long overdue.

As a result of these developments the designation of University Ombudsman is no longer considered appropriate and this Office is of the view that the appointment of a Commissioner for Further and Higher Education would be more in keeping with the widened jurisdiction of the Office.

This Office considers these developments in the method of operation of the University Ombudsman even before the proposed statutory strengthening and rationalisation of administrative audit authorities in the country have been approved, as a step in the right direction. Not only has this process significantly enhanced the role, efficiency and functioning of the Office of the University Ombudsman in line with the basic tenets of the Paris Principles but it has also ensured that in carrying out his duties the University Ombudsman adopts the procedures that appear in the Ombudsman Act to regulate the proceedings of the Office of the Ombudsman. This should in turn bring about greater procedural uniformity in the methodology used for the conduct of investigations and enable recommendations for the award of redress in sustained cases to be more closely aligned with the Parliamentary Ombudsman's scale of redress measures and criteria.

Another positive aspect of this development was the role taken by the Parliamentary Ombudsman and his involvement in the work of the University Ombudsman while allowing him full discretion in his evaluation of incoming complaints. Like the Parliamentary Ombudsman, the University Ombudsman has no executive powers and functions and according to guidelines for the presentation of cases under which the previous incumbent operated, the University Ombudsman could only express opinions and offer advice and, in appropriate cases, make recommendations to the university authorities on these complaints which would also be communicated to the person lodging the grievance. Under these guidelines when the University Ombudsman would communicate his final decision to a complainant, the case would be considered closed.

The new vision that was imparted to the Office of the University Ombudsman in 2008 brought about several far-reaching changes with regard to the resolution of justified complaints. Even here, in line with the relevant provisions of the Ombudsman Act, in cases that are sustained the University Ombudsman asks the institution concerned to inform him within a reasonable time of the action that it intends to take to observe the conclusions of his Final Opinion. When the institution does not within this period implement or only implements in part any recommendations in the University Ombudsman's Final Opinion or where no reply is received within the timeframe indicated by him in this report, the University Ombudsman shall inform the Parliamentary Ombudsman and the complainant about this situation.

In these circumstances the complainant retains the ultimate right of recourse to the Parliamentary Ombudsman and may request him to review the University Ombudsman's report. In the event that an intervention by the Parliamentary Ombudsman does not lead to action by the authorities concerned which seems to him to be adequate and appropriate, the Parliamentary Ombudsman would then be free, in his discretion, to send a copy of the relevant documentation to the Prime Minister and thereafter make any such report to the House of Representatives on the matter as he thinks fit.

These developments have given added strength to the University Ombudsman and enabled his Office to benefit from an established mechanism in existing ombudsman legislation that did not reach this Office during the years when it operated as a separate organization. The new system also allows the University Ombudsman the possibility to conduct own initiative investigations following consultations with and on the advice of the Parliamentary Ombudsman.

The inclusion of the Office of the University Ombudsman under the same roof as the Office of the Parliamentary Ombudsman as from November 2008 marked a significant step forward and contributed towards giving substance to the service objectives that have underpinned the initiatives by this Office in favour of a unified ombudsman structure. It also served to establish in practical terms the operational implications of this new scheme to bring together the various complaint handling systems under one roof as further testimony to the national commitment in favour of good governance and higher standards of administrative conduct by public authorities.

The basis of draft legislation for the proposed unified ombudsman service

Together with this groundwork to lay the foundations for a more integrated ombudsman service, during 2008 the Office of the Ombudsman concluded its work on the preparation of a draft legislative framework as a basis for discussion containing amendments that are considered necessary to its founding legislation to guide the development of the proposed new ombudsman service in the country. In this task the vision of this Office was guided largely by the *Principles relating to the status of national institutions* (the Paris Principles) for the promotion and protection of human rights adopted by Resolution 48/134 of 20 December 1993 of the General Assembly of the United Nations that have been referred to earlier.

In recent years the ombudsman movement worldwide has become increasingly associated with human rights; and the Office of the Ombudsman in Malta has responded to this call although its response has to be viewed in the context of the Maltese perspective. Feeling adequately safeguarded by Malta's commitment to the observance of fundamental human rights that is anchored by the European Convention Act which made provision for the substantive articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and subsequent Protocols to be enforceable as part of the Law of Malta and mindful of the fact that the thrust by Ombudsmen in various European states in favour of human rights gained its impulse mainly from the need to assist these countries to cherish their newly-established democratic credentials, this Office views this human rights dimension especially as a spur to underpin the right of citizens to good public administration.

Although efforts by this Office to make reference to these two guiding principles of modern ombudsmanship in the amendments to the Constitution of Malta in 2007 that enshrined this institution were unsuccessful, it is felt that the move towards a unified ombudsman service represents a viable alternative route to support even more forcefully the citizens' right to clean, transparent and accountable administration. The signposts that chart the way along this route are to a large extent derived from the Paris Principles that also serve as the main pillars of the draft legislation that was prepared by this Office and submitted to the Government in mid-2008 for its consideration.

On the occasion of the opening of the Eleventh Parliament on 10 May 2008 the President of the Republic stated in his address that in the context of the government's commitment to principles of good governance, the Government was proposing to enact legislation "*for the empowerment of the Ombudsman in coordinating all administrative complaints in the public service as a whole*." This statement was consistent with the indication that was given by the Government to the Ombudsman in July 2007 that it was in principle in favour of strengthening and streamlining the various structures set up by law in recent years to scrutinize and audit decisions and actions in specific areas of public administration by means of a unified ombudsman service.

In keeping with this strategic direction, the draft legislation that was put together by the Ombudsman to further the process of consolidation of the country's ombudsman service is based on the following main planks:

(i) with investigations by sectoral ombudsmen marked by procedural differences and by a lack of uniformity in the application of standards and rules, the procedures that apply to investigations by the Parliamentary Ombudsman and to their aftermath as set out in the Ombudsman Act, 1995 are considered by and large to have withstood the test of time and should be extended to sectoral ombudsmen thus ensuring a homogeneous investigative process and consistent outcomes that were already approved by the House of Representatives when the ombudsman legislation was enacted in 1995;

(ii) in view of developments subsequent to the setting up of the review mechanisms referred to earlier (such as Mepa's widened remit to include environmental matters and the setting up of the Malta College of Arts, Science and Technology for vocational and professional education and training), the jurisdiction of Mepa's Audit Office should be extended to include environmental matters in addition to its present statutory remit on development planning issues while the jurisdiction of the Office of the University Ombudsman too should be extended to include MCAST and the Institute of Tourism Studies besides the University of Malta;[3]

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3 As explained earlier, the proposal to extend the remit of the Office of the University Ombudsman was subsequently implemented in November 2008 with the appointment of Professor Charles Farrugia as University Ombudsman with a mandate that included jurisdiction on MCAST as well as the Institute of Tourism Studies.

(iii) under current legislation the selection and appointment of sectoral ombudspersons by the same public authority that the officeholder is called upon to investigate (such as in the case of Mepa's Audit Officer and the Commissioner for Children) is bound to give rise to doubts about the authenticity of the whole process while not all sectoral ombudsmen are appointed and may be removed in the same way; not all enjoy the same security of tenure; and none are Officers of Parliament and accountable to this institution for their work. In order to be compliant with the basic requirements in the Paris Principles regarding their independence and autonomy and with concepts of good governance and good public administration as laid down by the Council of Europe and the European Union, these institutions, as part of the proposed new single ombudsman system, should also be directly answerable for their activities via the Parliamentary Ombudsman to the House of Representatives while being bound by the provisions applicable under the Ombudsman Act and already approved by the House;

(iv) in addition to investigative duties, a sectoral ombudsman might have other statutory tasks to perform – this applies, by way of example, in the case of the Commissioner for Children. In this instance, while falling under the Office of the Parliamentary Ombudsman insofar as the Commissioner's power to investigate breaches or infringements of the rights of children by means of written complaints or on the Commissioner's own initiative are concerned, the review of ombudsman legislation takes due account of the fact that the Commissioner should be allowed to retain full, complete and direct responsibility over any other existing statutory functions without any reference to the Parliamentary Ombudsman.

While the main purpose of the reform process for the ombudsman institution being promoted by the Parliamentary Ombudsman aims at an effective interface between his Office and sectoral ombudsman offices, it is also vital that the proposed expansion of the Office of the Ombudsman will allow the institution to retain characteristics that are essential to enable it to function properly as outlined in Recommendation 1615 (2003) *The institution of ombudsman*.[4]

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4 This Recommendation was adopted by the Standing Committee, acting on behalf of the Parliamentary Assembly of the Council of Europe, on 8 September 2003.

The characteristics that are considered by this Recommendation as essential for an ombudsman institution to operate effectively within the national system for the protection of human rights and the promotion of the rule of law and to underpin its role in ensuring the proper behaviour of public administration already feature to a large extent in the current legislation. The proposed legislative framework therefore continues to give due recognition to these key features of the ombudsman service including:

- guaranteed independence from the subject of investigations with regard to decisions on admissibility of complaints, method of investigation, evaluation of evidence, drawing of conclusions, submission of recommendations and reports and the launching of own-initiative investigations;
- transparent procedures for appointment by national parliaments of the person selected for the position being a suitably qualified and experienced individual of high moral standing and political independence;
- personal immunity from any disciplinary, administrative or criminal proceedings or penalties relating to the discharge of official responsibilities;
- guaranteed sufficient resources for the discharge of all responsibilities allocated to the institution and complete autonomy over issues relating to budget and staff;
- guaranteed prompt and unrestricted access to all information necessary for an investigation;
- internal procedures that guarantee the highest administrative standards in the institution's own work as well as fairness, efficiency and transparency;
- public accountability (in terms of both availability and comprehensibility) of information on the existence, identity, purpose, procedures and powers of the Ombudsman;
- procedures which are easily and widely accessible, simple, free of charge and confidential;
- a commitment by the administration to furnish within a reasonable time full replies regarding the implementation of the Ombudsman's recommendations and opinions and to give proper reasons whenever they cannot be implemented; and

- the presentation to Parliament of an annual report and other reports whenever the administration fails to implement recommendations put forward by the Ombudsman.

Although current legislative provisions underlying the audit mechanisms that are earmarked for a closer association with the Office of the Parliamentary Ombudsman are virtually silent on most of the principles that support their work in defence of the rights of particular groups of citizens, it is recognized that these tenets are by and large observed by these Offices. As a result these institutions already enjoy most of the benefits that are generally associated with an autonomous operational environment although the experience of recent years has shown that this autonomy can at times face threats.

By rolling these essential characteristics onto existing administrative audit mechanisms and others that could possibly be set up in the future and that could be included in a single address under a widened remit for the Parliamentary Ombudsman across the public service, the draft legislation prepared by the Parliamentary Ombudsman seeks as one of its aims to give even greater substance to the principle of accountability. In this regard a crucial consideration is that as Officers of Parliament the Parliamentary Ombudsman and sectoral ombudsmen – henceforth to be referred to as Commissioners – would be directly accountable to Parliament and would be supported by the direct backing and interest of the House in their work while at the same time being allowed full rein to carry out their functions according to their best judgement without any overt reliance on the public authority entrusted with the execution of the laws under which these offices were set up.

The draft legislation prepared by this Office also envisages that the leaders in the new ombudsman house under construction would remain without any executive power to sustain the enforceability of their recommendations.[5] The underlying principle here remains the conviction that the role of the Ombudsman and of his sectoral peers is to persuade from their high moral ground by means of sound arguments that any maladministration or injustice

5 Although the Information and Data Protection Commissioner appointed in terms of the Data Protection Act and the Freedom of Information Act has the power to enforce his decisions, his Office has been excluded at this stage from the process aimed at promoting convergence between existing administrative review mechanisms.

that is identified should be remedied on the grounds that it erodes the basic right to good administration and that any failure that is allowed to fester undermines the human rights of the individual and the democratic functioning of the public administration. The ombudsman system should remain a catalyst for good administrative practice and offer recommendations based on the award of appropriate remedies that bear the stamp of the institution's authority and the moral standing of persons that partake of the Parliamentary Ombudsman's role.

Other aspects of the draft legislation prepared during 2008 by the Office of the Parliamentary Ombudsman to further develop the Ombudsman Act envisage that:

- while the House Business Committee will be responsible from time to time to consider and recommend the setting up of new sectoral ombudsman institutions[6] or the suppression or merger of existing ones so as to take into account developments in different segments of the country's public administration, the Parliamentary Ombudsman will in turn be empowered to appoint Commissioners following consultation with this Committee by means of standard procedures that apply to all appointments while the Committee will establish their respective functions by rules published in the *Government Gazette*;

- with Commissioners being designated as Officers of Parliament, this should provide an element of interaction with the Office of the Ombudsman and ensure conformity with the provisions of the Ombudsman Act including procedures that Commissioners should follow to ensure impartial and fair investigations abiding by the fundamental rules governing due process. This relationship will contribute towards the strengthening of their respective investigative infrastructure through the authoritative interpretation by the Parliamentary Ombudsman of the principles backing the right of citizens to good administration, after proper consultations where

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6 Such as, for instance, Commissioners with a specific remit to scrutinize new areas including the Armed Forces of Malta, the Police Force and the health sector. In this regard it is of interest to point out that on 8 May 2008 the Parliamentary Ombudsman submitted a memorandum to the Government that was entitled *Proposal by the Parliamentary Ombudsman for the appointment of a Commissioner for Health*; and this memorandum appears in Annex I.

necessary, and through the provision by the Ombudsman of centralized administrative services while allowing them to retain their capacity to operate independently within their specialised jurisdiction;

- the institutional convergence being proposed will enable Commissioners to seek the opinion of the Parliamentary Ombudsman and to consult him regarding procedural and investigative aspects of their work where they consider this exchange of views to be of benefit to the process to harmonise and uniformly apply principles governing the audit of administrative action although Commissioners will at all times retain full freedom to act within their remit and to reach their own conclusions on complaint issues that fall under their respective jurisdiction;

- each Commissioner will be required to prepare an annual report that will describe the activities and work carried out during the previous calendar year and will be incorporated in the annual report of the Parliamentary Ombudsman.

- statutory provision will be made so that it is ultimately the House of Representatives, through an appropriate structure, that will, when the merits of the case so warrant, finally determine issues when recommendations by the Parliamentary Ombudsman and by Commissioners are not implemented by the public administration.[7]

The reference by the President of the Republic to the Government's aim to empower the Maltese ombudsman institution to coordinate "*all administrative complaints in the public service as a whole*" and the Parliamentary Ombudsman's various public pronouncements on the role of his institution to coordinate other mechanisms of administrative audit contributed so that in the context of a national debate on the strengthening of democracy and greater transparency, the Select Committee that was set up by the House of Representatives on 16 July 2008 following a resolution by the Prime Minister included on its agenda the strengthening of the Maltese ombudsman institution by means of entrusting this Office with responsibility for the coordination of complaint-handling institutions and administrative audit mechanisms in the Maltese public sector.

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7 This issue is discussed in greater depth in the subsequent section of this report.

This Office considered this step as an important development in the further strengthening and broadening of the country's democratic sinews and indicated to the Government that while sharing the terms of reference of the Select Committee that revolved around its future role as an umbrella organization that will formally coordinate complaint handling mechanisms in the broad public sector, it was prepared to extend its full cooperation to this Committee including the submission of its views on its proposed role in the coordination and direction of a consolidated ombudsman system in the country.

At this stage this Office would like to sound a note of warning. The establishment of a new unified ombudsman institution with widened competences and new structural and operational relationships will need to be accompanied by the provision of sufficient resources so that the legitimate interests of citizens can be adequately protected and standards of public administration in the country will be further enhanced. As the Office prepares itself to assume the responsibilities resulting from the proposed widening of its remit, on the other hand it is the Government's responsibility to ensure that this move will be accompanied by the annual allocation of sufficient financial, human and material resources that are necessary to successfully underpin the Office's new mandate.

On recommendations in sustained grievances that are not observed by public authorities

Occasions at times arise when although the Ombudsman's lamp of scrutiny reveals sustained instances of maladministration or injustice, the public authorities concerned, for reasons of their own, fail to implement the Ombudsman's recommendations for redress. In effect this is a situation that the Office of the Parliamentary Ombudsman shares with other counterpart institutions for administrative review.

Despite efforts in recent years by this Office to find a solution to this problem, no effective means have been found as yet to bring recommendations that have not been accepted by the administration to the attention of the House for its consideration. This has taken place even though the Ombudsman Act, 1995 already provides that an identified injustice or an instance of maladministration which ultimately require a political decision as to whether the issue at stake should be rectified and in what manner, can be brought to the notice of the House of Representatives by the Ombudsman.

The previous Ombudsman admitted prior to the expiry of his second term of office in 2005 that his efforts to resolve instances of failure by the public administration to redress justified complaints were on the whole unsuccessful. He stated that the system launched in 2003 whereby these cases would be examined by a group consisting of a Member of Parliament nominated by each parliamentary group together with the Ombudsman on the strength of reports submitted by his Office to the House of Representatives and this review would then be followed by a discussion by the House Business Committee for a final resolution, had not worked well.

Subsequent to the appointment of the current Ombudsman, however, this Office expressed the view that it feels that this system is not appropriate given the local parliamentary environment and that the House of Representatives might not have adequate resources to monitor these cases in an effective manner. This Office also feels that scrutiny by the House of Representatives of these cases should not be done on a voluntary basis.

Instead cases that so merit should be subjected to a review by the two sides of the House under existing parliamentary structures and under new *ad hoc* statutory provisions that would enable Parliament to make an objective analysis of the recommendations in the Ombudsman's Final Opinion so that after a public and transparent process, a final political decision would be taken on the way forward. This decision would be binding on the public body concerned and would need to be implemented without any delay. In this way the public administration would be placed under the scrutiny of the country's political representatives and subject to an ultimate political decision by the House while at the same time any such decision would be submitted to the sanction of public opinion.

This system would also give due recognition to the fact that the Ombudsman is an Officer of Parliament and that his Office falls under the House of Representatives.

The Office of the Ombudsman feels that the updating of the legislation covering its functions, duties and responsibilities that is being proposed in connection with the widening of its original mandate should serve as an opportunity to introduce legislative amendments regulating the conduct of the House in similar cases on the lines mentioned above. These amendments should envisage that only the Parliamentary Ombudsman should have the

right to bring deserving cases to the attention of Parliament and that whereas Commissioners would be able to propose to him deserving cases that in their opinion should be accorded this ultimate and exceptional remedy, the Parliamentary Ombudsman should still remain the sole and ultimate interlocutor of the House in these proceedings.

The views of the Parliamentary Ombudsman on the implementation of decisions reached by the Tribunal for the Investigation of Injustices

Also in the context of the wide debate in the country at large about the need to strengthen institutions that were set up to safeguard democracy and ensure a fair and transparent administration and to define the manner in which these institutions ought to relate to each other in the free exercise of their respective functions coupled with the government's commitment to uphold public service delivery in a courteous, expeditious and impartial manner as underlined by the Public Administration Act (Act I of 2009) which was still under consideration by the House of Representatives at that time, the Ombudsman on 16 July 2008 submitted an Opinion to the Speaker of the House in the exercise of his functions under the Ombudsman Act, 1995 in connection with the implementation of decisions by the Tribunal for the Investigation of Injustices as an issue of ongoing public interest.

This letter to the Speaker and the full text of the Ombudsman's Opinion are given in Annex II.

New procedures for the handling of Parliamentary Questions by the Office of the Parliamentary Ombudsman

During 2008 the Ombudsman's relationship with the House of Representatives with regard to procedures for the handling of Parliamentary Questions on the work of the Office of the Ombudsman was better defined by means of an exchange of correspondence between the two sides.

The Ombudsman's letter to the Speaker of the House on 10 December 2007 and the Speaker's reply on 23 January 2008 are given in Annex III.

International relations

During 2008 the Ombudsman participated in various international conferences as a means of keeping direct contact with the ombudsman community and

keeping abreast of developments in this field that are of direct interest to his Office. In this regard participation in the second meeting of the Mediterranean Network of Mediators and Ombudsmen was of particular interest.

In November 2007 the *Wadi al Madhalim* (the Mediator of the Kingdom of Morocco), the *Médiateur de la République* (the Mediator of the French Republic) and *El Defensor del Pueblo* (the Defender of the People in Spain) jointly took the initiative to organize the first meeting in Rabat, Morocco of the Mediterranean Network of Mediators and Ombudsmen between the various stakeholders and institutions in the Mediterranean basin that are involved in the promotion of freedom, democracy, human rights, good governance and citizenship values. At the end of this meeting participants issued the Declaration of Rabat that underlined the role of Mediators and Ombudsmen to define a strategy at the Mediterranean level that would push forward "*the rules of good governance within the public administrations, their modernisation and their raising moral standards, the improvement of their relations with the users, the reinforcement of ethics on the level of the public services, the promotion of the culture and the protection of the rights of citizens.*"

The second meeting of the Mediterranean Network of Mediators and Ombudsmen in Marseilles on 18-19 December 2008 served as another occasion for representatives of twenty eight mediation organizations in the Mediterranean basin, human rights institutions and institutions acting as Mediators in Mediterranean states where the ombudsman institution does not yet exist to strengthen their cooperation. This occasion enabled them to pursue their common efforts to improve the defence of citizens and promote further democracy and human rights in the Mediterranean area.

Having as its topic *Mediterranean Mediators: challenges of a common area*, participants in this meeting adopted a resolution which referred to the draft resolution of the UN General Assembly's third commission dated 6 November 2008 on the role of Ombudsmen, Mediators and other national institutions for the promotion and protection of human rights which encourages Member States to create Mediators, Ombudsmen and other national institutions that promote and protect human rights or to reinforce and create, if necessary, the mechanisms of cooperation between these institutions where they exist, in order to coordinate their action. This resolution also encouraged Member States to organize communication campaigns in order to make the general

public understand better the importance of mediation institutions.

The resolution called for the creation of a Group of Friends of Mediators and Ombudsmen within the UN organization and wished that a debate be opened on the importance and role of these national mediation institutions before and during the 65th session of the 2010 General Assembly. The resolution expressed recognition by participants of the fact that mediation institutions had been assigned an important role in the promotion and protection of human rights at regional, national and international level on the 60th anniversary of the Universal Declaration of Human Rights.

Participants in the Marseilles conference also recognized, among other things, that:

- to exercise their mandate mediation institutions must be at the service of individuals who consider themselves to have been prejudiced by the actions of public authorities and must be both accessible and transparent;
- the mediation mission must be exercised independently of the authorities and conditions that are necessary for this independence must be created;
- in their objective to correct injustices, mediation institutions play an important role to stop any possible malfunctioning by administrative authorities and to promote good governance; and that
- mediation institutions contribute to the creation and reinforcement of the rule of law, democracy and a proper exercise of human rights.

The resolution adopted by participants also showed their wish to participate actively within the framework of the Paris Principles in the context of efforts aimed at the promotion and protection of human rights. It also emphasized the view that freedom and peace in the Mediterranean area are facilitated by dialogue between citizens, mutual understanding, tolerance, the fight against injustice and poverty and respect for human rights. At the same time on the basis of the ancestral values of the Mediterranean area which is generally considered as the melting pot of culture and religions and the cradle of democracy, it was acknowledged that mediation institutions in this region can contribute to the implementation of democracy as well as fundamental rights and freedoms as a means of encouragement to social harmony in each country and peace in the region.

Representatives of Mediterranean mediation institutions attending the meeting agreed to set up the Association of Mediterranean Ombudsmen as an institution that would link organizations in the region that work in the field of mediation and human rights. The Association is committed to promote within the Mediterranean space the sharing of common values such as democracy, the rule of law, respect for human rights and principles of justice and equity and to spread in the area wider recognition of national and international texts related to human rights, the Universal Declaration of Human Rights as well as the Rabat Declaration of 2007. It was agreed that the Association would seek to create an effective partnership with international organisations and institutions that share its mission and that are dedicated to the promotion and defence of human rights.

The plans and activities of the Association of Mediterranean Ombudsmen include:

- the improvement of the website of the Association and the setting up of a network of liaison officers so as to exchange information and promote good practice and create a database on the activities of its various member institutions;
- the design and organization of a training programme for staff of member institutions including the conduct of studies and research on topics of general interest;
- assistance, if necessary, to Parliaments and governments to create mediation institutions in countries in the Mediterranean region where these institutions do not yet exist;
- the organization of meetings and seminars for the exchange of information about the experience of participating institutions; and
- the organisation of a meeting at least every two years to discuss topics of general interest to participating institutions.

The meeting also served to set up the First Governing Board of the Association of Mediterranean Ombudsmen and the Maltese Ombudsman, Chief Justice Emeritus Dr Joseph Said Pullicino, was elected to serve as the Association's Treasurer.

2. PERFORMANCE REVIEW

Overall performance

With the exception of 2007 when incoming complaints rose sharply to 660 as a result of the significant boost by the AFM special factor when several members of the Armed Forces of Malta approached the Office of the Ombudsman in the defence of their rights in the wake of the 2006 promotions exercise, since 2005 the incoming caseload has remained virtually stable. The number of complaints raised in 2005 (583) dipped by 16 (2.7%) to 567 in 2006 and after the spike that was registered in 2007 (up by 93 or 16.4%), complaint intake in 2008 at 551 was almost back at par with the 2006 level. This meant that in the year under review there was a decrease of 109 or 16.5% in the number of complaints received in comparison with 2007.

Table 1
Complaints and enquiries received 1996-2008

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

As usual it is somewhat hard to interpret this apparent lull in the number of people who turned to the Ombudsman for assistance in the last few years. Recent efforts by the Maltese public authorities to provide a better quality service are known to have yielded generally positive results although this should not be taken to mean that areas of weak performance and unacceptable standards of service delivery to customers do not exist. At the same time it

is known that increased attention is focused on more effective customer care services and internal complaint handling systems as a means of cushioning the impact of any service failure before customer dissatisfaction can escalate further.

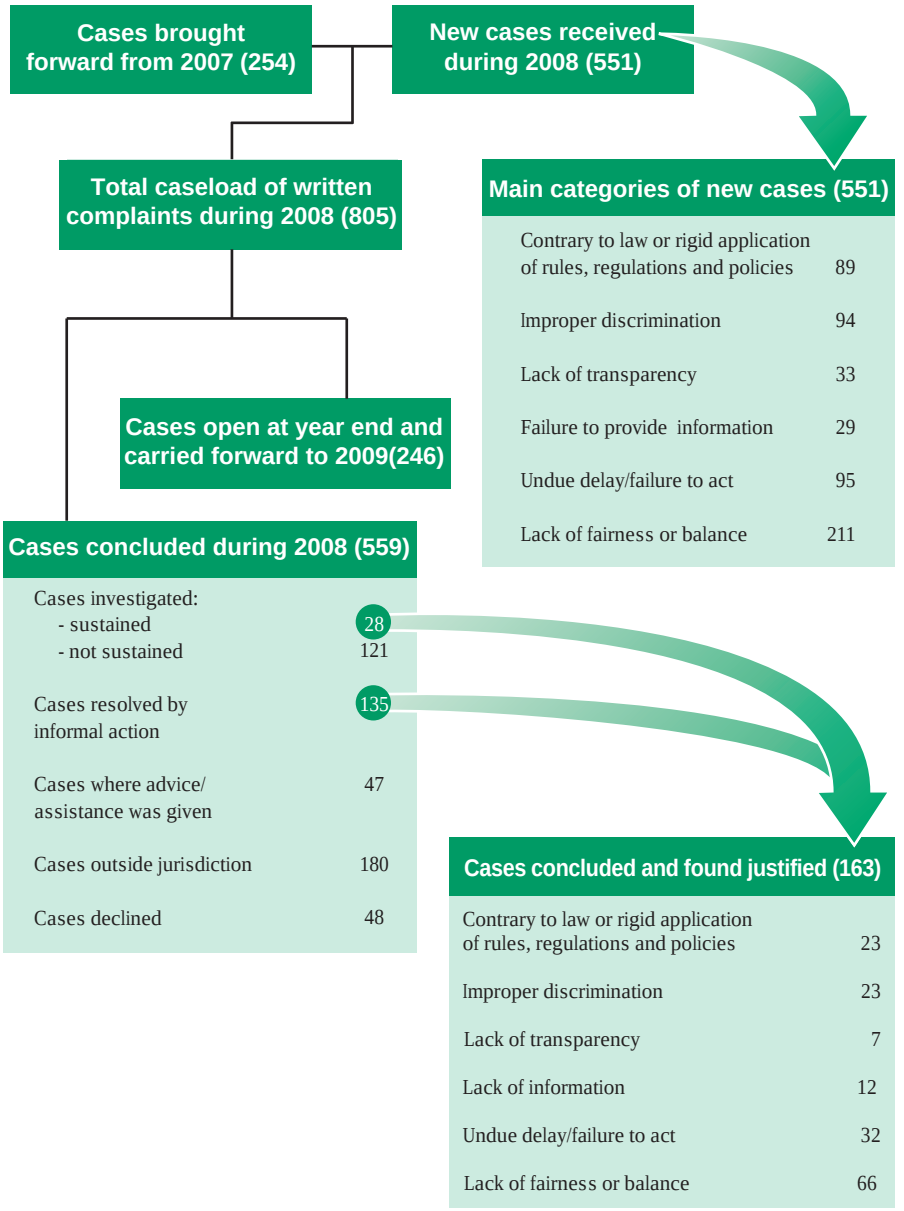
It is also known that citizens are increasingly jealous of their right to good administration and are prepared to stand up in order to ensure that their rightful expectations of efficient, timely and fair service are observed. It is possible too that this overall performance in part reflects the process whereby the Government continues to divest itself of a number of productive and service activities that were previously under its control – and hence within the Ombudsman's jurisdiction – as part of the ongoing privatisation programme.

On the other hand it cannot be said that overall awareness of the ombudsman service among citizen is low. The Office regularly makes its views and opinions known on the local media on various issues although admittedly it is likely that some of these pronouncements can hardly be expected to make a strong impact on the average citizen in view of the nature and scope of these statements. At the same time the institution is ever mindful of the need to ensure that there is no overexposure on the media of its role in the safeguard of citizen rights since this could in turn prove counterproductive.

However, the fact that a core indicator such as the incoming complaint caseload shows that complaint handling in 2008 was the lowest ever and covered exactly half the number of grievances in the institution's first full year of operation in 1996 when it stood at an all-time peak of 1,112 should not be allowed to pass unnoticed since it may be an indication of an underlying trend that needs to be examined. Sustained lower levels of demand for the ombudsman service may be taken to indicate a slackening of the awareness by citizens of the role of the institution to promote their right to good administration especially if it happens among those sections of the community which are likely to be the ones that most need guidance and assistance in their relationships with public authorities owing to their educational background, personal situation, age, social status, household environment or economically disadvantaged background.

Although the Office's database on complaint management does not capture any information on the educational attainment, skills level or social background of complainants for reason that are readily understood, yet there is an

Chart A
Overview of written complaints during 2008



underlying impression among the Office's caseworkers that most grievances that are sent to the institution originate from individuals who would have had access to a good level of education, are familiar with the way in which the public sector at large conducts its operations and programmes and possess a basic awareness of citizen rights vis-à-vis the public administration. This perception is confirmed by the complexities of several issues that are increasingly being submitted for the Ombudsman's consideration and by the way in which these complainants are able to articulate their position and views.

At the same time the simpler issues that are presented to the Office and that exert generally lesser demand on its resources tend to be associated with complainants who are unsure of their rights, who are less assertive of their entitlements and who generally harbour lower expectations of even their rightful demands from the public service.

It is the intention of this Office to monitor this situation closely in the coming months. Lack of awareness of the institution's remit to assist citizens to assert their entitlements regardless of their condition, age, education, ability and social standing and to expect as of right quality service and acceptable standards of service delivery can serve to dent the Office's role in the protection of citizen rights and to deny citizens of resort to a powerful weapon in their favour that can restore their injured rights. It also erodes the rightful place of the Office of the Ombudsman as one of the country's leading institutions in the defence of the right to good administration and prevents the Office from carrying out its mission fairly, equitable and effectively among all citizens.

The proposal that has been referred to earlier in this *Annual Report* that envisages a closer relationship and collaboration between the Office of the Parliamentary Ombudsman with other mechanisms of administrative review in specialised areas of public administration can serve as a good opportunity for the launching of appropriately designed media campaigns targeted to meet the needs of specific sectors of the Maltese community who might otherwise feel left out of the Ombudsman's sight. This outreach activity to make the public more aware of the role of the Office of the Ombudsman will need to be addressed largely to particular segments of society, possibly even to selected localities, which are considered to have failed to participate adequately in the Ombudsman's work and which do not benefit adequately from his service to the country.

The Ombudsman's complaint handling process that is activated by written complaints and, in recent years, also by grievances that are received by electronic means and via the online complaint form on the Office's website, is supplemented by assistance to citizens who visit the building where the Office is located in St Paul Street, Valletta or who phone to make initial enquiries and seek advice and assistance about the way in which their affairs have been handled by government departments and public bodies. This service to callers is provided by the Public Relations Officer who listens to their concerns and upon ascertaining that these matters fall within the Office's purview, will advise them on the course of action to be pursued and that seems most appropriate, depending on the particular circumstances of the case under consideration.

The first option that is generally resorted to in issues that are relatively simple and straightforward and that pose little, if any, difficulty to resolve is to refer the matter directly to the Liaison Officer in the public authority that is involved. This official serves as the first point of contact with the Office of the Ombudsman and can assist to expedite a decision or to find a quick solution by virtue of being fully conversant with the workings of the organization, its internal structures and procedures.

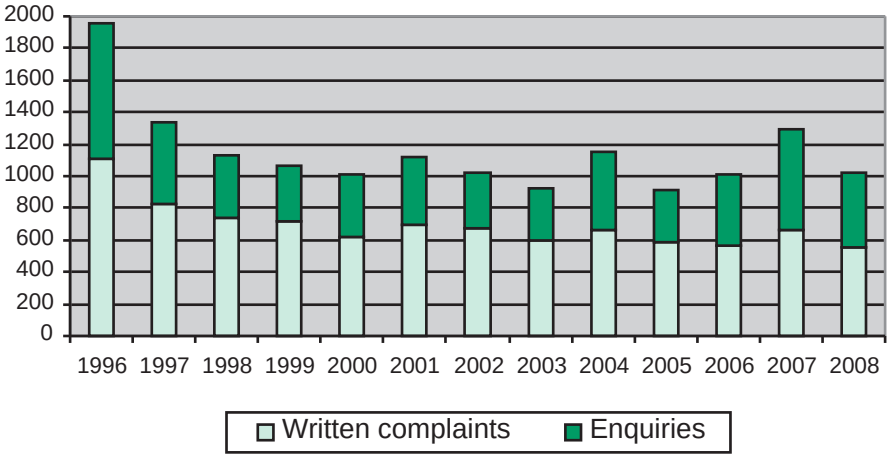
The second course of action is adopted in instances where the nature of the complaint is considered to be more serious and deemed to warrant the Ombudsman's intervention including use of his statutory power to hear or obtain information from the public body that is involved in the complaint. In these cases the respondent is given advice and guidance about the procedures that need to be followed so that the grievance can be submitted to the Office of the Ombudsman including the documentary and other evidence that is required in support of the case and to establish the injustice or stress to which the complainant has been subjected as a result of the alleged maladministration as well as to identify an appropriate response and the terms of the remedy that the complainant would consider as satisfactory. On some occasions the Public Relations Officer also assists complainants who are less articulate about their concerns to put their grievances in writing to the Ombudsman.

A look at the flow and the number of incoming verbal enquires shows that no significant analysis can be made since demand varies somewhat significantly from year to year. In this regard, for instance, the relatively high amount of enquiries lodged with the Office during 2007 which at 635 was the second

The Ombudsman addresses Liaison Officers from several government departments and public authorities at a meeting held in Projects House, Floriana on 24 October 2008. The meeting served to promote a deeper understanding of the role of the ombudsman institution and of the right of citizens to good administration among the network of Liaison Officers in the public sector who are in regular touch with the Office of the Ombudsman.

highest ever recorded, went down rather sharply to 469 during the year under review. This number of enquiries represented a mere 55% of the 849 enquiries that were dealt with during the institution's first full year in 1996 and which was an all-time high.

Diagram A
Complaint caseload and enquiries
1996-2008



To a large extent the nature of issues reported to the Office's PRO during 2008 were on the lines of previous years. The main thrust of the advice sought by citizens covered issues related to employment rights and conditions, the computation of tax arrears and refunds, aspects of programmes administered by government departments and public bodies, misapplication of policy, entitlement to social assistance benefits, loss of pension rights, delays in the issue of licences and permits, unfair treatment, pending applications, errors by public officials, poor recordkeeping, procedural deficiencies, communications failure, the application of administrative penalties and inefficient service delivery.

Complaint intake

In contrast with 2007 when the number of incoming complaints showed a steep rise in May and an even sharper increase in June – up to 89 and 108 respectively – mainly as a result of the large number of complaints by

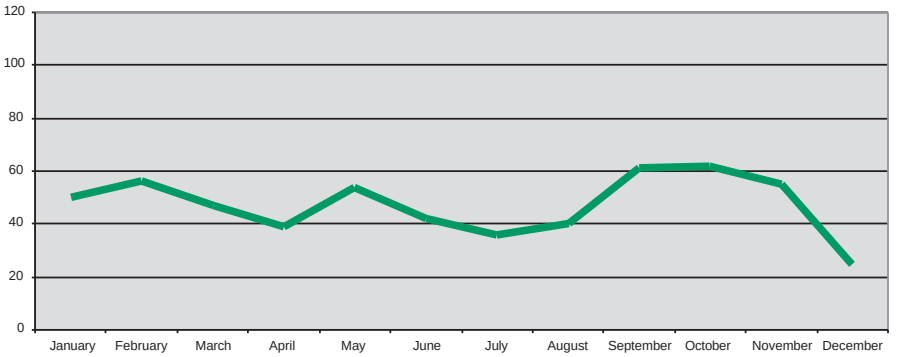
members of the Armed Forces of Malta following the promotions exercise of 2006, the year 2008 was marked by a more regular monthly inflow.

The monthly pattern of complaint closures too maintained virtually the same course of previous years although August 2008 was marked by the closure of no less than 114 cases. With July 1997 standing out as the month with by far the highest number of cases that were ever resolved in a single month (143), August 2008 ranked as the second highest month in terms of complaints that were brought to an end. This performance is attributable largely to the Ombudsman's decision to bring to a conclusion concurrently all the complaints about the AFM promotions exercise so as to have the full picture to hand and ensure consistency in his determination of these cases including coherent outcomes and recommendations.

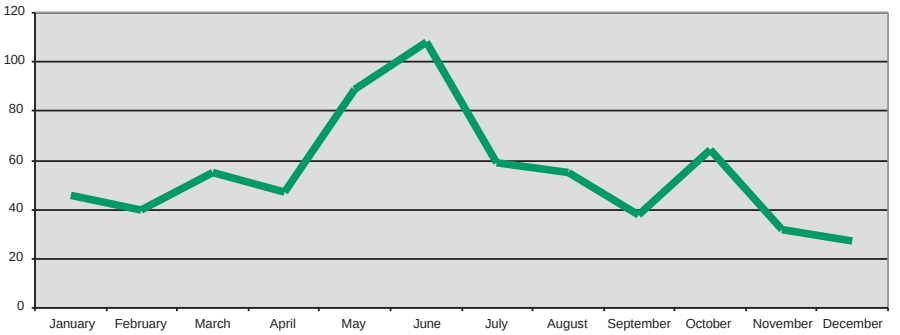
Table 2
Complaint statistics by month
2006-2008

	2006			2007			2008		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
Brought forward from previous year			129			154			254
January	50	66	113	46	55	145	43	38	259
February	56	39	130	40	46	139	52	51	260
March	47	46	131	55	53	141	34	53	241
April	39	38	132	47	66	122	51	40	252
May	54	47	139	89	50	161	44	31	265
June	42	38	143	108	23	246	56	27	294
July	36	26	153	59	40	265	47	43	298
August	40	42	151	55	41	279	51	114	235
September	61	49	163	38	36	281	49	41	243
October	62	51	174	64	75	270	53	48	248
November	55	60	169	32	44	258	32	32	248
December	25	40	154	27	31	254	39	41	246
Total	**567**	**542**		**660**	**560**		**551**	**559**	
Enquiries	**443**			**635**			**469**		

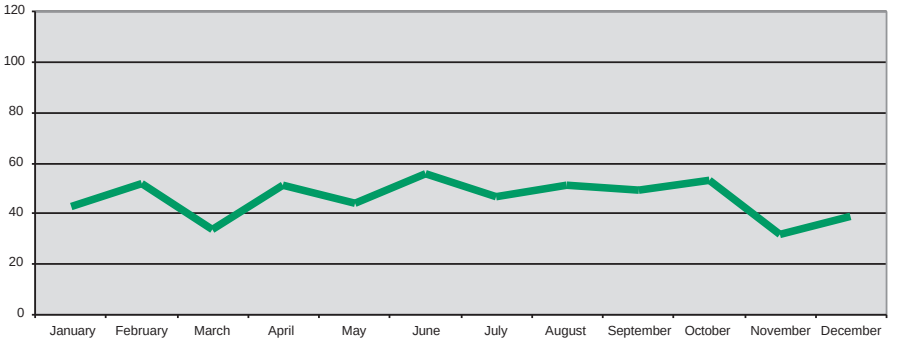
Diagram B
Monthly complaints received
2006-2008



2006



2007



2008

Information derived from the Office's database for complaint management shows that in 2008 the highest share of incoming complaints was again directed at the AFM with 54 grievances, representing 9.8% of the total number of complaints that were received during the year compared with 164 (24.9%) in 2007. To a fairly large extent these were residual complaints that were based on the same issues and concerns of the previous year as other aggrieved members of the AFM took their turn to approach the Office of the Ombudsman on the basis of claims to promotions to the next higher rank in the Force which they felt that they had been unjustly denied.

For the first time the health sector was classified in second position in terms of complaint intake numbers and with 40 grievances accounted for 7.3% of the total number of incoming complaints compared to 29 (4.4%) in 2007. A series of these complaints arose in connection with the filling of posts in the Deputy Nursing Officer grade while other complaints concerned alleged refusals to award a qualification allowance or to supply medicines and claims of unfair decisions by the Health Division.

Complaints against the Malta Environment and Planning Authority during 2008 stood at 31 (5.6%), down from 44 (6.7%) during the previous year while claims against the revenue authorities stood at 30 (5.4%) compared to 32 (4.8%) in 2007. Whereas the central issues in the charges raised against Mepa ranged from lack of effective enforcement action to unfair approvals of building development and building permits and illegal development works, the shortcomings that were ascribed to the revenue authorities arose mostly in connection with disputes regarding tax computations that were considered erroneous and unfair; the imposition of fines and penalties; requests for the refund of tax and duty charges; and unfair classification of the tax status of taxpayers.

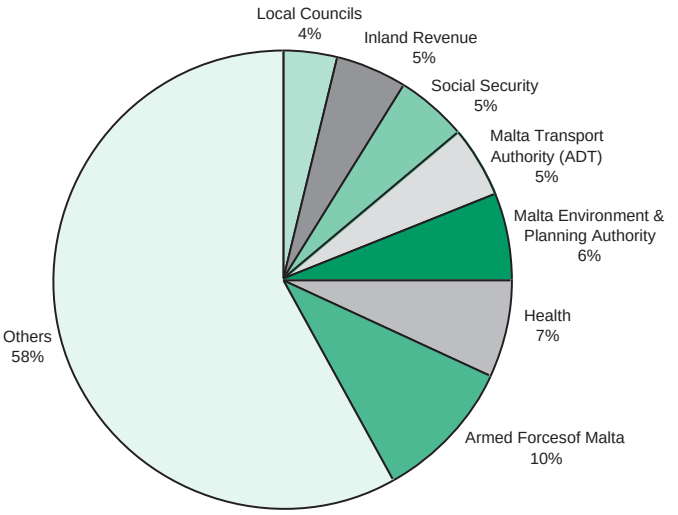
Another strong source of incoming complaints during the year under review was the social security sector with 27 grievances (4.9%) compared to 26 (3.9%) in 2007. The issues most complained about were based on decisions taken by the national social security adjudication boards on the award of social assistance benefits, pensions due, arrears of pensions, entitlements to state benefits, etc.

In this regard it is of interest to point out than the top six sectors in the public service which attracted the highest number of complaints in 2008 generated

Table 3
Complaint numbers by type of public service sector
2006-2008

Sector	2006	2007	2008
Armed Forces of Malta	8	164	54
Agriculture	5	6	4
Air Malta	5	14	5
Corradino Correctional Facility	4	-	3
Courts	9	3	6
Customs	3	-	4
Education	29	26	2
Elderly	2	5	2
Enemalta Corporation	19	20	19
Health	32	29	40
Housing	11	10	1
Housing Authority	12	7	16
Inland Revenue	30	32	30
Joint Office	3	5	4
Land	15	15	18
Local Councils	47	33	20
Malta Maritime Authority	10	6	2
Maltacom	10	1	2
Malta Enterprise	1	2	2
Malta Shipyards	2	3	1
Malta Transport Authority	33	36	26
Management & Personnel Office, OPM	23	25	17
Public Broadcasting Services	2	-	1
Malta Environment & Planning Authority	41	44	31
Police Force	18	27	19
Public Service Commission	9	2	11
Roads	1	-	11
Social Security	31	26	27
Tourism	4	-	1
Treasury	2	6	7
University of Malta	10	3	8
VAT	7	1	1
Water Services Corporation	22	17	13
Works	5	1	1
Others	102	91	142
Total	**567**	**660**	**551**

Diagram C
Shares of complaints received 2008



a total of 208 grievances (38%) compared to 338 (51%) in 2007 and 214 (38%) in 2006. It is also of interest to point out that whereas the AFM shot out of nowhere to lead this classification in successive years in 2007 and 2008, the Malta Environment and Planning Authority slipped to third place in 2008 after two consecutive years when it occupied the second position. On the other hand protests against local councils eased further and after slipping from first place in 2006 to fourth position in 2007, they ranked seventh in 2008. The Public Transport Authority underwent the same experience when after two successive years in third place it went down to sixth position. Health-related complaints continued to feature on this list and rose from sixth in 2007 to second place in 2008.

Upon arrival at the Office of the Ombudsman all incoming complaints are classified in accordance with a set of criteria that are based on the grounds on which complaints are launched. Table 4 shows that as in previous years allegations by complainants of lack of fairness or balance by public officials constituted by far the bulk of incoming complaints during 2008 even though both in absolute and in relative terms this category shrank in relation to the previous year – from 315 (48%) in 2007 to 211 (39%) in 2008.

Table 4
Complaint grounds
2006-2008

Grounds of complaints	2006		2007		2008	
Contrary to law or rigid application of rules, regulations and policies	61	11%	69	11%	89	16%
Improper discrimination	127	22%	97	15%	94	17%
Lack of transparency	25	4%	31	4%	33	6%
Failure to provide information	20	4%	31	4%	29	5%
Undue delay or failure to act	139	25%	117	18%	95	17%
Lack of fairness or balance	195	34%	315	48%	211	39%
Total	**567**	**100%**	**660**	**100%**	**551**	**100%**

At the same time three other causes of complaint – improper discrimination; undue delay or failure to act on time; and administrative action that was considered contrary to law or arising from a rigid or inconsistent application or interpretation of rules, regulations, guidelines and policies – were responsible for 94, 95 and 89 grievances respectively with each category accounting for around 17% of the incoming caseload. There were 97 cases (15%), 117 (18%) and 69 (11%) in each of these three categories in 2007.

Diagram D
Categories of complaints received (by type of alleged failure)
2008

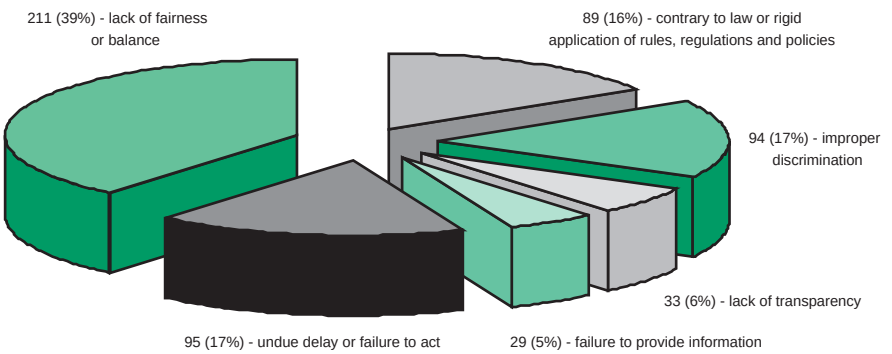


Table 5 provides a classification of complaints that were received in 2007 and 2008 by ministry. However, whereas information for 2007 relates to the various ministries that were in existence throughout the year, as a result of the formation of a smaller Cabinet after the March 2008 general elections and changes in the structure of portfolios and in the allocation of functions and responsibilities to ministries, a strict ministry-by-ministry comparison between the two years is not possible. The 2008 column, therefore, includes the number of complaints that were lodged against the ministries that were in operation prior to the general elections as well as complaints against the new ministerial set-up after March 2008; and clearly it is only in a few of these cases (such as the Ministry for Gozo and the Ministry of Foreign Affairs) that the numbers bear comparison.

Table 5
Complaints received (classified by ministry) 2007-2008

	2007	2008
Office of the Prime Minister	191	127
Ministry of Finance	48	15
Ministry of Finance, the Economy and Investment	-	56
Ministry for Justice and Home Affairs	93	42
Ministry of Education, Youth and Employment	51	11
Ministry of Education, Culture, Youth and Sport	-	45
Ministry for Tourism and Culture	2	3
Ministry for Competitiveness and Communications	9	2
Ministry for Resources and Infrastructure	5	5
Ministry for Resources and Rural Affairs		17
Ministry for Gozo	7	4
Ministry of Health, the Elderly and Community Care	38	16
Ministry for Social Policy	-	81
Ministry for Investment, Industry and Information Technology	63	-
Ministry for Information Technology and Investment	-	11
Ministry for Rural Affairs and the Environment	54	12
Ministry for Urban Development and Roads	36	2
Ministry for Infrastructure, Transport and Communications	-	56
Ministry for the Family and Social Solidarity	48	9
Ministry of Foreign Affairs	2	10
Outside jurisdiction	13	27
Total	**660**	**551**

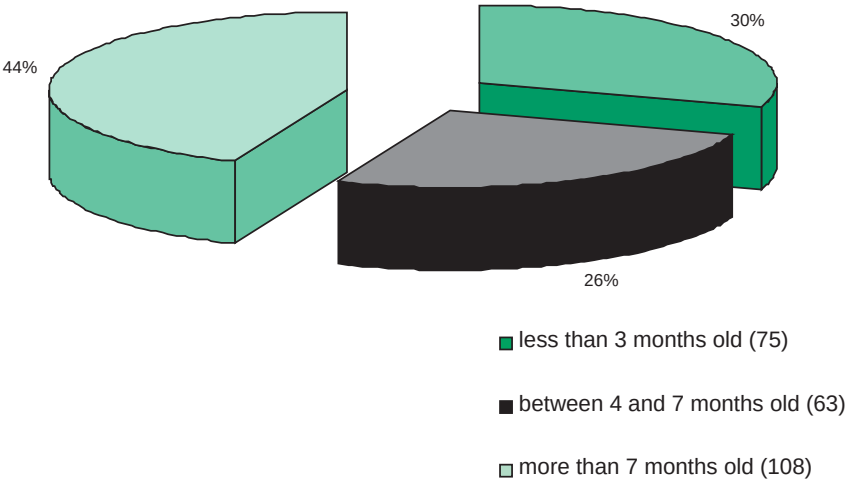
Table 6
Complaints by locality 2006-2008

Locality	2006	2007	2008
Attard	29	24	24
Balzan	11	7	8
Birgu	1	8	3
Birkirkara	28	41	31
Birżebbuġa	15	19	15
Bormla	7	11	6
Dingli	9	3	1
Fgura	15	14	13
Floriana	4	2	1
Għargħur	2	3	1
Għaxaq	1	4	6
Gudja	1	9	5
Gżira	11	10	5
Ħamrun	18	10	6
Iklin	2	9	6
Isla	2	3	2
Kalkara	6	6	2
Kirkop	-	3	3
Lija	4	7	10
Luqa	5	6	5
Marsa	4	4	4
Marsaskala	19	21	20
Marsaxlokk	3	6	2
Mellieħa	10	12	9
Mġarr	1	1	3
Mosta	18	29	37
Mqabba	3	5	-
Msida	12	14	13
Mtarfa	5	3	2
Naxxar	17	24	15
Paola	10	14	8
Pembroke	5	6	4
Pieta'	10	8	7
Qormi	10	20	21
Qrendi	1	3	4
Rabat	13	13	15
Safi	4	3	4
San Ġiljan	20	15	10
San Ġwann	17	20	15
San Pawl il-Baħar	14	18	24
Santa Luċia	6	5	4
Santa Venera	7	4	8
Siġġiewi	6	14	12
Sliema	29	29	22
Swieqi	14	8	15
Ta' Xbiex	2	3	3
Tarxien	12	9	8
Valletta	23	16	10
Xemxija	2	-	-
Xgħajra	1	2	1
Żabbar	22	39	16
Żebbuġ	8	10	13
Żejtun	6	17	12
Żurrieq	12	20	10
Gozo	48	39	39
Other	-	1	1
Overseas	2	6	7
Total	567	660	551

Table 7
Age profile of open files in hand at end 2008

Age	Cases in hand
Less than 2 months	38
Between 2 to 3 months	37
Between 4 to 5 months	26
Between 6 to 7 months	37
Between 8 to 9 months	19
Over 9 months	89
Total open files	**246**

Diagram E
Percentage shares of open complaints by age
(at end 2008)



Complaint outcomes

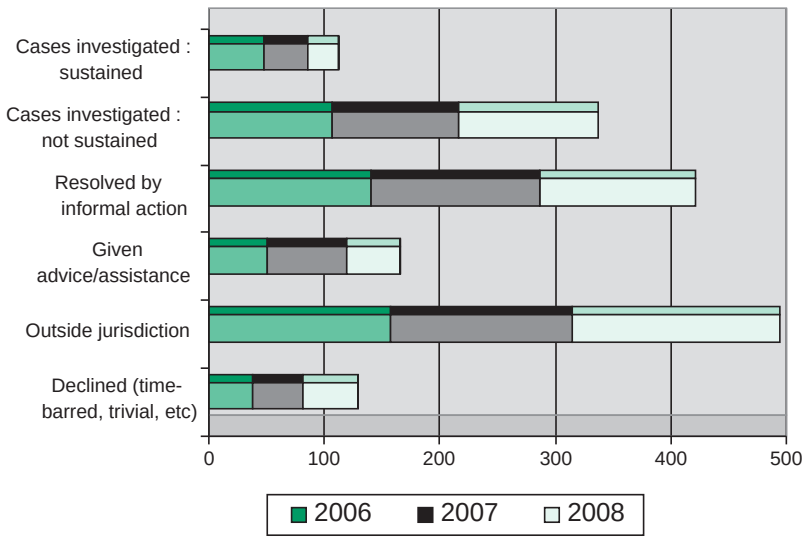
Table 8 which provides a breakdown of complaints where investigations were concluded during 2008 shows that the number of complaints that were considered to warrant a full scale investigation by the Ombudsman including access to files and other relevant official documents was virtually at the same level of the previous year – 149 compared to 146 or around 26% of the total number of finalised complaints. The number of sustained cases, however, continued to drop – down from 37 in 2007 to 28 in 2008 – and represented 5% of the total number of cases that were determined during the year under review, down from 6.6% in the previous year. In instances where the Ombudsman's investigation established that maladministration had occurred, the remedies that were recommended were determined by the circumstances surrounding these cases.

Table 8
Outcomes of finalised complaints
2006-2008

Outcomes	2006	2007	2008
Cases investigated	155	146	149
of which: sustained	[48]	[37]	[28]
not sustained	[107]	[109]	[121]
Resolved by informal action	141	145	135
Given advice/assistance	50	69	47
Outside jurisdiction	158	157	180
Declined (time-barred, trivial, etc)	38	43	48
Total	**542**	**560**	**559**

At the same time the ability of the institution to serve as a platform for the informal resolution of conflict between citizens and the public administration was highlighted by the relatively high number of cases that were settled by means of informal involvement by the Office – 135 cases (some 24%) in 2008 compared to 145 (around 26%) in 2007. These cases were resolved by the practical remedies that more often than not were brokered directly by the Office's team of investigative staff.

Diagram F
Outcome of finalised complaints
2006-2008



On the other hand the number of cases that were not pursued by the Office on the grounds that they were beyond the institution's jurisdiction or were time-barred or considered trivial went up somewhat sharply, from 200 (35.7%) in 2007 to 228 (40.8%) in 2008. This is a matter of some concern to this Office since it shows that there are still several citizens who, though aware of the institution's existence, are not familiar with its functions and the limitations that are imposed by the Ombudsman Act on its investigations.

Table 9 which consists of information about the main categories of resolution for cases that were sustained by the Ombudsman's investigations or that were resolved by other than a formal investigation shows that in 2008 the majority of these cases (66 or 41%) were attributed by the Ombudsman to a lack of fairness or balance by the public authorities that were under scrutiny. This performance strengthened the trend in evidence in recent years as sustained complaints in this category went up from 51 (28%) in 2006 to 61 (33%) in 2007.

Table 9
Type of maladministration in justified complaints
2006-2008

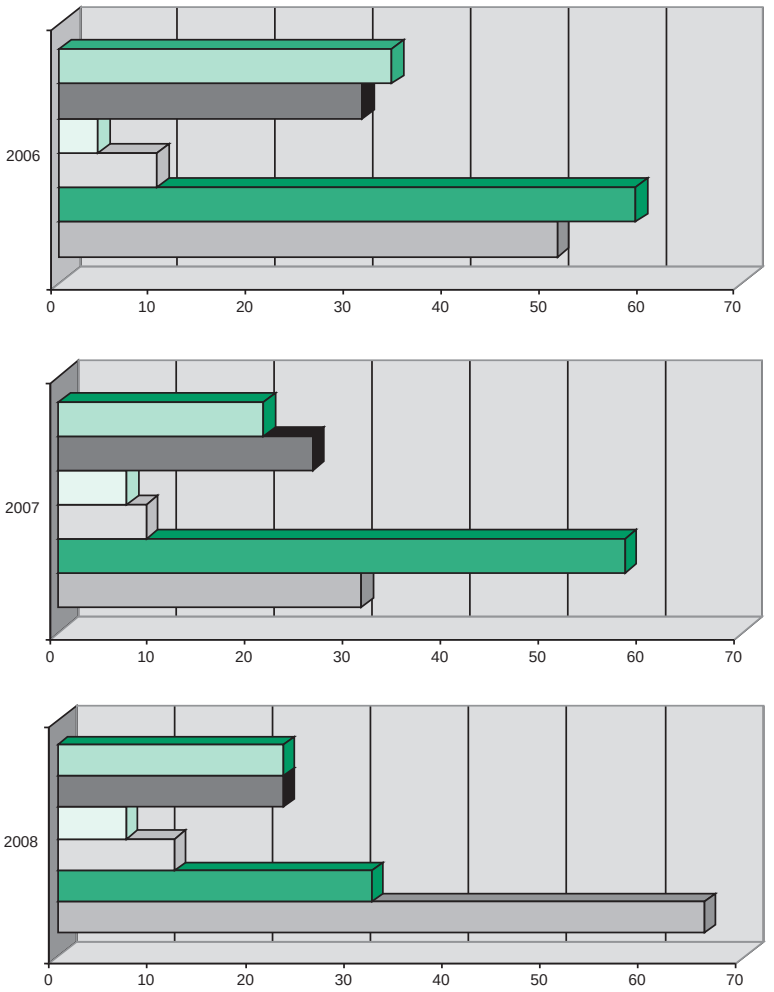
Closing status	2006		2007		2008	
Contrary to law or rigid application of rules, regulations and policies	34	18%	21	12%	23	14%
Improper discrimination	31	17%	26	14%	23	14%
Lack of transparency	4	2%	7	4%	7	4%
Failure to provide information	10	5%	9	5%	12	7%
Undue delay or failure to act	59	31%	58	32%	32	20%
Lack of fairness or balance	51	27%	61	33%	66	41%
Total	**189**	**100%**	**182**	**100%**	**163**	**100%**

Lack of fairness or balance is particularly inimical to the right of citizens to good administration as it erodes the sense of justice and fair play that ought to serve as the touchstone of all action by the public service and introduces differences in the treatment that is given to citizens that can have particularly harmful effects.

In 2008 avoidable delay or failure to act by public authorities accounted for 32 cases (20%) that were found justified by the Ombudsman; this was down in both absolute and relative terms from the 2007 results with 58 (32%) substantiated grievances that were classified under this category. Even here unreasonable delay and failure to take appropriate action at the right time can harm the rightful interests of citizens who deserve to have their concerns addressed by means of timely action.

Conduct by public officials that was rooted in improper discrimination was found by the Ombudsman in 23 sustained cases (14%) in 2008 while an equal number of justified cases were attributed to actions and decisions that were contrary to law or based on a rigid application of rules, regulations and policies. In 2007 these two sources of justified complaints contributed respectively to 26 cases (14%) and 21 cases (12%).

Diagram G
Cases concluded and found justified
2006-2008



3. CASE STUDIES

An orderly and fair selection process

The University Ombudsman received a complaint from a member of the academic staff of the University of Malta who alleged that she had been the victim of discrimination. She claimed that following the issue of a call for applications for the post of Lecturer in the Faculty of Education and interviews with short-listed candidates, she was placed second in the final order of merit even though she had better academic qualifications and a longer teaching experience than the selected candidate.

Complainant went on to allege that the selection process was flawed because a member of the selection board coordinated a master's course that was attended by the successful applicant. She was also upset that the university authorities failed to give her an adequate explanation why her application had been turned down.

In his investigation the University Ombudsman found that although the call for applications did not specify a post-graduate degree as a requirement, the selection board had in fact taken full cognisance of the fact that complainant's relevant academic qualifications (a master's degree and a first degree) were higher than those of the chosen candidate who had a first degree but was still reading for a master's degree. At the same time the board noted that complainant had a considerably longer teaching experience at primary level than the appointed candidate (twenty years compared to two) who, on the other hand, had a much wider lecturing experience in Teacher Education.

The University Ombudsman also found that although the selection board considered "*academic qualifications*" and "*teaching experience*" as important criteria, its members had taken due account of other yardsticks such as "*suitability*", "*professional development*" and "*performance in interview*"; and the board had agreed that on these grounds the credentials of the selected candidate were superior to complainant's. This candidate was in fact considered to possess better all-round and greater in-depth knowledge of Early Childhood Education from an international perspective; had attended several international conferences; and had also participated in several research projects in the subject area. Complainant could not claim these achievements in her track record.

There was also evidence that during her interview, the selected candidate performed better than complainant and showed a stronger academic orientation while she demonstrated higher awareness of critical issues facing Early Childhood Education and had offered informed suggestions on how to deal with them. This led the selection board to conclude that overall the selected candidate was better suited to meet the current and future needs of the Department of Primary Education in the Faculty of Education.

The University Ombudsman observed that in the selection of academic staff at the University, candidates in possession of a master's degree are normally given preference over those who are still reading for this degree especially if the former have a longer teaching career. He agreed that in the circumstances it was not at all surprising that complainant felt that the selection board discriminated against her when the final choice fell on a candidate with lower qualifications and lesser experience.

The University Ombudsman stated, however, that in a selection process the final order of merit is determined by the overall evaluation of candidates based on criteria that are established by the selection board. In this case the board based its choice on a wider set of criteria than mere experience and qualifications and had laid greater store on candidates' teaching experience at university level, participation in international conferences, research activity, knowledge and ideas on issues affecting Early Childhood Education in Malta and overseas as well as general academic orientation.

The University Ombudsman explained that it is not within his remit to judge criteria chosen by a board to guide its selection process and neither is he always in a position to evaluate the extent to which candidates' credentials meet these criteria especially when it comes to an assessment of their performance during an interview. What the University Ombudsman could do in similar circumstances is to be satisfied that these criteria and their respective weights are agreed upon by members of the board, preferably before the selection process gets under way, and that these criteria are applied consistently in the evaluation of all candidates so that the process is transparent, fair and free of any discrimination.

The University Ombudsman was satisfied that the evidence showed that the selection process was conducted in an orderly and fair manner and felt that the claim of discrimination had not been substantiated.

He then passed on to examine complainant's second grievance based on conflict of interest of a member of the selection board that consisted of four academic members and a representative of the University Council. Complainant objected to the presence on this board of an academic member from the Faculty of Education who was responsible for the coordination of the course leading to the degree of European Masters in Early Childhood Education and Care on the grounds that the successful candidate and two other short-listed applicants were registered students in this course at the time that the interviews took place. The University Ombudsman found that this board member had offered to abstain from sitting on the selection board if it was felt that the duties of course coordinator could be regarded as causing conflict of interest but this offer was turned down by the university authorities.

Following consideration the University Ombudsman was of the opinion that involvement in the organization of a study programme was not an adequate reason to bar this member from sitting on the selection board. Moreover, being deeply involved in the academic management of the department in the Faculty of Education where the selected candidate was due to be deployed, it would clearly have been inappropriate to exclude this person from serving on the board.

The University Ombudsman stated that given local circumstances and particularly since the circle of academics in any specific area is small, it is almost inevitable that a board member would at some stage have lectured, tutored and examined one or more of the candidates for an academic post at the University. It could, however, be argued that the presence of such members on a selection board may have a positive aspect in the sense that these academics would have a direct and close knowledge of candidates' merits and strengths to fill an academic post and would already be aware of the actual range and level of their competences.

The University Ombudsman commented that taking everything into account, he was of the view that in this case the stature and overall experience of the members of the selection board would have counterbalanced any hypothetical bias by another member of the board. Besides he had full confidence in the integrity of all board members.

... involvement in the organization of a study programme was not an adequate reason to bar this member from sitting on the selection board.

After considering the detailed report by the selection board and his extensive interview with the chairperson of this board, the University Ombudsman concluded that there was no basis to support the allegation that the selection process was flawed by the presence of the member of the board who had been mentioned by complainant.

With regard to the third aspect of the complaint about lack of feedback, the University Ombudsman found that the University sent complainant the standard rejection letter to tell her that she had not been selected and that when she sought a more detailed explanation, she was given a list of the areas on which candidates had been assessed by the board. She was also informed that substantial weight had been given to the quality of candidates' professional development, their participation and research at an international level and experience of teaching at undergraduate level.

Finding that the claim of lack of feedback on her performance during her interview was justified, the University Ombudsman commented that given the circumstances, complainant was entitled to a full explanation why a candidate with lower academic qualifications and lesser teaching experience had been preferred. He observed that although the Rector's letter of explanation in reply to complainant's protest had somewhat mitigated this shortcoming, yet this did not go far enough to reassure her that the whole process had been conducted fairly and was above board.

The principles of good administration include the right of citizens to be given reasons for decisions taken by the authorities that affect them directly; and candidates in an examination or interview are entitled to proper feedback on their performance. According to the University Ombudsman the University's letter of rejection following a staff selection process is too bland and should be replaced by a clear statement on the criteria adopted for selection and their respective weighting. This statement should also refer to the areas where the successful candidate was found to be more capable or suitable than others or, alternatively, explain to unsuccessful applicants where they were found to be lacking.

The University Ombudsman stated that providing this type of information to unsuccessful candidates goes beyond the requirement merely to satisfy the candidates' need to know about their performance. An unambiguous justification of the decision taken by a selection board encourages good

practice and reinforces a sense of fairness, transparency and accountability and would at the same time strengthen the University's reputation as an objective and impartial employer.

Knocking on the wrong door

A British national alleged in a complaint that he lodged with the Ombudsman that the Housing Authority had committed an act of maladministration and was wrong to exclude him from a list of parties to whom it refunded monies and made payments due upon the rescission of a contract for the purchase of property from the Authority.

The Ombudsman's investigation found that in July 2005 a local bank had placed at the disposal of complainant's daughter and her Maltese husband a facility for a home loan amounting to thousands of Maltese liri for the purchase of property from the Housing Authority to be used as the couple's ordinary future residence and for completion works on this property. However, since the loan amount did not cover the entire sum due to the Authority, complainant made arrangements to transfer family funds from the UK into an account that he opened in August 2005 with the bank that had advanced the loan to the couple.

The Ombudsman also found that payment for the purchase by the couple of the property from the Housing Authority in November 2005 took place by means of two drafts that were issued by the bank. The first draft consisted of the full loan amount that was advanced to the couple while the second draft amounting to Lm3,000 was issued by the bank in favour of the Authority and was drawn from complainant's account in line with instructions that he gave to the bank. In addition complainant's daughter and her husband were obliged to pay all other expenses connected with the purchase of the property including stamp duty, notarial fees and fees due for searches at the Public Registry.

Some time after the purchase of the property, however, the couple underwent separation proceedings and asked the Housing Authority to revoke the contract and to take back the property. The Authority accepted this proposal and on the basis of the value of the property and of the improvements made since 2005, it established the amount that it would pay upon rescission of the contract to regain possession of the property.

When the rescission of the original contract took place in mid-February 2008 the Housing Authority paid the bank the total outstanding balance of the loan amount together with accrued interest due by the couple to the bank as the main creditor so that the loan could be closed and the hypothecs registered on the date of the acquisition in favour of the bank could be waived.

These payments were indispensable if the property was to be taken back by the Housing Authority since the hypothecs registered on this property in favour of the bank would not have been waived had the loan and interest due until the rescission of the contract not been paid.

At the same time the balance of the price agreed upon between the couple and the Housing Authority so that the Authority would re-acquire the property was used to settle pending amounts that were still due to the notary who was involved in the 2005 contract including professional fees, stamp duty and searches at the Public Registry as well as other expenses incurred on the rescission of the contract.

... The contract was ... a legally binding document ... unless its validity was contested through judicial proceedings ... in ... the courts of justice and not in an institution for administrative scrutiny.

In his investigation the Ombudsman confirmed that the money had been divided in this way by the Housing Authority with the express consent of complainant's daughter and her ex-husband and this authorization was recorded in the deed of rescission itself. The couple had also declared in this deed that they were fully satisfied with the contract of rescission and that they had no further claims or pretensions against the Housing Authority.

The Ombudsman also pointed out that although complainant alleged that his daughter signed this contract under duress, she was still bound by the terms that were stipulated in this document. The contract was to all intents and purposes a legally binding document and presumed to be valid unless its validity was contested through judicial proceedings instituted in a proper forum such as the courts of justice and not in an institution for administrative scrutiny such as the Office of the Ombudsman.

In view of this sequence of events the Ombudsman concluded that there was

no act of maladministration on the part of the Housing Authority. The money to take back the property was due to complainant's daughter and her ex-husband who had acquired it together in 2005 and the Authority merely distributed these funds by issuing two payments on the lines that were indicated in the contract of rescission. As a result the first payment was issued in favour of the bank that had extended the loan to the couple while the second payment was made in favour of the person whose name had been expressly indicated in the contract of rescission.

In the circumstances the Ombudsman ruled that once the Housing Authority had no relationship with complainant and once complainant's name had not featured in the contract of rescission as a person to whom any payments or refunds were due from the proceeds for the reacquisition of the property, the Authority had acted properly in the way in which it had issued the two payments. He advised complainant to settle the matter directly with his daughter and her ex-husband to whom he had extended financial assistance of his own accord since it was clear that the Authority was in no way involved in the matter.

The employee who was left without his bonus payment

A long-serving employee with Heritage Malta was distressed to find a few weeks after he resigned his post in October 2007 that the agency had awarded a one-time bonus to a number of its employees to reward them for their efforts in the successful organization of two international exhibitions and several other projects during the year whereas he had been left out. He referred the matter to the Ombudsman because he felt that he had been unjustly deprived of this award and claimed that he was entitled to this bonus in view of his strong involvement in these activities.

On its part Heritage Malta sought to justify its action by pointing out that the decision to award a bonus to a small number of serving employees was meant as an incentive for future projects particularly in view of the challenges and other tasks that were lined up for them in the coming years. The agency was of the view that since complainant resigned in October and the bonus was awarded in November, this ruled him out from being entitled to receive this payment. The agency further held that the award of a bonus is not due to employees as of right and that it is not unusual to grant a benefit only to serving employees in recognition of a particular event.

The Ombudsman agreed that employees do not possess an automatic right to the award of a bonus merely because they perform their duties properly since their efforts are compensated by the payment of a wage or salary. The award of a bonus to employees is generally linked to extra output or to reach particular objectives that management may have in mind.

Aware of the fact that complainant had always performed his duties well while an employee of Heritage Malta, the Ombudsman ruled that the grievance was partially justified. Although clearly the decision to pay the one-time bonus was taken with the aim of motivating Heritage Malta employees particularly in view of the heavy workload that was planned for the years ahead, there was at the same time no doubt that the agency's management meant the award of a bonus to signify its appreciation of the efforts that had been put in by these employees.

Given that this bonus was meant to be in recognition of the work done in 2007 and since complainant was on the agency's workforce till the end of October, the Ombudsman was of the opinion that he was entitled and should have received at least part of the bonus that had been paid by Heritage Malta.

The Ombudsman pointed out that from his investigation there were indications that complainant had been deprived of his bonus because the management of Heritage Malta was annoyed that he failed to inform the agency that he had applied for another post elsewhere and only told management of his decision to take up new employment on the very eve of his departure. Although complainant insisted that this was not so and that he had given the agency enough time to identify a replacement, the Ombudsman stated that nonetheless this did not constitute a proper reason to deprive him of the reward given to other employees who performed the same duties. Together with these employees complainant contributed his share towards the attainment of the objectives of Heritage Malta for 2007 and the agency had no reason to withdraw its recognition of his efforts for the ten months that he had been in its employment during 2007.

... although the award of a bonus is not due as of right, once an employer decides to give a bonus payment, all the employees who are eligible for this payment or who would have qualified for this payment, acquire a right to its award.

Finally the Ombudsman held that

although the award of a bonus is not due as of right, once an employer decides to give a bonus payment, all the employees who are eligible for this payment or who would have qualified for this payment, acquire a right to its award. He maintained that public authorities could not discriminate when awarding a bonus to employees and that they are bound to give this award according to the declared intentions and objectives. This means in effect that if the bonus is meant to reward work that was actually done, every employee who participated in the performance of the assignment in question in a satisfactory manner is entitled to its award including, for instance, an employee who might no longer form part of the workforce.

The Ombudsman pointed out that even the Public Service Management Code considers the award of a pro-rata bonus payment as an accepted practice.

Considering that the bonus payment by Heritage Malta was motivated by two aims, namely that of rewarding past efforts and to encourage future commitment, the Ombudsman recommended that complainant be paid half the bonus payment that was given to his fellow employees in recognition of the commendable way in which they had performed their duties.

Soon after the submission of the Final Opinion by the Ombudsman, the management of Heritage Malta agreed to comply with his recommendation.

Alleged failure by a regulatory body

In a complaint lodged with the Office of the Ombudsman it was alleged that the Malta Communications Authority (MCA) failed in its duty as a regulatory body when it approved shutdowns by Maltapost plc, the company that is responsible for the postage service in the Maltese Islands.

According to complainant this tacit assent was in breach of the Authority's responsibility to oversee and monitor Maltapost's performance and activities and violated key elements of the company's Universal Service Obligation that refer to daily postal deliveries and accessibility of services to the public.

It was also claimed that when the MCA sanctioned the repeated suspension of postal services and delivery and closure of outlets on days that are not public holidays, this contributed towards a failure by Maltapost to meet service quality targets.

The Ombudsman made the initial observation that the service provider in this case was Maltapost plc, a company in which the Government has no controlling interest and over which his Office has no jurisdiction. On the other hand, the Malta Communications Authority is a government agency that acts as a regulator, among others, of the postal service in Malta and is by law empowered to lay down quality of service requirements to the service provider and to monitor them; to issue directives and conditions of licence and ensure compliance by the service provider of these obligations; and also to keep under review the availability of a range of postal services of high quality and that provide value-for-money service to users.

The Ombudsman noted that postal services in Malta are regulated by the Postal Services Act and by regulations issued under this Act that transposed the European Union Postal Directive into Maltese law. Article 17 of the Act provides for the right of users in Malta to enjoy "*the permanent provision of a postal service of a quality as may be prescribed*" and also obliges the MCA to issue directives to Maltapost in respect of the quality of the postal service to be provided to the country at large. Article 17(4) specifies that as the universal service provider, Maltapost "*shall guarantee, on every working day and not less than five days a week, save in circumstances deemed exceptional by the Authority, as minimum: (i) one clearance, (ii) one delivery to the home or premises of every person ...*"

In virtue of the powers conveyed by the Postal Services Act and after consultation with the MCA, Legal Notice 500 of 2004 listed the regulations laid down by the Minister responsible for the postal service under which Maltapost has to operate and which the company has to comply with. Under these regulations Maltapost is to provide as a minimum "*every working day at least one delivery to each postal address or other delivery point and at least one collection from each current access point or as may be agreed to with the Authority from time to time*" – but although there is no definition of what constitutes a working day, this has to be read in conjunction with the guarantee of a minimum of five days a week as stipulated in the Act.

Directive No 1 that was issued by the Malta Communications Authority in 2006[1] establishes the procedure that Maltapost must follow in effecting

1 *Directive of 2006 on the Procedure relating to the change of certain services provided by the Universal Services Provider under the Postal Services Act.*

changes in relation to the days and times of opening of any post office, the days of delivery and the collection of postal articles. Paragraph 5 of this Directive lays down that whenever Maltapost submits a request to the MCA to change a service, the company must provide sufficient reason to justify the need to resort to any such change and provide the Authority with contingency plans to minimise as reasonably possible any inconvenience to the public.

In September 2008 the MCA published a document entitled *Maltapost plc's Universal Service Obligations* that referred to the obligations incumbent on the service provider and also addressed the rights of consumers with respect to access to services and the guarantee of daily delivery. This document confirmed Maltapost's obligation to provide a next day delivery service and also referred to the Quality of Service (QoS) Targets to be achieved by Maltapost for its universal postal services. In this regard the Ombudsman understood that the MCA regularly monitors these services and was generally satisfied with Maltapost's overall performance. He also understood that the Authority was of the view that during the last few years Maltapost had secured improvements in the quality of its universal postal services and ensured an appreciably high level of customer services as well as sustainability on its part with standards for delivery next day for inland mail that compared well with more than half of the other EU Member States and that were planned to improve even further by 2009.

The Ombudsman also noted that in the context of the need to ensure the provision of an efficient and reliable postal service the Postal Services Act had established the principle and recognized that this service should evolve in response to technical considerations and to the country's economic and social environment as well as to the needs of users. This means that products and services forming part of the provision of the universal service by Maltapost may increase or decrease in the light of society's needs at any point in time.

In the course of his investigation the Ombudsman ascertained that despite its shutdown days Maltapost had achieved its delivery targets. These standards are monitored by an independent organisation appointed by Maltapost while on its part the MCA audits the procedures adopted by this organisation to ensure that its methodology is in line with international measurement standards.

The Ombudsman found in his inquiry that following the submission of a request by Maltapost in respect of six shutdown days during 2008 during

which delivery would not be made, the Authority approved four days of shutdown; and Saturday 6th September 2008 was one of these days. However, since the following Monday was a public holiday, this meant that Maltapost did not operate for three days at a stretch instead of the usual two given that its collection and delivery service last operated on Friday 5th September 2008 and was back in action on Tuesday 9th September 2008.

Also mindful of the fact that out of the four dates in 2008 that were approved by the MCA there were two days that were also considered as shutdown days in previous years (i.e., 2nd January and 26th December), the Ombudsman established that the number of shutdown days in 2008 was the same as in 2007; and, consequently, there had been no increase in the number of shutdowns in 2008 as alleged by complainant.

The Ombudsman found that it was against this background and on the understanding that its approval would not prejudice Maltapost's service obligation that the Malta Communications Authority had approved the shutdown. In this way the Authority had taken a decision that was fully within its competence at law to take and it is not the function of his Office to challenge such a decision once it is within the law and there was no abuse of the mandate given to the Authority by virtue of the Malta Communications Authority Act which lays down its purpose, regulatory functions, powers and duties.

The Ombudsman also noted that when the MCA was set up, the practice of shutdown for one day when a public holiday falls either the day before or after a Sunday was already in force. Besides, these shutdowns feature in the Collective Agreement between Maltapost and the trade union representing the majority of the company's employees.

In the light of these considerations the Ombudsman concluded that the Malta Communications Authority had acted within its mandate and that there was no conclusive evidence of any abuse of this mandate. He therefore found no grounds to sustain complainant's grievance.

... The Ombudsman found that ... the Authority had taken a decision that was fully within its competence at law to take and it is not the function of his Office to challenge such a decision once it is within the law.

A selection process that was seriously flawed and grossly unjust

An employee with Enemalta Corporation approached the Office of the Ombudsman in connection with the issue of an internal call for applications for the post of Principal Technical Officer that was restricted to Senior Technical Officers. Aware that he lacked the basic criteria to be eligible for consideration, complainant had not bothered to send an application but admitted he was greatly taken aback some time later to discover that the position was awarded to an employee who did not hold the grade of Senior Technical Officer and who was therefore ineligible to apply in the first place.

From documentation seen by the Ombudsman it was confirmed that the call for applications for the post of Principal Technical Officer issued in March 2007 laid down that applications were restricted to Corporation employees in the grade of Senior Technical Officer. The circular also mentioned the qualifications and experience in a drawing office environment that applicants needed to possess to be eligible for consideration.

The Ombudsman found that a few days before the call for applications was due to close, an employee who had applied for this post requested the Chairman of the Corporation to intervene on his behalf after he was told by Enemalta's Human Resources Department that he was not eligible to apply. A few days later the Corporation informed this employee that his application would be considered valid as long as he had applied before the closing date for the submission of applications.

The Ombudsman also found that the choice to fill the post in question was limited to the employee who had sought the Chairman's intervention and another candidate who too did not hold the grade of Senior Technical Officer. Since both these applicants were successful in their interviews, it was the applicant who had appealed to the Chairman who scored the highest number of marks and whose appointment was recommended by the selection board.

A few days after the result of the call was announced, complainant wrote to the Chairman of the Corporation and asked for an explanation on what grounds the successful candidate had been selected when applications were restricted to Senior Technical Officers and this candidate was not even in this grade. Complainant also asked for a remedy since he insisted that he had not applied for this post in view of the restriction that appeared in the

circular. When the Corporation, however, merely sent an acknowledgement but never bothered to send an explanation, at this point complainant sought refuge in the Office of the Ombudsman.

On being approached by the Ombudsman, Enemalta Corporation explained that when it restricted the call for applications to Senior Technical Officers, there were no applications from employees in this grade and that when an employee who was not a Senior Technical Officer but who possessed the technical qualifications that were needed for the post together with the necessary experience had submitted his application, he was told that this application would be turned down. However, after this employee appealed to the Chairman and referred to his educational background, experience and strong commitment to his duties, his application was accepted and he was interviewed together with another employee who too did not hold the grade of Senior Technical Officer. In the end it was the employee who had appealed to the Corporation who was placed first and who was awarded the position.

The Ombudsman held that these facts merely confirmed that the Corporation failed to abide by the original criteria for eligibility that appeared in its call for applications. On its part the Corporation did not contest the fact that the two employees who were interviewed did not hold the grade that was required in the call for applications but sought to justify its acceptance of an application from an employee who was clearly ineligible on the grounds that it was aware of his educational background, his experience and his work ethic.

The Ombudsman was of the opinion, however, that this explanation did not justify what was without any doubt a serious shortcoming by the Corporation. He stated that its decision to accept the application by an employee who was not eligible put complainant, and possibly a number of other employees, at a disadvantage by not being given the opportunity to apply for the post as well.

The Ombudsman stated that when after the closing date of the call for applications Enemalta decided that the grade of Senior Technical Officer was no longer a pre-requisite for the post of Principal Technical Officer, the call for applications ought to have been withdrawn and a new one should have been issued. In this way all employees who were eligible to apply under the new criteria would have been made aware of this change and given the opportunity to submit their application. This would have meant that justice

would have been done with all those who were excluded under the first call but who were eligible under the new selection criteria and would at the same time have ensured full transparency throughout the whole selection process.

The Ombudsman held that irrespective of the merits of the chosen candidate and whether he deserved the promotion despite his ineligibility under the initial criteria, there was no doubt that the process that led to his selection was seriously flawed and grossly unjust on other employees who observed the original conditions and believed that their applications would have been invalid since they did not qualify in the first place. The Corporation's decision to interview applicants who were ineligible under the original criteria and to select one of them meant that the Corporation had encouraged and rewarded an employee who ignored the conditions of the call for applications and potentially damaged the interests of other employees who acted prudently and refrained from submitting an application which they themselves felt would have been inappropriate.

The Ombudsman pointed out that the Corporation had not acted correctly when it accepted the application by an employee who was ineligible and had even gone so far as to interview him and to promote him to Principal Technical Officer. By doing so the Corporation had sent the wrong message to its employees that its instructions could be ignored and indeed that any such action could in turn even lead to a reward. Not only was the whole process invalid and lacking transparency but it also led to justified suspicions of abusive manoeuvring on the part of the Corporation even though this might not have been the case.

... The Corporation's decision to interview applicants who were ineligible ... and to select one of them meant that the Corporation had encouraged and rewarded an employee who ignored the conditions of the call for applications.

The Ombudsman stated that the Corporation's actions attracted serious criticism from his Office. All employees who were in the same situation as the chosen candidate should have been given an identical opportunity to compete for the post – and this is what equity is all about.

The Ombudsman concluded that even if there may have been no specific intention to discriminate against complainant on the part of the Corporation,

the process was invalid, unfair and unjust and utterly lacked transparency. He therefore sustained the grievance and recommended that the Corporation should rescind the appointment that it had issued to the selected applicant or else invite fresh applications on the basis of the new eligibility criteria and appoint an additional Principal Technical Officer and distribute the responsibilities of the grade between these two officers.

The Ombudsman stated that he was aware that these options were bound to create difficulties but the present situation had been created by an unjust and unacceptable decision by the Corporation and it was now up to the Corporation itself to resolve this problem.

Shortly afterwards the Corporation informed the Ombudsman that it had decided to implement his second recommendation and issued a new call for applications that was not restricted to employees already in the grade of Senior Technical Officer.

Losing an entitlement to a Treasury pension by just one month

In February 2008 the Office of the Ombudsman received a complaint from a female teacher who was due to reach retirement age in the following month and who, after making enquiries with the Treasury Department, was upset to find out that she was not entitled to a Treasury pension because she had only rejoined the Education Department in February 1979.

After making the necessary verification, the Ombudsman wrote to complainant and told her that her allegation of discrimination was unfounded. He stated that although he fully understood her state of mind upon finding out that things would have been different and she would not have forfeited her entitlement to a Treasury pension if only she had taken back her post in the public service just one month earlier, however, the information that was given to her by the Treasury Department was correct. This was based on what is provided in the Pensions Ordinance since she had re-started employment as a part-time teacher in February 1979.

Article 21 of the Ordinance which governs the grant of pensions, gratuities and other allowances to persons in the public service and, in certain instances, to their dependants, provides that the provisions of this Ordinance and, consequently, the benefits mentioned therein, apply to "*all officers appointed*

in the public service of Malta after the commencement of this Ordinance but prior to 15th January 1979, and no pension, gratuity or other allowance shall be payable under this Ordinance, nor shall any other payment be made thereunder, to any person who was not an officer before the date aforesaid ...”

Complainant herself explained that although she started her career in the Education Department in 1967, she had to resign her post in September 1972 on getting married as a result of the policy then in force in the public service that female employees had to resign on getting married. She had applied for the post of part-time teacher in 1978 but it was only in February 1979 that she was called back on teaching duties and it was then in 1980 that she was reappointed on a full-time basis. In the circumstances it was clear that complainant was not in the public service prior to the cut-off date specified in the Pensions Ordinance.

The Ombudsman took note of the point raised by complainant that she was aware of other part-time teachers in January 1979 who also had their job terminated in July 1979 and had to re-apply for employment before the start of the next scholastic year. According to complainant, although these employees were actually out of work in the summer of 1979 they were still able to get their Treasury pension. The Ombudsman, however, pointed out to complainant that since she failed to mention the names of these persons or to provide more details so as to back up her allegation, he was not able to verify the issue.

The Ombudsman also explained that this notwithstanding, he had to point out that by any account the situation that she described was not quite similar to hers in the sense that she herself had stated that these persons, whoever they were, were in fact employed in the public service in January 1979 – and it was this which was the substantive issue.

The Ombudsman also observed that it was the practice at that time that the service of casual or part-time teachers would be terminated at the end of each scholastic year in July and they would then again be engaged at the start of the next scholastic year in September – and in the case of teachers this break in employment is not considered as a break in service for pension purposes by virtue

... it was clear that complainant was not in the public service prior to the cut-off date specified in the Pensions Ordinance.

of regulation 8 of the Pensions Regulations that allows exceptions to the requirement that the service in respect of which a pension may be granted must be unbroken, provided that the temporary suspension of employment does not arise from misconduct or voluntary resignation of the employee. This meant that had complainant been re-employed as a part-time teacher in January 1979 and not in February, she would have been entitled to a Treasury pension and the break during the summer months would not have been a bar to her entitlement to a Treasury pension.

The Ombudsman also clarified to complainant that despite her claim that she had always paid her social security contributions on time, this was of no relevance whatsoever in the case of Treasury pensions that are issued in terms of the Pensions Ordinance and regulations made thereunder.

In the circumstances the Ombudsman was faced with no other option but to inform complainant that his Office could not be of any assistance to her in her predicament.

An outrageous delay

In a complaint that was lodged in 2008 by two family members from Gozo it was alleged that despite their various letters and reminders, the Land Department failed to pay compensation for the value of agricultural products from two plots of rural land that had been expropriated in 1989 by the Government in order to make way for the building of several social housing units. Complainants pointed out that their payment had been overdue for several years whereas other landowners whose land had been expropriated at the same time for the same project had received their compensation.

Complainants provided documentary evidence to the Ombudsman showing that the Government had expropriated the two plots of land in question by means of two notices that were published in the *Government Gazette* in March 1989 and October 1989 respectively. They also showed papers which confirmed that in December 1997 as well as in March 1999 they had drawn the attention of the Land Department to the fact that compensation in respect of the value of the products from these plots that were expropriated several years earlier was still outstanding and asked that the original amount of compensation due to them should be revised so as to take due account of interest payable on this sum for all the years in which compensation had

remained pending. However, despite the acknowledgements that complainants received from the Land Department, no payment was ever made because according to department officials the allocation in the department's budget for expropriation costs had been exhausted.

Complainants again wrote to the Land Department in May 2007 and in November 2007 but here again these two letters met the same outcome and complainants continued to face a brick wall. It was at this stage that they turned to the Office of the Ombudsman.

In response to the Ombudsman's approach about this case the Land Department stated that it would take immediate action on the amount that was due to complainants on the basis of an estimate that would be issued by the Agriculture Branch of the Ministry for Gozo. The department also envisaged that the contract in connection with the outstanding payment due to complainants would be signed in a few weeks' time.

Upon receiving this information, complainants immediately asked the Land Department for an advance copy of the contract that they would be expected to sign as well as an indication of the way in which the pending amount had been worked out. However, a few weeks later they were upset in no small way when they found out that the amount of compensation that was being given to them by the Land Department did not take into account the undue delay for which the department was solely responsible and that in such cases no interest payments are ever made on the amount in respect of the value of agricultural products.

Feeling strongly that this was unjust, complainants failed to turn up on the date when the contract was due to be signed with the Land Department and again sought refuge in the Office of the Ombudsman, asking the Ombudsman to intervene on their behalf in order to settle this problem with the department.

Upon taking up this case again the Ombudsman found that the compensation of around €8,000 that was being offered to complainants had been established at the time that the expropriation orders on the two plots of land were issued and that the amount had not been adjusted to include interest due on this sum as from the first day when it was due to the former owners of the land. Subarticle 21(1) of the Land Acquisition (Public Purposes) Ordinance (cap 88 of the Laws of Malta) states as follows:

"*When rural land has been acquired by a competent authority either absolutely or for a time or on public tenure, and that land is subject to a lease other than emphyteutical lease, there shall be paid to the tenant or occupier of such land a fair compensation in respect of any agricultural improvements carried out by the tenant or occupier or by a member of the family in the said rural land during the period of eight consecutive years preceding the date of termination of the lease and an amount equal to the value of the products gathered by the tenant, occupier or by a member of the family from the said rural land, after deduction of the expenses incurred towards its cultivation in the last four years immediately preceding the date of such termination:*

Provided that there shall not be deducted as part of the said expenses the cost of the tenant's or occupier's own labour or the labour of any member of the family in the rural land."

The Ombudsman noted that the department's stand on this issue and its refusal to pay interest that had accrued over the years on the value of the agricultural crops as estimated by the Agriculture Branch was based on the fact that the law makes no reference to interest payments in similar circumstances. He stated, however, that although the law makes no reference to interest payments it is also a fact that the law does not envisage that the department responsible for the acquisition of property would take some twenty years in order to issue compensation due to landowners whose land is expropriated.

The Ombudsman declared that he was of the opinion that the Land Acquisition (Public Purposes) Ordinance had been enacted in order to protect the common interest of society in instances where public sector projects that are in the national interest need to be carried out and at the same time safeguard the right of landowners whose property is expropriated to receive adequate compensation in due time. He also affirmed that he did not have the slightest doubt that in instances where the expropriation of property is involved, it was never the intention of the legislator to allow the department concerned to allow some twenty years to pass before issuing financial compensation to the owners of the property because of an administrative shortcoming and settle the amount due at its own convenience as the Land Department seemed intent on doing in this case.

The Ombudsman stated that in his view there was no question that the department was wrong not to have settled the amount due to complainants within a reasonable time when it was due and observed that citizens should not be made to pay for a mistake by a public authority. He insisted that all public authorities should remain accountable for their actions, including their mistakes, despite the passage of time and should make adequate amends whenever they are responsible for decisions that cause distress to citizens. After all the purpose of the Land Acquisition (Public Purposes) Ordinance is "*to regulate the acquisition of land for public purposes and to establish the procedure to be followed in relation thereto*" and there is no provision in this legislation that specifically prohibits the award of redress to aggrieved citizens.

The Ombudsman insisted that procedures for expropriation of privately owned land for public purposes ought to be based on the award of a fair and appropriate compensation and should also envisage that any such compensation is given to the owner of the property as soon as possible after the expropriation has taken place. According to the Ombudsman, mindful of the fact that an expropriation order is accompanied by the issue of a declaration that any payment due to the owner of the property would be effected immediately, a delay lasting more than one year after the issue of any such declaration is unacceptable; and in this case, a delay bordering on some twenty years was nothing short of outrageous.

... public authorities should remain accountable for their actions, including their mistakes, despite the passage of time and should make adequate amends ... for decisions that cause distress to citizens.

The Ombudsman commented that there was no doubt whatsoever that the Land Department had utterly failed to observe the legislation which regulates its actions in the acquisition of land for public purposes when for reasons of its own it failed to issue compensation within a reasonable time to the owners. There was also no doubt that this instance of gross maladministration had entailed considerable loss to complainants.

The Ombudsman stated that in his opinion the Land Department was solely responsible for the situation that had arisen and that had prejudiced complainants' interest. In the circumstances the only acceptable solution

was for the department to effect the payment due to complainants without any additional delay in order to redress this situation that had been allowed to prolong itself for such an inordinate time.

In the circumstances the Ombudsman recommended that the Land Department should make amends and pay compensation to complainants for the damage that they had suffered because of exaggerated delay on its part to finalize the necessary procedures and settle the amount that was due for the value of the agricultural products on the land that had been expropriated.

The Ombudsman recommended that this payment should also include interest on the full amount that was due on the basis of the interest rates that were effective throughout the full period that the delay had lasted. In this regard he recommended that this period would commence as from an interval of one year after the expropriation had taken place up to the date when the payment would actually be made by the department.

Soon after the issue of the Final Opinion by the Ombudsman the Land Department confirmed that it had accepted his recommendations and that it would settle the amount that was due to complainants as compensation on the basis of his suggestion.

The entitlement by a contract employee to a qualification allowance

Following the issue of a call for applications, a public officer was recruited by the Ministry of Health, the Elderly and Community Care to perform management duties at the Mater Dei Hospital on a definite three-year assignment under the terms of an agreement for the engagement of contract employees applicable for persons holding a substantive grade in the public service.

This employee, however, subsequently felt aggrieved at the refusal by the hospital authorities to grant him a qualification allowance for a masters' degree in Health Services Management that was conferred on him a few months after he commenced his assignment. He approached the Office of the Ombudsman and claimed that he was entitled to the grant of this allowance on the grounds that nowhere in his contract was it stated that paragraph 2.4.8 of the Public Service Management Code (PSMC) that sanctions the award of such an allowance was not applicable.

The Ombudsman's initial observation concerned paragraph 1 of complainant's employment contract which stated that "*Persons who already hold a substantive grade in the Malta public service and are appointed to a position on a definite contract will be governed exclusively by the conditions spelt out in this contract*"; and this clearly meant that whereas his earlier position as a public officer was largely regulated by the PSMC, only the conditions of service that regulated his engagement and that appeared in the contract were now applicable. At the same time, however, in instances where complainant's new employer wanted certain provisions of the PSMC to continue to apply, the contract made specific reference to these conditions; and these references to particular sections of the PSMC indicated that the employer wanted to ensure that in these situations complainant would retain the benefits that he would have been able to enjoy as a public officer by virtue of the Code.

The Ombudsman noted that complainant and the Mater Dei management held contrasting views on certain sections of the contract. On the one hand complainant argued that since the contract did not exclude the payment of an allowance for any additional qualification that he obtained after he was engaged by the Ministry, he was entitled to such an allowance by virtue of his being a public officer. On the other hand the hospital management felt that this claim was unfounded under paragraph 1 of the contract.

The Ombudsman pointed out that in his view in this situation the principle *ubi lex voluit, dixit* ought to apply. This meant that if the Ministry wanted to grant complainant the benefit applicable to public officers insofar as qualification allowances are concerned, including the allowance for a qualification attained after signing the contract, it would have made its position clear as was the case elsewhere in the contract. Instead the contract included a provision that made a cap on the payment of allowances and limited any such allowance to the one that complainant was already entitled to when he joined the Mater Dei Hospital.

The Ombudsman stated that he could not but conclude that the interpretation given by the hospital authorities to the contract was strictly speaking correct and in line with the terms that were agreed upon. At the time that complainant signed the agreement he must have been aware of the restriction imposed by paragraph 1 of the contract but was prepared to accept the position and the conditions and limitations attached to the post because he must have felt that on the whole they were favourable and represented a breakthrough in his

career prospects and salary level.

In the circumstances the Ombudsman stated that he could not rule that the hospital authorities were guilty of an act of maladministration in their interpretation of complainant's contract although at the same time he felt that this did not mean that a more liberal interpretation of the contract could not be given in a way that would have been more favourable to complainant and accommodated his request.

The hospital authorities, for instance, turned down complainant's request for the allowance on the grounds that paragraph 5.9 of the contract entitled him to retain the qualification allowance that he received as a public officer immediately prior to the signing of his contract while paragraph 5.10 stated that he was not eligible for the payment of "*any other benefits apart from those stipulated in the preceding paragraphs*". The Ombudsman, however, did not agree with the view of the Mater Dei management that the term "*benefits*" includes the qualification allowance and shared complainant's stand that the Public Service Management Code makes a clear distinction between allowances and benefits and that qualifications do not fall within the category of benefits.

The Ombudsman stated that this is not a casual distinction but one of substance. Whereas the Code as a rule links payment of an allowance to employees to the degree of disturbance, risk or skill in the work that is involved or, as in this instance, for personal merit, the Code links the award of benefits to payments made under the Social Security Act which is a scheme for social insurance and provides cash benefits for marriage, maternity, childhood, sickness, unemployment, retirement, invalidity, etc.

Given the distinction made by the PSMC in the definition of these terms, the Ombudsman felt that it was not proper to equate allowances with benefits; and this interpretation was further strengthened by paragraph 5.10 of the contract which went on to state that "*if during the contract period the contract employee avails himself of any such benefits as paternal leave, responsibility leave or reduced hours, he will be reverted temporarily to the basic terms and conditions of his substantive appointment*." These words to a large extent confirmed that in the context of the contract the two parties considered the term "*benefits*" to refer to social security benefits contemplated under the PSMC and that are due to employees under the Social Security Act.

At the same time the Ombudsman did not hesitate to admit that paragraph 5.10 is somewhat ambiguous when it states that "*the contract employee will not be entitled to any other benefits apart from those stipulated in the preceding paragraphs*." Since paragraph 5.9 entitled complainant to retain the qualification allowance received as a public officer, it could be argued that the allowance was considered to all intents and purposes as a benefit for the purpose of the contract.

In his defence complainant took the cue from sub-paragraph 2.4.8.1 of the PSMC that a qualification allowance is meant primarily to encourage public officers to improve their qualifications and provide a better service to citizens and questioned why this incentive should not also be made available to public employees who are on a definite contract. The Ombudsman agreed with this viewpoint that a restrictive interpretation of the contract goes against the spirit of the government's policy to encourage public officers to further their studies and improve their skills and went on to state that he saw no reason why the career prospects of public officials under a performance contract should be halted.

The Ombudsman made one final observation. While the contract may be taken to refer only to the retention of an allowance for a qualification obtained prior to the signing of the contract and to exclude recognition for a qualification obtained after its signing, this interpretation is not necessarily correct. It could also be held that the contract had to specify that complainant would continue to receive the qualification allowance that he was already entitled to upon joining the Ministry since without this clarification his right to this payment could have been prejudiced.

... a restrictive interpretation of the contract goes against the spirit of the government's policy to encourage public officers to further their studies.

The Ombudsman held therefore that in his view the clause as drafted did not necessarily mean that the Ministry intended to exclude the payment of any subsequent allowance to which complainant would have been entitled as a public official. However, in view of the blanket provision in paragraph 1 which allows little space for any alternative interpretation, the Ombudsman had no option but to rule against complainant and to exclude any maladministration by the hospital authorities.

In the circumstances the Ombudsman concluded that he could not censure the decision that complainant's benefits or allowances were, in terms of paragraph 1 of his contract, limited to what was stated in this document. There was no doubt that while this contract spelt out various provisions of the PSMC that were still applicable to complainant, the provision regarding entitlement to a qualification allowance appeared to be limited to what specifically appeared in paragraph 5.9 and to nothing else. The Ombudsman held that this interpretation, even if admittedly a restrictive one, was consonant with the wording of the contract and could be taken to reflect the will of the parties at the time that it was signed.

The Ombudsman therefore ruled that in the course of an investigation into alleged maladministration, he could not conclude that the complaint was justified. At the same time he took this opportunity to recommend to the authorities to revisit certain terms and conditions of the standard contract on which complainant's employment had been modelled to remove any ambiguities that could give rise to conflicting interpretations.

The Ombudsman recommended that this revision should consider the issue of the award of qualification allowances to public officers who are appointed to a position by means of a definite contract and who wish to further their studies to achieve recognised qualifications during the term of any such contract. He suggested that in the event of acceptance of this recommendation, there should be no reason why complainant's request for the payment of a qualification allowance would not be approved.

The Mater Dei management responded positively to the Ombudsman's Final Opinion and stated that if the Ministry responsible for hospital services agreed with his recommendation regarding the payment of a qualification allowance to complainant, it would not hesitate to implement this suggestion.

Failed efforts to renew the employment permit of a Chinese national

The Office of the Ombudsman received a grievance from a restaurant owner who complained that when in November 2007 he sent an application to the Employment and Training Corporation (ETC) for the extension by another year as from February 2008 of the employment permit of a Chinese national who had already worked for several years as a chef in his establishment, the Corporation had only issued a permit for another six months on the grounds

of a change in policy.

Complainant felt aggrieved by this new policy and claimed that it is unfair that an expatriate cannot remain in Malta to work at a stretch for more than three years. He feared that as a result of this decision there was a risk that the goodwill and the reputation that he had built over the years for his establishment would come to an end.

Upon approaching the Employment and Training Corporation for an explanation, the Ombudsman found that employment permits to persons with European citizenship are issued automatically unless the unlikely event arises where Malta will make a case with the European Commission to close a particular sector or occupation. However, a permit for a third-country national (i.e. a person who is not a citizen of one of the Member States of the European Union) is issued only when the applicant can demonstrate that he is unable to find any Maltese or EU national to fill the vacancy and that the person on whose behalf the application has been made is sufficiently qualified and experienced to fill the post in question.

The ETC also explained that upon receiving a government directive on this issue in the autumn of 2007, permits for third-country nationals may only be renewed twice for a maximum stay in Malta of three years and that at present the only exception to this rule are very highly skilled persons and *bona fide* investors.

The Corporation informed the Ombudsman that in view of the newly arising situation, it had informed complainant that the employment licence of his Chinese chef could only be extended by another six months and that at the end of this period it would not be possible to renew this permit again. The Corporation also made it clear to complainant that he was still free to employ another qualified Chinese chef to replace his employee as long as all the employment conditions in respect of third-country nationals were fully observed.

On his part the Ombudsman appreciated the difficulties that this policy is bound to create to employers since it is not easy to identify a person who can be fully trusted to work as a chef in a Chinese restaurant on a three-year assignment. On the other hand, however, he pointed out that when complainant first recruited the services of this expatriate he must already have been aware

of the fact that this engagement was possible on the strength of a temporary employment licence that needed to be extended at regular intervals. Furthermore, complainant should have known that although employment permits are generally renewed without any difficulty, he had never been given any assurance that his employee's work permit would be extended automatically. Nor had he, throughout the duration of his employee's work contract in Malta, acquired any right to have this permit extended automatically upon its expiry.

... not only has the Government every right to change its policies but ... what is important is that policies are applied without any undue discrimination or preference.

The Ombudsman explained to complainant that from the time that he had first employed the Chinese chef at his restaurant, government policy on the employment of third-country nationals had changed and the response by the ETC to his application for the renewal of his employee's work licence merely reflected this new policy.

The Ombudsman also pointed out that not only has the Government every right to change its policies but in this case it was obliged to do so and to adopt policies that are in accordance with European law and in particular with Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. Under this Directive Member States of the EU can only recognize the long-term resident status of third-country nationals after five years' continuous legal residence and persons who acquire this status will enjoy equal treatment with nationals as regards, among other things, access to paid employment, conditions of employment and working conditions. Since the employee in question did not possess this status, the ETC was perfectly in order to turn down the request for an extension of his employment licence by another year.

In the opinion of the Ombudsman these considerations by the Government were perfectly legitimate and in no way could be considered as amounting to maladministration or to injustice. He pointed out that in any similar situation what is important is that policies are applied without any undue discrimination or preference and, as far as he could ascertain, the policies that were being followed by the ETC on the issue of the employment of third-country nationals in Malta on the basis of Council Directive 2003/109/EC of 25 November 2003 were being applied fairly and consistently.

The Ombudsman informed complainant that in the circumstances he felt that his grievance was not justified since the ETC's decision was fully in order. He therefore closed the file.

Whatever happened to the original fiscal receipt?

In April 2008 a housewife lodged a complaint with the Office of the Ombudsman where she stated that after purchasing an energy efficient washing machine, she had submitted an application to the Malta Resources Authority (MRA) in terms of Government Notice 1026/06 of 5th December 2006 for a rebate on the price of this appliance as part of the government's drive to increase efficiency in energy consumption.

Her application was, however, rejected by the Authority on the grounds that the original fiscal receipt that had been issued by the supplier in connection with this purchase was missing and she was asked to send the original receipt in order to be eligible for the grant. Despite her insistence that she had in fact already sent the original fiscal receipt with her application form together with all the other documents that are required by the MRA to process her request, the Authority continued to turn it down. At this stage she sought the help of the Ombudsman.

When the Ombudsman asked the MRA management for an explanation, the reply that he was given to a large extent confirmed complainant's version of the way in which events had unfolded with one slight, albeit significant, difference. According to the Authority the file containing complainant's application only included the application form that she had submitted, the product label and the invoice issued by the outlet from where she had purchased the appliance while the original fiscal receipt was missing. The MRA explained that an application such as the one submitted by complainant could not be considered unless it is accompanied by the original fiscal receipt and that the procedure whereby in similar cases applicants were allowed to take an affidavit was no longer applicable and had been discontinued after the end of 2007.

The Ombudsman noted that the law not only specifically requires that the original fiscal receipt is to be attached to the application but also distinguishes this receipt from the invoice and the product label or fiche of which a copy may be provided and is considered acceptable by the Authority. Clearly the

Authority cannot disregard an express requirement of the law that is meant to prevent abuse and to be applied across the board in all cases without exception.

... the Authority cannot disregard an express requirement of the law that is meant to prevent abuse and to be applied across the board in all cases without exception.

In the circumstances the Ombudsman wrote to complainant that although he had no reason to doubt her version, on the other hand his Office was not in a position to reconcile her statement regarding the enclosures that she had submitted to the MRA with the insistence by the management of the Authority that she had failed to include the original fiscal receipt in her application.

Since according to law it is the person who alleges that a mistake or a shortcoming has taken place who has the onus to prove his allegation and complainant was not in a position to do so, the Ombudsman stated that he was unable to investigate the matter any further.

Annexes

Annex I

Proposal by the Parliamentary Ombudsman for the appointment of a Commissioner for Health

1. Introduction

When presenting the *Ombudsplan* for the current year before the House Business Committee I expressed my intention to formally propose the appointment of a Commissioner for Health to investigate complaints of maladministration in this sector. I stated the view that the time has come for the people to be given effective redress in an area which requires specialized attention.

2. Background

This proposal is being made in the context of the following considerations and in the scenario of important developments in the field of public health care and in the furtherance of patients' rights.

(i) The Department of Health (Constitution) Ordinance (even if outdated) provides for the organizational structure of the Department that would enable it to provide the various health services and facilities, both preventive and curative, in its hospitals and clinics as well as in the community. Responsibility for the provision of these services now falls upon the Health Division even if the law still recognises it as the Department of Health.

(ii) The Department of Health (Constitution) Ordinance also provides for the establishment of Hospital Management Committees to manage state hospitals on behalf of the Government. However, only the one for St Luke's Hospital was ever appointed and even this is now defunct. An internal complaints mechanism is available at Mater Dei Hospital.

(iii) The Patients' Charter of Rights and Responsibilities issued by the St Luke's Hospital Management Committee was designed to a limited extent to contribute towards patient empowerment as a means of bringing about a sustained improvement in the provision and delivery of government services in health care. The Charter recognizes that "*... in this field, offering a basically good level of care is not sufficient. We want to ensure that care*

is delivered to the highest achievable standards from all perspectives ... Patients today have the means to access information about health and disease. They rightly expect to be treated as partners by the health care professionals providing a service." The Charter does not, however, give specific details as to patients' rights in terms of such issues as availability of treatment, waiting times for appointments for treatment including surgery, accessibility to information and standards of care, etc. which rights are now widely recognised in other countries.

(iv) The Health Care Professions Act enacted in 2003 updated the provisions regulating the right to the practice of the health care professions as well as the related professional standards in line with Malta's new obligations as a Member State of the European Union. The Councils for the various health care professions, upon receipt of a complaint from any person, can investigate any allegation of professional misconduct or breach of professional ethics by any member of the professions regulated by these Councils. The respective Council may, after due inquiry, take appropriate disciplinary steps if a health care professional falling under its jurisdiction is found guilty of professional misconduct or had otherwise failed to abide by the professional and ethical standards applicable to his profession.

(v) However, despite an all-round commitment to promote a relationship that would result in satisfied clients and health care providers as well as efforts to improve further the standards of patient care in government hospitals, occasions arise when this relationship is put to the test. Despite every good intention to treat hospital patients with courtesy and respect in appreciation of a person's dignity including access to appropriate levels of medical and nursing care and allied services, it is important to ensure that clients of the government health service, including patients and their relatives, will be able to raise their voices in the proper quarters whenever it is felt that a patient's rights are not being adequately safeguarded by the hospital authorities for whatever reason.

(vi) There is a growing awareness of these rights. This is evidenced not only by a marked increase in the number of health-related complaints being dealt with by my Office in recent months but also by the increase in litigation in various fora in which patients, clients and their relatives claim that their rights have been violated, seeking and obtaining redress.

At a time when consumer rights in the field of health care are gaining deeper recognition and when standards of service delivery in the health sector should

improve considerably now that the new Mater Dei Hospital has opened its doors to receive patients, this Office would like to recommend the appointment of a national Commissioner for Health.

3. Reasons for the appointment of Commissioner

The Ombudsman notes the Government's declared commitment to make Malta a centre of excellence in medical care. The opening of the new Mater Dei Hospital, the projected rehabilitation centre and centre for cancer treatment, the extension and refurbishment of St Vincent de Paule, the opening of a number of public/private homes for the elderly, the Pharmacy of your Choice scheme and other initiatives are proof of an ever expanding range of medical services being made available to the public by Government.

The declared government intention to focus on primary health care in an efforts to alleviate the pressures on public institutions for the elderly opens up a whole new area that will require monitoring to verify and ensure that the rights of senior citizens to effective treatment by medical, paramedical and therapeutic staff are being adequately safeguarded.

All this comes at a time when consumer rights in the field of health care are gaining deeper recognition and when, therefore, standards of service delivery in this area should improve considerably. There is an ever-growing awareness that citizens have the right to have their expectations met and that the public administration should be held accountable not only for maintaining the required health standards but also, and more importantly, to deliver the services to all those who are entitled to them within the rules and recognized norms of good administration.

4. Proposal

These positive developments have therefore prompted this Office to recommend to Government to consider the appointment of a national Commissioner for Health. This Office has since its inception to date investigated regularly allegations of maladministration regarding health care. It maintains a healthy relationship with the health authorities at all levels and, through their cooperation and understanding, redress has often been given to complaining citizens. I am, however, of the opinion that considering the developments in this vital sector, the time is ripe to have a more focused monitoring process

by a competent official who can be more proactive in the defence of citizens' rights in medical care.

5. Functions

It is proposed that the Commissioner's function will be to conduct investigations on complaints put forward by or on behalf of citizens who feel aggrieved and believe that they have sustained hardship or injustice as a result of failure, unsatisfactory treatment or service, lack of diligence by a government health care provider or failure to provide adequately a service which it is a duty of the national health authorities to provide.

It will be the function of the Commissioner for Health to investigate any allegation of maladministration by a government health service authority, person or body responsible for the management and operation of hospital, pharmacy and laboratory services, public health, community health care facilities as well as other facilities that form part of the comprehensive state health service.

The Commissioner will also be able to investigate allegations of other administrative failures on the part of the health administration, including complaints from its own staff.

The Commissioner would also be entitled to conduct own initiative investigations into the administrative workings and procedures of health institutions under his jurisdiction to identify areas of malpractice or maladministration that adversely affect standards of care.

6. Limits of jurisdiction

The following are the suggested limits of the Commissioner's jurisdiction:

(a) The Commissioner's jurisdiction will extend to any action taken by or on behalf of the government health authorities and any such body in which the Government has effective control. It should also extend to those private/public entities running health institutions or schemes in which Government directly or indirectly participates even though it does not have a controlling interest.

(b) The Commissioner for Health will not replace internal complaint

mechanisms which are already in place and which should continue to function as first line protection of the patient or client.

(c) The Commissioner for Health will not be involved in the review of action taken by health care professionals in the exercise of their clinical judgement for the diagnosis of illness or for the treatment of patients.

(d) Furthermore, in the context of the role of the Commissioner for Health to put the minds of the public at rest regarding the safety of patients undergoing health care treatment and promoting general public confidence in the country's health system, the Commissioner will not be able to review the technical merits of decisions taken by health care professionals where there are no grounds for any allegation of maladministration by health service providers in the exercise of their professional competence or of discriminatory professional actions and decisions based on their technical, medical and clinical judgement.

7. Organisational set-up

It is not intended to set up a new authority with an independent administration. While retaining his full autonomy and independence in the exercise of his functions, the Commissioner will utilize the investigative and administrative services of my Office as required. His desired independence is therefore achieved without the need of duplicating administrative structures with the consequent waste of human and financial resources.

It is therefore proposed that the Commissioner would operate within the framework outlined by me to the Prime Minister and to the Leader of the Opposition in my letter of 18 July 2007, meant to ensure the strengthening of the institutional framework for the protection and promotion of citizens' rights within a wider ombudsman jurisdiction. This framework was approved in principle by the Prime Minister by letter of 26 July 2007. The proposed setup is also intended to ensure that the citizen will still have the right to request the Parliamentary Ombudsman to review a decision taken by the Commissioner for Health.

8. Future development

It is also proposed that, at a subsequent stage, consideration might be given to the possibility of extending the role of the Commissioner for Health to cover complaints against other private health care providers, especially in

view of the growing number of privately run organizations that provide institutional health care. It is submitted that while understandably the state should not unduly interfere in the commercial running of such institutions, every effort should be made to ensure that the standard of care given in them should be subject to the scrutiny of an independent authority with the specific function of investigating allegations of abuse and maladministration that adversely affect the citizens' rights in this vital field.

8 May 2008

Annex II

Opinion by the Ombudsman on the implementation of decisions by the Tribunal for the Investigation of Injustices

Letter by the Parliamentary Ombudsman to the Speaker of the House of Representatives on 16 July 2008

(free translation)

MALTA Ombudsman

16 July 2008

The Hon Speaker
House of Representatives
The Palace
Valletta

Dear Mr Speaker,

In the exercise of my functions under Act XXI of 1995 I am submitting my Opinion in connection with the implementation of decisions by the Tribunal for the Investigation of Injustices, an issue of ongoing public interest.

I would like to ask you to communicate this Opinion to the House of Representatives in the manner that you consider most appropriate.

With best regards

J Said Pullicino
Ombudsman

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

Opinion by the Ombudsman on the implementation of decisions by the Tribunal for the Investigation of Injustices

(free translation)

1. On various occasions this Office is asked to investigate why decisions by the Tribunal for the Investigation of Injustices are not carried out by the authorities to whom these decisions are directed. I believe that it is now time for me as Ombudsman, an Officer of Parliament appointed in the manner provided for in the Constitution to safeguard fair governance and equitable administration, to give my Opinion about the administrative responsibilities of these authorities in similar circumstances. I am submitting this Opinion in the exercise of my function as Ombudsman according to Act XXI of 1995. I am also submitting this Opinion in the context of a wider debate in the country at large about the need to strengthen institutions that were set up to safeguard democracy and ensure a fair and transparent administration and to define the manner in which these institutions ought to relate to each other in the free exercise of their respective functions.

2. In my view the principles of fair and proper administration in the public sector require each body, whether set up or not under the terms of the Constitution, to accept, respect and implement decisions taken by other authorities as long as these decisions are within the limits of their respective competence and their specific jurisdiction. This applies, for instance, with regard to a declaration issued by my Office after having concluded its investigation that maladministration has taken place as well as with regard to a recommendation by the Public Service Commission following an appointment or a promotion in the public service. It is even more applicable with regard to judgements given by the Courts and by Tribunals that are judicial institutions in the country which are entrusted with responsibility to guarantee the rule of law that is best embodied by sustained efforts to hold out against injustice and abuse.

3. This means that while each institution is free to be critical of decisions taken by other authorities in the exercise of the particular functions that are assigned to them within their jurisdiction, including judgements that are issued by the Courts and by Tribunals, it is not admissible that these decisions are not accepted as being final and binding upon any other authority.

4. It is therefore my view that in situations where no appeal is lodged

in accordance with what is laid down by law following a decision taken by a Court or by a Tribunal set up by law, and especially in instances where a final decision has been issued by the Court of Appeal on the merits of a particular case, there should be full acceptance of the principle that is universally acknowledged that every public authority or body should act in full respect of the law and of the democratic order whereby Courts and Tribunals set up by law should finally determine the rights and obligations between citizens and between the State and citizens.

5. It is the duty of public authorities and bodies, including those set up under the Constitution such as the Office of the Ombudsman and the Public Service Commission, to acknowledge and, whenever circumstances so warrant, implement judgments including decisions by the Tribunal for the Investigation of Injustices. A ruling by this Tribunal that a citizen had suffered injustice which is not the subject of an appeal in Court or which is confirmed by the Court of Appeal, should be taken as having been amply proven. It is the duty of public administration at large to enact recommendations that are issued with a view to rectifying an injustice and, whenever these recommendations envisage an alternative remedy, to do so in the best possible way in favour of a citizen who is aggrieved by an unjust administrative decision. At this stage it should be emphasized that the Tribunal for the Investigation of Injustices was elevated by law to the status of a Tribunal to determine the rights and obligations of citizens and that its judgements were given executive force in the same way as judgements issued by the Courts.

6. This underlines why in an instance that involves an appointment in the public service which, according to the Constitution, must be made on the advice of the Public Service Commission, both the Government and the Commission cannot ignore the final ruling of this Tribunal which considers that a complaint is sustained once it is established that the respondent suffered an injustice while the process for an appointment or for a promotion was under way. The Public Service Commission should not contest findings in a decision that is issued by a competent Tribunal set up by law and in my view is in duty bound to provide the most appropriate remedy for any such injustice in terms of the recommendation issued by the Tribunal or, in the case of an appeal, in the final judgement of the Court of Appeal.

7. Unless this outlook prevails, a citizen who is considered in a final decision as the victim of an injustice would be deprived of the remedy that

the Tribunal or the Court regards as the most appropriate. This would constitute a breach of the basic principle of the rule of law that every constituted authority should accept that decisions by the Court and by Tribunals are final and binding.

J Said Pullicino
Ombudsman

16 July 2008

Annex III

Letter by the Parliamentary Ombudsman to the Speaker of the House of Representatives on 10 December 2007

(free translation)

10 December 2007

The Hon Speaker
House of Representatives
The Palace
Valletta

Dear Mr Speaker,

It appears that it is now time, in the light of the experience of the last few years, to examine afresh and, if considered necessary, to review the procedures that have been followed so far with regard to the way in which Parliamentary Questions regarding the work of the Office of the Parliamentary Ombudsman are presented and the way in which replies are given.

The current procedures were established on the basis of the guidelines that were set up by my predecessor, Mr Joseph Sammut, in his Memo to the Permanent Secretary at the Office of the Prime Minister dated 23 January 1996.

Under these guidelines a Parliamentary Question (PQ) about the Office of the Commissioner for Administrative Investigations that is tabled in the House of Representatives should follows these procedures:

Note: In his Memorandum of 23 January 1996 Mr Joseph Sammut pointed out that as an Officer of Parliament, the Ombudsman is completely independent of the executive arm of government and the Office of the Parliamentary Ombudsman does not fall under the responsibility of the Prime Minister. As a result the Prime Minister should not give replies to Parliamentary Questions about the work done by the Ombudsman.

Mr Sammut also pointed out that the Ombudsman has a special relationship with the whole House of Representatives and according to Act XXI of 1995 shall annually or as frequently as he may deem expedient, report directly to the House of Representatives on the performance of his functions under this Act; and in the circumstances he suggested that Hon Members of Parliament should approach him directly in connection with any information which they required about the work done by his Office.

(i) the PQ would be put to the Prime Minister or the Minister or the Parliamentary Secretary who would be responsible for the issue referred to in the Parliamentary Question and that would fall under his jurisdiction;

(ii) Mr Speaker would then pass the question directly to the Office of the Ombudsman;

(iii) the Ombudsman would in turn send his written reply directly to the Member of Parliament (MP) who asked the question; and

(iv) the Ombudsman would also send a copy of his reply to the Speaker;

(v) the Prime Minister or the Minister or the Parliamentary Secretary to whom the Parliamentary Question would have been addressed in the first place, would reply broadly on the lines as explained by the Ombudsman in his letter dated 23 January 1996 and indicate that a reply by the Ombudsman himself would be sent directly but privately to the Member of Parliament who had originally tabled the PQ.

While these procedures respect the functional autonomy that the Ombudsman enjoys as an Officer of Parliament and at the same time ensure that in practice the information requested by a Member of Parliament would be made available to the questioner, in my view, however, this system does not reflect faithfully the fundamental role of Parliamentary Questions as a vital instrument in the democratic process. When used judiciously, Question Time in the House of Representatives should serve as the best means of scrutinizing the extent to which not only the executive can be held accountable for its operations but also other public authorities including those which are recognised by the Constitution of Malta in the same way as the Office of the Ombudsman, are held responsible for their actions. Monitoring the performance of these institutions is a right of every Member of the House.

In the light of this assessment I would like to suggest that:

(i) henceforth Members of the House should in the first instance address any PQ concerning the work of this Office to the Speaker;

(ii) whenever a PQ is addressed to Mr Speaker by a Member of Parliament and placed on the agenda of the House and is submitted by the Speaker for

an answer, the issue raised in the PQ becomes of interest to all the Members of the House. It cannot therefore be considered to concern only the Member who presented the question since all the other MPs in the House and, indeed, the country as a whole, have a right to be made aware of the contents of the reply given to the question;

(iii) as a matter of fact after the reply to the PQ is given, it is possible not only for the MP who originally tabled the question but also for any other Member to put supplementary questions in line with the Standing Orders of the House.

These basic considerations – because clearly there are others as well – lead me to believe that the procedures adopted so far by my Office to reply directly to the MP who submits a Parliamentary Question and in confidence provide him the information required, are not proper and somewhat unorthodox. In my view neither is it procedurally correct for the Ombudsman to send a copy of the reply to the PQ to the Speaker of the House even though the Speaker, at his own discretion, could decide to put a copy of this reply on the Table of the House.

Under the current procedures, information that is likely to be of interest to the public at large might be restricted to the Member of Parliament who would have asked for this information and is not made accessible as of right to other Members of the House. It is also likely that, as matters now stand, the general public might not even have access to this information.

Although it is true that the Office of the Ombudsman is independent and autonomous of the executive arm of government, this does not mean that the institution should not carry out its work in a transparent manner or that its operation should not be subject to controls by the House of Representatives to whom the Ombudsman, as an Officer of Parliament, is accountable.

On the strength of these assertions I am convinced that in future the proper path that is to be taken by a Parliamentary Question that is tabled by a Member of Parliament that concerns the work of the Office of the Ombudsman should be as follows:

(i) the original PQ should be addressed directly by the Hon Member of Parliament in the first place to the Speaker of the House;

(ii) Mr Speaker should in turn forward the PQ to the Ombudsman for his terms of a reply;

(iii) the Ombudsman should then send his original reply directly to the Speaker who should place it on the Table of the House together with the Question at the first available opportunity. In this way the Ombudsman's reply would reach not only the Member of Parliament who first raised the issue but would also be made available to all the other Members of the House as well as to the country at large. These procedures would at the same time enable other Members, should they feel the need to do so, to submit supplementary questions on the same subject according to the Standing Orders of the House;

(iv) no harm would be done if the Ombudsman, as a matter of courtesy, would also send a copy of his reply to the PQ directly to the Member of the House who would have first raised the question.

In my view these new procedures would reflect in a much better way and in a more appropriate manner the significance of Question Time in the House of Representatives and at the same time allow the House the opportunity, should it so wish, to ask for additional information on the matter raised in the PQ.

I am submitting this proposal for consideration by your Honour with a view to ensuring that if you feel that the main thrust of this proposal is in line with the Standing Orders of the House, these new procedures would take effect as from 1 January 2008. Naturally, if you feel that it is necessary, we can examine the matter together in greater detail in the manner that you consider most appropriate.

With best regards

J Said Pullicino
Ombudsman

The following is the text of a letter that was sent by the Speaker of the House of Representatives to the Parliamentary Ombudsman on 23 January 2008

(free translation)

KAMRA TAD-DEPUTATI HOUSE OF REPRESENTATIVES
MALTA

Uffiċċju ta' l-Ispeaker *Speaker's Chambers*

Tel: 356 25596 206
356 25596 000

Fax: 356 25596 400

RECEIVED
23 JAN 2008
OMBUDSMAN

23 January 2008

LETTER
23 JAN 2008
ACKNOWLEDGED

Chief Justice Emeritus J Said Pullicino
Ombudsman

I refer to your letter dated 10 December 2007 and to the cordial discussion that we had in my Office on Tuesday 22 January 2008 where we agreed on the best way how to handle Parliamentary Questions that are tabled by Members of Parliament in the House of Representatives on the Office of the Ombudsman and its work.

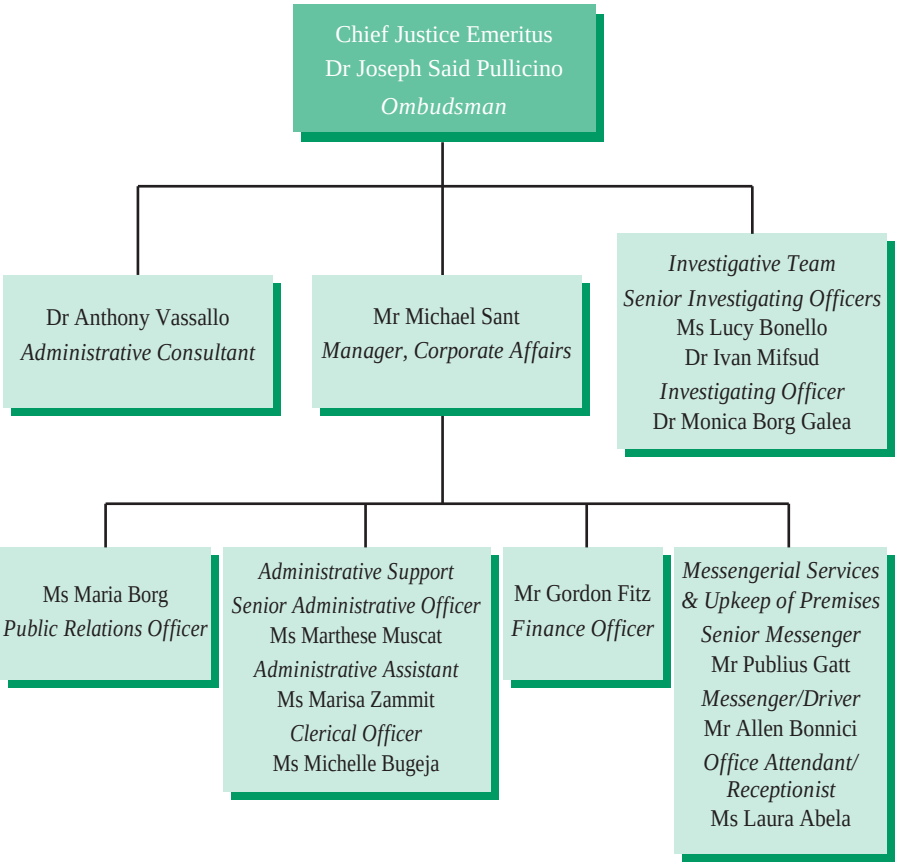
We agreed that all such Parliamentary Questions addressed to the Speaker should be sent to the Office of the Ombudsman for the terms of a reply and that upon reaching the Speaker's office, the replies to these PQs would be placed on the Table of the House in order to be accessible to Members of Parliament and to members of the public alike.

A Tabone.

Anton Tabone
Speaker

Annex IV

Staff organization chart (on 31 December 2008)



Annex V

Report and financial statements for year ended 31 December 2008

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 reached an agreement with Mepa to start providing investigative and administrative support services to the Mepa Auditor against payment of an agreed fixed annual sum. Similar services are being provided to the University Ombudsman however related expenditure is refunded by the Ministry of Education which retains the Government funds voted for the University Ombudsman.

The Office of the Ombudsman is responsible for ensuring that:

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

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

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

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

Statement of income and expenditure

	Notes	2008 €		2007 €
Income				
Government grant		**456,998**		456,557
Mepa audit grant	2	**19,100**		-
Non-operating income	3	**3,415**		3,103
			479,513	459,660
Expenditure				
Personal emoluments	4	**343,125**		(334,412)
Administrative and other expenses (Schedule 1)		**96,484**		(88,935)
			439,609	(423,347)
Surplus for the year			**39,904**	36,313

Statement of affairs

	Notes	2008 €	€	2007 €
Non-current assets				
Property, plant and equipment			**72,783**	65,410
Current assets				
Receivables	5	**17,999**		5,954
Cash and cash equivalents	6	**170,662**		151,411
		188,661		157,365
Current liabilities				
Payables	7	**7,889**		9,124
Net current assets			**180,772**	148,241
Net assets			**253,555**	213,651
Reserves				
Accumulated surplus			**253,555**	213,651

The financial statements were approved by the Office of the Ombudsman on 23rd January 2009 and were signed on its behalf by:

Gordon Fitz
Finance Officer

Michael Sant
Manager
Corporate Affairs

Statement of changes in equity

	Accumulated surplus €
At 1 January 2007	177,338
Surplus for the year	36,313
At 31 December 2007	213,651
Surplus for the year	39,904
At 31 December 2008	**253,555**

Cash flow statement

	Notes	2008 €	2007 €
Operating activities			
Surplus for the year		**39,904**	36,313
Adjustments for:			
Depreciation		**13,281**	13,254
Gain/Loss on disposal of tangible fixed assets		**(15)**	245
Mepa grant		**(19,100)**	-
Interest receivable		**(3,400)**	(3,103)
Operating surplus before working capital changes		**30,670**	46,709
Decrease/(Increase) in receivables		**(12,046)**	585
Increase/(Decrease) in payables		**(1,234)**	4,826
Net cash from operating activities		**17,390**	52,120
Investing activities			
Payments to acquire tangible fixed assets		**(20,654)**	(15,299)
Mepa grant		**19,100**	-
Proceeds from sale of equipment		**15**	
Interest received		**3,400**	3,103
Net cash used in investing activities		**1,861**	(12,196)
Net increase in cash and cash equivalents		**19,251**	**39,924**
Cash and cash equivalents at beginning of year		**151,411**	111,487
Cash and cash equivalents at end of year	6	**170,662**	151,411

Notes to the financial statements

1 Presentation of financial statements

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

These financial statements are presented in Euro (€).

2 Summary of significant accounting policies

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

Revenue recognition

Revenue from government grants is recognised at fair value upon receipt. Other income consists of bank interest receivable, proceeds from sale of disposed minor equipment and the annual grant of € 23,293 payable by Mepa for investigative and administrative services provided by the Office of the Ombudsman. For this year only it was agreed that V.A.T. on this grant which amounts to € 4193 will be deducted from the grant. Similar services are being provided to the University Ombudsman however, all expenditure made is charged to the Ministry of Education.

Tangible fixed assets

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

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

Receivables and payables

Receivables and payables are stated at their nominal value.

Notes to the financial statements (continued)

3 Non-operating income

	2008 €	2007 €
Bank interest receivable	**3,400**	3,103
Proceeds from sale of equipment	**15**	-
	3,415	3,103

4i Personal emoluments

Wages and salaries	**328,247**	318,759
Social security costs	**14,878**	15,653
	343,125	334,412

ii Average no. of employees

	14	15

5 Receivables

Trade receivables	**526**	-
Prepayments	**17,473**	5,954
	17,999	5,954

Notes to the financial statements (continued)

6 Cash and cash equivalents

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

	2008 €	2007 €
Cash at bank	**170,373**	151,101
Cash in hand	**289**	310
	170,662	151,411

7 Payables

	2008 €	2007 €
Trade payables	**6**	9,124
VAT payable on Mepa grant	**4,193**	-
Accruals	**3,690**	-
	7,889	9,124

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables. As at 31 December 2008 the Office had no unrecognised financial liabilities.

8 Fair values

At 31 December 2008 the fair values of assets and liabilities were not materially different from their carrying amounts.

Schedule 1

Administrative and other expenses

	2008 €	2007 €
Utilities	**13,780**	11,677
Materials and supplies	**4,323**	5,437
Repair and upkeep expenses	**5,812**	2,476
Rent	**2,166**	2,166
International membership	**856**	959
Office services	**6,992**	5,001
Transport costs	**8,219**	6,669
Travelling costs	**8,591**	7,787
Information services	**7,268**	6,373
Contractual services	**23,029**	24,840
Professional services	**827**	536
Training expenses	**210**	175
Hospitality	**840**	748
Incidental expenses	**26**	28
Bank charges	**264**	564
Depreciation	**13,281**	13,254
Disposals	**-**	245
	96,484	88,935

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Auditor General

Our Ref: AF 56/95
Your Ref:

6th May 2009

The Ombudsman
Office of the Ombudsman

Office of the Ombudsman- Report and financial statements for the year ended 31 December 2008

Report of the Auditor General

We have audited the financial statements of the Office of the Ombudsman for the year ended 31 December 2008.

The audit of the financial statements is covered by the provisions of Section 11 of Act XXI of 1995 – The Ombudsman Act and Section 1 (a) of the First Schedule of Act XVI of 1997 – The Auditor General and the National Audit Office Act.

Respective responsibilities

As described on page 3, the Office of the Ombudsman is responsible for the preparation of the financial statements. Our responsibility, as auditors, is to form an independent opinion on the financial statements based on our audit.

Basis of opinion

We conducted our audit in accordance with International Standards on Auditing. An audit includes an examination, on a test basis, of evidence relevant to the amounts and disclosures in the mentioned statements. It also includes an assessment of the significant estimates and judgments made by the Office in the preparation of the statements.

We planned and performed the audit so as to obtain all the information and explanations that were considered necessary for the execution of the audit.

Audit 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 2008 and of the results of its operations for the year then ended in accordance with International Financial Reporting Standards and comply with the Office of the Ombudsman Act, 1995.

A. C. Mifsud
Auditor General