PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS MALTA

ANNUAL REPORT

for the period January - December 2007

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

Ombudsman

October 2008

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 2007.

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

Yours sincerely

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1. THE YEAR IN REVIEW

Since the enactment of the Ombudsman Act in 1995 by the House of Representatives, 2007 was arguably one of the most momentous periods in the history of the Maltese ombudsman institution.

The year under review witnessed the final steps in a long drawn-out process to enshrine the Maltese ombudsman institution in the Constitution and to guarantee its continued existence and independence in favour of the right of citizens to good public administration. Another highlight during the year was the initial thrust towards a unified ombudsman service with a wider and more effective scope that would promote best practice and provide guidance and advice on complaint management and bring together the various ombudsman schemes and other similar scrutiny bodies that emerged in recent years under the impact of the public sector reform programme aimed to empower citizens and provide better service.

While these developments were in train the Office continued to tackle its core activity in a robust manner and dealt expeditiously with complaints by members of the public who felt aggrieved by acts and decisions by public authorities that were considered detrimental to their interests. Following an initial sift to establish whether there was a *prima facie* case of maladministration that enabled these grievances to fall within the remit of the institution as laid down in its founding legislation, the Office's team of case officers examined these complaints for any mismanagement, administrative failure, delay or any other intrusion into the norms of good administration and reached its conclusions on the basis of the values of independence, integrity and fairness that have consistently upheld the work of the institution.

To a large extent the Office continues to appreciate that government departments and public bodies within jurisdiction cooperate fully with its staff and acknowledge the informal and conciliatory techniques upon which their investigations are based and cases settled. There is growing evidence that the principles in *The Ombudsman's guide to standards of best practice for good public administration* which was released in April 2004 are being increasingly accepted while the redress culture that was promoted by another publication entitled

Redress: the introduction of a new culture in Maltese public administration continues to gain wider recognition through a marked increase in the rate of acceptance and implementation of the Ombudsman's recommendations. As the bedrock of the Ombudsman's work, this complaint-handling work represents the institution's contribution towards an improvement in the quality of the Maltese public service in the context of a sustained programme of reform and improved administrative practice.

The incorporation of the Ombudsman in the Constitution of Malta

There is no doubt that the crowning glory of the Office of the Ombudsman during the year under review was achieved on 18 July 2007 when Bill No. 78 of 2006 entitled *Constitution of Malta (Amendment) (No 2) Act, 2006* received the unanimous approval of the House of Representatives. As a result, immediately after article 64 of the Constitution the following new article was added:

"*64A. (1) There shall be a Commissioner for Administrative Investigations to be called the Ombudsman who shall have the function to investigate actions taken by or on behalf of the Government, or by such other authority, body or person as may be provided by law (including an authority, body or office established by this Constitution), being actions taken in the exercise of their administrative functions.*

(2) The manner of appointment, the term of office, and the manner of removal or suspension from office of the Ombudsman together with any other matter ancillary or incidental thereto or considered necessary or expedient for the carrying out of the function referred to in sub-article (1) shall be provided for by an Act of Parliament."

At the same time article 66 of the Constitution was amended to include article 64A with various other articles of the Constitution that cannot be passed in the House of Representatives unless at the final voting thereon in the House there is the support of not less than two-thirds of all the Members of the House.

The formal assent by the President of the Republic on 24 July 2007 to Act No. XIV of 2007 to amend the Constitution of Malta marked the end of a

lengthy process of consultation and discussion that was launched during the tenure of the country's first Ombudsman Mr Joseph Sammut. This process served to improve the proposals that were originally presented by the government to establish the Maltese ombudsman institution at a constitutional level and enhance the status of the Office.

In particular the amended text of the Bill that was released by the government in August 2006 and that was subsequently approved by the House of Representatives was wider in scope than the original text in the sense that it appears to allow the functions of the Ombudsman to be extended by an Act of Parliament to include the investigation of administrative acts by bodies that are not government controlled or in which the government does not have a controlling interest but which are considered to be providing a public service only insofar as matters are concerned that strictly pertain to the provision and supply of any such service. It is felt that by virtue of this amendment it would be possible to counter the loss in the scope and extent of accountability to which citizens are justly entitled in strategic areas and activities that are considered to pertain more properly to the domain of public administration but which, on grounds of government policy, are withdrawn from public control and assigned instead to private direction and management.

Act No. XIV of 2007 also extended the Ombudsman's jurisdiction over administrative actions and decisions by authorities, bodies and other offices established by the Constitution without encroaching upon their right to fully maintain and safeguard their respective autonomy in the exercise of their constitutional functions and tasks.

The new window of opportunity being provided by the widening of the Ombudsman's vista merits closer consideration. Since 1995 the Ombudsman's power and jurisdiction have not been curtailed and the First and the Second Schedule to the Ombudsman Act containing persons and bodies as well as actions and matters that are outside his purview remained untouched. At the same time, given the somewhat restrictive application of the ombudsman legislation that is established by section 12 of the Ombudsman Act and its defined jurisdiction, in recent years there has been an effective diminution of the breadth of the Ombudsman's action as the government curtailed and reformed its role as a public service provider and introduced various arrangements for the delivery of services previously performed by its employees

such as outsourcing, greater NGO involvement and public/private partnerships. As a result of these developments that contributed towards a changing profile of public service delivery in the country, it is important to ensure that the new service providers will not be allowed, on account of statutory exclusions that were introduced back in the mid-90s, to adopt a lower level of customer focus or to ease their accountability measures including the provision of appropriate redress to make up for service failure.

The role and functions of the Ombudsman as now defined in article 64A of the Constitution of Malta take due account of this newly arising landscape for service provision and introduce alternative arrangements whereby the Ombudsman through appropriate legislation would not be precluded from areas that were previously within his jurisdiction.

The right to good administration

The Office's sense of satisfaction with this elaboration of its role in the Constitution as well as its protection was, however, to some extent tempered by the fact that the proposal to the authorities to give further substance to its entrenchment in the Constitution by the inclusion of another clause that would recognize the right of every individual to good administration was not adopted. This right is acknowledged and defined in Article 41 of the Charter of Fundamental Rights of the European Union which was proclaimed by the European Parliament, the Council of the European Union and the European Commission on 7 December 2000 as well as in the adapted version of the Charter which was proclaimed on 12 December 2007 in Strasbourg and to which Malta is a signatory.

This Office continues to hold the view that recognition of this right in the Constitution of Malta would not only have strengthened the right of every individual to a just and transparent administration but would also have motivated and justified the decision of the House of Representatives to entrench the Maltese ombudsman institution itself as guardian of this right. This proposal could have taken the form of inclusion of the principle of the citizen's right to good public administration in Chapter II Declaration of Principles in the text of the Constitution of Malta whereby this principle, while not

enforceable in the courts of law, would be considered as one of the basic principles underpinning the Republic of Malta. The government would be in duty bound to respect and adopt this principle when formulating any law while the judiciary would give it due recognition in issues that are referred to the courts and in its interpretation of the national corpus of laws.

Although favourable views were expressed regarding this proposal during the debate in the House of Representatives on the entrenchment of the ombudsman institution in the Constitution, at the same time doubts were raised that its proposed status and lack of enforceability were likely to undermine its positive effects. To some extent, however, refuge on this issue was sought from the fact that Part II of the Administrative Justice Act (Act V of 2007) lists various principles of good administrative behaviour that are to be respected and applied by administrative tribunals established under this Act while the Bill entitled Public Administration Act, 2008 affirms the values of public administration and provides for the application of these values throughout the public sector with a view to service delivery that is courteous, expeditious and impartial for an effective and efficient implementation of the policies of the government of the day.

Taken together these developments are considered to provide adequate legal standing to the norms of good administration by public authorities at least until such time as any future exercise to update the Constitution will be inspired, among other things, by a fuller appreciation of the obligations arising from the revised Charter of Fundamental Rights of the European Union. They also provide tangible recognition that the Ombudsman's insistence on the observance of the basic principles of good governance is bearing fruit. These principles are slowly but surely being embedded in the country's social, administrative and legislative fabric.

The Ombudsman's role in the protection of human rights

Another proposal by the Office of the Ombudsman that failed to find favour was the inclusion of a reference in the constitutional amendment that the Ombudsman could take on a role in the promotion of human rights. This dimension is fast becoming an increasingly important feature of the

Ombudsman's investigation of administrative actions even in a country such as Malta which consistently receives creditable ratings in international scoreboards regarding respect and observance for human rights. The Commissioner for Human Rights of the Council of Europe and the European Ombudsman are actively promoting the notion that national and regional ombudspersons should take on a positive human rights perspective and favouring that Ombudsmen should have an explicit human rights mandate. It was therefore somewhat disappointing that the advice by the Office to the House of Representatives to take account of these developments and to ensure that its new constitutional status would enable it to promote the observance of fundamental human rights as well as to assume an explicit mandate in this field was turned down.

In the course of the discussion in the House of Representatives it was recognised that while there is in the country full observance of the rule of law and that the country has a legal system that is stoutly centred around the basic fundamental principles that safeguard human dignity and freedom, occasions at times arise when in their contacts with public bodies citizens experience an erosion of their fundamental rights as a result of delays, excessive bureaucracy and decisions and actions which at best remain unexplained or nebulous. It was pointed out that although the country is already well served by several institutions that protect citizens from the strong arm of government and public authorities that can manifest itself in maladministration, injustice and inefficient service delivery, existing structures need to be further strengthened with measures such as legislation concerning freedom of information and whistle blowing that are conducive to good governance and higher standards of accountability and transparency. In this way the country would be able to offer an even wider network to protect the fundamental rights of citizens from high-handedness, discrimination and unfairness while at the same time benefiting from Malta's membership of the European Union that affords an added safeguard in the defence of fundamental citizen rights whenever things might threaten to go wrong.

Other comments that were raised in the House of Representatives regarding the future role of the Maltese ombudsman institution in the field of the protection of human rights were to the effect that any such involvement by the Ombudsman should be viewed with caution. It was held that while it is important for the Ombudsman to provide a sense of direction and a broad

outline of his institution's strategy in charting its future course of action, at the same time it was equally important to ensure that any such development would not represent the unilateral assertion of a new role for the Office that would mark a departure from its original calling in the field of complaint handling. It was also held that the Ombudsman should not resort to new tasks and functions in the defence of human rights without any specific mandate from the House of Representatives. It was pointed out that the perception that was being given that the Maltese ombudsman institution could unilaterally drift towards the safeguard of fundamental citizen rights and be rendered akin to an office or a commission on human rights needed to be considered carefully and that Parliament needed to be fully engaged in the matter with a view to expressing its own opinion on any such reorientation of the sights of the institution.

In this regard the Ombudsman's concern with human rights should be clearly established while the rationale behind this approach should be placed in its proper perspective. The role of a guarantor of fundamental human rights is not alien to the functions of an Ombudsman. It is complementary and the two roles can comfortably sit together. Investigation of complaints by the Ombudsman is primarily based on a test whether the rules of good administration have been followed or not and acts and decisions which do not follow these principles can at times constitute an infringement of one or another of complainants' human rights given that these rights form an integral element of the principles of good administration that are strenuously promoted by the Ombudsman. Besides, Ombudsmen in several countries – some of which are EU Member States – are required not only to investigate grievances from the perspective of the extent to which issues raised in these complaints adhere or not to the tenets of good administration but are also assigned specific responsibilities in the wider context of keeping under continuous review the state of respect for citizens' human rights in their countries.

In recent years cooperation between the Council of Europe Commissioner for Human Rights, ombudsman offices and national institutions that uphold the promotion and protection of human rights in Member States of the Council of Europe has been enhanced. The Commissioner has put on record his wish to work in association and to develop closer ties with his "natural" partners – Ombudsmen and national human rights institutions – to strengthen the protection of human rights at national level. Indeed, in line with his objective

to foster the effective observance and full enjoyment of human rights in Council of Europe Member States, the Commissioner for Human Rights is mandated, among other things, to "*facilitate the activities of national ombudsmen or similar institutions in the field of human rights*". In this context the Commissioner regards ombudsman institutions as important components of the human rights structures in Member States that can play a crucial role in monitoring the extent of the respect for human rights shown by national authorities towards their people.

In view of the ongoing structured dialogue between Ombudsmen, human rights institutions and the Commissioner for Human Rights, ombudsman offices can acquire a deeper and stronger edge to stamp out and correct breaches of human rights. This is particularly relevant in individual cases that might only come to light by way of the non-judicial nature and the conciliatory thrust of the interventions of Ombudsmen as laid out in their mandates. These instances might otherwise not even surface at all if different rules of procedure such as resort to judicial proceedings are the only alternative available to respondents. This dialogue is backed by the Commissioner's initiative to widen his current cooperation with Ombudsmen and national human rights institutions by means of an active network of these institutions that would provide information on human rights and take appropriate action that is allowed by their respective mandates on alleged violations of human rights.

Respect for fundamental human rights in Malta is already adequately guaranteed and is enshrined in the Constitution which contains entrenched provisions with regard to respect for the basic individual rights and liberties. Citizens who allege that they have been denied their human rights and fundamental freedoms or who consider that these rights and freedoms are under threat can submit their grievances to the First Hall of the Civil Court which has jurisdiction to consider applications of this type. It has the power to provide remedial measures that are considered necessary for the purpose of enforcing, or securing the enforcement of, the human rights and fundamental freedoms of the person concerned. The Constitution also makes due provision for the right of appeal to the Constitutional Court from a judgement delivered by the First Hall of the Civil Court.

Furthermore the European Convention Act (Act XIV of 1987) makes provision for the substantive articles of the European Convention for the Protection of

Human Rights and Fundamental Freedoms and subsequent protocols to the Convention to be enforceable as part of the law of Malta. In addition the European Convention Act states that where any ordinary law is inconsistent with these human rights and fundamental freedoms, these rights and freedoms shall prevail and any such ordinary law shall, to the extent of the inconsistency, be void.

Despite a strong legal fabric that sustains the national commitment in favour of human rights and the fact that the country's political, legal and administrative environment is consonant with that prevailing in other EU Member States, the local ombudsman institution feels that it can still play an important role to promote human rights in the country. Indeed, although no such new and specific mandate in the furtherance of human rights was introduced in the constitutional amendment of 2007 regarding the Office of the Ombudsman, it is felt that there may still be time at a subsequent stage in the process of constitutional reform to further extend the role of the Ombudsman by a wider mandate that will encompass human rights as a vital cog in the concept of good administration to which all citizens are entitled. Such a step would be particularly significant especially since no national institution exists in Malta that is entrusted with specific responsibility to promote and safeguard the fundamental human rights of citizens. Moreover, it is felt that rather than creating yet another institution to act as a watchdog in this vital area, the function of a national human rights institution could naturally be assigned to the Parliamentary Ombudsman who could absorb it within his present sphere of activity.

Even at this stage, however, it should be pointed out that the functions of the Ombudsman as laid down in the Ombudsman Act, 1995 and in the Constitution are sufficiently wide so as to permit his Office to engage itself unrestrictedly, as indeed it is already doing, in the field of human rights. The Office not only conducts its investigations of admissible complaints from a human rights perspective whenever circumstances associated with such grievances warrant this approach but also draws the attention of the authorities concerned to any actual or potential violations of these rights. It puts forward proposals and recommendations for the award of appropriate redress not only with regard to instances under investigation but also with a view to a wider audience and a more general applicability and relevance.

The main aim of the Ombudsman is to ensure that public administration

operates within a framework of legality and in the context of fair play and full observance of the rules and regulations that govern the performance of the wider public sector. This implies a rigid adherence to the letter and spirit of the Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the principles laid down by other institutions that promote respect for human rights.

In this regard it is important to point out that the intrinsic significance that would be derived from an express recognition of the Ombudsman's role in human rights protection would be the fact that action by the institution can serve to identify in the bud any situations that are likely to give rise to violation of a citizen's fundamental rights and in this way pre-empt any possible loss of human dignity and damage to a person's aspirations. By means of preventive action the Ombudsman can signal to the authorities a potential threat to citizens' interests and can also, in the event that any such infringement has already occurred, contribute towards a resolution of the situation and avert resort to judicial proceedings on the basis of a just and effective settlement including, where appropriate, the implementation of the necessary sanctions and redress measures.

Although the Ombudsman's founding legislation coupled with recent amendments to the Constitution to enshrine the Office of the Ombudsman do not bestow upon the institution a specific and formal mandate to steer investigations on the basis of rules that are grounded on the observance of human rights, it is clear, however, that the work of the Ombudsman is already guided largely by this vision.

Towards a unified public sector ombudsman service

The year under review was also marked by initial efforts to bring together existing complaints handling and ombudsman schemes in the country and establish a single port of call for citizens who may at times feel unsure of the complaint handling schemes that are available to them when they experience the brunt of service failure, maladministration or incompetence. This can best be done by a rationalised and unified, even if loosely integrated, system of national administrative audit.

Especially in recent years citizens who feel that the quality of some aspect of public service delivery is unacceptable or that standards of governance and lines of accountability are unsatisfactory or inappropriate, have had access to a growing list of independent regulatory bodies with specific thematic competences and covering niche areas that fulfil a role that is in many respects similar to that performed by the Office of the Ombudsman. These bodies too are required to review and resolve grievances that are bought to their attention with the main aim of promoting better governance by public authorities, contributing towards improved practices and raising levels of transparency while combating maladministration in its various forms on their respective fronts.

It is widely held, however, that the development of these various investigatory bodies has moved along a loosely organized path and that arrangements governing certain aspects of their operations lack consistency. Each backed by its own separate jurisdiction to handle complaints and issues that fall under its competence, these bodies have sought to resolve matters under their remit by establishing their own terms of reference and their own policies and procedures for caseload management, investigative work, the award of remedies in sustained cases and public accessibility. Enforcement systems are known to differ as well.

The management of the relationship between the Office of the Ombudsman and analogous public sector complaints authorities also differs; and the following examples provide an indication of the extent to which this relationship varies.

According to subarticle 74(15) of the Education Act, the University Ombudsman is appointed for a term of five years by the Parliamentary Ombudsman and has the duty "*to investigate and report on any complaint by the students or employees of the University on matters related the University as well as complaints by persons who have been refused entry into the University, and to suggest redress.*" The Act makes no provision for any direct functional relationship between the Parliamentary Ombudsman and the University Ombudsman and as a consequence the University Ombudsman operates in an autonomous manner although the Act provides that "*complainants, who have exhausted this remedy, may still bring their complaints to the Parliamentary Ombudsman.*"

The Education Act lays down that the salary and allowances of the University Ombudsman are determined by the Minister responsible for education and are a charge on the Consolidated Fund.

The Act also stipulates that the Parliamentary Ombudsman may only remove the University Ombudsman from office for proved inability to perform the functions of his office or proved misbehaviour on the advice of the Council of the University with the support of at least two-thirds of the members of Council. The University Ombudsman sends his annual report to the Parliamentary Ombudsman and this document in turn forms part of the annual report by the Parliamentary Ombudsman to the House of Representatives.

On the other hand the Commissioner for Children Act which provides for the appointment of a Commissioner for Children with power to investigate any breaches or infringements of the rights of children and which may be considered as having set up a specialised ombudsperson institution, makes no provision for any kind of relationship with the Office of the Ombudsman. The Commissioner for Children is appointed directly by the Prime Minister after consultation with the Social Affairs Committee of the House of Representatives. In the exercise of the functions established under the Commissioner for Children Act, the Commissioner acts independently and is not subject to the direction and control of any other person or authority.

To the extent that the Commissioner's functions include such matters as the promotion of the rights and interests of children, family unity, the advocacy of adequate support to parents for the upbringing of their children, the protection of children from physical or mental harm and neglect and the promotion of the highest standards of health, education, social services and leisure and recreational facilities for children, the involvement of the Ombudsman is not strictly warranted. At the same time, however, subarticle 14(1) of the Act provides that "*the Commissioner may carry out an investigation for any purpose connected with the execution of the Commissioner's duty either on a written complaint made to the Commissioner by any person or on the Commissioner's own motion*" while the remaining subarticles provide direction regarding the Commissioner's competence to carry out investigations including notification procedures following a decision to investigate a complaint, advice to complainants, reporting procedures as well as the submission of recommendations for action to be taken as may be necessary or expedient and

the publication of these recommendations to any person or body to whom the recommendations are directed.

Given that the Office of the Commissioner for Children has in common with the Office of the Ombudsman an investigatory role which may be considered to constitute a potential overlap between the two institutions in terms of a strategic approach to their remit rather than to matters falling under their diverse jurisdictions, the failure of the Commissioner for Children Act to provide for a cooperative relationship between the two bodies in complaint handling may be taken to denote lack of an awareness that at least insofar as their complaint handling functions are concerned, the two bodies promote a common cause.

Yet another different scenario exists with regard to the review mechanism set up under article 17C of the Development Planning Act to provide a measure of accountability and scrutinize building development and land use in accordance with the mission that was given to the Malta Environment and Planning Authority (Mepa). The Audit Officer is appointed by the Authority with the concurrence of the Minister responsible for development planning after consultation with the Standing Committee on Development Planning of the House of Representatives. He is entrusted with the responsibility to review all the functions and workings of the Authority and to investigate, either on his own motion or following a complaint received by him, the functions and workings of the Authority and suggest to the Authority what redress, if any, should be given in sustained cases. The Audit Officer is also required to transmit a copy of his reports to the Board of the Authority and to draw up an annual report that is published in its entirety as part of the Authority's annual report.

The Development Planning Act requires the Authority and its management to provide all reasonable assistance as may be required by the Audit Office and to permit the Audit Officer to view and copy all files and any other documentation in their possession. Under this Act the Authority is also bound to transmit a copy of all the reports drawn up by the Audit Officer to the Minister and to inform him of any action that it has taken in connection with these reports while in instances where no action is taken on measures that are recommended by the Audit Officer, the Authority has to inform the Minister of the reasons why no such action has been taken.

Under the Development Planning Act the Audit Officer shall act in his individual judgement and shall not be subject to the direction of any person or authority in drawing up his reports on investigations that he has carried out on the functions and workings of the Authority.

This review of these three complaint handling authorities shows that although their key function is to investigate reported cases of administrative failure and to safeguard individuals whose interests have been prejudiced in areas that fall under the respective jurisdictions, their effective powers are varied while the independence of the Commissioner for Children and of the Audit Officer of Mepa does not seem to be adequately safeguarded in terms of funding arrangements and resource provision. Indeed, they can be considered to be not adequately in line with the Paris Principles that govern similar administrative review bodies. At the same time, although their statutory functions are well defined, it is felt that their operational arrangements need to be reinforced particularly with regard to their accountability and their reporting obligations.

The Education Act, for instance, provides no reporting sequence for the University Ombudsman while it is felt that the mere submission by the Commissioner for Children of reports containing recommendations for action to any person or body to whom the recommendations are directed, is inadequate. Equally inadequate is the reporting sequence that has to be followed by Mepa's Audit Officer which envisages merely that in the case of rejection by the Authority of any recommendations submitted by the Audit Officer, the Authority is simply to inform the Minister of the reasons why no such action has been taken.

These varied institutional set ups have given rise in recent months to an interesting development in cases that could interest the jurisdiction of more than one authority. Formal and informal advice has been sought from the Ombudsman on how particular issues should be tackled both from a procedural and from a substantial angle. Other institutions have turned to the Ombudsman for guidance and this invariably led to fruitful consultation and convergence of ideas with the final decision being left to the institution having the jurisdiction to decide the merits.

This situation led the Office of the Ombudsman during the year under review

to consider the feasibility of promoting a unified yet loosely integrated ombudsman service whereby these separate offices would come under the overall guidance of the Parliamentary Ombudsman without any effective reduction of their powers and jurisdiction. This proposal for constructive interaction between the Office of the Ombudsman and other independent investigative complaint bodies drew heavily on the fact that these offices represent complementary institutions in the protection of the rights of citizens and share the same motivation to ensure a just and transparent administration. The proposal was also spurred by an awareness of the benefits that may be derived from a uniform interpretation and application of principles both of procedures as well as substance.

With this aim in view the Ombudsman during 2007 was instrumental in promoting the idea that the system underlying complaints authorities in the country needed to evolve and existing ombudsman arrangements be brought together to provide a joined-up service to the people that would be sustained by the same principles and operate on the basis of common review and investigatory procedures. This new system would be backed by the application of consistent redress policies in a joint ombudsman service that would continue to guarantee in all circumstances its complete independence of government and of the public administration.

The initial thrust to the proposal to establish a single integrated ombudsman house came early in 2007 and was initially being prompted by a perceived need to strengthen the administrative structures within which the Commissioner for Children was operating. Identified problems included lack of adequate financial resources which hindered her work; a lack of independence of the post, heightened by the location of the office of the Commissioner for Children within buildings that were shared with the Ministry of the Family and Social Solidarity and with other government support organizations; lack of empowerment to carry out the proper functions of this Office as a human rights institution and to monitor the government's compliance with the United Nations Convention of the Rights of the Child; and the need to provide the office with the same status as that of the Office of the Ombudsman. It was evident that efforts to strengthen the profile of the office as an autonomous institution were under strain mainly as a result of the operational and other constraints under which the institution was required to work.

A similar issue flared in the open even more sharply in mid-2007 when the Audit Officer of the Malta Environment and Planning Authority (Mepa) openly complained that his office lacked the necessary resources to investigate complaints lodged against the Authority. The Audit Officer claimed that upon the expiry of his first term of office, the concurrence of the Minister after consultation with the Standing Committee on Development Planning to his reappointment by the Authority had taken an unduly long time and that he found himself in an untenable position when his Office was also deprived of its investigating officer. In the controversy that raged in the following months between Mepa and its Audit Officer, the Authority continued to insist that it had its own reasons that justified its refusal to re-appoint the former investigating officer to his former position in the Audit Office whereas the Audit Officer in turn demanded the reinstatement of this official in his previous duties. As a result of this impasse for various months the work of Mepa's Audit Officer virtually ground to a halt.

Aware that this divergence was contrary to an accessible complaint handling service in the field of building development and physical planning, the Ombudsman at this stage launched an important initiative to review existing arrangements backing public sector ombudsman schemes and their organization. With a view to ensuring that his proposals would receive as wide a consensus as possible, on 19 July 2007 the Ombudsman wrote to the Prime Minister and to the Leader of the Opposition that in his view the disagreement between Mepa and its Audit Officer arose "*because the Office of the Audit Officer, like those of other institutions set up by special laws that partake of the nature of the Office of the Ombudsman, does not enjoy that degree of autonomy and independence required by the Paris Principles approved by Resolution of the General Assembly of the United Nations No 48/134 of the 20th December 1993*."

This Resolution refers to national institutions for the promotion and protection of human rights and its Annex captioned *Principles relating to the status of national institutions* states as follows in the section dealing with *Composition and guarantees of independence and pluralism*:

"*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."

Guided by these considerations the Ombudsman proposed that the ombudsman concept in the country should be taken forward by the strengthening of systems of review of administrative action that would as a first step entail closer standing collaboration and joint working between his Office and other investigative bodies assigned responsibility by law for the overview of designated areas of public service delivery. This unification of the various ombudsman bodies and comparable review mechanisms under one roof and in one main ombudsman structure would serve to further promote the right of citizens to good administration and enhance the credibility as well as the visibility of the Maltese ombudsman service as a leading pathway to administrative justice. The ultimate aim should be the creation of an effective national administrative audit system that would, in a way, mirror the positive developments in national financial audit.

The Ombudsman suggested that this exercise could build on the longstanding field experience of his Office coupled with the operational strengths that the separate institutions assembled over the years and enable the emergence of a new ombudsman service that would allow each ombudsman scheme to handle grievances falling under its jurisdiction under common ground rules and a shared vision of good governance and at the same time to retain its independence and autonomy. While relying on common procedures and processes for the handling and management of complaints including uniform investigative techniques and redress proposals, it was envisaged, however, that the productive linkage being promoted by the Ombudsman between the various complaints-handling bodies would not stand in the way of independent decision-making by these offices.

The constitutional thinking behind this proposal not only aims at strengthening the concept of separation of powers that today go beyond the traditional ones of legislative, executive and judicial power but also at emphasising their interdependence. Any power, even that vested in constitutional authorities, has to be held accountable for its actions. However, it has to be acknowledged that in administrative matters power has to rest finally with the people's elected representatives who should be vested with the right and duty to take binding decisions subject to the ultimate test and sanction of public opinion.

In the second half of 2007 the Office of the Ombudsman gave more substance to its vision of a new and improved service and its proposals gained further ground. These proposals foresaw a new ombudsman service operating under amended legislation that would update the role of the Office of the Ombudsman and ensure that the review structures falling under its overall guidance, duly enhanced and upgraded, would be made accountable to the House of Representatives through the Parliamentary Ombudsman. Under this scenario it will ultimately be the House of Representatives that will reach a final decision in the case of recommendations for redress regarding sustained grievances that, for some reason or other, cannot be implemented by the public authorities that are involved and that merit consideration at such a high level. In these cases, selected for presentation to an appropriate Committee of the House of Representatives at the discretion of the Parliamentary Ombudsman and during sessions in which he will be the sole representative of his Office with full authority to present issues for consideration by the Committee, Members will reach a decision on their merits and the public administration will be bound to honour the final direction issued by the House.

The establishment of a modern and comprehensive ombudsman system in its own right would extend the Ombudsman's standing over public service providers covered by the proposed new arrangements while allowing each separate ombudsman, commissioner or complaints body to retain full responsibility over the areas covered by their respective jurisdiction and remit. In this regard the *Annual Report 2006* of this Office had indicated sectors such as health and higher and further education as new areas that could fall under the mandate of a unified ombudsman system while other new jurisdictions that also involve the protection of citizen rights could possibly in the foreseeable future include areas such as housing and the Armed Forces.

The proposed widening of the Ombudsman's mandate is not meant to involve the Parliamentary Ombudsman for Administrative Investigations directly in the work and core functions of other officeholders or to interfere with their respective mandates. Neither is it meant to enable the Ombudsman to overrule their decisions and recommendations in individual cases that fall under their jurisdiction. Each sectoral ombudsman or commissioner will retain his current jurisdiction and his functional independence as well as overall control and responsibility over the conduct of investigations falling under his own distinct jurisdiction while being made accountable to the House of Representatives for

his decisions. Insofar as issues are concerned that cut across the jurisdictional limits of each authority, officeholders will adopt common working methods and comply with principles of good administration that would be consistent across the board. At the same time bodies falling under a broader remit of the Parliamentary Ombudsman and brought together under one overarching structure will benefit from shared management and administrative services and technical support. This enhanced cooperation should also serve to promote best practice across the broad spectrum of government service, resolve complaints in a consistent manner and draw lessons from sectoral or systemic complaints.

Besides strengthening the public profile of the Ombudsman and of counterpart review mechanisms falling under a widened jurisdiction, a single unified complaints institution that provides a seamless service should prove more effective among citizens and generate greater acceptance and trust. It should allow people to feel more confident to submit their grievances to a more identifiable ombudsman institution while an added advantage would be the possibility to launch a wide-ranging communication strategy aimed at promoting public awareness of this new system of complaint management.

In making his case for a consolidated complaints authority the Ombudsman drew strength from Parliament's amendment to the Constitution to establish his own Office as a constitutional authority; the Administrative Justice Act (Act V of 2007) that sets up judicial structures and procedures to ensure uniformity in the field of judicial review of administrative actions; and the Public Administration Bill that is meant to make the public service more responsive while giving a tangible form to the right of every citizen to good administration. His proposals were meant as another link in the process to enhance transparency and efficiency even in institutions set up by law to investigate administrative action.

An added value of the proposal to bring together the various separate schemes under one roof would be the strengthening of the independence, impartiality and autonomy of these satellite institutions. Although backed in the exercise of their functions by the legal support that protects them from the direction or control of any person or authority including persons or authorities whose administrative actions they have the right and the duty to investigate, fears may still arise that the capability of these institutions to perform their tasks in

an effective manner may be somewhat restricted due to limitations in human and financial resource provision. The proposal for a coherent ombudsman service envisages better rationalisation of resources by means of administrative cooperation and conversion between the institutions involved together with a common interpretation and application of the principles of good administration that motivate these institutions in the performance of their key competencies so that the Ombudsman, as the highest constitutionally recognized authority, will give advice on issues related to complaint handling procedures including remedial measures also in view of the fact that it is the Ombudsman himself who ultimately has the residual power to investigate further the actions of these authorities.

The proposal to put together the manpower resources as well as the operating systems of these different institutions under a single configuration led by the Office of the Ombudsman should also allow these institutions to have at their disposal the human, financial and technical resources that are necessary for a better discharge of their functions by means of the procedures for resource provision that are laid down in the Ombudsman Act, 1995. It is proposed that this would be done by means of the presentation of an Ombudsplan to the House of Representatives by the 15th day of September of each year that will cover the needs of the new unified ombudsman service and that will be considered by the House Business Committee on behalf of the whole House. Upon approval of the budgetary amount indicated in the annual Ombudsplan to cover the resources needed by the institution, this amount would be a charge on the Consolidated Fund without any further appropriation other than the Ombudsman Act itself.

In addition to the back up provided by the Office of the Ombudsman, a tangible sign of the autonomy of each respondent institution that would contribute towards an improvement in the public perception regarding their independence could be provided by their eventual physical separation and severance from the offices from where they now operate, possibly to be housed under one roof. This separation would underline the fact that it is not admissible that those charged with an investigation of actions and decisions by public bodies should be dependent on the same bodies that are subject to their investigation and would strongly serve to reinforce their independence.

Finally it has to be stressed that when suggesting the widening of the structures

charged with the function to investigate administrative action, the Ombudsman is in no way favouring the setting up of additional institutional authorities. On the contrary, it is his view that the appointment of Commissioners having a specific investigative role and operating independently within the ombudsman structure should favour a streamlining of operations that militates for efficiency and transparency. He is moreover on record that it is his firm opinion that the Parliamentary Ombudsman himself should be accountable, as he is, to the House of Representatives and should not be considered to be a super judge or indeed a super minister.

The first steps in the implementation of the process

Late in July 2007 the government accepted the Ombudsman's proposal to develop a unified system and to widen the remit of his Office so that the Office of the Ombudsman would henceforth service the University Ombudsman and Mepa's Audit Office. The government also indicated that at a later stage it might submit other similar review institutions for inclusion within this new ombudsman structure.

On its part the Opposition agreed that offices such as the Commissioner for Children and autonomous bodies established by law and whose mission converges with that of the Ombudsman can share their administrative set up with that of the Ombudsman but did not agree that these proposals should apply with regard to Mepa's Audit Office and other similar complaint handling offices. The Opposition held that in the case of offices such as Mepa's Audit Office or the Police Board[1] which are part of a department or a public agency, the situation is different in the sense that these are internal audit mechanisms and not autonomous bodies in their own right and argued that if responsibility for the administration of Mepa's Audit Office would be handed over to the

[1] The Police Board which is set up under Title V of Part II of the Police Act and which is appointed by the President of the Republic acting on the advice of the Minister responsible for the Police Force, is required, among its other functions, to inquire into and report on any matter regarding the conduct of the Force or any of its members either on its own motion or on any complaint which it receives or is referred to it by the Minister; to inquire and to report on any complaint made to it by an officer against treatment which he deems prejudicial or discriminatory, or causes him undue distress; and to monitor the conduct of internal police disciplinary proceedings, relations between the Force and the public and the workings of the Internal Affairs Unit within the Police Force. The Police Board is required every year to submit a report of its work to the Minister, the Social Affairs Committee of the House of Representatives and the Commissioner of Police.

Ombudsman, this could be taken to mean that the Audit Office of the Authority would be effectively responsible towards the Ombudsman and would be considered to carry out investigations on his behalf.

Following further consultations between the Office of the Ombudsman and the Malta Environment and Planning Authority as well as Mepa's Audit Office, it was agreed in December 2007 that efforts would be made to detach the Audit Office from the premises of the Authority while the investigative, administrative and secretarial support services which have so far been provided directly to the Audit Office by Mepa would henceforth be provided via the Office of the Ombudsman although staff deployed on assignments for the Audit Office would respond directly to the Audit Officer and only take directives from him while carrying out these tasks under his overall direction and guidance.

It was also agreed that complaints against Mepa should as a rule initially be addressed to the Authority's Complaints Office and that citizens should only resort to the Audit Office in the event that they do not receive a satisfactory reply from the Complaints Office although in exceptional cases whenever it was felt that the case in question merited a direct approach to the Audit Office, this option should be made available to citizens through the Public Relations Office of the Office of the Ombudsman.

The agreement also envisaged that the Audit Officer would retain his own office at the Mepa premises where he would be able to gather evidence and examine documents and plans at his discretion. The official address of the Audit Office would be that of the Parliamentary Ombudsman for Administrative Investigations in Valletta while in the short to medium term the objective will be to relocate the office of the Audit Officer to the same premises occupied by the Parliamentary Ombudsman while at the same time enjoying full authority over his office.

By virtue of these arrangements the Office of the Ombudsman was able to broker an agreement that is expected to pave the way for the establishment of a new working relationship with other complaint handling institutions and to amalgamate and rationalize their services, establish stronger lines of communication and cooperation and enable them to share common standards of good practice. This process of ombudsman reform should establish these institutions on the same statutory foundations while allowing each office under

the proposed new set up to provide the specialist mediatory service that is relevant to its field of operations.

During the latter half of 2007 the Office of the Ombudsman was involved in preliminary work in connection with updated and consolidated legislation that would expand its present remit and serve as the basis of a new public sector ombudsman system that will take on board existing complaint handling organizations and unify their policies including standard criteria and procedures for complaint management and the application in a consistent manner of provision for redress. The proposed legislation will also leave room for the assimilation into the system of other comparable review bodies that might be set up at a later stage.

The draft legislation for a new unified ombudsman service was designed in a way that will draw fully on the key strengths that the Office of the Ombudsman has built since it was launched in 1995 and enable it to operate as a streamlined organization where all complaint handlers work together in the service of the values of good governance, accountability and transparency to scrutinize the executive under the direction of the House of Representatives.

Proposals for cooperation among Ombudsmen of countries in the Mediterranean region

Regular participation by representatives of the Maltese ombudsman institution in international conferences and seminars is seen as a means of keeping in touch with the latest ombudsman values and concepts and of gaining a deeper insight into the work of counterpart institutions and bodies which form part of the large ombudsman community worldwide. Through its participation in these events the Office of the Ombudsman acquires access to the practices and experiences of other national Ombudsmen as they strive to promote accountable public service and to the continued realignment of the ombudsman vision and oversight role to match people's expectations and aspirations.

In this connection it is felt that participation by the Office of the Ombudsman on 8-10 November 2007 in the first meeting of Ombudsmen and Mediators of countries in the Mediterranean region which was organized in Rabat,

Morocco by the *Diwan Al Madhalim* (the Moroccan Institution of Mediation) in collaboration with the *Médiateur de la republique française* of France and *El Defensor del Pueblo* of Spain about *The Mediterranean basin, place for dialogue and consultation: Ombudsmen, players of good governance* deserves mention. The aim of the meeting was to foster cooperation and partnerships among Ombudsmen and mediation institutions in Mediterranean countries; strengthen these institutions to enable them to play a role in favour of justice, equity and good governance, democracy and human rights; and assist countries which as yet have no national mediation organizations to protect human rights to develop this infrastructure.

The Rabat Declaration issued at the end of the meeting stated that the record of democratic principles and of rights and freedoms in the Mediterranean area includes achievements such as constitutional references to human rights; the establishment of democratic institutions and the rule of law; the existence of mediation systems; multiple party systems; the promotion of local democracy through decentralisation; and principles of good governance in the management of public affairs. It was agreed, however, that the road to democracy in some countries in the Mediterranean is marked by the interruption of the democratic process; repression; political violence; infringements to human rights; lack of independence of certain institutions; and several constraints which prejudice the national drive in favour of democracy and institutions that promote democratic principles.

The Rabat Declaration stated that Mediterranean Ombudsmen and mediation institutions acknowledge that democracy is based on the recognition of the inalienable and universal nature of dignity and the equal rights of all human beings; that the rule of law implies the submission of all institutions to the law; the separation of powers; the free exercise of human rights and fundamental freedoms; commitment to the values of justice and equity; and equality before the law.

The Rabat Declaration recognized the need for the basic principles backing the functioning of national institutions for the protection and promotion of human rights as approved by the General Assembly of the United Nations by means of Resolution A/Res/48/134 dated 20 December 1993 known as the Paris Principles in the context of good governance, accountability, administrative transparency and an effective management of public matters.

On the strength of these principles the Rabat Declaration affirmed the attachment of Ombudsmen and mediation institutions in the Mediterranean region to the common values underlying mediation such as conciliation and respect for the principles of justice, equality and the rule of law and also agreed that the consolidation of mediation institutions constitutes an essential component of efforts to promote an environment that is conducive to wider appreciation of these values. In order to achieve these objectives it was felt that given the experience in certain countries in the field of mediation between public administration and citizens, greater cooperation should be developed between mediation institutions in Mediterranean countries in the light of their role in the development of good governance; the reinforcement of ethics in the public service; the promotion of a democratic culture and the protection of human rights.

Guided by this vision, the Rabat Declaration referred to the need to establish an institutional mechanism that would enable Ombudsmen and mediation institutions to coordinate their activities and consolidate their achievements. It was suggested that a permanent committee should be set up that would meet on a regular basis to monitor these activities and consider the feasibility of launching an organization of mediation institutions in the Mediterranean region to attain the objectives that appear in the Declaration.

In line with the spirit motivating the Barcelona Process, the Office of the Ombudsman expressed appreciation and support of the initiatives that were promoted by the Rabat meeting and offered to put at the disposal of the permanent set-up that was being recommended its contribution in terms of sharing its own experience and accumulated knowledge on ombudsman related issues and covering such areas as good governance, complaint handling and respect for the rule of law. The Maltese ombudsman institution also showed interest in learning about the experience of similar institutions in other Mediterranean countries with regard to the way in which the rights of irregular migrants need to be respected at the countries of origin as well as at their points of destination. This will enable the Office of the Ombudsman to appreciate how Ombudsmen and mediation institutions in other countries resolve problems and issues associated with the right of migrants and allow the Office to become more familiar with the background, the culture and problems faced by these people. In turn this should allow the institution to operate more effectively by serving as a means of guidance and education to the country as

a whole and in this way contribute towards the emergence of a culture of acceptance and tolerance at a time when this is known to be somewhat lacking in Malta.

When viewed from the perspectives of Mediterranean neighbours with their different religions, cultures and political and social backgrounds, the establishment of links between various aspects of good governance such as the right to good administration and fundamental human rights should prove an enlightening experience. These links should also contribute towards enhancing the values of communication, consultation and solidarity among Mediterranean societies – and these fundamental values are recognised to give strength and to allow a wider dimension to the ombudsman concept.

2. CASELOAD MANAGEMENT DURING 2007

Overall performance

Table 1 reveals that following two successive years when the incoming caseload declined from 660 in 2004 to 583 in 2005 and 567 in 2006 (a combined drop of 93 grievances or 14%), the year under review experienced a rather sharp rise as the number of written complaints that reached the Office of the Ombudsman went up, merely by chance, by an amount that was on a par with that of the previous two years taken together (93 or 16.4%) to stand at the level that was reached in 2004. This increase was, however, attributable solely to the multiple complaints that were received from members of the Armed Forces of Malta (AFM) and when this factor is taken into account, a decline in overall incoming grievances by individual complainants would otherwise have been in evidence.

In contrast for the second year running the number of enquiries that were handled by the Public Relations Office of the institution showed a remarkable increase. Under this service citizens from all walks of life who find themselves

Table 1
Complaints and enquiries received 1996-2007

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

in a corner as a result of actions and decisions by government departments, agencies and statutory authorities make initial inquiries to find out whether their concerns and any running disputes which they might have with these bodies are eligible to be addressed by the Ombudsman's investigating officers and for the purpose of learning about the way in which the Office tackles admissible grievances and how it conducts its investigations. This service also provides assistance to users of government services who are reticent or might lack confidence or expertise to formulate their concerns in writing against

Chart A
Overview of written complaints during 2007

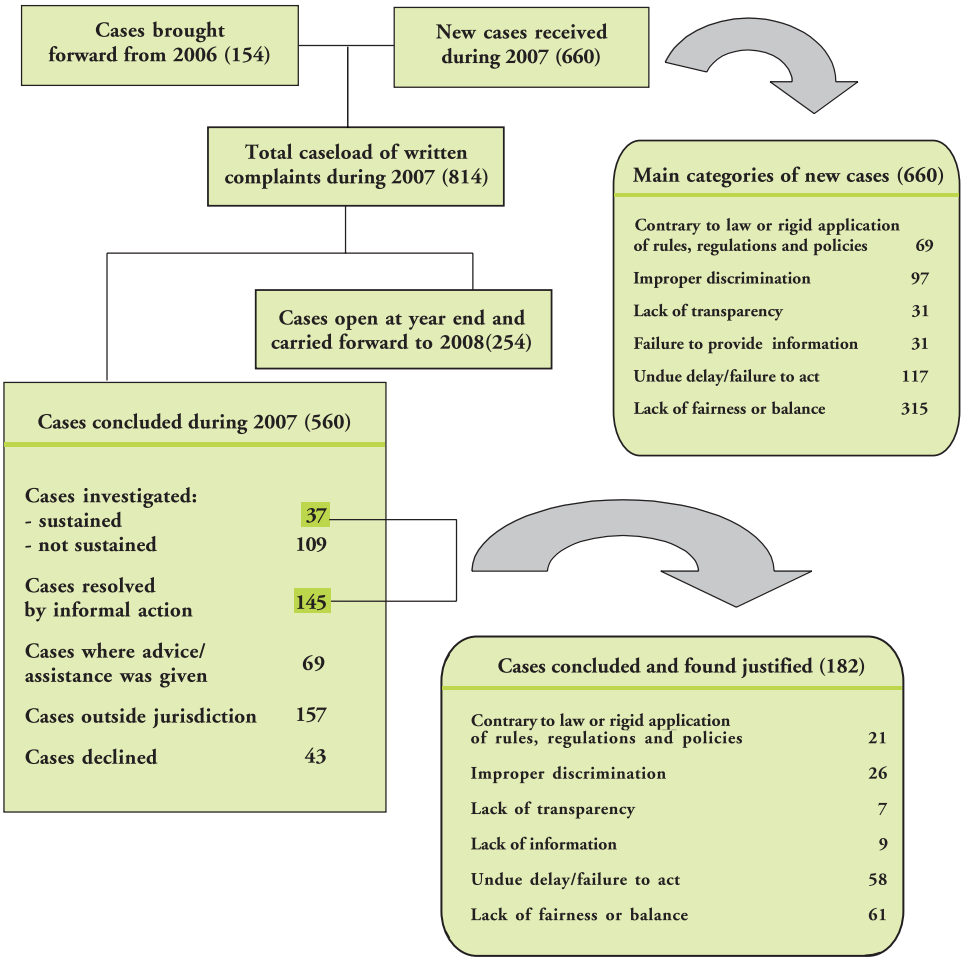
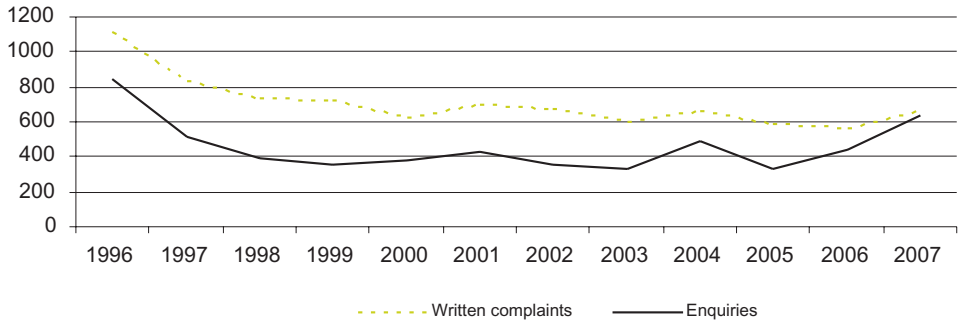


Diagram A
Complaints and enquiries received
1996 - 2007



powerful state bodies since the institution's founding legislation lays down that complaints to the Ombudsman are to be made in writing while oral complaints are to be put in writing as soon as practical.

The number of verbal enquiries logged during 2007 rose steadily by 192 (43.3%) to 635 compared to an increase of 110 (33%) to 443 during 2006. This was the second highest amount of verbal approaches ever made to the Office of the Ombudsman with the peak being reached during the institution's first full year in 1996 when no fewer than 849 citizens sought advice and assistance. Records from the separate data base for these enquiries show that most of them were in relation to matters concerning housing, inland revenue, ownership and expropriation of property, promotions and appointments in the public service, delays and failure to reply to correspondence or to take decisions. Other enquiry issues concerned court delays and issues in the private domain such as job losses in the non-government sector which fall outside the remit of the Office and the Ombudsman has no discretion to undertake an investigation.

Total demand for the Maltese ombudsman service during the reporting year stood at 1,295 – an increase of 285 (28.2%) over the demand level of the previous year. This represented the third strongest customer base that ever made use of the institution compared to 1,961 in 1996 and 1,342 in 1997.

Complaint intake

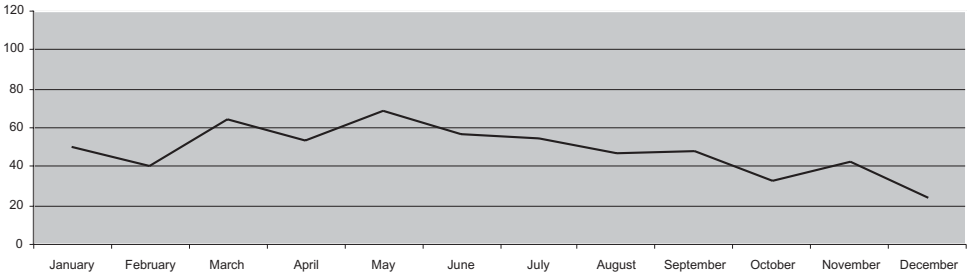
While there was a steady and sustained inflow of complaints throughout most of 2007, midyear was marked by a striking rise in the number of incoming complaints in comparison with the previous year – up by 35 (64.8%) to 89 in May; by 66 (157%) to 108 in June; and by 23 (63.9%) to 59 in July (Table 2). In fact, with the exception of the flurry of new complaints that were registered soon after the opening of the Office of the Ombudsman way back in January, May and November 1996, the intake in June 2007 represented the higher entry ever recorded in a single month in the last eleven years.

This virtual doubling of complaints lodged with the Office of the Ombudsman during these three months occurred largely under the impact of an impressive

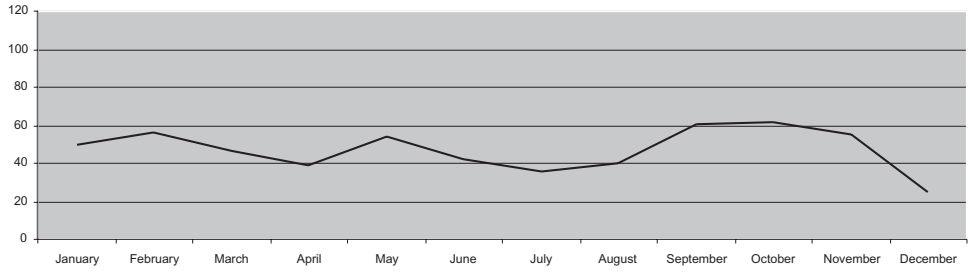
Table 2
Complaint statistics by month
2005-2007

Brought forward from previous year	2005			2006			2007		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
			136			129			154
January	50	57	129	50	66	113	46	55	145
February	40	53	116	56	39	130	40	46	139
March	64	52	128	47	46	131	55	53	141
April	53	76	105	39	38	132	47	66	122
May	69	65	109	54	47	139	89	50	161
June	57	60	106	42	38	143	108	23	246
July	55	51	110	36	26	153	59	40	265
August	47	48	109	40	42	151	55	41	279
September	48	58	99	61	49	163	38	36	281
October	33	30	102	62	51	174	64	75	270
November	43	1	144	55	60	169	32	44	258
December	24	39	129	25	40	154	27	31	254
Total	**583**	**590**		**567**	**542**		**660**	**560**	
Verbal enquiries	**333**			**443**			**635**		

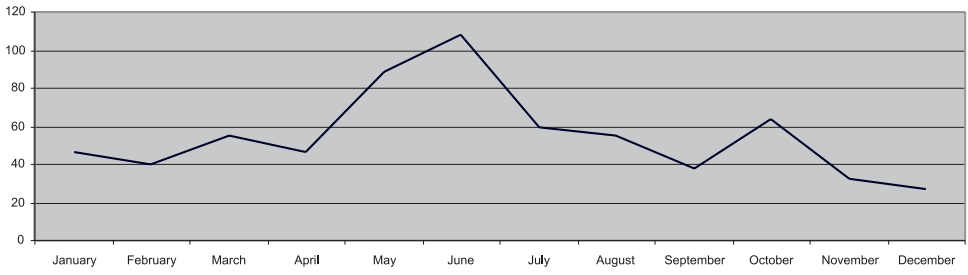
Diagram B
Monthly complaints received 2005 - 2007



2005



2006



2007

wave of grievances from members of the Armed Forces of Malta in the aftermath of a promotions exercise that took place during the previous year. Feeling aggrieved that they had been treated unfairly and that prospects for promotion that they might reasonably have expected during their enlistment with the Force had been prejudiced, men of the force resorted to a scrutiny of their cases by the Ombudsman in relatively large numbers when they felt that they had failed to obtain the remedy to which they believed that they were

entitled under the mechanism for the redress of complaints that is set up under Part VII of the Malta Armed Forces Act. Investigation of most of these grievances proved time-consuming and entailed continuous liaison between the Office's investigative team and the authorities responsible for the management of the Force with a view to ensuring just and consistent outcomes for respondents.

Again as a result of the seeming dissatisfaction of several AFM personnel with the results of the promotions exercise, complaints in this category not surprisingly shot up in an impressive manner to take pole position in the classification of complaints by public service sector (Table 3). Whereas in the previous two years complaints against the AFM management were on the low side, in 2007 the wide level of dissent against these decisions demonstrated itself in the presentation of no fewer than 164 objections to the Office of the Ombudsman. This represented 24.8% of the total number of complaints that were received during the year and was by a long way the complaint area with the highest caseload ever recorded in one single year since the institution was set up, exceeding by far the highest intake that was ever previously recorded – 106 grievances in 1996 as a whole in connection with issues related to environment and development planning control. It should be noted that these complaints, with some exceptions, referred to a promotions exercise that took place after a lapse of over five years and that was long overdue.

Statistics in respect of complaints against public bodies and agencies that are subject to the Ombudsman's jurisdiction show that for the second year running allegations of maladministration against the Malta Environment and Planning Authority (Mepa) ranked in second position in terms of complaint issues with 44 cases or 6.7% of the total incoming workload compared to 41 (7.2%) in 2006. In this connection it is relevant to point out that under the terms of the Ombudsman's remit, cases concerning planning and building and development control such as building construction that is not in accordance with approved plans, breaches of planning control, administrative errors in the processing of applications, failure to take action against unauthorised development and failure to take due account of the effects of proposed new development on neighbouring amenities can only be scrutinized by the Ombudsman if the respondent has already approached the Audit Officer of the Malta Environment and Planning Authority and remains dissatisfied by his response or is unconvinced by his ruling. Some of the investigations that

Table 3
Distribution of complaints received by type of public service sector 2005-2007

Sector	2005	2006	2007
Armed Forces of Malta	11	8	164
Agriculture	9	5	6
Air Malta	6	5	14
Corradino Correctional Facility	1	4	-
Courts	13	9	3
Customs	5	3	-
Education	28	29	26
Elderly	5	2	5
Enemalta Corporation	30	19	20
Health	35	32	29
Housing	-	11	10
Housing Authority	8	12	7
Inland Revenue	51	30	32
Joint Office	7	3	5
Land	22	15	15
Local Councils	63	47	33
Malta Maritime Authority	4	10	6
Maltacom	5	10	1
Malta Enterprise	4	1	2
Malta Shipyards	3	2	3
Malta Transport Authority	45	33	36
Management & Personnel Office, OPM	12	23	25
Public Broadcasting Services	2	2	-
Malta Environment & Planning Authority	34	41	44
Police Force	16	18	27
Public Service Commission	7	9	2
Roads	-	1	-
Social Security	20	31	26
Tourism	4	4	-
Treasury	6	2	6
University of Malta	6	10	3
VAT	2	7	1
Water Services Corporation	21	22	17
Works	5	5	1
Others	93	102	91
Total	**583**	**567**	**660**

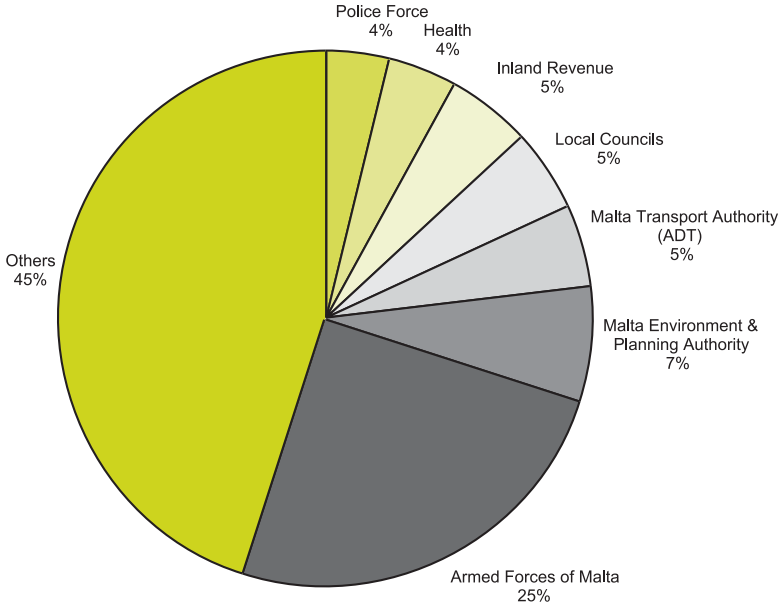
were conducted by the Ombudsman under this complaint category during the year under review had deep and wide-ranging implications that affected a relatively large number of citizens in various localities especially in the southern region of Malta and a result the Ombudsman's findings in these cases made headlines and received extensive coverage in the media.

Reference has been made in an earlier section in this report to the proposal that was put forward by the Ombudsman in mid-2007 to the government to establish a single unified ombudsman service that envisaged as a first step the incorporation, among others, of the Audit Office of the Authority into the Office of the Ombudsman. Following the government's approval of this suggestion, all the parties involved entered into a Memorandum of Understanding which provided that as from 1 January 2008 the Authority's Audit Office would be able to make use of the investigative and administrative services that are available at the Office of the Ombudsman and that staff performing these duties for the Audit Officer would be directly answerable only to him. Since these arrangements were not yet in place by the end of the period under review, the Ombudsman's approach to the handling of complaints in this area and the degree of his involvement in these issues were guided by the same criteria as in previous years; and as a result, for the purpose of this report the number of incoming cases in 2007 is comparable with that of earlier years.

The Malta Transport Authority was yet again in third place in terms of new complaint intake for 2007 with 36 complaints or 5.5% of the total incoming caseload by complaint subject. These complaints to a large extent centred on issues related to vehicle registration tax, parking, allegations of arbitrary treatment including unfair regulations and requests for compensation for damage suffered by car owners. In this respect it should be pointed out that consultations on this latter issue went on during the year to establish criteria and procedures that should regulate such claims so that, where possible, recourse to judicial proceedings is avoided.

At the same time local councils, which since 2004 had topped the list for three consecutive years as the main target for complaints, experienced another drop and slipped to fourth position with a total of 33 complaints or 5.0% of the total number of incoming grievances. This amounted to a virtual halving of the amount of complaints lodged against local councils in 2005 that stood at

Diagram C
Shares of complaints received 2007



63 (10.8%). An analysis of these complaints by subject shows that they arose preponderantly in relation to street management and traffic control issues while in a few other complaints, respondents took exception to the imposition of fines for what they regarded as contraventions that were manifestly unjust.

There were several other areas of administration that virtually maintained the same level of complaints as in the previous year. A case in point was the number of complaints raised against the revenue authorities with 32 complaints (4.8%) in 2007 compared with 30 (5.3%) in 2006. Several respondents resorted to the Ombudsman because they were aggrieved at the fact that they were still being asked to settle outstanding bills for the payment of tax or of tax arrears which they considered unjustified despite objections which they had raised earlier with the Inland Revenue Department while others were upset because their requests for a refund of overpaid tax amounts continued to face a brick wall.

Other matters of administration that more or less maintained the same complaint level included the state healthcare service with 29 complaints (4.4%) in 2007 compared to 32 (5.6%) in 2006; education with 26 grievances (3.9%) in 2007 as against 29 (5.1%) in 2006; and social security with 26 complaints (3.9%) in 2007 and 31 (5.5%) in 2006.

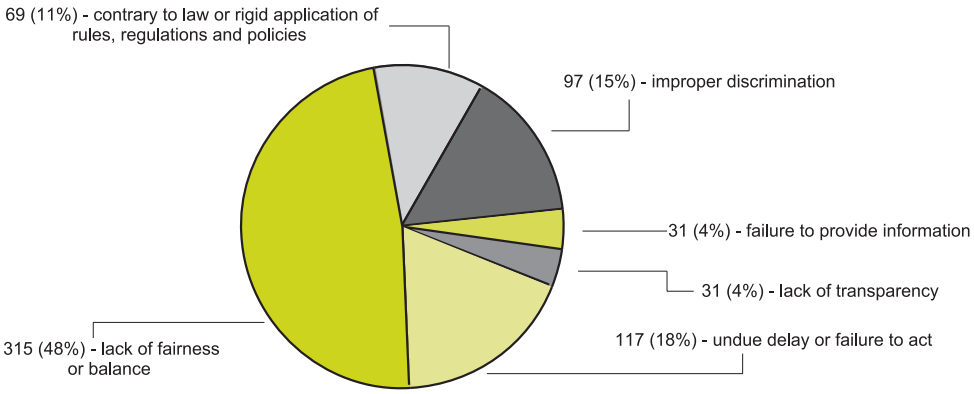
These records show that taken as a group the four bodies that were most complained about generated 277 grievances or 42% of total incoming complaints during 2007 while the four public service sectors that were next on the list accounted in all for 113 complaints (17%). Although it is normal for a larger share of registered new complaints to be attributed to a few public bodies, the very high incidence of AFM complaints in the year under review contributed in no small way to a relatively much higher proportion of complaints that originated from a small number of areas than in previous years.

A detailed breakdown of complaints that were dealt with during 2007 by the Office of the Ombudsman according to the type of maladministration that was alleged by respondents (Table 4) shows that there was a sharp rise in the number of complaints that were attributed to lack of fairness or balance: up from 195 (or 34% of the total incoming caseload in 2006) to 315 (48%) in 2007. Even here this increase was largely attributable to the gush of complaints that arose following the award of promotions to AFM personnel who alleged

Table 4
Complaint grounds
2005-2007

Grounds of complaints	2005		2006		2007	
Contrary to law or rigid application of rules, regulations and policies	156	27%	61	11%	69	11%
Improper discrimination	77	13%	127	22%	97	15%
Lack of transparency	38	6%	25	4%	31	4%
Failure to provide information	30	5%	20	4%	31	4%
Undue delay or failure to act	155	27%	139	25%	117	18%
Lack of fairness or balance	127	22%	195	34%	315	48%
Total	**583**	**100%**	**567**	**100%**	**660**	**100%**

Diagram D
Categories of complaints received (by type of alleged failure) 2007



that they had been treated unfairly when they were passed over for promotion in favour of other candidates with lower qualifications and lesser experience. Mainly as a result of this strong influx of complaints, this category was for the second year running the highest source of grievances and accounted for almost half of the incoming caseload.

Failure by officials holding public authority to respond in time or even to act at all caused concern among several citizens who approached the Office of the Ombudsman and 117 grievances or 18% of new complaints that were received during 2007 were caused in this way. Improper discrimination was another strong single source of distress among complainants although the number of incoming complaints in this category dipped from 127 in 2006 to 97 in 2007 and its relative share eased from 22% to 15%.

With the Armed Forces of Malta forming part of the portfolio of the Office of the Prime Minister and given the massive rise in complaints from members of the AFM, it comes as no surprise that the OPM tops the list of public authorities with the highest number of complaints – 191 (29%) in 2007 compared to 42 (7.4%) in 2006. As a result of this development the Ministry for Justice and Home Affairs that traditionally leads this list eased into second position – from 107 complaints (18.9%) in 2006 to 93 (14.1%) in 2007. On

the other hand the Ministry for Investment, Industry and Information Technology maintained its third place in this list with 68 complaints in 2006 (12%) and 63 in 2007 (9.5%). Taken together, these three leading complaint sectors accounted for 347 grievances (52.6%) that were lodged with the Office of the Ombudsman during the period under review (Table 5).

Table 5
Complaints received (classified by ministry) 2006-2007

	2006	2007
Office of the Prime Minister	42	191
Ministry of Finance	53	48
Ministry for Justice and Home Affairs	107	93
Ministry of Education, Youth and Employment	54	51
Ministry for Tourism and Culture	10	2
Ministry for Competitiveness and Communications	17	9
Ministry for Resources and Infrastructure	7	5
Ministry for Gozo	10	7
Ministry of Health, the Elderly and Community Care	39	38
Ministry for Investment, Industry and Information Technology	68	63
Ministry for Rural Affairs and the Environment	50	54
Ministry for Urban Development and Roads	34	36
Ministry for the Family and Social Solidarity	62	48
Ministry of Foreign Affairs	2	2
Outside jurisdiction	12	13
Total	**567**	**660**

The number of cases still under investigation that stood at 254 at the end of 2007 (Table 7) was well above the level of pending issues in previous years. Here again this backlog reflects the heavy AFM complaint load; and the fact that 150 open files (59%) had been on the Ombudsman's agenda for more than five months and were still in hand at the end of the year was in effect an indication of the Ombudsman's deliberate decision to release his rulings on all these cases in one go so as to ensure consistency both in his investigative approach as well as in his findings and final recommendations. Given the magnitude of the task to conclude all these investigations together, work on this assignment had not yet been concluded by the end of December 2007.

Table 6 Incoming complaints by locality 2005-2007

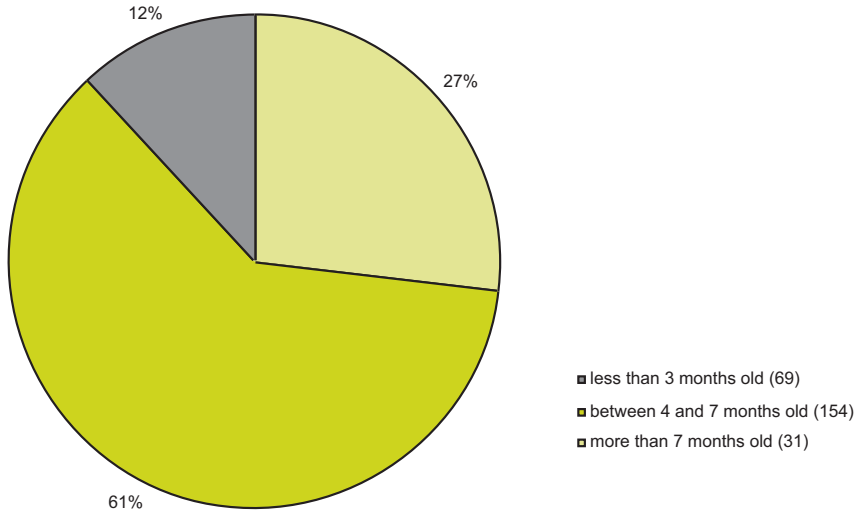
Locality	2005	2006	2007
Attard	29	29	24
Balzan	5	11	7
Birgu	3	1	8
Birkirkara	38	28	41
BirŻebbuġa	15	15	19
Bormla	9	7	11
Dingli	6	9	3
Fgura	18	15	14
Floriana	6	4	2
Għargħur	2	2	3
Għaxaq	4	1	4
Gudja	3	1	9
GŻira	7	11	10
Ħamrun	10	18	10
Iklin	4	2	9
Isla	-	2	3
Kalkara	3	6	6
Kirkop	4	-	3
Lija	4	4	7
Luqa	7	5	6
Marsa	4	4	4
Marsaskala	15	19	21
Marsaxlokk	5	3	6
Mdina	1	-	-
Mellieħa	9	10	12
Mġarr	2	1	1
Mosta	29	18	29
Mqabba	3	3	5
Msida	11	12	14
Mtarfa	3	5	3
Naxxar	19	17	24
Paola	1	10	14
Pembroke	7	5	6
Pietà	11	10	8
Qormi	13	10	20
Qrendi	5	1	3
Rabat	24	13	13
Safi	4	4	3
San Ġiljan	22	20	15
San Ġwann	18	17	20
San Pawl il-Baħar	19	14	18
Santa Luċija	6	6	5
Santa Venera	9	7	4
Siġġiewi	9	6	14
Sliema	23	29	29
Swieqi	15	14	8
Ta' Xbiex	4	2	3
Tarxien	11	12	9
Valletta	16	23	16
Xemxija	-	2	-
Xgħajra	1	1	2
Żabbar	22	22	39
Żebbuġ	8	8	10
Żejtun	10	6	17
Żurrieq	5	12	20
Gozo	36	48	39
Other	-	-	1
Overseas	6	2	6
Total	583	567	660

Table 7
Age profile of open files in hand at end 2007

Age	Cases in hand
Less than 2 months	30
Between 2 to 3 months	39
Between 4 to 5 months	35
Between 6 to 7 months	119
Between 8 to 9 months	10
Over 9 months	21
Total open files	**254**

In this regard despite the circumstances associated with the heavy influx of AFM complaints, the Office was by and large able to attain its goals for complaint management in terms of time taken to reach outcomes on complaints that was consistently in line with the institution's established standards for service delivery and with clients' expectations.

Diagram E
Shares of open complaints by age (at end 2007)



Complaint outcomes

The output of the Office in terms of cases that were finalised during 2007 rose marginally over the previous year: from 542 closed files in 2006 to 560 (Table 8). Of these closures, 146 cases (26.1%) were subjected to a full-scale formal investigation (compared to 155 or 28.6% in 2006) where the substance of the complaints was thoroughly addressed by the institution's investigative team and enabled the Ombudsman to form an opinion as to whether the basis of the complaint was justified or whether there was no maladministration on the part of the public body involved. Whatever the outcome of these investigations, the Ombudsman gave detailed explanations in writing to complainants of the reasons that had guided his final opinions and, where appropriate, put forward recommendations for remedial action or for improved administration by several public service bodies.

The Office remains generally satisfied with the response given by public bodies to issues that were referred to them in connection with complaints that were under investigation and with the cooperation that was extended to members of its staff. Departments and other public institutions were to a large extent receptive to the findings of the Office and to its insistence on good administrative practice and on appropriate measures in instances of

Table 8
Outcomes of finalised complaints
2005-2007

Outcomes	2005	2006	2007
Cases investigated	204	155	146
of which: sustained	[53]	[48]	[37]
not sustained	[151]	[107]	[109]
Resolved by informal action	104	141	145
Given advice/assistance	140	50	69
Outside jurisdiction	127	158	157
Declined (time-barred, trivial, etc)	15	38	43
Total	**590**	**542**	**560**

maladministration and in most cases showed a favourable disposition towards the Ombudsman's recommendations.

The total number of sustained cases during 2007 amounted to 37 or one-fourth of the complaints that were accepted for investigation and a mere 6.6% of the caseload that was concluded throughout the period under review. This showed a drop from the 48 grievances that were upheld during the previous year or 31% of the cases that were investigated and which in turn represented 8.9% of complaints that were closed in 2006.

Cases which were investigated and brought to a conclusion during 2007 and which in the Ombudsman's view were not justified stood at 109 or 19.5% of the total number of completed complaints; and this performance matched the previous year's level when in 107 cases (19.7%) there was insufficient evidence to back or substantiate the issues raised in these grievances and the Ombudsman did not find in favour of complainants.

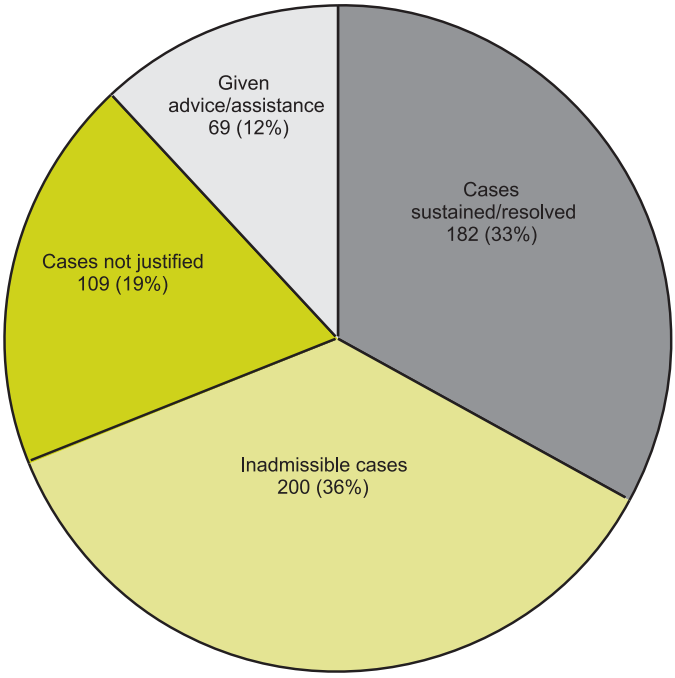
In all the cases that were actioned by the Ombudsman and his investigative staff and where a formal investigation was opened, the examination of the issues that were involved was brought to a conclusion by means of a written report that outlined the details of the case and provided a reasoned explanation of the Ombudsman's final ruling together with any necessary recommendations in order to resolve the complaint. In cases with outcomes that were favourable to complainants, the Ombudsman took the necessary follow up action to ensure that the public body in question would respond to his recommendations and that the rights of complainants to a fair and equitable solution of their concerns, including the award of any appropriate means of redress, would be respected.

At the same time whenever there are lessons that can be learnt from procedural weaknesses, mistakes and systemic problems that come to light from instances of maladministration that are identified by the Ombudsman in the course of his investigation of individual complaints, these occasions serve to spur public bodies that fall under his scrutiny to introduce and apply the necessary changes and improve their practices and administrative processes and procedures as a means of avoiding the recurrence of these causes for complaint. This is of course one of the benefits that may be derived from an effective complaints system such as the one provided by the Ombudsman especially when other branches of the public administration which have similar functions and

responsibilities towards citizens are prepared to learn from these experiences and from other noteworthy case studies that appear in the Office's biannual publication called *Case Notes*. The strongest contribution that can be made by the Ombudsman towards an improvement in the quality of the public service is when his recommendations and advice, especially those having a wider application, are acted upon and observed by public service providers; and on the whole there is ample evidence that on several occasions the guidelines that are set by the Ombudsman are in fact followed and bring about tangible improvements in standards of customer service.

The Ombudsman's mediatory role was also conspicuous from the 145 cases that were discontinued during the period under review upon being brought to a successful resolution on the strength of preliminary inquiries and informal action taken by his Office. These conciliations amounted to 25.9% of the year's closures and were virtually at the same level of the previous year when

Diagram F
Percentages shares of completed complaints 2007



141 cases (26%) were resolved in a similar manner. In addition during 2007 the Ombudsman gave advice and assistance to 69 other individuals (12.3%) compared to 50 (9.2%) in 2006 and on these occasions this proved sufficient to draw these persons from any potential conflict with the public bodies involved and resolve the situation to the benefit of all the parties concerned.

During 2007 the Office disposed of a total of 200 non-jurisdictional complaints (35.7%) that fell outside the Ombudsman's remit since they were statute barred or else were declined on the grounds that they were reported to the Ombudsman later than six months when the complainant first had knowledge of the subject matter of the complaint as stipulated in subsection 14(2) of the Ombudsman Act. In terms of numbers this was just four complaints higher than in the previous year when 196 invalid cases (36.2%) were turned down because an investigation was unwarranted.

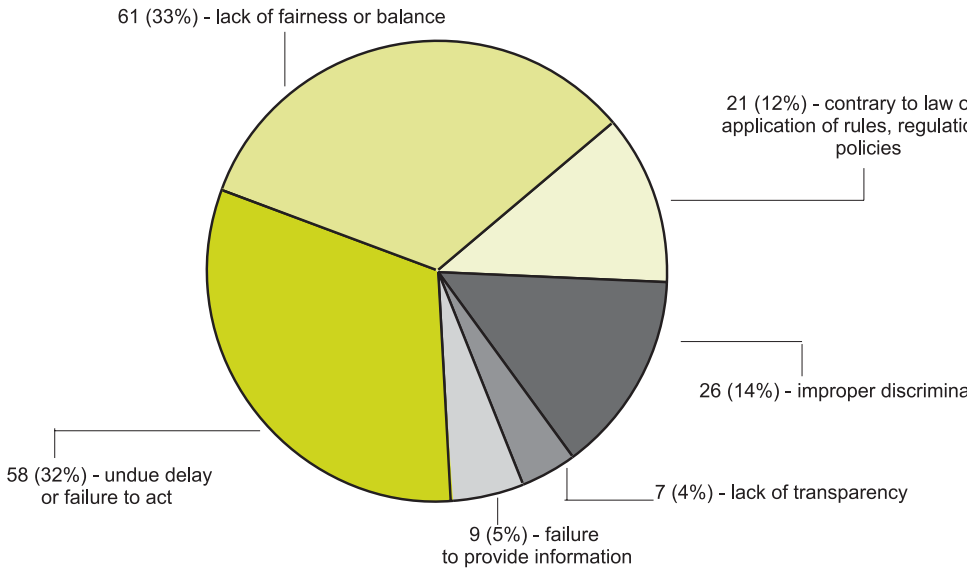
The incidence of grievances lodged with the institution that are deemed to have been substantiated and that uphold the complainants' stand can be measured by the amount of sustained cases following an investigation together with the number of cases that are resolved on the strength of informal action taken by the staff of the Ombudsman. In the reporting year the amount of cases that were justified eased slightly: down from 189 or 34.9% of total completed complaints in 2006 to 182 (32.5%).

Table 9
Cases concluded and found justified
(classified by main categories of resolution) 2005-2007

Closing status	2005		2006		2007	
Contrary to law or rigid application of rules, regulations and policies	30	19%	34	18%	21	12%
Improper discrimination	18	11%	31	16%	26	14%
Lack of transparency	12	8%	4	2%	7	4%
Failure to provide information	8	5%	10	5%	9	5%
Undue delay or failure to act	59	38%	59	31%	58	32%
Lack of fairness or balance	30	19%	51	28%	61	33%
Total	157	100%	189	100%	182	100%

In line with the swing that first set in during 2006, the share of finalised cases that was attributed to lack of fairness or balance maintained a steady upward path during 2007 and represented the most frequent closing status as it rose to 61 (33% of all cases concluded and found justified) compared to 51 (28%) in 2006. At the same time delays and failure by public bodies to take the necessary decisions and actions led to 58 instances (32%) that were found justified against 59 (31%) during the previous year. Of the remaining cases, sustained grievances during 2007 that arose due to improper discrimination amounted to 26 (14%) whereas 21 grievances (12%) took place as a result of actions and decisions by public bodies that were considered in breach of the law or that were based on a rigid application of rules, regulations and policies which in the end caused injustice to the respondents that was ascertained by the Ombudsman's own investigation.

Diagram G
Cases concluded and found justified (classified by major categories) 2007



3. SELECTED CASES

The couple who were made to pay someone else's penalty

A couple who purchased a plot of land from the Joint Office were taken aback to find that although the Malta Environment and Planning Authority (Mepa) approved their application for a permit to build a semi-detached villa on this site, they were warned that this permit would not be issued until the Authority would recover expenses which it incurred to remove the encumbrance caused by the illegal occupation of the site by the owner of an adjoining plot before they had purchased this land. Although they held that Mepa had no authority to impose this condition, the couple had no alternative but to pay the sum of Lm300 under protest in order to obtain the planning permit.

At this stage the couple referred the matter to Mepa's Audit Officer who confirmed the stand taken by the Authority on the grounds that when complainants acquired the property they also assumed all the obligations which the title to this property imposed upon them and that under the Development Planning Act no permit may be issued on a site until the Authority recovers monies due to it. Faced with this situation the couple resorted to the Office of the Ombudsman for a refund of this sum and to seek compensation for Mepa's delay to issue a development permit.

When the Ombudsman took up the case he confirmed that illegal development had in fact taken place on this site well before the purchase of the land by complainants. He also confirmed that at that time this land belonged to the Joint Office and that it was this Office that had allowed unauthorised works to be carried out by a third party without taking the necessary action to stop them. However, since the Joint Office failed to comply with an enforcement order issued by Mepa, the Authority had taken direct action itself at a cost of Lm675 to evict the transgressor.

The Ombudsman's investigation revealed that when Mepa failed to recover from the Joint Office the expenses that it incurred to remove the illegal development, the Authority sought to recover these costs at the next available opportunity by

imposing a fine on the new owners of the property. Records seen by the Ombudsman showed that although at first Mepa claimed payment of the full amount of Lm675 from complainants, however, in view of the peculiar circumstances of the case and since complainants were not the owners of the land when the illegal works took place, the Authority agreed to lower its claim to Lm300 as a sign of goodwill if complainants were prepared to pay this amount on behalf of the Joint Office.

Mepa justified its stand on this issue by making reference to the proviso in subarticle 34 (1b) of the Development Planning Act which states that a development permission by the Authority shall not be granted unless the applicant or his predecessor in title "… (has) … *paid such fines or made such other payments as may be due by reason of any offence under this Act.*" The Ombudsman, however, pointed out that article 34 of the Development Planning Act should be taken in its entirety. This article states as follows:

"*34. (1) In any case in which the Authority may under this Act grant permission to develop land it may grant permission for the retention on land of any buildings or works constructed or carried out thereon, or for the continuance of any use of land, without permission under this Act or after such permission has ceased to be valid or operative; and references in this Act to permission to develop land or carry out any development on land, and to applications for such permission, shall be construed accordingly:*

Provided that permission under this subarticle shall not be granted except on an application for such permission and unless the applicant or his predecessor in title has:

(a) forthwith upon being required to do so, ceased to carry out any works he was required to interrupt; and
(b) paid such fines or made such other payments as may be due by reason of any offence against this Act."

The Ombudsman noted that complainants had argued, however, that this section of the Development Planning Act was not applicable in their case since they had not applied for the retention of any buildings that had been carried out without permission or to retain any illegal use of these works.

In his consideration of this grievance the Ombudsman took into account two vital aspects – the legal aspect and the administrative viewpoint.

From the legal point of view the Ombudsman noted that the Authority as well as its Audit Office had referred to subarticle 34(1b) of the Development Planning Act without placing this subarticle in the context of the body of article 34 which refers to permission for the retention on the land of any building or works constructed or carried out thereon for the continuance of any illegal use of land.

Since the demolition of illegal buildings by Mepa had taken place well before complainants purchased the land, it was obvious that they were not seeking the sanctioning of any illegal construction or works that were built earlier on the land or to retain any buildings and works and make use of any such structures. The Ombudsman therefore ruled that in this case subarticle 34 (1b) was not applicable.

From an administrative point of view the Ombudsman stated that by its attitude in this case to impose a penalty at will, it was obvious that the Authority had used its power to its advantage in order to recover costs that it incurred to remove the illegal works that had taken place on this site. While it was true that it first attempted on the one hand to claim from the Joint Office as the owner of this site the expenses which it had incurred and eventually it reduced its claim by some 50%, on the other hand it was clear that between the removal of the illegal development on the site and the purchase of the land by complainants, there was more than ample time for the Authority to recoup its expenses from the person who had carried out the illegal works and whose identity was well known or from the Joint Office itself. At the same time, if Mepa for some reason or other felt that it should not insist upon the Joint Office to settle these costs, it should at least have advised this Office to impose a condition regarding settlement of this outstanding claim to any person who showed interest in purchasing this site. Mepa, however, failed to do anything of the sort.

The Ombudsman concluded that application of subarticle 34(1b) in this case did not appear to be sanctioned by law and that Mepa was not correct to insist that complainants should pay expenses in connection with the direct action that it had taken on the site. Indeed, of its very nature the fact that it had taken enforcement action some years earlier eliminated the possibility of applying this provision of the law in respect of complainants' application.

As a result the Ombudsman was of the view that the Authority had overstepped its rights and that even the reduced amount of Lm300 that Mepa had insisted upon under threat that the development permit that had already been approved would not be allowed to go ahead, was not payable to the Authority.

The Ombudsman also concluded that the precedent adopted by Mepa amounted to maladministration since even if the Authority felt that it should not insist upon the Joint Office to refund the costs which it incurred in order to implement its enforcement action, there was ample opportunity to make alternative arrangements with the Joint Office so that any outstanding costs would be recovered when the land would be sold.

For these reasons the Ombudsman ruled that the complaint was justified and recommended that Mepa should issue a refund of the sum of Lm300 which complainants had paid under duress.

Soon after the Ombudsman issued his final report on this grievance Mepa's Legal Consultant informed complainant that the Authority had decided not to follow up the Ombudsman's recommendation.

On his part the Ombudsman took up the issue with government and wrote that this case presented an anomalous situation that had been faced in other complaints where persons were made to pay fines and penalties for an offence that they had not committed and for which they had not been charged. He pointed out that these apparently unjust situations were attributable to legislative provisions and regulations and were not limited to planning legislation but could also be found in traffic laws, licensing regulations, billing for services, etc. The Ombudsman stated that he planned to examine this situation in greater depth with a view to ensuring that as much as possible fees, dues and penalties will in fact be paid by those responsible for their payment and innocent and unwary citizens will be protected from undue harassment while at the same time there will be appropriate means to guarantee that monies due to the government or to public authorities will be recovered.

The government, however, disagreed with the Ombudsman's conclusion since it considered that the enforcement of planning regulations is an action that benefits the community in general as well as individuals and neighbours who may be adversely affected by building development. Claiming that enforcement

of regulations is important to the entire planning system, the government insisted that it is not unreasonable to expect buyers to ensure that property which they are considering to purchase conforms to planning permits and regulations and that any outstanding fines or other costs related to the property under consideration are duly settled.

At the same time the government felt that since the removal of a building or planning illegality by means of direct action by Mepa is the last resort against any such illegality and the possibility to recoup costs incurred as a result of direct action further strengthens the Authority's hands in similar situations, it was felt that allowing the sale of a property to third parties without allowing Mepa the possibility to recoup the costs of direct action from the new owner would constitute a loophole that would undermine the whole process.

Harsh disciplinary action for a minor offence

A member of Air Malta's cabin crew alleged in a complaint with the Office of the Ombudsman that she was treated unjustly in the way she was hastily suspended and disciplined by the company. As a result, she lost her salary and other financial benefits since her suspension lasted longer than the eight weeks that were finally inflicted on her by the company's Appeals Board and she had to forego additional income that she could have earned during summer.

Complainant also alleged discriminatory treatment and cited instances where more serious offences by other employees were treated in a lighter manner by Air Malta and held that her case should not have been considered as a serious offence under the Collective Agreement between the national airline and the Union of Cabin Crew.

Although complainant submitted her grievance almost two years after the Appeals Board reduced the suspension inflicted by the Board of Discipline and this interval exceeded the limit of six months stipulated by section 14(2) of the Ombudsman Act, the same section provides that the Ombudsman may still conduct an investigation if he considers that there are special circumstances that make it proper for him to do so. In this case the Ombudsman felt that

some elements of the complaint justified the exercise on his part of the discretion allowed by law because of the serious principles that were involved in this grievance.

The Ombudsman found that the sequence of events was as follows.

Soon after the arrival of an Air Malta flight at Malta International Airport on the evening of 2 June 2004, the cabin crew on this flight passed through the red channel in the customs area. At that time this area happened to be unmanned. In the absence of any officials to inspect their hand luggage, the crew continued on their way to the Arrivals Lounge where they were spot-checked by officials from Air Malta's Internal Audit Unit and found to be carrying various items in their hand luggage.

Complainant was found in possession of a few in-flight food items belonging to Air Malta and two cartons of cigarettes on which duty had not been paid. All these items were confiscated. The cigarettes were handed to the Customs Division but were released to her a few days later after she paid the customs duty that was due as well as a fine to the Division.

On 3 June 2004 complainant was suspended on half her basic pay on the grounds that she was guilty of a serious offence under the Collective Agreement. According to the Agreement, in case of a serious offence a full investigation of the circumstances will be carried out and the employee may be suspended on half basic pay during the period of investigation until a disciplinary hearing is held. The Collective Agreement lists gross inaptitude, incompetence and misconduct as well as theft and breach of security procedures and regulations as serious offences but states that this is not an exhaustive list and other serious offences can prejudice the relationship between the company and its employees.

On 16 June 2004 complainant was charged with the possession of items belonging to the company and the illegal importation of cigarettes. The first charge was considered as a serious offence that was in breach of the Collective Agreement while the second offence breached customs regulations.

During a hearing by the Board of Discipline on 29 July 2004 complainant pleaded that she had not even been called to give her version of events and that her suspension on half pay was disproportionate to the alleged offence.

She also pleaded that her action did not constitute theft as stipulated in the Collective Agreement since only customs regulations were breached when cigarettes were found in her possession but added that this matter was regularized with the payment of duty to the customs authorities. Air Malta in turn insisted that a breach of the security procedures of the company and of regulatory bodies is a serious offence and that the Customs Division is one such regulatory body operating inside the air terminal. Air Malta held that complainant's action constituted a serious breach of regulations issued by the airport authorities.

On 16 August 2004 the Board found complainant guilty of the charges brought against her and suspended her from work without pay for six months. She was also to forfeit the half pay withheld from her salary during the period of suspension.

Complainant appealed on the following grounds:

- the Board failed to give any motivation for its decision;
- evidence heard by the Board cleared her of any serious breach of security procedures;
- the charge of illegal importation of cigarettes does not fall under the Collective Agreement while breach of customs regulations falls outside Air Malta's jurisdiction;
- the penalty imposed was heavily disproportionate to the value of the in-flight food items involved and was highly discriminatory since in similar incidents the employees had not been subjected to such harsh disciplinary action; and
- she was not allowed to give her version of events in the course of the investigation about the incident.

The Appeals Board set up by Air Malta heard the appeal on 9 September 2004 and considered two main charges against complainant: the possession of items that belonged to the company and the illegal importation of cigarettes. The Board quashed the decision of the Board of Discipline with regard to the charge of theft of company property after the airline admitted that it could only accuse complainant of unauthorised possession of company goods and the Board found that there is no reference in the Collective Agreement to any such offence. The Board, however, agreed that unauthorised possession of company

property constitutes a serious wrongdoing and that this charge had been proven since complainant herself admitted that the food items found in her possession belonged to Air Malta.

The Appeals Board also concluded that Air Malta is obliged to observe and to ensure observance of the country's laws and regulations and that since the Customs Division is a regulatory authority in terms of the law, Air Malta cannot turn a blind eye in the case of infringement of local laws.

The Board felt that a violation of customs regulations amounts to a breach of national law and that despite action taken by the Customs Division, Air Malta was still within its right under the Collective Agreement to consider the illegal importation of cigarettes as a serious breach of security procedures adopted by a regulatory body operating inside the air terminal building.

At the same time the Appeals Board agreed that complainant had not been approached to give her version of events. It also agreed that the Board of Discipline had not given any reasons for its decision and recommended that in future all decisions by this Board should be motivated.

The Appeals Board finally recommended that since complainant was guilty of unauthorised possession of company property and the illegal importation of cigarettes, the penalty should be reduced to eight weeks suspension on no pay with effect from 3 June 2004 at the end of which she would be reinstated on full pay.

The first point raised by the Ombudsman in his investigation was that Air Malta had not allowed complainant to state her case and acted on the basis of a report by its Internal Audit Unit that during a spot-check complainant had in her possession some in-flight food items that were company property and two cartons of cigarettes on which duty was not paid by the time she exited the customs area. The Ombudsman observed that Air Malta's failure to act diligently in the first instance by hearing complainant's version of the way in which events unfolded was discriminatory.

The Ombudsman commented that it was difficult to understand how unlawful possession of company property consisting of a few petty items that cost a mere Lm0.60 constituted a serious offence. It was also difficult to understand why

complainant's action was considered as a serious offence when other employees found in possession of more expensive in-flight food items and drinks belonging to Air Malta were given much lighter forms of punishment. In this respect the Ombudsman pointed out that company policy in respect of food items such as those found in complainant's possession that are surplus to flight requirements and cannot be used on other flights is that these items are to be destroyed.

The Ombudsman referred to the charge against complainant of importing cigarettes without paying customs duty and observed that if there was any evidence that she intended to avoid customs duty or that she failed to do anything that she was obliged to do when passing through customs, there would have been grounds to consider this as a serious offence in terms of the Collective Agreement. However, Air Malta failed to verify what actually happened by means of the video security system that covered the customs area at the Malta International Airport and that captured the whole incident on film when complainant and her colleagues passed through the red channel; and had Air Malta done so, it would have been reasonable to expect the airline to reach a different conclusion on the incident. The Customs Division in turn confirmed that complainant and her colleagues had passed through the red channel in the customs area that was unmanned at that time and disciplinary action had been taken against the official who left the counter unattended.

According to the Ombudsman complainant had no obligation to wait for a customs official and she could not be deemed to have acted maliciously when she walked out of the customs area with her colleagues since Air Malta had not issued any instructions to its employees to call or to wait for the arrival of customs officials in such a situation. The Ombudsman pointed out that the company's failure to give due consideration to evidence provided by the MIA's security video tapes and failure by the Appeals Board to consider these facts in its deliberations constituted a serious shortcoming since this would have given a clear indication whether complainant intended to breach any security procedures.

The Ombudsman also observed that the Appeals Board recognized that the Board of Discipline gave no motivation for its ruling and had recommended that in future such rulings should include adequate reasons so as to back any declarations of guilt. The Ombudsman stated that this concept is a

fundamental right of citizens and it is the responsibility of Air Malta to ensure that this right is respected. At the same time he observed that although the Appeals Board referred to the failure by the Board of Discipline to motivate its decision, the Appeals Board did not overturn this decision.

The Ombudsman stated that it is a basic rule of due process that a declaration of guilt has to be adequately motivated to allow for a proper consideration of the decision on appeal. Failure by the Appeals Board to direct the Board of Discipline to motivate its decision before the Appeals Board considered the case meant that complainant was deprived of her right to a dual hearing since the proceedings at first instance were vitiated.

The Ombudsman took the opportunity to address a number of considerations that were raised by Air Malta during this case.

The company pleaded that the Ombudsman has no jurisdiction to investigate the grievance because disciplinary proceedings against complainant were in line with the Collective Agreement and since administrative procedures were applied correctly with no evidence of abuse by the two boards, it was not up to the Ombudsman to review their findings. Air Malta held that the review of its disciplinary proceedings requested by complainant more properly belonged to the Civil Court or to the Industrial Tribunal because if she felt aggrieved by these findings as opposed to the administrative procedures that were adopted, she should have referred the matter to the appropriate judicial authorities.

While admitting that he is precluded by law from investigating any complaint the subject matter of which is pending in proceedings before a court of law or tribunal and that he is bound to suspend his investigation if a demand is filed before any court or tribunal on the subject matter of the investigation, the Ombudsman explained that this limitation of his jurisdiction refers exclusively to any tribunal constituted by or under any law. Air Malta's Board of Discipline and its Appeals Board are not tribunals constituted by or under any law but are administrative structures set up under the Collective Agreement to ensure discipline in the running of the enterprise.

The Ombudsman also argued that since complainant claimed that she was the victim of a miscarriage of justice, she had every right to ask him to intervene so as to rectify this injustice. He commented that it was for this reason that he

considered it desirable for him to investigate the merits of this case and although he has jurisdiction to investigate procedures before administrative boards that are not tribunals set up by law, he would not lightly interfere in their decisions but would as a rule give due weight to their findings especially when their procedures afford adequate minimum guarantees for a fair hearing. The Ombudsman made it clear that he only intervenes for very grave reasons such as proof that the basic rules of due process are not observed, manifest miscarriage of justice or when a decision is based on an evident mistake of law or fact.

The Ombudsman emphasized that his Office cannot declare that the decision of the Appeals Board was invalid since the procedures of the Collective Agreement had been satisfied during its hearing. In the circumstances he could only conclude that on the basis of the evidence presented, had Air Malta acted prudently by hearing complainant prior to ordering her suspension and by examining the MIA security tape and acted on the resulting information in line with precedents in analogous cases, it would not have discriminated against complainant by treating her very differently from other employees charged with similar offences.

The Ombudsman commented that Air Malta caused hardship to complainant that could have been avoided through more prudent action. Her offence should not in the first place have led to an indefinite suspension until the conclusion of disciplinary proceedings since in various precedents the airline adopted different disciplinary measures with other employees.

Although the Ombudsman did not question Air Malta's policy to take swift action against unauthorised possession by staff of items belonging to the company, at the same time he emphasized that the airline has the duty to be consistent and fair in dealing with its employees. Unlawful possession cannot be equated to theft and when unlawful possession of items of a negligible value takes place, management should exercise a proper sense of proportion while ensuring due discipline.

The Ombudsman pointed out that complainant was wrong to feel victimized because she was found to have failed to abide by the rules and had to face the consequences of her actions. This does not mean, however, that she should incur penalties that were considerably higher than those meted to other employees who were guilty of similar offences and she deserved a fair hearing

where those who pass judgement on her would have access to all the evidence that is available.

The Ombudsman said that complainant's most serious offence was her failure to pay duty on imported cigarettes but although having a valid justification, there was no reference to this extenuating circumstance in the decisions of the two boards. Since the customs official who deserted his station was only reprimanded for a failure that directly affected the interests of his department, it was unacceptable that complainant was given a much harsher penalty that was manifestly disproportionate to her offence which had not caused any material or financial damage to the airline.

In the view of the Ombudsman complainant was right to plead that the Appeals Board could only have found her guilty of the minor charges that in the opinion of the Board had been proved. On the other hand the decision by the Appeals Board that a breach of customs security regulations constitutes a serious offence in terms of the Collective Agreement was valid despite insistence by complainant that the Appeals Board had no competence to determine such guilt. The Ombudsman, however, reiterated that this Board could not decide that complainant was guilty of this offence when it did not have all the material facts before it. If it had, it would have been clear to the Board that there was no proven intended breach of customs regulations in the first place.

The Ombudsman concluded that:

- although the ruling of the Appeals Board was valid since its procedures were in line with the Collective Agreement, the Board would have reached a different conclusion if it had all the facts before it;
- the ruling by the Board of Discipline did not contain any motivation on which its core decision was reached and this constituted a breach of complainant's rights;
- Air Malta's failure to ask complainant to give her version of events before she was put on an indefinite suspension was a serious mistake; and
- there was evidence to suggest that if Air Malta had given consideration to the information provided by MIA's security cameras and acted in conformity with analogous situations, it would not have suspended complainant indefinitely and considered the case as a serious breach of discipline in the first place.

The Ombudsman concluded that the outcome of Air Malta's decision was that complainant remained suspended for fourteen weeks during which she was on half salary and lost significant additional summer income. Even if one were to accept the decision of the Appeals Board as fair, her suspension pending the outcome of the disciplinary proceedings resulted in her unnecessarily losing six weeks' additional income. Considering that the proceedings were vitiated because the Appeals Board did not have or failed to consider vital information before it, complainant's financial losses were significantly greater.

The Ombudsman upheld that Air Malta should not have suspended complainant indefinitely in the first place when in the past its disciplinary action for analogous situations was much less severe. He ruled that the Board of Discipline's failure to give any motivation for its decision amounted to a breach of complainant's rights while the ruling of the Appeals Board also amounted to an injustice and the penalty inflicted by this Board was disproportionate to the nature of her failure.

He therefore recommended that:

- complainant's record of a serious breach of discipline be replaced by one of a minor breach of company rules and procedures;
- her penalty be revised in line with Air Malta's decision in analogous cases; and
- she be refunded the difference in the emoluments to which she would have been entitled under the Collective Agreement had she not been unfairly suspended.

With regard to complainant's claim that she lost additional income that she could have earned during the summer months had she not been suspended indefinitely, the Ombudsman considered that since complainant had not worked these extra hours, she should be compensated by a token sum of Lm100 in full and final settlement of the undue discomfort to which she was subjected but which was in the first place provoked by her own failure in the course of her duty.

Air Malta management, however, felt that it was not appropriate to give effect to the Ombudsman's recommendations since this would undermine the disciplinary process operated by the company which had taken place in accordance with the relevant provisions of the Collective Agreement. Air Malta

also felt that if it implemented these findings, this would erode the responsibility and the autonomy of the adjudicating authority within the company that was obliged to maintain a proper and consistent internal disciplinary process.

Following further exchanges between the Ombudsman and Air Malta, the management of the company finally agreed, in line with its institutional obligations, to implement the recommendations issued by the Ombudsman.

The euro changeover trainer who was not short listed

A public officer who was upset that his application to join the National Euro Changeover Committee as a Euro Assistant was unsuccessful, lodged a complaint with the Ombudsman where he asked him to declare that he had been excluded unfairly from selection despite his experience and qualifications.

Complainant felt aggrieved that the Committee seemed to have completely overlooked his earlier experience as a Euro Changeover Trainer in a government ministry as well as in the formulation of the Euro Assessment Checklist and the Euro Changeover Plan since in his view this experience was relevant for the post in question. He was also irked that his interview had lasted only a few minutes and claimed that his qualifications in management, banking and finance and EU studies had been overlooked as well.

The Ombudsman found that in its preparations for the introduction of the Euro, the National Euro Changeover Committee issued a call for applications for the recruitment of Euro Assistants. The job involved working on a part-time basis for ten hours per week for a period of around two years to provide information and educate consumers and retailers on the euro changeover process, simulate consumer behaviour and practices, deal with queries by consumers, monitor the implementation of the dual display of prices, deliver basic training as required and encourage the retail business sector to subscribe to the Fair-pricing Agreements in Retailing (FAIR) initiative.

According to the Committee, all the two hundred and ninety nine candidates who were called for a ten-minute interview were each assessed on six criteria

– persuasion, attitude, approach, knowledge, personality and communication skills. Following an order of merit that was drawn by the selection board, seventy successful applicants were chosen while another twenty were put on the reserve list.

Complainant was, however, unimpressed by this explanation and stated that when he was asked to attend the interview he had been told to prepare an effective ten-minute role play in which he had to convince members of the selection board, acting as if they were shop owners, to join the FAIR initiative. Instead no role play had taken place at all and he was assessed on an interview that lasted merely two minutes and in which only three questions were put to him, two of which he considered as being particularly irrelevant. Complainant expressed surprise at the way in which during such a brief interview the selection board was able to assess him on the six criteria on which it was said to have judged all the other applicants and stated that it must have been practically impossible for the board to evaluate his abilities in such a short time.

The Committee countered complainant's account of what happened during his interview by stating that the selection board gave a different version of what in fact had taken place. It denied that the interview lasted only two minutes but had taken instead a full ten minutes like the interviews of all the other candidates and insisted that complainant was treated in exactly the same manner as all the other applicants who had been interviewed.

The Committee recalled that complainant had already been called for other interviews for other posts with the National Euro Changeover Committee prior to the call for Euro Assistants but he was always found unsuitable. While assuring the Ombudsman that these previous interviews had no bearing on the outcome of his interview for the position of Euro Assistant, it pointed out that it seemed highly likely that the skill set that was being sought from applicants and that was required for posts with the Committee did not match the skill set possessed by complainant and in the circumstances his comments on the selection process were not justified.

In his report on this complaint the Ombudsman pointed out that, as in other selection processes, the exercise to select Euro Assistants depended largely on the award of marks under several criteria to candidates according to the subjective opinion of the members of the board on the performance of

candidates during their interviews. The Office of the Ombudsman, like any other institution that is charged with the verification of decisions in analogous situations, is not in a position to substitute the subjective opinion of members of a selection panel by its own since obviously only those present were aware of what actually took place and what was said throughout each interview and could pass judgement on the respective merit of each candidate.

For this reason the Ombudsman stated that he could not verify whether the allegation by complainant that he had been subjected merely to a two-minute interview could be sustained even if he commented that it seemed somewhat difficult to reconcile complainant's version that he had been asked three questions in two minutes. On this basis the Ombudsman declared that he was not in a position to uphold the complaint.

Without any prejudice to this opinion, however, the Ombudsman stated that he could not but comment on procedures applied by the selection board during the interviews. From information provided by the Committee, the Ombudsman noted that although marks should have been given for each of the six different criteria under which candidates were judged, only one overall mark for each successful candidate was presented to his Office in its investigation of complainant's grievance. The Ombudsman also observed that information on marks obtained by complainant and by other unsuccessful candidates were not made available to his Office.

The Ombudsman insisted that good administration demands that all procedures should be as fully transparent as is reasonably possible and practicable. In his view the results presented by the Committee did not fully respect this principle and the fact that there was a very large number of applicants who had to be interviewed did not exempt the selection board from striving to ensure that the whole process would be as transparent as possible.

Following his investigation the Ombudsman concluded that given the totally subjective nature of the selection process, his Office was not in a position to sustain this complaint although he still wished to make it clear that he expected the NECC to adopt more transparent procedures in its selection process despite the understandable difficulties that it faced because of the large number of applicants. This failure did not, however, in any way undermine the validity of the outcome of its interviews or of the whole process.

The British Staff Nurse

Since May 2000 a British national married to a Maltese citizen worked in the Health Division on a year-to-year contract as a nurse on salary scale 12. However, upon being appointed Staff Nurse on a substantive basis in March 2006 following an open call for applications, she found that her increments during all these years were not taken into account and she was put on the lowest rung of salary scale 12.

Feeling aggrieved at what she regarded as discriminatory treatment and also because she felt that instead she should have qualified straightaway for scale 10 on the basis of her previous years of service, she approached the Office of the Ombudsman when her protests with the Health Division led nowhere.

The Ombudsman's investigation showed that in March 2006 complainant was appointed to Staff Nurse together with several other part-time and casual Maltese nurses who had also provided service to the Health Division for various years. However, whereas she was put on the lowest step in salary scale 12, her Maltese counterparts retained the increments that they received during their previous years with the Division and so received a higher salary.

The Ombudsman found that before putting complainant on the lowest salary rung of her new post, the Health Division sought the views of the Management and Personnel Office (MPO) of the Office of the Prime Minister. The MPO had advised that since the call for applications stipulated that successful candidates would be placed in salary scale 12 and also indicated the annual increments attached to this post, as a newly appointed Staff Nurse in the substantive grade in the Maltese public service complainant was to be placed at the minimum salary scale of grade 12 in accordance with the call for applications.

The attention of the Ombudsman was also drawn to section 3 of the Agreement on the Nursing and Paramedical Class signed in May 1993 between the government and unions representing staff in these grades which stipulated that entry into the grade of Staff Nurse is in scale number 12 and that a Staff Nurse will move up to scale 10 on completion of five years service in the grade subject to satisfactory performance.

The Ombudsman also noted that in December 1998 the Health Division and the MPO agreed that whenever full-time nurses on reduced hours who worked a set number of hours per year and were also entitled to increments would be appointed full-time Staff Nurses, they would retain the incremental steps that they received when they were employed on reduced hours as long as there was no interruption in their service with the Division.

Complainant's conditions in her annual contracts with the Health Division included a salary on an incremental rate as well as bonuses, an income supplement and additional cost of living increases while like other Maltese nurses, she was entitled to benefits such as a nursing premium, maternity leave, vacation and sick leave, free medical care and free medicines. As the spouse of a Maltese citizen, complainant had freedom of movement and did not require a work permit and while on contract she was to all intents and purposes a public officer as defined in the Constitution of Malta.

According to the Ombudsman the issues involved in this complaint were:

- the salary scale and the step in this scale to which successful applicants for the post of Staff Nurse were entitled on appointment to this grade;
- the allegation of improper discrimination against complainant as a UK national and as a citizen of a Member State of the EU when compared with the treatment given to her Maltese counterparts; and
- complainant's claim that she ought to be appointed straightaway to salary scale 10 because of her previous years of service with the Health Division.

The Ombudsman was of the opinion that since the call for applications under which complainant and her Maltese counterparts were appointed Staff Nurses had indicated the incremental nature of this post and also stated that the maximum salary would be reached with the sixth increment, on this basis complainant and her colleagues were only entitled to the first rung of salary scale 12 on appointment.

The Ombudsman pointed out, however, that a close reading of the Public Service Management Code in respect of an employee's starting pay seemed to support the view that following an appointment to a new post, employees who have already provided service to government should not get a salary that is lower than the one which they previously enjoyed. In his view the underlying

thrust of the relevant provisions of this Code is that employees who have already provided a service to government should not suffer a drop in their salary following an improvement in their status; and this seemed to justify a claim in favour of contract staff and casual employees to retain the increments from their previous employment upon their appointment to a substantive grade. Indeed, according to the Ombudsman, it was quite likely that this sentiment was at the root of the MPO's decision in 1998 to approve that casual and part-time nurses retain any incremental steps that they enjoyed prior to their appointment to a substantive grade and enabled complainant's counterparts to retain the increments that they had already received. The different treatment given to complainant, however, gave rise to the question as to why in her case she was not allowed to keep her increments.

The Ombudsman referred to the practice by the Health Division for various years to counter shortages of nursing staff in the state health service by the temporary recruitment of Maltese nurses as casual or part-time employees and the engagement of foreign nurses on a definite one-year contract that was renewable on a year-to-year basis; and in this context he brought up Article 39 of the Treaty establishing the European Community which guarantees the free movement of workers within the Union and provides that "*such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.*" The Ombudsman stated that it follows that at least from 1 May 2004 it was not acceptable to treat EU citizens in a discriminatory manner.

The MPO, however, was adamant that contract employees are only entitled to what appears in their contract and referred to paragraph 5.7 of the standard form of contract for the engagement of contract employees which states that apart from their salary and other financial benefits and entitlements, contract employees are not entitled to any other concessions that are applicable to permanent public officers such as parental leave, responsibility leave and reduced hours. Paragraph 5.8 of the specimen contract also states that contract employees are not eligible to apply for posts under internal calls for applications or to benefit from promotions and progression stipulated in classification agreements on government staff. According to the MPO this meant that contract employees could not claim the right to retain the incremental step of their salary scale on being appointed to a substantive grade.

The Ombudsman insisted that the engagement of Maltese citizens as casual employees and of non-Maltese EU nationals as contract employees was discriminatory against the latter at least as from the date that Malta acceded to the EU. This meant that the contracts that were reached with complainant subsequent to Malta's membership of the Union breached the EU directive insofar as they implied less favourable conditions when compared with casual and part-time Maltese nurses. There was further discrimination when complainant and her Maltese colleagues were appointed to the same substantive post but complainant was given a lower salary than her Maltese counterparts.

The Ombudsman stated that at least as from 1 May 2004 and even following her appointment to the grade of Staff Nurse, there was no reason for the different treatment by the government to Maltese and non-Maltese EU citizens engaged as Staff Nurses and this was contrary to law as from this date. He commented that not only are the public administration and the courts of law bound to observe and apply EU directives but that complainant can seek the protection of EU institutions to ensure observance of EU directives and the recognition of her rights and redress against improper discrimination.

The Ombudsman referred to efforts by the Health Division to justify its decision to treat complainant differently from other applicants when filling a substantive post on the grounds that the Maltese nurses involved in this case fell under article 8.7.3 of the Collective Agreement for Public Service Employees which regulates the award of increments to part-time and casual employees whereas as a contract employee, complainant fell outside the scope of this Agreement. According to the Health Division, this was not therefore a case of discrimination.

The Ombudsman, however, turned down this stand by the Division since complainant and her fellow nurses did not obtain their substantive employment on the strength of the nature of their former work that merely qualified them to apply for the post in question. The call for applications was not an internal call but was open to any person who satisfied the established criteria and made no distinction between casual or part-time employees or contract employees with government or workers who hailed from the private sector. Neither did the call specify that any applicant would derive an advantage on the strength of the nature and quality of service already given to the government and once the call for applications did not distinguish between different categories of

workers and the nature of their previous employment with government, complainant had every right to expect to retain the same treatment, remuneration and conditions of service as the other successful colleagues for performing the same duties in their newly acquired substantive grade.

The Ombudsman made a further observation. He noted that even though complainant was on a fixed term contract which was renewed from year to year, she had received several annual increments during these years in the same way as her colleagues who were casual or part-time employees. Since this showed that the Health Division felt that her years of service deserved recognition and acknowledged that she qualified for an appointment to a permanent post, it was surprising that she was offered instead a reduced salary that was tantamount to a negation of the years of service she had already given to the Division. It was also incongruous that part-time and casual nurses who worked reduced hours were allowed to retain their increments upon being appointed full-time employees while this advantage was denied to complainant. The Ombudsman saw no reason for this discrimination against complainant especially when as an EU national she has the right to be employed by the government of a Member State of the EU and to be given the same treatment and conditions of work as that country's nationals.

The Ombudsman pointed out that these considerations were without prejudice to any legal rights that complainant may have in terms of subsection 45(2) of the Constitution of Malta and any moral rights under article 26 of the Employment and Industrial Relations Act and Legal Notice 461/04 *Equal treatment in employment regulations* made under the same Act that prohibit discriminatory conditions of work based on nationality. As a model employer, the government cannot argue that the Employment and Industrial Relations Act and any regulations made under this Act do not apply to the public service.

The Ombudsman finally considered complainant's plea that since she had already served for five years she was entitled to salary scale 10 and not salary scale 12 but found that for progression to scale 10 Staff Nurses must, in terms of the 1993 Agreement, have completed five years service in the grade. Complainant had served five years but she only got her grade on appointment following the March 2006 call for applications and since the five years required for progression started from the date of her appointment in the grade, the

Ombudsman felt that on these grounds her grievance was not justified especially when her Maltese counterparts too were not put in salary scale 10.

The Ombudsman reached the following conclusions:

(i) even though the PSMC does not entitle contract employees to retain their increments on appointment to a substantive grade, there is an underlying thrust in this Code that upon improvement of their status in the public service, employees should not suffer a reduction in salary – and it was disconcerting that casual and part-time nurses appointed to the substantive grade of Staff Nurse retained their increments while complainant was not allowed to do so;

(ii) the government's policy to recruit Maltese citizens as casual and part-time employees and to engage foreigners, including non-Maltese EU citizens, on a definite contract as well as the MPO's decision to distinguish between part-time/casual employees and contract staff implied that Maltese nurses got more beneficial treatment than EU citizens upon their appointment to a substantive grade – and this different treatment was discriminatory;

(iii) no valid evidence was produced by the health authorities to justify this discrimination;

(iv) complainant's claim to salary scale 10 on the basis of her previous years of service was unfounded since this service was not in the grade and even her Maltese counterparts were not treated differently in this respect.

The Ombudsman upheld the complaint of discrimination in the way that complainant was deprived of the increments which she received while on contract and recommended that her salary should incorporate all the increments that she had gained as a contract nurse in line with the treatment given to her Maltese counterparts.

The Management and Personnel Office, however, disagreed that complainant had been subjected to discrimination and expressed the view that it was unwilling to be seen to create a precedent whereby contract employees are awarded benefits that go beyond those that are stipulated in their contracts.

Efforts to determine this issue remain unresolved.

An unjust directive with far-reaching implications

A teacher in government service lodged a complaint with the Office of the Ombudsman where she claimed that she had just discovered that she lost her right to a pension under the Pensions Ordinance as a result of an unjust directive that had led to the termination of her employment in 1979. She explained that as the date of her retirement drew closer, she was surprised to learn from the Management and Personnel Office (MPO) that due to a break in her service between May and July 1979 she was not eligible for a Treasury pension under the Pensions Ordinance.

The Ombudsman's investigation showed that complainant started her career as a teacher in the Department of Education in 1968 and that in line with government policy at that time, she resigned her post in 1975 on getting married. From records in her personal file the Ombudsman found that complainant was employed as a part-time Casual Teacher on 16 October 1978 and that her teaching duties were terminated abruptly on 4 May 1979. Complainant was again engaged as a part-time Casual Teacher on 25 September 1979 at the start of the scholastic year 79/80 and, also in line with standard practice for part-time teachers in government service at that time, her service was terminated at the end of the scholastic year on 14 July 1980. She was again engaged at the start of the scholastic year 80/81 in September 1980 and given a substantive appointment on 7 January 1981. Complainant had remained in government service ever since.

In complainant's personal file the Ombudsman found that in May 1979 and in July 1980 the termination of her part-time employment was recorded by means of a standard stencilled form in use at that time to indicate that the services of part-time/casual staff were no longer required. This form showed the particulars of the teacher involved, the signature of the Head of School where the teacher served and the date when the form was signed.

The Ombudsman commented that although employment is normally terminated on the grounds of resignation, retirement, dismissal on disciplinary grounds or redundancy, in this case there were no details in complainant's personal file to explain the reason behind the termination of her employment

in 1979. There was no letter of resignation or any evidence of disciplinary action while at that time complainant was still a far way off from retirement. Furthermore, evidence given in connection with this case by complainant's former Head of School showed that her services were still required at the time when her employment was terminated although she could not recall why complainant was not allowed to complete the scholastic year 78/79. Also according to this former Head of School, no other part-time teacher at the school at that time suffered the same fate.

On complainant's allegation that her service was terminated following instructions on the telephone from officials in the Ministry of Education, the former Head of School admitted that it was common practice at that time to receive verbal instructions over the phone from Ministry officials regarding the transfer of staff and no written instructions would ever be issued to confirm these directives. She could not, however, recall whether it had been so in complainant's case.

In the course of the Ombudsman's investigation contacts were also established with several individuals who were involved in the state education sector in the late 70s and early 80s. Although mainly because of the passage of time the reasons behind the arbitrary termination of complainant's employment remained unclear, doubts were raised by some of these individuals whether the grievance was genuine or merely an attempt to set up an alibi that would allow complainant to claim that she had suffered injustice and discrimination so as to qualify for a pension.

The Ombudsman admitted that this grievance had far-reaching implications in the sense that as a result of what took place a long time ago, complainant had recently become aware that she was not entitled to any service (Treasury) pension. He pointed out that at that time the services of part-time casual teachers were terminated at the end of the scholastic year and these teachers would be re-engaged at the start of the next scholastic year in September. He also recalled the practice that any such break in service by teachers is not considered as a break in service for pension purposes. This implied that if complainant had continued in employment as a part-time teacher up to the very end of the scholastic year 78/79, the problem would not have arisen at all and there would have been no bar to her entitlement to a Treasury pension.

The Ombudsman took note of the MPO's stand that complainant had not provided a service to the government between 4 May and 15 July 1979 or the last official day of the 78/79 scholastic year and was not eligible for a Treasury pension since she did not have uninterrupted service from 15 January 1979 which, in terms of the Pensions Ordinance, is the cut-off date for the purpose of eligibility to a service pension. In the circumstances, what needed to be considered was whether valid grounds existed for considering that the gap between 4 May and 15 July 1979 did not constitute a break in service for the purpose of the Pensions Ordinance.

The Ombudsman ascertained that the conditions that need to be fulfilled so that part-time or temporary service could count for pension purposes are as follows:

- the temporary or part-time service has to be unbroken;
- during the temporary or part-time engagement the public officer concerned should have worked at least half the normal working hours; and
- the temporary or part-time service is followed immediately by full-time employment.

In this complaint it appeared that only the first condition gave rise to concern since the two other conditions had been observed.

The Ombudsman pointed out that regulation 8 of the Pensions Regulations states that: "*The service in respect of which a pension or gratuity may be granted must be unbroken, except in cases where the service has been interrupted by abolition of office or other temporary suspension of employment, and not arising from misconduct or voluntary resignation.*" He stated that no abolition of post had occurred in this case and there was no evidence of any voluntary resignation while it was hard to fathom how an employee who was dismissed on grounds of misconduct could have been re-engaged within a few months and appointed on the government pensionable establishment shortly afterwards.

At this stage the Ombudsman proceeded to determine whether complainant's situation in 1979 could be considered as a temporary suspension. This task was, however, hampered by the fact that no records were found in her personal file to explain what led to the termination of her employment way back in

May 1979 and the years which had passed rendered it even more difficult to get the information from officials involved in issues related to staff deployment at the Department of Education at that time.

The Ombudsman considered complainant's claim that she suffered injustice as a result of maladministration and that it was only now that she became aware of the adverse consequences of this discriminatory action. While insisting that no explanation was ever given to her and that her personal file gave no reasons for the arbitrary termination of her employment because the decision was motivated by political discrimination, complainant was adamant that she had never resigned from her employment. She pleaded that although she was re-engaged at the start of the next scholastic year, at that time she had failed to realise the long-term implications of this injustice.

The Ombudsman was of the opinion that if maladministration could be proved, the sequence of events would support the view that the period between May and mid-July 1979 during which complainant was relieved of her duties could be taken to qualify as a temporary suspension in terms of regulation 8 of the Pensions Regulations.

The Ombudsman stated that in his opinion there was enough circumstantial evidence regarding the termination of complainant's service in May 1979. Nowhere was there any evidence of a letter of resignation that she had sent or of a letter sent to her by the Department of Education to terminate her employment while in her personal file there was no indication at all as to what had actually happened. It seemed plausible that her termination took place upon the issue of verbal instructions without any records having been kept regarding the sequence of these instructions or their contents.

The Ombudsman ruled that lack of proper record keeping was an indication of bad administration by the department and attracted criticism. Reasons for the termination of an employee's duties should be properly indicated and the motives should be recorded. In this case it emerged that the way in which records were kept at that time worked to complainant's detriment because they did not provide information as to what really took place.

Although the investigation failed to identify the official responsible for the decision to summarily terminate complainant's job, the Ombudsman stated

that this was not strictly relevant and what needed to be established was whether this decision was justified and whether it constituted an act of maladministration.

On the basis of his findings, the Ombudsman was satisfied that:

- no valid reason was given to justify the termination of complainant's employment in May 1979;
- complainant had not submitted her resignation from the Department of Education – and this was confirmed by the fact that she was re-engaged at the first opportunity when schools re-opened after the summer holidays without any condition or restriction while merely a few months later she was appointed on a permanent basis.

In view of this, the Ombudsman ruled that although it could properly be said that the termination of complainant's employment did not have any element that qualified it as a temporary suspension from work, there was enough circumstantial evidence that, seen in retrospect, this was an unjustified decision that lacked any valid reason or justification. Taking everything into account, he was of the opinion that complainant was an unwitting victim of maladministration amounting to an injustice that deserved to be rectified especially since she had never expected to suffer long-term negative consequences as a result of this arbitrary decision.

The Ombudsman held that it was not fair that through no fault of her own complainant was subjected to the trauma resulting from the prospect of being disqualified from receiving a service pension to which she would otherwise have been entitled. On this reasoning the principle of redress to which his institution subscribes, demands that this act of maladministration should be considered null and without effect and that complainant should be placed in a position as if maladministration had not taken place. For pension purposes, therefore, the termination of her employment should be considered as if it had never occurred and the MPO and the Treasury Department should together decide whether to grant a pension to complainant upon her retirement in accordance with the Pensions Ordinance.

Faced with some initial hesitation by the MPO to accept his findings, the Ombudsman explained that his recommendation, based on facts established

by his independent investigation, should be accepted as an objective assessment by an independent authority having the *vires* at law to conduct such an enquiry. This means that while the authorities are within their rights not to accept his recommendation for a just and sufficient reason, they are, however, not at liberty to contest or ignore his declaration that the facts as examined constitute an act of maladministration.

The Ombudsman insisted that the sequence of events established by his investigation fully supported the view that complainant's break in service should qualify as a temporary suspension in service in terms of the Pensions Regulations and was of the opinion that the MPO and the Treasury Department should revisit the case and take due account of the fact that the termination of service in May 1979 constituted an act of maladministration that should not adversely affect complainant's pension rights.

He asserted that the decision barring complainant from a service pension was reached after taking into account what was regarded as a break in service arising from the termination of her employment in May 1979 which in his view was an act of maladministration which should be considered as having no effect on the reckoning of her pension. The way in which employment records were kept by the Department of Education amounted to administrative failure since they gave no information on the reasons behind the termination of her employment or on whose authority this decision was issued although evidence showed that it was officials in the Ministry of Education who had taken this decision.

While upholding the grievance, the Ombudsman recommended that complainant be integrated within her pension rights in terms of the Treasury pensions regulations since there was enough supportive evidence that she had been subjected to a temporary suspension of employment which did not arise from misconduct or voluntary resignation. For the purpose of the Pensions Ordinance there was therefore, in the opinion of the Ombudsman, no break in service.

Accepting that since for some reason complainant was treated differently when out of thirty-two part-time teachers who were recruited to render service during the 78/79 scholastic year she was the only one whose engagement was terminated before the end of the year, the MPO agreed that complainant had suffered an injustice and took the necessary action to remedy this situation.

Arm-twisting tactics

Premises that were leased to a commercial company were returned to the owner when the company folded its operations and the remaining years of the lease agreement were cancelled by means of a contract where the company assumed responsibility for the payment of all outstanding water and electricity dues. However, when the owner of the premises presented to the Water Services Corporation a form to register a change of consumer, the Corporation refused to accept this form.

A few days later without any prior warning Enemalta Corporation withheld the electricity supply to these premises on the grounds that the company which had used the premises owed some Lm1,000 for water and electricity consumption for the previous twelve months. The Corporation also informed the owner that in order to accept the form for the registration of a new consumer and to reinstate the electricity service, he had to settle all outstanding bills as well as a reconnection fee of Lm60. When the owner adamantly refused to do so, the premises remained without any electricity supply.

When efforts to resolve the issue with Enemalta Corporation led nowhere, the owner approached the Office of the Ombudsman to intervene on his behalf since he claimed that the Corporation was acting unfairly when it expected him to pay bills issued in the name of the company to whom the premises had been leased. He demanded the reinstatement of the service to his premises without the payment of the reconnection fee and accused the Corporation of twisting his arm to make him settle the outstanding amount because it was aware that without any electricity supply it would be virtually impossible for him to find a new tenant.

The Ombudsman commented that this attitude by Enemalta Corporation was in sharp contrast with that shown a few months earlier when it refunded the owner of a commercial property arrears for water and electricity consumption which he had paid under protest and which were due by the tenant who occupied the premises during the time covered by the outstanding bills. This sum had been reimbursed following the Ombudsman's intervention when the management of the Corporation refrained from abusing of its dominant power

and accepted to follow up any pending amount directly with the registered account holder instead of seeking to secure these dues from third parties. In this first case which was identical to the complaint under consideration, the Corporation had informed the Office of the Ombudsman that after having reviewed the legal implications of its initial stand, it decided to refund the amount paid under protest by the owner of the premises less the sum of Lm60 as reconnection fee.

The Ombudsman declared that he saw no reason why the Corporation should change the position that it had taken in the first case and observed that this seemed to be a case of sheer discrimination by Enemalta that was adopting a policy of two weights and two measures in circumstances that were identical. He stated that this was unacceptable. The Ombudsman observed that the Corporation should have realized straightaway that even in this case complainant was not the registered account holder for the purpose of the Electricity Supply Regulations and that although it had decided to withhold the supply of electricity to his premises, there was no relationship at all between complainant and the Corporation insofar as the pending amount was concerned.

Under sections 8 and 9 of the Electricity Supply Regulations Enemalta Corporation has the right to ask for a deposit from an account holder as a means of ensuring that it would be able to collect fees that are due and the Chairman of the Corporation is allowed full discretion to determine the amount of this deposit. The Ombudsman observed that his Office was not aware whether the company that leased the premises had ever been asked to pay this deposit but if this precaution had not been taken, it was even more unfair for the Corporation to put pressure on a third party to settle outstanding dues for which it was not at all responsible.

The Ombudsman commented that it was not acceptable, not least for a public corporation, not to make use of means allowed by law to safeguard its rights with a body or an individual with whom it holds a judicial or a contractual relationship and to seek instead to place the onus regarding the observation of obligations arising from this relationship on a third part that was not involved in any way in this relationship.

In his observations on this case the Ombudsman remarked that there was evidence to suggest that the company that rented complainant's premises had

failed to settle its water and electricity bills for at least one year. He stated that it was therefore surprising that while the company was allowed to default on its payments for such a long time and no action was ever taken, all of a sudden the Corporation took drastic action to suspend its service when the tenant relinquished the premises and caused unnecessary problems to a third party that was not even the registered account holder of the premises during the previous year.

The Ombudsman commented that without any shadow of doubt the action taken by Enemalta Corporation in this case went against the law. The Corporation had gone beyond the powers provided by the Electricity Supply Regulations which do not allow the Corporation to act in this way although other laws sanction this type of behaviour such as, for instance, the Motor Vehicle Regulations which explicitly consider the owner of a rented car as being responsible for the payment of fines that are incurred by clients. However, the Electric Supply Regulations and other laws that concern Enemalta Corporation make no provision for any similar powers and as a result the Corporation is not authorised to deal with complainant in the way that it had done.

The Ombudsman stated that by its action the Corporation prejudiced the right of complainant to enjoy his property since lack of water and electricity service is bound to lessen the rental value of the property. In addition the economic rights of complainant as an operator in the field of property letting have to be safeguarded and there should be no hindrance to his efforts to find new tenants for his premises. Since having no water and electricity supply had significantly reduced complainant's chances of being able to rent his property, loss of potential business was clearly attributable to Enemalta Corporation. The Ombudsman stated that this situation was unacceptable and attracted criticism.

The Ombudsman therefore advised the Corporation to reconsider its position and if there were no other reasons to justify its decision to withhold the provision of electricity supply to complainant's premises besides that referred to in his grievance, Enemalta should instruct the Water Services Corporation to accept complainant's form to register a change of consumer so that the water and electricity supply could be reinstated to the premises forthwith.

The Ombudsman concluded that in the circumstances Enemalta Corporation was only justified to collect from complainant the reconnection fee of Lm60.

According to the Ombudsman the Corporation was fully entitled to suspend the provision of service to the premises and was also entitled to claim this fee in order to reinstate the service since it was not responsible for the disruption in service provision.

Soon after the Ombudsman's recommendation, Enemalta Corporation agreed to accept the form to register a change of consumer as long as this document would be presented to its Customer Care Division at the same time that the previous tenant of complainant's property would undertake to settle his arrears to the Corporation.

The three educational psychologists

Three educational psychologists employed with the Education Division claimed in a complaint which they lodged with the Office of the Ombudsman that they had been subjected to discrimination and to unfair treatment by the Division which, on the grounds that they did not work the hours that they were obliged to work, refused to grant them an allowance of Lm350 per year of service in the post.

The employees claimed that this allowance was due to them in terms of the Agreement reached in May 1996 on the classification, regrading and assimilation of the psychologist class in government service that also regulated the work and duties of these employees. They alleged that a colleague whose working hours were exactly like theirs had been treated in a more advantageous manner by the Division and asked the Ombudsman to recommend that they should be treated likewise.

The Ombudsman found that complainants were appointed Educational Psychologists in the Education Division following a call for applications in June 1997. This call stated that successful candidates would be appointed on a full-time basis and be subject to rules and regulations governing from time to time the Maltese public service in general and the Education Division in particular.

Clause 5 of the Agreement refers to the award of caseload and other allowances to psychologists and states that an all inclusive allowance is payable to

Educational Psychologists to reflect caseload weightings and cover extra duties and extra attendances in guidance clinics, the Child Development Advisory Unit, special schools and other units. However, according to the Education Division, since complainants had steadfastly refused to observe the working conditions and the office hours in accordance with their appointment and were guilty of unauthorised absence from work, they were not entitled to the payment of this allowance.

The Education Division informed the Ombudsman that way back in 2004 the Permanent Secretary of the Ministry for Education had written to the three complainants to draw their attention to the fact that they were not observing their working hours. The Director General had issued a similar warning in June 2006 and it was only on 7 August 2006 that complainants started working normal office hours.

The Education Division did not deny the claim by complainants that for some time a fourth psychologist had received different treatment in the sense that although this employee did not work normal office hours, he had still received the allowance. The Division explained, however, that when the attention of this employee was drawn to his shortcoming, the problem had been remedied and the conditions of the Agreement were enforced. With regard to the allowance that was paid in error to this fourth employee, the Education Division maintained that in this case the solution was to ask the employee to refund any extra allowances that he received and to which he was not entitled rather than to extend this payment to complainants as well.

The Ombudsman stated at the outset in his report on this complaint that this case could be considered as one pertaining to the field of industrial relations which in his view ought to be resolved between management and the union representing the three employees involved in this issue. However, since the complaint hinged on the application of an agreement in respect of entitlement to remuneration, it was felt that the complaint warranted an intervention by his Office.

The Ombudsman first considered complainants' claim that they were entitled to the payment of an allowance in terms of clause 5 of the Agreement regulating the duties and responsibilities of psychologists in the public service. However, since in the opinion of the Ombudsman this clause provides that this allowance

is payable to reflect caseload weightings and to cover extra duties and attendances, he ruled that strictly speaking the payment of this allowance is not linked to the working hours of these employees but to their caseload and extra duties. No evidence was presented by the Education Division to show that complainants' caseload did not merit this allowance or that they had refused to carry out any extra duties that the authorities requested them to perform. Viewed from this perspective, the Ombudsman stated that the Education Division did not seem to have a leg to stand on in its refusal to grant this allowance solely on the basis of clause 5 of the Agreement.

On its part the Education Division laid great store on the working hours that the educational psychologists are expected to work and which they had refused to observe for a long time. The Division explained that the Agreement which was at the crux of the issue referred to the whole class of psychologists and included both professional career paths, namely those in the education stream and those following the clinical psychology path. This Agreement makes no reference to any specific working hours that members in these two streams have to observe and it should therefore be taken that these are the normal working hours in the public service or those during which the Education Division, as complainants' employer and their immediate authority, requires their services. In this connection it was pointed out that complainants' clinical counterparts in the Health Division and who are deployed at Mount Carmel Hospital are conditioned to a forty-hour week.

After taking account of these explanations, the Ombudsman was of the view that the Education Division could not be faulted for insisting that complainants should provide their services and attend to their duties during normal working hours. He was, however, critical of the stand taken by the Division with regard to another educational psychologist when for a long time it allowed this employee to work according to a timetable that did not conform to the Agreement and stated that the Education Division was at fault to allow these arrangements. At the same time the Ombudsman noted that the Education Division had indirectly accepted the lapse on its part and withdrew these arrangements upon being made aware of the fact that all psychologists in the public service fall under the same conditions of work of the Agreement.

The Ombudsman pointed out in his report on this case that failure by the Education Division to institute disciplinary proceedings against complainants

for their refusal to comply with a legitimate order that it had issued in respect of their working hours attracted criticism. These proceedings could have led to complainants' dismissal although he observed that it was likely that any such disciplinary action was time barred by the time that he completed his investigation.

Also according to the Ombudsman, this attitude by the Education Division showed lack of enforcement of discipline by the Division on its staff since complainants had been allowed for various years to work lesser hours than the Division maintained that they should have worked. Although the Ombudsman found no evidence that any steps were taken by the Education Division not to continue to pay the full salaries to complainants while their unilateral action was under way, at the same time he held that from an administrative point of view it was not in order for the Division to do so even if it could be argued that any excess payment of salary had more than offset the non-payment of the allowances claimed by complainants.

The Ombudsman concluded that:

- in his opinion the all inclusive allowance mentioned in clause 5 of the Agreement was payable by the Education Division to complainants, regardless of the issue linked to the working hours which they were obliged to respect. Once the Education Division produced no evidence that complainants had not satisfied the conditions laid down in this clause for entitlement to the allowance, the decision by the Division to unilaterally withhold payment of this allowance was not sanctionable by the Agreement;
- the Education Division failed to enforce discipline on complainants who refused to obey its legitimate orders and were allowed to work in accordance with a timetable which was in conflict with its order and which was not sanctioned by the Agreement while it submitted no evidence to the Ombudsman to show that complainants had not been given their full salary for as long as their repeated misdemeanours persisted.

The Ombudsman concluded that when all the facts and circumstances of this case are taken into account, he did not consider than he should make any recommendations in respect of the claim by complainants for payment of the allowance mentioned in the Agreement.

Sponsorships under scrutiny

In October 2007 the Ombudsman was requested to investigate the fairness of a call for applications issued in 2006 that invited officers in the public service to undertake masters study programmes under sponsorship arrangements administered by the Staff Development Organisation (SDO) of the Office of the Prime Minister.

Complainant challenged one of the conditions in this call which restricted applications to officers in salary scale 10 or in a higher grade since he understood from the SDO that government preferred participants to be employees who were already in the higher positions in the civil service so that it could reap the benefits of this scheme more quickly than if it allowed participants to come from a lower grade.

Complainant expressed disagreement with this policy to favour employees in the higher grades to further their education on the grounds that it was discriminatory and worked against employees in the lower categories. He also felt that it was not fair that employees who were sponsored by the government were bound to remain in the public service only for a definite period upon completion of their studies.

When the Ombudsman sought the views of the SDO management on the restriction in the 2006 call for applications to officers in salary scale 10 and higher, he was informed that this situation had been rectified in the call for 2007 when the eligibility of candidates was extended to employees in salary scale 17 so as to allow employees in lower grades to apply as well. On these grounds complainant's reference to improper discrimination by the SDO was not considered justified since in the meantime the necessary corrective action had already been taken.

The Ombudsman was also told that the 2007 call for applications had made reference to the SDO's intention to set up a reserve list for consideration by the selection board of applicants who held an appointment that was below scale 10 but above scale 17 in the public service and who satisfied the eligibility criteria while possessing the necessary qualities to benefit from participation

in these sponsored study programmes. However, since the 2007 call for applications attracted no fewer than 55 candidates while the budgetary allocation only covered a handful of sponsorships, the SDO had enough suitable candidates without the need to resort to candidates on its reserve list. The Organisation insisted that in its selection process it had acted all along in line with the conditions that appeared in the call for applications and that its approach could not be faulted.

At the same time the SDO felt that complainant was completely misguided in his view that the sponsorship programme administered by the Organisation was merely designed as an aid scheme to assist public officers to further their education. The Organisation explained that the scheme was intended primarily as an investment by government in areas where skills were lacking and where the mismatch between needs and the availability of qualified manpower could be addressed in the short to medium term by means of positive forms of support to public officials to undertake studies in these areas. Various needs had been identified and in its call for applications the SDO had indicated the various courses that were available without limiting these fields of study to MBA programmes.

The SDO stated that the fact that government binds employees who benefit from these sponsorships to remain in the public service for an agreed number of years is in itself a clear indication that this scheme is considered primarily as an investment in human resources for serving public officers. According to the SDO the government expects to have more qualified employees as a result of this initiative and there is nothing wrong in its insistence on maximizing its return from the use of public funds to strengthen the educational background of its own officials while at the same time ensuring that, at the end of their studies, these employees are bound to remain in government service for a guaranteed number of years.

Finally the SDO pointed out that the type of assistance which complainant seemed to have in mind was more readily found in nation-wide schemes administered by the Ministry of Education, Youth and Employment.

The Ombudsman took note of the SDO's defence of its position to limit applications for its sponsorship scheme by linking it to investment by government in areas where a skills shortage had been identified and which could

be corrected by means of assistance to government employees willing to acquire skills in these areas.

The Ombudsman observed that investment in human resources should not be expected to give immediate results and that these sponsorship arrangements should instead be considered as an initiative aimed at making a lasting contribution to improved standards in public administration. Complainant's apparent expectation of an immediate return was somewhat misplaced since ultimately what is important for government and for the country is that investment is channelled towards the upgrading of skills that are needed by the Maltese public service.

In these circumstances the Ombudsman felt that the government had not acted wrongly when in its efforts to look for eligible staff willing to upgrade their educational standards by means of sponsorships for study programmes, it sought to identify employees most likely to benefit from these initiatives from the higher echelons of the public service who are generally involved in the decision-making process and who have a managerial role in the civil service structure. According to the Ombudsman, the limitation that appeared in the SDO circular could be considered as the first sift in the selection process to identify staff who stood to benefit from this programme and was based on reasonable and valid grounds and could not be considered as being improper. There was nothing intrinsically wrong, unacceptable or discriminatory in this approach.

The Ombudsman pointed out that he did not share complainant's view that it is unfair for the government to bind employees who benefit from similar sponsorships arrangements to serve in the public service for a number of years following their graduation. This policy has formed part of the rules of the public service for several decades and ought to be seen in the context of ensuring that employees who benefit from sponsorships are committed to serve government for a reasonable length of time that is related to the duration of their sponsorship. The Ombudsman commented that on the other hand it would be unreasonable and unjust to expect successful participants to be bound to serve government for the rest of their career since any such condition could deter employees from submitting their applications in the first place.

At the same time the Ombudsman warned that it would be downright unreasonable not to bind employees who benefit from government

sponsorships to remain in the public service for an agreed number of years. In the absence of any such pledge, the government could be considered as having made provision for the training of its employees who, as a result of qualifications acquired at public expense, would be allowed full freedom to seek other more remunerative positions both locally and abroad and in this way be lost to the service of the public.

The Ombudsman felt that on the basis of these considerations, there were no grounds to sustain this grievance.

Appendices

Appendix A

Sixth Seminar of the National Ombudsmen of EU Member States and Candidate Countries at the European Parliament, Strasbourg

14-16 October 2007

Rethinking good administration in the European Union

Contribution by Chief Justice Emeritus Joseph Said Pullicino, Parliamentary Ombudsman of Malta

Legality and good administration: is there a difference?

Excellencies, ladies and gentlemen

It is indeed an honour and a privilege for me to address such an august and qualified gathering of European Ombudspersons dedicated to the defence of the individual against administrative excesses and to the promotion of a clean and transparent public administration.

As a Judge, I was mostly concerned with the significance and intricacies of the interpretation and application of legal statutes and regulations. As an Ombudsman, my attention is focused on the complexities and nuances of public administration, its use and abuse. Both as a Judge and Ombudsman I swore to uphold the rule of law. If the rule of law is the cornerstone of an orderly, democratic society, legality and good administration are certainly its essential, supporting pillars. Legality and good administration are undoubtedly intertwined and interdependent. As I shall venture to illustrate in my short intervention, while good administration presumes and can only flourish in a state of legality, legality necessarily requires a good administration that functions within the parameters of the existing legal order. I shall attempt to limit myself to basic concepts that can serve as a common denominator for discussion in this seminar where delegates hail from countries with different legal cultures, diverse juridical systems and traditions and

varying democratic credentials. The correct definition of terms proper to administrative law is therefore paramount.

Legality, in the strict sense, can be defined as adherence to or observance of the law. It means conformity to law as an established set of rules that lays down a required system of conduct an administration is bound to adhere to. This set of rules is defined by statute, regulation, court made law, custom, usage and binding conventions. It is possible, within a degree of certainty, to assess whether administrative acts fall within the defined limits of legality or outside them. Illegality means that the administration has breached those limits and that breach is sanctionable before a court or other tribunal established by law.

Legality is, therefore, a state or quality of being within the law. It is an implied warranty that an act of the administration strictly adheres to the statutes of the jurisdiction within which it is empowered to operate. Rather than being a right, legality imposes an obligation on the administration and the citizen to observe the law.

Good administration, on the other hand, cannot be defined as a state or quality. It is an ideal to which citizens aspire and which the public administration should strive to achieve. The definition of good administration in the abstract has always eluded commentators. In a general way, it can be defined as the observance of those norms that comprise the basic elements of the correct conduct of public affairs for the common good and which, in the main, reflect the basic tenets of fairness and justice that an organised society expects. These are the yardsticks applied in practice.

It is accepted that good administration requires much more than acting legally. It is often defined negatively by stating what maladministration is. The former European Ombudsman Jacob Soderman defined the term maladministration as that action that "*occurs when a public body fails to act in accordance with a rule or principle which is binding upon it".* It encompasses improprieties on the part of the administration that certainly include illegality but that often go beyond it. Carelessness, unfairness, undue delay, lack of cooperation and procedural irregularity amount to maladministration.

The term "*good administration"* has been given status and substance when it was recognised as a fundamental right in Article 41 of the Charter of

Fundamental Rights of the European Union. That Article lays down that "*every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union*".

As we all know, the European Code of Good Administrative Behaviour provides us with a vital tool in performing our dual role as an external mechanism of control, investigating complaints and recommending corrective action where necessary, as well as in helping us to better our performance by directing attention to areas for improvement. It clarifies in detail what this right to good administration should mean in practice. One must admit, however, that to date it is not a binding legal instrument. It is and remains a *desideratum* which we are all committed to strive to attain. The strength and effectiveness of this Code depend on our conviction that good administration can only be delivered if the principles laid down in it are faithfully put into practice.

I think we can agree that as things stand there is one basic difference between legality and good administration. Both are means and measures of rendering the public administration accountable. However, while the citizen can best vindicate his rights through judicial review of administrative actions within the sphere of legality when a violation of a binding legal provision is alleged, in all other cases beyond the limits of strict legality the public administration can only be held accountable for its actions through pressure of public opinion, the democratic process and ultimately electoral control.

It is also clear that the test of good administration covers a much wider spectrum of activity than strict legality. When maladministration involves an illegality it is sanctionable at law. When it does not involve an illegality it is still verifiable against the stiffer test of the principles of proper administration that are gaining recognition as an informal source of law.

One can therefore identify this essential difference between legality and good administration. It is, however, a difference that is being blurred as a result of a growing awareness of the need to impose accepted standards of good administration through effective legal sanctions. It has been sometimes mooted that the Ombudsman is not really concerned with law and, therefore, legality and that he need not pronounce himself on the application of laws and regulations. It is suggested that he should only be concerned with justice and equity since these are the constituent elements of good administration.

These statements are undoubtedly fallacious. It cannot be put in doubt that it is a principle of good administration that public authorities have to refrain from arbitrariness and have to act in accordance with the law of the land which is undeniably the guarantor of the rule of law. Public authorities are bound by the fundamental principle of lawfulness to comply with statutory law in all its forms. When they fail to do so, they are guilty of maladministration. The Ombudsman has the duty to identify such a violation in his investigation, and, when necessary or indicated, recommend redress.

The confines of judicial review of administrative actions, both procedural and substantive, are constantly being refined by legislation and even more by jurisprudence. There is a marked dovetailing between judicially recognised rights acquired by the citizen against public maladministration and the principles that are being universally accepted as comprising the right to good administration. It is certainly a positive European trend that citizens have come to expect and demand more and that legislators and governments have primed themselves to meet these expectations and actually give more to the citizen. It should therefore come as no surprise that the courts, by which I mean the domestic ones, the European Court of Human Rights and the European Union courts including the most recent Civil Service Tribunal, are moving with the times and developing a "notion of legality" to reflect the era we live in.

The notion of legality not only implies abiding by the word of the law but is being widened to include:

- respecting the principle of legal certainty. This requires acting consistently and in a predictable manner thereby allowing the individual to operate and plan future operations with a certain amount of confidence. The principle of legal certainty is to a large extent about non-retroactivity, for example, of particularly onerous conditions. The upholding of acquired rights and the respecting of legitimate expectations are other aspects of legal certainty;

- respecting the principle of proportionality. It requires that a public authority does not impose an obligation on a citizen except to the necessary extent. It also involves avoiding imposing disproportionate burdens, a concept that is developing into a principle of subsidiarity and social solidarity;

- exercising one's discretion with care. This implies, amongst other things, considering all the relevant factors in an objective manner, taking decisions in the public interest and for the public good and also not exceeding the limits of one's discretion;

- allowing a margin of appreciation in reaching decisions based on reasonableness and standards of fairness and non-discrimination acceptable in a democratic society;

- operating in as open and transparent a manner as possible and giving reasons when taking decisions.

Breaching any of the above could lead today to the judicial annulment of an administrative act or to the granting of damages. This has not always been so. I believe we are greatly indebted to the Strasbourg Court for its landmark judgments that evolve these important judicial concepts amongst others, both substantial and procedural, that underpin the protection of fundamental human rights. These principles are now filtering from the judicial to the administrative level.

Ladies and gentlemen: as Ombudsmen you will no doubt recognize these to be also principles of good administration.

These concepts and others have, to my mind, become points of convergence between legality and good administration. They are not only diluting, in a positive way, the distinction between legality and good administration. They are also in effect grafting on to good administration the quality of legality. In truth, the very fact that we are speaking about a right of good administration that is about to be codified as a binding instrument in all the Council of Europe Member States in itself means that good administration is being drawn into the realm of legality.

There are other points of convergence between legality and good administration that come to mind. It has been suggested by some that the Ombudsman can not only ignore the law but actually recommend against it. We have seen that once it is a basic principle of good administration that legality should be respected and observed, the Ombudsman cannot ignore the law. He has to favour and ensure its observance. In doing so he can, however, resort to equity which is considered to be a principle of natural law and which most juridical

systems accept, though in varying degrees, to be a means of humanising the law. Aristotle extols equity as justice moderated by love – "*When then the law has spoken in general terms, and there arises a case of exception to the general rule, it is proper, in so far as a law giver omits the case and by reason of his universality of statement is wrong, to set right the omission by ruling it as the law giver himself would rule were he there present, and would have provided by law had he foreseen the case would arise.*" (Aristotle's *Ethics Book 5* para 1137b). This teaching is as valid today as it was more than 2000 years ago.

There is therefore room for equity in the rule of law. This allows for corrective measures in exceptional cases. Judges are empowered to decide on the basis of equity. Some legal systems allow binding judicial precedent through equity; others do not. But all systems require that the exercise of equity should not be arbitrary but used exceptionally, with reference to situations not envisaged by the legislator and intended to obviate a manifest injustice. The same criteria would apply to equitable considerations that determine administrative actions. It can therefore be said that both a judicial decision and an administrative action based on equity, properly exercised, fall within the ambit of legality and are a manifestation of the rule of law. In fairness, one cannot really expect the administrator to decide on the basis of equity unless in cases where the law accords him a discretion empowering him so to do or when the law is silent, unclear or incomplete. Certainly not only can the Ombudsman himself decide on equity when the case so warrants but he can also sanction an equitable administrative act.

A good administrator should never take on the role of a legislator. He is entrusted with the duty to administer the law according to its word and spirit as laid down by the legislator. The Ombudsman too is not a legislator. If, in his opinion, an administrative act is in accordance with a law or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory, he can only adopt the remedial action which the law setting up his Office allows him to take. In the case of Malta, he can only recommend that that law or practice be reconsidered.

This brings me to my final comment.

Good administration, like legality, always implies respect for the rule of law and is never a licence to act in any way outside or contrary to law. Good

administration, like legality, is also about operating in such a way that the citizen, the administration's client, receives the level of service that he or she is entitled to. As shown, legality as described above overlaps with what we referred to as good administration.

Ladies and gentlemen: notwithstanding the trend towards the "*legalisation*" of good administration, there will always remain an area where the principles of good administration include notions beyond the scope of legality such as treating the customer with courtesy and taking decisions in a timely manner. These fall in the realm of "*soft law*" and are not judicially enforceable. An Ombudsman may recommend *ex gratia* redress to an aggrieved citizen who has received a very bad service and indeed may be influential enough to see the recommendation implemented. But principles that go beyond legality remain judicially unenforceable and do not lead to annulment following judicial review or to the award of damages.

If an official is discourteous when carrying out an act of administration, he may have committed an act of maladministration. He may also have breached a code of conduct but he has not violated any principle of legality. There is therefore overlap between legality in the modern, wide sense and good administration. But good administration seems to be ahead of legality and, as we have seen, connotes much more than legality.

I will end my contribution by briefly referring to developments that have been taking place in my home country and which illustrate the topic we are discussing. Last month the House of Representatives unanimously approved a Bill entrenching the ombudsman institution in the Malta Constitution – a provision that will require a two-thirds majority of Members to amend. During the debate on that Bill I had suggested that the House could consider another constitutional amendment: recognizing in principle the right of the citizen to good administration – a declaration of principle that would not be enforceable but would highlight the duty of the organs of the State to respect it. That proposal was not accepted. However, the Government moved a Pubic Administration Bill.

That Bill, when approved, will make all levels of public administration accountable for the manner in which they provide services, carry out their functions and manage their resources for the observance of public

administration and the Code of Ethics. The Bill practically incorporates the principles set out in our Code of Good Administrative Behaviour. The approval of this Bill will in effect go a long way towards legalising the rules of good administration providing not only a disciplinary but also in some cases a measure of legal sanction for their breach.

In Malta at least the gap between strict legality and good administration is being gradually reduced in the interest of a cleaner and more transparent administration. The citizen stands to gain.

Appendix B

Report by the University Ombudsman to the Parliamentary Commissioner for Administrative Investigations for 2007

This being my tenth year of office as University Ombudsman I have the honour and pleasure of submitting my annual report for your consideration and judgement. I repeat my regular acknowledgement of personal indebtedness to your good self, and to your predecessor, for opportunities of discussion and advice on particular cases, and I also acknowledge my own further education in the operations of Ombudsman.

My workload for the year 2007 shows little difference from my reports for previous years as to numbers of cases, their origins and motivations and possibly also the results and outcomes. In my comments I shall try to draw special attention to some types of complaints from both students and staff members of the University. Although I find your regular publication of *Case Notes* very interesting and useful, I would also find it difficult to copy you with my much fewer and personally identifiable cases.

Students' cases

I was presented with 15 cases from students. Two of these had originally applied to your offices before being referred to me, whilst another case proved interesting in that having found the complaint to be doubtful I advised the student that he could appeal to the Ombudsman. In some of my early reports, having expressed doubts as to whether I can operate as a judge or arbiter or mediator, I found satisfaction by trying to give the complainant some advice. I have just received your final decision on this case and I was naturally pleased that you found my own comments justified.

In another case the complaining student was having difficulties in following an MA course of a rather unusual character on thinking skills, practices and

methods which may seem to be somewhat demanding and associated with a high incidence of failures. The student complained of having been advised to resign from the course.

Low marks and grades were awarded to three students by their examiners in the first sessions of tests and unredeemed in re-sits, and naturally I had to emphasise that I myself can never act as an extra examiner, my sole duty being to ensure that correct procedures and regulations have been strictly followed.

Four students complained of having been denied admission to the courses they wished, and again I find that I am bound to emphasise that there are specific regulations to be observed.

Just three weeks from the May date of the MATSEC examinations, I received complaints from three students who claimed that they had received partial and insufficient support from the special University Board (ACCESS) that considers the needs of students suffering from disabilities affecting their learning skills, such as dyslexia, although they had presented detailed reports by their school teachers and qualified psychologists. This is recognised abroad, and especially in Britain, as a real and severe problem affecting large numbers of youths and the special boards follow well-established guidelines. My concern is that such "guidelines" should be revised and updated from time to time and that the criteria applied should avoid undue stringency and finesse in the estimation of the degrees of disability, with the students being fairly allowed to use the necessary technical aids, and when indicated the help of a reader or amanuensis.

As to the outcome of my interventions on behalf of students I find that in six of the fifteen cases I could make favourable recommendations to the university authorities, but as with previous reports I have to doubt what statistical significance one could see with such numbers.

Staff cases

The three cases in this category came from academics, two being unsuccessful applicants for appointment to advertised post at Lecturer level, one of them being for the Junior College staff. The procedures of selection entrusted to

an *ad hoc* board (with final endorsement by Council) include an interview and when the number of applicants is large there may have to be a short listing based on applicants' qualifications as judged by the Selection Board – a factor which in itself may be considered adverse by an unsuccessful applicant and on which I myself may find it difficult to pronounce. The matter on which I am quite certain is that as I am not myself present at the interview I am excluded from forming any judgement on the applicant's *suitability* (rather than qualifications) for the specific advertised post.

A case of special character was presented by a Senior Lecturer who had for some years been waiting a decision from the University of Malta to his application for promotion to Associate Professor. Having recently achieved this promotion, he is now claiming that it should be backdated to when he had first applied, with monetary compensation accordingly. I have no doubt that this goes completely beyond my remit as University Ombudsman and I am grateful to you that you accepted to deal with the case.

Comments

I have followed with great interest the published accounts of your functions and interventions as Parliamentary Commissioner particularly as you addressed such matters to the House Business Committee in November last year. My abundant indebtedness to you in mentorship will continue to develop with your announcement that from January this year I can make use of the administrative and investigative services of your Office.

Because of my long attachment and professional experience in the medical service of this country and of Britain, I am especially interested in your suggestion to Parliament that the time has come for the institution of Commissioners for Higher Education and the Health services.

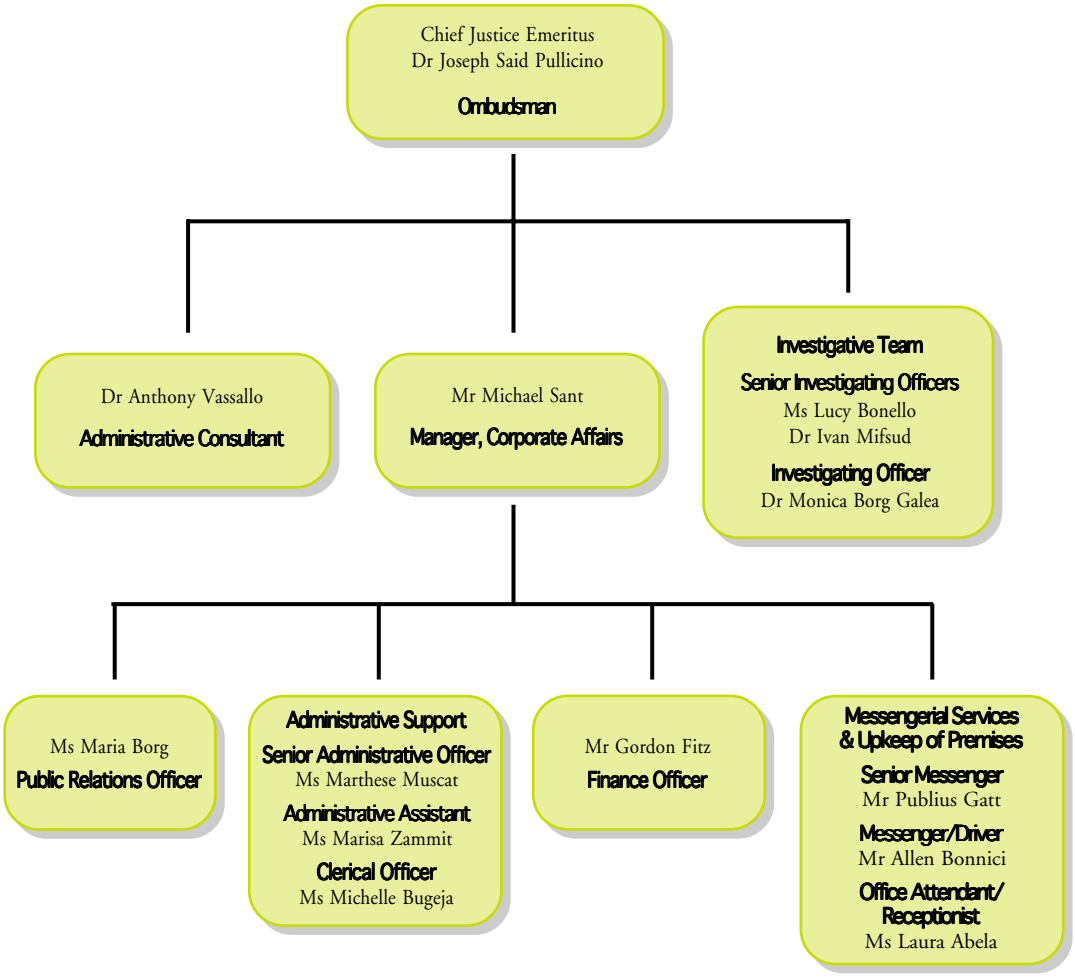
Victor G. Griffiths
University Ombudsman

16 April 2008

Appendix C

Staff organisation chart

(*as on 31 December 2007*)



Appendix D

Office of the Ombudsman

Report and financial statements for year ended 31 December 2007

Statement of income and expenditure

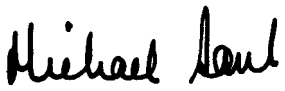
		2007		2006
	Notes	Lm	Lm	Lm
Income				
Government grant		**196,000**		180,000
Non-operating income	3	**1,332**		837
			197,332	180,837
Expenditure				
Personal emoluments	4	**143,563**		(129,823)
Administrative and other expenses (Schedule 1)		**38,180**		(42,185)
			181,743	(172,008)
Surplus for the year			**15,589**	8,829

Statement of affairs

		2007		2006
	Notes	Lm	Lm	Lm
Non-current assets				
Property, plant and equipment	5		**28,081**	27,308
Current assets				
Receivables	6	**2,556**		2,807
Cash and cash equivalents	7	**65,001**		47,862
		67,557		50,669
Current liabilities				
Payables	8	**(3,917)**		(1,845)
Net current assets			**63,640**	48,824
Net assets			**91,721**	76,132
Reserves				
Accumulated surplus			**91,721**	76,132

The financial statements were approved by the Office of the Ombudsman on 8th January 2008 and were signed on its behalf by:

Gordon Fitz
Finance Officer



Michael Sant
Manager
Corporate Affairs

Statement of changes in equity

	Accumulated surplus Lm
At 1 January 2006	67,303
Surplus for the year	8,829
At 31 December 2006	76,132
Surplus for the year	15,589
At 31 December 2007	**91,721**

Cash flow statement

	Notes	2007 Lm	2006 Lm
Operating activities			
Surplus for the year		**15,589**	8,829
Adjustments for:			
Depreciation		**5,690**	6,857
Loss on disposal of tangible fixed assets		**105**	0
Interest receivable		**(1,332)**	(837)
Operating surplus before working capital changes		**20,052**	14,849
Decrease/(Increase) in receivables		**251**	(848)
Increase/(Decrease) in payables		**2,072**	(1,814)
Net cash from operating activities		**22,375**	12,187
Investing activities			
Payments to acquire tangible fixed assets		**(6,568)**	(3,430)
Proceeds from sale of equipment		**–**	–
Interest received		**1,332**	837
Net cash used in investing activities		**(5,236)**	(2,593)
Net increase in cash and cash equivalents		**17,139**	9,594
Cash and cash equivalents at beginning of year		**47,862**	38,268
Cash and cash equivalents at end of year	7	**65,001**	47,862

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 Maltese Liri (Lm).

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.

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.

3 Non-operating income

	2007 Lm	2006 Lm
Bank interest receivable	**1,332**	837
	1332	837

4 i Personal emoluments

Wages and salaries	**136,843**	122,722
Social security costs	**6,720**	7,101
	143,563	129,823

ii Average number of employees	**15**	17

5. Property, plant and equipment

	Improvements to property Lm	Office equipment Lm	Computer equipment Lm	Computer software Lm	Motor vehicles Lm	Furniture & fittings Lm	Air conditioning Lm	**Total Lm**
Cost								
At 1 January 2007	24,019	9,613	20,141	6,048	7,020	20,737	5,285	92,863
Additions	5,109	79	758	–	–	373	249	6,568
Disposals	–	–	–	–	–	(461)	–	(461)
At 31 December 2007	**29,128**	**9,692**	**20,899**	**6,048**	**7,020**	**20,649**	**5,534**	**98,970**
Depreciation								
At 1 January 2007	5,307	7,899	18,456	5,936	5,616	18,021	4,320	65,555
Charge for the year	1,942	637	877	64	1,404	402	364	5,690
Release on disposals	–	–	–	–	–	(356)	–	(356)
At 31 December 2007	**7,249**	**8,536**	**19,333**	**6,000**	**7,020**	**18,067**	**4,684**	**70,889**
Net book value at 31 December 2007	**21,879**	**1,156**	**1,566**	**48**	**–**	**2,582**	**850**	**28,081**

5a. Property, plant and equipment

	Improvements to property Lm	Office equipment Lm	Computer equipment Lm	Computer software Lm	Motor vehicles Lm	Furniture & fittings Lm	Air conditioning Lm	**Total Lm**
Cost								
At 1 January 2006	24,019	9,678	22,563	5,950	7,020	19,763	6,105	95,098
Additions	–	165	1,933	98	–	974	260	3,430
Disposals	–	(230)	(4,355)	–	–	–	(1,080)	(5,665)
At 31 December 2006	**24,019**	**9,613**	**20,141**	**6,048**	**7,020**	**20,737**	**5,285**	**92,863**
Depreciation								
At 1 January 2006	3,706	7,129	21,142	5,623	4,212	17,527	5,024	64,363
Charge for the year	1,601	1,000	1,669	313	1,404	494	376	6,857
Release on disposals	–	(230)	(4,355)	–	–	–	(1,080)	(5,665)
At 31 December 2006	**5,307**	**7,899**	**18,456**	**5,936**	**5,616**	**18,021**	**4,320**	**65,555**
Net book value at 31 December 2006	**18,712**	**1,714**	**1,685**	**112**	**1,404**	**2,716**	**965**	**27,308**

6 Receivables

	2007 Lm	2006 Lm
Trade receivables	–	515
Prepayments	2,556	2,292
	2,556	2,807

7 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:

	2007 Lm	2006 Lm
Cash at bank	64,868	47,714
Cash in hand	133	148
	65,001	47,862

8 Payables

	2007 Lm	2006 Lm
Accruals	3, 917	1,845
	3,917	1,845

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables. As at 31 December 2007 the Office had no unrecognised financial liabilities.

9 Fair values

At 31 December 2007 the fair values of assets and liabilities were not materially different from their carrying amounts.

Schedule 1

Administrative and other expenses

	2007 **Lm**	2006 Lm
Utilities	**5,013**	4,875
Materials and supplies	**2,334**	1,940
Repairs and upkeeping expenses	**1,063**	769
Rent	**930**	930
International membership	**412**	435
Office services	**2,147**	2,908
Transport costs	**2,863**	6,930
Travelling costs	**3,343**	2,672
Information services	**2,736**	3,775
Contractual services	**10,664**	8,803
Professional services	**230**	773
Training expenses	**75**	–
Hospitality	**321**	351
Incidental expenses	**12**	3
Bank charges	**242**	164
Depreciation	**5,690**	6,857
Disposals	**105**	–
	38,180	42,185

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Office of the Ombudsman-Report and financial statements for the year ended 31 December 2007

Report of the Auditor General

We have audited the financial statements of the Office of the Ombudsman for the year ended 31 December 2007.

The audit of the financial statements is covered by the provisions of Section 11 of the 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 statement. It also includes an assessment of the significant estimates and judgments made by the office in the preparation of the statement.

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 2007 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.

Anthony Mifsud
Auditor General

8th October 2008