



PARLIAMENTARY OMBUDSMAN

ANNUAL REPORT 2016

FOR THE PERIOD
JANUARY - DECEMBER 2016

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



OMBUDSMAN

PARLIAMENTARY OMBUDSMAN

ANNUAL REPORT 2016

FOR THE PERIOD JANUARY - DECEMBER 2016

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





11/12 St Paul Street, Valletta VLT1210

Email: office@ombudsman.org.mt

Tel: +356 2248 3200, 2248 3216

The Office is open to the public as follows:

October – May 08:30am – 12:00pm
 01:30pm – 03:00pm

June – September 08:30am – 12:30pm

www.ombudsman.org.mt

Facebook: Ombudsman Malta



OMB/6/9/20

March 2017

The Honourable Dr Angelo Farrugia
President of the House of Representatives
Parliament of Malta
Freedom Square
Valletta



Mr Speaker

In terms of Section 29 of the Ombudsman Act 1995, I am hereby submitting the Annual Report concerning the performance of the Office of the Ombudsman for the period January to December 2016.

The Annual Report includes an oversight of the activities and initiatives taken during that year as well as relevant data regarding the conduct of the investigation of complaints. It also includes reports by the Commissioners for Education, Health and Environment and Planning covering the same period.

Yours sincerely

Anthony C. Mifsud
Parliamentary Ombudsman

CONTENTS

A YEAR OF TRANSITION AND CONTINUITY

Introduction09

Of visibility.....11

Of relevance.....22

Of effectiveness.....25

NOTES FROM THE 2016 DIARY31

PERFORMANCE REVIEW53

ANNUAL REPORT BY THE COMMISSIONER FOR EDUCATION

Dealing with bureaucracy73

Performance Review.....77

ANNUAL REPORT BY THE COMMISSIONER FOR ENVIRONMENT AND PLANNING

Caseload..... 85

Implementation of recommendations 89

Own Initiative Investigations 89

Joint investigations 89

Collaboration with NGOs..... 90

MEPA Demerger..... 91

Conclusion 92

ANNUAL REPORT BY THE COMMISSIONER FOR HEALTH

Introduction97

Performance Review.....97

Own initiative investigations102

Preliminary Investigations102

Entitlement to the supply of medicinals

under the Social Security Act103

Toxic Fumes affecting Ta’ Xbiex resident 104

Collective Agreements 104

Cases concerning the Public Service Commission 104

Allowance given for Health Hazard105

Conclusion105

APPENDICES

Appendix A	106
The Ombudsman's dual role – Defending the citizen and promoting the right to good administration	
Appendix B	116
Association of the Mediterranean Ombudsman – Malta declaration on migration	
Appendix C	120
Speech by the President of Malta, H.E. Marie-Louise Coleiro Preca at the 9th Meeting of the Association of Mediterranean Ombudsman	
Appendix D	124
Speech by the Commissioner for Environment and Planning, Perit David Pace at the SBE16 Malta	
Appendix E	128
Correspondence from the Commissioner for Environment and Planning on the MEPA demerger	
Appendix F	136
Correspondence from the Commissioner for Environment and Planning on the Paceville Masterplan	
Appendix G	140
Organisation Chart as at 31 December 2016	
Appendix H	142
Report on the Financial Statements for the year ended 31 December 2016	





OMBUDSMAN

**Ombudsman Parlamentar**
Deputat i Komisionit të Përbashkët

**Komisionari për Rikrekit**
Komisionari i Komisionit të Përbashkët

**Komisionari për fëmijë**
Komisionari i Komisionit të Përbashkët

**Komisionari për mjedis**
Komisionari i Komisionit të Përbashkët

Orari i punës	8.00 - 19.00
Orari i kontaktimit	11.00 - 19.00
Orari i kontaktimit	8.00 - 19.00
Orari i kontaktimit	8.00 - 19.00

A YEAR OF TRANSITION AND CONTINUITY

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN







A YEAR OF TRANSITION AND CONTINUITY

INTRODUCTION

2016 was a year of transition and continuity. In March 2016 the outgoing Ombudsman, Chief Justice Emeritus Joseph Said Pullicino concluded his second term and passed on the baton of office to his successor. Anthony C. Mifsud is the third Ombudsman to head this constitutional authority, vital to ensure good governance fully respecting principles of proper administrative behaviour.

It is significant that the new Ombudsman, like his predecessors, enjoys the unanimous support of all the Members of the House of Representatives. Parliament is to be commended on a smooth, swift and seamless transition fully respecting the 2007 Constitutional amendment which provides that there shall be in Malta at all times a Commissioner for Administrative Investigations to be called the Ombudsman.

The prompt consensus on the choice of a new Ombudsman and his unanimous approval are not only positive signs of political maturity but also evidence a recognition that a good public administration can only be ensured if its actions are subject to the supervision, investigation and audit of independent authorities like the Parliamentary Ombudsman and the Auditor General. While it is imperative that these authorities have adequate structures, facilities and human resources to perform their functions effectively, it is the persons who are appointed to these high offices that determine policies, define investigative processes and conduct investigations into allegations of maladministration on the complaints of injured parties or on their own initiative. It is for this reason that the appointment of a new Parliamentary Ombudsman necessarily involves a time of transition during which the new incumbent has the opportunity to familiarise himself with the intricate and complex nature of his office. This is by no means an easy task.

The Office of the Parliamentary Ombudsman in Malta has, since it was set up in 1995, been fortunate to have three Ombudsmen hailing from diverse educational and professional backgrounds who have served in various high administrative and judicial offices. This diversity enriches the investigative

capability of the Office since every Ombudsman is influenced by his professional experience and draws from the knowledge gained throughout his career. Every Ombudsman invariably instils his style and character on the way the Office exercises its functions.

However, the dual objectives of the Ombudsman to protect individuals against abuse and bad governance and to serve as the conscience of the public administration remain constant. From this perspective the year under review was not only a year of transition but also a year in which every effort was made to ensure continuity.

Whatever direction of policy and style of management are adopted it is essential to ensure continuity to keep in mind three fundamental objectives that must be pursued. The Office of the Ombudsman must remain:

- visible,
- relevant, and
- effective.

The first part of this Annual Report attempts to analyse how these essential objectives were met and satisfied during this year of transition. The calendar of events that follows illustrate how the activities undertaken by the Ombudsman and Commissioners in the exercise of their functions contributed towards the attainment of these objectives. An exercise that helps the Office fine tune the way it relates to aggrieved citizens and the public authorities. This to ensure an improved administration as well as to assess to what extent it was successful to maintain the institution as a key player to promote correctness, transparency and accountability through a proper observance of principles that govern good administrative behaviour.



H.E. Marie-Louise Coleiro Preca, President of Malta administers the oath of Office to Mr Anthony C. Mifsud as Parliamentary Ombudsman on 21st March, 2016



OF VISIBILITY

POSITIVE PRESENCE

In a year of transition it was important that the Office retains a positive presence as an effective constitutional authority prepared to scrutinise the workings of the public administration to investigate complaints promptly and comprehensively and when justified, to recommend redress.

It also needed to continue to be seen to be proactive in highlighting, through own initiative investigations, systemic failures and administrative failings that required to be addressed. Citizens had to be reassured that the change at the helm of the Office of the Ombudsman would not materially affect the defence of their rights.

This Office must endeavour to be always visible to society. Visibility means awareness not only of the material functioning of the institution but also of the substance of the service it is intended to provide in the performance of its functions. An awareness that needs to be constant and consistent at all times and at all levels. The recognition of the Ombudsman institution as a constitutional authority enhanced its status as a key player in the system of checks and balances designed to ensure good governance. It increased its visibility.

In the proper performance of its functions, the Office is required to ensure that the acts of the public administration, in the wide meaning of the term, conform to the accepted principles that govern the good management of public affairs. When doing so it would effectively be contributing towards keeping public authorities to account when dealing with all those that they are bound to serve. Public authorities should therefore be made aware that their actions are subject to the objective scrutiny of the independent opinion of the Ombudsman who has the duty to opine not only that their actions or inactions are according to law but also, and perhaps more importantly, whether they are just or unjust, improperly discriminatory, reasonable or unreasonable, or simply outright wrong.

His opinion and recommendation need to be regarded by all public authorities as authoritative, to be respected, accepted and unless for valid

and cogent reasons, implemented. It is therefore not acceptable that a public authority ignores an opinion of the Ombudsman or the Commissioners simply because it does not agree with it. It needs to justify its decision in the light of the reasoned opinion of the Ombudsman or Commissioner. On the other hand, a person aggrieved by an action or inaction of a public authority must be made aware of his/her right to have recourse to the Office of the Ombudsman to vindicate his/her right and seek redress.

The Ombudsman institution was set up specifically to attempt to eradicate a system of political patronage and clientelism that undermines good governance. In a small, tightly knit society it is not easy to achieve this aim since it takes time to eradicate a culture that seeking favours rather than rights is more effective. In this respect, the political will to strengthen institutions like the Ombudsman becomes paramount. It is also for this reason that the Office of the Ombudsman endeavours to instil in the conscience of society that it is not only an alternative means of resolution of disputes between the citizen and public authority but also that it is in a position to act as an honest broker between them to attempt to arrive at a just and equitable solution of complaints.

HIGH LEVEL OF VISIBILITY

It can be safely said that in the year under review, for a number of not necessarily positive reasons, the Office retained a high level of visibility in the country. A number of events that were of interest to public opinion highlighted the way the Office functioned both nationally and internationally. The appointment of a new Ombudsman and the fact that the three Commissioners for Health, Education and Environment and Planning had passed the middle of their term and had become fully accustomed to the complexities of their office were factors that impacted on the flow of complaints and the increase in their disposal rate.

During the year therefore, visibility remained at an acceptable level on a par with that of previous years, and one cannot say that public awareness of the Office and the services it provides diminished. To a certain extent the activities throughout the year, some of them of an exceptional nature, contributed to compensate for the reduction in outreach activities, during the second half of the year. Understandably, there is a case for a reassessment of these activities. However, public awareness needs to be constantly nurtured, even at grass roots level both within the sphere of the public administration and society in general.

Among the events that underlined the visibility of the Office during the year one can mention the following:

- i. The judicial action instituted by the Ombudsman the previous year contesting the government's insistence that the Ombudsman had no jurisdiction to investigate complaints filed by Army officers alleging they were unfairly treated in promotion exercises.
- ii. Holding the 9th Meeting of the Association of Mediterranean Ombudsmen (AOM).
- iii. Increasing public awareness through the performance of statutory duties and outreach activities.
- iv. The publication of reports of own initiative investigations .

I. COURT OF APPEAL JUDGEMENT AFFIRMS OMBUDSMAN'S JURISDICTION

The ongoing proceedings before the Court of Appeal in the case instituted by the Ombudsman against the Ministry for Home Affairs and National Security to seek judicial definition that he had jurisdiction to investigate complaints by officers of the Armed Forces of Malta, who felt aggrieved in promotion exercises, continued to attract the attention of public opinion throughout the year.

It will be recalled that on 12 October 2015 the First Hall of the Civil Court had rejected the government's plea of lack of jurisdiction and decided that the Ombudsman had jurisdiction to investigate such complaints. It affirmed that it was the Ombudsman himself who decides whether he has jurisdiction even in those cases where the complainant had adequate means of redress under other laws. The Ombudsman could therefore continue with his investigation into the complaints of the officers. The Court ordered defendants to provide all the information that the Ombudsman requested or might request regarding these complaints and to appear before him if so summoned.

The government appealed from that decision and the Ombudsman was constrained to suspend his investigations pending the decision of the Court of Appeal. Those proceedings attracted wide interest, both locally and internationally. Though government was perfectly within its rights to appeal the judgement of the First Court, it was generally recognised that the hearing in appeal would be delaying the investigation of the complaints. Internationally, a number of Ombudsmen, including Parliamentary and Military Ombudsmen, followed the proceedings with keen interest and requested information on the outcome. They expressed surprise that the Parliamentary Ombudsman in Malta enjoyed such a high level of autonomy and independence that he could actually engage in judicial proceedings with government to define the limits of his jurisdiction.

On assuming Office, the new incumbent decided to carry on with the judicial process, while keeping the door open for a possible amicable settlement that would guarantee his right to investigate the complaints. That amicable settlement was not forthcoming. The Court of Appeal delivered a definitive judgement on 31 October 2016.

Court of Appeal's decision

The Court dismissed the government's appeal and confirmed the first judgement on its merits. The Court's judgement is based on the following considerations, among others:

- a) It resulted amply clear that the Ombudsman Act applied to both officers and men of the Armed Forces of Malta, even though only in respect of appointments, promotions, salaries and pension rights.
- b) The Act specifically states that it does not apply to members of the Armed Forces unless proof is produced to the satisfaction of the Ombudsman that shows that every possible means to obtain a remedy had been exhausted.

- c) That means that the Ombudsman has jurisdiction to investigate the complaints regarding the promotions in question, so long as the Ombudsman is satisfied that proof has been produced that shows that any possible means to produce a remedy had been exhausted. The Ombudsman is authorised to conduct the investigation if he is satisfied that, in particular circumstances, it would not be reasonable to expect that complainant proceeds or should have proceeded with those available means of remedy.
- d) It was the Ombudsman and no one else, who had to be satisfied that the proof produced to show that every possible means to obtain a remedy had been exhausted. It was only the Ombudsman that had to be satisfied that in the particular circumstances of the case it would not be reasonable to expect complainants to proceed with the available means of remedy.

This does not mean that the Ombudsman could capriciously discard remedies that were available according to law. The Act of the Ombudsman remains subject to the scrutiny of the Courts to determine whether his decisions were reasonable, not taken for improper purposes or based on irrelevant considerations.

In these circumstances it did not result to the Court that the decision of the Ombudsman by which he maintained that all available remedies at the disposal of complainants had been exhausted, was unreasonable. Moreover, the Ombudsman had every right to maintain that the Ombudsman Act entitled him to conduct the investigation because he was satisfied that, in the particular circumstances of the case, it would not be reasonable to expect complainants to proceed with those other remedies that could apparently seem to be available to them.

The Army officers had had recourse to the Commander of the Armed Forces who failed to give them a decision. Therefore, it did not result to the Court that the Ombudsman was unreasonable when he concluded for these reasons, that the fact that complainants had the possibility to refer their complaint, through the Commander, to the President of the Republic was not an effective remedy. A remedy that is not effective is no remedy at all. The Court therefore decided that there were all the legal requisites to empower the Ombudsman with jurisdiction to investigate the complaints filed with him by the officers of the Armed Forces.

Ombudsman proceeds with investigation

Following that judgement, the Ombudsman continued with his investigation and requested the Ministry and the Commander of the Armed Forces to produce the required documentation necessary for his investigation. This long drawn out judicial confrontation, even though successful, is regretted. It could have been avoided. It has unnecessarily delayed the investigation of legitimate, though not necessarily justified, complaints. The only positive aspect of this unfortunate incident is the fact that public opinion became more conscious of the advantages of having a strong Ombudsman institution, prepared to defend

the interests of aggrieved citizens with all means at its disposal. To that extent it contributed towards an increased visibility of the institution during the year.

II. ORGANISING THE 9TH MEETING OF THE ASSOCIATION OF MEDITERRANEAN OMBUDSMEN IN MARCH.

As fitting closure to the events organised to mark the 20th Anniversary of the setting up of the Ombudsman institution in Malta, the Office organised the 9th Meeting of the Association of Mediterranean Ombudsmen (AOM) on 9-10 March. This Association brings together national ombudsmen and mediators from practically all Mediterranean countries, having different constitutions and systems of government, diverse legal orders and administrative and judicial structures that reflect the cultural, social and economic development of their respective countries as well as their traditions.

Malta is a founder member of the Association and has been its honorary Treasurer since it was set up. The Association strives to promote a wider diffusion and acceptance in the Mediterranean region of the values and objectives that sustain the Ombudsman institution such as good governance, accountability, transparency, fairness, the rule of law and human rights. The theme chosen for this meeting by the Maltese Ombudsman was *“The Ombudsman a key player for good governance”*.

The President of the Republic, Her Excellency Marie-Louise Coleiro Preca and the President of the House of Representatives, the Hon Dr Angelo Farrugia attended the opening ceremony. Together with the President of the Association, the Albanian Ombudsman, Dr Igor Totozani, and the Maltese Ombudsman, they welcomed delegates and delivered keynote speeches.

On the first day of the Conference three plenary sessions were held. The first session, chaired by the President of the Association dealt with the Ombudsman's dual role; that of defending the citizen and promoting the right to good public administration. The Maltese Ombudsman introduced the discussion by inviting delegates to focus on the vital role that the Ombudsman has to play as a key player in the democratic life of a country, the promotion of the ideals of good governance and correct administrative practices, as well as the protection of fundamental rights and freedoms. His contribution is being reproduced as an appendix in this publication.

The theme of the second plenary session dealt with the strengthening of the Ombudsman institution through international cooperation, training opportunities and advanced academic studies on ombudsmanship and good governance. This session was chaired by the Honourable President of the AOM and Ombudsman of Morocco, Mr Abdelaziz Benzakhour. It dealt with the need to continue and strengthen existing, ongoing training programmes for staff in ombudsman institutions throughout the Mediterranean. It was imperative to continue to seek international support for these programmes which were considered to be vital for the strengthening of ombudsman institutions in the Mediterranean. Such initiatives have been organised for a number of years by the Ombudsman of Morocco. Malta has strongly supported these initiatives

by regularly sending Investigating Officers and other officials to lecture in these courses. It did so this year.

The third plenary session dealt with the role of the Ombudsman in protecting human rights in times of political and economic crises, terrorism and irregular immigration. It was chaired by the Defender of Rights of France Mr Jacques Toubon. This session generated considerable interest among delegates since the topic was of grave humanitarian concern and needed to be addressed through immediate active and effective cooperation.

The President of the AOM, the Defensor del Pueblo of Spain and the Director General of the Tunisian Mediator made keynote speeches, while the representative of the Council of Europe, the Ombudsman of Macedonia, the Deputy Ombudsman of Catalunya and the Head of Investigations of the Office of the Maltese Ombudsman among others, intervened during the debate.

MALTA DECLARATION

Participants approved the AOM Malta declaration on Migration 2016, stressing the commitment of the AOM to raise awareness on the problems of migration and to give its proactive contribution and support to the development of a human rights based approach in tackling the challenges and managing the mixed migratory flows both in the actual precipitating humanitarian crisis and in the longer process of integration.

The text of this declaration is being published as Appendix B to this report.

When closing the proceedings, delegates expressed appreciation for the sterling work carried out by the outgoing Malta Ombudsman to promote and support the Association of Mediterranean Ombudsmen. At the end of his second term of Office, they unanimously resolved to nominate Chief Justice Emeritus Joseph Said Pullicino as an honorary life member of the Association. Delegates also expressed their thanks and appreciation for the excellent organisation of the Meeting, the high level of content of the various contributions and the warm welcome and hospitality extended to them by the Office of the Maltese Ombudsman. The meeting was given coverage in the media both locally and internationally. This helped the Office to maintain a high profile as an active player in promoting good governance and defending human rights.

iii. Increasing public awareness through the performance of statutory duties and outreach activities.

Throughout the year the Ombudsman and Commissioners were involved in various activities that brought the institution and its work to the attention of the public. It has been the practice over the years for the Ombudsman to utilise statutory duties he has to focus public opinion on major issues of public concern. He does this both when preparing the Ombudsplan for the following year and publishing his annual report, that now also includes those of the Commissioners. These documents are presented to the President of the House of Representatives to be laid on the Table of the House, attract wide attention and are commented on by the media.

The debate in the House Business Committee on the Ombudsplan is being broadcast directly by Parliament's television station and livestreamed on the internet. Outreach activities aimed to project the institution and the service it provides also increase its visibility and are invaluable to ensure sustained awareness of citizens on the availability of the means the Office puts at their disposal to defend their rights. These include participation in events like Freshers' Week at the University, the Expo at MCAST, a physical presence in Gozo to receive complaints, meetings with Liaison Officers and others.

Society needs to be reminded that the Office of the Ombudsman was set up to attempt to eradicate a system of political patronage and partisan clientilism that erodes good governance. Aggrieved persons need to be constantly encouraged to seek redress from competent, independent authorities set up to protect them. Rather than seek favours, they need to stand up for their rights. It is in this context that visibility should remain a primary objective of the institution, just as it is equally important that strengthening the development and relevance of the Ombudsman institution should remain high on the political agenda.

AREAS OF CONCERN - PRIVATISATION OF ESSENTIAL SERVICES

As in previous years, the Ombudsman highlighted in his Ombudsplan areas of concern that in his view could negatively affect good governance and that needed to be addressed. He reiterated his growing preoccupation at the negative effects on the right of aggrieved persons' to have access to the Ombudsman as a result of the ongoing implementation of policies of privatisation of essential services, especially in the health and energy sectors. Segments of these essential services, previously delivered by government, are now being wholly or partially privatised and are being made available by the private sector through companies in which the government has no controlling interest.

The jurisdiction of the Ombudsman in these areas was being significantly eroded. The Ombudsman and the Commissioners would no longer be in a position to investigate complaints against the service provider even when these concern the quality of a service that the private company bound itself contractually to provide to government.

PRIVATISATION OF HEALTH SERVICES

This is particularly worrying in the vital area of health in which both patients and government employees, seconded with a private company, are already experiencing a marked diminution of their right of access to the Commissioner for Health and the Ombudsman. In fact, towards the end of the year under review, the Commissioner expressed his inability to conduct own initiative investigations in those circumstances. He had also received the first complaints against the private service provider that he had to consider to be out of his jurisdiction.

This is of even greater concern in the case of the privatisation of the Gozo General Hospital, that effectively means that the whole population of Gozo is being practically excluded from direct access to the Commissioner of Health when being treated in the now privately owned general hospital. An unacceptable

situation that improperly discriminates against a section of the population.

The Ombudsplan recalled the efforts made by the Commissioner for Health to draw the attention of the competent authorities to an evolving situation that was causing grave concern. It recalled that he had sought assurances from the Ministry for Health that public private partnerships for the provision of essential health services would not prejudice the right of those availing themselves of those services and employees in the public health sector, seconded to the private sector provider to have recourse to him and to the Office of the Ombudsman. The Commissioner also submitted that the lack of correct and timely information on these otherwise positive initiatives, was not helping to dispel uncertainty. The Ministry assured him that the relative contracts will be published by the end of the year. Unfortunately, those parts of the contract were eventually published and the information revealed left the Commissioner none the wiser. Most of his queries remained unanswered.

Little progress was registered on this delicate issue till the end of the year under review. The Ministry insisted that the contracts and agreements entered into with the private service provider would continue to adequately protect all concerned. In his Ombudsplan, the Ombudsman invited the House to take note of these developments, that in his opinion, required attention. The House should examine whether the Ombudsman should have a role in the defence of citizens' rights and correct practices in the management of essential services when delivered to the public by the private sector. It had to be considered whether provision of such services should come under direct scrutiny of the Ombudsman. A scrutiny that would naturally be limited only to the provision of the essential service to the client or consumer and would in no way impinge on other activities of a purely commercial nature of the private companies providing the service.

In this context the Ombudsman recommended further reflection on whether there was a need to amend the Ombudsman Act and other legislation to ensure that the right of the citizen to the protection of his Office over the delivery of essential services that the State was bound to guarantee, would not be weakened or neutralised. The Ombudsman and the Commissioner for Health submitted amendments to the Ombudsman Act for the consideration of Government.

Lobbying

Another important matter that the Ombudsman raised in his Ombudsplan for 2017 was the need to introduce legislation to regulate lobbying and how this relates to the right of individuals to receive correct and timely information on the activities of the public administration. When doing so the Ombudsman was performing his secondary but no less important role to ensure an open transparent and accountable public administration. Transparency and accountability can only be guaranteed if the public administration performs its duty to provide correct and timely information to enable public opinion to assess and judge the correctness of its actions.

Lobbying is essentially a positive process aimed to influence decisions taken by public authorities. It is undoubtedly to be encouraged when it is made in an open and transparent manner to genuinely promote issues for the common good. Intrinsically it is a democratic exercise aimed to acquire information from the public authorities necessary to influence public opinion. When, on the other hand, lobbying is not open and transparent but is allowed to happen surreptitiously by a person's intent on gaining undue advantage, it can give rise to deceit and corruption.

Lobbying and good governance

During the year the Ombudsman followed the debate on this matter, that directly concerns good governance and that was gaining increased attention both in Malta and in Europe. In June he attended the European Network of Ombudsman Conference that took place in Brussels that specifically discussed the link between lobbying, transparency and corruption. There was consensus that any measures that could be taken should not be aimed at restricting or prohibiting lobbying. They had, on the contrary, to promote the notion that the process of lobbying should be regulated in such a way as to ensure transparency.

This could be done:

- i. through the setting up and maintaining of a Register of Lobbying that would be accessible to the public;
- ii. that the Commission set up to oversee the Standards of public officers is the regulator of lobbying;
- iii. that lobbyists are bound to register and to provide regular information on their activities on how, when and with whom they exercise their activities; and
- iv. that there should be a code of conduct on how lobbying has to be done. It has to be binding and regulate not only those who do lobbying but also those who are involved in it. This code of ethics had, among other things, to ensure that legislators and other public officers would not involve themselves in lobbying for a number of years after they have completed their term of office.

The Ombudsman noted with satisfaction that the Government had already expressed the view that there should be a Register of lobbyists that would identify who they were and what were the objectives of their lobbying. He also expressed agreement with the suggestion of the Deputy Prime Minister and Minister for European Affairs and the implementation of the Electoral Manifesto, that the Parliamentary Commissioner for Standards should be entrusted with analysing the concept of lobbying and to make recommendations on how lobbying should be regulated.

IV. OWN INITIATIVE INVESTIGATIONS ON SYSTEMIC FAILINGS OF THE PUBLIC ADMINISTRATION

The appointment of Commissioners to investigate complaints in specialised areas of the public administration and the wide powers given to them to initiate own initiative inquiries on matters of concern of maladministration considerably increased the standing of the Office as a watchdog for good governance in vital areas of government. These Commissioners, highly respected professionals in their field, throughout the year identified failings in public administration that gave rise to injustice, improper discrimination or wrong interpretation and application of laws and regulations. Very often Commissioners are alerted to these situations through complaints by individuals seeking redress. Complaints that are indicators of serious, systemic failures that need to be addressed. Own initiative investigations carried out by the Commissioners, as authorised by the Ombudsman, often highlight situations that aggravate society in general and in many instances, vulnerable persons in need of support.

Commissioners' increase visibility

The Commissioners focussed on issues that required immediate attention. Thus for example the Commissioner for Environment and Planning investigated problems of lack of enforcement by the Planning Authority, the interpretation of regulations covering development in ODZ sites and the obstruction of public pedestrian passageways. On the other hand, the Commissioner for Health continued to follow up own initiative investigations on infants and adults with hearing problems and on the entitlement of patients to the supply of medicines under the Social Security Act. He also conducted preliminary investigations on a number of issues that he raised with the Health authorities. The areas of concern he addressed varied from the problem of dust and particles emanating from the Palumbo dockyard, to a patients' charter in treatment for muscular degeneration and the privatisation of health services among others. The Commissioner for Education strived to establish a presence at the Malta College of Arts, Science and Technology through contacts with its management, academics and students. He attended the Freshers' Week at ITS. Following the appointment of the new Rector he sought to improve relations between the University and his Office. His efforts produced the desired results as shown by the sharp increase of the number of complaints settled.

Other initiatives taken by the Ombudsman and Commissioners not directly involving complaints also resulted in increased visibility of the Office. For example the Commissioner for Environment and Planning held discussions with the Ramblers' Association of Malta and issued a report on 'Access to the countryside' in which he made recommendations on how this should be regulated by a law that introduces the concept of access rights and the freedom to roam. He sought to recommend a balance between the enjoyment of the countryside and the rights of landowners to the peaceful and uninterrupted enjoyment of their property. The report was well received. It provoked the reaction of the Federazzjoni Kaccaturi, Nassaba u Koservazzjonisti (FKNK). In

meetings held with the Commissioner the FKNK sought reassurances that the rights of their members would not be prejudiced.

During the year under review, the Commissioner also examined the effects of the proposed demerger of the MEPA and the setting up of two separate authorities, one to oversee planning and development and the other the environment.

Joint Investigations

An interesting development that continued to build on what had been started in previous years was the carrying out of joint investigations by two Commissioners on complaints that needed to be considered from different aspects. Such investigations were carried out by the Commissioner for Environment and Planning and the Commissioner for Health when situations arose that required investigation into public health issues that were negatively impacted by matters relating to development or the environment and vice versa. These ranged from a complaint on water flowing on a dog friendly beach at Baħar iċ-Cagħaq to lack of action to remove a chimney installed on the roof of a neighbouring residence and health hazards caused by dust pollution and exhaust emanating from a generator.

Such joint investigations enabled the Office to provide a comprehensive service to complainants. Opinions and recommendations carried more weight with the public administration in so far as the subject matter of the complaint was dealt with from various angles simultaneously by Commissioners who are specialists in their field. This trend needs to be encouraged and further developed since it would give added value to the service being provided by the Office to aggrieved individuals.



OF RELEVANCE

An institution remains relevant to the society it is meant to serve, if it adequately fulfils the essential functions it is intended to perform. Every institution, especially if like the Ombudsman, set up by law, has a specific role to play within the fabric of society and its governance. Society can only feel that the institution is and remains relevant if it performs in a manner that achieves the main aims for which it has been set up.

RESULTS AND TRUST

Relevance is therefore to be gauged not only by the results achieved by the institution throughout the year in the performance of its proper functions but also, and perhaps more importantly, by the extent to which those results positively impact society in so far as they reflect the institution's mission statement and satisfy the aspirations of citizens and what they expect from it. Relevance ensures that the institution remains close to the people it is bound to serve and matches their aspirations. Closeness generates trust and confidence that the institution can properly and adequately perform its functions.

The Ombudsman needs to cultivate and nurture that trust. Both the public administration and the aggrieved person need, at all times, to recognise the institution as fully autonomous and independent, that it can investigate complaints and address issues of good governance objectively without fear or favour. It is to the credit of the Ombudsman institution in Malta that it has throughout the years given ample proof that it can creditably perform its functions. The trust that citizens have always shown in the Ombudsman evidence the high esteem and respect the institution enjoys as an authority with the vital role to ensure good governance and defend the citizen against arbitrariness and abuse.

Though there will, of course, always remain room for improvement. Last year's performance was no exception.

MISSION STATEMENT AND PERFORMANCE

The mission statement of the Office of the Ombudsman is encapsulated in the maxim that it is primarily an institution to defend citizens against arbitrariness and injustice through the investigation of complaints and own initiative

investigations and also to act as the conscience of the public administration to ensure correctness and good governance.

It is useful to recall that Malta enjoys one of the most progressive and forward looking Ombudsman legislation that potentially gives the Office the standing of an Auditor of all actions of the public administration in a wide sense, on a par with that which the Auditor General enjoys in respect of matters relating to the management of public finances.

The Parliamentary Ombudsman is by law endowed with the widest powers to conduct investigations into complaints. Unlike many other countries including the United Kingdom, aggrieved individuals have the right of direct access to the Ombudsman and they do not need to complain to him through any intermediary. In the United Kingdom for example, a complaint, to date, can only be made through the services of a Member of Parliament representing the person complaining. Again, unlike many other countries, the Ombudsman in Malta and the Commissioners in his Office have the widest powers to conduct own initiative investigations. They are free to identify and enquire into any systemic failure of the administration they feel should be addressed.

In the year under review the total number of persons who had recourse to the services of the Office was close to that of previous years. The number of registered enquiries showed an improvement. These were handled by the front desk and public relations officers who gave their assistance and advice to those seeking help on the best way to proceed and when necessary, directed them to file complaints with the Ombudsman or Commissioners. The number of new complaints received shows a decrease from that of the previous year. This was markedly so in the number of complaints received by the Parliamentary Ombudsman.

Taking stock in a time of transition

It was understandable that the new incumbent required time to familiarise himself with his new responsibilities, to take stock of the way the Office operated and to identify what changes and reforms needed to be made to improve its workings. On the other hand, people had to become accustomed to the change and to feel confident that they could usefully and profitably have recourse to the Office to seek redress.

It was clear however that in a time of transition, every effort had to be made to raise the profile of the new Ombudsman in the eyes of society through appropriate outreach initiatives to sustain and increase trust in the effectiveness of the Institution. On the other hand, the number of complaints received by the Commissioners remained very close to that of previous years, with that received by the Commissioner for Health showing a slight increase.

It is evident that the Commissioners, well into their fourth year of their first term in Office, had created a sound good will in the country to enable them to act effectively as a bridge between aggrieved persons and the public administration. Their reports for the year under review that form an integral part of this publication, show that all the Commissioners established channels of

direct access with the Ministries and departments that fall under their jurisdiction. They discussed with them complaints by individuals that they were investigating and raised issues of genuine concern that required to be addressed. They did this with varying degrees of success depending on the matter under discussion.

However, whatever the outcome, there is no doubt that the efforts of the Commissioners and of the Ombudsman, that when appropriate, were given due publicity, highlighted the relevance of the Institution during the year as an effective tool to ensure good governance. For a number of reasons results were not always positive but the Office persisted in its efforts to convince the public administration to accept its authoritative opinions and implement its recommendations.

The right of the Ombudsman and the Commissioners to focus on areas of general concern, bring them to the attention of the public authorities and deliver an opinion on how they should be addressed and resolved, when exercised objectively and judiciously, undoubtedly gives an added value to the work that the Office of the Ombudsman performs to ensure good governance.

A number of such initiatives covering various aspects of the public administration were undertaken during the year under review and reference is made to them in other sections of this report.



OF EFFECTIVENESS

The effectiveness of an institution is gauged primarily by the quality and level of its performance, the maximisation of results achieved considering the available resources and the impact the delivery of services proper to its functions has on those it is bound to serve.

Assessing the effectiveness of the performance of the Ombudsman institution during the year under review, one needs to apply these criteria to the two main objectives of the institution that of protecting individuals against abuse and bad governance and serving as the conscience of the public administration.

ANALYSING DATA AND PERFORMANCE

The core function of the Ombudsman is to investigate complaints filed by aggrieved individuals seeking redress. In this respect statistical data on the movement of complaints received and disposed of by the Ombudsman and the Commissioners throughout the year provides a first indicator on the performance of the institution. This information, carried elsewhere in this report, needs to be properly read and analysed. It has to be contextualised within the framework of the functions of the Ombudsman that are not only to investigate and determine complaints but also to act as a mediator, negotiator and honest broker between the complainant and public authorities. Hybrid functions that often, through their very nature, defy the setting out of definite time frames within which complaints should be investigated and disposed of.

When interpreting data therefore care should be taken not to draw hasty conclusions from a superficial reading of statistics. Unless imponderables and considerations peculiar to the nature of the Office are factored in, one might draw distorted conclusions that do not properly reflect the performance of the Office. This of course does not mean that statistical data should be ignored. It is extremely useful for comparative analysis and in many ways, indispensable to provide a sound basis for future planning. One must also keep in mind that performance from a strictly statistical perception can be greatly influenced by one off events that positively or negatively exceptionally affect the workings of the Office throughout the year. Such events including the introduction of the reforms to ensure stricter following of investigation processes, the investigation

of complex cases and changes in the complement of investigating officers, also for personal reasons, all had a bearing on performance.

One needs to stress that in relatively small, tightly knit institutions like the Office of the Ombudsman, service is highly personalised and such situations inevitably tend to affect performance. It takes time to absorb change and to restore a smooth running of the administration.

Raw statistics show that there was a sharp decline in the number of complaints received by the Ombudsman that was offset by a corresponding increase in those received by Commissioners. There could be a number of reasons for this. The fact that the grievances units set up by Government as internal complaints mechanisms, had in fact absorbed a number of complaints that would otherwise have been channelled to the Office; and the perceived trend that aggrieved persons might again have been tempted to seek direct redress through personal contact with the administration.

Ideally also one could imagine that there might have been an improvement in the provision of services by the public administration or even that the efforts of the Office of the Ombudsman throughout the years were finally bearing fruit. It has been said famously, that the ultimate aim of an Ombudsman is to run himself out of a job. However human nature being what it is, one needs to be wary of the danger that the Institution would no longer remain relevant to society, if society is not made fully aware of the strong defence that the Ombudsman and Commissioners can put up to redress grievances.

The data on the outcome of finalised complaints is particularly revealing. While the number of finalised complaints by the Commissioners was on a par with that of previous years with some improvement, the Ombudsman succeeded to finalise a far greater number, 514 as against 354 in 2015 - an increase of 45 %. A notable increase that can be attributed to a number of factors. These include an understandable effort by the outgoing Ombudsman to finalise the investigation of complaints that were mature for completion to reduce the backlog for his successor.

The new Ombudsman was concerned at the fact that the investigation of complaints might be taking more time than warranted. It was therefore his priority to engage with investigating officers to streamline operations and to dispose of complaints when this was possible without undue haste and ensuring a correct investigative process. Cleaning the Aegean stables is a useful exercise that needs to be periodically done.

REVIEW OF PENDING INVESTIGATIONS

On assuming Office, the new Ombudsman with the help of the administration carried out a review of all pending investigations and together with investigating officers chartered their progress. Because of staff movements the team of investigators had to be reorganised and strengthened. The overall effect at least statistically, was very positive.

Care must be taken not to sacrifice the quality of the service given to complainants, for the sake of achieving attractive statistical levels, even if this

entails seeking redress through a longer process of mediation. It is good to adopt generic time frames for the conduct of investigations but these have to be flexible to allow for the varied complexities that cases present. More importantly, it has to be understood that the Office can only conduct investigations efficiently and within reasonable time frames if there is cooperation and response from the public authorities involved in the complaint. This is not always readily forthcoming. The Ombudsman has undertaken during the year under review, to formulate a code of conduct setting out guiding principles that the Office has to follow when providing a service to complainants. This code should be published in 2017.

Other revealing data that statistics for the year under review provides refer to the outcome of finalised complaints. It is interesting to note that while it is true that only a small number of complaints received by the Ombudsman was sustained, just 25 out of 514, a much greater number 161 were resolved by informal action while another 57 complainants were given assistance. This trend is also generally sustained in the number of complaints dealt with by the Commissioners in fact they together received 236 out of which 54 were sustained. This shows that the bulk of the service given by the Office is aimed at resolving disputes through negotiation and mediation.

Investigating officers regularly bring together complainants and public authorities who provide a service that gave rise to the complaint to try and reach an amicable settlement. Their efforts are often successful but the process is generally a lengthy one since solutions need generally to be found on the basis of equity and the correct exercise of discretionary powers.

CONSCIENCE OF THE PUBLIC ADMINISTRATION

It should be underlined that the function of the Ombudsman is not simply to determine whether an administrative act is according to applicable laws and regulations. He is in duty bound to determine whether that act was unjust, unreasonable, improperly discriminatory or simply wrong, even if it was technically, legally correct.

It is precisely when deciding issues on the basis of justice and equity rather than on strict legality that the Ombudsman assumes the role of acting as the conscience of the public administration. Indeed the Ombudsman is by law bound to recommend that an unjust law or regulation should be amended or revoked to correct systemic failures and to ensure that manifest injustice is rectified. Seen from this perspective one can conclude that Parliament has bestowed on the Ombudsman the singular function to scrutinise administrative and indeed even legislative acts also from a moral and ethical view point. He has to determine whether such acts conform to accepted standards of good administrative behaviour in a democratic society.

The Ombudsman Act gives the Ombudsman the potential to assume the role of an active contributor to ensure an open, transparent and accountable public administration. The Ombudsman and Commissioners can do so not only when investigating complaints by aggrieved persons but also, and more importantly when conducting own initiative investigations.

ESCALATING CONFRONTATION

Regrettably the year under review was marked by escalating confrontation with those who govern and those who aspire to govern trading serious allegations of improper conduct, unjustified secrecy and corruption.

Civil society has expressed deep concern at the deteriorating situation calling for remedial measures to be taken immediately. The Office of the Ombudsman has not failed to emphasize the need to ensure the strict observance of the rules of good governance and the need to strengthen the institutions that are entrusted with their enforcement. The initiative taken late last year to focus public opinion on the right of citizens to be fully informed of matters concerning the public administration and the corresponding duty of the State to provide such information was meant to provoke a healthy public debate on an issue that lies at the heart of good governance.

Undoubtedly maladministration, improper behaviour and corruption thrive when the conduct of public affairs is shrouded in secrecy that inevitably undermines transparency and accountability. It is unfortunate that during the year under review, the disclosure of timely and correct information remained a highly controversial issue.

This Office itself faced on occasions, reluctance if not refusals, to provide it with information, notwithstanding the wide powers that the Ombudsman has at law to exact it. The saga of the Army case and the repeated requests by the Commissioner for Health to be provided with the full, uncensored texts of the agreements relative to the privatisation of the health services are just two examples that illustrate how the failure to provide correct and timely information can interfere in the investigation by this Office of complaints alleging improper discrimination and maladministration.

REMEDIAL ACTION URGENTLY NEEDED

There is a growing feeling that this grave situation needs to be radically addressed and remedial action is urgently called for. Openness, transparency and accountability cannot remain slogans to be used for political or partisan convenience. They are values that need to be translated into real, tangible criteria that can guarantee good governance. The present scenario, that has roots that go back for many years with negative traits ingrained in the way of thinking of society, is fast leading to a lack of trust in the political class and general disillusionment in the conduct of public affairs as a service to the country. The year under review could be considered to be a defining moment when all these crucial issues have come to a head. It presents an invaluable opportunity for a frank and serious debate on the deep issues and challenges they represent and the solutions that need to be found to guarantee openness, transparency and accountability in the management of public affairs.



NOTES FROM THE 2016 DIARY

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN





NOTES FROM THE 2016 DIARY

18 FEBRUARY 2016

**OMBUDSMAN AND THE COMMISSIONER FOR ENVIRONMENT
AND PLANNING PARTICIPATE IN A PUBLIC DISCUSSION**



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino and the Commissioner for Environment and Planning, Perit David Pace participated in a Public Discussion meeting organised by the Swieqi Local Council.

The theme of the meeting was *'The Ombudsman - shield of the citizen and the conscience of the public administration.'*

During the meeting, those who attended had the opportunity to ask questions about the function of the Ombudsman and the Commissioners and share experiences of difficulties they encounter in their locality.

18 FEBRUARY 2016

20TH ANNIVERSARY – MASS BY THE ARCHBISHOP OF MALTA



The Archbishop of Malta, H.G. Mons. Charles J. Scicluna visited the Office of the Ombudsman and celebrated Mass commemorating the 20th Anniversary of the setting-up of the Office of the Ombudsman in Malta.

Apart from past and present employees, the Deputy Speaker the Hon. Censu Galea and the Clerk of the House, Mr Raymond Scicluna were also present.

19 FEBRUARY 2016

OMBUDSMAN MEETS GRETA



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino met representatives from the GRETA – The Council of Europe group of experts on action against trafficking in Human Beings. During the meeting issues relating to fundamental Human Rights, Migration and Human Trafficking and the role of the Ombudsman in these issues were discussed.

The Ombudsman was accompanied by Dr Monica Borg Galea, Head of Investigations.

10 MARCH 2016

9TH AOM MEETING: OPENING CEREMONY



The commemorative events celebrating the 20th Anniversary from the setting up of the Office of the Ombudsman came to fitting close with the organisation of the Ninth Meeting of the Association of Mediterranean Ombudsmen (AOM).

The theme of the two day conference was '*The Ombudsman – a key player for Good Governance*'. The President of the Republic H.E. Marie-Louise Colerio Preca and the President of the House of Representatives, the Hon. Angelo Farrugia attended the opening ceremony and delivered key note speeches. The speech of the President of the Republic and the Malta Declaration approved by the meeting are being reproduced as Appendix C of this report.

12 MARCH 2016

PARLIAMENTARY OMBUDSMAN JOSEPH SAID PULLICINO NOMINATED AS HONORARY MEMBER OF THE AOM



During the General Assembly of the Association of Mediterranean Ombudsmen held in Malta, the Honorary President of the AOM and Mediator of the Kingdom of Morocco, Abdelaziz Benzakour nominated the Parliamentary Ombudsman of Malta, Chief Justice Emeritus Joseph Said Pullicino as Honorary Member of the Association.

Mr Benzakour said that the nomination was being made on behalf and in agreement with all the members of the Association, and it was a gesture of gratitude for the valuable contribution that Said Pullicino gave to the Association as one of its founding member and treasurer. Benzakour hoped that Said Pullicino will continue to contribute also after his mandate ends.

The President of the AOM, Dr Igli Totozani, seconded the nomination and thanked the Parliamentary Ombudsman Joseph Said Pullicino for the excellent service and for advocating the association's ideals since its foundation.

14 MARCH 2016**OMBUDSMAN'S SECOND MANDATE ENDS**

The term of the second mandate of Chief Justice Emeritus Joseph Said Pullicino as Parliamentary Ombudsman ended on Friday 11 March.

The Government and Opposition agreed to nominate the Auditor General, Mr Anthony C. Mifsud as his successor.

The nomination required a two-thirds vote of the House of Representatives which was held on Tuesday 16 March.

At the end of his mandate, the Parliamentary Ombudsman Joseph Said Pullicino addressed the media giving an overview of his tenure.

21 MARCH 2016

MR ANTHONY C. MIFSUD SWORN IN AS PARLIAMENTARY OMBUDSMAN



Mr Anthony C. Mifsud, FCIPD, was sworn in as Parliamentary Ombudsman in a ceremony presided over by H.E. Marie-Louise Coleiro Preca, President of Malta and in the presence of the Prime Minister, the Hon. Joseph Muscat, the Speaker of the House, the Hon. Angelo Farrugia and the Leader of the Opposition, the Hon. Simon Busuttil.

Mr Anthony C. Mifsud, has a longstanding career in the public sector. In 2008, by unanimous resolution of the House of Representatives, he was appointed as Auditor General and reconfirmed, again by unanimous resolution in June 2013. On the 16th March 2016, the House of Representatives unanimously approved his nomination as Parliamentary Ombudsman.

After the ceremony, the outgoing Ombudsman, Chief Justice Joseph Said Pullicino welcomed Mr Mifsud at the Office of the Ombudsman and introduced him to the staff.

8 APRIL 2016**ENVIRONMENT AND PLANNING COMMISSIONER PARTICIPATES AT THE SBE16 MALTA**

Speech by the Commissioner for Environment and Planning, Perit David Pace at SBE16 Malta – Europe and the Mediterranean: Towards a Sustainable Built Environment. The speech of the Commissioner for Environment and Planning is being reproduced as Appendix D of this report.

25 APRIL 2016**ENVIRONMENT AND PLANNING COMMISSIONER PARTICIPATES IN 'SAVE WIED ĠHOMOR' EDUCATIONAL SEMINAR**

The Commissioner for Environment and Planning, Perit David Pace, was invited by the Local Councils of Swieqi, San Ġwann and St Julians to participate in an educational seminar on 'Save Wied Ġhomor' on the occasion of Earth Day.

During the seminar, a number of Environmental NGO's gave short informative presentations on the characteristics of Wied Ġhomor. In his concluding

remarks, the Commissioner gave an overview of his work in relation to assisting citizens in seeking their rights for a better quality of life. The Commissioner also explained his functions and how he can assist residents in matters of concern. Commissioner Pace urged residents to support NGOs and Local Authorities in their work to secure better environmental conditions within urban areas.

23 JUNE 2016

THE OFFICE OF THE OMBUDSMAN PARTICIPATES IN THE MCAST EXPO



The Office of the Ombudsman for the first time participated in the MCAST EXPO, a showcase of the students' work in their respective institutes. The Commissioner for Education, Prof Charles Farrugia visited the Expo and had the opportunity to meet the students and lecturers from different institutes and explained his role and functions.

8 JULY 2016

THE DEPUTY OMBUDSMAN OF ROMANIA PAYS A COURTESY CALL ON THE PARLIAMENTARY OMBUDSMAN



The Deputy Ombudsman of Romania, Prof Mircea Criste paid a courtesy call on the Parliamentary Ombudsman Mr Anthony C. Mifsud.

Professor Criste studied law and obtained a PhD in Constitutional Law subsequent to which he was appointed as a Professor at the West University of Timisoara, Romania.

In 1997 he became the first Director General of the Penitentiary System where he was a prime mover of the important reforms in this area of justice. He was also a judge and Chief Prosecutor of the Supreme Court of Justice as well as Ambassador to Macedonia.

His current position is that of Deputy People's Advocate (Ombudsman) with special responsibility for the Armed Forces, Justice, the Police and Correctional Facilities.

Dr Brian Said, Senior Investigating Officer was in attendance.

11 JULY 2016

**THE PARLIAMENTARY OMBUDSMAN PRESENTS THE ANNUAL REPORT 2015
TO THE PRESIDENT OF THE HOUSE OF REPRESENTATIVES**



The Parliamentary Ombudsman, Mr Anthony C. Mifsud, presented the Office of the Ombudsman's Annual Report for 2015 to the President of the House of Representatives, the Hon. Anglu Farrugia.

For the Office of the Ombudsman, 2015 in many ways was a momentous year. It was the 20th Anniversary of the institution and the year in which major structural works to provide new, modern offices were completed.

As expected, for the second consecutive year, the Office of the Ombudsman experienced an increase in the complaints received. In 2015, the Office of the Ombudsman handled 611 cases, an overall increase of 13.5% over 2014. This follows a 9% increase in complaints in 2014. This can be attributed to a number of outreach initiatives carried out during the year under review.

The 2015 Annual Report also highlights the initiatives taken by the Parliamentary Ombudsman and the Commissioners in their role as defenders of the citizens' rights.

4 AUGUST 2016**ACCESS TO THE COUNTRY SIDE – THE RIGHT TO RAMBLE**

Own Initiative Investigation by the Commissioner for Environment and Planning

The Parliamentary Ombudsman, Mr Anthony C. Mifsud together with the Commissioner for Environment and Planning, Perit David Pace have presented a report entitled 'Access to the countryside – the right to ramble' to the President of the House of Representatives, the Hon. Angelo Farrugia.

The Own Initiative Investigation by the Commissioner was initiated following a series of meetings with representatives of the Ramblers' Association of Malta in which they raised their difficulties in accessing the countryside to practice their hobby. During these meetings, the need to establish a series of Rambling Trails which would define the available pathways was also discussed.

The scope of the report is to suggest a possible method providing a legislative framework within which rambling can be carried out without prejudicing landowners' rights to the peaceful enjoyment of their property.

The report suggests a novel way of environmental conservation, rather than letting the countryside open to unchecked roaming, often with harmful consequences, passage ways through the countryside will offer controlled paths strictly for areas of sensitive ecological or environmental importance, while opening up new vistas which to date are inaccessible for a number of reasons.

In his report, the Commissioner for Environment and Planning recommends enacting legislation that introduces the concept of access rights. As an example, the report mentions the English and Scottish models, which give the right to access to private land where the landowner has agreed to let people use it for specific use and under clear guidelines.

This system offers a win-win situation where a property is not ceded or abdicated but the owner's rights are reinforced by the granting of access rights which would, therefore, recognise the prerogative of landowners to regulate such

access. In return, the presence of groups of ramblers will serve as a deterrent against vandalism and damage to paths, structures and infrastructures forming part of the trail and will provide a monitoring and 'watchdog' service in favour of the upkeep and preservation of the landscape.

The Commissioner concluded his report by stating that there is an urgent need for the setting-up of rambling trails locally since there are various benefits to be derived. These proposals will also raise awareness and appreciation of the natural and historical heritage we are so fortunate to have in our country.

26 AUGUST 2016

COMMISSIONER FOR ENVIRONMENT AND PLANNING EXPRESSES HIS CONCERN ON THE EFFECT OF THE MEPA DEMERGER

The Commissioner for Environment and Planning, Perit David Pace, sent a letter to the Minister for Sustainable Development, the Environment and Climate Change, the Hon. José Herrera and to the Parliamentary Secretary for Planning and Administrative Simplification, the Hon. Deborah Schembri expressing his concern on the negative environmental effects resulting from the demerger of the Environment and Planning Authorities.

The letter was also sent to the Hon. Prime Minister, the Hon. Leader of the Opposition and to the Parliamentary Committee for the Environment and Planning.

Letter (annex 6)

30 AUGUST 2016

ENVIRONMENT AND PLANNING COMMISSIONER MEETS THE MINISTER FOR SUSTAINABLE DEVELOPMENT, THE ENVIRONMENT AND CLIMATE CHANGE

The Commissioner for Environment and Planning, Perit David Pace had a meeting with the Minister for Sustainable Development, the Environment and Climate Change, the Hon. José Herrera, and discussed the Environment and Resources Authority and a number of other issues, including fish farms and the new Commission for Sound Pollution.

During the meeting, the letter sent by the Minister highlighting his concerns on the effect of the MEPA demerger was also discussed.

The Commissioner presented the Minister with a copy of the report '*Access to the countryside – the right to ramble*'.

6 SEPTEMBER 2016**MEETING BETWEEN THE COMMISSIONER FOR ENVIRONMENT AND PLANNING AND THE FEDERATION FOR HUNTING AND CONSERVATION - MALTA (FKNK)**

Following concerns expressed by the Federation for Hunting and Conservation - Malta (FKNK) on the report "*Access to the Countryside - The Right to Ramble*" which the Commissioner for Environment and Planning had recently published, a meeting was held at the Commissioner's request, with FKNK officials.

During the meeting the Commissioner categorically stated that the report in no way hinted at the notion that private landowners would be forced to allow passageways for rambling through their property. Private property owners' rights, including any rights that appertain to private footpaths leading to privately owned land, will not be lessened, eradicated or affected in any manner. As the Commissioner explained access to these areas would be to the sole discretion of the individual land owners.

The Commissioner explained that, as stated in the report, the Rambling trail network will focus on public land and as stated private landowners would only join the network at their own discretion. He further explained that the report emphasised the need for mutual respect of usage rights of open countryside between legitimate stakeholders.

Both parties agreed that the countryside was diminishing and with the increased diversity of leisure outdoor activities, pressure was increasing for multiple uses of public land.

The scheme proposed would ensure control to access in the interest of safety, biodiversity conservation and better land management.

A frank and cordial exchange of views took place on a number of issues that the FKNK were facing in the practice of their activity, and other issues that were discussed included, better signage posts of demarcation between private and public land; the Public Domain Act and any effect this can have on the rights of private ownership.

15 SEPTEMBER 2016

OMBUDSMAN MEETS EU OMBUDSMAN SECRETARY GENERAL



The Parliamentary Ombudsman, Mr Anthony C. Mifsud has met the EU Ombudsman Secretary General, Ms Beate Gminder and Ms Marta Hirsch-Ziembińska, Head of Inquiries and ICT at the Office of the European Ombudsman.

During the meeting the Ombudsman and Ms Gminder discussed proactive initiatives taken by both institutions and exchanged good practices adopted when dealing with complaints from citizens.

Both the Parliamentary Ombudsman and the EU Ombudsman Secretary General reaffirmed the high value of cooperation between both institutions and within the European Network of Ombudsmen.

The meeting was also attended by the specialised Commissioners within the Office of the Ombudsman in Malta, Director General and Head of Investigations.

29 SEPTEMBER 2016

THE OFFICE OF THE OMBUDSMAN PARTICIPATES AT THE INSTITUTE OF TOURISM STUDIES FRESHERS' WEEK



3 OCTOBER 2016**COMMISSIONER FOR ENVIRONMENT AND PLANNING MEETS SENIOR EU OMBUDSMAN OFFICIALS**

During a private visit to Strasbourg, the Commissioner for Environment and Planning David Pace called on the Head of Inquiries and ICT at the European Ombudsman's Office Ms Marta Hirsch-Ziembińska.

During the meeting, pending queries relating to the Commissioner's caseload were discussed.

Present also was Dr. Maria Depasquale, Principal Legal Officer at the Office of the European Ombudsman.

6 OCTOBER 2016**PARLIAMENTARY OMBUDSMAN MEETS UNIVERSITY STUDENTS AT FRESHERS' WEEK**

The Parliamentary Ombudsman Mr Anthony C. Mifsud, visited the KSU Freshers' Week at the University of Malta and met students from various faculties. The Ombudsman was accompanied by Ms Steph Dalli, KSU President and Mr Mark Trapani, KSU Vice-President

10 OCTOBER 2016

THE PARLIAMENTARY OMBUDSMAN WELCOMES THE DEFINITIVE JUDGEMENT AUTHORISING AND ORDERING THE REGISTRATION OF THE BIRTH OF A CHILD BORN AT SEA

The Parliamentary Ombudsman welcomes the definitive judgement of the Court of Appeal delivered on 30 September 2016, authorising and ordering the Director of the Public Registry to register the birth of a child born at sea.

A mother, of Somali origin, gave birth on a boat carrying 70 other irregular immigrants that eventually sank. The mother and child were rescued by the Armed Forces of Malta and transferred on a vessel flying the Russian flag the 'Yelena Shatrova'. Since the rescued immigrants could not be transferred onto the vessel of the Armed Forces of Malta because of inclement weather the Russian vessel was authorised to enter port in Malta where the mother and child landed and were given subsidiary humanitarian protection.

The Ombudsman notes the declaration of the First Hall of the Civil Court in the appealed judgement that the child had the fundamental right to be registered and to have a nationality and that this right had to be respected. He also noted that the law as it stands, is unclear and that the amendments purposely made to provide for such eventualities did not adequately cover all cases including those of a child born in such circumstances similar to those of applicant.

The Court of Appeal in its judgement declared that it was of the opinion that the legislator did not intend to exclude the registration of children born at sea and brought to Malta in circumstances similar to that of appellant. The Ombudsman therefore recommends that the law is revisited and clarified to provide for the registration by the Director of the Public Registry of the birth of all stateless children born at sea who are brought to Malta as their first port of call. Adequate safeguards should be made to ensure that such exceptional registration is not abused of by undeserving applicants.

11 OCTOBER 2016

OMBUDSPLAN 2017 TABLED IN PARLIAMENT

The 2017 Ombudsplan was tabled in Parliament during yesterday's sitting by the President of the House of Representatives, the Hon. Anglu Farrugia.

In his first Ombudsplan, the Parliamentary Ombudsman, Mr Anthony C. Mifsud outlines the primary objectives for the ensuing year and makes proposals aimed at strengthening the Ombudsman's institution. The proposals include the

appointment of a Deputy Ombudsman from among the Commissioners to stand in for the Parliamentary Ombudsman when necessary and that the Ombudsman and the Commissioners should have a single longer term of office.

As it was the practice in the previous years, the Ombudsplan 2017, also highlights issues that the Ombudsman considers that deserve particular discussion namely the privatisation of essential services and the need for legislation to regulate lobbying.

The Ombudsplan was discussed during a special sitting of the House Business Committee held on 21 November 2016.

31 OCTOBER 2016

THE PARLIAMENTARY OMBUDSMAN WELCOMES THE COURT OF APPEAL JUDGEMENT ON THE PLEA OF LACK OF JURISDICTION TO INVESTIGATE COMPLAINTS BY OFFICERS OF THE AFM

The Parliamentary Ombudsman welcomed the judgement by the Court of Appeal in the court case, originally instituted by his Office against the Ministry of Home Affairs and National Security that had raised the plea of lack of jurisdiction of the Ombudsman to investigate complaints lodged with his Office by officers of the Armed Forces of Malta.

The Court of Appeal has confirmed the judgement given by the First Hall of Civil Court delivered on the 12 October 2015.

Now that the judgement of the First Hall of Civil Court has become definite, the Parliamentary Ombudsman will proceed with the investigation of these complaints.

23 NOVEMBER 2016

OMBUDSMAN MEETS THE MONITORING COMMITTEE OF THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE

The Parliamentary Ombudsman, Mr Anthony C. Mifsud met members of the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe.

On regular basis, the Committee of Ministers of the Council of Europe invites the Congress of Local and Regional Authority to prepare a country by country report on the situation of the local and regional democracy in all Council of Europe member states. The Committee shall also ensure that all the principles of the European Charter of Local Self-Government are implemented.

The Monitoring Committee is the body which prepares the reports and monitors on a regular basis how the recommendations of the Congress are being implemented.

14 DECEMBER 2016**CASE NOTES 2015 TABLED IN PARLIAMENT**

The Case Notes 2015 was tabled in Parliament by the President of the House of Representatives, the Hon. Anglu Farrugia.

The Case Notes is a bi-lingual annual publication of summaries of selected cases investigated by the Parliamentary Ombudsman and the Commissioners. The publication provides an insight into the wide variety of complaints that are filed with the Ombudsman by aggrieved individuals to seek redress. It also sheds light on the different investigative approaches adopted and to what lengths, the Ombudsman and Commissioners, go to convince the public authorities to adopt their recommendations to redress identified injustices.

15 DECEMBER 2016**THE PARLIAMENTARY OMBUDSMAN PARTICIPATES IN A COUNCIL OF EUROPE SEMINAR OF FREEDOM OF EXPRESSION**

The Parliamentary Ombudsman, Mr Anthony C. Mifsud participated in a high level seminar as organised by the Council of Europe and the European Network of National Human Rights Institutions (ENNHRI) with the theme '*Freedom of expression – role and powers of National Human Rights Institutions (NHRIs) and other national mechanism.*' The seminar was held in Strasbourg on 15 December 2016.

The seminar is a follow up to a proposal made by Secretary General Thorbjørn Jagland in his 2015 annual report to launch a two-year programme to support national mechanisms to protect journalists.

The event is brought together the representatives of National Human Rights Institutions and other national mechanisms, as well as former judges of the European Court of Human Rights and representatives of other Council of Europe's bodies dealing with this issue.

The Ombudsman was accompanied by Mr Jurgen Cassar, Research and Communications Officer.



PERFORMANCE REVIEW 2016

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN





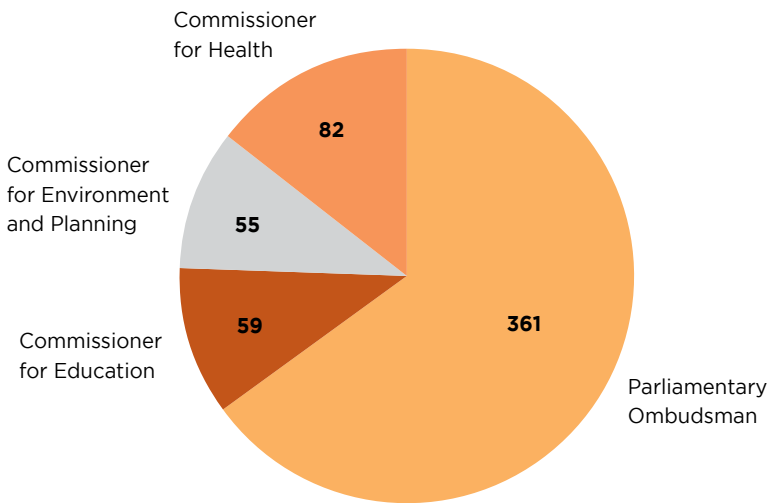
PERFORMANCE REVIEW 2016

CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

TABLE 1.1 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN
2015 - 2016

	2015	2016
Sector	No of cases	No of cases
Parliamentary Ombudsman	405	361
Commissioner for Education	65	59
Commissioner for Environment and Planning	65	55
Commissioner for Health	76	82
Total	611	557

DIAGRAM 1.2 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN
2016



In 2016, the Office of the Ombudsman experienced a decline in the complaints received. Table 1.1 and Diagram 1.2 show that during 2016, the Office of the Ombudsman handled 557 cases, 8.8% less than 2015. Of the 557 cases, 361 were investigated by the Parliamentary Ombudsman, 11% less than 2015; 82 by the Commissioner for Health, an increase of 8% from the previous year, 55 by the Commissioner for Environment and Planning, 15% less than 2015 and 65 by the Commissioner for Education, 9% less than the previous year.

INCOMING COMPLAINTS

Total Case Load

During the year in review, apart from the written complaints, the Office handled 579 enquiries, an increase of 4.5% when compared to 2015 (554) whereas the number of written complaints handled by the Parliamentary Ombudsman, during 2016 decreased by 11% (44) from 405 in 2015 to 361 in 2016. Table 1.3 and Diagram 1.4 show the number of enquiries and written complaints received by the Office since its establishment in 1995.

TABLE 1.3 - COMPLAINTS AND ENQUIRES RECEIVED

1996 - 2016

Year	Written complaints	Enquiries
1996	1112	849
1997	829	513
1998	735	396
1999	717	351
2000	624	383
2001	698	424
2002	673	352
2003	601	327
2004	660	494
2005	583	333
2006	567	443
2007	660	635
2008	551	469
2009	566	626
2010	482	543
2011	426	504
2012	443	462
2013	329	475
2014	352	581
2015	405	554
2016	361	579

DIAGRAM 1.4 – OFFICE OF THE OMBUDSMAN – WORKLOAD
1996 - 2016

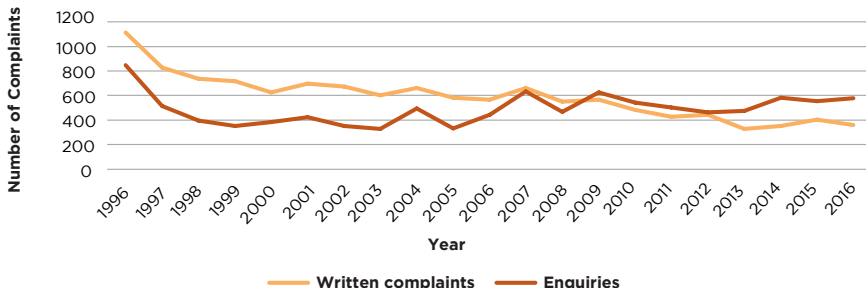


Table 1.3 and Diagram 1.4 outlines the number of enquiries and complaints received per year since 1995 when the institution of the Ombudsman was setup. Even though the number of complaints received decreased from the previous year, on the otherhand, the number of citizens who enquired with the Office, increased by 4.5% over the previous year. Enquires are another fundamental role the institution has in assisting people in seeking redress to their difficulties. Citizens who contact the Office for assistance are either guided to lodge a complaint with the Ombudsman or else if their case cannot be dealt with by the Ombudsman or the Commissioners are referred to the relevant authorities.

TABLE 1.5 – GENERAL ELECTIONS TREND
1997 - 2016

Year	No of Cases
1997	829
1998 (GE)	735
1999	717
2002	673
2003 (GE)	601
2004	660
2007	660
2008 (GE)	551
2009	566
2012	615
2013 (GE)	493
2014	538
2015	611
2016	557

Over the years experience has shown that as the General Election approaches the number of complaints start to decline as illustrated in Table 1.5.

MONTHLY COMPLAINTS INTAKES AND CLOSURES

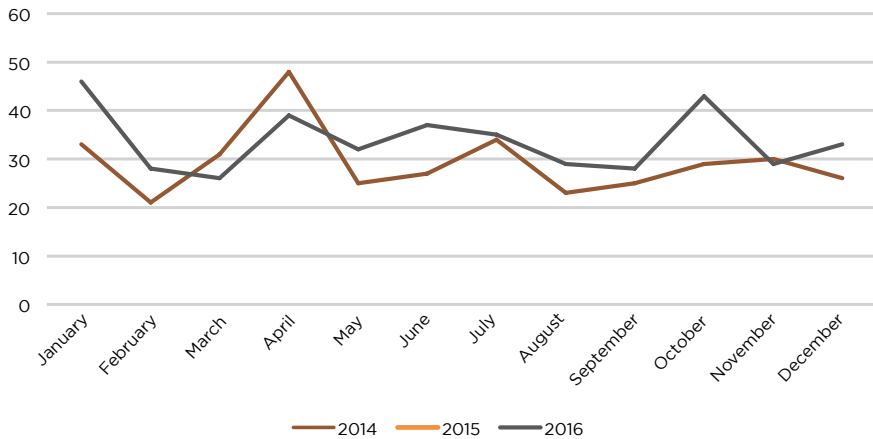
TABLE 1.6 – COMPLAINTS STATISTICS BY MONTH

2014 – 2016

Brought forward from previous year	2014			2015			2016		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
			184			225			276
January	33	23	194	46	24	247	37	35	278
February	21	21	194	28	24	251	33	33	278
March	31	11	214	26	38	239	36	73	241
April	48	41	221	39	27	251	27	49	219
May	25	30	216	32	29	254	24	41	202
June	27	27	216	37	24	267	27	25	204
July	34	33	217	35	29	273	35	28	211
August	23	27	213	29	21	281	35	67	179
September	25	21	217	28	21	288	30	29	180
October	29	19	227	43	41	290	27	61	146
November	30	27	230	29	38	281	28	42	132
December	26	31	225	33	38	276	22	31	123
Total	352	311		405	354		361	514	
Enquiries	581			554			579		

Between January and December 2016, the number of completed investigations increased from 354 to 514, an increase of 160 from the previous year. This growth is mostly attributed to the increase of human resources in the investigation section. As regards to the pending cases, at the end of 2016, the pending caseload stood at 123, which amounts to 55.3% less from the pending case load at the end of the previous year.

DIAGRAM 1.7 - COMPLAINTS STATISTICS BY MONTH
2014 - 2016



DISTRIBUTION OF PUBLIC SERVICE SECTORS AND AUTHORITIES SUBJECT TO INVESTIGATION IN 2016

TABLE 1.8 – COMPLAINTS RECEIVED CLASSIFIED BY MINISTRY AND RESPECTIVE DEPARTMENTS
2016

Ministry for Competitiveness and Digital, Maritime and Services Economy			
Sector	No of cases received	Investigated	Sector not involved
Malta Communications Authority	1	-	1
Malta Gaming Authority*	3	2	1
TOTAL	4	2	2
Ministry for Education and Employment			
Sector	No of cases received	Investigated	Sector not involved
Education Department	24	15	9
Employment and Training Corporation**	2	1	1
Examinations Department	1	1	-
Foundation for Tomorrow's School	1	1	-
Jobs Plus**	5	1	4
National Library	3	3	-
Sports Malta	3	2	1
University of Malta	2	-	2
TOTAL	41	24	17

Ministry for Health*

Sector	No of cases received	Investigated	Sector not involved
TOTAL	-	-	-

*Cases related to the Public Health Sector are featured in the Annual Report of the Commissioner for Health

Ministry for EU Affairs and Implementation of the Electoral Manifesto

Sector	No of cases received	Investigated	Sector not involved
TOTAL	-	-	-

Ministry for Finance

Sector	No of cases received	Investigated	Sector not involved
Customs Department	1	1	-
Inland Revenue Department	10	7	3
Malta Financial Services Authority	1	1	-
Treasury Department	1	-	1
VAT Department	1	1	-
TOTAL	14	10	4

Ministry for Foreign Affairs

Sector	No of cases received	Investigated	Sector not involved
Foreign Affairs	4	1	3
TOTAL	4	1	3

Ministry for Gozo

Sector	No of cases received	Investigated	Sector not involved
Gozo Affairs	3	2	1
Gozo Channel Co Ltd	1	-	1
TOTAL	4	2	2

Ministry for Home Affairs and National Security

Sector	No of cases received	Investigated	Sector not involved
Armed Forces of Malta	11	4	7
Correctional Services	4	2	2
Home Affairs and National Security	7	6	1
Immigration	1	-	1
Office of the Commissioner of Refugees	2	1	1
Police	18	8	10
Police Board	2	1	1
TOTAL	45	22	23

Ministry for Justice, Culture and Local Government

Sector	No of cases received	Investigated	Sector not involved
Courts of Justice	7	1	6
Identity Malta (Citizenship and Expatriate Affairs)	18	15	3
Identity Malta (Land Registry)	1	1	-
Justice, Culture and Local Government	3	1	2
Local Council	13	10	3
Malta Arbitration Centre	1	-	1
Public Broadcasting Services	2	1	1
TOTAL	45	29	16

Ministry for Social Dialogue, Consumer Affairs and Civil Liberties

Sector	No of cases received	Investigated	Sector not involved
Industrial and Employment Relations Department	1	-	1
Malta Competition and Consumer Affairs Authority	4	3	1
National Commission for the Promotion of Equality	1	1	-
Occupational Health and Safety Authority	1	-	1
Social Dialogue	1	1	-
TOTAL	8	5	3

Ministry for Sustainable Development the Environment and Climate Change

Sector	No of cases received	Investigated	Sector not involved
Agriculture	1	-	1
Fisheries and Aquaculture	2	2	-
Sustainable Development the Environment & Climate Change	3	2	1
TOTAL	6	4	2

Ministry for the Economy, Investment and Small Business

Sector	No of cases received	Investigated	Sector not involved
Konrdin Grain Terminal Co Ltd	1	1	-
Malta Gaming Authority*	2	2	-
Malta Industrial Parks Ltd	1	1	-
TOTAL	4	4	-

Ministry for the Family and Social Solidarity

Sector	No of cases received	Investigated	Sector not involved
Department of Social Security	19	10	9
Family and Social Solidarity	3	3	-
Foundation for Social Welfare Services	2	2	-
Housing Authority	8	7	1
TOTAL	32	22	10

Ministry for Tourism

Sector	No of cases received	Investigated	Sector not involved
Air Malta	4	4	-
Institute of Tourism Studies	1	1	-
Malta Tourism Authority	1	1	-
TOTAL	6	6	0

Ministry for Transport & Infrastructure

Sector	No of cases received	Investigated	Sector not involved
Transport and Infrastructure	5	4	1
Transport Malta	10	7	3
TOTAL	15	11	4

Office of the Prime Minister

Sector	No of cases received	Investigated	Sector not involved
ARMS Ltd	16	16	-
Electoral Office	1	-	1
Enemalta	3	1	2
Engineering Resources Ltd	3	3	-
Government Property Division	3	3	-
Lands Department	8	6	2
MEPA****	1	-	1
Malta Resources Authority	1	1	-
Office of the Prime Minister	13	4	9
PAHRO***	6	6	-
People & Standards Division***	2	1	1
Planning Authority****	2	1	1
Water Services Corporation	2	2	-
TOTAL	61	44	17

Outside Jurisdiction

32	-	32
----	---	----

Autonomous

Sector	No of cases received	Investigated	Sector not involved
Public Service Commission	40	16	24
Total number of cases received	361	202	159
* Change of Ministry from the Ministry for the Economy, Investment and Small Business to the Ministry for Competitiveness and Digital, Maritime and Services Economy established on 10 May 2016.			
** Change in name from Employment and Training Corporation to Jobsplus, effective date 1st June 2016.			
*** Change in name from PAHRO to People and Standards Division, effective date 23rd September 2016.			
**** Demerger of MEPA into two separate and independent authorities; Planning Authority and Environment Resources Authority, effective date 4th April 2016.			

To provide a clearer picture of the breakdown of incoming complaints by areas of government and policy initiative, from this year the table listing government departments against which complaints were lodged, and complaints received by Ministries were amalgamated into one table. Therefore, Table 1.8 shows the complaints received classified by departments and public authorities according to each Ministry's portfolio.

Also, the new table categorises the number of complaints received, the number of complaints investigated and those grievances that for different reasons were resolved without the need of involving the department or ministry concerned. Most of these cases are closed at a pre-investigation stage on the following grounds:

- the person submitting the grievance has a reasonable alternative remedy available at law;
- the issue raised in the complaint is considered to be trivial, frivolous or vexatious and/or not made in good faith;
- the person submitting the grievance is found to have insufficient personal interest in the case; and
- if the complaint is outside the Ombudsman's jurisdiction or time-barred.

The following analysis focuses on the top five ministries by the number of complaints received. In all, the top five ministries attracted 264 complaints or 73% of the total amount of grievances lodged:

THE OFFICE OF THE PRIME MINISTER

The Office of the Prime Minister (OPM) and the departments under its portfolio attracted the most number of complaints received. From the 361 cases received by the Ombudsman, 61 cases (17%) were against a department or authority which falls under the OPM. From the 61 complaints lodged, 44 were investigated, and the remaining 17 were either concluded without an investigation or were investigated without involving the department concerned.

ARMS Ltd attracted 16 complaints during the year in review, which amounts to 26% of the total complaints received by a department which falls under the OPM's portfolio. All the 16 complaints were investigated. Complaints received directly against the OPM amounted to 13 or 21% of the total complaints, of which only four were investigated with the involvement of the ministry. The Lands Department attracted eight complaints or 13% of the complaints received against the OPM.

MINISTRY FOR JUSTICE, CULTURE AND LOCAL GOVERNMENT

The Ministry of the Justice, Culture and Local Government (MJCL) together with the Ministry of Home Affairs and National Security (MHANS) attracted the second number of complaints received.

The MJCL drew 45 complaints, 12% of the complaints received by the Ombudsman of which 29 were investigated, and the remaining 16 were looked into without the involvement of the department concerned. The most department under the MJCL portfolio that received the most number of complaints was Identity Malta (Citizens & Expatriate Affairs), attracting 18 complaints (40%) followed by the Local Councils having 13 complaints (28%) against them.

MINISTRY FOR HOME AFFAIRS AND NATIONAL SECURITY

The Ministry for Home Affairs and National Security (MHANS) attracted 45 complaints of which 22 (49%) were investigated with the department involved, and 23 (51%) were not.

The Police Force had 18 complaints or 40% of the complaints received, while the Armed Forces of Malta attracted 11 complaints or 24% of the complaints received against a department or an entity which falls under the MHANS portfolio.

MINISTRY FOR EDUCATION AND EMPLOYMENT

The Ministry for Education and Employment (MEDE) attracted 41 complaints of which 24 (59%) were investigated, and the remaining 17 (41%) were closed without the need of involving the Ministry. These complaints do not include the complaints investigated by the Commissioner for Education.

Most of the complaints were against the Education Department, attracting 24 complaints or 59% of the MEDE caseload.

THE PUBLIC SERVICE COMMISSION

The Public Service Commission (PSC) attracted 40 cases of which 16 (40%) were investigated, and the remaining 24 (60%) were dealt without the involvement of the PSC. These data is excluding the complaints mentioned in the Annual Report of the Commissioner for Health.

MINISTRY FOR THE FAMILY AND SOCIAL SOLIDARITY

The Office of the Ombudsman received 32 complaints against the Ministry for the Family and Social Solidarity (MFSS) of which 22 (69%) were investigated, and 10 (31%) were done without the Ministry's intervention.

The Department of Social Security attracted 19 complaints or 59% of the grievances received of which 10 were investigated. There were 8 complaints (25%) against the Housing Authority of which 7 were investigated.

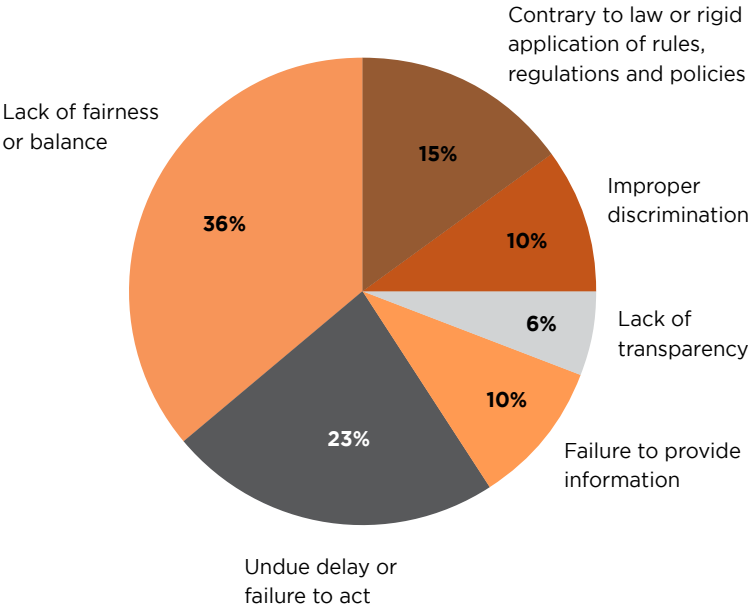
COMPLAINT GROUNDS

TABLE 1.9 - COMPLAINT GROUNDS 2014 - 2016

Grounds of Complaints	2014		2015		2016	
Contrary to law or rigid application of rules, regulations and policies	91	26%	86	21%	55	15%
Improper discrimination	29	8%	39	10%	37	10%
Lack of transparency	63	18%	44	11%	20	6%
Failure to provide information	35	10%	46	11%	34	10%
Undue delay or failure to act	72	20%	89	22%	84	23%
Lack of fairness or balance	62	18%	101	25%	131	36%
Total	352	100%	405	100%	361	100%

Table 1.9 shows a detailed analysis of the complaints by the type of alleged maladministration. The most common complaints received by the institution, during the year in review, related to lack of fairness or balance. This category amounted to 36% of the complaints (131) an increase of 30% over the previous year. Followed by complaints alleging undue delay or failure to act that attracted 23% (84) of the complaints.

DIAGRAM 1.10 – CATEGORIES OF COMPLAINTS RECEIVED (BY TYPE OF ALLEGED FAILURE)
2016



COMPLAINTS RECEIVED CLASSIFIED BY LOCALITY

TABLE 1.11 - COMPLAINTS BY LOCALITY
2014-2016

Locality	2014	2015	2016
Attard	15	12	7
Balzan	5	3	5
Birgu	1	4	-
Birkirkara	72	70	23
Birżebbuġa	7	7	4
Bormla	2	2	5
Dingli	1	4	2
Fgura	6	8	9
Floriana	1	-	-
Għargħur	-	3	2
Għaxaq	4	5	-
Gudja	2	2	4
Gżira	4	7	4

Ħamrun	1	7	5
Iklin	1	2	-
Isla	3	-	2
Kalkara	-	1	-
Kirkop	1	3	2
Lija	-	3	4
Luqa	1	3	6
Manikata	-	-	1
Marsa	1	-	8
Marsaskala	9	8	7
Marsaxlokk	1	2	3
Mellieħa	2	7	9
Mġarr	2	-	-
Mosta	16	15	11
Mqabba	2	1	2
Msida	8	3	8
Mtarfa	3	1	3
Naxxar	15	12	10
Paola	11	6	11
Pembroke	1	4	2
Pieta'	2	5	6
Qormi	5	13	11
Qrendi	2	2	1
Rabat	2	-	7
Safi	-	3	1
San Ġiljan	6	6	5
San Ġwann	6	9	3
San Pawl il-Baħar	10	18	21
Santa Lucia	2	3	4
Santa Venera	9	6	5
Siġġiewi	8	9	8
Sliema	8	8	13
Swieqi	5	7	3
Ta' Xbiex	-	3	1
Tarxien	6	6	6
Valletta	15	14	7
Xemxija	-	-	1
Żabbar	4	9	12

Žebbuġ	6	3	8
Żejtun	6	7	6
Żurrieq	5	5	10
Gozo	12	19	30
Other	19	29	19
Overseas	16	16	14
Total	352	405	361

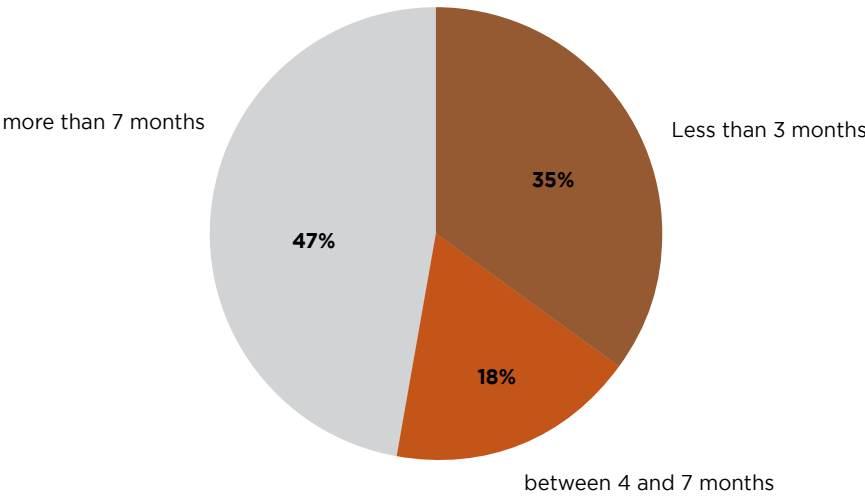
AGE PROFILE OF OPEN CASELOAD IN HAND AT END 2016

TABLE 1.12 – AGE PROFILE OF OPEN CASELOAD AT END 2016

Age	Cases in hand
Less than 2 months	31
Between 2 to 3 months	12
Between 4 to 5 months	11
Between 6 to 7 months	10
Between 8 to 9 months	5
Over 9 months	54
Total Open files	123

Table 1.12 and Diagram 1.13 show the number of cases still under investigation that stood at 123 at the end of 2016, 153 cases less than the previous year.

DIAGRAM 1.13 - PERCENTAGE SHARES OF OPEN COMPLAINTS BY AGE (AT END 2016)



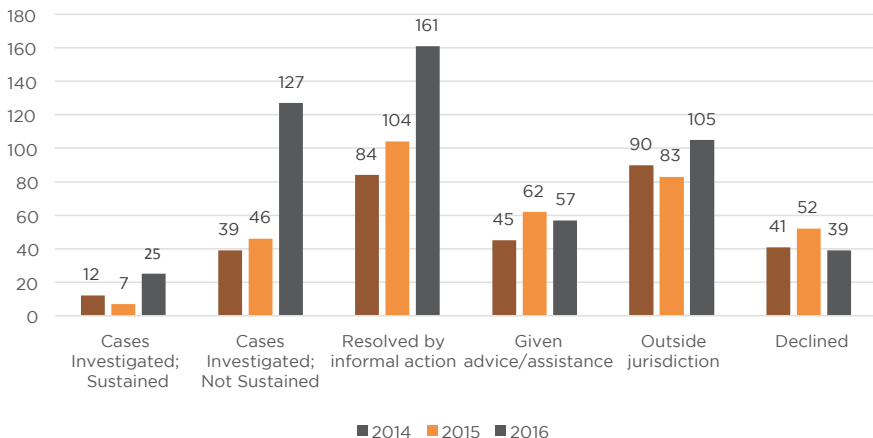
OUTCOME OF FINALISED COMPLAINTS

TABLE 1.14 – OUTCOMES OF FINALISED COMPLAINTS
2014 - 2016

Outcomes	2014	2015	2016
Sustained cases	12	7	25
Cases not sustained	39	46	127
Resolved by informal action	84	104	161
Given advice/assistance	45	62	57
Outside Jurisdiction	90	83	105
Declined (time-barred, trivial, etc.)	41	52	39
Total	311	354	514

Table 1.14 shows the outcome of the finalised complaints. In 2016, 25 cases from the concluded complaints were found justified by the Ombudsman with a satisfactory outcome for the complainant, a considerable increase of 257% from the previous year. On the other hand, there was also an increase in the complaints that were not sustained that during the year under review amounted to 127, an increase of 176%. Also, during the year in review 57 cases were finalised by giving advice or assistance and without the need to conduct a formal investigation. There were also 161 cases that were also solved by informal action while cases that were outside the Ombudsman's jurisdiction stood at 105 cases.

CHART 1.15 – OUTCOMES OF FINALISED COMPLAINTS
2014 - 2016



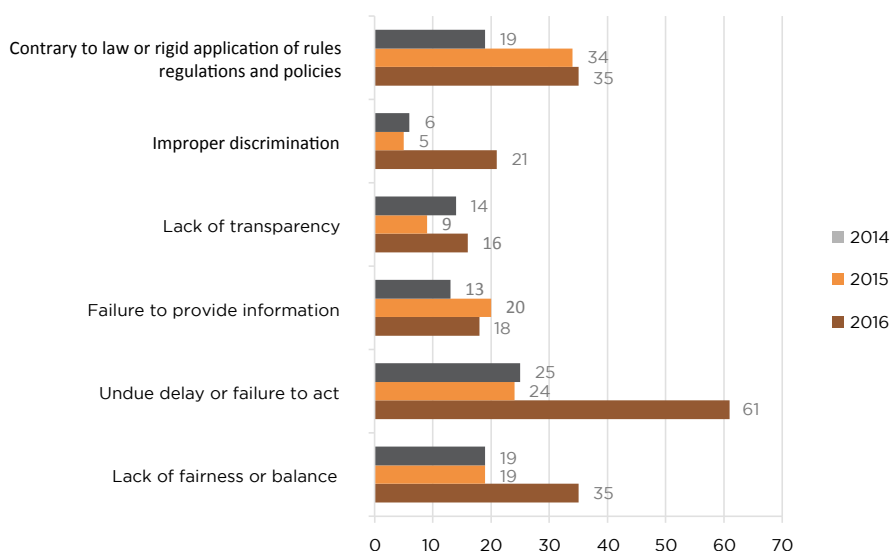
TYPE OF MALADMINISTRATION IN JUSTIFIED COMPLAINTS**TABLE 1.16 - TYPE OF MALADMINISTRATION IN JUSTIFIED COMPLAINTS**
2014 - 2016

Closing Status	2014		2015		2016	
Contrary to law or rigid application of rules, regulations and policies	19	20%	34	31%	35	19%
Improper discrimination	6	6%	5	5%	21	11%
Lack of transparency	14	15%	9	8%	16	9%
Failure to provide information	13	14%	20	18%	18	10%
Undue delay or failure to act	25	25%	24	21%	61	32%
Lack of fairness or balance	19	20%	19	17%	35	19%
Total	96	100%	111	100%	186	100%

Table 1.16 shows that 32% of the justified complaints during the year under review concerned complainants related to undue delay or failure to act. The second most common legitimate complaints were about allegations that the administration lacked fairness or balance, amounting to 19% of the 2016 case load. Likewise, another category which attracted 19% of the justified complaints concerned complainants that alleged that the administration had acted contrary to the law or applied a rigid application of the rules, regulation and policy.

CHART 1.17 - CASES CONCLUDED AND FOUND JUSTIFIED

2014 - 2016





ANNUAL REPORT BY THE

COMMISSIONER FOR EDUCATION







ANNUAL REPORT BY THE COMMISSIONER FOR EDUCATION

DEALING WITH BUREAUCRACY

'Bureaucratie' is French for a cluster of desks where officials sit to execute their separate tasks. As the spread of state organisations became wider and more complex, the word evolved to represent official state administrations. Today *bureaucracy* is defined as a body of non-elected government officials or an administrative policy-making group. Specialisation of functions, a hierarchy of authority and an adherence to fixed rules characterise bureaucracies.

Bureaucracies have been likened to beehives, where a hierarchy of operatives perform their defined chores. The queen bee (the Director) masters all attention; the soldier bees protect the hive and its occupants from outside dangers just as departmental officials ensure that decisions and directives are implemented. In the meantime, the worker bees concentrate on their assigned duties, just as clerks and other employees fulfil their responsibilities according to the rules and regulations of the organisation.

The comparison between bureaucracies and beehives is not a disparaging one. On the contrary, bureaucracies that function as efficiently as beehives pride themselves as highly organised, well-oiled organisations that deliver results to the benefit and satisfaction of their constituents.

In truth, organisations that involve large numbers of people cannot function well without the framework of a bureaucratic structure. They need a hierarchy or a chain of command. The hundreds, sometimes thousands, of officials involved must have defined roles and tasks, which they fulfil guided by established protocols. The alternative leads to chaos and a disservice to the individuals or the society they should serve. Public or private organisations shorn off efficient bureaucratic structures create dysfunctional administrations. At the same time, an over emphasis on the strict interpretation and enforcement of the rules, excessive red tape and a proliferation of legalistic protocols give bureaucracies a bad name.

The Commissioner for Education operates within the bureaucracy of the Office of the Parliamentary Ombudsman. He deals with complaints lodged by individuals or groups against educational entities funded

by the Maltese government. These include: the various sectors of the Ministry for Education and Employment, the University of Malta, the Malta College of Arts, Science and Technology, and the Institute of Tourism Studies: all state-supported bureaucracies in their own right. As a result, the Commissioner for Education is steeped in bureaucracy but holds a measure of healthy wariness when dealing with the internal and external genera of the system.

The bureaucracy at the Office of the Ombudsman kicks in as soon as a complaint arrives and is registered. It persists throughout the course of the investigation until the Commissioner resolves the case by formal or informal action. Occasionally the enquiry runs smoothly without setbacks; often it entails a complex and bumpy path. On the one hand complainants regard their grievances as personal and unique, on the other hand, the organisations concerned deem petitions as challenges to their established and well-tested administrative policies and practices.

True to their bureaucratic nature, these educational bodies invariable react by reverting to the laws or regulations on which they operate. One does not expect them to do otherwise. The institutions' regulations, frequently embedded in local education legislation, guide (some claim 'dictate') their decisions and actions. For this reason, the Commissioner for Education rarely disturbs decisions taken by institutionally established bodies such as selection boards, examination committees or review of results panels. He does so when he finds erroneous evaluations of objective criteria, or manifest irregularities and discrepancies, or obvious improper discrimination.

Furthermore, the Commissioner does not delve into purely academic matters such as whether one candidate is more qualified than another, or whether a student's work deserves higher grades. His responsibilities concentrate on ensuring that the relevant boards had considered all the pertinent elements in the case, and that the decision-taking processes were transparent, fair and equitable. He confirms that these boards exercised their functions according to set and approved procedures, and pursued them in a manner that was not improperly discriminatory. The Commissioner does not act as defence counsel for the complainants or for the institution concerned. He endeavours to act as the 'honest and neutral broker' seeking solutions that are equitable to all parties. In other words, the Commissioner respects the bureaucratic process but does so cautiously not unconditionally. Most of all, he takes into account the human as well as the juridical factors involved.

In this function the Office of the Ombudsman operates differently from the Courts of Laws in that Commissioners investigate cases by considering their merits, and draw conclusions by laying greater stress on the spirit of the laws and regulations than on their rigid application. It is at this point that clashes with bureaucracy occur. Naturally, occasions arise when the rigid application of rules or policy becomes mandatory. However, one cannot reject the notion that in some situations, valid exceptions are more equitable. Indeed, as a longstanding Consultant to the Maltese Ombudsman has pointed out, since its inception the

Office has considered that a rigid application of a rule or policy might result in unfair treatment. This occurs in cases where there are enough mitigating circumstances to warrant an exception to the rule.

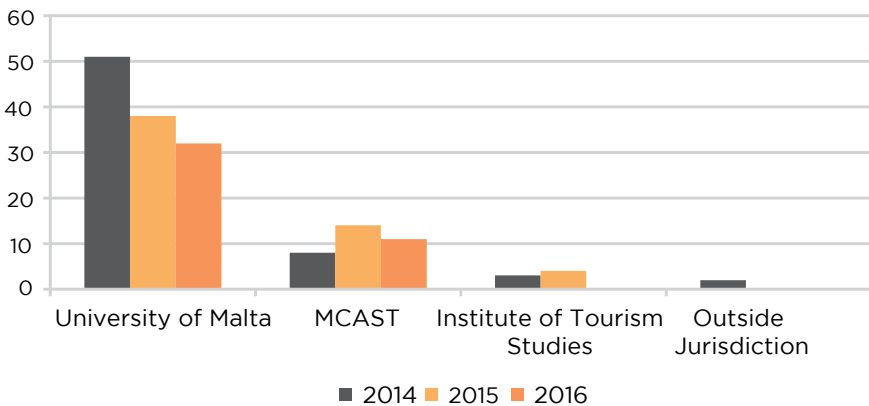
The sociologist Max Weber has argued that the rationalisation or the mechanical application of bureaucracy can lead to emotionally detached decisions, which in turn lead to dehumanised executive action. It is the duty of the Commissioner for Education to rectify an inequitable outcome when indiscriminate bureaucratic actions result in unfair treatment. Bureaucracy should be respected for its intrinsic beneficial attributes, but it should not be allowed to stultify creative thinking, or supersede an intelligent application of the rules, or pervert natural justice.

PERFORMANCE REVIEW

The following tables detail the extent and the nature of the work carried out by the Commissioner for Education during the year under review. The data provided is often self-explanatory, however, explanations and elaborations are provided where deemed necessary.

TABLE 2.1 COMPLAINTS INTAKE BY INSTITUTION
2014-2016

Institutions	2014	2015	2016
University of Malta	43	41	35
MCAST	7	6	11
Institute of Tourism Studies	3	-	3
Education Authorities	7	18	10
Outside Jurisdiction	-	-	0
Total	60	65	59



As one would expect, the highest number of complaints came from the University of Malta, the institution with the highest number of students and staff. The second highest came from MCAST, while complaints against the Students Stipends Office came third.

The low incidence of complaints from the Institute of Tourism Studies persists. One can argue that students and staff in this institution have nothing or little to complain about. Lack of awareness about the role and services offered by the Commissioner for Education, or a reluctance to use this Office's assistance, is probably closer to the mark, in which case stronger outreach efforts should be undertaken.

The complaints coming from University students originate primarily from the Faculty of Laws. It is highly unlikely that this Faculty treats its students in unfair or discriminatory manners more than any of the other Faculties. It could be that the nature of the Faculty of Laws renders its students more alert to their rights than students in other Faculties. However, such a reason does not explain the fact that hardly any complaints ever originate from the Faculties of Engineering, Sciences, ITC, FEMA and any of the Institutes. Again, is it a question of lack of awareness about the services offered by this Office, or is it a reluctance to revert to this Office from fear of negative repercussions? Such issues have to be explored and dealt with conjointly by the Commissioner and the University, as well as with the authorities of the other Institutions falling under the Commissioner for Education's remit.

The data in **Table 2.2** is self-explanatory and do not require further elaboration.

TABLE 2.2 - COMPLAINTS BY INSTITUTION CLASSIFIED BY GENDER AND STATUS OF COMPLAINT
2014 - 2016

	University of Malta			MCAST			Institute of Tourism Studies			Education Authorities			Total		
	2014	2015	2016	2014	2015	2016	2014	2015	2016	2014	2015	2016	2014	2015	2016
Students															
Male	13	14	18	3	1	1	-	-	1	5	9	6	21	24	26
Female	15	18	5	2	1	3	-	-	-	1	8	3	18	27	11
Staff															
Male	7	5	4	1	4	4	2	-	-	-	1	-	10	10	8
Female	4	2	8	1	-	3	1	-	1	-	-	1	6	2	13
Others	3	2	-	-	-	-	-	-	1	1	-	-	4	2	1
Total complaints by students and staff	42	41	35	7	6	11	3	-	3	7	18	10	59	65	59
Own initiative cases	1	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Outside jurisdiction	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	43	41	35	7	6	11	3	-	3	7	18	10	60	65	59

TABLE 2.3 - OUTCOMES OF FINALISED COMPLAINTS
2014 - 2016

Outcomes	2014		2015		2016	
Resolved by informal action	12	26%	10	14%	7	10%
Sustained	2	4%	8	11%	5	7%
Partly sustained	3	6%	3	4%	8	12%
Not sustained	14	30%	20	29%	34	50%
Formal investigation not undertaken/discontinued	10	21%	22	31%	11	16%
Investigation declined	6	13%	7	10%	3	4%
Total	47	100%	70	100%	68	100%

The outcome category labelled “*Resolved by Informal Action*” needs clarification. Each year a number of complaints originate from clear cases of misunderstandings by the opposing parties. Such misunderstandings can occur at the complainants’ end or lack of action at the institution’s end, more often than not, at both ends. Interventions by the Commissioner for Education normally suffice to clear the misunderstandings resulting in win-win outcomes. Such cases do not warrant detailed reports or *Final Opinions*: a letter of explanation (and several phone-calls) to both parties helps to clarify the misunderstandings or misconceptions that led to the complaint in the first place. One can count such cases with the “*Sustained*” category, but doing so will not be absolutely correct since both the complainant and the institution against which the complaint is lodged have a measure of justification for their actions.

To a certain extent, the same observation applies to the cases falling under the “*formal investigation not undertaken/discontinued*”. In such cases, it often happens that following initial investigations by the Commissioner and explanatory meeting with the complainant, the latter realises that a cause for complaint does not exist. As a result and by mutual agreement, the case is therefore dropped or closed.

Table 2.4 also shows that the Commissioner for Education does not sustain half of the complaints lodged with his Office. This is a substantial proportion, but one must understand that the decision not to sustain is not taken lightly. Such decisions follow thorough investigation of the facts, clarifications (through correspondence and meetings) of the allegations or claims by the complainant, and careful analysis of the replies and reactions by the institution concerned. It is a source of satisfaction to the Commissioner that even when he has to deliver a negative decision, many complainants who are obviously disappointed by the adverse outcome, still feel that they have had a fair hearing and feel satisfied at the fact they had been provided with a full explanation why their complaint had not been upheld. Not all complainants emerge with such feelings: some still feel that they are in the right and their rights have been denied. Unfortunately such outcomes are inevitable, but it is important to understand that the Commissioner for Education does not act a defence council for the complainant or for the educational entities concerned. He has to act faithfully in the interest of fairness to both parties.

TABLE 2.4 - COMPLAINT GROUNDS
2014 - 2016

Outcomes	2014		2015		2016	
Unfair marking of academic work	15	25%	15	23%	7	12%
Special needs not catered for	2	3%	2	3%	-	-
Promotion denied unfairly	4	7%	5	8%	5	8%
Post denied unfairly (filling of vacant post)	4	7%	2	3%	7	12%

Unfair/discriminatory treatment	27	45%	32	49%	34	58%
Lack of information/attention	7	12%	9	14%	6	10%
Own-initiative	1	2%	-	-	-	-
Total	60	100%	65	100%	59	100%

The following is a breakdown of the cases that were classified under the category “unfair/discriminatory treatment”:

4 Unfair discriminatory treatment

9 Unfair treatment regarding government stipends and scholarships

16 Unfair treatment on academic grounds

5 Unfair treatment on non academic grounds

34 cases

This table provides information on the type of claims dealt with by the Commissioner for Education in the year under review. The highest incidence (39 cases) occurs in the “unfair/discriminatory treatment” category. These complaints include claims by students and staff who feel that they were deprived of their rights whether of an academic or non-academic nature. Students who were not awarded stipends, or who felt that their stipends were not adequately covered fall in this category. Other complainants felt that their claims were ignored, or were not given sufficient attention. Such claims range from long delays in replies to written queries to lack of parking places on campus for staff and students.

Individuals who felt that they were denied a post in an institution that advertised vacancies, as well as by those convinced that they were denied a deserved promotion lodged one-sixth of the complaints. It should be stressed that in such cases, the Commissioner does not delve into purely academic credentials, but investigates whether the selection process was transparent, fair and non-discriminatory. For similar reasons, when dealing with claims of “unfair marking of academic work”, the Commissioner does not evaluate or pass judgement on the quality of academic presentations. He examines the process through which the marks or grade for a piece of work were reached, and pronounces himself on whether the process was justified. Judgement on the quality of academic work is left to experts in the subject area who were appointed by the institutions’ authorities specifically for this task.

One notes that complaints regarding Special Needs have declined to the extent that the Commissioner for Education did not receive any in 2016. The reason for the decline is that the institutions concerned have established in-house mechanisms to deal and solve most problems related to the needs of students and staff who have to cope with physical or intellectual shortcomings. These internal mechanisms were established following proposals by this Office and came to fruition through the understanding and goodwill of the officials of the entities concerned.



ANNUAL REPORT BY THE

COMMISSIONER FOR ENVIRONMENT AND PLANNING



ANNUAL REPORT 2016 BY THE COMMISSIONER FOR ENVIRONMENT AND PLANNING

CASELOAD

The caseload this year was slightly lower than for 2015, 110 against 115. The caseload consisted of 55 cases carried over from the previous years, matched by 55 new cases.

However the rate of determination of the pending cases rose sharply from 2015 levels, as 78% of the caseload was closed in 2016. The corresponding figure for 2015 was 52%.

The positive trend of resolving cases without the need for a Final Opinion has continued. 52 cases were concluded in this manner, amounting to 60% of the closed cases. The corresponding figure for the previous year was 63%.

These results are shown in graphic form below:

TABLE 3.1 CASE LOAD - JANUARY - DECEMBER 2016

Case Load	No. of complaints
Pending cases from previous years	55
New Requests for Investigation	55
Total	110

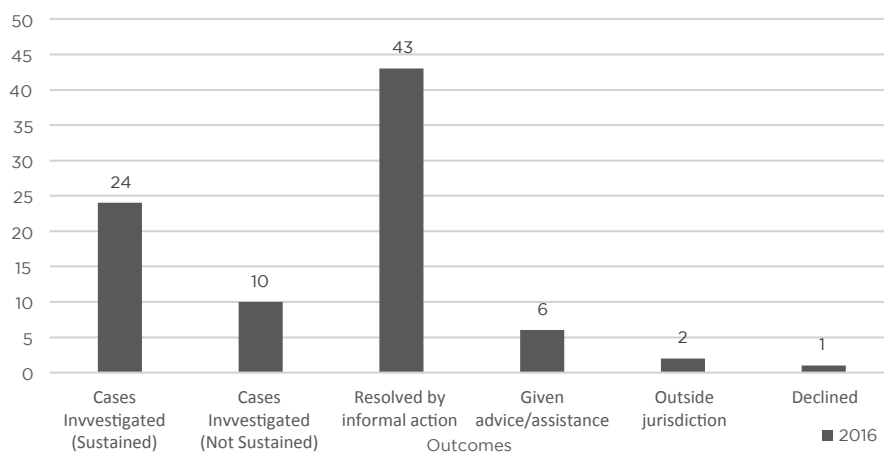
TABLE 3.2 CLOSED CASES - JANUARY - DECEMBER 2016

Closed Cases	No. of complaints
Pending cases from previous years	47
New cases	39
Total	86

Categorisation of the closed cases by outcome shows that 24 complaints investigated were sustained or partly sustained, 10 were not sustained, 43 were resolved by informal action, 6 were resolved by advice or assistance given, 2 were found to be outside jurisdiction, while 1 complaint was declined.

TABLE 3.3 - OUTCOMES OF CLOSED CASES - JANUARY - DECEMBER 2016

Outcomes	No. of complaints	
Sustained	24	28%
Not Sustained	10	12%
Resolved by informal action	43	50%
Given advice or assistance	6	7%
Outside jurisdiction	2	2%
Declined	1	1%
Total	86	100%



CASE TYPOLOGY

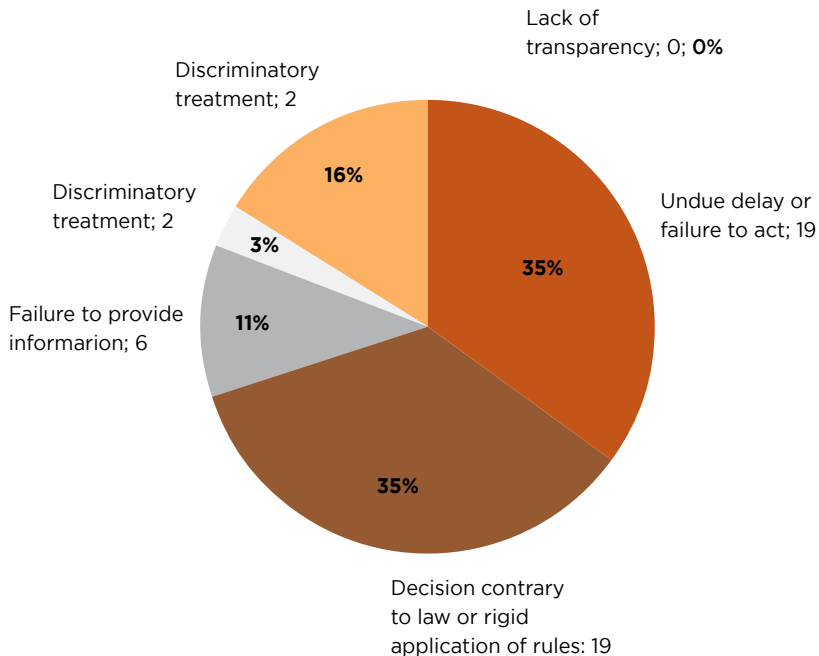
A review of the case typology for the new cases opened in 2016 shows that the largest number of complaints received – 19 – was shared between two case types, namely ‘Undue delay or failure to act’ and ‘Decisions contrary to law or rigid application of rules’.

There were 2 complaints against ‘Discriminatory treatment’, 9 against ‘Lack of fairness or balance’ and 6 against ‘Failure to provide information’. Once more, there were no complaints received against ‘Lack of transparency’.

Table 3.4 shows these statistics in graphic form:

TABLE 3.4 - NEW CASELOAD BY NATURE OF COMPLAINT - JANUARY - DECEMBER 2016

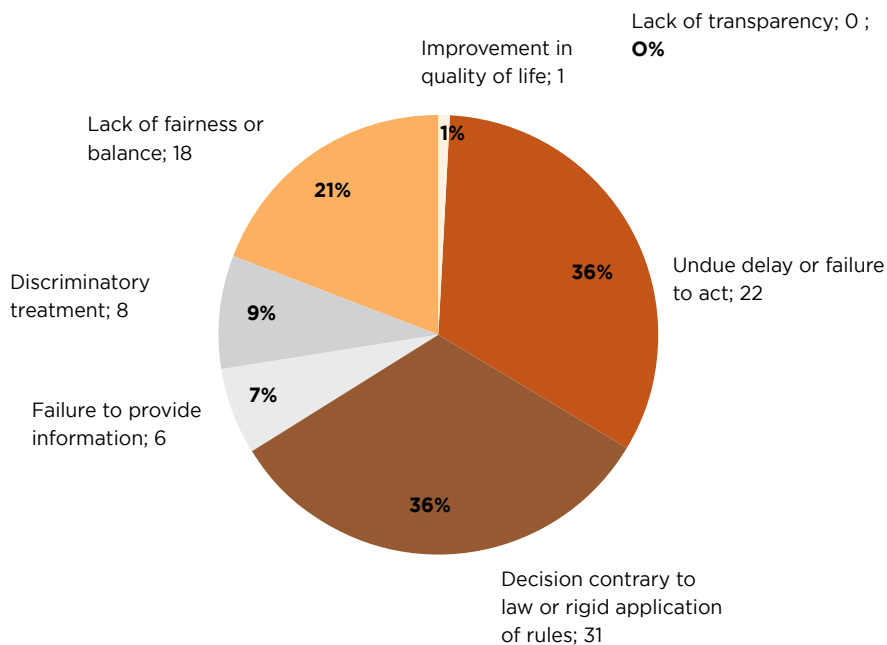
Nature of complaint	No. of complaints	
Undue delay or failure to act	19	35%
Decision contrary to law or rigid application of rules	19	35%
Discriminatory treatment	2	3%
Lack of fairness or balance	9	16%
Failure to provide information	6	11%
Lack of transparency	-	-
Total	55	100%



Similarly, as shown in Table 3.5, applying the same classification to the closed cases shows that of the 86 closed cases, by far the largest number, 31, was on complaints against 'Decisions contrary to law or rigid application of rules', followed by 22 on 'Undue delay or failure to act', 18 on 'Lack of fairness or balance', 8 on 'Discriminatory treatment' and 6 on 'Failure to provide information'. In addition, a new classification was added, namely 'Improvement in quality of life' which during the year under review there was only one case. With environmental issues taking an increased priority in matters affecting development and our everyday living, it is important to introduce the concept that decisions which create a negative impact on citizens' quality of life should be seen as a unique reason for raising a complaint.

TABLE 3.5 CLOSED CASES BY NATURE OF COMPLAINT – JANUARY - DECEMBER 2016

Nature of complaint		2016
Undue delay or failure to act	22	26%
Decision contrary to law or rigid application of rules	31	36%
Discriminatory treatment	8	9%
Lack of fairness or balance	18	21%
Failure to provide information	6	7%
Lack of transparency	-	-
Improvement in quality of life	1	1%
Total	86	100%



Although at first sight this might seem as too wide-sweeping a classification, investigation and determination of complaints under this classification will define the parameters within which such complaints may be treated.

IMPLEMENTATION OF RECOMMENDATIONS

From the 34 cases where a Final Opinion was communicated, 20 contained recommendations on providing redress as well as changes to procedures or legislation to address the issue and improve the services rendered.

Of these, 6 cases ended with a positive response from the entity concerned. In 11 cases, the recommendations were not accepted, while a response had not been received in the remaining 3 cases.

This means that there was a marked increase percentage-wise for implemented recommendations, since these figures reflect a 30% acceptance rate, as against a 14% rate last year.

OWN INITIATIVE INVESTIGATIONS

Five investigations were opened on an 'Own Initiative' basis. These included issues on surface water run-off on a beach; submission of documentation in connection with the processing of an application for development; the implementation of a method statement in connection with the restoration of an ODZ site; outside furniture placed within a public pedestrian passageway and representation of the Environment and Resources Authority on the Planning Authority Board.

JOINT INVESTIGATIONS

As already mentioned in previous reports, one of the advantages of the way in which the Ombudsman's Office is structured, is that Commissioners investigating complaints which fall within their remit, make use of the same administrative resources.

As in previous years, investigations were carried out with the Commissioner for Health, when situations arose which required investigation into public health issues. Likewise, complaints on health issues sometimes required input relating to development or environmental matters.

In 2016, five such investigations were carried out. The first case was already referred to earlier, and was an 'Own Initiative' investigation opened by this Office at the request of the Commissioner for Health who was dealing with a complaint on water flowing onto a dog-friendly beach at Baħar iċ-Ċagħaq.

The problem was related to the Coast Road project. Investigation revealed that the water was not contaminated but the Health Authorities were reluctant to clear the beach as fit for bathing.

Following discussions and a site inspection together with officials from Transport Malta and the Health Directorate, a solution was found on how to divert the water flow into the sea eliminating the surface runoff without the need to cut across the rocks, since this was not possible due to environmental constraints.

The second case was opened following a request from the Commissioner for Health who was investigating a complaint on a chimney installed on the roof of the neighbouring residence, and the issue arose on the legality or otherwise of the works. The investigation is in the concluding stages.

The third case involved a complaint on dust pollution in relation to the formation of temporary access to sites under development. Since the issue had a health bearing, the Commissioner for Health was asked to provide his own input to the matter. The investigation has been concluded and the Final Report is being drafted.

The fourth case was also a request from the Commissioner for Health to join in on an investigation being carried out on a complaint relating to exhaust from a generator in a residential building. At present the case is awaiting the outcome of efforts by the owner to provide a better exhaust extraction system.

The fifth case, also a joint 'Own Initiative' investigation with the Commissioner for Health, investigated the levels of monitoring and control on the use of herbicides in agriculture and landscaping of public areas. This is a matter of concern and the issue has been frequently raised by environmentalists. Meetings and discussions were held with the Malta Competition and Consumer Affairs Authority. Developments are expected to cut back on the use of such pesticides.

COLLABORATION WITH NGOS

Following a series of meetings and discussions with the Ramblers' Association of Malta and the Government Property Division, a publication entitled '*Access to the Countryside - the Right to Ramble*' was launched in July. The booklet aims at highlighting the need to structure and regulate access through our open spaces, for a variety of reasons.

Our countryside is under pressure through conflicting demands for activities ranging from conservation of habitat and wildlife species through hunting and trapping as well as outdoor sports, some of which threaten the delicate ecosystems.

The publication deals with the aspect of providing access through public and private land for the purposes of rambling or hiking. This activity, if well-regulated and promoted, can create a niche tourism market in the winter months, besides providing a healthy way of exercise and promotion of our natural and historical heritage lying away from the urban centres.

Regulating access also provides a structured method for meeting conflicting demands and allows the practice of different hobbies and sports in these areas.

Following the publication, discussions were held with the *Għaqda Kaċċaturi u Nassaba Konservazzjonisti* in order to clarify misconceptions and explain some points in the publication. A joint Press Release was published at the end of these discussions.

Regular discussions continue with the Noise Abatement Society of Malta (NASOM) on a number of issues relating to noise control. Some progress was achieved but there is still a lot of work to be done in order to enforce compliance and effectively curb excessive noise. It is hoped that the Environment and Resources Authority together with the authorities concerned will tackle this problematic issue effectively. Noise pollution is a major health hazard but determined action to curb it is conspicuous by its absence.

MEPA DEMERGER

Following the demerger and the setting up of the autonomous Environment and Resources Authority last April, it is appropriate to assess how effective the new Authority has been in having a determining effect on development.

Judging from recent press coverage, the ERA's autonomy and status as the ultimate authority on environmental matters is not proving effective in controlling development in ODZ areas. It has been reported that the ERA objections to such development in a five week period were overruled no less than 61 times, and that 69% of ODZ applications approved by the Planning Authority had been objected to by the ERA.

Clearly this does not reflect positively on the ERA's stature and its depiction as 'toothless' in such situations is therefore not far from the truth. It is useless to justify this state of affairs by referring to the right of appeal given to the Authority, as statistics show how impossible it would be for the Authority to file appeals in every case.

I had already aired my misgivings on this state of affairs in a letter written to the Minister for Sustainable Development, the Environment and Climate Change as well as to the Parliamentary Secretary for Planning and Simplification of Administrative Processes last August, reproduced as Annex XX. It seems that the situation has not improved at all.

In the light of the foregoing I reiterate the recommendation made in that letter, namely that changes should be made to the current planning legislation and PA procedures to ensure that applications that are objected to by the ERA are not approved by the PA Board unless the grounds for these objections are effectively addressed and the necessary amendments made to the project design.

Another issue related to development and planning was the launching of a Masterplan for Paceville by the Authority. The proposal was met with widespread criticism, which was directed not at the initiative itself, but at the manner by which it was drafted and the proposals it made.

The criticism was justified since the process had excluded the element of public participation in the drafting stage, and the Masterplan presented practically as a *'fait accompli'* for discussion.

Considering that at the same time there were two partial Local Plan amendment proposals going through the public participation stages, the objections against the secretive and rushed drafting of the Paceville Masterplan were justified. I wrote to the Parliamentary Secretary for Planning and Simplification of Administrative Processes giving my views on the matter, the letter in being reproduced as Appendix F. It appears that extensive review, not excluding a complete withdrawal, of the proposal is being considered.

CONCLUSION

As anticipated, unfortunately the splitting of the MEPA has not yet resulted in an Environmental Authority with effective powers in regulating development, whether in ODZ areas or development zones. The need for a strong environmental voice in the determining of applications for development is crucial, particularly at this stage when revamped policies are making it easier for applications in ODZ areas to obtain approval.

With the mushrooming of entertainment establishments all over the islands, there is an urgent need for the putting into place of effective noise control mechanisms, starting from the design stage and extending into the implementation, commissioning and operation of such outlets. This will require a thorough overhaul of legislation and enforcement systems.

The setting up of an Environment Court should be seriously considered, with cases dealing with environmental pollution such as effluent discharge, garbage dumping, noise and air pollution being referred to this Court which would have the required technical backup to carry out its own investigations on a scientific basis.



ANNUAL REPORT BY THE

COMMISSIONER FOR HEALTH





ANNUAL REPORT 2016 BY THE COMMISSIONER FOR HEALTH

INTRODUCTION

The number of cases investigated by the Commissioner for Health which were upheld or partly upheld by far exceeds those cases which were not sustained. This shows the constant commitment and the importance of the role of the Commissioner for Health in assisting persons who experience any form of maladministration in the public health sector.

However, the Commissioner still laments on the great delay in receiving replies and feedback from the Department of Health. The Commissioner repeatedly commented about this lack of cooperation, in his last four annual reports, notwithstanding this, there has been no progress whatsoever. The Performance Review in this report in Section 2 highlights the consequences of this lack of cooperation which is causing unnecessary delay in the investigation of complaints.

PERFORMANCE REVIEW

TABLE 4.0 – COMPLAINTS RECEIVED
2015 – 2016

Complaints Received	2015	2016
General Public	41	45
Employees within the Public Health Sector	35	37
Total	76	82

During 2016, the Commissioner for Health received 82 complaints, of which 45 were from the general public and 37 from employees working in the public health sector. The number of complaints received increased by 8% over 2015.

TABLE 4.1 – COMPLAINTS RECEIVED

Jan – Dec 2016

Against	No. of complaints
Ministry for Health	68
Public Service Commission	10
Ministry for the Family and Social Solidarity	2
Ministry for Social Dialogue, Consumer Affairs and Civil Liberties	1
ARMS Ltd	1
Total	82

Table 4.1 shows that from the 82 complaints received, 68 were against the Ministry for Health, 10 against the Public Service Commission, 2 against the Ministry for the Family and Social Solidarity and 1 each against ARMS Ltd and the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties.

TABLE 4.2 – OUTCOME OF COMPLAINTS RECEIVED

Jan – Dec 2016

Outcome	No. of Complaints
Sustained	25
Partly Sustained	2
Not Sustained	13
Resolved by informal action	5
Withdrawn by complainants	1
Advice given	1
Referred to Commissioner for Mental Health	1
Pending	34
Total	82

During the year under review, from the 82 complaints received, the Commissioner for Health concluded 48 cases of which 27 cases were either sustained or partly sustained. As mentioned in the introduction of this report 34 cases were still pending mainly due to a lack of reply from the Department of Health.

As shown in Table 4.3, of the 34 pending complaints, 12 cases have been pending for over six months.

TABLE 4.3 – AGE PROFILE OF PENDING COMPLAINTS

Jan – Dec 2016

Age	Pending Cases
Less than 2 months	9
Between 2 to 3 months	6
Between 4 to 5 months	7
Between 6 to 7 months	4
Between 8 to 9 months	4
Over 9 months	4
Total	34

TABLE 4.4 PENDING FEEDBACK BY DEPARTMENT ON COMPLAINTS RECEIVED

Jan – Dec 2016

Department	No. of Complaints
Ministry for Health	29
Office of the Principal Permanent Secretary	3
Ministry for Social Dialogue, Consumer Affairs and Social Liberties	1
ARMS Ltd	1
Total	34

Table 4.4 shows that the Ministry for Health tops the list of pending feedback by 29 (85%) cases which are pending some sort of reply or feedback in order to continue to investigate the case.

TABLE 4.5 CATEGORIES OF COMPLAINTS FROM THE GENERAL PUBLIC

Jan – Dec 2016

Nature of Complaint	No. of Complaints
Not given requested medicines	18
Unsuccessful surgery	2
Request to be sent abroad for treatment	3
Protection from health hazard	4
Request for compensation following alleged carelessness whilst given treatment	3
Refused request for release from Mount Carmel Hospital	1
Not given reply to queries	1
Request for admission to St Vincent de Paul Residence	1
Request for refund of expenses incurred on treatment abroad	1
Request for admission to Home for the Elderly	1
Unorthodox reward of tender	1

Nature of Complaint	No. of Complaints
Refusal to be given dental treatment	3
Delay to be operated	1
Cancellation of appointment	1
Not given registration certificate due to Nursing and Midwifery Council not reappointed	1
Not given registration certificate due to Pharmacy Council not being reappointed	1
Request for correction of discharge letter from hospital	1
Alleged bullying causing psychological violence	1
Total	45

Table 4.5 illustrates the nature of the complaints lodged by the general public with the most common grievances are related to the right of free medicines. The complaints from citizens who alleged that are not given the entitled medicine this year amounted to 40% of the cases investigated by the Commissioner during the year in review.

TABLE 4.6 CATEGORIES OF COMPLAINTS FROM EMPLOYEES IN THE PUBLIC SECTOR
Jan – Dec 2016

Nature of Complaint	No. of Complaints
Found ineligible to apply for Call of Applications	9
Request for reinstatement in Government Service	2
Request for allowance for doing higher duties	2
Revision of results following Call for Applications	3
Request to be given appointment following Call for Applications	2
Refusal by Department of Health to recognise post graduate diploma	1
Unfair transfer	1
Loss of leave records	2
Refusal of request to be given health hazard allowance	3
Request to include duties as Hospital IT Training Officer in the Information and Communications Authority (ICT) Class	1
Request to be give Resident Specialist post as per Government/MAM Agreement and to be given relative allowance back dated	1
Unfair non-renewal of work contract	1
Unfair disciplinary action taken	1
Not selected for the post applied for	1
Request not to refund salary due to staff negligence	1
Request to be given duties according to speciality	3
Request to be paid for duties performed	1

Nature of Complaint	No. of Complaints
Request for correction of work contract to be in line with Call for Applications	1
Lack of reply	1
Total	37

Similarly to the complaints raised by the general public, the categories of the complaints lodged by the health sector employees are diverse totalling to 19 different types of complaints. As shown in Table 4.6 the most common complaints raised by staff working within the Public Health Sector relate, for the second consecutive year, to employment selection process.

TABLE 4.7 TOTAL NUMBER OF PENDING COMPLAINTS

Department / Sector / Ministry	No. of Complaints
Ministry for Health	40
Office of the Principal Permanent Secretary	5
Ministry for the Family and Social Solidarity	1
Ministry for Social Dialogue, Consumer Affairs and Civil Liberties	1
ARMS Ltd	1
Total	48

As at the end of the year under review, the Commissioner for Health had 48 cases pending of which 83% of the cases are against the Ministry for Health (Table 4.7). As illustrated in Table 4.8 of the 48 pended cases, 14 cases were carried forward from the previous years.

TABLE 4.8 CASES PENDING FROM PREVIOUS YEARS AS ON 31 DECEMBER 2016

Department / Ministry	No. of Complaints
2013	
Ministry for Health	1
2014	
Ministry for Health	2
Office of the Principal Permanent Secretary (referred to recently)	1
2015	
Ministry for Health	8
Office of the Principal Permanent Secretary (referred to recently)	1
Ministry for the Family and Social Solidarity	1
Total	14

Apart from the cases received during the year under review, the Commissioner is following up cases which he received and investigated in the past two years. Table 4.8 shows the number of cases pending from the previous years. The Commissioner hopes that due consideration and cooperation is given from the departments concerned in order to concluded these cases.

TABLE 4.9 CLOSED CASES PENDING FROM PREVIOUS YEARS

Jan – Dec 2016

Complaints received in (Year)	No of Complaints
2014	9
2015	30
2016	48
Total	87

During 2016, the Commissioner concluded 87 cases out of which 39 were cases received in 2014 and 2015. Out of the cases concluded during the year under review 44 were upheld. Regrettably, the recommendations of the Commissioner on four investigations were not accepted by the public administration - two by the Public Service Commission and two by the Ministry for Health.

OWN INITIATIVE INVESTIGATIONS

In the past years' Annual Reports, the Commissioner for Health had stated that he had completed an Own Initiative Investigation on "*Infants and Adults with Hearing Problems*". One of the Commissioner's recommendations was that there should be a hearing screening test on neonates so that newborns with hearing problems would be detected as early in life as possible and would therefore be given any possible treatment without any delay.

The Commissioner continued to follow-up the matter and it appears that there is a possibility that the necessary equipment would be purchased during the year 2017.

PRELIMINARY INVESTIGATIONS

During 2016, the Commissioner initiated the following preliminary investigations:

- i. Dust and Particles emanating from the Palumbo Dockyard
- ii. High pesticide levels in some fruit and vegetables
- iii. Patients Charter
- iv. Dimethyl Fumarate (*Tecfidera*) needed for treatment of Multiple Sclerosis
- v. Treatment for Macular Degeneration
- vi. Re-introduction of Pink Form to Diabetic Patients
- vii. Privatisation of Health Services

The investigation on the treatment for Macular Degeneration and amendments to the Ombudsman Act concerning the Privatisation of Health Services, are still being discussed between the Office of the Ombudsman and the Ministry for Health.

The Commissioner for Health continued also to follow up preliminary investigation started in previous years on the supply of Capecitabine (Xeloda) needed by cancer patients. The issue is still being considered by the Ministry for Health and there are hopes that this medicine will be made available during the year 2017. The Ministry has been allocated an additional budget of €3,000,000 for 2017 specifically for the purchase of cancer medication. (This treatment was approved by the Ministry for Health on 1 February 2017).

ENTITLEMENT TO THE SUPPLY OF MEDICINALS UNDER THE SOCIAL SECURITY ACT

In the Annual Reports for 2012, 2013, 2014 and 2015, the Commissioner commented about the treatment required by certain diabetic patients and patients suffering from Hepatitis C. In 2015, the Commissioner had issued a report which was sent to the Hon. Prime Minister and referred for evaluation to the Parliamentary Standing Committee on Health in terms of its powers under Standing Order 1203.

In November, 2016 the Ministry for Health approved the issue of more Haemoglucotest (HGT) strips to Type 1 patients but the problem of the supply of Analogue Insulin to Type 2 patients is still not resolved.

On the supply of medicines concerning patients suffering from Hepatitis C, the fifty or so patients mentioned in the report have received the necessary treatment. Talks between the Commissioner and the Ministry for Health have been ongoing and the Commissioner will continue to see whether any progress will be achieved during 2017.

The Commissioner for Health hopes that the following issues that have been ongoing on for quite some time and which are still being considered will be resolved during 2017:

- i. the supply of Analogue Insulin to Type 2 diabetes;
- ii. the supply of medicines needed by patients suffering from Hepatitis C;
- iii. the introduction of new cancer drugs; and
- iv. the hearing screening of neonates.

DISCUSSIONS WITH MINISTRY FOR FINANCE

While investigating the issue of medicines required for Diabetic Type 2 patients, Hepatitis C patients and cancer patients it transpired that the main reason for the withholding the procurement was because of lack of funds. Therefore, the Commissioner for Health held discussions with the Ministry for Finance to try and intervene.

The Ministry for Finance could not approve additional funds during 2016 but stated that due consideration will be given during the 2017 budget.

In fact the medicines procurement vote had been increased and a new allocation of €3,000,000 was added with the specific purpose for the purchase of drugs required by cancer patients. He will continue to monitor regarding progress on this matter.

TOXIC FUMES AFFECTING TA' XBIEX RESIDENT

In the 2015 Annual Report, the Commissioner reported that he was investigating a case reported by the Sunday Times of Malta on a 60-year-old, suffering from severe heart problems, goes to sleep in the uneasy knowledge that a simple power cut could put his life at risk. The complainant had alleged that whenever the lights go out, and during scheduled testing, the generator installed in a large block of apartments that has its exhaust vents at street level floods the air with thick, acrid fumes. The Commissioner took up the case with the relevant authorities and followed up the tests conducted by the Environmental Health Directorate.

The Commissioner continued to follow up the matter during 2016 but he regrets to say that no progress has been achieved.

He also involved, the Commissioner for Environment and Planning but the latter is also finding problems to enforce his views.

This case is proving to be difficult to conclude because of the expenses involved to redress the issue. The owners of the property are obviously not too keen to take any urgent action.

This notwithstanding, the Commissioner for Health will continue to follow-up the matter.

COLLECTIVE AGREEMENTS

As stated in the 2015 report there were certain employees who were adversely hit by the Collective Agreements entered with between the Government and Trade Unions.

Since amendments to such Agreements are not possible, this Office could not be of any help. However, it is felt that certain categories of employees were very unfairly treated when the Agreement was being negotiated.

The matter has therefore been referred for the consideration of the Principal Permanent Secretary at the Office of the Prime Minister. The Commissioner recommended that Government should reopen talks with the Unions concerned.

CASES CONCERNING THE PUBLIC SERVICE COMMISSION

As stated in Section 2 of this report, ten of the complaints received concerned the Public Service Commission (PSC). Two complainants asked for revision of the result and the other eight were regarding eligibility to apply for Calls for Applications.

Three of the cases, from the 2015 caseload concerned the revision of the results as recommended by the Selection Boards. The PSC accepted the recommendations of the Commissioner in one of the cases, but did not accept them in the other two cases. In both these cases, the Commissioner upheld

the complaint and therefore the allegations made by the complainants were sustained. Complainants were informed so that they would be in a position to take any action they consider necessary to safeguard their interests.

ALLOWANCE GIVEN FOR HEALTH HAZARD

The Commissioner for Health investigated complaints concerning allowance due to health hazards given to certain employees.

It resulted, that the employees whose grades are included in the Agreement reached between the Union and the Ministry for Health, are given the allowance but other employees doing exactly the same work and exposed to the same health hazards were not being given the allowance because their grades were not included when the Agreement was signed.

After the recommendation by the Commissioner for Health, the Ministry for Health continued to refuse in granting the allowance and the matter was therefore referred for the consideration of the Principal Permanent Secretary.

UPHELD COMPLAINTS

As mentioned in section 2 of this report, particularly in Table 4.9, and repeatedly in other sections throughout the report, the Commissioner had submitted for approval a number of cases but, in spite of the fact that he strongly felt that complainants were in the right, yet his recommendations were either not accepted or kept in abeyance indefinitely. This is frustrating and unfair on complainants.

In last year's Annual Report, the Commissioner had reiterated that '*justice delayed is justice denied*'. Notwithstanding this criticism and constant appeal to the authorities to act on his recommendations, even though the majority of the complaints are accepted, he feels that the remedies given to citizens by the Ombudsman Act to safeguard their rights fall short of giving the desired results.

CONCLUSION

As stated in the introduction, the Commissioner for Health would like to see better response from the Ministry for Health to the concerns raised by both the public and the employees of the various health institutions.

This can be achieved if the Ministry could introduce time frames and insist on strict adherence from its employees to answer promptly to correspondence received from the Commissioner – on the same lines of Parliamentary Questions (PQ's).

The Commissioner for Health hopes that during the coming year, the Ministry for Health appreciates more the effort done by his Office in resolving grievances and therefore promptly respond to requests for information and to the queries addressed to them.

The Commissioner feels that his criticism should be seen as a learning curve to correct any deficiencies in work practices.

APPENDIX A

**THE OMBUDSMAN'S DUAL ROLE -
DEFENDING THE CITIZEN AND PROMOTING
THE RIGHT TO GOOD PUBLIC ADMINISTRATION**



The Ombudsman – a key player for Good Governance

NINTH MEETING OF THE ASSOCIATION OF MEDITERRANEAN OMBUDSMAN

MALTA | 9-10 March 2016

The Ombudsman's dual role –

Defending the citizen and promoting the right to good public administration

Chief Justice Emeritus Joseph Said Pullicino, Parliamentary Ombudsman - Malta

Dear Friends,

In this first session we are invited to focus on the vital role that the Ombudsman has to play as a key player in the democratic life of our respective countries, the promotion of the ideals of good governance and correct administrative practices and the protection of fundamental rights and values.

Separate and distinct functions

The theme identifies a dual function of the Ombudsman: that of defending the citizen and that of promoting the right to a good public administration. It is a theme that correctly highlights the reality that the Ombudsman is an institution in evolution, that it is developing progressively, even if not everywhere necessarily in the same manner and at the same pace, to become a more effective tool, not only to provide citizens with a more comprehensive and effective protection against maladministration, injustice and abuse of power, but also a proactive instrument to help improve the public administration for the common good.

The two functions must remain separate and distinct, but they are undoubtedly complimentary. The primary function remains that of defending the citizens against arbitrariness, ensuring that they are treated fairly, justly and equitably by public administrators. A secondary but no less important role of the Ombudsman is to actively contribute towards an improved open, transparent and accountable public administration through constructive dialogue on identified systemic failures. Any positive results forthcoming from such dialogue will ultimately but directly benefit the citizens.

The Malta experience

We are proud and honoured to host this Ninth Meeting of our Association that coincides with the 20th Anniversary of the setting up of the Ombudsman institution in Malta. I shall briefly illustrate the evolution of our Office in Malta and how it has developed during these years from an authority set up by law to investigate complaints against the public administration into a fully-fledged constitutional authority, with the added assumed, even if not explicit function to audit the administrative actions of government and act as the guarantor of the citizens' right to a good public administration.

It is of the utmost importance for the Ombudsman to be given the proper tools to be able to perform these dual functions efficiently and effectively. Most importantly, it is essential that we all strive to improve our legal, investigative and administrative structures. Our respective institutions should be able to operate within structures that are completely autonomous and independent from government and public authorities that fall under their scrutiny. Ideally, the Ombudsman institution should not be answerable to any Ministry, but directly to Parliament. It should have as wide a jurisdiction as possible encompassing all aspects of the public administration, except for those specifically excluded by law.

In the investigation of complaints the Ombudsman should have wide powers of investigation and free access to public documents and power to summon witnesses in the search of truth. The institution should also enjoy financial autonomy; it should not depend on government for its financing. Its annual budget should be authorised by Parliament and its expenditure audited by the Auditor General, another constitutional authority.

In this respect Malta is indeed fortunate that its House of Representatives in 1995 unanimously approved the Ombudsman Act that sets up an institution that incorporates all these essential elements. Its legislative framework, modelled on that governing the New Zealand institution, has proved to be progressive and forward looking, allowing for further improvement to meet new situations and challenges in a society that is continuously changing and developing.

Welcome characteristics

It is a welcome characteristic of our Association that it brings together Ombudsmen from countries having different constitutions and systems of government, diverse legal orders and administrative and judicial structures, that reflect the cultural, social and economic development of the country as well as its traditions. It is therefore inevitable that the laws governing our respective institutions vary considerably.

The functions we are called upon to perform do not necessarily tally, but our single, common denominator must be that we have the duty to promote the citizens right to a good public administration, to serve as a mediator between the citizen and the public authority, and to stand up and defend him when his rights, especially his fundamental ones, are threatened. To be able to do this successfully and meaningfully our legislation must as a minimum, contain the essential features I mentioned above guaranteeing our institution its autonomy and independence. If that is not the case, each one of us should strive to convince the legislator and public opinion on the need to fully appreciate the vital role of the Ombudsman as a key player in the democratic process, and to meaningfully amend the laws governing the Ombudsman institution in the country. The Ombudsman can only be an effective defender of citizens' rights if he is perceived by aggrieved persons to be an authority that is completely independent and autonomous from government and the public authorities that fall under his jurisdiction, and if his founding legislation allows him to act within such parameters and gives him the tools to do so.

Primary function - defender of rights

Undoubtedly the primary function of the Ombudsman remains that of providing persons who feel aggrieved by an act of the public administration with an authoritative institution that can investigate his complaint and recommend appropriate redress. Essentially therefore the core function of the Ombudsman is to promote transparency, fairness, equity and administrative justice in the operations of the public administration. He/she seeks to restore dignity and justice to individuals with a sustained grievance against a public institution.

When exercising this core function, the Ombudsman attempts to empower the citizen to react against injustice, acts of maladministration and improper discrimination, encouraging him or her to stand up for their rights. He enhances the individual's ability to access information on processes that affect his interests and consequently to demand that decisions taken are based on the principles of fairness, transparency and equity.

There are two important aspects in the exercise of the primary function of the Ombudsman that may or may not be relevant to your jurisdictions, but which the Malta experience has shown to be significant and essential in the defence of the individual.

i. The right of the aggrieved person to have direct access to the Ombudsman.

This is a right that most, though not necessarily all jurisdictions recognise. The Maltese Ombudsman has the right to conduct any investigation on the written complaint of any person having an interest, who claims to have been aggrieved by any action of the public administration. This right of direct access is not limited to citizens. It is given to all interested persons whatever their nationality or location, so long as the action complained of is one

taken by or on behalf of government or any other authority or body in which the government has a controlling interest.

The Ombudsman therefore can and does receive complaints from non-Maltese citizens or persons living outside Malta's jurisdiction, whatever their state or condition. He can and does receive and investigates complaints by stateless persons, irregular or rejected immigrants, inmates in prisons and members of the Armed forces.

The method of investigation is strictly regulated by law, it is non-adversarial but transparent. The essential norms of due process must be observed to ensure a just and transparent investigation even though this is conducted in private. It is the duty of all Ombudsman to carry out outreach programmes and make full use of the social media and modern information techniques to make the services of the Ombudsman widely known within his jurisdiction.

This is especially important in large countries and in countries that have significant ethnic or other minorities.

ii. The right to make own initiative investigations.

An important aspect of the primary function of the Ombudsman is the power to make own initiative investigations. It needs to be stressed that, when the legislator chooses to entrust the Ombudsman with the power to initiate investigations into areas of maladministration that he felt merited his attention, it was in effect raising the status of the Office to that of an auditor of the administrative actions of the public administration.

The Ombudsman does not need to have a complaint to carry out such own initiative investigations, though they are often inspired by a grievance against which individuals seek redress. Essentially when conducting such investigations the Ombudsman is acting as a watchdog over the action of government departments, ministries and other public authorities. He is expected by law to be proactive and to act as a defender of citizens' rights in the widest sense of the term.

Our experience in this respect has been extremely positive. It has given the Ombudsman a very effective tool to address systemic failures of the administration and issues of good governance that affect large sections of the population. Own initiative investigations were successfully used to raise public awareness on the rights of vulnerable persons that needed additional protection. This right has been put to good use in Malta both by the Ombudsman and his Commissioners. Many of their own initiative investigations have been well received and have had a positive impact on specific areas of the administration that required immediate attention and corrective measures.

I believe that the power to conduct own initiative investigations is especially important in those jurisdictions where the Ombudsman functions as a human rights institution and in countries that have a significant deficit in fundamental human rights. In such situations, the Ombudsman needs to be completely free to identify issues that require attention both on an individual personal level but also, where systems fail or the authorities take action that can be qualified as violations of fundamental rights. In such instances the Ombudsman must be in a position to react immediately on his own volition, investigate and recommend appropriate remedies as quickly as possible.

Effectiveness of recommendations

An issue that could be discussed in this session and that is differently approached in our respective jurisdictions, relates to the effectiveness of the recommendations made by the Ombudsman. The Ombudsman in Malta, like many other Ombudsmen elsewhere lacks executive powers. He can recommend a wide range of flexible remedies, including financial compensation when appropriate, but unlike a court of law, his recommendations are not binding and can be rejected by the public authorities. The Ombudsman's ability to secure results therefore depends upon the quality of the arguments he makes, the respect he commands in the country and the moral authority inherent in his Office.

I strongly believe that there should be no change in this approach and that the fundamental distinction between the Ombudsman as a mediator between the citizen and the public administration, and the Courts of Law that deliver binding judgements, should be retained. Essentially the Ombudsman's opinions while based on the application of legal norms, are weighted with principles of justice and equity.

It is the Malta experience that the great majority of the Ombudsman's recommendations are accepted and the suggested remedies implemented. This does not mean however that one should not consider ways and means how the final opinions and the recommendations of the Ombudsman could be rendered more effective. Every effort should be made to ensure that the complainant is given full satisfaction, through transparent and accountable process, that the public authority was justified in refusing to implement the Ombudsman's recommendation.

The secondary function - the Ombudsman as a catalyst for the improvement of the public administration

A secondary but certainly not less important function of the Ombudsman is the potential of the Office to act as a catalyst for the improvement of the public administration. This function is implied but not expressly spelt out in the Ombudsman Act. It is a direct corollary of the

right of the Ombudsman to conduct own initiative investigations and has been actively developed and pursued by the Ombudsman in Malta.

This especially so when systemic failures of policies and procedures, aggravating wide sectors of the population, are identified. It needs to be recalled that in Malta and in many other jurisdictions amongst us, the Ombudsman is a Parliamentary Officer and his Office is a parliamentary institution. It does not form part of the Executive and it is not a court. In our part of the world, neither is he an NGO, nor a pressure group. The Office of the Parliamentary Ombudsman therefore, does not and should not project itself as an adversary for the public administration. It should not follow a policy of confrontation. The Ombudsman should consider himself to be a defender of the citizen but also an *amicus* of the public administration.

Generally found co-operation

In promoting these initiatives, the Ombudsman in Malta generally found collaboration from Ministries, government departments, public authorities and corporations. He has on several occasions successfully conducted initiatives that led to the setting up of internal complaints mechanisms, consumer protection bodies, transparent and fair promotion processes and similar exercises. There have on occasion been cases where the public authority itself has sought the advice of the Parliamentary Ombudsman who then offered his services to help in determining correct, just and transparent procedures that would go a long way to satisfying the aspirations of aggrieved citizens.

Examples of initiatives

Examples of initiatives that led to a positive conclusion in the interest of the common good, include:

1. Making proposals at the request of the government on the strengthening of the Ombudsman institution in Malta. These are contained in a publication bearing that name and is available with other documents on the table at the entrance.
2. Publications made by the Ombudsman to promote the setting up of a national human rights institution in Malta and reflections on the White Paper towards the establishment of the Human Rights and Equality Commission now being proposed by government following that publication.
3. An investigation on the State's duty to disclose information to which the public is entitled, a politically charged issue that is hotly debated in Malta. This was the subject of an

international meeting and the proceedings have been published in a document that is also being made available.

4. The setting up of a semi-autonomous body within the Transport authority to investigate claims for damages resulting from lack of proper maintenance of roads for which it was responsible. The Authority, following court judgements and the Ombudsman's insistence, finally accepted it has a duty to care towards users of roads and is now paying for damages for which it is declared to be liable.

5. Following discussions with the Energy authority it was decided to set up a semi-autonomous board to investigate complaints received by consumers of electricity who claimed that their electrical appliances had been damaged as a result of sudden current outages. An occurrence which is not uncommon in Malta.

These are just a few examples of the positive and proactive collaboration between the Ombudsman and the public administration that needs to be recognised, highlighted, and strengthened. Public authorities should be encouraged to react affirmatively to proposals meant to make their administration more transparent and accountable. The Office should progress into a useful tool to design effective procedures on redress that could satisfy the grievances of citizens aggrieved with the service they receive and that could favour out of court settlement.

The need for specialisation

Parliamentary Commissions

The increased complexity of the social and economic activities generated by the public administration and the level of scrutiny that the Ombudsman has to exercise when performing his dual functions, have led him to recommend that the institution should be oriented towards specialisation that would widen the scope and authority of its investigations. The 2010 amendments to the Ombudsman Act, unanimously agreed to by the House of Representatives, provide for the appointment of Commissioners for Administrative Investigations in specialised areas of the public administration. A process that, while guaranteeing the full autonomy of these Commissioners in the exercise of their respective powers and functions in the investigation of complaints falling within their technical competence, would for all other purposes integrate them within the existing structures of the Office of the Parliamentary Ombudsman.

These Commissioners are Officers of Parliament, subject to the provisions of the Ombudsman Act, applying the same investigative processes and procedures and utilising a unified investigative and administrative structures. There are today three such Commissioners, one

dealing with matters of education, another of health and a third with issues of planning and environment.

I believe that the new set-up strengthens the institutional framework of the office by providing as far as possible, a one stop shop for aggrieved citizens to seek redress, while the Commissioners who are experts in their field, provide a focussed, specialised and authoritative service to complainants.

Experience and expertise is invaluable when the Ombudsman authorizes the Commissioners to conduct own initiative investigations or when he takes initiatives to strengthen the public administration. The need for some sort of specialisation has been felt in other jurisdictions, mostly in European countries. There are various variants of the system adopted in Malta, including the appointment of Deputy Ombudsman operating in various fields. I strongly recommend that more jurisdictions should study closely this development and identify what model is best suited to their country.

Conclusion

Dear friends, I believe that ombudsman-ship is a living science that needs to be nurtured and developed to meet the needs and challenges of a changing world. The Ombudsman has always been regarded by all shades of public opinion as a major player in the network of checks and balances essential for the correct, transparent and accountable management of public affairs in a modern democracy, to which citizens are justly entitled.

It is for this reason that I have been promoting the concept that the right of the citizen to a good public administration should be included as a fundamental right in the Constitution. It is also for this reason that I have been proposing that the Office of the Ombudsman and the Office of the Auditor General should be put constitutionally on an equal footing. The Auditor General is charged with the scrutiny of the fiscal performance of the public administration while the Ombudsman should be charged with investigating its administrative actions, inactions, decisions and processes.

A scrutiny that would in effect not only recognise the Ombudsman as a defender of citizens' rights but also as the conscience of the public administration. The Ombudsman would then be recognised as the Constitutional authority that can give authoritative opinions on the values that should guide the public administration to do what is just, reasonable non-oppressive or improperly discriminatory and simply right. This in my opinion is the way forward.

Thank you.

APPENDIX B

**ASSOCIATION OF THE MEDITERRANEAN OMBUDSMEN –
MALTA DECLARATION ON MIGRATION**



AOM Malta Declaration on Migration

10th of March 2016, Valetta – Malta

We, the Ombudsman and Mediator Institutions gathered on the occasion of the 9th Meeting of the Association of the Mediterranean Ombudsmen (AOM), on 9-10 March 2016 in Valetta, the Republic of Malta;

Recognizing the relevant international law in the sphere of human rights and fundamental freedoms and the obligations of state parties to uphold the norms and standards contained therein,

Recalling the AOM Tirana Declaration of 27 June 2014, on migration and asylum in the Mediterranean region.

Affirming the commitment of Ombudsman and Mediator institutions to protect and promote human rights and fundamental freedoms without borders, in view of the distinct role of our independent institutions in the domestic and international institutional landscape,

Concerned about the humanitarian situation about the migration crisis in the larger Mediterranean area, linked to gross violations of human rights in regions plagued by armed conflicts and poverty, and further aggravated as a result of the failure of transit and destination countries to build a coherent and coordinated response with mobilization of necessary financial, human and logistical resources,

Acknowledging that particular relevance of AOM for the current crisis, in view of its geographical outreach including countries of origin, transit and destination of the migrants and refugees,

Hereby declare as follows:

1. AOM encourages all its associate Ombudsman and Mediator Institutions to engage in monitoring and pressuring State and non-governmental actors to abide to standards and obligations stemming from international human rights and refugee law, including the Geneva Convention of 1951 and its Protocol of 1967.
2. AOM asks all the States to guarantee that refugees and migrants avail of effective access to rights including asylum procedures without any discrimination.
3. AOM calls on local and international stakeholders to counter hate speech, racism and xenophobia, which have a bearing on the rights situation of refugees and, at the same time,

erode the fundamental values and principles of diversity, tolerance and coexistence for our societies.

4. AOM urges close with key local and international stakeholders, importantly civil society and INGOs operating in affected countries, to increase guarantees and resources addressing the needs of vulnerable groups, including children, women, the elderly, persons with disabilities, LGBTI, victims of torture. With particular reference to unaccompanied children, Ombudsman and Mediator institutions shall cooperate with them in order to address their specific needs and facilitate family reunification
5. All refugees should have in transit and destination countries all the information on their rights and the possibility to seek the support of Ombudsman and Mediator Institutions; in addressing complaints on infringements of refugee rights by authorities in countries along migration routes, AOM associate institutions shall closely cooperate for the delegation of cases for jurisdiction.
6. So as to provide effective and timely follow up on complaints and grievances of refugees and migrants as a result of state authorities in transit or destination countries, Ombudsman and Mediator institutions commit to pursuing close communication and interaction regarding the transfer of cases for competency among Ombudsman and Mediator member institutions depending on their jurisdictions.
7. In fulfilling their dual function as defenders and promoters of rights, Ombudsman and Mediator Institutions call for a human rights based approach, so as to ensure that State responses to the migration crisis and security concerns do not jeopardize human rights standards for citizens in countries of transit and destination.
8. In light of the longer-term integration challenge of integration, Ombudsman and Mediator Institutions urge States to develop sound integration policies that enable new diasporas to become productive for the economy and an added value for diversity of the societies hosting them.
9. For the returnees to their countries of origin, Ombudsman and Mediator institutions call upon state and intergovernmental actors to provide meaningful support for their integration, while ensuring a dignified process of return and avoiding repatriation in countries of origin where their safety is not ensured.

APPENDIX C

**SPEECH BY THE PRESIDENT OF MALTA
H.E. MARIE-LOUISE COLEIRO PRECA
AT THE NINTH MEETING OF THE ASSOCIATION
OF THE MEDITERRANEAN OMBUDSMEN**

I am pleased to address this ninth meeting of the Association of the Mediterranean Ombudsmen, which is once again being held in Malta. It is a pleasure to see so many representatives from so many countries in the Mediterranean region, and let me begin by wishing each of you every success in making this an effective arena for discussion and sharing.

The role of the ombudsmen is becoming more vital and more necessary in the complex communities that exist within the Mediterranean. It is a role that requires both autonomy and flexibility, calling for creative solutions and courageous action.

Above all, an ombudsman's focus must be on the protection of core values. Echoing the Paris Principles, these values consist of equity and accountability; of sustainable development; the safeguarding of human rights; and the continued protection of vulnerable groups.

By valorising the place of ombudsmen within our democratic systems, we send a clear message about the need to preserve and to promote social, political, and economic values within society.

Let us recall the words of academics Roy Gregory and Peter Hutchesson, who affirm that the role of the ombudsman comes in response to the major dilemmas of contemporary life; namely that, within modern states, "democratic action is possible only through the instrumentality of a bureaucratic organization. But bureaucratic power—if it is not properly controlled—is itself destructive of democracy and its values".

How, then, are we to reflect these values within the context of the multilayered relationships that exist and take shape in our societies? The relationships between citizens and service providers, between members of minority groups and those who belong to a powerful majority, are often asymmetrical.

The ombudsman is therefore tasked with upholding basic dignities where they are most at risk, and ensuring that balance is achieved within power relationships that can, all too often, result in abuse.

In this capacity, the ombudsman gives voice to something far more fundamental than the regulation of bureaucratic power. The ombudsman stands to safeguard wellbeing, as an agent of peace in the midst of potential oppression and conflict.

We must be mindful that an essential component of the ombudsman's function is to address and transform conflict. The ombudsman presents a path away from violence, direct or covert, and towards the possibility of harmonious resolution.

It is clear that, at this difficult point in our history, the need for such efforts is particularly pressing within our Mediterranean.

The task of conflict transformation, as practiced by the ombudsman, evolves from the most ancient pursuit of justice. It is a continually developing endeavor that engages both the public, who call upon the good offices of the ombudsman for assistance, and governing powers, which may be obliged to submit to external scrutiny.

When we agree that the ombudsman's role is rooted in a concern for the dignity of each individual, then we must acknowledge the need for a concurrent focus on those imbalances of power that permeate our communities and institutions, frequently embedded within the deepest structures of society.

It is sometimes ombudsmen themselves, in the pursuit of their work, who must act as a catalyst for the exploration of systemic difficulties that would otherwise go ignored or unchallenged.

The ombudsman stands in the centre of such processes, at once a neutral intermediary and an uncompromising voice for fairness and equity. The ombudsman functions within this difficult space, sensitive to the fact that an imbalance of power is often a crucial factor.

How is one to address this imbalance and its attendant inequalities, within which it is the individual who is usually at most risk?

To build effective responses, we must remain conscious of the wholeness of the human person, while also maintaining an intersectional awareness of those particularities of gender, ethnicity, religion, socio-economic status and cultural heritage that form our individual experiences of the world.

It is the ombudsman's duty to take the positive values at the heart of our society and ensure that they inform each and every mediated interaction, inspired by non-coercive strategies of conflict resolution. We must take seriously the great threats to peace and development occurring around the world, particularly within our Mediterranean region, while also acknowledging the insight that empowered citizens will bring to our discourse.

Above all else, we need citizens who are able to take responsibility, and who are capable of more fully participating in governance.

Therefore, a key goal must be education. It is through education that an ombudsman contributes most decisively to the empowerment of complainants, securing their participation.

It is through education that an ombudsman assists in fostering a civil society that is informed about its rights, is confident in exercising them, and is capable of sharing them within ever widening circles of community and connection.

Your work includes teaching opportunities with individuals, where policies are explained and cultural diversity is explored, and also opportunities to help parties better understand all facets of a dispute, appreciating its implications and complexities. These are the fundamental tools we require if citizens are to incorporate conflict resolution techniques within their own lives and communities, for the benefit of society as a whole.

As potential educators, it should be clear that an ombudsman's goals cannot merely be the short-term resolution of conflict. Rather, our goals must be for a steady, progressive transformation, a long term journey towards a society that is capable of maturely confronting and dealing with conflict.

We must come together to work towards societies that are educated in their rights, in processes of conflict resolution, and capable of demanding that each citizen be treated with the dignity that is rightfully theirs.

Ultimately, the ombudsman's goal is to tirelessly uphold the wellbeing of the individual, sustained in cultures of peace.

Through your efforts at securing the wellbeing of all citizens, you are re-establishing, or sometimes creating for the first time, healthier and equitable relationships.

However, this does not only protect individuals. It opens up a space in which administrations and institutions have the opportunity to reflect on their exercise of power, and to come, through self-examination, to recognise the need for meaningful improvement and change.

Let me conclude by calling for us all to consider, within our various roles, the paramount importance of trust. The credibility of a process and the integrity of the individual and the team who implements that process are both essential components in the development of trust, and in securing a flourishing engagement between citizens and institutions. Your work must be filled with a sense of conviction, inspiring others with confidence, and encouraging them to recognise the strength of our values.

Your work must find its greatest fulfilment in the promotion of those values rooted in Human Rights. Beyond your particular focus on different democratic values, we are all united in the promotion of underlying fundamental rights. These basic truths, held in common, link our work across sectors, and across national borders.

Let the drive towards the full empowerment of citizens continue to inspire your efforts as ombudsmen. Let the committed participation of individuals and communities, and their ability to inform and strengthen processes of governance, be a clear goal in your endeavours.

By your example, may you embody and teach effective strategies of conflict transformation, which are applicable at all levels.

May you always be worthy of the trust placed in you, by resisting those voices that would see our core values sacrificed in the pursuit of expediency. Rather, let us always and in all ways commit to the pursuit of wellbeing.

I am sure that you shall make use of the opportunities offered by this conference, to consider new strategies for making your own contributions towards these goals, and above all, to the realisation of a sustainable peace among the communities and the nations of our Mediterranean.

Thank you.

APPENDIX D

**SPEECH BY THE COMMISSIONER FOR ENVIRONMENT
AND PLANNING, PERIT DAVID PACE AT SBE16 MALTA
- EUROPE AND THE MEDITERRANEAN:
TOWARDS A SUSTAINABLE BUILT ENVIRONMENT**

Good morning and may I join yesterday's speakers on the introduction panel in wishing foreign delegates a pleasant stay in Malta. I hope that you will not only enrich the debate during the proceedings of this event but that you will enrich the experience of your stay here by getting to see a few of the cultural and historical treasures that this country can offer.

When I took office in 2012, I decided that besides my role as safeguarding citizens' rights to proper public administration by investigating their complaints and recommending corrective action where such complaints were found to be justified, I would contribute to the same objective in another manner, that is by assisting Civil Society in an empowerment process for it to be more knowledgeable in recognising and using its rights for the public good.

As part of this process I began a series of meetings with NGOs in order to understand their problems and assist in their efforts to obtain information and facilitate dialogue with authorities in their areas of concern.

One such NGO was SBE Malta. I met its Board in 2014. That is when I learnt about its dream of hosting a regional iiSBE event in 2016. Having attended the Barcelona iiSBE Conference in the same year, I got an idea of what it would have to take in terms of resources in order to run an event of such a calibre. To put it mildly, it seemed a tall order.

Therefore the fact that we are all here today and with the hindsight of yesterday's proceedings I feel that it is only fitting to congratulate SBE Malta for having succeeded in putting this Conference together, with the participation of high level speakers from Europe, the Mediterranean and beyond.

I wish to take this opportunity of your presence among us to share some concerns on the matter of sustainable development and its relevance to the man in the street. I feel that the vast body of data emerging from research, practical applications and theoretical studies has yet to filter down and form a part of the public *forma mentis* which is ultimately where your efforts are intended to provide their beneficial effects.

I was comforted therefore, if such a term could be used, to hear the iiSBE Executive Chairman Nils Larsson talking about the distance that still exists between theory and practice and of 'bringing the mainstream with us'. The President of the Kamra tal-Periti also stressed the multiple ownership of our legal framework, hindering efforts to reduce this distance.

Reference to this issue was also made yesterday both by the Minister for the Environment, Sustainable Development and Climate Change, as well as by the Dean of the Faculty for the Built Environment who in their interventions spoke about the need for a multi-disciplinary approach to tackling the issues in the former case, and the lack of input of sustainability principles at all levels of public administration in the latter.

And to drive the point home we had Perit Joseph Falzon explaining the results of his survey on local sustainable use of heritage resources from where it emerged that 88% of respondents claim that Local Councils require more information about proposed policies and objectives, while at the same time, the Local Councils themselves feel that their concerns are not taken seriously enough by the authorities.

And in the final paper, we were presented with a clear example of the 'dead-end' situation that NGOs and other sectors of Civil Society often experience in their attempts to improve the quality of urban life, due to lack of resources and know-how in taking their projects forward to the implementation stage.

May I recommend therefore that fora such as the one we are participating in today, provide sufficient space for analysis and debate on how to bridge this gap and truly empower today's urban dwellers by not only providing the tools for the successful implementation of sustainability principles in everyday life, but more importantly, to instill and sustain a conviction at public level of their indispensable need and beneficial qualities.

During yesterday's discussion at the end of the session, I mentioned another project which I had started with the Association of Local Councils, and which was taken up by one of its Regional Groups. This project started up as a research into the successful introduction of the 'shared space' concept in historical urban cores, in an attempt to restore these zones back to the residents to use as areas of public interaction.

As I stated, the concept was 'plugged' into a Sustainable Urban Mobility programme which was already up and running in that region. I shall be following its progress keenly.

I am also collaborating with another NGO on the implementation of effective noise mitigation measures at neighborhood level. Noise and the stress it causes, are major factors contributing to the degrading of the quality of life in our urban areas. Combined with heat stress in our hot summer climate, they are certainly a major health risk.

So far progress has been rather slow but there are encouraging signs that the efforts are bearing fruit.

By enabling civil society to access knowledge on and capabilities for the implementation of sustainable development principles, we are accelerating the process towards obtaining the results that your work is striving to achieve.

The ultimate aim would be a Utopian situation where a thoroughly enabled and knowledgeable civil society convinces a thoroughly amenable and open government to implement the full spectrum of sustainable development. And that's where my job would become redundant.

However, since human nature is what it is, I can safely say that my job is secure at least for the foreseeable future. Which means that we all need to work that much harder to achieve our common objectives.

I wish every success to your presentations and debates in the remaining two days of this conference, and once again congratulate SBE Malta and its collaborators in realising their dream.

APPENDIX E

**CORRESPONDENCE FROM THE COMMISSIONER
FOR ENVIRONMENT AND PLANNING,
PERIT DAVID PACE ON THE MEPA DEMERGER**



COMMISSIONER FOR ENVIRONMENT AND PLANNING



Ref taghna: CEP/3

24 ta' Awwissu 2016

L-Onor Dr José A Herrera
Ministru għall-Iżvilupp Sostenibbli, l-Ambjent u t-Tibdil fil-Klima
Casa Leoni
St Joseph High Road
Sta Venera
SVR 1012

L-Onor. Dr Deborah Schembri
Segretarju Parlamentari għall-Ippjanar u Simplifikazzjoni Amministrattiva
L-Uffiċċju tal-Prim Ministru
Berġa ta' Kastilja
Il-Belt Valletta
VLT 1061

Gregory Vassallo, Segretarju Parlamentari

Inhossni fid-dover li nwassal għall-attenzjoni tagħkom ir-riżervi serji li għandi dwar l-effetti negattivi li qed jirriżultaw fuq il-protezzjoni tal-ambjent wara li giet fis-sehh u qed tithaddem il-leġislazzjoni li tat effett lid-*demerger* bejn l-Awtoritajiet tal-Ippjanar u tal-Ambjent u r-Riżorsi. Riżervi li jiena kont diġà indikajt thassib dwarhom f'ittra li bghatt lill-Onor. Prim Ministru u lill-Onor. Kap tal-Oppożizzjoni fit-2 ta' Settembru 2015 (kopja annessa) u li fiha esponejt il-hsibijiet tiegħi dwar l-abbozzi tal-liġijiet li fasslu d-*demerger* fil-MEPA li kienu qed jiġu diskussi fil-Kamra tad-Deputati.

F'dik l-ittra jien kont esprimejt it-thassib tiegħi li "*Irid jiġi assikurat li l-hidma taż-żewġ Awtoritajiet tkun trasparenti u thalli lok għal skrutinju u partecipazzjoni tal-pubbliku f'kull livell, filwaqt li jkun hemm checks and balances neċessarji fl-istrutturi amministrattivi u proċedurali li jaddottaw dawn l-Awtoritajiet*".

B'mod partikolari kont insistejt fuq il-htieġa li l-Awtorità għall-Ambjent u r-Riżorsi tkun preżenti dejjem fuq il-Kunsill Eżekuttiv tal-Awtorità tal-Ippjanar u mhux tkun preżenti biss fuq l-istedina ta' *Chairperson* Eżekuttiv. Dan bi dritt u "... *sabiex jissahha il-kuncett li kunsiderazzjonijiet ambjentali ma jieqfux biss ma' deċiżjonijiet dwar pjani u ordnijiet ta' konservazzjoni iżda għandhom jiddaħhlu fit-tfassil ta' strategiji u allokkazzjoni ta' riżorsi*".

Kont ukoll irreferejt għar-realtà li "... *huwa faċli li jkollok iż-żewġ strategiji nazzjonali f'pożizzjoni konfligġenti fuq xi aspett ta' żvilupp propost*" għaliex kien evidenti li fit-thaddim tal-istrategiji nazzjonali taż-żewġ awtoritajiet "... *ser ikun hemm overlapping konsiderevoli għaliex l-aspett ambjentali fit-tifsila wiesgħa tiegħu, jaffettwa l-iżvilupp fiziku f'kull qasam* ...". Il-fatti li sehhej u qed isehhu f'dawn l-aħhar ġimghat jiġġustifikaw għal kollox il-preokkupazzjoni li jiena kont allura esprimejt.

Hi l-konvinzjoni tiegħi li, f'pajjiż bħal Malta diġà żviluppat, konsiderazzjonijiet ambjentali għandu jkollhom almenu l-istess saħħa daqs deċiżjonijiet dwar l-ippjanar. Jekk xejn, deċiżjonijiet dwar l-ippjanar għandhom ikunu ikkundizzjonati mill-kunsiderazzjonijiet ambjentali. Dan ifisser li r-regolaturi f'dawn iż-żewġ oqsma għandhom ikunu żewġ awtoritajiet almenu tal-istess saħħa. Bħala regola, proġetti ta' żvilupp għandhom ikunu konformi mal-kunsiderazzjonijiet, opinjonijiet u linji gwida espressi dwarhom mill-Awtorità għall-Ambjent u r-Riżorsi.

Wara kollox dan ma jagħmel xejn hlief li jirrifletti l-ghanijiet espressi mill-Gvern meta vara l-proġett tad-*demerger* fejn ġie ddikjarat ripetutament li b'dan l-eżerċizzju l-ambjent kien ser ikollu vuċi aktar b'saħħitha.

L-esperjenza riċenti tat-tweġġiq tal-liġijiet fil-prattika juru proprju bil-kontra. L-Awtorità għall-Ambjent u r-Riżorsi tirriżulta li hi wahda bla saħħa, bla snien u bla ebda influwenza jekk mhux ukoll għal kollox irrelevanti għad-deċiżjonijiet mehuda fuq l-ipproċessar ta' applikazzjonijiet għall-iżvilupp mill-Awtorità tal-Ippjanar. Dan apparti l-fatt li l-Awtorità għall-Ambjent u r-Riżorsi f'diversi okkażjonijiet tidher li ma kienet xejn effikaċi u lanqas sewwa preparata biex teżerċita b'mod effettiv il-funzjonijiet anke limitati li fil-fatt għandha.

L-esperjenza qed turi li l-aspett ambjentali ta' proġett hu għal kollox sekondarju għall-ghoti tal-permess li jista' jiġi deċiż esklussivament fuq kunsiderazzjonijiet ta' ippjanar u żvilupp mingħajr l-obbligu fuq l-Awtorità tal-Ippjanar li tikkunsidra bis-serjetà u bir-reqqa l-fehma tal-Awtorità għall-Ambjent u r-Riżorsi dwar l-impatt ambjentali tal-proġett u dan bħala kundizzjoni *sine qua non* għall-ghoti tal-permessi mehtieġa.

Mill-banda wahda allura ghandek Awtorità tal-Ippjanar b'saħħitha li tista' tiddispensa kif trid mill-kunsiderazzjonijiet ambjentali u tqishom biss jekk u meta dawn jiġu sottomessi lilha mir-rappreżentant tal-Awtorità għall-Ambjent u r-Riżorsi, u mill-banda l-oħra ghandek l-Awtorità għall-Ambjent u r-Riżorsi dgħajfa li m'għandha l-ebda jedd timponi fuq l-Awtorità tal-Ippjanar li tisma' u tqis is-sottomissjonijiet tagħha dwar l-applikazzjoni, jekk u meta tagħmilhom. Awtorità li għandha biss vot wiehed minn eżekuttiv ta' erbatax li l-parti l-kbira huma mahtura mill-Gvern.

Din ir-realtà hi ovvjament ta' żvantaġġ għall-Awtorità għall-Ambjent u r-Riżorsi. Realtà li b'konsegwenza tal-mod kif il-liġijiet ġew imfassla, waslet u qed twassal għal sitwazzjonijiet fejn il-kunsiderazzjonijiet ambjentali li jeħtieġ li jiġu ikkunsidrati fl-interess tal-ġid komuni fl-ipproċessar ta' proġetti ta' żvilupp kbar jew żgħar, jiġu preġudikati jew għall-inqas jidher li jistgħu jkun preġudikati favur l-interessi tal-iżviluppatur, il-profitt u vantaġġi ekonomiċi.

Mingħajr ma nidhol fil-mertu ta' uħud minn dawn il-proġetti, anke għaliex jista' ikun li għadu possibbli li jsir appell kontra deċiżjoni tal-Awtorità tal-Ippjanar li approvat l-ghoti tal-permess, ser nirreferi għal ċirkostanzi li sehew u li huma oġġettivament inaċċettabbli. Dan biex nillustra kemm hi dgħajfa u ineffettiva l-Awtorità għall-Ambjent u r-Riżorsi fil-konfront tal-Awtorità tal-Ippjanar u biex min huwa responsabbli jieh u l-passi kollha meħtieġa biex sitwazzjoni serja ta' din ix-xorta tiġi urġentement rimedjata.

1. Il-liġi tipprovdi li fuq dan il-Bord ikun hemm "... *rappreżentant tal-Awtorità tal-Ambjent*". Dan ifisser li jista' ikun kwalunkwe membru tal-Awtorità għall-Ambjent u r-Riżorsi li jiġi minnha delegat biex jidher u jivvota fuq il-Bord tal-Ippjanar. Bhala regola, jekk ma jkunx hemm haddiehor delegat, huwa *Chairman* li għandu rappreżentanza legali tal-Awtorità għall-Ambjent u r-Riżorsi u allura huwa preżunt li jkun hu li jidher għaliha fuq il-Bord tal-Awtorità tal-Ippjanar. Però min jirrappreżenta l-Awtorità għall-Ambjent u r-Riżorsi, ikun min ikun, ma jagħmilx hekk fil-vesti personali tiegħu, imma in rappreżentanza tal-Awtorità għall-Ambjent u r-Riżorsi u hu obbligat li jesprimi l-fehma ta' dik l-Awtorità u jivvota skont il-mandat lilu mogħti.

2. Infatti, il-liġi tal-Awtorità għall-Ambjent u r-Riżorsi tipprovdi wkoll li jekk *Chairman* ma jkunx f'pożizzjoni li jeżerċita l-funzjonijiet tiegħu minhabba indispożizzjoni jew għal xi raġuni oħra l-Awtorità għandha dritt li tiddelega lil haddiehor. Delega din li trid tirriżulta minn deċiżjoni tal-Awtorità li għandha tiġi ikkomunikata lill-Awtorità tal-Ippjanar u f'dan il-każ lill-Bord tal-Ippjanar tagħha. Jidher għalhekk li jista' ikun hemm interpretazzjoni legali differenti għal dik li s'issa hija n-norma, jiġifieri li *Chairman* ma jistax

jappunta delegat fuq il-Bord. Nifhem li din il-lakuna qiegħda diġà tiġi indirizzata.

3. Hu mbagħad għal kollox kontra r-regoli tat-trasparenza u l-kontabilità li l-opinjoni tal-Awtorità għall-Ambjent u r-Riżorsi, li setgħet tkun ta' valur determinanti fid-deċiżjoni dwar l-ghoti tal-permess, tibqa' sigrieta u mistura mill-membri l-oħra tal-Bord tal-Ippjanar u mill-opinjoni pubblika. Ċirkostanzi bħal dawn ifissru li elementi materjali ta' fatt u ta' opinjoni awtorevoli li setgħu jinfluenzaw it-tehid tad-deċiżjoni dwar l-ghoti tal-permess, ikunu ġew indebitament mistura. Dan bi ksur tal-prinċipji bażilari li għandhom jiggvernaw is-smiġħ xieraq.

4. Mill-banda l-oħra l-fatt li l-liġi donnha tippermetti li l-Awtorità tal-Ippjanar tista' tinjora l-assenza tar-rappreżentant tal-Awtorità għall-Ambjent u r-Riżorsi, anke meta tkun mgħarrfa bl-indispożizzjoni tiegħu u meta m'għandhiex quddiemha r-reazzjoni ta' dik l-Awtorità għall-proġett propost għaliex dik ir-reazzjoni tibqa' mistura mill-membri tagħha, turi kemm il-liġijiet viġenti huma difettużi u nieqsa mill-protezzjoni li għandhom jagħtu liċ-ċittadin fid-difiża tal-jeddijiet ambjentali tiegħu. Mingħajr ma nesprimi għidizzju dwar dak li sehh, jew dwar ir-responsabbiltajiet tal-awtoritajiet konċernati, hu fatt li jekk dak li ġara seta' jiġri bil-liġijiet kif imfassla jehtiegħ li jittieħdu passi sabiex sitwazzjonijiet bħal dawn ma jiġux ripetuti.

Dan li qed jingħad ma japplikax biss għall-inċidenti li nqalghu dan l-aħħar fl-approvazzjoni ta' bini *high rise*. Jekk xejn, dak li ġara ikkonferma b'mod ċar dak li kien diġà evidenti, anke minn sqarrijiet tal-istess Awtorità fejn ilmentat li l-opinjoni tagħha fuq applikazzjonijiet għal żvilupp fuq siti ODZ ma kienitx qiegħda tingħata l-importanza xierqa.

Hu ċar li f'dan il-kuntest il-prinċipji li għandhom jirregolaw il-governanza tajba tal-amministrazzjoni pubblika m'humiex qed jiġu rispettati. Il-fatti li graw waqt smiġħ mill-Bord tal-Ippjanar ta' applikazzjoni għall-hruġ ta' permessi għall-proġett ta' *Highrise Building* f'Tigné servew biex urew b'mod ċar dak li għadni kemm iddeskrivejt. Dan qed iwassal għal sitwazzjoni fejn l-Awtorità għall-Ambjent u r-Riżorsi jkollha tappella d-deċiżjoni sabiex tara li l-opinjoni tagħha tkun irrispettata, u anke dan ma jfissirx li ser tirnexxi. L-Awtorità għall-Ambjent u r-Riżorsi m'għandhiex tkun mgħobbija bil-piż finanzjarju w amministrattiv ta' numru ta' appelli. Dan għaliex, bħala awtorità tal-istess saħħa u poter daqs l-Awtorità tal-Ippjanar, għandu jkollha l-istess għarfien bil-liġi għad-deċiżjonijiet tagħha.

S'issa dan m'huwiex il-każ, u għalhekk il-pjan tal-Gvern li johloq żewġ awtoritajiet paralleli u tal-istess saħħa, m'huwiex qiegħed jirnexxi. Fl-ittra

tiegħi tat-2 ta' Settembru 2015 li għaliha irreferejt fil-bidu ta' din l-ittra jiena kont għidt li *"Minn mindu twaqqfet l-Awtorità tal-Ambjent li wara saret l-Awtorità tal-Ambjent u l-Ippjanar kien hemm sforz kontinwu sabiex isir titjib fil-livell ta' parteċipazzjoni tal-pubbliku kif ukoll li l-Awtorità tkun aktar miftuħa għal skrutinju pubbliku fix-xogħol kollu li tkun qiegħda twettaq"*. Kont imbagħad sostnejt li *"L-abbozzi li qiegħdin jiġu diskussi jnaqqsu ferm minn dawn iż-żewġ elementi. Hemm bżonn għalhekk li jsiru emendi fl-abbozzi sabiex din il-problema tiġi indirizzata"*.

Sabiex nitilqu mis-sempliċi retorika għall-fatti, jehtiegħ li żvilupp għandu jitqies bħala attività li ser thalli impatt ambjentali, li jista' ikun pożittiv jew negattiv, u mhux bil-maqlub, jiġifieri li l-ambjent jista' ikollu impatt fuq l-iżvilupp. Jekk l-Awtorità għall-Ambjent u r-Riżorsi toponi għal żvilupp ikun ifisser li l-impatt tiegħu fuq l-inhawi (u f'każ ta' ċerti proġetti l-impatt jista' ikun nazzjonali), ser isarraf fi tnaqqis tal-kwalità tal-hajja tar-residenti tal-madwar. Il-kunċett ta' degradazzjoni tal-ambjent urban minhabba żvilupp li jistona kontestwalment mal-inhawi tiegħu għadu m'huwiex enfasizzat biżżejjed.

Tajjeb li jissemma hawnhekk li hemm progress fir-rikonoxximent tar-rwol tal-Awtorità għall-Ambjent u r-Riżorsi fil-proċeduri ta' *screening* jew ta' konsultazzjoni preliminari, billi żviluppaturi qegħdin jikkonsultaw mal-Awtorità fl-istadji bikrija tat-tfassil ta' proġetti sabiex jiġu identifikati ostakoli li jistgħu jwasslu għal rifjut tal-permess minhabba raġunijiet ambjentali. Hekk qiegħed jissahhah ir-rwol ta' awtorità parallela, kif kien il-hsieb originali tal-Gvern.

F'din is-sitwazzjoni nhoss li għandi nirrakkomanda li jsir tibdil fil-liġijiet u regolamenti, sabiex il-proċeduri jinbidlu u l-ewwelnett ir-rapport bl-opinjoni tal-Awtorità għall-Ambjent u r-Riżorsi jitqiegħed flimkien mad-DPAR imhejji mid-Direttorat tal-Awtorità tal-Ippjanar fid-dokumentazzjoni għad-dispożizzjoni tal-pubbliku, u mhux sempliċement issir referenza għaliha fid-DPAR. Dan jassigura aktar trasparenza u skrutinju pubbliku kif inhu xieraq.

Minbarra dan, ikun x'ikun l-iżvilupp propost, jekk l-Awtorità għall-Ambjent u r-Riżorsi tesprimi riżervi dwaru, il-permess ma jingħatax sakemm isiru l-emendi mehtieġa u jiġu indirizzati dawn ir-riżervi għas-sodisfazzjon tal-Awtorità għall-Ambjent u r-Riżorsi. Din hija l-proċedura li diġà tintuza in-konnessjoni ma kwistjonijiet ta' sahha pubblika, li wara kollox tiffurma element wiehed biss mill-fatturi ambjentali li jikkundizzjonaw proposti ta' żvilupp.

Inhegġiġkom għalhekk, biex fid-dawl ta' dawn il-kunsiderazzjonijiet fost l-oħrajn tqisu x'miżuri korrettivi għandhom jittiehdu biex jinholq il-bilanċ mehtieġ bejn l-Awtorità tal-Ippjanar u l-Awtorità għall-Ambjent u r-Riżorsi.

Bilané li ghandu johloq sinerġija bejn iż-żewġ awtoritajiet immirata biex kull żvilupp fil-pajjiż ikun ikkundizzjonat u iggwidat mill-esiġenzi ambjentali iddettati mill-ġid komuni u mhux mill-interessi privati jew tas-suq.

Jien nibqa' ghad-dispożizzjoni taghkom jekk tixtiequ li l-materja tiġi diskussa ulterjorment. Qieghed nibghat kopja kif jidhirli li hu xieraq lill-Onor. Prim Ministru u lill-Onor. Kap tal-Oppożizzjoni. Inhoss li kif ghamilt fil-każ tal-ittra tat-2 ta' Settembru 2015 li kopja kienet intbaghtet lill-Kumitat dwar l-Ambjent u l-Ippjanar tal-Iżvilupp tal-Kamra tar-Rappreżentanti, ghandi naghti pubblicità ukoll lil din l-ittra li tesprimi l-fehma tal-Kummissarju għall-Ambjent u l-Ippjanar fuq materja ta' importanza ġenerali u nazzjonali.



Perit David Pace
Kummissarju għall-Ambjent u l-Ippjanar

Dokument anness

Kopja: Il-Prim Ministru
Uffiċċju tal-Prim Ministru
Berga ta' Kastilja
Il-Belt Valletta

Il-Kap tal-Oppożizzjoni
Dar Ċentrali
Triq Herbert Ganado
Pietà

Iċ-Chairman
Kumitat dwar l-Ambjent u l-Ippjanar tal-Iżvilupp
Kamra tar-Rappreżentanti
Parlament ta' Malta
Misrah il-Helsien
Il-Belt Valletta

APPENDIX F

**CORRESPONDENCE FROM THE COMMISSIONER
FOR ENVIRONMENT AND PLANNING, PERIT DAVID PACE
ON THE PACEVILLE MASTERPLAN**



COMMISSIONER FOR ENVIRONMENT AND PLANNING

**Our Ref: CEP/23**

16 December 2016

Dr Deborah Schembri
Parliamentary Secretary for Planning
and Simplification of Administrative Processes
Office of the Prime Minister
Auberge de Castille
Valletta

Honourable Parliamentary Secretary

Re: Paceville Master Plan

The proposal published by the Planning Authority for the drawing up of a holistic plan to regulate future development within the Paceville zone has undoubtedly received universal acclaim.

However, there has been just as strong a critical response to the methodology used for launching the project, and this because the Plan was conceived as a developed project rather than a set of strategy proposals for public consultation.

The fact that the Plan was drawn up without any contribution by the public, whether Local Government, NGOs or individuals, meant that a basic procedural principle in drawing up of such a plan was ignored.

A look at the 'Active online public consultation initiatives' page on the Authority's website will reveal that presently there are two partial Local Plan amendment proposals, one for Mosta and the other for Marsa.

In the first case the public was informed about the objectives of the exercise in order to submit its comments, while in the second case a Public Consultation exercise has been ongoing since July 2015, and is presently at its third stage. It is therefore inexplicable how this procedure has been set aside for the Paceville Master Plan.

The proposal is set around nine large sites. This approach was justified by the Authority as being the only sites with one owner or a group of owners which offered a regeneration opportunity for the benefit of all.

In this case the Authority could have proposed this concept as an overall strategy for discussion, as was done for the initiatives mentioned previously.

The proposal as published has denied the commercial and residential communities, and the general public, the opportunity to contribute its ideas in an open and unrestricted dialogue. This has created an uneven playing field where a few might benefit but many will lose out.

Requesting public feedback on a plan which has already been drawn up is totally different to proposing a strategy for participation by all in the drawing up of the final plan. It is also strange that the Authority felt the need to enter into one-to-one consultation with residents. I trust that the minutes of these meetings will be fully published, in the interests of transparency.

A report by the Council of Europe drawn up in 2011 comments thus about the level of participation by Local Councils in the planning and decision-making processes in all aspects falling within their remit.

“51. Under Article 4(6) [of the Charter] local authorities shall be consulted in the planning and decision-making processes for all matters which concern them directly. Maltese law contains a number of provisions to this effect, and the overall impression is that this part of the Charter is well taken care of. On the other hand, critical observations were aired – like in 2002 – as to the reality of the consultation processes when it comes to some of the independent central agencies under Maltese law [Underlining done by this Office]. The delegation is left with the clear impression that there is still need for improvements in the system and practices of consultation and co-operation between central and local authorities in Malta. At the core of the efforts in this sense, the importance of the role of local councils as interlocutors and citizens’ representatives in the overall running of the public sector should be stressed.”¹

I have quoted from this report since a delegation from the Council of Europe was in Malta two weeks ago, for the purpose of assessing the present situation as part of the five-yearly review process of member country reports.

It would be disappointing were the report which is to be published conclude that the situation at least in the Planning sector, as exemplified by this case, has not changed.

¹ Monitoring Visit Brief – Local democracy in Malta – Monitoring Committee Report 2011 Para. 51.

The Plan fails to consider the investment and commitments that have been made and continue to be made, by firms, organisations and individuals. This emerges from the fact that the consultants engaged had little or no restrictive parameters to respect, and could freely develop the concept, apart from taking the nine sites, none of which have an approved project, as a point of departure.

It also appears that the proposal fails to respect and apply current policies, regulations and guideline documents which every development proposal has to follow.

It is a matter of concern that such an initiative has created so much conflict due to the fact that the Master Plan has been evolved in a way that prevented equal opportunity for sectorial involvement in its development leading to consensus that the final document provided a sustainable development strategy offering an improved quality of life for all.

It appears that ongoing discussions have achieved a measure of success. However, for them to really succeed, the Authority has to give due consideration to public opinion about the Plan, and safeguard public interest by taking strong decisions on its review, including if necessary the setting aside of the present proposal and a fresh start to the process.

A copy of this letter is being sent to the Chairman of the Parliamentary Committee on Planning and the Environment.

Yours sincerely

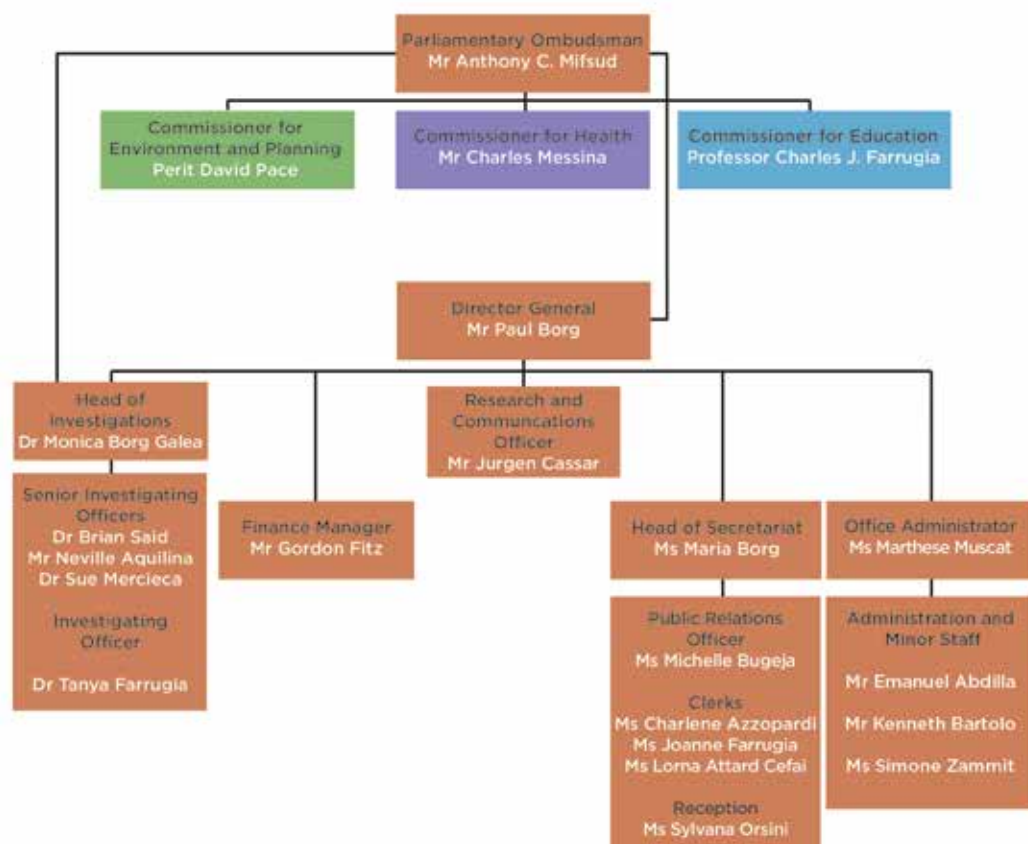


Perit David Pace
Commissioner for Environment and Planning

Copy: The Chairman
Environment and Development Planning Committee
House of Representatives
Parliament of Malta
Freedom Square
Valletta

APPENDIX G

**OFFICE OF THE PARLIAMENTARY OMBUDSMAN
ORGANIGRAM – STAFF ORGANISATION CHART
(ON 31 DECEMBER 2016)**



APPENDIX H

**OFFICE OF THE OMBUDSMAN –
REPORT AND FINANCIAL STATEMENTS
FOR THE YEAR ENDED 31 DECEMBER 2016**

STATEMENT OF RESPONSIBILITIES OF THE OFFICE OF THE OMBUDSMAN

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

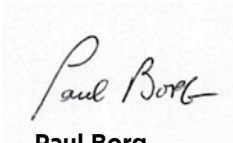
The Office of the Ombudsman is responsible for ensuring that:

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

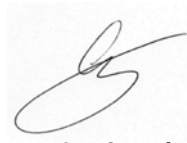
The Office is responsible to prepare accounts for each financial year which give a true and fair view of the state of affairs as at the end of the financial year and of the income and expenditure for that period.

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

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



Paul Borg
Director General



Gordon Fitz
Finance Manager



National Audit Office
Notre Dame Ravelin
Floriana FRN 1600
Malta

Phone: (+356) 22055555
E-mail: nao.malta@gov.mt
Website: www.nao.gov.mt
www.facebook.com/NAOMalta

Report of the Auditor General

To the Office of the Ombudsman

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Ombudsman set out on pages 5 to 16, which comprise the statement of financial position as at 31 December 2016, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information.

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

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

Auditors' responsibility

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

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

Opinion

In our opinion, the financial statements give a true and fair view of the financial position of the Office of the Ombudsman as at 31 December 2016, and of its financial performance and cash flows for the year then ended in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with the Office of the Ombudsman Act, 1995.

Auditor General

STATEMENT OF COMPREHENSIVE INCOME

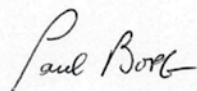
	2016	2015
	€	€
Income		
Government grant	1,025,000	1,139,880
Non-operating income (note 3)	4,152	476
	1,029,152	1,140,356
Expenditure		
Personal Emoluments (note 4)	(824,676)	(760,066)
Administrative and other expenses	(266,779)	(254,990)
	(1,091,455)	(1,015,056)
Total Comprehensive		
(Outflow)/Income for the year	(62,303)	125,300

STATEMENT OF FINANCIAL POSITION

	Notes	2016 €	2015 €
Assets			
Non-current assets			
Property, Plant and Equipment	5	863,805	917,310
Current assets			
Receivables	6	15,010	14,992
Cash and cash equivalents	7	89,108	224,072
		104,118	239,064
Total assets		967,923	1,156,374
Equity and Liabilities			
Accumulated surplus		929,269	991,572
Payables	8	38,654	164,802
Total Equity and Liabilities		967,923	1,156,374

The financial statements on pages 6 to 17 were approved by the Office of the Ombudsman on 27th January 2017 and were signed on its behalf by:

WS



Paul Borg
Director General



Gordon Fitz
Finance Officer

STATEMENT OF CHANGES IN EQUITY

	Accumulated Fund Total €
At 1 January 2015	866,272
<i>Statement of Comprehensive income</i>	
Surplus for the year	125,300
At 31 December 2014	991,572
<i>Statement of Comprehensive income</i>	
Loss for the year (page 6)	(62,303)
At 31 December 2016	929,269

STATEMENT OF CASH FLOWS

	Notes	2016 €	2015 €
Cash flows from Operating activities			
(Loss)/Surplus for the year		(62,303)	125,300
Depreciation		96,650	98,992
Loss on disposal of tangible fixed assets		163	12,119
Interest receivable		(152)	(476)
		<hr/>	<hr/>
Operating surplus before working capital changes		34,358	235,935
(Increase)/Decrease in receivables		(18)	2,606
Increase / (Decrease) in payables		(126,148)	53,850
		<hr/>	<hr/>
Net cash used in/ generated from operating activities		(91,808)	292,391
Cash flows from Investing activities			
Payments to acquire tangible fixed assets		(43,308)	(526,288)
Interest received		152	476
		<hr/>	<hr/>
Net cash used in investing activities		(43,156)	(525,812)
Net decrease in cash and cash equivalents			
		(134,964)	(233,421)
Cash and cash equivalents at beginning of year		224,072	457,493
		<hr/>	<hr/>
Cash and cash equivalents at end of year	7	89,108	224,072

NOTES TO THE FINANCIAL STATEMENTS

1 Legal Status

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

These financial statements were approved for issue by the Finance Manager and Director General on the 27 January 2017.

2 Summary of significant accounting policies

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

Basis of preparation

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

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

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

Materiality and aggregation

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

New and revised standards

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

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

Property, plant and equipment (PPE)

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

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

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

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

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

Receivables

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

Cash and Cash equivalents

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

Payables

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

Revenue recognition

Revenue from government grants is recognised at fair value upon receipt. Other income consists of bank interest receivable.

Foreign currencies

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

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

Critical Accounting Estimates and Judgements

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

Capital Management

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

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

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

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

3 Non-operating income	2016	2015
	€	€
Bank interest receivable	152	476
101 Grant	<u>4,000</u>	<u>-</u>
	<u>4,152</u>	<u>746</u>
4i Personal Emoluments		
Wages and salaries	793, 128	732,494
Social security costs	31,547	27,572
	<u>824,676</u>	<u>760,066</u>
ii Average No. of Employees	<u>26</u>	<u>23</u>

Notes to the financial statements (continued)

5i. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Airconditioning	Total
Cost	€	€	€	€	€	€	€	€
At 1 January 2016	868,972	30,888	28,614	45,087	52,259	111,102	104,131	1,241,054
Additions	28,771	5,253	2,811	209	-	6,264	-	43,308
Disposals	-	(7,155)	(3,476)	(360)	-	-	-	(10,991)
At 31 December 2016	897,743	28,986	27,949	44,936	52,259	117,366	104,131	1,273,370
Depreciation								
At 1 January 2016	107,903	22,374	24,370	38,055	43,614	56,314	31,112	323,742
Charge for the year	59,849	3,378	3,128	3,595	2,881	7,690	16,129	96,650
Release on disposals	-	(7,081)	(3,476)	(271)	-	-	-	(10,828)
At 31 December 2014	81,111	18,671	24,022	41,379	46,495	64,004	47,241	409,564
Net book value								
At 31 December 2014	729,991	10,315	3,927	3,557	5,764	53,362	56,890	863,806

Notes to the financial statements (continued)

5ii. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition.	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2015	484,420	23,546	32,284	44,849	52,259	76,766	56,244	770,368
Additions	426,785	8,960	2,217	415	-	36,886	51,025	526,288
Disposals	(42,233)	(1,618)	(5,887)	(177)	-	(2,551)	(3,138)	(55,604)
At 31 December 2015	868,972	30,888	28,614	45,087	52,259	111,101	104,131	1,241,052
Depreciation								
At 1 January 2015	81,111	21,488	26,958	33,375	36,433	50,749	18,121	268,235
Charge for the year	57,928	2,364	3,299	4,813	7,181	7,278	16,129	98,992
Release on disposals	(31,136)	(1,478)	(5,887)	(133)	-	(1,713)	(3,138)	(43,485)
At 31 December 2015	107,903	22,374	24,370	38,055	43,614	56,314	31,122	323,742
Net book value								
At 31 December 2015	761,069	8,514	4,244	7,032	8,645	54,787	73,019	917,310

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

6 Receivables	2016	2015
	€	€
Bank Interest receivable	24	65
Stocks (stationery)	12,241	11,918
Prepayments	2,745	3,009
	15,010	14,992

7 Cash and Cash Equivalents

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

	2016	2015
	€	€
Cash at bank	88,282	223,722
Cash in hand	826	350
	89,108	224,072

8 Payables	2016	2015
	€	€
Trade payables	37,131	76,292
Accruals	1,523	88,510
	38,654	164,802

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables. As at 31 December 2016 payment was due to the three contractors responsible for refurbishing works carried out at the Office, otherwise the Office had no unrecognised financial liabilities.

9 Fair values

At 31 December 2016 the fair values of assets and liabilities were not materially different from their carrying amounts.

SCHEDULE

Administrative and other expenses

	2016	2015
	€	€
Utilities	18,166	19,638
Materials and supplies	10,085	7,438
Repair and upkeep expenses	5,424	4,160
Rent	8,016	8,017
International membership	1,960	1,840
Office services	9,018	12,251
Transport costs	13,404	9,004
Traveling costs	14,086	10,694
Information Services	10,404	10,309
Outreach	5,632	5,053
Contractual Services	41,399	41,033
Professional Services	14,587	12,930
Training expenses	170	53
Hospitality	1,982	6,235
Bank charges	381	277
AOM Conference	15,252	-
Depreciation	96,650	98,992
Disposals	163	12,119
	<u>266.779</u>	<u>254,990</u>

11/12 St Paul Street, Valletta VLT1210

Email: office@ombudsman.org.mt

Tel: +356 2248 3200, 2248 3216

The Office is open to the public as follows:

October – May 08:30am – 12:00pm

01:30pm – 03:00pm

June – September 08:30am – 12:30pm

www.ombudsman.org.mt

Facebook: Ombudsman Malta

