

PARLIAMENTARY OMBUDSMAN | MALTA

# ANNUAL REPORT 2017

FOR THE PERIOD JANUARY - DECEMBER 2017



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





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OMB/6/9/21

May 2018

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 2017.

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

Mittig

Anthony C. Mifsud Parliamentary Ombudsman

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# AN EVENTFUL AND MOMENTOUS YEAR

ANNUAL REPORT BY THE PARLIAMENTARY OMBUDSMAN



# AN EVENTFUL AND MOMENTOUS YEAR

#### PREMATURE ELECTIONS AND CONSENSUS ON NEED FOR REFORM

2017 was marked by an election called prematurely, a year before the expiry of the constitutional term of the legislature. The campaign was contested mainly on platforms of economic wellbeing and issues of good governance. The party in office was returned with an increased majority. Essentially it received a strong mandate to continue to implement its policies.

The President's inaugural address for the opening of the new legislature that reflects government's policy, stated that:

"Our country has to carry on making a leap in quality in every area and it is for this reason that in this legislature the government wants to keep on strengthening the institutions and their structures which are the pillars on which our democracy is built."

The President also referred to reforms which were planned to strengthen the principles of accountability and meritocracy. The President's address drew its inspiration from the electoral manifesto of the party returned to power that declares that, notwithstanding the great work that had been done in the previous four years to strengthen transparency and governance, there was a conviction that there was much more to be accomplished in this area.

The government remained committed to strengthen institutions set up by the Constitution as necessary checks and balances to safeguard public interest and to ensure that the country would continue to function well as a modern democracy. There was a conviction that there was need for more to be done to ensure transparency and a more open government subject to public scrutiny.

In her address the President listed a number of legislative and administrative initiatives that the government intended to take during this legislature to strengthen good governance and accountability in the public administration. Undoubtedly the government's declared objectives signal positive developments that when realised, should generate wide consensus in the country. Indeed they reflect, in principle, on the insistence of the parties in opposition on the need to

overhaul the country's institutions to guarantee a public administration that was free from corruption and abuse of power.

The proposed reforms and their realisation, through appropriate legislative measures leading to a new Constitution, will be closely followed by the Office of the Ombudsman. It will seek to contribute towards the discussion on the implementation of reforms that directly impact on the right of the individual to a good public administration.

The Ombudsman reiterates his belief that his Office remains one of the main guarantors of this right. It is within his remit to do his utmost to ensure that the proposed reforms would ensure an open, transparent and accountable public administration to serve a modern democratic State in which the rule of law prevails. As hitherto, the Office would continue to monitor these initiatives and contribute towards their realisation since that can only further empower the citizen to safeguard his rights and his expectation that he should be justly and fairly treated by the public administration. In this, the Office of the Ombudsman, as a defender of aggrieved citizens, has a vital role to play.

#### THE PROPER FUNCTIONING OF A DEMOCRACY

Proposing reforms, achieving consensus on their content, having them translated into laws and regulations approved by the House of Representatives are all positive signs of a healthy, democratic process. It is mostly through these essential motions that the electoral programme is implemented.

However, it is not enough to have perfect, modern and progressive legislation in place to secure good governance and to satisfy the legitimate aspirations of citizens to fully enjoy their right to a good public administration. It is only through the correct, fair and just implementation of laws and regulations by public authorities that the citizen can feel secure in the belief that he is being fairly and justly treated and that he is not being subjected to improper discrimination and abuse of power.

Essentially therefore, it is the scrupulous implementation and application in practice of laws and regulations and the correct exercise of administrative discretion they empower, that is pivotal to the proper functioning of a democracy. More importantly, it is an effective system of checks and balances provided by independent constitutional authorities like the Courts, the Ombudsman, the Auditor General and others, that guarantees the observance of the rule of the law in the county.

It is within these parameters that the Office of the Ombudsman has an important task to perform. It is for this reason that the Ombudsman feels it is his duty to alert society to areas of concern that he identifies in the exercise of his functions. Concerns that not only hinder the process of investigation of complaints submitted to him and to his Commissioners but could also undermine and even endanger the vitality of the democratic texture of the country. Issues that throughout the year cast doubts over the right of society to enjoy good governance. Doubts that could have been dispelled had the principles of good public administration and ethical behaviour been correctly observed. It is pertinent that some of the more important areas that the Ombudsman identified are highlighted in this Annual Report.

#### FAILURE TO PROVIDE INFORMATION

This Office has on various occasions underlined the duty of public authorities to provide prompt, correct and timely information on matters relating to their administration. It has repeatedly been stated that Ministries, departments and public authorities can only be held accountable if they willingly provide a full account of their administration when requested to do so. Information should only be withheld for serious well defined reasons that justify non-disclosure for reasons of public policy or in the national interest necessary to ensure good governance.

Failure to disclose would otherwise expose the public administration to the charge that it was not being open and transparent. The Ombudsman is on record that he recognises that the public administration needs to have a window of discretion when information could legitimately be withheld, especially when it refers to ongoing negotiations on agreements that refer to industrial and economic development. However, a systemic refusal or stubborn reticence to disclose information, even after such negotiations have been concluded, undermines good governance and the democratic process. It also eventually runs against the interest of the public administration itself. This because it generates suspicion and favours abuse and corruption.

Administering in a shroud of secrecy is indicative of a siege mentality and instils a sense of insecurity and doubt as to whether the public administration can withstand the legitimate scrutiny of public opinion in the search of truth. Regrettably the public administration - and this includes public authorities - appears to have adopted a generally negative approach towards its duty to disclose information and the citizen's right to be informed. Some have gone to extremes by even refusing to provide important and even vital information to which the public was obviously entitled since it concerned important segments of the economic and social life of the country.

An even more worrying, recent development that has come to light in an attempt to ensure a total black out of silence is the practice of binding parties with whom the public administration enters into contractual agreements not to disclose information on the contracts themselves without prior approval from the public authority.

This has resulted in anomalous situations where for example a trade union refuses to disclose information on a concluded industrial agreement because it claims to be bound by government not to provide such information. Parties contracting with government justify their refusal to provide information not because of any commercial interest they would like to protect, but because of a specific contractual clause precluding them from doing so. Regrettably these are not isolated instances. Outright refusal or extreme reluctance to disclose information can be said to have become a style of government that is seriously denting the openness and transparency of the public administration. The situation has been further compounded by the fact that many public authorities claim they have the right to withhold information because they are administered on commercial lines. Indeed the ultimate stage has been reached where essential services in health, energy and other areas are, as a result of privatisation, being exclusively provided by limited liability companies in which the government has or does not have a minority interest. These maintain that they are not accountable except for the performance of their contractual obligations. They are therefore not bound to provide any information on their activities to third parties.

The situation is fast getting out of control and the people's right to an accountable public administration is being seriously prejudiced. Action needs to be taken to remedy a rapidly deteriorating situation. There is an urgent need for an informed debate that could lead to consensus on the measures needed to ensure openness and transparency in the management of public affairs.

This annual report is not the forum in which to recount the many instances of reticence or outright refusal by public authorities to disclose information to which the public was entitled and which amply illustrate and justify the concern that the Office of the Ombudsman has repeatedly flagged. These are of public domain.

It must be stated that this sustained reticence to disclose information has not, except for some notable exceptions, seriously hindered the work of the Office of the Ombudsman. This Office has generally had, throughout the year under review, access to information required to conduct its investigations into complaints received. In this respect the Ombudsman Act provides it with the effective tools it requires to ensure that such information is forthcoming. Most government departments comply with requests to provide files and documentation even though some could not be commended for their promptness and others did so reluctantly.

It is proper and pertinent to refer to a number of instances among others that the Office had to tackle, during the year under review, that show how the negative response of public authorities to provide information hindered the Ombudsman and his Commissioners in the exercise of their functions.

1. The refusal by the Ministry for Home Affairs and National Security to provide all files relative to promotion exercises in the top echelons of the Armed Forces to investigate complaints by officers in the rank of Lieutenant Colonels and Majors, who felt aggrieved at being bypassed for promotion to the rank of Colonel and Lieutenant Colonel respectively. These files were eventually handed over following a definitive judgement by the Court of Appeal confirming that the Ombudsman had the jurisdiction to investigate complaints by Army Officers in respect of appointments, promotion, pay and pension rights. The Army authorities then cooperated fully with the Office but its reluctance to provide the required information delayed the investigation by several months. It was being expected that the investigation of these complaints should be concluded early in the coming year.

- 2. The Commissioner for Health justly complained about the repeated refusals of the Ministry for Health to provide him with clean copies of agreements with Vitals Healthcare on the privatisation of hospitals in Malta and Gozo. After much insistence, the Ministry only provided him with heavily redacted copies that precluded him from making a clear and precise assessment on whether the interests of patients and staff employed in the public sector were adequately protected and indeed whether they were being effectively deprived of the protection of the Ombudsman and the Commissioner for Health to which they are entitled at law. This serious incident was further aggravated by the fact that the Ministry for Health provided the Auditor General with clean copies that he required to carry out his investigations. The failure of the Ministry to provide the Commissioner with the information he requested was in clear violation of express provisions of the Ombudsman Act.
- 3. All Commissioners, albeit at varying degrees, complain in their Annual Report that Ministries, departments and public authorities very often failed to answer their request for reaction on complaints and to provide the required information sometimes for months on end. This delayed the investigation of cases that very often required an immediate response if injustice was to be effectively remedied and abuse redressed. This is especially so in cases related to health, and planning and environment where time is often of the essence. The Commissioners rightly stress that the failure of the public authorities to respond immediately to their gueries not only showed a lack of awareness of the function of the Ombudsman institution but also disrespect to the Ombudsman and Commissioners as Officers of Parliament. Moreover, it shows a lack of sensitivity to the need to investigate complaints against the administration and to provide redress to aggrieved citizens. The Commissioners also highlight the stringent time limits imposed on all departments and public authorities within which they were bound to respond to requests of the new, revamped and centralised Grievances Unit not only to cooperate in its investigations but also to implement its recommendations.

Regrettably, not all fully understand that the ultimate function of the Office of the Ombudsman is to improve the public administration by identifying, through its investigations, acts of maladministration and to provide adequate remedies to redress injustice. When this happens the Ombudsman and Commissioners are in duty bound to be critical of the facts that result from the investigation of the injustice and to comment negatively when recommending redress. Such criticism, even if harsh and direct, should be accepted in the right spirit, in which it is made, in a genuine effort to ensure a better and more transparent public administration. It should not be lightly ignored or disposed of.

#### **NETWORK OF LIAISON OFFICERS**

The network of Liaison Officers that the Office has created and sustained for many years, practically in all government departments and public authorities, has proved to be a valuable link between the Ombudsman, his Commissioners and the public administration. Where the Office is fortunate to have a competent, hardworking and cooperative liaison officer, the information required is promptly provided. The officer often takes a direct interest in the enquiry and this can lead to a speedy resolution of the complaint. The liaison officers who understand that the real purpose of the Office of the Ombudsman is also to provide the best form of customer service are to be commended for their initiative. It must be stated that liaison officers are most effective when allowed ample freedom by their superiors to deal directly with the officer investigating the complaint. This positive approach contributes towards a quick closure of the complaint that can often be the result of an administrative oversight or an incorrect interpretation and application of laws and regulations.

When a liaison officer is allowed by his superiors to take the initiative to process the complaint at the first level of customer care, he would be in a position to access all the information from the relevant file and provide it to the investigating officer. Experience shows that many complaints find their root in the lack of proper information on how the department or authority processed



The Parliamentary Ombudsman together with the incoming and outgoing Commissioners. Left to Right - Mr Charles Messina, Commissioner for Health; Mr Charles Caruana Carabez, Commissioner for Education; Perit Alan Saliba, Commissioner for Environment and Planning; Mr Anthony C. Mifsud, Parliamentary Ombudsman; Perit David Pace, Former Commissioner for Environment and Planning; Professor Charles J. Farrugia, Former Commissioner for Education and Mr Paul Borg Director General.

the client's case. Sometimes the complainant would have given incorrect information to the department or would have been completely unaware of the rules that applied to his particular case.

The exchange of the right information at the outset of the investigation often leads to a quick settlement of the complaint. Whatever the outcome of the investigation, even if it is a complex and lengthy one and results in a refusal of the complaint, the exercise generally leaves a positive effect because complainants express satisfaction that they had the opportunity to obtain full information on how the public administration dealt with their grievance and on the reasons for its refusal.

The duty of the public authority to provide correct and timely information to an aggrieved party and the corresponding right of the latter to be duly informed are therefore crucial to the work of the Ombudsman and his Commissioners. This duty and corresponding right are also vital if the public sector is to be motivated by the open government principles of transparency, accountability and participation. Principles that can only effectively materialise if the public administration fulfils its duty to disclose the required information promptly and correctly within the parameters established by law.

#### NEW COMMISSIONERS APPOINTED

Election year coincided with the lapse of the first five-year term of the Commissioners for the investigation of complaints in specialised areas appointed in terms of the 2010 amendments to the Ombudsman Act. The process to install a new team of Commissioners was duly put in motion. A process that required consultation between the Ombudsman, the Prime Minister and the Leader of the Opposition. The procedure, a novel and complex one for Malta, essentially gives the Ombudsman the residual right to nominate a Commissioner if the Prime Minister and the Leader of the Opposition fail to agree on a suitable candidate. It is satisfying to note that the procedure in all its possible permutations worked well when the first outgoing Commissioners were appointed. It again gave the same positive results this time round.

This means that the procedure, has now been tested and found to be reliable. It also shows that the political element feels comfortable with it and is prepared to divest itself of some of its administrative discretion to decide who is to fill these important positions, giving the Parliamentary Ombudsman the power to do so in case of disagreement between the Prime Minister and the Leader of the Opposition.

In adopting such a procedure Parliament has shown a high degree of political maturity and trust in the Ombudsman institution. It has also traced and implemented a new procedure designed to illustrate how other sensitive appointments to high public office could be appointed, within a system of checks and balances meant to achieve the maximum political consensus possible.

The term of office of the Commissioners lapsed in July of the year under review. The statutory consultation was set in motion by the Ombudsman and as

a result two of the team of Commissioners were changed with Professor Charles Farrugia, Commissioner for Education, expressing his wish to not be considered for reappointment for a second term. The Prime Minister and Leader of the Opposition agreed to propose Mr Charles Caruana Carabez for appointment to this post. They also agreed to propose Mr Charles Messina, the former Commissioner for Health, for a second term. The Ombudsman then chose Perit Alan Saliba to succeed Perit David Pace as Commissioner for Environment and Planning. The Ombudsman thanked all the outgoing Commissioners for their sterling service during what were challenging formative years when they were required to coordinate the setting up of their offices within the Ombudsman institution. Together with the Ombudsman and under his direction they laid the foundations of a new institution, a first of its kind and an example followed by others in which a team of highly qualified specialised professionals in their field share the same objective in providing a service to aggrieved individuals in need of redress.

The Commissioners function in an integrated office that provides them with all the necessary support needed to exercise their functions. They do this while retaining their autonomy and independence from the Ombudsman within the limits set out by law. As expected the appointment of these Commissioners not only increased immensely the focus of the Office on the specialised areas that fall under their jurisdiction. It also, and perhaps more importantly, resulted in a qualitative improvement in the service given to aggrieved citizens.

An added welcome benefit was the fact that all Commissioners were very well acquainted with the authorities and departments falling under their remit, the laws and regulations governing administrative procedures and had easy access to management personnel at all levels. Their inside knowledge of the administrative set-ups of the various departments and authorities helped them to diagnose the way the administration dealt with the complaints they were investigating and to mature their judgement as to whether they were justified.

The Commissioners working in a unified environment, closely collaborating among themselves and the Ombudsman, create a team spirit that ensure that the principles of ombudsmanship in the services of citizens and the value of independence and autonomy from the Executive, permeate their work and guide them in the exercise of their functions. Close collaboration and constant interaction among them, as well as regular meetings with the Parliamentary Ombudsman, ensure uniformity in their method of approach, the way investigations are conducted and how final opinions are drafted. They also ensure that matters of policy and methods of approach with public authorities, as well as issues of internal management, are frankly discussed and decisions taken collegially.

#### **NO RADICAL REFORM IS SEAMLESS**

Of course no radical reform is seamless. There were teething troubles and problems arise periodically but undoubtedly the reform was extremely positive. In its infancy it has borne fruit. Now with the advent of the second team of Commissioners it needs to be nurtured and sustained so that its impact on society would be felt even more.

As envisaged the appointment of Commissioners required a radical reform of all the structures of the Office to ensure that they would be able to properly service what were in fact three additional independent and autonomous units within an integrated system. This meant for example that the team of investigating officers that handles investigation of complaints, and that is the backbone of the functions of the Ombudsman service, had to reorganise itself to make itself available to the Commissioners when and if required. It had not only to become acquainted with the way the Commissioners chose to function but also to guide them on important issues of law and establish the parameters within which they had to operate.

Similarly, the Secretariat had the hard task to reorganise a system meant only to serve the Ombudsman into a multiple service geared to provide secretariat services to four separate units, operating within the same framework and governed with the same rules. The case management systems had to be modified to suit the exigencies of the Commissioners. Clerical staff had to take on the additional duties of personal assistants to the Commissioners and were expected to be flexible and to perform the other necessary duties associated with the new roles.

The restructuring of the institution has been generally successful and the organisation works well. Certainly not everything is perfect. More has to be done especially in areas like the monitoring of the progress of investigations, ensuring, where possible, that time frames are kept; maintaining the required level of awareness in society of the utility of the Office of the Ombudsman; introducing in-house activities to foster team spirit between the Ombudsman, Commissioners and all staff among others.

The new Commissioners that took office on the 1st September of 2017, acknowledge that they were fortunate in finding a well organised Office that provided them with the opportunity of having a smooth transition. The outgoing Commissioners gave their successors a detailed handover of pending cases and introduced them to the principles that should guide them in the exercise of their functions.

Understandably the process of settling in took some time but, as can be evidenced by the Commissioners' annual reports for the year under review, which is carried in other sections of this report, they all rapidly understood that the intrinsic nature of their functions was to defend aggrieved persons against maladministration in the areas falling under their jurisdiction. As expected this change over and the uncertainty that it inevitably involved, did have a marginal effect on the number of cases the Commissioners received. It was also natural that the new Commissioners would need time to build bridges with the various authorities that would enable them to identify the best work practices to investigate complaints. It is expected that by next year all the Commissioners would be functioning at their maximum potential to provide the best service in the investigation of complaints in the area falling under their jurisdiction.

#### NUMBER OF RECEIVED COMPLAINTS SUSTAINED

The fact that this was an election year also inevitably affected the number of complaints received. As has been pointed out on previous occasions, it is inevitable that during the time leading up to an electoral test, the party in government doubles its efforts to realise its electoral programme in an effort to satisfy the aspirations and needs of constituents. An approach that is sustained by the party returned to power that is expected by the electorate to keep promises made especially when these refer to providing remedies for perceived injustice.

It is noted, from the tables reproduced elsewhere in this annual report, that a slight drop in the number of complaints received by the Ombudsman was adequately set off by an increase in those received by the Commissioners. Essentially therefore the level of complaints received compares favourably with those of previous years.

There should be no cause for alarm or reason for negative comment if there is a healthy reduction in the number of cases as a result of intensified efforts by the public administration in a wide sense, to see to the needs of citizens. This even if done with a personalised approach and in the proximity of elections, so long as the administrative action is taken within the parameters of existing laws and regulations.

#### CONCERNS ON TRANSPARENCY, ACCOUNTABILITY AND CULTURE OF IMPUNITY

Areas of concern arise where there is a growing perception that an administrative decision is being taken not within the strict observance of the rules governing a good public administration that is meant to ensure a level playing field for all citizens and an open, transparent and accountable management of public affairs.

The validation of illegal acts, the opportunity to sanction abusive actions, the grant of amnesties to regularise violations of laws and regulations when practiced as a system of conduct of governance to satisfy claims that would otherwise be considered to be sanctionable acts or omissions at law, can have serious, negative consequences on the enjoyment of the citizens' right to a good public administration. This especially when such initiatives are taken on a large scale, as a matter of course and not exceptionally.

The popular perception unfortunately gaining ground, that any illegality or abuse however gross, can ultimately be forgiven, written off or forgotten, can lead to dangerous situations that undermine the democratic texture of society. It could generate a culture of impunity that leads one to feel safe to disregard laws and regulations and to commit illegalities in the face of express provisions of the law, in the expectation that eventually all will be sanctioned albeit with the payment of a compensatory fine. A culture that favours the strong against the weak, that punishes law abiding citizens and rewards law breakers, provokes a crises in law enforcement and undermines the rule of law.

When the thin, dividing line between administering public affairs in the interest of the common good and satisfying personal, sectoral or partisan interests becomes increasingly blurred, a window of opportunity is created that allows clientilism, political patronage, opportunism, abuse and eventually corruption to fester.

#### **PROGRESSIVE WEAKENING OF INSTITUTIONS**

This essentially brings about a progressive weakening of the State's institutions, especially those having, like the Ombudsman, the specific function to monitor correctness and abuse of power by those entrusted with the conduct of the public administration and to guarantee the right of the citizen to good governance. The Ombudsman has on various occasions alerted to the need to assess and when necessary, regulate initiatives, policies and procedures that could, if utilised for ulterior purposes, negatively affect the democratic process and undermine an open, transparent and accountable public administration.

Thus for example, in the Ombudsplan for the year under review submitted to Parliament, he referred to the need to debate and legislate to regulate lobbying and to determine the limits of the power of incumbency. He has insisted on the need to clarify the legitimacy of the engagement of persons in positions of trust not in accordance with the constitutional process governing employment in the public administration.

It is fair to note that these initiatives and others like the setting up of grievances units, are not in themselves negative. Nor do they necessarily harm the democratic process or are incompatible with an open and transparent administration. They have, however, to be used judiciously and be well regulated by legislation that is compatible with the Constitution and which ensures a level playing field for all players participating in the political debate and a fair and just treatment to all citizens free from any improper discrimination.

In this respect the Ombudsman and his Commissioners had, throughout the year, felt the need to highlight issues that needed to be addressed because they were a cause of complaints as a result of decisions of grievances boards and the engagement of persons in positions of trust. The effects of political lobbying, promoting sectoral interests and partisan agendas in a manner that was not always transparent and that was not seen to be by a section of the population conducive to a healthy, democratic debate. Similarly, the limits of the exercise of the power of incumbency still need to be defined if it is to be ensured that those who are entrusted with the management of public affairs do so in the interest of the common good and not to promote partisan interests. These problems and others persist and are contributing to the general feeling that basic issues of good governance and the rule of law still need to be addressed.

#### OMBUDSMAN KEY ACTOR OF GOOD GOVERNANCE

These issues directly concern the Office of the Ombudsman since its mission statement as a defender of citizens' rights involves an appreciation of the democratic credentials of the public administration and an assessment on whether the basic principles embodied in codes of good governance, meant to ensure a fair and just administration and to secure the enjoyment of fundamental rights, are being strictly observed.

It is for this reason that the OECD maintains that the Office of the Ombudsman is a key actor of good governance and that it has a vital role to play in strengthening open government. In the introduction to a recent survey carried out by the OECD on Ombudsman institutions, it is stated that:

"The Omubudsman occupies a special place within the governance system because of its regular contact with the citizenry. The institution is ideally positioned to understand their needs and identify systemic problems of the public administration. In some cases it also monitors the right to access to information and human and civil rights violations. Therefore the Ombudsman can play a key role in promoting open government especially the implementation of its principles. Furthermore Ombudsman institutions can apply these principles to their own work and promote them within the public administration".

#### ACTION NEEDS TO BE TAKEN ON SHORTCOMINGS

The Ombudsman institution is conscious of its secondary but not less important function to act as the conscience of the public administration. To this end it has to constantly monitor its workings in the process of investigating complaints submitted by aggrieved citizens. It is in this spirit that the Ombudsman feels that it is his duty to highlight serious shortcomings that the country needs to urgently address.

Shortcomings that have been identified and strongly underlined by the then Chief Justice, Dr Silvio Camilleri, during his address at the inaugurous session of the Forensic Year last October. An extremely forceful speech that is nothing less than a battle cry to all those persons in authority in good faith to rally in defence of the rule of law, that was in his opinion at risk of disintegrating due to grave deficiencies and failure of institutions to responsibly fulfil their functions. The last paragraph of that memorable address that deserves to be recorded and studied in depth, was filled with foreboding and notably prophetic. The former Chief Justice said: "It is, therefore, imperative that the Rule of Law be safeguarded from any slow, insidious and imperceptible erosion, because that results in final ruin; we must beware, because this is how the Rule of Law may cease to be, without even our noticing: not with a bang, but with a whimper".

That last sentence was uttered just a few days before the atrocious assassination of a leading investigative journalist that shocked Malta and the world. These events cannot go unnoticed and unheeded. Action needs to be taken by all in authority.





ANNUAL REPORT BY THE PARLIAMENTARY OMBUDSMAN



# NOTES FROM The 2017 Diary

#### **FEBRUARY 14, 2017**

#### Courtesy visit by the Leader of the Opposition

The Leader of the Opposition, the Hon. Simon Busuttil paid a courtesy visit to the Parliamentary Ombudsman, Mr Anthony C. Mifsud.

In his introductory comments the Leader of the Opposition said institutions such as the Ombudsman and the Auditor General should serve as a model for other institutions. He underlined the importance of the Office of the Ombudsman to safeguard people's rights.

The Parliamentary Ombudsman said that one of his first decisions was to strengthen his investigation team. During 2016, the Office of the Ombudsman concluded the investigation of 515 cases.

#### MARCH 24, 2017

The Commissioner for Environment and Planning attends a conference entitled 'Consumer Code and the Clean Energy for All Package: How to protect New Consumers?'

The Commissioner for Environment and Planning, Perit David Pace attended a conference entitled "Consumer Code and the Clean Energy for All Package: How to



*protect New Consumers?*" organised by the National European Ombudsman Network in Brussels.

The conference discussed the opportunities and risks of the provisions of the Clean Energy Package for all energy consumers, prosumers and vulnerable consumers alike.

In his concluding remarks NEON President Lewis Shand Smith stated that "Fair access to redress for all energy consumers requires a change of mindset so that the circumstances of different types of consumers are taken into consideration". The Conference affirmed that access to affordable energy is an essential social right, it's more than a commodity, and therefore when choosing to engage, consumers must keep benefiting from the highest levels of consumer protection offered in Europe. In the meantime, stakeholders need to respect the various levels of engagement and make sure the most vulnerable consumers also benefit from the energy transition. Every member state has a different policy mix and a different understanding of the way to help vulnerable consumers and to guide them out of energy poverty, this should be respected as well.

Speakers at the Conference included MEP Theresa Griffin, Carina Tornblom from DG Justice and Consumers, Brendan Devlin DG Energy and Fredeique Coffre, The French energy Ombudsman.

#### MARCH 30, 2017

A year of transition and continuity - Annual Report 2016 tabled in Parliament



The 2016 Annual Report was tabled in Parliament by the President of the House, the Hon. Angelo Farrugia. The report was presented to the Speaker by the Parliamentary Ombudsman, Mr Anthony C. Mifsud.

In his report, the Ombudsman stated that 2016 was not only a year of transition but also a year in which every effort was made to ensure continuity. The Ombudsman explained that it is essential to ensure continuity to keep in mind three fundamental objectives that must be pursued - visibility, relevance and effectiveness.

Apart from analysing these three essential objectives during this year of transition, the report also includes an oversight of the activities and initiatives taken during 2016 as well as relevant data regarding the conduct of the investigation of complaints. The report also includes reports by the Commissioners for Education, Health and Environment and Planning.

#### APRIL 4, 2017

### Ombudsman participates in a symposium on the Human Rights challenges in Europe



The Parliamentery Ombudsman, Mr Anthony C. Mifsud participated in a symposium entitled 'Human Rights Challenges in Europe II: Populism? Regression of Rights and the Role of the Ombudsman'. The symposium which was organisied by the International Ombudsman Institute, The Catalan Ombudsman, and the Parliament of Catalunya was held in Barcelona between the 3rd and 4th April 2017.

Following the two day discussion, the symposium declared that the ombudsmen should undertake to promote and defend human rights and fundamental freedoms, both economic and social as civil and political. They also asked the European Union states to fully comply with their international obligations on human rights, suppressing states of emergency and suspensions of the European Convention when such limitations are not absolutely essential.

They also require the European Union States to host migrants and refugees, in compliance with the proposal of the European Commission of September 2015, and to treat them in full conformity with international and European human rights conventions and standards, with special attention paid to children's rights and their best interest.

#### The Parliamentary Ombudsman, Mr Anthony C. Mifsud met with a delegation from the Group of States Against Corruption (GRECO) to discuss the Maltese electoral process and democratic institutions. The Ombudsman was accompanied by Dr Monica Borg Galea, Head of Investigations.

#### JUNE 21, 2017

The Parliamentary Ombudsman attends the PSOG Meeting



The Parliamentary Omudsman attended the bi-annual meeting of the Public Service Ombudsman Group (PSOG). For several years the Office of the Ombudsman has been an active member of the PSO which includes public services Ombudsmen from the United Kingdom and the Republic of Ireland as well as the Gibraltar Public Services Ombudsman, the Bermuda Ombudsman and the Cayman Islands Complaints Commissioner together with the Local Government Ombudsman and the Housing Ombudsman for England.

The Ombudsman was accompanied by Mr Paul Borg, Director General.

#### MAY 4, 2017

### The Parliamentary Ombudsman meets with the GRECO delegation

#### JULY 6, 2017

The Ombudsman attends a symposium discussing fundamental rights issues



The Parliamentary Ombudsman, Mr Anthony C. Mifsud attended a symposium discussing fundamental rights issues that are currently high on the Union's political agenda. The symposium themed '2007 - 2017: Is Europe doing enough to protect fundamental rights? - the children perspective' was organised by the EU Agency for Fundamental Rights as part of their 10th Anniversary Celebration. The event was organised in close cooperation with the Maltese Presidency of the Council of the European Union.

H.E. Marie-Louise Coleiro Preca, President of Malta opened the symposium which was also attended by stakeholders, including Members of the European Parliament, the European Commission, national governments and parliaments, national human rights institutions and other human rights actors across the EU.

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

#### JULY 28, 2017

# *Good.* Could be better - Own Initiative Report by the Commissioner for Education



Own Initiative Report by the Commissioner for Education on MATSEC Access Arrangements for Special Needs Candidates with Reference to candidates suffering from ADHD, Autism or Dyslexia Conditions

The Commissioner for Education at the Office of the Ombudsman undertook this study to establish whether students with special education needs sitting for the SEC and Matriculation examinations receive all the access support they require to overcome fully the obstacles imposed by their conditions.

#### **SEPTEMBER 1. 2017**

Appointment of Commissioners for Health, Education and Environment and Planning



The Parliamentary Ombudsman, Mr Anthony C. Mifsud appointed three specialised Commissioners to serve as Commissioners for Administrative Investigations.

Mr Charles Messina has been re-appointed for another five years as Commissioner for Health.

Mr Charles Caruana Carabez has been appointed Commissioner for Education to succeed Professor Charles Farrugia who has retired.

Perit Alan Saliba has been appointed Commissioner for Environment and Planning. He succeeds Architect David Pace.

The Commissioners, like the Ombudsman, are autonomous Officers of Parliament and enjoy the same independence and security of tenure. The Commissioners work independently of each other but co-ordinate their work with the Office of the Ombudsman.

#### **SEPTEMBER 14, 2017**

#### Ombudsman presents the 2018 Ombudsplan to the Speaker



The Parliamentary Ombudsman, Mr Anthony C. Mifsud presented the 2018 Ombudsplan to the President of the House of Representatives, the Hon. Angelo Farrugia.

The Ombudsplan was later disscussed and approved by the House Business Committee.

#### SEPTEMBER 29, 2017

## Ombudsman and newly appointed Commissioners visit the Speaker of the House



The Parliamentary Ombudsman Mr Anthony C. Mifsud introduced the two newly appointed Commissioners to the Speaker of the House of Representatives, the Hon. Angelo Farrugia.

Perit Alan Saliba was appointed Commissioner for Environment and Planning while Charles Mr Caruana Carabez was appointed Commissioner for Education.

Mr Charles Messina's appointment as Commissioner for Health has been renewed for a second and final five-year term.

The speaker, Hon. Angelo Farrugia congratulated the Commissioners on their appointment and wished them success in their work.

#### **SEPTEMBER 29, 2017**

The Commissioner for Education visits the Institute for Tourism Studies



The Commissioner for Education, Mr Charles Caruana Carabez visited ITS and met students, staff and academics.

#### **SEPTEMBER 29, 2017**

The Office of the Ombudsman participates at the ITS Freshers' Week



#### OCTOBER 2, 2017

The Office of the Ombudsman participates at the University Freshers' Week



#### **OCTOBER 3, 2017**

#### Case Notes 2016 tabled in Parliament

The Case Notes 2016 was tabled in Parliament by the President of the House of Representatives, the Hon. Angelo 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.

### OCTOBER 5, 2017

### The Commissioner for Education visits the University Campus



The Commissioner for Education, Mr Charles Caruana Carabez visits the University of Malta Campus during the KSU Freshers' Week.

#### NOVEMBER 10, 2017

### The Ombudsman meets the Council of Europe Commissioner for Human Rights



The Parliamentary Ombudsman, Mr Anthony C Mifsud received the Council of Europe (CoE) Commissioner for Human Rights Mr Nils Muiznieks. The Commissioner was in Malta for a two day visit to monitor the human rights protection standards as part of Malta's obligation as a CoE Member State. Such visits are aimed at providing Council of Europe Member States with guidelines to raise the standards of human rights protection, in accordance with his mandate.

The focus of the meeting with the Parliamentary Ombudsman was on the protection of the human rights of migrants, including their integration and women's rights. The meeting also discussed the Ombudsman's Human Rights mandate and the national public consultation on the human rights and equality framework.

The Commissioner for Human Rights was accompanied by Mr Matthieu Birker, Adviser to the Commissioner and Mr Nikolaos Sitaropoulos, Deputy of the Director of the Office of the Commissioner for Human Rights. The meeting was attended also by the Commissioner for Health, Mr Charles Messina, the Head of Investigations, Dr Monica Borg Galea, the Communications and Research Officer, Mr Jurgen Cassar, and Investigating Officer, Dr Danielle Mallia.

#### NOVEMBER 22, 2017

## The Ombudsman participates in a Q&A Session with Law Students from the University of Malta



The Parliamentary Ombudsman, Mr Anthony C. Mifsud, welcomed a group of students who are reading Law at the University of Malta. Following a short presentation about the institution's role, the Ombudsman participated in a Q&A session. The students were accompanied by their Lecturer, Dr Ivan Mifsud.

#### **DECEMBER 23, 2017**

#### AOM-AOMF Working Group on Children Migrants - study visit in Spain



The Office of the Ombudsman, represented by its Communications and Research Officer, Jurgen Cassar took part in a study visit organised by the Defender of People of Spain aimed at analysing the situation of minor migrants in Spain.

As part of the visit, the AOM-AOMF Working group had meetings with the Defender of People of Spain, Francisco Fernandez Marugan and its officials, Fondation Raices, and the Head of the Minors of the Defender of People of Andalusia. The working group also visited a centre for minors seeking asylum in Madrid managed by Fondation Merced Migraciones. The visit discussed the age assessment method, the processes of minors seeking asylum and human trafficking.

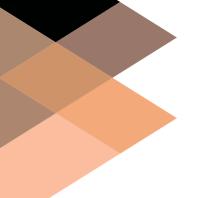
Representatives from different Ombudsman offices namely from France, Albania, Turkey and Macedonia formed part of the AOM-AOMF working group.





ANNUAL REPORT BY THE PARLIAMENTARY OMBUDSMAN





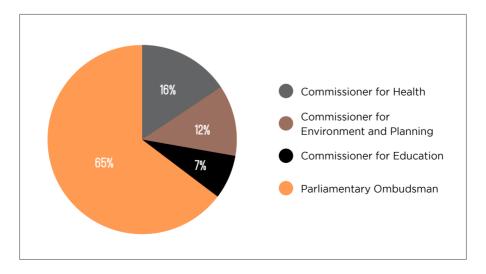
# PERFORMANCE REVIEW 2017

#### CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

TABLE 1.1 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN 2016 – 2017

	2016	2017
	No of cases	No of cases
Parliamentary Ombudsman	361	336
Commissioner for Education	59	39
Commissioner for Environment and Planning	55	62
Commissioner for Health	82	83
Total	557	520

DIAGRAM 1.2 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN 2017



In the year under review, the Office of the Ombudsman handled 520 cases, a decline in the cases received of 7% from 2016. As shown in Table 1.1 and Diagram 1.2, of the 520 cases, 336 were investigated by the Parliamentary Ombudsman, 7% less than 2016; 83 by the Commissioner for Health, in the same level of the previous year, 62 by the Commissioner for Environment and Planning, a 13% increase on 2016 and 39 by the Commissioner for Education, 34% less than the previous year.

#### **INCOMING COMPLAINTS**

#### Total Case Load

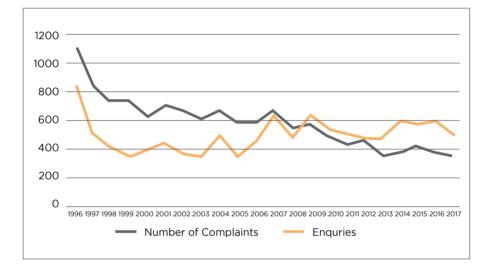
During the year in review, apart from the written complaints, the Office handled 484 enquiries, a drop of 16% when compared to 2016 (579) whereas the number of written complaints handled by the Parliamentary Ombudsman, during 2017 decreased by 7% (25) from 361 in 2016 to 336 in 2017. Table 1.3 and Diagram 1.4 show the number of enquiries and written complaints received by the Office since 1996.

TABLE 1.3 - COMPLAINTS AND ENQUIRIES RECEIVED 1996-2017

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

Year	Written complaints	Enquiries
2013	329	475
2014	352	581
2015	405	554
2016	361	579
2017	336	484

DIAGRAM 1.4 – OFFICE OF THE OMBUDSMAN – WORKLOAD 1996-2017



During 2017, the country has gone through the process of a General Election. Experience has shown that when an election is held, the Office of the Ombudsman experiences a decline in complaints. This is attributed to the post-election euphoria, which sees many citizens seeking direct access to the Government to seek redress. Table 1.5 shows that the same trend was experienced during the past years whenever a General Election was held.

1997-2017	
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
2017 (GE)	520

#### TABLE 1.5 - GENERAL ELECTIONS TREND 1997-2017

TABLE 1.6 - COMPLAINTS STATISTICS BY MONTH 2015 - 2017

		2015			2016			2017	
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
Brought forward from previous year			225			276			123
January	46	24	247	37	35	278	29	27	125
February	28	24	251	33	33	278	24	29	120
March	26	38	239	36	73	241	32	36	116
April	39	27	251	27	49	219	37	21	132
Мау	32	29	254	24	41	202	36	31	137
June	37	24	267	27	25	204	25	18	144
July	35	29	273	35	28	211	23	21	146
August	29	21	281	35	67	179	21	23	144
September	28	21	288	30	29	180	20	20	144

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	2015 20		2016 2017						
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
October	43	41	290	27	61	146	35	29	150
November	29	38	281	28	42	132	30	22	158
December	33	38	276	22	31	123	24	14	168
Total	405	354		361	514		336	291	
Enquiries	554			579			484		

Between January and December 2017, the number of completed investigations decreased from 514 in 2016 to 291, a drop of 223 from the previous year. As regards to the pending cases, at the end of 2017, the pending caseload stood at 168, which amounts to an increase of 36.6% from the pending case load at the end of the previous year.

DIAGRAM 1.7 – COMPLAINTS STATISTICS BY MONTH 2015-2017

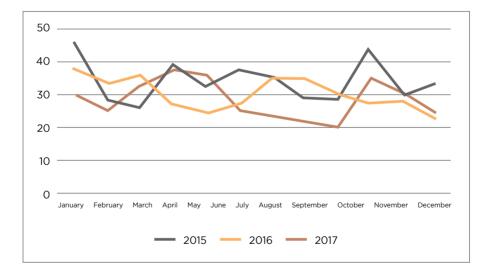


TABLE 1.8 - COMPLAINTS RECEIVED CLASSIFIED BY MINISTRY AND RESPECTIVE DEPARTMENTS 2017

#### Autonomous

Sector	No of Cases received	Investigated	Sector not involved	
Public Service Commission	21	15	6	

#### Office of the Prime Minister (OPM)

Sector	No of Cases received	Investigated	Sector not involved
ARMS <sup>[1]</sup>	4	3	1
Enemalta <sup>[1]</sup>	3	1	2
Engineering Resources Ltd <sup>[1]</sup>	2	2	-
Identity Malta (Central Visa Unit)[7]	3	2	1
Identity Malta (Citizenship and Expatriate Affairs) <sup>[7]</sup>	6	2	4
Identity Malta (ID Cards) <sup>[7]</sup>	1	1	-
Identity Malta (Public Registry) <sup>[7]</sup>	2	-	2
Lands Authority (Lands) <sup>[6]</sup>	4	4	-
Lands Department <sup>[6]</sup>	1	1	-
Malta Financial Services Authority <sup>[10]</sup>	1	-	1
Office of the Prime Minister	6	2	4
People and Standards Division	5	2	3
Resource Support and Services	1	1	-
Water Services Corporation <sup>[1]</sup>	1	1	-
TOTAL	40	22	18

#### Ministry for Competition and Digital, Maritime and Services Economy (MCDMS)

Sector	No of Cases received	Investigated	Sector not involved
Malta Communications Authority <sup>[8]</sup>	1	-	1
Malta Freeport <sup>[11]</sup>	1	1	-
TOTAL	2	1	1

Sector	No of Cases received	Investigated	Sector not involved
Commerce Division	1	1	-
Malta Enterprise	1	-	1
Small Businesses and Self-employed	1	-	1
TOTAL	3	1	2

#### Ministry for the Economy, Investment and Small Businesses (MEIB)

#### Ministry for Education and Employment (MEDE)

Sector	No of Cases received	Investigated	Sector not involved
Commission for Voluntary Organisations	1	1	-
Education Department	19	15	4
Foundation for Educational Services	2	-	2
Jobs Plus	2	-	2
Life-Long Learning	1	1	-
Malta Libraries	1	-	1
National Commission for Further and Higher Education	2	2	-
Sports Malta	1	-	1
University of Malta	1	-	1
TOTAL	30	19	11

#### Ministry for Energy and Water Management (MEW)

Sector	No of Cases received	Investigated	Sector not involved
ARMS <sup>[1]</sup>	17	13	4
Enemalta <sup>[1]</sup>	3	1	2
Energy and Water Management	1	-	1
Engineering Resources Ltd <sup>[1]</sup>	1	-	1
Regulator for Energy and Water Services	1	1	-
Water Services Corporation <sup>[1]</sup>	1	1	-
TOTAL	24	16	8

#### Ministry for European Affairs and Equality (MEAE)<sup>[4]</sup>

Sector	No of Cases received	Investigated	Sector not involved
European Affairs and Equality	1	1	-
Social Dialogue	1	1	-
TOTAL	2	2	-

#### Ministry for European Affairs and Implementation of the Electoral Manifesto<sup>[4]</sup>

Sector	No of Cases received	Investigated	Sector not involved
European Affairs and Implementation of the Electoral Manifesto	1	1	-

#### Ministry for Family, Children's Rights and Social Solidarity (MFCS)

Sector	No of Cases received	Investigated	Sector not involved
Appogg	1	1	-
Department of Social Security <sup>[3]</sup>	13	6	7
Housing Authority <sup>[3]</sup>	6	5	1
TOTAL	20	12	8

#### Ministry for Family and Social Solidarity (MFSS)

Sector	No of Cases received	Investigated	Sector not involved	
Department of Social Security <sup>[3]</sup>	10	7	3	
Family and Social Solidarity	2	2	-	
Housing Authority <sup>[3]</sup>	8	5	3	
TOTAL	20	14	6	

#### Ministry for Finance (MFIN)

Sector	or No of Cases received		Sector not involved	
Accountancy Board	1	1	-	
Commissioner for Revenue (Customs) <sup>[2]</sup>	2	2	-	
Commissioner for Revenue (Inland Revenue)	14	7	7	
Commissioner for Revenue (VAT)	5	3	2	

Finance	4	3	1
Investor Compensation Scheme	1	1	-
Malta Financial Services Authority <sup>[10]</sup>	1	1	-
National Statistics Office	1	-	1
Treasury Department	1	-	1
TOTAL	30	18	12

Ministry for Foreign Affairs and Trade Promotion (MFTP)					
Sector	No of Cases received	Investigated	Sector not involved		
Foreign Affairs and Trade Promotion	2	2	-		

Ministry for Gozo (MGOZ)			
Sector	No of Cases received	Investigated	Sector not involved
Gozo Affairs	1	1	-
Gozo Channel Co Ltd.	2	-	2
TOTAL	3	1	2

Ministry for Home Affairs and National Security (MHAS)					
Sector	No of Cases received	Investigated	Sector not involved		
Armed Forces of Malta	13	3	10		
AWAS	1	-	1		
Correctional Services	2	1	1		
Home Affairs and National Security	4	2	2		
Office of the Commissioner of Refugees	1	-	1		
Police	20	10	10		
Police Board	1	-	1		
Probation and Parole	1	-	1		
TOTAL	43	16	27		

Sector	No of Cases received	Investigated	Sector not involved
Courts of Justice	4	2	2
Data Protection	1	1	-
Heritage Malta	1	1	-
Identity Malta (Central Visa Unit) <sup>[7]</sup>	4	1	3
Identity Malta (Citizenship and Expatriate Affairs) <sup>[7]</sup>	4	3	1
Justice, Culture and Local Government	5	4	1
Local Enforcement System	3	-	3
Local Council	5	5	-
Local Government	1	1	-
Malta Council for Culture and the Arts	1	1	-
Public Broadcasting Services	2	1	1
TOTAL	31	20	11

#### Ministry for Justice, Culture and Local Government (MJCL)

Ministry	for Social	Dialoque.	Consumer	Affairs a	and Civi	l l iberties	(MSDC)
i i i i i i i i juli juli juli juli juli		i Dialogue,	Consumer	Allans		LINCIUCS	(INDEC)

Sector	No of Cases received	Investigated	Sector not involved
Malta Competition and Consumer Affairs Authority <sup>[9]</sup>	2	2	-

Ministry for Sustainable Development, the Environment and Climate Change<sup>[5]</sup>

Sector	No of Cases received	Investigated	Sector not involved	
Fisheries and Aquaculture	2	2	-	
Sustainable Development and Climate Change	1	-	1	
WasteServ	1	1	-	
TOTAL	4	3	1	

#### Ministry for Tourism (MOT)

Sector	No of Cases received	Investigated	Sector not involved	
Air Malta	5	3	2	
Tourism	1	-	1	
TOTAL	6	3	3	

Sector	No of Cases received	Investigated	Sector not involved
Transport and Infrastructure	1	1	-
Transport Malta	6	6	-
TOTAL	7	7	-

#### **Ministry for Transport and Infrastructure**<sup>[12]</sup>

Ministry for Transport, Infrastructure and Cap	oital Projects (	MTIP) <sup>[12]</sup>	
Sector	No of Cases received	Investigated	Sector not involved
Lands Authority (Joint Office) <sup>[6]</sup>	2	1	1
Lands Authority (Lands) <sup>[6]</sup>	5	2	3
Transport Malta	7	5	2
Transport, Infrastructure and Capital Projects	3	1	2
TOTAL	17	9	8
Sector not specified	1	-	-
Outside Jurisdiction	27	-	-
TOTAL	336	185	123

<sup>[1]</sup> Change of Ministry from OPM to MEW on 04.06.17

<sup>[2]</sup> Customs Department falls under the remit of the Commissioner for Revenue

<sup>[3]</sup> Change of Ministry from MFSS to MFCS on 04.06.17

<sup>[4]</sup> Change of Ministry from Ministry for EU Affairs and Implementation Of Electoral

Manifesto to Ministry for European Affairs and Equality on 04.06.17

<sup>(5)</sup> Ministry changed to Ministry for the Environment, Sustainable Development and Climate Change (MESDC) on 04.06.17

<sup>[6]</sup> Changed to Lands Authority from OPM to the MTIP on 04.06.17

<sup>[7]</sup> Change of Ministry from MJCL to OPM on 04.06.17

<sup>[8]</sup> Change of Ministry to OPM from 04.06.17

<sup>[9]</sup> Change of Ministry to MJCL on 04.06.17

<sup>[10]</sup>Change of Ministry from MFIN to OPM on 04.06.17

<sup>[11]</sup>Change of Ministry to MOT on 04.06.17

 $^{\scriptscriptstyle [12]}$  Change of Ministry to MTIP on 04.06.17

Table 1.8 shows the complaints received classified by departments and public authorities according to each Ministry's portfolio. The table categorises the number of complaints received, the number of complaints investigated with the departments and authorities concerened 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 174 complaints or 52% of the total amount of grievances lodged:

#### MINISTRY FOR HOME AFFAIRS AND NATIONAL SECURITY

The Ministry for Home Affairs and National Security (MHAS) and the departments under its portfolio attracted the most number of complaints received. In all it attracted 43 complaints of which 16 (37%) were investigated with the department involved, and 27 (63%) were not.

The Police Force had 20 complaints or 46.5% of the complaints received, while the Armed Forces of Malta attracted 13 complaints or 30% of the complaints received against a department or an entity which falls under the MHAS portfolio.

#### THE OFFICE OF THE PRIME MINISTER

The Office of the Prime Minister (OPM) attracted the second largest number of complaints received. From the 336 cases received by the Ombudsman, 40 cases (12%) were against a department or authority which falls under the OPM. From the 40 complaints lodged, 22 were investigated, and the remaining 18 were either concluded without an investigation or were investigated without involving the department concerned.

#### MINISTRY FOR JUSTICE, CULTURE AND LOCAL GOVERNMENT

The Ministry for Justice, Culture and Local Government (MJCL) attracted 31 complaints, 9% of the complaints received by the Ombudsman of which 20 were investigated, and the remaining 11 were looked into without the involvement of the department concerned.

#### MINISTRY FOR EDUCATION AND EMPLOYMENT AND THE MINISTRY FOR FINANCE

The Ministry for Education and Employment (MEDE) and the Ministry for Finance (MFIN) attracted the same number of complaints, 30 each.

Of the 30 complaints against the MEDE, 19 were investigated, and the remaining 11 were seen without the need of involving the Ministry. These complaints do not include the complaints investigated by the Commissioner for Education.

The MFIN, which also attracted 30 complaints, was involved in the investigation of 18 of the cases received, whereas the remaining 12 were investigated without the involvement of the Ministry.

Grounds of Complaints	2015		2016		2017	
Contrary to law or rigid application of rules, regulations and policies	86	21%	55	15%	36	10%
Improper discrimination	39	10%	37	10%	37	11%
Lack of transparency	44	11%	20	6%	-	-
Failure to provide information	46	11%	34	10%	11	3%
Undue delay or failure to act	89	22%	84	23%	82	25%
Lack of fairness or balance	101	25%	131	36%	170	51%
Total	405	100%	361	100%	336	100%

TABLE 1.9 - COMPLAINT GROUNDS 2015-2017

Table 1.9 and Diagram 1.10 show 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 51% of the complaints (170) an increase of 23% over the previous year. Followed by complaints alleging undue delay or failure to act that attracted 25% (82) of the complaints.

#### DIAGRAM 1.10 - CATEGORIES OF COMPLAINTS RECEIVED (BY TYPE OF ALLEGED FAILURE)

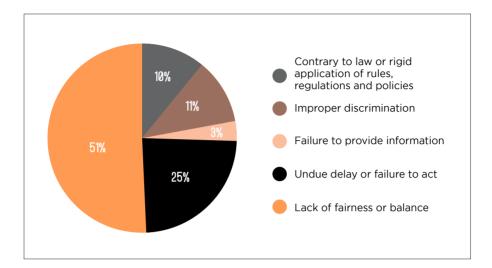


TABLE 1.11 - COMPLAINTS BY LOCALITY 2015-2017

Locality	2015	2016	2017
Attard	12	7	8
Balzan	3	5	7
Birgu	4	-	-
Birkirkara	70	23	19
Birzebbuga	7	4	5
Bormla	2	5	6
Dingli	4	2	2
Fgura	8	9	11
Floriana	-	-	1
Għargħur	3	2	1
Għaxaq	5	-	7
Gudja	2	4	1
Gżira	7	4	8
Ħamrun	7	5	6
Iklin	2	-	2
Isla	-	2	-
Kalkara	1	-	-
Kirkop	3	2	2
Lija	3	4	2

Locality	2015	2016	2017
Luqa	3	6	1
Manikata	-	1	1
Marsa	-	8	1
Marsaskala	8	7	8
Marsaxlokk	2	3	4
Mellieħa	7	9	5
Mġarr	-	-	-
Mosta	15	11	9
Mqabba	1	2	1
Msida	3	8	6
Mtarfa	1	3	1
Naxxar	12	10	7
Paola	6	11	8
Pembroke	4	2	5
Pietà	5	6	2
Qormi	13	11	6
Qrendi	2	1	1
Rabat	-	7	5
Safi	3	1	5
San Ġiljan	6	5	6
San Ġwann	9	3	11
San Pawl il-Baħar	18	21	8
Santa Luċija	3	4	1
Santa Venera	6	5	4
Siģģiewi	9	8	6
Sliema	8	13	9
Swieqi	7	3	3
Ta' Xbiex	3	1	1
Tarxien	6	6	11
Valletta	14	7	7
Xgħajra	-	-	1
Xemxija	-	1	-
Żabbar	9	12	15
Żebbuġ	3	8	13
Żejtun	7	6	5
Żurrieq	5	10	11
Gozo	19	30	29
Other	29	19	18
Overseas	16	14	13
Total	405	361	336

#### TABLE 1.12 - AGE PROFILE OF OPEN CASELOAD AT END 2017

Age	Cases in hand
Less than 2 months	46
Between 2 and 3 months	28
Between 4 and 5 months	21
Between 6 and 7 months	13
Between 8 and 9 months	15
Over 9 months	45
Total Open files	168

DIAGRAM 1.13 - PERCENTAGE SHARES OF OPEN COMPLAINTS BY AGE (AT END 2017)

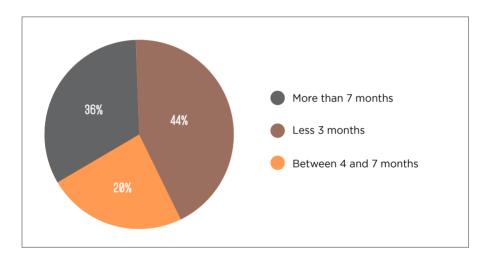


Table 1.12 and Diagram 1.13 show the number of cases still under investigation that stood at 168 at the end of 2017.

TABLE 1.14 -	OUTCOMES	OF	FINALISED	COMPLAINTS
2015-2017				

Outcomes	2015	2016	2017
Sustained cases	7	25	18
Cases not sustained	46	127	63
Resolved by informal action	104	161	114
Given advice/assistance	62	57	35
Outside Jurisdiction	83	105	49
Declined (time-barred, trivial, etc.)	52	39	12
Total	354	514	291

Table 1.14 and Diagram 1.15 show the outcome of the finalised complaints. In 2017, 18 of these complaints were found justified by the Ombudsman with a satisfactory outcome for the complainant. During the year under review, there was a decrease in the complaints that were not sustained which amounted to 63, 50% less than 2016. Also, 35 cases were finalised by giving advice or assistance and without the need to conduct a formal investigation. There were also 114 cases that were also solved by informal action while there were 49 cases that were outside the Ombudsman's jurisdiction, 53% less than the previous year.

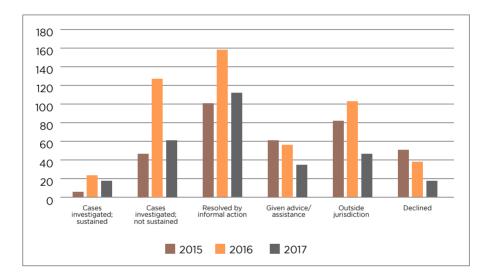


DIAGRAM 1.15 – OUTCOMES OF FINALISED COMPLAINTS 2015-2017

### TABLE 1.16 – TYPE OF MALADMINISTRATION IN JUSTIFIED COMPLAINTS 2015-2017

Grounds of Complaints		2015		2016		2017
Contrary to law or rigid application of rules, regulations and policies	34	31%	35	19%	16	12%
Improper discrimination	5	5%	21	11%	13	10%
Lack of transparency	9	8%	16	9%	1	1%
Failure to provide information	20	18%	18	10%	10	7%
Undue delay or failure to act	24	21%	61	32%	45	34%
Lack of fairness or balance	19	17%	35	19%	47	36%
Total	405	100%	361	100%	132	100%

Table 1.16 and Diagram 1.17 illustrate the type of maladministration of justified complaints. Of the 132, justified complaints, 36% concerned lack of fairness or balance. The second most common type of complaints were about allegations that the administration delayed its action or failed to take action, amounting to 34% of the 2017 justified case load.

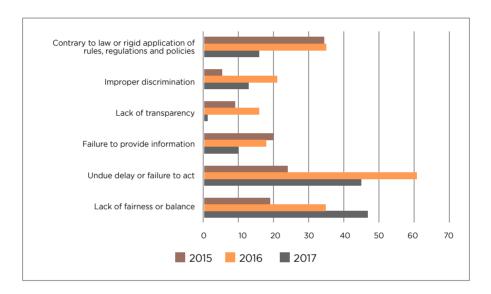


DIAGRAM 1.17 – CASES CONCLUDED AND FOUND JUSTIFIED 2015-2017





ANNUAL REPORT 2017



## ANNUAL REPORT 2017 COMMISSIONER FOR EDUCATION

PROF CHARLES J. FARRUGIA (2014 - 2017)

#### **EDUCATION MATTERS**

Proficient education services improve people's lives. Governments think so: they devote a considerable portion of their budgets to the service. For example, the Maltese Government's 2017 budget allocated €42.3 million or 11 percent to Education. Parents rightly assume that the better education they provide their children, the better their offsprings' life chances in health, civic harmony, job prospects, and hopefully, happiness. Consequently, most Maltese families spend a high portion of their income to ensure the best possible schooling for their children whether they attend State, Church or Independent institutions. They believe - correctly - that the better the education the higher the chances of their children's success. For the majority of people, education has become the cornerstone of their life achievements, and the higher the educational level, the more enhanced their chances of social and professional mobility. This fact of life has been proven scientifically throughout the world: for instance in the USA, graduates on average earn three times as much as non-graduates, and they live longer. There are exceptions but these only go to prove the general rule: education matters.

As a result, States feel duty-bound to guarantee a proper and efficient educational service. Chapter II Sections 10 and 11 of the Maltese Constitution requires the State to ensure that all its citizens have the right to educational services that are compatible with their abilities. Furthermore, the Islands' current Education Act stipulates that:

> "It is the right of every citizen of the Republic of Malta to receive education and instruction without any distinction of age, sex, disability, belief or economic means."

The Act proceeds to list the facilities and services that the State must offer to ensure that these aims are met.<sup>1</sup>

In spite of legislation, regardless of the funds spent on the sector, notwithstanding the goodwill of the professionals and other personnel who support education services, there are individuals who feel that they are not getting 'a fair deal', that the system has let them down, that the administration is cheating them of what is rightly theirs. Such individuals comprise students who have not been accepted into courses or who claim that their academic efforts are not recognized and therefore expect better grades than they had been awarded. The list includes teachers and academics who believe that they have been unjustly denied a post in the institution they aspire to join or have been deprived of a promotion in the one they serve. There are support personnel who work to keep the education service functioning but feel discriminated against and are convinced that the system just works to exploit them. The concerns of these individuals should be investigated and resolved.

It is a well-established fact that security, harmony and self-fulfilment ensure a high level of success at school or on the job. The principle applies to students, teachers or support workers in the educational system. The convers is also true: discontent, anxiety and disillusion breeds disruption and failure.

In 1996, with the aim of reducing to a minimum the dissonance at University, the government at the time established the services of the University Ombudsman. Students and staff, as well as prospective students and staff of the University of Malta who felt discriminated against or treated unfairly, and who had exhausted all the remedial channels within the Institution, could present their grievances to the University Ombudsman. The latter would investigate their claims, pronounce his Final Opinion and present his recommendations. Although his conclusions and recommendations were not legally binding, they had strong moral weight and the University hardly ever discarded them.

The appointment of the undersigned in 2008 as University Ombudsman within the ambit of the Office of Parliamentary Ombudsman, extended his remit beyond the University of Malta to include the Malta College of Science and Technology (MCAST) and the Institute of Tourism Studies (ITS). Amendments in the Malta Ombudsman legislation changed the nomenclature of the University Ombudsman to Commissioner for Education. The new role extended his remit even further to include all educational services provided by the State. The contribution of the University Ombudsman/Commissioner of Education to the Maltese educational system can be gauged by the fact that he has dealt with almost 500 complaints from November 2008 to July 2017.

The Office of the Commissioner for Education serves to ensure that the State sector of the Maltese educational system leads to the attainment of the aims of the Constitution and the Education Act. As an outgoing Commissioner, I am convinced it can do more. Therefore, I offer the following two suggestions

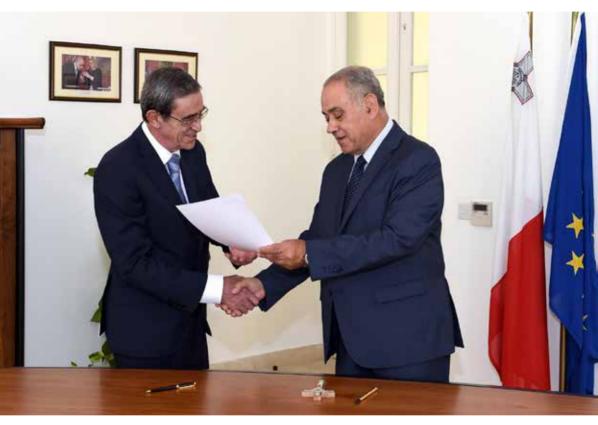
<sup>1</sup> Government of Malta: EDUCATION. [CAP. 327. 1.] CHAPTER 327. EDUCATION ACT. Part I: General Provisions - Right to education and instruction, Sections 3 and 4.

for the Office to widen its services beyond the State sector and at the same time remain focused on its educational objectives.

First, the State educational system serves just over half of the Maltese and Gozitan students who attend primary and secondary schools. Church and Independent Schools provide primary and secondary education to the other half. Increasingly, foreign Universities compete with local tertiary education institutions to offer tertiary education courses. Consequently, as the Ombudsman law stands, students and staff of the non-State sector cannot benefit from the services of the Commissioner for Education and the Office of the Ombudsman. The same applies to Maltese and Gozitan students who are enrolled in foreign tertiary level education institutions operating locally. If one truly believes that *Education Matters*, there are no reasons why almost half the beneficiaries of the Maltese educational system should be denied the Commissioner's service. I suggest that the Ombudsman legislation should be amended to extend the Commissioner's remit to embrace all those involved in the education enterprise of these Islands.

Second, during my term of office, the idea was mooted that the Commissioner for Education need not be appointed from the rank of educators. It was suggested that a good lawyer or administrator can fulfil the duties just as well. I strongly disagree. Commissioners for Education should be educators, persons well steeped in educational psychology, educational philosophy and educational sociology. They should have had teaching experience to understand the complex interaction between students and teachers in the classroom. They should have participated in the running of educational institutions to evaluate the impact that parents and society at large have on the educational service. Commissioners for Education who lack these attributes will waste precious time until they are able to grasp the intricacies of the education service at the national level and the complexities of human interaction at the institutional level. Preferably, they should also have the insight to look beyond the strict application of laws and regulations, and to concentrate on the spirit of the law. They should have the humility to accept the fact that they are not infallible. In the process, they will be so much more effective in a society where *Education* Matters and matters tremendously.

P.S. As a personal note, I wish to thank the officials of the Institutions I dealt with, for their assistance when I was investigating cases involving their students and staff. A special word of thanks goes to all my colleagues at the Office of the Ombudsman for their assistance in the course of carrying out my duties, as well as for their valued friendship, which I shall cherish far beyond the end of my final term of office.



The Parliamentary Ombudsman, Mr Anthony C. Mifsud handing the letter of appointment to Mr Charles Caruana Carabez, Commissioner for Education - 1 September 2017

## ANNUAL REPORT 2017 COMMISSIONER FOR EDUCATION

CHARLES CARUANA CARABEZ (2017-)

#### PURSUIT OF JUSTICE

Whilst the Office of the Ombudsman has, as its *raison d'etre*, the identification of a form of redress in cases of maladministration, it also has to deal, many a time, with the difficult task of convincing complainants that they are not justified in their requests. Another, very important task of the Ombudsman's Office is that of mediating between parties when both sides seem to have a certain amount of justification for their respective positions.

What holds sway in all the dealings of the Office of the Parliamentary Ombudsman is the meticulous pursuit of a sense of justice, but this is not an easy matter, as we shall see.

To spend much time considering what Justice is might seem, at first, quite unwarranted and profitless. Instinct tells us that every man and woman has an ingrained knowledge of what justice is, and that such knowledge is achieved quite effortlessly, much in the same way as no kitten goes to school to learn to mew. We are confident that we can instinctively tell what is just and what is unjust, and cannot, surely, mistake them, but experience teaches that this may be wrong, or overconfident. It is much like the fact that knowing what a clock does and what it looks like does not mean that we know how it works, or whether it is telling the time correctly.

One of the peculiarities of Justice is that whilst it can concern us in the most personal of ways, it is never exclusively individual. It always involves someone else as well. Very often, it involves three people, at least: the judge, the accuser and the accused. It is the person who is tasked with seeking Justice that concerns me most here. One notes that the figure of the 'Judge' occupies a prominent, even a central position in world of Literature and Religion, such is man's concern with getting his due.

The Office of the Ombudsman often has to find a balance between what is just and due in terms of the written law and what would be fair if a modicum of mercy or comprehension were to be applied. As my predecessor, Prof. Charles Farrugia, pointed out in his contribution to last year's issue of this publication, 'the law' is often seen operating under the guise of bureaucracy, and its strict application may in itself be a cause of injustice. Justice and the law do not always coincide, and it is within this grey area that the Ombudsman often has to operate. An Institution or a Government Department may be acting perfectly legally whilst at the same time inflicting hardship on a person. The essential clockwork mechanism of any entity are the little human cogs who have no executive power beyond that of following the rules and applying them, and thus, entities have the tendency to become, like machines, emotionless. Any deviation from the written letter of the law can compromise the position of any of these 'human cogs', so no functionary dares to contemplate any form of concrete empathy or sympathy.

All nations have laws, but all nations also have a judicial system. If the Courts were merely expected to know all the intricacies of the law and proceed to apply them, then all Judges and Magistrates could be easily replaced by a computer, and this is patently absurd. The Judges and Magistrates are there to apply the law within the context of each particular case, and for this they require serenity and detachment, as well as reasonableness and a sense of proportion; no machine endowed with present technology could ever be expected to do this. Judges and Magistrates –and the Office of the Ombudsman, which operates on the principles of the Judiciary and has some of its powers, render the law less inflexible, and a little more elastic, to fit each individual's case. This does not mean that the Judiciary, or the Office of the Ombudsman, exist to exculpate or exonerate, but rather to mitigate harshness when such harshness seems inappropriate.

Whenever it seems plain that a complainant is the victim of justice applied without contextual mitigation, the Ombudsman has to act, very often, as the honest broker between the two parties, and suggest ways and means by which to add the scales to the figure of Justice if it only bears the sword. The term 'honest broker' bears elucidation and illustration. The Ombudsman has the right at law to request documents from either party in order to gain a penetrating knowledge of the facts, and his requests may not be refused, except in a few and clearly-defined circumstances. It is predictable, however, that either party might feel that a requested document is 'sensitive', and may show great reluctance in releasing it, using a number of tactics to gain time in the vain hope that the matter becomes forgotten.

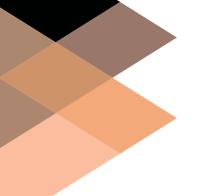
In order to allay any such fears or misgivings, I guarantee to the party from whom such sensitive documents are requested that they will not be passed on to the other party whenever the claim of sensitivity arises: I explain that the documents are simply needed for me to gain a deeper understanding of circumstances. I also explain to the other party that I would not be passing on the documents, telling him or her that I was appointed by him or her as a trusted interlocutor, and that they are therefore to trust the conclusion I derive from a scrutiny of the document without being asked to furnish details.

To date, I have had to do this several times, and it has proved to be a viable solution to situations which would otherwise stagnate into an impasse. Clearly, there has to be trust on both sides for this system to operate, and I have had little reason to complain, so far. In cases where it is not arbitration but the formal pronouncement of a decision against an entity, compliance with the advice given by the Commissioner remains problematic, in the sense that response and adherence are often sluggish. In one case, The Commissioner had to exercise his right to address the Minister directly because the entity involved simply disagreed with the Commissioner's position and showed no interest in complying.

The Office of the Ombudsman would be betraying its mission if it allowed Institutions to persist in malpractice. Whist the Ombudsman cannot enforce penalties, he should not allow injustice to flourish, either. It is time, therefore, to find ways to ensure that those entities which refuse to rectify their position by following the Ombudsman's advice should be exposed to public opinion, in order that they may not persist in their injustice without forfeiting their reputation. Although it is already possible to name and shame such institutions, the modus operandi is very vague. The Office of the Ombudsman should indicate clearly what methods it may utilise in order to name and shame in the most efficient and telling manner whoever believes he can commit injustice with impunity, in order that the risks faced by such behaviour be well known in advance.



The Commissioner for Education, Mr Charles Caruana Carabez during a visit to MCAST (top) and University of Malta Campus (bottom).



## **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.

TABLE 2.1 - COMPLAINT INTAKE BY INSTITUTION (2015 - 2017)

Institutions	2015	2016	2017
University of Malta	41	35	22
MCAST	6	11	6
Institute of Tourism Studies	-	3	1
Education Authorities	18	10	10
Outside Jurisdiction	-	0	0
Total	65	59	39

During the year under review, the highest number of complaints (22) came from the University of Malta, the institution with the highest number of students and staff. The second highest came from other department within the education authorities.

The trend of low incidence of complaints from the Institute of Tourism Studies persists even though the Office increased its outreach efforts targeted to the institute by participating in activities such as the freshers' week.

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

	University of Malta			MCAST			Institute of Tourism Studies			Education Authorities			Total		
	2015	2016	2017	2015	2016	2017	2015	2016	2017	2015	2016	2017	2015	2016	2017
Students															
male	14	18	7	1	1	2	-	1	-	9	6	-	24	8	9
female	18	5	9	1	3	1	-	-	1	8	3	2	27	12	13
Staff															
male	5	4	1	4	4	2	-	-	-	1	-	1	10	4	4
female	2	8	5	-	3	1	-	1	-	-	1	4	2	10	10
Others	2	-	-	-	-	-	-	1	-	-	-	2	-	-	2
"Total complaints															
by students and staff "	41	35	22	6	11	6	-	3	1	18	10	9	65	34	38
Own initiative	-	-	-	-	-	-	-	-	-	-	-	1	-	-	1
cases															
outside jurisdiction	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
TOTAL	41	35	22	6	11	6	-	3	1	18	10	10	65	34	39

#### TABLE 2.2 - COMPLAINTS BY INSTITUTION CLASSIFIED BY GENDER AND STATUS OF COMPLAINT (2015 - 2017)

TABLE 2.3 - OUTCOMES OF FINALISED COMPLAINTS (2015 - 2017)

Outcomes	20	15	20	16	2017		
Resolved by informal action	10	14%	7	10%	1	4%	
Sustained	8	11%	5	7%	2	8%	
Partly sustained	3	4%	8	12%	0	0%	
Not sustained	20	29%	34	50%	15	63%	
Formal investigation not undertaken/ discontinued	22	31%	11	16%	2	8%	
Investigation declined	7	10%	3	4%	4	17%	
Total	70	100%	68	100%	24	100%	

Table 2.3 illustrates the outcome of the finalised complaints of which 63% were not sustained. 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. Eventhough 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 of why their complaint had not been upheld.

Outcomes	20	15	20	16	20	)17
Unfair marking of academic work	15	23%	7	12%	3	8%
Special needs not catered for	2	3%	-	-	4	10%
Promotion denied unfairly	5	8%	5	8%	2	5%
Post denied unfairly (filling of vacant post)	2	3%	7	12%	4	10%
Unfair/discriminatory treatment	32	49%	34	58%	24	61%
Lack of information/attention	9	14%	6	10%	1	3%
Own-initiative	-	-	-	-	1	3%
Total	65	100%	59	100%	39	100%

TABLE 2.4 - COMPLAINT GROUNDS (2015 - 2017)

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

- 5 Unfair discriminatory treatment
- 3 Unfair treatment regarding government stipends and scholarships
- 15 Unfair treatment on academic grounds
- 1 Unfair treatment on non academic grounds

24 cases

This table provides information on the type of claims dealt with by the Commissioner for Education in the year under review. The trend follows that of the previous years, with the highest incidence (24 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.



# COMMISSIONER FOR ENVIRONMENT AND PLANNING

ANNUAL REPORT 2017





The Parliamentary Ombudsman, Mr Anthony C. Mifsud appointing Perit Alan Saliba as Commissioner for Environment and Planning – 1 September 2017

# ANNUAL REPORT 2017 COMMISSIONER FOR ENVIRONMENT AND PLANNING

PERIT ALAN SALIBA (2017 - )

## INTRODUCTION

This year saw the end of the term of the first Commissioner with the present Commissioner assuming duties on the 1<sup>st</sup> of September 2017. The change in Office ran rather smoothly and the pending caseload together with the processing of new cases received proceeded without any interruption.

The number of new cases processed this year was rather high when compared to the number of cases received in 2016, 62 against 55, with cases involving planning covering 65% of the caseload.

Closing cases without the need for a Final Opinion has continued. These cases involved mainly issues related to lack of transparency or handling decisions that are evidently against law or against the same policies established by the same entity.

The results for 2017 are being summarised below:

Caseload	No. of complaints
Pending cases from previous years	24
New requests for investigation	62
Total	86

TABLE 3.1 CASE LOAD - JANUARY - DECEMBER 2017

16 of the 24 pending cases from previous years involve complaints received during the year 2016, another 4 from the year 2015 whilst the remaining 4 concern Own Initiative investigations initiated between the years 2012 and 2014. All these Own Initiative investigations were closed during the current year.

#### TABLE 3.2 CLOSED CASES - JANUARY - DECEMBER 2017

Closed cases	No. of complaints
Pending cases from previous years	24
New Cases	52
Total	76

84% of the cases received during the current year have been closed during the same year. This is quite high when considering that 21% of the new cases received were received during the last two months of the current year.

Age profile	No. of closed cases
Less than 2 months	29
Between 2 and 3 months	11
Between 3 and 4 months	9
Between 4 and 5 months	4
Between 5 and 6 months	3
Between 6 and 7 months	1
Between 7 and 8 months	-
Between 8 and 9 months	2
More than 9 months	17
Total	76

#### TABLE 3.3 AGE PROFILE OF CLOSED CASES

The 17 cases that took more than 9 months to close are all cases from previous years. These cases usually take time to close due to the lack of an immediate reply from the department or authority concerned, or even worse, due to no reply at all. Although some queries might call for significant input of resources by the department/authority concerned, an early reply will lead to a quicker investigation and early conclusion of pending cases with the added advantage of reducing time-consuming reminders. Time is of the essence, especially in cases related to health issues and the conservation of our heritage. The appointment of Liaison Officers within the department/authority concerned help to mitigate this delay.

TABLE 3.4 AGE PROFILE OF PENDING CASES

Age profile	No. of pending cases	
Less than 2 months	6	
Between 2 and 3 months	3	
6 months	1	
Total	10	

Likewise, the duration in closing pending cases can be mainly attributed to the lack of an immediate reply from the department/authority concerned. It is not acceptable that departments/authorities expect citizens to provide certain information within a number of days or that the same departments/ authorities justly commit themselves to decide within a few weeks and then the same department/authority takes months to reply to a simple legitimate query by the Commissioner.

TABLE 3.5 DEPARTMENTS/AUTHORITIES SUBJECT TO COMPLAINTS THIS YEAR

Department/Authority	No. of complaints
Planning Authority	37
Transport Malta	5
Building Regulation Office	4
Cultural Heritage	2
Regulator for Energy and Water Services	2
Lands Authority	2
Office of the Prime Minister	1
Ministry for Transport, Infrastructure and Capital Projects	1
Environment and Planning Review Tribunal	1
Environment and Resources Authority	1
Wasteserv	1
Water Services Corporation	1
Occupational Health and Safety Authority	1
Enemalta	1
Local Council	1
Outside Jurisdiction	1
Total	62

This list shows the main departments or authorities concerned, as complaints are sometimes addressed against two or more entities. The built environment and planning takes much of the caseload, with 60% of the complaints received this year being addressed against the Planning Authority. This in itself does not signify any maladministration by the authority concerned, but rather shows that citizens are more concerned with the immediate neighbouring built environment rather than the environment on a national level that is usually brought up by NGOs or in Own Initiative cases.

TABLE 3.6	NEW CASELUAD BY NATURE OF COMPLAINT	

Nature of complaint	No. of complaints		
Undue delay or failure to act	16	26%	
Contrary to law or rigid application of rules	23	37%	
Improper discrimination	3	5%	
Lack of fairness or balance	13	21%	
Failure to provide information	4	6%	
Lack of transparency	1	2%	
Improvement in quality of life	2	3%	
Total	62	100%	

'Undue delay or failure to act' and 'Contrary to law or rigid application of rules' remain the most popular cases covering 63% of the total caseload this year compared to 69% last year. Rather than the interpretation of a law or regulation, some cases involved complaints where the department/authority departed completely from the same law or regulation. In this regard the Commissioner has in some cases immediately flagged the irregularity encountered in order to limit the destruction of our cultural heritage or any eventual claim for damages. This however, did not always have the desired results. The need for transparency and adequate provision of information remains a crucial requirement if the accountability of every department/authority is not to be jeopardized.

Outcome	No. of com	No. of complaints		
Resolved before final opinion	13	17%		
Resolved by informal action	2	3%		
Formal investigation not undertaken	31	41%		
Investigation declined	3	4%		
Sustained	19	24%		
Not sustained	8	11%		

The positive trend of resolving complaints without the need for a final opinion continued with 17% of the cases being closed accordingly. Out of the 31 cases where a formal investigation was not undertaken, 20 cases involved other proceedings in hand (such as an appeal in front of a tribunal) whilst for the other 11 cases an explanation/advice was given. Out of the 3 declined cases, one was time-barred. The 19 sustained cases include 10 opinions where the recommendation was accepted, 1 opinion that did not involve any recommendation and 6 opinions that are still awaiting a reply from the department/authority concerned. The recommendation in only 2 sustained opinions was declined by the Planning Authority on the basis that the law or regulations preclude the same authority from complying with the same opinion.

#### **OWN INITIATIVE INVESTIGATIONS**

During the current year three Own Initiative investigations were opened. These related to issues on the implementation of cycling routes along public promenades tackled with Transport Malta, works in tourist areas during the summer months with the Building Regulation Office and failure to take note of a previous Audit Officer report during the processing of an application by the Planning Authority. Two of these Own Initiative investigations have been closed during the current year.

#### **COLLABORATION WITH NGOs**

Regular meetings have been held with the Noise Abatement Society of Malta (NASoM) regarding issues related to noise pollution and the need for further noise abatement regulations. Other matters such as development control and traffic issues related to cyclists were also discussed during meetings held with Flimkien għal Ambjent Aħjar (FAA) and the Bicycle Advocacy Group Malta (BAG Malta) respectively. Meetings with other stakeholders such as the Malta Developers Association (MDA) and other entities that have a direct influence on the environment are in the pipeline.

### CONCLUSION

Full access to information and the need for decisions to be motivated according to law and regulations are the two factors paramount for successful and accountable governance and this both by the officers of the department/ authority concerned and also by the members of the boards. When it comes to accountability, there is no justifiable reason why information and reasons for decisions taken are withheld, especially when the officers and members withholding such information are paid from public funds and when the same information is paramount for the effective and healthy management of our environment.





ANNUAL REPORT 2017





The Parliamentary Ombudsman, Mr Anthony C. Mifsud appointing Mr Charles Messina for his second term as Commissioner for Health

# ANNUAL REPORT 2017 COMMISSIONER FOR HEALTH

CHARLES MESSINA (2012-2017) (2017- )

## INTRODUCTION

The year in review was the last year of the first term of the Commissioner for Health. On the 1st of September 2017, the Commissioner for Health was reconfirmed by the House of Representatives for his second term.

During 2017, the number of complaints received by the Commissioner stood at the same level of the previous year. As shown in table 4.0, the Commissioner for Health received 83 complaints. The Commissioner received more complaints from staff working in the public health sector (45) than from the general public (38).

The Commissioner for Health foresees that during the coming year (2018), the number of complaints from staff working in the public health sector, might decrease due to the Grievances Board that has now been set up permanently within the Office of the Prime Minister.

Once again, as in previous Annual Reports, the Commissioner for Health would like to express his disappointment on the approach of the Ministry for Health towards his Office. Rather often than not, recommendations take far too long to be implemented, if ever implemented, and replies to the first request for comments take ages, in fact 45% of the cases received during 2017, were still pending by the end of the year mainly due to the same reason.

It appears that the Liaison Officer, notwithstanding his efforts, is not succeeding in getting the necessary feedback and urgent comments from the officers concerned, especially when it comes to those who are superior to his grade.

# PERFORMANCE REVIEW

TABLE 4.0 COMPLAINTS RECEIVED – JANUARY TILL DECEMBER 2017

Complaints Received	2016	2017
From the public	45	38
From employees within the Health Sector	37	45
Total	82	83

TABLE 4.1 COMPLAINTS RECEIVED JAN – DEC 2017

Against	No. of complaints
Ministry for Health	70
Ministry for the Family, Children's Rights and Social Solidarity	7
Public Service Commission	5
Private Pharmacy	1
Total	83

Table 4.1 shows that from 83 complaints received, 70 were against the Ministry for Health, 7 against the Ministry for the Family, Children's Rights and Social Solidarity, 5 against the Public Service Commission and 1 against a private pharmacy.

TABLE 4.2 OUTCOME OF CASES RECEIVED IN THE YEAR 2017 JAN – DEC 2017

Outcome	No. of complaints
Sustained	20
Partly sustained	1
Not sustained	16
Resolved by informal action	3
Advised	1
Withdrawn	3
No jurisdiction	2
Pending	37
Total	83

Table 4.2 illustrates the outcome of the complaints received. In 2017, from the 83 complaints received, 21 cases were either sustained or partly sustained and 16 cases were not sustained. As highlighted in the introduction of this report, 45% of the cases are still pending, mainly due to lack of reply from the Department of Health. As shown in Table 4.3, by the end of the year under review, of the 37 cases, 10 were pending for over 6 months.

TABLE 4.3 AGE PROFILE OF PENDING COMPLAINTS JAN TO DEC 2017

Age	Pending cases	
Less than 2 months	7	
Between 2 and 3 months	7	
Between 4 and 5 months	13	
Between 6 and 7 months	3	
Between 8 and 9 months	2	
Over 9 months	5	
Total	37	

# TABLE 4.4 PENDING BY MINISTRY JAN – DEC 2017

Department/Ministry	No. of complaints.
Ministry for Health	34
Ministry for the Family, Children's Rights and Social Solidarity	2
Public Service Commission	1
Total	37

As shown in Table 4.4, the Ministry for Health tops the list of pending feedback by 34 (92%) cases which are pending some sort of reply or feedback. This is expected as the Commissioner's remit focuses on health related cases.

TABLE 4.5 CATEGORIES OF COMPLAINTS FROM THE GENERAL PUBLIC JAN – DEC 2017

Nature of complaint	No. of complaints
Not given required treatment/medicines	9
Request to be refunded expenses incurred abroad for treatment	3
Request for compensation for failed surgery	3
Unfair decision by CPSU	2
Discharge of patient from Mount Carmel Hospital	2
Not given yellow card for free medicines	1
Bad condition of dialysis machines	1
Lack of reply from Medical Council	1
Not given reports on medical condition	1
Refused disability pension	1

Nature of complaint	No. of complaints
Unavailability of elastic stockings	1
Request for a profession to be registered by the appropriate Council	1
Report against private pharmacist	1
Request for refund of cost of medicines which patient had to buy	1
Refusal to be registered by Medical Council	1
Request to install CCTV in old people's Home	1
Request to be considered for better old age pension rights	1
Unfair deduction from pension	1
Objection for medical information to be released to Insurance for compensation	1
Request for a central location to distribute oxygen cylinders	1
Alleged unfair treatment	1
Not given explanation following fall of elderly patient in hospital	1
Delay to be given out-patient appointment	1
Request to be given work permit	1
Total	38

Table 4.5 illustrates the nature of complaints lodged by the general public with the most common grievances, as in previous years, related to the right of free medicines.

TABLE 4.6 CATEGORIES OF COMPLAINTS FROM EMPLOYEES OF THE PUBLIC HEALTH SECTOR JAN - DEC 2017 - STAFF

Nature of complaint	No. of complaints
Alleged injustice at place of work	11
Refused proper salary scale	6
Unfair Selection Board decisions	5
Not given due allowance	2
Not re-employed post retirement age	2
Alleged discriminatory transfer	2
Alleged unfairly deducted vacation leave entitlement	2
Request to be given work according to qualifications	1
Request to be given appointment in view of present work responsibilities	1

Nature of complaint	No. of complaints
Not given decision by Grievances Board	1
Improper decision by Grievances Board	1
Grievances Board decision not implemented	1
Request for refund of allowance	1
Delay to be given approved Appointment	1
Improper behaviour by colleague	1
Allegedly given wrong information prior to sitting for examination	1
Refusal to be given unpaid leave	1
Request for standardisation of hypothecation limits	1
Alleged harassment at place of work	1
Alleged unfair suspension from work	1
Request to be given compensation for injury at work	1
Request to be given back-dated appointment	1
Total	45

Similarly to the complaints lodged by the general public, the categories of the complaints received from the health sector employees are diverse in nature, totalling to 22 different types of complaints. As shown in Table 4.6 the most complaints by employees working in the Public Health sector relate to alleged injustices on the place of work.

TABLE 4.7 TOTAL NUMBER OF PENDING COMPLAINTS (INCLUDING FROM PREVIOUS YEARS)

Department / Ministry / Sector	No. of complaints
Ministry for Health	55
Ministry for Family, Children's Rights and Social Solidarity	2
Office of the Prime Minister	2
Ministry for European Affairs and Equality	1
Public Service Commission	1
Total	61

As shown in Table 4.7, at the end of the year under review, the Commissioner for Health had 61 pending cases of which 90% were against the Ministry for Health, of which 24 cases were carried forward from the previous years.

#### TABLE 4.8 CASES PENDING FROM PREVIOUS YEARS

Deparment / Ministry	No. of complaints
2013	
Ministry for Health	1
2014	
Ministry for Health	2
2015	
Ministry for Health	3
2016	
Ministry for Health	17
Ministry for European Affairs and Equality	1
Total	24

# **RECOMMENDATIONS NOT YET IMPLEMENTED**

During his first term, the Commissioner for Health investigated various health related issues which resulted into recommendations to the public administration. Unfortunately, notwithstanding the continuous follow ups and reminders from the Commissioner's part, these are not yet implemented.

The issues investigated were:

- a. Inclusion of a cancer drug in the Government Formulary List;
- b. Hearing screening for Neonates<sup>1</sup>;
- c. Amendment to Protocols which cause discrimination between patients e.g. (but not only) Analogue Insulin not given to Type 2 diabetic patients;
- d. Supply Hepatitis C sufferers with required medicines<sup>2</sup>; and
- e. Refund of expenses incurred by patients for purchase of medicines to which they were entitled in terms of the Social Security Act.

In the case of the hearing screening for neonates, in 2014 the Commissioner for Health had conducted an own initiative investigation regarding problems faced by children and adults with hearing problems. The investigation was concluded and the recommendations were submitted to the Ministry for Health in 2015 with the main recommendation being that neonates should be screened for hearing problems so that, potential sufferers, will be treated as early in life as possible thus getting a much better chance for them to cope with their problem.

Since tender for the purchase of the machines was issued in April 2018, the Commissioner will follow-up the case till the machines are commissioned to Mater Dei Hospital.

<sup>1</sup> Tender issued in April 2018.

<sup>2</sup> Regular supplies available as from April, 2018.

## PRELIMINARY INVESTIGATIONS

During 2017, the Commissioner for Health also initiated preliminary investigations on the following issues:

- a. Treatment for IVF;
- b. Regulations regarding restaurant street tables;
- c. Medicines for Rare Diseases;
- d. Treatment of Patients Abroad;
- e. Regulations regarding manure clamps;
- f. Inclusion in hospital formulary of medicine Stalevo; and
- g. New case out-patient waiting lists at Mater Dei Hospital.

Preliminary investigations are conducted in order to establish if the issue merits to be investigated further as an own initiative investigation.

# FOLLOW UP ON COMMENTS MADE IN THE ANNUAL REPORT FOR 2016

In the 2016 Annual Report, the Commissioner mentioned that he had done the following preliminary investigations:

- Treatment for Macular Degeneration; and
- Privatisation of Health Services

To date the Commissioner, did not receive any feedback from the Ministry for Health regarding treatment for Macular Degeneration whilst he is still hoping that he will, some day, receive the full text concerning the Privatisation of Health Services, more so now that the private administrators of the Gozo General Hospital, Karen Grech and Saint Luke's have changed again. The full text of the contracts was given, by the Ministry for Health, to the Auditor General, however, in breach of the Ombudsman Act, not to the Ombudsman.

# ENTITLEMENT TO THE SUPPLY OF MEDICINALS UNDER THE SOCIAL SECURITY ACT

In last year's Annual Report, the Commissioner also commented on the supply of free Analogue Insulin. Another year has passed and the Commissioner is still in the dark, if and when, these medicinals will be made available to patients who are entitled to them free of charge in terms of the Social Security Act.

Even though, in this case, the Commissioner had concluded that the lack of supply of these medicines constitutes to a breach of the law, patients are still waiting for what they are entitled to.

#### FIRST TERM IN OFFICE

On 31 July 2017 the Commissioner for Health completed his first term of five years in Office. Table 4.9 illustrated the breakdown of cases received per year during his term in Office.

## TABLE 4.9 COMPLAINTS RECEIVED FORM 1 AUGUST 2012 TO 31 JULY 2017

2012	32 (1 August onwards)
2013	63
2014	77
2015	76
2016	82
2017	45 (up to 31 July)
Total	375

From the 375 cases received in 5 years **54%** were from the public and **46%** from employees working in the public health sector.

TABLE 4.10 OUTCOME OF THE CASES INVESTIGATED DURING THE FIRST TERM AUGUST 2012 – JULY 2017

	Total	2012	2013	2014	2015	2016	2017
Upheld	143	10	22	36	37	30	8
Not Upheld	114	15	28	27	25	16	3
Partly Upheld	05	1	1	1	-	2	-
Advised	22	3	5	7	3	1	3
Withdrawn	15	1	3	5	4	1	1
No action taken	2	2	-	-	-	-	-
Informal action	8	-	3	-	1	3	1
Could not be investigated	5	-	1	1	3	-	-
Pending	59	-	-	-	3	27	29
Investigation discontinued	1	-	-	-	-	1	-
Referred to Commissioner for Mental Health	1	-	-	-	-	1	-
Total	375	32	63	77	76	2	45

Table 4.10 shows the outcome of the complaints investigated. From the 375 cases investigated by the Commissioner 45% were either sustained, partly sustained or an advice was given. 30% of the cases were not sustained and therefore the complainants' request for a remedy was not justified.

# PRELIMINARY INVESTIGATIONS DURING THE FIRST TERM IN OFFICE

During his first term in Office, the Commissioner for Health initiated 44 preliminary investigations. Following the preliminary investigation, the Commissioner, then proceeded with an Own Initiative Investigation on six of them namely:

- Patients awaiting surgery for limb fractures;
- Screening of neonates for hearing problems;
- Waiting time at the Accident and Emergency Department at Mater Dei Hospital;
- Out of Stock Medicines;
- Depositing of sewage slurry on agricultural land; and
- Waiting lists at the Child Development Assessment Unit (CDAU) and Child Guidance Clinic (CGC).

Another five preliminary investigations worth mentioning are:

- Organ Transplantation;
- Provision of medicines for Hepatitis C patients;
- Delay to provide certain medicines for Multiple Sclerosis patients;
- Provision of Analogue Insulin and Glucose Testing strips for Type 2 diabetic patients; and
- Privatisation of hospitals.

As regards the first three preliminary investigations, the Commissioner reports that he is satisfied with the positive results on the matter.

# THE COMMISSIONER'S RECOMMENDATIONS

During his first term in Office, the Commissioner for Health found most preoccupying that the Ombudsman's Office does not have the authority to see that its recommendations (decisions) are implemented. The Ombudsman can only make recommendations, and it is then up to the Department concerned to decide whether to abide by the recommendations (decisions), refuse the recommendation or leave the status quo.

As an example, the Commissioner for Health, had two issues where; although the Ministry for Health knew that it was in the wrong and was in breach of the law, it persisted to do nothing because of lack of funds.

Both issues concern a number of patients. One case concerned the supply of Analogue Insulin to Type 2 diabetic patients that has been pending since July 2013 and another case concerning the treatment to patients who suffer from Hepatitis C which has been pending since December 2012<sup>3</sup>.

The other matter was about a recommendation made following an Own Initiative Investigation through which it was recommended to start a Hearing Screening Programme that concerns Neonates. Such a screening programme would considerably improve the quality of life to babies who are found to have a hearing problem. Such babies would tomorrow be part of the future generation<sup>4</sup>.

<sup>3</sup> Implemented in April 2018.

<sup>4</sup> Tender now in progress.

# **MEDICINES PROTOCOLS**

The Ministry for Health, rightly so, has a policy of putting in place protocols which guide clinicians on the availability of medicinals in the Government Formulary List.

Unfortunately, a number of these protocols, which to date total about 304, discriminate between one disease and another. For example, a medicine which is prescribed for disease A is not given to a patient who suffers from disease B. The Social Security Act is very clear on this.

The only condition, apart from entitlement, which the law imposes is availability. This means, that if a certain medicine is listed in the Government Formulary List, the patient is entitled to it without any distinction from which disease a patient suffers.

The Office of the Ombudsman has, *ad nauseam*, recommended to the Ministry for Health to make the necessary amendments to the Protocols, yet to no avail.

# THE GRIEVANCES UNIT

The Commissioner for Health notes, that the Grievances Board set up by the Office of the Prime Minister were given executive powers which are only enjoyed by few, if any, other administrative boards.

Also, on the issue of time limits, which are imposed on Head of Department as mentioned in the OPM Circular No 24/2017, to provide the necessary information to the Grievances Board within an established timeframe, should be adopted to this Office too. The time limit for the department to provide information to the Grievance Board was set to three days. This Office is reluctant to impose such tight deadlines, however it is unacceptable that information requests or follow up on the recommendations take ages to be dealt with.

Time limits are not imposed by law. The provision of information is. The Commissioner urges the administration to do the right thing and reply promptly to requests and to implement the recommendations made by this Office. Recommendations are meant to improve the administrative process of government and should not be seen as a hindrance or inconvenience.

The matter of delay to receive replies from the Ministry for Health and the delay to implement recommendations was also referred to in the Ombudsplan for 2018 wherein the Ombudsman stated that it was not acceptable for him to wait for months to get a reply from a government department and that. The implementation of the recommendation, if and when this takes place, is of lengthy proceedure and this at the detriment of the complaints.

The Ombudsman Act, obliges the Executive to provide information to the Ombudsman and the Commissioners. It should not be considered as a mere courtesy. Once the Executive had decided to supercharge the provision of information to the Grievances Unit, it should apply this equally to the Office of the Ombudsman which is a constitutionally established body.

Other powers which were given to the Grievance Board, which are not available to the Office of the Ombudsman, concern the Public Service Commission (PSC).

#### **PRIVATISATION OF HOSPITALS**

As stated in the Annual Report for 2016, the Commissioner for Health had started a preliminary investigation regarding the privatisation of St. Luke's Hospital, Karin Grech Rehabilitation Hospital and the Gozo General Hospital.

In this respect the Commissioner asked the Ministry for Health to provide him with copies of the Agreements but the Ministry only sent redacted copies which were the same ones that it had tabled in Parliament even though the Ministry had given the full texts to the Auditor General.

Since the full texts were not even given to Parliament, this matter was not pursued. This was referred to by the Ombudsman in the Ombudsplan for 2018 wherein it was stated

"mhux sewwa li tiġi rifjutata talba għall-informazzjoni sensittiva iżda tingħata lill-Awditur Ġenerali biss. L-amministrazzjoni m'għandha l-ebda diskrezzjoni f'dan ir-rigward u mhux sewwa li l-Ombudsman u l-Kummissarji jitpoġġew f'sitwazzjoni li jkollhom jagħmlu użu mill-poteri straordinarji li għandhom biex jakkwistaw informazzjoni li bil-liġi huma intitolati għaliha."

The full text was requested because page 2(a) of the Labour Supply Agreement states that the Vitals Global Healthcare (VGH) was responsible for the "*redevelopment, maintenance, management and operation of the sites....*". Now that VGH has passed on the Concession to another company, Steward Healthcare, this Office is more than ever keen to examine the full texts which Steward Healthcare is now bound to honour.

By asking for the full agreement, the Commissioner wanted to address a matter of public interest.

#### CONCLUSION

As reported in the Ombudsplan for the year 2018, the Ombudsman criticised the Ministry for Health for its:

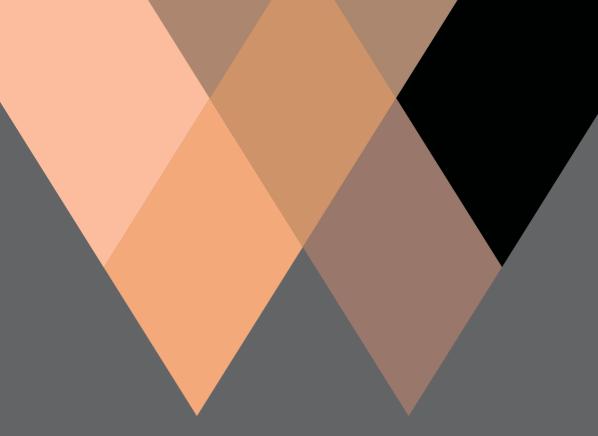
- a. delay to give replies even to the first request for comments; and
- b. reluctance to implement recommendations even when there is breach of law.

The Ministry for Health should not expect this Office to resort to the Judiciary to obtain information that the Ministry is legally bound to give. The prudence which this Office exercises should not be interpreted as reluctance to pursue the powers which the law affords to it.

It is within the remit of the Executive to show respect to the Ombudsman and to the Commissioners by following the recommendations made.

It is also incumbent that any request which this Office deems necessary to secure, will be given prompt attention so that the true finding of the circumstances which gave rise to the complaint are elicited and there will be fair resolution without any undue delay.



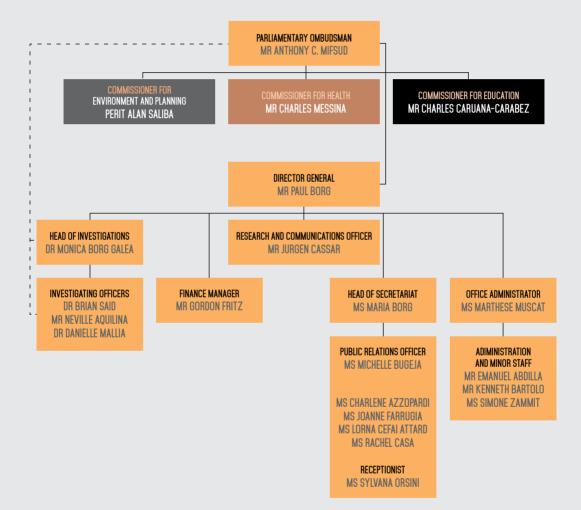


# **APPENDICES**

ANNUAL REPORT BY THE PARLIAMENTARY OMBUDSMAN



# APPENDIX A STAFF ORGANISATION CHART OFFICE OF THE PARLIAMENTARY OMBUDSMAN ORGANIGRAM



# APPENDIX B REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2017

# 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.

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Paul Borg Director General

Gordon Fitz Finance Manager



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# **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 2017, 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 2017, 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 29 March 2018

# Statement of Comprehensive Income

	2	2017	2016
Income	Schedule €	:	€
Government grant Non-operating income (note 3)		0,000 94	1,025,000 4,152
Expenditure	1,200	0,094	1,029,152
Personal Emoluments (note 4) Administrative and other expenses	•	,156) ,782) (,938)	(824,676) (266,779) (1,091,455)
Total Comprehensive Surplus / (Deficit) for the year	72	2,156	(62,303)

# **Statement of Financial Position**

		2017	2016
	Notes	€	€
Assets			
Non-current assets			
Property, Plant and Equipment	5	<u>793,524</u>	863,805
Current assets			
Receivables	6	17,801	15,010
Cash and cash equivalents	7	<u>195,410</u> 213,211	<u>89,108</u> 104,118
Total assets		1,006,735	967,923
Equity and Liabilities			
Accumulated surplus		1,001,425	929,269
Payables	8	5,310	38,654
Total Equity and Liabilities		1,006,735	967,923

The financial statements on pages 5 to 16 were approved by the Office of the Ombudsman on 29th January 2018 and were signed on its behalf by:

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Paul Borg Director General

Gordon Fitz Finance Officer

# Statement of Changes in Equity

		Accumulated Fund Total €
At 1 January 2016		991,572
Statement of Comprehensive inc	come	
Loss for the year		(62,303)
At 31 December 2016		929,269
Statement of Comprehensive inc	come	70.450
Surplus for the year	(page 6)	72,156
At 31 December 2017		1,001,425

# Statement of Cash flows

	Notes	2017 €	2016 €
Cash flows from Operating activities			
Surplus / (Deficit) for the year Depreciation Loss on disposal of tangible fixed assets Non-operating income		72,156 101,604 92 (94)	(62,303) 96,650 163 (152)
Operating surplus before working capital changes		173,758	34,358
(Increase) in receivables Increase / (Decrease) in payables Net cash generated from operating activities		(2,791) (33,344) 137,623	(18) (126,148) (91,808)
Cash flows from Investing activities			
Payments to acquire tangible fixed assets Non-operating income Net cash used in investing activities		(31,415) <u>94</u> (31,321)	(43,308) <u>152</u> (43,156)
Net increase/(decrease) in cash and cash equivalents Cash and cash equivalents at beginning of year Cash and cash equivalents at end of year	7	106,302 89,108 195,410	(134,964) 224,072 89,108

#### 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 2nd March 2018.

#### 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  $\notin$ , which is the Council's functional and presentation currency.

Transactions denominated in foreign currencies are translated into  $\in$  at the rates of exchange in operation on the dates of transactions. Monetary assets and liabilities expressed in foreign currencies are translated into  $\in$  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 - P (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	2017 €	2016 €
	Bank interest receivable	91	152
	Grant	-	4,000
	Other	3	-
		94	4,152

#### 4i Personal Emoluments

Wages and salaries	857,924	793,128
Social security costs	33,232	31,547
	891,156	824,676

ii	Average No. of Employees	25	26

to the financ	Notes to the financial statements (continued)	continued)						
5i. Property, Plant and Equipment	Equipment					Furniture		
	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	and fittings	Aircondition.	Total
	£	£	ŧ	£	Ŷ	ŧ	£	÷
At 1 January 2016	868,972	30,888	28,614	45,087	52,259	111,101	104,131	1,241,052
Additions	28,771	5,253	2,811	209		6,264		43,308
Disposals	'	(7,155)	(3,476)	(360)	'	ı	'	(10,991)
At 31 December 2016	897,743	28,986	27,949	44,936	52,259	117,365	104,131	1,273,369
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)	I	ı	'	(10,828)
At 31 December 2016	167,752	18,671	24,022	41,379	46,495	64,004	47,241	409,564
<b>Net book value</b> At 31 December 2016	729,991	10,315	3,927	3,557	5,764	53,361	56,890	863,805

Sit Property, Plant and EquipmentSit. Property, Plant and EquipmentCriftiesCriftiesCriftiesCriftiesCriftiesCriftingsCr	Notes to the financial statements (continued)	icial statements	(continued)						
to property         Equipment         equipment         software         vehicles         fittings         Aircor	ii. Property, Plant a	nd Equipment Improvements	Office	Computer	Computer	Motor	Furniture and		
		to property €	Equipment €	equipment €	software €	vehicles €	fittings €	Aircondition. €	Total €
$ \begin{array}{c ccccccccccccccccccccccccccccccccccc$	Cost	J	,	,	,	,	)	)	,
	1 January 2017	897,743	28,986	27,949	44,936	52,259	117,365	104,131	1,273,369
(2.542)         (129)         (2.329)         (16,352)         (671)           11         895.243         32,426         29,452         42.607         60,457         (671)           1167,752         18,671         29,452         41,379         46,495         64,004           167,752         18,671         24,022         41,379         46,495         64,004           1         59,683         4,520         2,375         3,348         7,792         7,757           als         -         (2,542)         (129)         (2,329)         (16,352)         (579)           017         227,435         20,649         26,268         42,398         37,935         71,182           017         227,435         20,649         26,268         42,398         37,935         71,182	ditions	(2,500)	5,982	1,632	ı	24,550	1,751	ı	31,415
117 $895,243$ $32,426$ $29,452$ $42,607$ $60,457$ $118,445$ $118,445$ $118,445$ $118,445$ $118,445$ $118,671$ $24,022$ $41,379$ $46,495$ $64,004$ $7,757$ $7,752$ $7,1,182$ $7,1,182$ $7,1,182$ $7,1,182$ $7,1,182$ $7,1,182$ $7,1,182$ $7,1,182$ $7,1,263$ $7,263$ $4,7,263$ $7,263$ $7,263$ $7,263$ $7,263$ $7,2,222$ $7,2,222$ $7,2,222$ $7,2,222$ $7,2,222$ $7,2,222$	sposals		(2,542)	(129)	(2,329)	(16,352)	(671)	•	(22.023)
167,752         18,671         24,022         41,379         46,495         64,004           r         59,683         4,520         2,375         3,348         7,792         7,757           als         -         (2,542)         (129)         (2,329)         (16,352)         (579)           017         227,435         20,649         26,268         42,398         37,935         71,182           017         227,435         20,649         26,268         42,398         37,935         71,182           017         667,808         11,777         3,184         209         22,522         47,263	31 December 2017		32,426	29,452	42,607	60,457	118,445	104,131	1,282,761
167,752 $18,671$ $24,022$ $41,379$ $46,495$ $64,004$ r $59,683$ $4,520$ $2,375$ $3,348$ $7,792$ $7,757$ als         - $(2,542)$ $(129)$ $(2,329)$ $(16,352)$ $(579)$ $017$ $227,435$ $20,649$ $26,268$ $42,398$ $37,935$ $71,182$ $017$ $227,435$ $20,649$ $26,268$ $42,398$ $37,935$ $71,182$ $017$ $667,808$ $11,777$ $3,184$ $209$ $22,522$ $47,263$	preciation								
59,683 $4,520$ $2,375$ $3,348$ $7,792$ $7,757$ $11$ $ (2,542)$ $(129)$ $(2,329)$ $(16,352)$ $(579)$ $17$ $227,435$ $20,649$ $26,268$ $42,398$ $37,935$ $71,182$ $17$ $667,808$ $11,777$ $3,184$ $209$ $22,522$ $47,263$	1 January 2017	167,752	18,671	24,022	41,379	46,495	64,004	47,241	409,564
-         (2,542)         (129)         (2,329)         (16,352)         (579) $227,435$ $20,649$ $26,268$ $42,398$ $37,935$ $71,182$ $667,808$ $11,777$ $3,184$ $209$ $22,522$ $47,263$	arge for the year	59,683	4,520	2,375	3,348	7,792	7,757	16,129	101,604
227,435     20,649     26,268     42,398     37,935     71,182       667,808     11,777     3,184     209     22,522     47,263	lease on disposals		(2,542)	(129)	(2,329)	(16,352)	(579)	·	(21,931)
667,808 11,777 3,184 209 22,522 47,263	31 December 2017		20,649	26,268	42,398	37,935	71,182	63,370	489,237
	<b>let book value</b> 31 December 2017	667,808	11,777	3,184	209	22,522	47,263	40,761	793,524

# Notes to the financial statements (continued)

Receivables	2017 €	2016 €
Bank Interest receivable	13	24
Stocks (stationery)	13,341	12,241
Prepayments	4,447	2,745
	17,801	15,010

#### 7 Cash and Cash Equivalents

6

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:

	2017 €	2016 €
Cash at bank	194,692	88,282
Cash in hand	718	826
	195,410	89,108
Payables	2017 €	2016 €
Trade payables	688	37,131
Accruals	4,622	1,523
	5,310	38,654

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables.

#### 9 Fair values

8

At 31 December 2017 the fair values of assets and liabilities were not materially different from their carrying amounts.

# Schedule

# Administrative and other expenses

	2017	2016
	€	€
	10 500	40.400
Utilities	16,566	18,166
Materials and supplies	7,629	10,085
Repair and upkeep expenses	6,616	5,424
Rent	8,016	8,016
International membership	1,893	1,960
Office services	6,799	9,018
Transport costs	11,012	13,404
Traveling costs	15,984	14,086
Information Services	7,454	10,404
Outreach	3,995	5,632
Contractual Services	45,114	41,339
Professional Services	1,852	14,587
Training expenses	763	170
Hospitality	1,032	1,982
Bank charges	361	381
AOM Conference	-	15,252
Depreciation	101,604	96,650
Disposals	92	163
	236,782	266,779