



**Parliamentary Ombudsman
for Administrative Investigations**

MALTA



Annual Report 2014

**For the period
January – December 2014**

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





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The Honourable Dr A Farrugia
Speaker
House of Representatives
Parliament of Malta
Republic Street
Valletta

Mr Speaker

In terms of Section 29 of the Ombudsman Act 1995, I am hereby submitting my Annual Report concerning the performance of my Office for the period January to December 2014.

The report includes an oversight of the activities of my Office 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


J Said Pullicino
Ombudsman

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A year of consolidation

It has been recorded in the Parliamentary Ombudsman's Annual Report for **2013** that that year was a year of change, challenges and opportunities. It was a year during which plans on the way forward to improve the services that the Office of the Ombudsman could provide to citizens charted in 2012, started to be implemented and brought to fruition on the lines of the radical reforms recommended in the *PricewaterhouseCoopers* report.

Benefits of radical reforms

On the other hand, **2014** was a year of consolidation, during which the Office started to reap the benefits of those reforms. With the appointment in January of the last Commissioner having jurisdiction over education, all the various institutional, investigative, administrative and secretarial initiatives were put in place. During the year it was immediately clear that the measures taken not only greatly bettered the organisational structure of the Office but they also enabled it to provide citizens with an improved investigative service that had the added value of final opinions by specialised commissioners who were undoubtedly more authoritative and focussed on the complaints falling within their remit.

2014 was a year of consolidation, during which the Office started to reap the benefits of the reforms that started in 2013

These Commissioners, while operating in an integrated administrative and investigative set-up, are completely autonomous and independent in the exercise of their functions. The Ombudsman only has a power of review in exceptional cases provided for in the Ombudsman Act, as amended. The Commissioners, like the Ombudsman are able to draw on the invaluable advice of the Administrative Consultant, a dedicated official with years of experience in the procedures of public administration and ombudsman-ship.

Reorganised Investigative Team

The Ombudsman and Commissioners are now supported by a reorganised investigative team that has been restructured under the overall supervision of a Head of Investigations. While every investigating officer continues to handle complaints assigned to him/her by the Ombudsman, with professional autonomy, there has been an effort to try to coordinate and streamline the process to attain greater efficiency in the handling of cases.

The Office is fully aware that in matters of redress of injustice, speed in the investigation of complaints is of the essence. It is recognised that this is an area that must be kept constantly under scrutiny and undue delay needs to be addressed. For a number of reasons, it is not always possible to respect self-imposed time limits. It is not only the increase in the number of complaints but also the complexity of their subject matter that require more time to conclude investigations. As a result, there is a real risk of a backlog being created. Systems must be put in place to ensure that there is a proper, regular, periodical trail of complaints being investigated to ascertain that they are being disposed of within the shortest possible timeframe. In this respect more work has to be done in the coming year. The Commissioners like the Ombudsman, when necessary utilise the services of the same team of investigating officers. They too must be conscious of the need to increase efforts to conclude investigations as speedily as possible while ensuring that complaints are thoroughly scrutinised in full respect of the rules governing due process so far as applicable.

The reform of the administrative structures of the Office has allowed for the introduction of a positive element of middle management that was previously completely lacking.

Reorganised secretariat

All sections of the office are ably supported by a reorganised secretariat that mainly concentrates on duties connected with the administrative work involved in the investigation of complaints. While the hallmark of the secretariat is flexibility, with secretaries, administrative and clerical officers adapting themselves to perform whatever is required from them by the various departments, experience has shown that it is very useful to detail a secretary to carry out the duties of personal assistant with each of the Commissioners to help him in his work on complaints he is investigating. These work practices together with the constant consultation between the Ombudsman and the Commissioners, are proving to be invaluable to promote the synergy required to foster the team work necessary to provide a unified, comprehensive and efficient ombudsman service.

Reform of administrative structures

During the year, the appointment of a loyal, trustworthy and competent Director General who could concentrate exclusively on management duties, resulted in the introduction of organisational systems meant to improve efficiency and discipline in the operations of the various departments. All the administrative management aspects of the Office are being delegated to the Director General by the Ombudsman. Meetings are held regularly between the Ombudsman, the Commissioners, the Director General and senior staff to assess progress and plan ahead.

The reform of the administrative structures of the Office has allowed for the introduction of a positive element of middle management that was previously completely lacking. The appointment of an Office Administrator, who responds directly to the Director General, has led to a better management of human resources. Minor staff are now better organised; their duties better shared and supervised. Measures have been taken to tighten financial expenditure and accountability even at that level and this is already resulting in considerable cost saving. The Office Administrator also acts as personal assistant to the Ombudsman and when necessary, performs the function of link person between him and the various sections of the Office.

An area that required attention has been the provision of transport facilities to provide an efficient service to the Ombudsman, Commissioners and the Office. To contain the daily expenditure, time tables and work schedules are carefully planned, while a regular audit of mileage, fuel consumption and costs has been put in place.

On the other hand, as a result of this development, the Finance Manager, who was previously responsible for these aspects of the administration, is now able to concentrate on managing the finances of the Office under the supervision of the Director General. During this year, as in the previous one, the Finance Manager continued to oversee the extensive structural works that are being carried out in the offices of the Ombudsman. A major project that requires dedication, hard work and tact to coordinate the various trades, liaise with architects and contractors while at the same time, ensuring that operations do not unduly interfere with the service that the Office continues to provide to citizens. Care must be taken to ensure that the cost of the project, that should be fully completed next year, is kept within the projected budget and that overruns are kept to a minimum.

The major operational reform in all the departments of the Office put in place during this year shows that the measures taken have been carefully planned to provide an Ombudsman service that is efficient, all embracing and simple to operate.

Finally two vital links in the chain of services offered by the Office are the public relations office at the front desk and the reception desk. The front desk is the first point of contact of aggrieved persons seeking redress. The reception desk provides correct information to those seeking to utilise the services of the Office. It channels and connects customers to the right department within the office and beyond. Even in these two sections flexibility is the key word.

The front desk, that is now manned by an administrative supervisor that is a key figure in the secretariat, has been relieved from the duties of public relations officer that have been essentially transferred to the research and communications officer. While continuing to perform supervisory secretarial duties, the administrative supervisor is tasked with receiving

complaints from those who opt to lodge them personally rather than online. These persons often require advice on whether they could file a complaint, whether the Ombudsman has jurisdiction over its subject matter and what procedures they have to follow. Steps are being taken to ensure that the reception desk is manned at all times by part time qualified staff who, as required, also perform clerical duties.

Outreach Programmes

One of the major deficiencies, identified by *PricewaterhouseCoopers* in their report on the performance of the Office, was undoubtedly the lack of an effective and continuing outreach programme meant to make the general public more aware of the services the Ombudsman could offer. This was indeed one of the reasons why that report had recommended that the post of Manager Corporate Affairs should be suppressed. It had become abundantly clear that the same person could not efficiently and competently fulfil the task of managing the day to day business of the Office while at the same initiate, promote and execute comprehensive outreach programmes.

Regrettably, it is a fact that during the first term of the present Ombudsman's tenure and even before, very little was done to bring the Office closer to the people and to make the citizens aware of the essential function it performs in the protection of their rights. Little or no use was made of modern means of communication and the social media to engage with the public. Even the website of the Office was rudimentary, unattractive and completely inadequate. This was a situation that required immediate attention. It was a pivotal aspect of the reform required to modernise the Office and the way it projected itself in society.

It was therefore clear that the recommendation of the report to suppress the post of Manager Corporate Affairs and to create two new posts that of a Director General responsible for the administration of the office and a Research and Communications Officer had to be implemented immediately. 2014 was the first full year of operations under this new administrative structure. One can say that, while there is still room for improvement and development, the reform was highly successful and the change fully justified.

The Office was fortunate to have identified the right person for the job of Research and Communications Officer. A person who had obviously previous experience in many of the tasks assigned to him, even though coming from a completely different professional background. He has shown drive and initiative to increase the visibility of the Office with the public and improve its accessibility.

A brief review of the major initiatives taken in this area during this year will be carried in another chapter of this report. It is enough at this stage to refer to the complete restructuring of the new website that has been acknowledged internationally to be one of the best Ombudsman websites in Europe and is serving as a model for other countries.

Throughout the year a number of new initiatives were taken to promote the activities of the Ombudsman, the Commissioners and senior investigating officers, these included Press Briefings where necessary, the participation of the Ombudsman in a number of programmes on radio and television; the first time ever participation in the Freshers' Week at the University of Malta by the Commissioner of Education; and the holding of regular meetings between the Commissioner for Planning and the Environment and NGOs active in this field. All the publications of the Office have been reviewed and special attention has been given to their presentation and editing.

At the end of the year the Research and Communications Officer prepared a detailed outreach programme for next year that will include events to mark the twentieth anniversary of the setting up of the Office of the Ombudsman in Malta. It is an ambitious programme difficult to implement in its entirety. However, it is a great improvement on past performance. It is definitely the way forward if the Office is to achieve its objectives in this vital area of its activity.

Concluding remarks

This brief overview of the major operational reform in all the departments of the Office put in place during this year shows that the measures taken have been carefully planned to provide an Ombudsman service that is efficient, all embracing and simple to operate. If it functions well, in the right environment, the setup could maximise results without unduly taxing available resources. This year all departments had to operate from makeshift temporary offices. All staff have taken up the challenge and performed the tasks assigned to them enthusiastically. Results have been very encouraging and augur well for the future. Hopefully, by next year all departments will be operating from new, modern, spacious and well equipped offices that have been specially designed to facilitate operations. Offices that will be attractive and functional, with a full potential to provide an improved service to all those who require help from the Ombudsman and his Commissioners.

Relations with the public administration

Generally good

2014 was the first full year of the incoming administration. Generally speaking, and albeit with one or two notable exceptions, the promise of good relations and building bridges, with the new Ministries and officials administering the various departments and authorities falling within the jurisdiction of the Office of the Ombudsman, has been realised.

The investigative functions of the Ombudsman sometimes inevitably lead to contrasting and differing opinions that need to be ironed out. Misunderstanding is often the result of a lack of proper appreciation of the functions and powers of the Ombudsman. This is especially true of newly appointed management teams of authorities and corporations, who sometimes fail to appreciate that the relative autonomy that they must necessarily enjoy in the management of an entity on commercial lines, does not exempt them from the principles of good governance and in some cases, rules and regulations, applicable to the public administration.

Generally speaking, and albeit with one or two notable exceptions, the promise of good relations and building bridges, with the new Administration, has been realised.

It takes time for officials in top management posts, often and rightly roped in from the private sector because of their perceived managerial competence, to accept that their decisions are subject to the scrutiny of the Ombudsman. They sometimes fail to realise that they are required to adopt and apply the principles of fairness, equity, non-discrimination, transparency, openness and accountability applicable to the public administration. They must also accept that their management is subject to be verified by an independent authority like the Ombudsman, who has the function to ensure that these principles are scrupulously applied.

Learning curve

This lack of understanding often requires a learning curve that takes time and this inevitably delays the investigation of complaints. This is especially so when there has also been a change of liaison officers who need time to grasp the full import of their new role and duties as a vital link between the entity they represent and the Office of the Ombudsman.

Relations with the management of public authorities are not always easy and straight forward. Progress has been registered with some corporations like Air Malta and the Water Services Corporation, but more work has to be done next year to ensure that there is more awareness of the functions of the Ombudsman. This not only as an effective instrument to ensure a fair and just administration, but also as a positive tool to improve the quality of service they provide to citizens. During this year there have been a number of occasions where the Ombudsman offered his good offices to address systemic failures in administration and to promote the review of existing procedures. The Ombudsman has been instrumental in promoting greater transparency and accountability in dealing with complaints in areas of selection and promotion exercises of employees and improvement in the quality of the service provided.

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An example of such an exercise is the agreement that was reached after lengthy negotiations, with Transport Malta in June 2014, on how complaints lodged alleging damages sustained due to road surface conditions, should be dealt with. The press release informing the public of the agreement reached is being published as an annex since it provides a good example of how the Ombudsman operates as a catalyst to improve public administrative processes when a systemic failure is identified.

On the other hand, the process of transition from one administration to the other within the public service has been much smoother. It was immediately clear that the government generally and the Principal Permanent Secretary in particular, fully recognised the vital role of the Office of the Ombudsman as a key figure in the statutory checks and balances to ensure fairness, transparency and accountability. The categorical and correct instructions given by the Principal Permanent Secretary to the Permanent Secretaries to cooperate fully with the Ombudsman at all stages of his investigations and to give due consideration to his recommendations, contributed greatly towards the fostering of a good relationship between the Office of the Ombudsman, Ministries and government departments.

There have been cases when the Office was informed that Government would be accepting to implement the recommendations, even though it did not fully agree with his conclusions and their motivation.

Generally positive

The experience to date was generally positive. This to the extent that there have been cases when the Office was informed that Government would be accepting to implement the recommendations of the Ombudsman in his Final Opinion, even though it did not fully agree with his conclusions and their motivation. Such instances are welcome proof that the Executive respects and recognises the Ombudsman as a constitutional authority, entrusted with the function to determine what actions were fair or unfair, just or unjust and how proved injustice he identified should be remedied. There have of course, during the year been areas of disagreement, but this is in the nature of things.

Areas of concern

Issues of transparency and accountability

In the Ombudsplan for 2015, presented to Parliament in September of the year under review, the Ombudsman identified areas of concern which he believed needed special attention. These included issues of transparency mostly due to the administration's reluctance to provide prompt and satisfactory information, issues of accountability generally, as a result of lack of transparency and issues relating to positions of trust and the way this method of engagement with government and public authorities seems to be on the increase without proper regulation. These issues persist and the Office must maintain an ongoing focus on them to engage the attention of the public administration and civil society on the need to address them.

In that document the Ombudsman had submitted that the terms transparency and accountability are not political buzzwords. They are terms that are acquiring the status of juridical concepts that impose discipline and justice in the administration. They are becoming the measure through which the correctness of the public administration is verified. There cannot be real accountability if there is no transparency.

Transparency has to be the rule and not the exception. Where an exception is required to the rule, this has to be sanctioned by law.

Transparency has to be the rule and not the exception. Where an exception is required to the rule, this has to be sanctioned by law. Transparency requires not only that the conduct of the public administration is not hidden but also that the reasons for decisions taken must be made known. This is necessary because the Executive is accountable to Parliament and the electorate that empowers it.

Transparency is also essential for the Ombudsman to carry out his functions correctly. He cannot arrive at a judicious opinion whether an administrative act he investigates is unjust or improperly discriminatory, unless there is transparency and where the facts of the case are well known.

The State's duty to Inform

The Ombudsman has been stressing that it needs to be generally accepted that it is only through the process of correct and timely information on the actions of the Executive and public authorities that transparency can be assured and accountability secured. These values are of the essence of democracy and have to be safeguarded at all times.

There are issues in Malta on the limits of the State's duty to inform; on the rights of the Executive and public authorities to non-disclosure of information relating to government activities and on the right of Parliament and citizens to be informed. This has been an issue that has been raised in successive administrations. There are strong indications that there is a growing reluctance on the part of public authorities to provide information, even when this is apparently legitimately requested.

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There is clearly a need for an open and frank debate between political parties and civil society on whether existing legislation regulating freedom of information and data protection is adequate and whether its interpretation and application sufficiently guarantee the right of the citizen to be informed within the legitimate parameters defined by law.

The Ombudsman believes that the right to be informed is not only essential to ensure transparency and accountability. It is also an essential element of the fundamental right of the citizen to a good public administration. The Ombudsman intends to follow this lead next year with other initiatives meant to project these issues onto the national political agenda also within the context of the Government's declared intention to amend the Constitution.

Relations with the Public Service Commission (PSC)

The Public Service Commission is the constitutional authority entrusted with overseeing employment in the public service. The Ombudsman has a limited, residual jurisdiction to investigate complaints against this Commission. It has been the practice not to interfere in its activities except in so far as procedural rules guaranteeing due process are concerned and in cases of manifest injustice. Complaints generally refer to selection and promotion processes in the public service. The Commission carries out its functions through the appointment of selection boards and complaints generally refer to lack of proper surveillance on the way some boards operate.

This Office has had occasion recently to draw the attention of the Commission to a number of cases where in its opinion, selection processes have been deficient and to a consequent lack of proper monitoring of the workings of selection boards when people complain. What could be perceived as rubberstamping of reports by these boards is probably due to lack of human resources and qualified personnel, but it remains a matter that needs to be addressed. Efforts must be made during the coming year to create the correct synergy between the Office of the Ombudsman and the Public Service Commission to ensure that the rules of fairness and due process are not only applied but also seen to be applied.

Positions of Trust

Closely linked with the issue of employment in the public service is the matter regulating the recruitment to public offices from outside the public service. Sub- article (2)(c) of Article 110 of the Constitution of Malta provides that *“in respect of the recruitment to public offices from outside the public service, shall, unless such recruitment is made after a public examination advertised in the Gazette, be exercised only through an employment service provided out of public funds which ensures that no distinction, exclusion or preference is made or given in favour or against any person by reason of his political opinion and which provides opportunity for employment solely in the best interests of the public service and of the nation generally”*.

The question that has arisen from time to time, under successive administrations, is whether the practice to appoint persons from outside the public service on a position of trust conforms with this constitutional provision and other extent legislation governing employment in the public service. If it does so conform, concerns have been raised over the limits that should regulate such employment, what is the right definition of position of trust and whether the degree of trust should be related to the position or to the person authorising such employment.

The major political parties have sanctioned this practice and regulations are in place to determine when and under what circumstances, a person could be employed in a position of trust. While there is agreement that an element of personal trust is inherent in certain positions to ensure the correct implementation of policies, there are obviously sharp disagreements on the extent of the use or abuse of this procedure.

A procedure that has been in place for a number of years and has consistently given rise to controversy during successive administrations. Controversy that is sometimes also fuelled by a reluctance to provide timely and accurate information on the conditions of service of certain persons appointed in a position of trust. The Ombudsman has alerted Parliament on the need to address this issue. He intends to continue his efforts in this direction in the coming year.

Army dispute gathers momentum

In last year's Annual Report extensive reference was made to the difficulties that the Office was encountering with the Ministry for Home Affairs and National Security following

promotion exercises that led to important changes in the top echelons of command of the Malta Armed Forces.

The Ministry was and still is contesting the Ombudsman's right to investigate complaints of alleged injustices as a result of the promotion exercise in 2013. Unsuccessful and protracted negotiations with the Ministry on the latter's objection that the Ombudsman does not have jurisdiction to investigate such complaints by officers even though that jurisdiction is expressly provided for in the Ombudsman Act, resulted in a stalemate.

No progress registered

Notwithstanding the Ministry's stated position that it wished to find a solution for the impasse, no progress was registered during the year. The Ministry showed no willingness to reach an agreement that would guarantee the right that officers had under the Ombudsman Act to have their complaint investigated by his Office. It continued to maintain that officers had to follow the procedure laid down in the Army Act whereby complaints have to be channelled in the first place through the Commander and the President of the Republic. A position that the Ombudsman strongly contested since such an approach virtually nullified the right of officers to seek redress through his Office. The army dispute has for months been a major talking point of political controversy and reference was made to it during a Parliamentary debate on amendments to the Army Act. The Ombudsman felt the need to issue a Press Statement, published as an annex to this report, to emphasize the stand taken to secure the right of officers to have recourse to his Office.

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The Ombudsman strongly maintained that the only way in which the rights of Officers could be fully protected was to follow the procedure that had been laid down in the General Order of 11 November 2011 and that had been agreed upon by the previous administration, the former Commander of the Armed Forces and the Attorney General.

After protracted negotiations the Ombudsman remains of the same opinion. He believes that the procedure laid down in that Order reconciles any apparent conflict or contradiction between the Army Act and the Ombudsman Act, while adequately safeguarded the rights of all concerned. Since it became obvious that the passage of time was prejudicing the rights of these officers, the Ombudsman was constrained for the first time ever to file a judicial protest against the Ministry for Home Affairs and National Security requesting that the relative documents necessary for the conduct of his investigations be handed over. The Ombudsman

stated that in default, court action would be taken to establish that his Office had jurisdiction in terms of the Ombudsman Act to investigate all complaints by army officers regarding promotions, to enforce his request for the production of documents and evidence required for his investigation and to enforce appropriate penalties in case of non-compliance.

In a counter protest, the Minister responsible for the Armed Forces and the Permanent Secretary at the Ministry for Home Affairs and National Security reaffirmed the official position and there was clearly no room for further negotiations. That is how matters stood at the end of the year. It is clear that court action is inevitable. The Ombudsman feels that it is his duty to continue to defend officers of the Armed Forces who put their trust in his Office and requested him to investigate their complaints in terms of a law that gave them that right. It is highly unlikely that there will be a change of heart at this stage and regrettably the Ombudsman will proceed early in the coming year to assert the jurisdiction his Office has in terms of the Ombudsman Act.

Incident could have been avoided

The Ombudsman reaffirms his statement that in his Opinion this whole unsavoury incident could have been avoided, if justice had been allowed to take its course. It is his conviction that the approach of the administration on this issue is fundamentally incorrect on a number of counts. Suffice to say that when an issue of jurisdiction arises in any tribunal, the principle to be applied should be that jurisdiction should be favoured so that the process of establishing rights and obligations is not unduly delayed.

Even at this late stage, the Ombudsman is still hopeful that there will be a breakthrough in this dispute next year and that an out of court settlement is reached to allow the investigation of complaints to proceed.

Another incident worth recording - Relations between Ombudsman and Committees of the House of Representatives

Another incident that it is worth recording and that is also connected with complaints by members of the Armed Forces, refers to alleged irregularities in procedures by the grievances unit set up by the Home Affairs and National Security Ministry to investigate alleged injustices that occurred during the previous administration and beyond. The incident is interesting because it was the first time that a matter was referred to the Ombudsman for investigation in terms of Article 13(4) of the Ombudsman Act (Chapter 395). The sub- article provides, *inter alia*, that “...any Committee of the House of Representatives may at any time refer to the Ombudsman, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case the Ombudsman shall, subject to any special directions of the Committee, investigate the matters so referred, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit.”

The Opposition requested the Speaker of the House to bring the request for investigation to the attention of the House Business Committee so that it will take the necessary steps to forward it to the Ombudsman in terms of this subsection. The Speaker did so. After a very short debate in the Committee in which the Government expressed the opinion that the letter of the Opposition was not a petition in terms of law and that it could have been addressed by the Opposition directly to the Ombudsman. No further decision was taken except that the Speaker informed the Committee that he would be forwarding the Opposition's request to the Ombudsman so that he would take any action he deemed necessary in the circumstances.

In a letter, of the 24 March 2014, the Ombudsman informed the Committee, through Mr Speaker, that since there had been no specific reference to him in terms of the quoted subsection, he felt he could not investigate the petition made by the Opposition. The situation would have been completely different had the Opposition made the petition on behalf of a person who felt aggrieved by any act of the Injustices Commission set up by the Ministry for the Armed Forces. In such a case, the aggrieved person would have had a personal interest in the complaint and it was customary for the Office of the Ombudsman to investigate complaints made by Members of Parliament on behalf of their constituents.

The Ombudsman reaffirms his statement that in his opinion the Army dispute could have been avoided, if justice had been allowed to take its course.

Ombudsman's motivation

In his motivation to that decision, the Ombudsman noted that:

1. He was of the opinion that the letter of the Opposition could not but be considered as a petition in terms of the law. The Member of Parliament who signed the letter had every right to petition a Committee of the House, both in his own name and on behalf of the Opposition.
2. The House had agreed to forward the letter to the Ombudsman but the House Business Committee did not in any way decide to refer the merits of the petition for investigation in terms of the above quoted sub-article. The Ombudsman expressed the opinion that to avoid doubt the correct procedure had to be applied. Reference by a Parliamentary Committee had to be made formally as expressly provided by law.
3. In the circumstances, in default of a specific reference according to law, requesting the Ombudsman to consider the merits of the petition as subject to special directions the Committee chose to give, the Ombudsman concluded that he should not investigate the petition of the Opposition.

The Opinion expressed by the Ombudsman in his letter of 24 March 2014 is important in so far as it enunciates the correct interpretation and application of the provision of the Ombudsman Act that regulates the relations between the Committees of Parliament and the Office of the Ombudsman. It determines the correct procedure to be followed when filing a petition to a Committee of the House to be referred to the Office of the Ombudsman for investigation and sets out the parameters when such a request can be entertained by the Ombudsman.

It is felt that the incident is of considerable public interest and the full text of the Ombudsman's letter is being appended to this report.

Notes from the 2014 Diary

The following are reflections on some aspects of the performance of the Office of the Ombudsman during the year under review based on notes from the 2014 diary of activities.

During the year the Ombudsman and the Commissioners continued to perform the main function of their Office to investigate complaints from aggrieved citizens and to initiate own initiative investigations on matters that they identified required special attention. The Ombudsman considers that the Office performed well in this respect though there is always room for improvement. Even though the final opinions and recommendations made are not enforceable and it remains the Ombudsman's conviction that this as it should be, the success rate of acceptance of the reports by the public administration remains high.

There have been instances where the recommendations made were accepted and implemented even though the public administration expressed reservations and disagreement with the final opinions. On the other hand, there have been occasions when the public administration refused to implement recommendations made for various reasons, mostly financial ones. There have been instances where the Ombudsman and the Commissioners were convinced that the complaints were fully justified and strongly felt that the perceived injustice had to be remedied. When this happened they continued to pursue the complaint at the highest level in an attempt to convince the authorities, not without success, to accept and implement their recommendations. Sometimes it is a long and difficult process but positive results in such situations are not unknown.

The level of public awareness on the Office of the Ombudsman was heightened by its recognition as a constitutional authority, vested with the function to determine whether an administrative decision is right or wrong, just or unjust or improperly discriminatory. An institutional reality brought about by the unanimous approval of a Constitutional amendment that should instil in the Executive and public authorities the political will to respect final opinions issued by this Office and implement their recommendations. It is for this reason that the Ombudsman has for some time now, been advocating the need to explore new avenues of cooperation between his Office and Parliament to render his decisions more effective as an instrument to provide adequate redress against injustice and maladministration, while retaining their essential characteristic of non-enforceability.



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino during one of the regular meetings with the President of the House of Representatives, the Hon. Angelo Farrugia

7 March 2014 - proposals on the strengthening of the Ombudsman institution

This was a main topic discussed in a document submitted to Government on this day mapping out proposals for the strengthening of the Ombudsman institution. The document was drafted by the Ombudsman, following a request by the Honourable Louis Grech, Deputy Prime Minister and Minister for European Affairs and Implementation of the Electoral Manifesto, in the context of a consultation exercise intended to give substance to the electoral promise in the Labour Party's Manifesto *"To strengthen the Office of the Ombudsman with more resources and tools to improve the working of this important institution"*.

This comprehensive document proposes the basic essentials of measures that the Ombudsman believes should be taken to ensure a correct evolution of the institution in a modern democratic society. It unfolds a vision for the future development of the Ombudsman institution as an effective instrument to audit the acts of the public administration, in the exercise of its function as a defender of citizens' rights that encompasses the very essentials of the mission statement of the Office of the Ombudsman.

That document has had a very positive and widespread reaction in international Ombudsman fora. Much interest has been expressed in the way the Malta institution has evolved, not only with the introduction of specialised Commissioners but also with the efforts being made

Finally the Ombudsman made a number of proposals to render more effective his recommendations through a stronger synergy between his Office and Parliament and between his Office and the Courts.

17 April 2014 - Meeting with H.E. Marie-Louise Coleiro Preca, President of the Republic

The strengthening of the Ombudsman institution was discussed during a courtesy visit paid by the Ombudsman on the newly elected President of Malta, Her Excellency Marie-Louise Coleiro Preca. The President showed great interest in the proposals. This also in the context of her initiative to promote a national debate on the need to reform the Constitution to ensure that it adequately met the requirements of a modern, fully fledged, democratic society. The Ombudsman expressed his belief that the Constitution should primarily be the vital instrument to ensure good governance for the wellbeing of citizens. It is for this reason that he has been promoting the notion that the right of the citizen to a good public administration should be recognised as a fundamental right in the Constitution.

There have been instances where the Ombudsman and the Commissioners were convinced that the complaints were fully justified. When this happened they continued to pursue the complaint at the highest level.



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino during a courtesy visit to H.E. Marie-Louise Coleiro Preca, President of the Republic



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino together the Commissioner for Health, Mr Charles Messina and the Commissioner for Environment and Planning, Perit David Pace addressing the media

Moreover, constitutional authorities that have the function to ensure an open, transparent and accountable public administration, like the Office of the Auditor General and the Parliamentary Ombudsman need to be strengthened. The role of Parliament as the supreme organ of the State, that expresses the will of the electorate through its representatives and as the ultimate source of power to which all the other organs of the State need to be accountable, should be revisited. It has to enjoy full administrative autonomy from the Executive. Moreover, the Constitution should recognise the offices of the Auditor General and the Parliamentary Ombudsman, as authorities accountable to Parliament charged with the fiscal and administrative audit of the actions of the Executive and other public authorities and entities. Their independence and autonomy should therefore be constitutionally guaranteed.

2 June 2014 - Joint Own Initiative Investigation

During the year the Ombudsman continued to implement his vision of an Office with a dual function, that of investigating individual complaints of maladministration and that of being an effective instrument to improve the public administration. The Ombudsman and the Commissioners continued to identify areas of concern of systemic failures in the management of public affairs and to address them through own initiative investigations.

Throughout the year, the Ombudsman authorised all the Commissioners to carry out such investigations on issues that were of public interest. These investigations often led to recommendations to various Ministries and authorities on how identified injustices and shortcoming could be remedied. Some of these final opinions led to meetings with Ministers and top management of public authorities to discuss how recommendations made could be implemented.

For the first time ever the Ombudsman authorised a joint own initiative investigation by the Commissioner for Health and the Commissioner for Environment and Planning on the practice of dumping sewage slurry on cultivated land. The Ombudsman took this unprecedented step because of the public outcry on this common malpractice of farmers, that was apparently widespread and that not only raised serious environmental issues but also possible health hazards. This multi-faceted investigation conducted by two Commissioners, that are experts in their field, is complex and will require some time to conclude. It is also a significant development in the evolution of the system of Commissioners that is meant to provide a comprehensive audit of the actions of the public administration in the more important aspects of social activity.

24 June 2014 - Ombudsman meets GRECO evaluation team

During this year the Office of the Ombudsman remained a point of reference for international organisations including the United Nations, European Union and Council of Europe organisations, to gather information on the level of observance of human rights in Malta. The Ombudsman was asked to participate in consultation processes initiated by these organisations to help draft final opinions about conditions obtaining in Malta. Delegations regularly meet the Ombudsman to obtain first-hand information on issues they identify as problematic. They seek his assessment of these situations and discuss possible remedies.

One such meeting was held with the Council of Europe's group of experts against corruption (GRECO) while conducting their fourth valuation round on Malta on matters relating to the prevention of corruption of judges, politicians and prosecutors. Even though the Ombudsman has no jurisdiction over the judiciary and does not directly consider complaints alleging corruption in this and other areas, visiting delegates were interested in the objective opinion of the Ombudsman on these issues as well as on the safeguards available to citizens to protect their fundamental rights.

National Human Rights Institution (NHRI)

In this respect, the need to set up a National Human Rights Institution in Malta was raised. The Ombudsman explained in detail his initiatives to promote the setting up of such an institution. Whenever foreign delegations consult the Ombudsman on human rights' issues, it is evident that they consider that his Office has the full credentials necessary to qualify as a National Human Rights Institution. They are all appreciative of the efforts of the Office to

promote the observance of fundamental rights and to keep the strengthening of structures necessary to protect them high on the national political agenda.

The Office has been a prime promoter for the setting up of a National Human Rights Institution. Last year, the Ombudsman published a major document proposing the setting up of such an institution as an autonomous Commission headed by the Parliamentary Ombudsman. That publication aroused considerable interest also in the light of the Government's declared intention to establish a Human Rights and Equality Commission. The Ombudsman has this year been working on a further document setting out his reaction to a White Paper issued by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties entitled "*Towards the establishment of the Human Rights and Equality Commission*". In this publication, that it is hoped will be issued next year, the Parliamentary Ombudsman expresses a positive reaction to the White Paper and makes concrete proposals intended to develop further the concepts of the White Paper and their application in practice.

In his reflections the Ombudsman will take as his starting point the policy decisions taken by Government and the set up proposed in the White Paper. He will suggest, ways and means how the Government's objectives can best be achieved, without weakening existing authorities and entities having a specific role in the promotion and protection of human rights. The Ombudsman believes that he can validly contribute to the consultation process both regarding the proposed equality law and the law setting up the HREC.



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino during his visit to Freshers' Week 2014

30 September 2014 – Fresher's Week

During this year the Commissioners have shown initiative in promoting new activities to reach out to various sectors falling under their remit, not only to make them more aware of the services they offered but also and more importantly to get to know the problems and challenges that they are facing and that could be a source of major complaint. Thus for example the Commissioner for Education, ably supported by members of staff of the Office, participated for the first time ever in the Fresher's Week organised by the Students' Representative Council at the University. He was present on campus together with the Ombudsman. They toured various activities and made contact with students who greatly appreciated the opportunity to explain their activities and voice their concerns. It is definitely an initiative that should be repeated next year and possibly extended to cover other institutions of advanced learning like MCAST.

3 October 2014 – Meeting with Environment NGOs

On the other hand, the Commissioner for Environment and Planning started a series of consultation meetings with NGOs active on issues about environment and planning. This would be an ongoing process that will help the Commissioner to remain in touch with major environmental problems and planning issues, that are very relevant to the interpretation and application of policies and regulations by the competent authorities. All indicators point that in the coming years these are matters that will be of growing concern and that would need to be addressed.

Public Health Service Shortcomings

Meanwhile, the Commissioner for Health during the year continued to investigate complaints regarding shortcomings in the public health service. Most of these complaints are by their very nature urgent and the Commissioner rightly adopted a direct approach with the health authorities aimed at providing immediate relief where required. In fact, most of the complaints were resolved without the need for a final opinion. Other investigations required protracted negotiations with the health authorities especially in cases regarding the provision of drugs and medical care for specific serious conditions like hepatitis and diabetes that are still not available. Also in this respect experience has shown the advantage of having specialised Commissioners and this is now self-evident.

Participation in international fora

Sustained international presence

During the year the Office of the Ombudsman continued to actively participate in international activities aimed to promote the role of the Ombudsman in securing good governance. Of note during the year was the participation of the Office in the 6th International Conference of Ombudsmen Institutions for the Armed Forces held in October. This conference, that gathers ombudsmen from many countries with a specialised jurisdiction to investigate complaints of injustice and maladministration by the armed forces, is of particular interest to Malta at a time where the right of officers and men of the force to have recourse to the Ombudsman is being contested while their right to join a trade union to defend their interests is being considered.



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino addressing the Second Edition of the World Human Rights Forum held in Marrakech, Morocco

The Parliamentary Ombudsman was invited in November to participate in the Second Edition of the World Human Rights Forum held in Marrakech, Morocco. He was asked to sit as a contributor on a panel at a workshop entitled *'The Mediator a main contributor to building democracy'*. The text of the Ombudsman's contribution is being reproduced elsewhere in this publication. This prestigious invitation was a sign of the high esteem that the Office of Parliamentary Ombudsman in Malta enjoys internationally.

PSOG

During the year the Office continued to actively participate in the activities of other international institutions in which it is a member. It continued to take an active part in the proceedings of the Public Sector Ombudsman Group, even though financial constraints did not allow the Ombudsman to attend all meetings held during the year. It is still the intention of the Office to organise a group meeting in Malta next year as part of the events to mark the 20th Anniversary of the setting up of the Ombudsman institution in Malta.

EOI, IOI, AOM

Throughout the year the Ombudsman continued to be active in other international Ombudsmen fora including the European Ombudsman Institute (EOI), the International Ombudsman Institute (IOI) and the Association of Mediterranean Ombudsmen (AOM). The Ombudsman continued to play a leading role in the Association that comprises all the Ombudsmen and Mediators of countries bordering the Mediterranean littoral. He was re-elected to the Committee of the Association now presided by the Albanian Ombudsman.



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino during a ceremony presided by the President of the Republic of Albania, Bujar Nishani, commemorating the Albanian's Ombudsman 10th Anniversary

The Malta Office continues to perform the duties of Treasurer, while the Secretariat operates from the Office of the French *Défenseur des droits*. Malta contributes, within its limited resources to the funding of the activities of the Association both financially and with human resources. It continues to support training courses organised by the Ombudsman of Morocco for trainees from different Mediterranean countries, by sending one of its Senior Investigating Officers or a qualified member of its staff, to conduct training sessions. This Association needs to be promoted and strengthened. The Ombudsman is convinced that it could be developed into a very effective instrument to promote the principles of good governance in the region and consequently, possibly influence public administrations to ensure the observance of the right to a good public administration to which citizens are entitled.

During the year the Office of the Ombudsman continued to actively participate in international activities aimed to promote the role of the Ombudsman in securing good governance.

The International Ombudsman Law Institute (IOLI)

It is in this context that the Ombudsman continued to promote the setting up of an International Ombudsman Law Institute. A proposal that gathered more support during the year both nationally and internationally. Both Government and Opposition expressed their support to such an initiative and the Association of Mediterranean Ombudsmen on 27 June 2014 welcomed this proposal wholeheartedly and recommended its members to give their support for the realisation of the project.



The Parliamentary Ombudsman, Chief Justice Emeritus Joseph Said Pullicino addressing the 8th Meeting of the Association of the Mediterranean Ombudsman

In the plans for the physical restructuring of the offices, care was taken to provide adequate, modern facilities that could serve to house the Institute. Capital expenditure provided by Government has and is being utilised to provide the Institute with adequate self-contained premises. Work on the project is now well advanced and should be completed by the end of next year. The capital outlay for the project will therefore be Malta's contribution to the project. The main financial stumbling block will be the securing resources necessary to set up a fund for the provision of scholarships for deserving students, mainly from developing countries, that should form the backbone of the student body. There are indications that the Government of Malta would be prepared to contribute towards this fund. However, understandably it expects that a substantial part of the funds required should be made available from outside sources since that should be a prerequisite to establish the international character of the Institute.

Meanwhile, progress has been made in discussions with the University to ensure the necessary academic backing to guarantee that the level of instruction would be such as to ensure full recognition of the degrees conferred by the Institute. Statutes for the setting up of the Foundation to manage the institute, to which the Parliamentary Ombudsman of Malta, the Association of the Mediterranean States and the Government of Malta would be parties, are being drafted. It is hoped that all preparatory work for the setting up of the Institute should be in place by next year.

The Association of Mediterranean Ombudsmen welcomed the proposal of the setting up of the International Ombudsman Law Institute in Malta wholeheartedly and recommended its members to give their support for the realisation of the project.

Whether the project can be launched next year with the first intake of students projected for 2016 would depend solely on whether adequate resources are forthcoming to set up the Scholarship Fund.

Performance Review 2014



Performance Review 2014

Cases handled by the Office of the Ombudsman

Table 1.1 – Cases handled by the Office of the Ombudsman 2013 - 2014

	2013	2014
Sector	No of cases	No of cases
Parliamentary Ombudsman	329	352
Commissioner for Education	38	60
Commissioner for Environment and Planning	61	49
Commissioner for Health	65	77
Total	493	538

Diagram 1.2 – Cases handled by the Office of the Ombudsman 2014

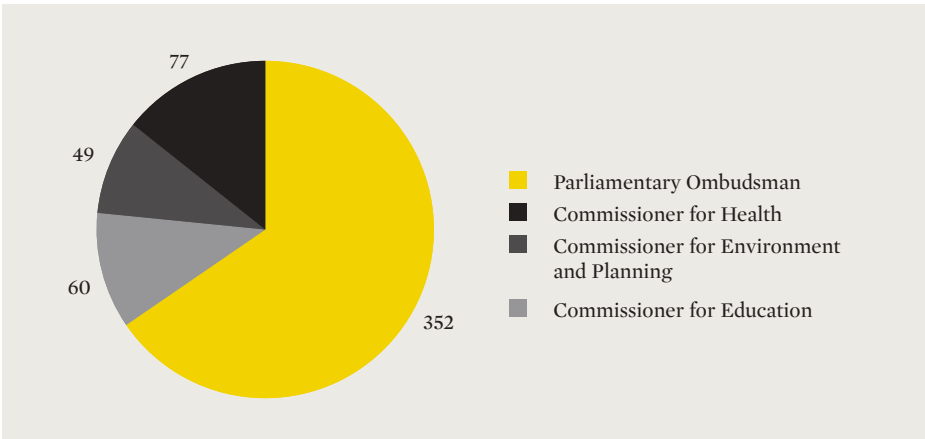


Table 1.1 and Diagram 1.2 show that during 2014, the Office of the Ombudsman handled 538 cases, an overall increase of 9% over 2013. Of the 538 cases, 352 were investigated by the Parliamentary Ombudsman; 77 by the Commissioner for Health, 49 by the Commissioner for Environment and Planning and 60 by the Commissioner for Education.

Incoming Complaints

Total Case Load

During 2014, apart from the written complaints, the Office handled 581 enquiries, an increase of 22% when compared to 2013 (475) whereas the number of written complaints handled by the Parliamentary Ombudsman, during 2014 increased by 23 from 329 in 2013 to 352 in 2014. Table 1.3 and Diagram 1.4 show the number of enquiries and written complaints received by the Office since its establishment in 1995.

Table 1.3 – Complaints and enquires received 1996 – 2014

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

Diagram 1.4 – Office of the Ombudsman – workload (1996 - 2014)

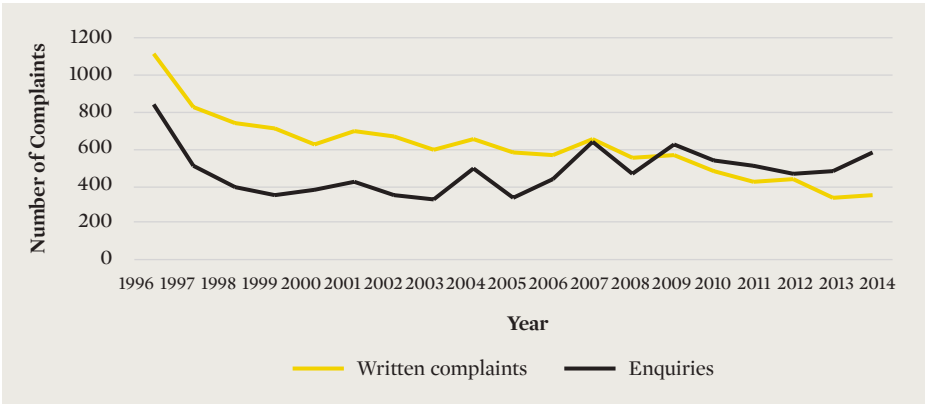


Table 1.3 and Diagram 1.4 also show that the downward trend in written complaints, mainly caused by the General Election held in March 2013, has been reversed. Table 1.5 shows that the same trend was experienced whenever a General Election was held.

Table 1.5 – General Elections Trend 1997 - 2014

Year	No of Cases
1997	513
1998 (GE)	396
1999	351
2002	352
2003 (GE)	327
2004	494
2007	635
2008 (GE)	469
2009	626
2012	615
2013 (GE)	493
2014	538

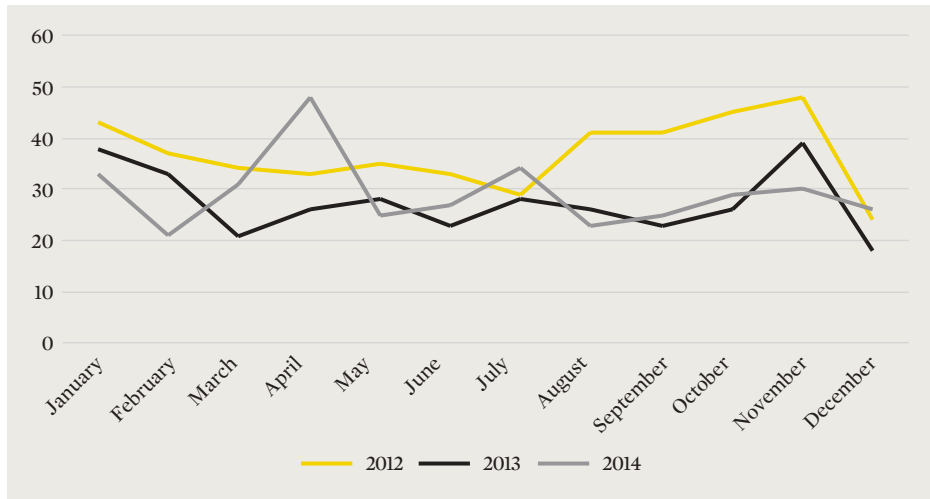
Monthly Complaints intakes and closures

Table 1.6 – Complaints Statistics by month 2012 – 2014

Brought forward from previous year	2012			2013			2014		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
			238			263			184
January	43	41	240	38	42	259	33	23	194
February	37	33	244	33	33	259	21	21	194
March	34	37	241	21	50	230	31	11	214
April	33	29	245	26	42	214	48	41	221
May	35	44	236	28	42	200	25	30	216
June	33	27	242	22	27	195	27	27	216
July	29	31	240	29	23	201	34	33	217
August	41	32	249	28	28	201	23	27	213
September	41	25	265	21	56	166	25	21	217
October	45	50	260	26	18	174	29	19	227
November	48	35	273	39	28	185	30	27	230
December	24	34	263	18	19	184	26	31	225
Total	443	418		329	408		352	311	
Enquiries	462			475			581		

The total number of completed cases between January and December 2014 dropped from 408 in 2013 to 311 (down by 97 or 24%). Pending cases at the end of the year under review stood at 225, an increase of 41 or 18%, pending cases from the previous year.

Diagram 1.7 - Complaints Statistics by month 2012 – 2014



Distribution of public service sectors and authorities subject to investigation in 2014

Table 1.8 – Complaint numbers by type of public service sector 2012 - 2014

Sector	2012	2013	2014
WSC (ARMS)	-	13	26
Outside Jurisdiction	18	17	26
Department of Social Security	33	14	21
Local Council	22	20	21
Police	15	11	17
Public Service Commission	7	12	16
Inland Revenue Department	14	11	14
Housing Authority	14	8	13
Transport Malta	29	15	13
Armed Forces of Malta	15	36	11
Employment and Training Corporation	7	6	9
Enemalta	14	3	9
Courts of Justice	4	6	8
Directorate Educational Services	30	15	8

Sector	2012	2013	2014
Lands Department	9	5	8
Office of the Prime Minister	4	10	8
Air Malta	16	7	6
Customs and Exise	-	2	6
Equality	-	-	6
Lotteries and Gaming Authority	2	5	6
Central Bank	-	1	5
VAT Department	5	4	5
Correctional Services	-	1	4
Finance	1	-	4
Home Affairs and National Security	-	4	4
Malta Competition and Consumer Affairs Authority	1	1	4
Water Services Corporation	44	6	4
Citizenship and Expatriate Affairs	1	6	3
Foreign Affairs	2	6	3
Heritage Malta	5	1	3
Industrial and Employment Relations Department	2	3	3
MEPA	7	3	3
Malta Communications Authority	-	-	3
Malta Financial Services Authority	1	-	3
PAHRO	9	8	3
University of Malta	5	4	3
Civil Protection Department	1	-	2
Malta Council for Culture and the Arts	-	-	2
Malta Information Technology Agency	1	1	2
Malta Resources Authority	4	2	2
Petitions Board	-	1	2
Agriculture and Rural Payments Agency	-	1	1
Animal Welfare	-	1	1
Appogg	-	-	1
Coordination of Planning Policy and Priorities	-	-	1
Data Protection	-	1	1
Elderly	1	1	1
Engineering Resources Ltd	-	-	1

Sector	2012	2013	2014
Family and Social Solidarity	-	2	1
Foundation for Medical Services	-	1	1
Foundation for Social Welfare Services	-	-	1
Foundation for Tomorrow's School	-	-	1
Government Property Division	8	4	1
Gozo Affairs	3	1	1
Health	21	4	1
Joint Office	4	5	1
Kummissjoni Nazzjonali Persuni b'Dizabilita	1	1	1
Kunsill Malti Ghall-Ispert	-	1	1
Land Registry	-	1	1
Malta Air Traffic Services Ltd	2	-	1
Malta Enterprise	-	4	1
Mater Dei Hospital	-	-	1
National Statistics Office	-	1	1
Office of the Refugee Commissioner	1	-	1
Passport Office	3	-	1
Police Board	-	-	1
Public Registry	3	-	1
Sapport	-	-	1
Sport and Sport Complexes	1	-	1
Sustainable Development	-	-	1
Tourism	-	-	1
Transfer of Residence Exemption Board	-	-	1
Transport and Infrastructure	-	1	1
Wasteserv Malta	-	1	1
Agriculture	2	1	-
Cleansing	1	-	-
Consumer Protection	1	1	-
Contracts Department	1	-	-
E U Funds and Programmes	-	1	-
Elderly and Community Care	5	1	-
Electoral Commission	1	-	-
Examinations Department	1	2	-

Sector	2012	2013	2014
Finance Economy and Investment	1	-	-
Fisheries	2	-	-
I D Cards	-	1	-
Infrastructure Transport and Communication	1	-	-
Internal Audit and Investigation	1	-	-
Licencing Authority	1	-	-
Life Long Learning	-	1	-
Local Government	6	2	-
MCAST	2	1	-
Malta Council for Science and Technology	1	-	-
Malta Industrial Parks Ltd	-	1	-
Malta Tourism Authority	2	2	-
Malta University Services Co Ltd	-	-	-
Medical Council	-	2	-
Mediterranean Conference Centre	-	1	-
MQRIC	4	-	-
National Employment Authority	1	-	-
Occupational Health & Safety Authority	-	2	-
Paying Agency MRRA	-	1	-
Public Broadcasting Services	-	1	-
Resources and Rural Affairs	8	2	-
Science and Technology Policy	2	-	-
Specialist Accreditation Committee	1	1	-
Television Licences Unit	5	-	-
Treasury Department	-	6	-
University of Malta (UO)	2	-	-
Total	442	335	352

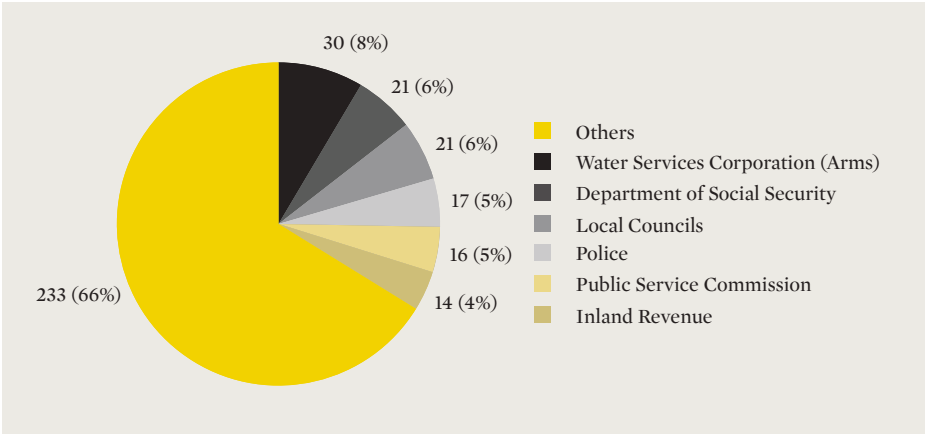
Table 1.8 provides a breakdown of incoming complaints by areas of government and policy initiative. To give a general overview of the complaints received, for the first time the whole list of departments against which complaints were lodged, is being published.

Complaints against the Water Services Corporation (WSC) and ARMS topped the list of the top five public authorities by number of complaints received. WSC and ARMS attracted 30 complaints during the year in review, a 58% increase over the same period in 2013.

Complaints concerning Local Councils placed second with 21 complaints, a slight increase when compared to 2013. The same number of complaints were lodged against the Social Security Department, which from the fifth place in 2013, placed second in 2014, experiencing a 50% increase over 2013.

The Police, for the first time, featured in the list of the top five public authorities by the number of complaints received, placing third with 17 complaints, an increase of 54%. Likewise, the Public Service Commission featured for the first time, at the fourth place with 16 complaints, an increase of 33%. The Inland Revenue Department placed fifth with 14 complaints, an increase of 27%.

Diagram 1.9 – Shares of complaints received 2014



In all, the top five entities attracted 119 complaints or 34% of the total amount of complaints.

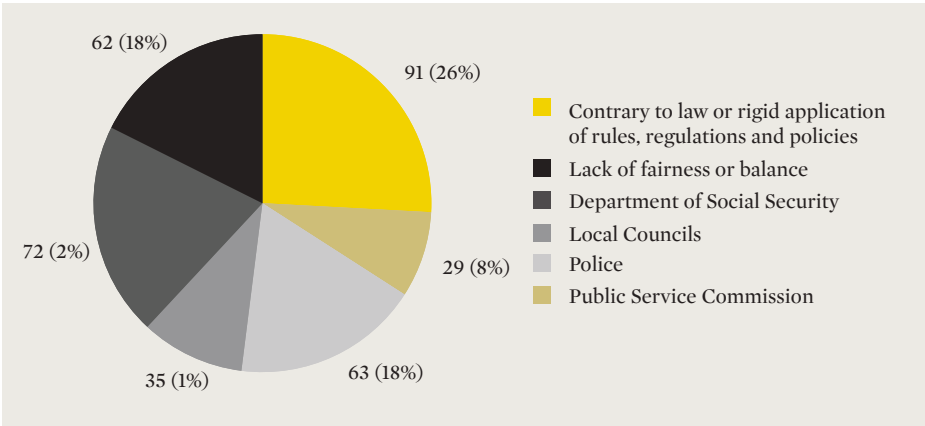
Complaint Grounds

Table 1.10 – Complaint Grounds 2012 – 2014

Grounds of Complaints	2012		2013		2014	
Contrary to law or rigid application of rules, regulations and policies	104	24%	81	25%	91	26%
Improper discrimination	41	9%	29	9%	29	8%
Lack of transparency	51	11%	44	13%	63	18%
Failure to provide information	34	8%	30	9%	35	10%
Undue delay or failure to act	85	19%	57	17%	72	20%
Lack of fairness or balance	128	29%	88	27%	62	18%
Total	443	100%	329	100%	352	100%

Table 1.10 shows a detailed analysis of the complaints by the type of alleged maladministration. This shows that the most common complaint during the year under review related to decisions by the public administration that were allegedly contrary to the law or about a rigid application of rules, regulations and policies. This category attracted 26% (91) complaints followed by complaints alleging undue delay or failure to act that attracted 20% (72) of the complaints.

Diagram 1.11 – Categories of complaints received (by type of alleged failure) 2014



It is pertinent to note that, for the third consecutive year there was a percentage increase in the number of complaints attributed to lack of transparency from 11% in 2012 to 13% in 2013 to 18% in 2014. At the same time there was a reduction in the number of complaints attributed to lack of fairness or balance, from 29% in 2012 and 27% in 2013 to 18% in 2014.

Complaints received classified by Ministry

Office of the Prime Minister	26
Ministry for Energy and the conservation of water*	10
Ministry for Finance	39
Ministry for Gozo	1
Ministry for Energy and Health**	33
Ministry for Health***	2
Ministry for Home Affairs and National Security	47
Ministry for Justice, Culture and Local Government****	32
Ministry for Social Dialogue, Consumer Affairs and Civil Liberties	14
Ministry for Sustainable Development, the Environment and Climate Change	4
Ministry for the Economy, Investment and Small Business	12
Ministry for the Family and Social Solidarity	40
Ministry for Tourism	10
Ministry for Transport and Infrastructure	14
Ministry for Education and Employment	23
Ministry for Foreign Affairs	3
Autonomous*****	16
Outside jurisdiction	26
Total	352

* From 1 January to 1 April 2014

** From 2 April to 31 December 2014

*** From 1 January to 1 April 2014

**** From 2 April to 31 December 2014

***** Public Service Commission

Table 1.12 shows the complaints received classified by the Ministries responsible for the department or entity on which the public complained. In April 2014, the Government announced a reshuffle changing some of the portfolios. The table above lists both the Ministries as they were following the 2013 general election and post-reshuffle. The Ministry for Home Affairs and National Security topped the list with the highest number of complaints - 47 complaints or 14% of the total case load. This is followed by the Ministry for the Family and Social Solidarity, having 40 cases or 12% of the total case load.

Complaints received classified by Locality

Locality	2012	2013	2014
Attard	40	17	15
Balzan	8	2	5
Birgu	3	-	1
Birkirkara	31	29	72
Birżebbuġa	5	2	7
Bormla	5	1	2
Dingli	7	2	1
Fgura	6	7	6
Floriana	3	1	1
Għargħur	1	2	-
Għaxaq	2	3	4
Gudja	3	5	2
Gżira	4	4	4
Ħamrun	10	5	1
Iklin	1	3	1
Isla	-	3	3
Kalkara	3	1	-
Kirkop	3	1	1
Lija	8	6	-
Luqa	7	7	1
Marsa	-	2	1
Marsaskala	8	5	9
Marsaxlokk	4	2	1
Mellieħa	4	10	2
Mġarr	4	2	2
Mosta	13	12	16
Mqabba	3	3	2
Msida	4	10	8
Mtarfa	1	1	3
Naxxar	11	12	15
Paola	5	4	11
Pembroke	5	4	1

Locality	2012	2013	2014
Pietà	6	7	2
Qormi	5	9	5
Qrendi	2	-	2
Rabat	7	7	2
Safi	2	1	-
San Ġiljan	7	5	6
San Ġwann	11	11	6
San Pawl il-Baħar	21	12	10
Santa Lucia	4	2	2
Santa Venera	5	7	9
Siġġiewi	3	5	8
Sliema	13	6	8
Swieqi	9	7	5
Ta' Xbiex	2	-	-
Tarxien	10	5	6
Valletta	15	7	15
Xemxija	1	-	-
Xgħajra	-	-	-
Żabbar	11	12	4
Żebbuġ	8	4	6
Żejtun	15	5	6
Żurrieq	12	5	5
Gozo	26	16	12
Other	31	12	19
Overseas	5	16	16
Total	443	329	352

Age profile of open caseload in hand at end 2014

Table 1.14 – Age profile of open caseload at end 2014

Age	Cases in hand
Less than 2 months	36
Between 2 to 3 months	31
Between 4 to 5 months	31
Between 6 to 7 months	16
Between 8 to 9 months	18
Over 9 months	93
Total Open files	225

Diagram 1.15 - Percentage shares of open complaints by age (at end 2014)

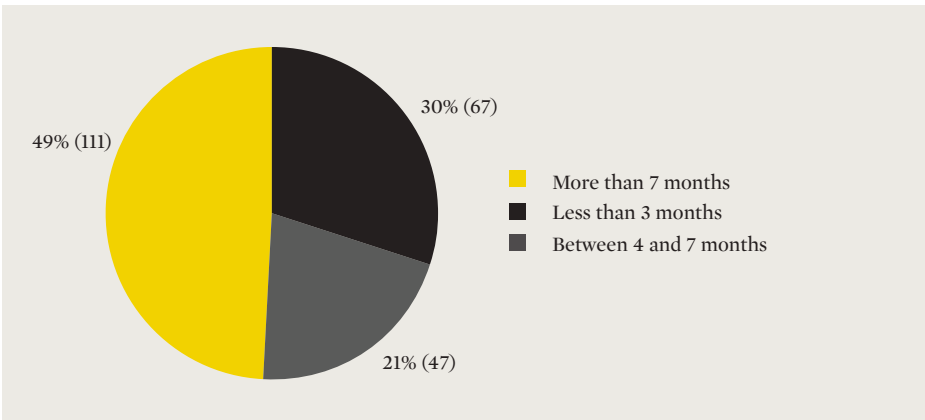


Table 1.14 and Diagram 1.15 show the number of cases still under investigation that stood at 225 at the end of 2014, an increase of 41 cases or 22% more than the previous year.

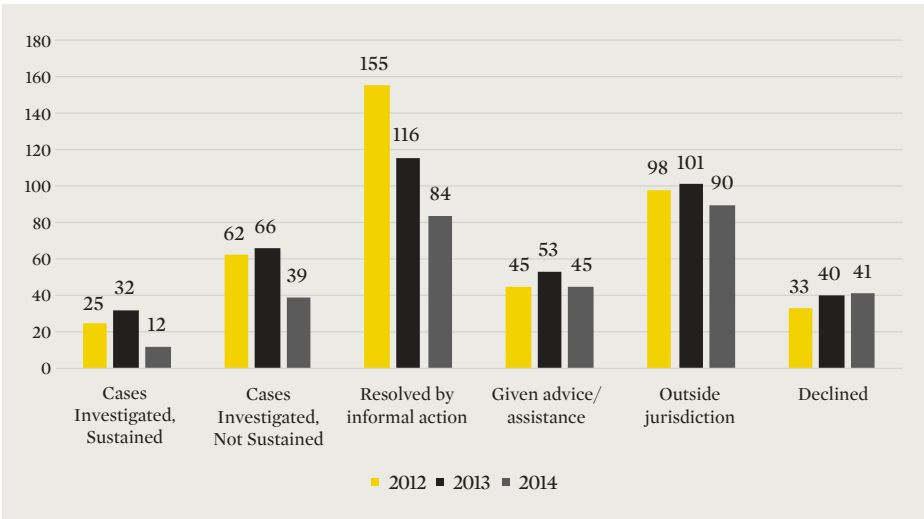
Outcome of finalised complaints

Table 1.16 – Outcomes of finalised complaints 2012- 2014

Outcomes	2012	2013	2014
Sustained cases	25	32	12
Cases not sustained	62	66	39
Resolved by informal action	155	116	84
Given advice/assistance	45	53	45
Outside Jurisdiction	98	101	90
Declined (time-barred, trivial, etc.)	33	40	41
Total	418	408	311

Table 1.16 shows the outcome of the finalised complaints. In 2014 there was a decrease of 24% over 2013. Of which 12 cases were found justified by the Ombudsman with a satisfactory outcome for the complainant. Of the 311 cases finalised during 2014, 45 cases were finalised by giving advice or assistance and without the need to conduct a formal investigation. There were 84 cases that were also solved by informal action while cases that were outside the Ombudsman’s jurisdiction stood at 90 cases.

Chart 1.17 – Outcomes of finalised complaints 2012 – 2014



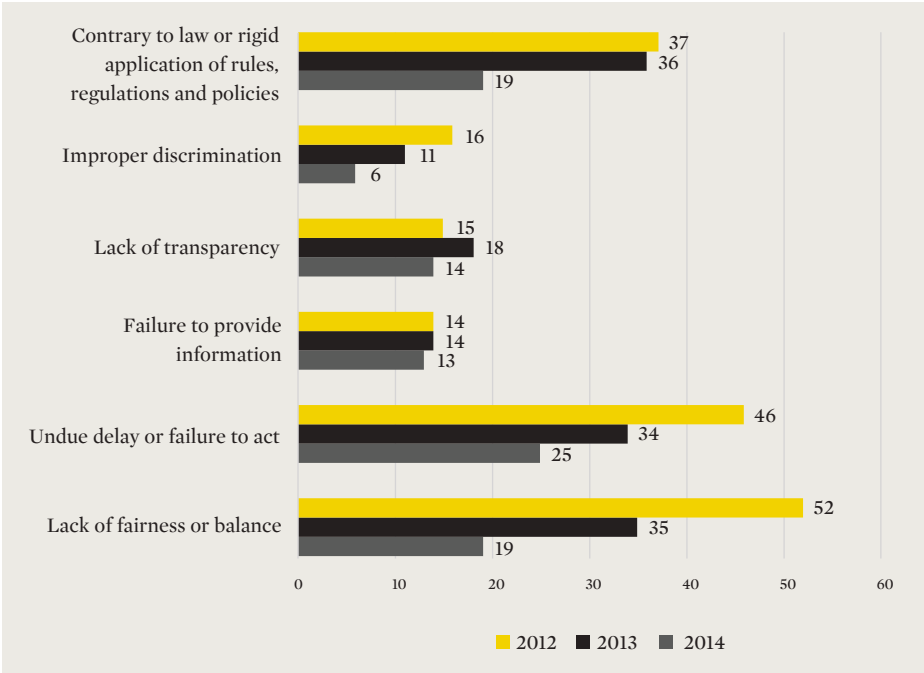
Type of maladministration in justified complaints

Table 1.18 – Type of maladministration in justified complaints 2012 - 2014

Closing Status	2012		2013		2014	
Contrary to law or rigid application of rules, regulations and policies	37	21%	36	24%	19	20%
Improper discrimination	16	9%	11	7%	6	6%
Lack of transparency	15	8%	18	12%	14	15%
Failure to provide information	14	8%	14	10%	13	14%
Undue delay or failure to act	46	25%	34	23%	25	25%
Lack of fairness or balance	52	29%	35	24%	19	20%
Total	180	100%	148	100%	96	100%

Table 1.18 shows that 25% of the justified complaints during the year under review concerned an undue delay or failure to act. The second most common justified complaints were about proven actions and decisions by public officials that were contrary to law or that were based on an inflexible interpretation and application of rules, regulations and procedures, amounting to 20% of the caseload and equally those who alleged lack of fairness or balance.

Chart 1.19 – Cases concluded and found justified 2012 – 2014

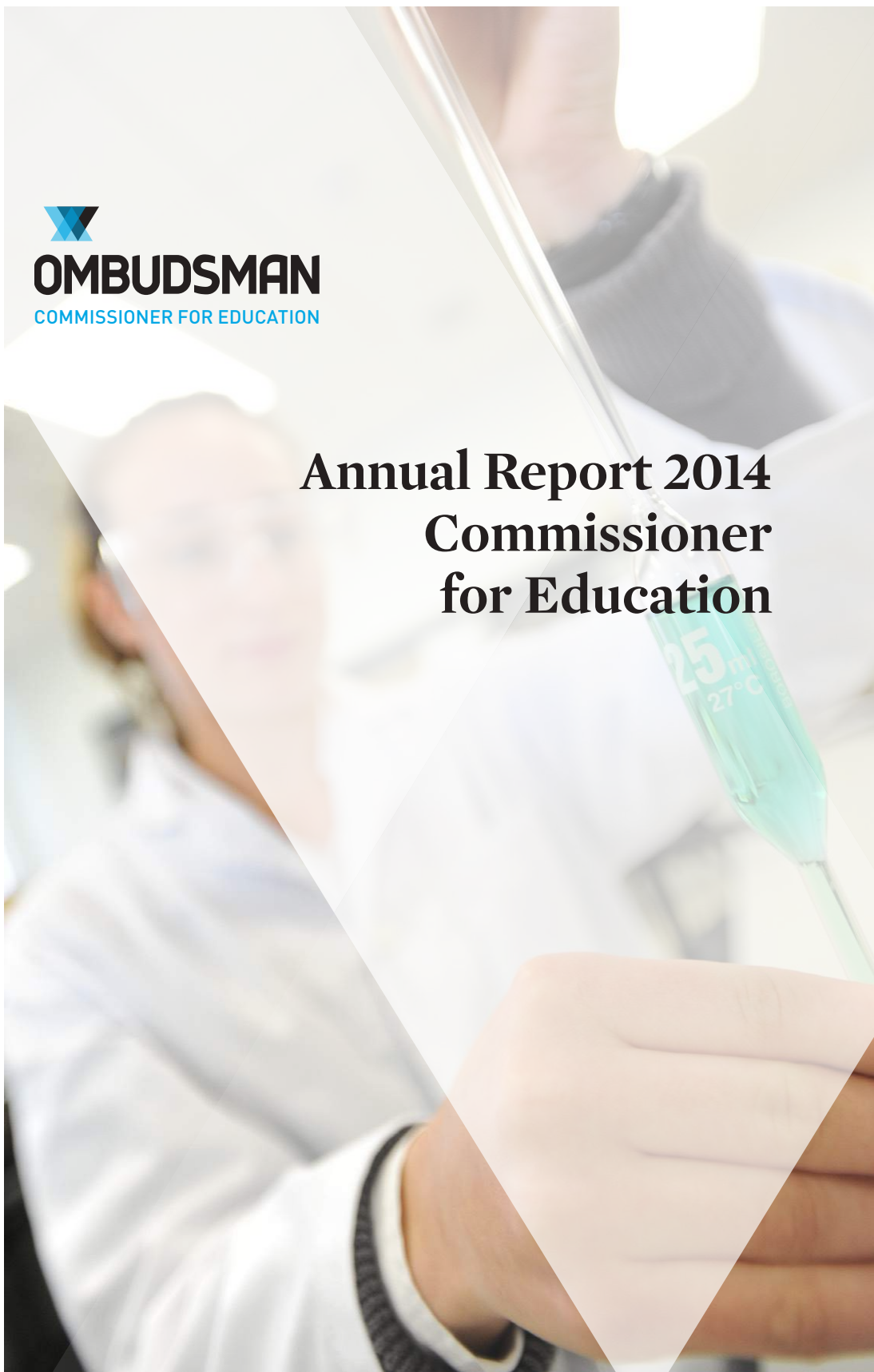




OMBUDSMAN

COMMISSIONER FOR EDUCATION

Annual Report 2014 Commissioner for Education



The Commissioner for Education as a Change Agent

The most obvious role of the Commissioner for Education (previously known as the University Ombudsman) is to mediate between the variety of complainants and the education institutions of higher learning in Malta. The complainants can be students or employees of the institutions concerned. They can also be prospective students or aspiring employees who for a variety of reasons feel unfairly or discriminatorily treated by the academic or administrative sectors of the institutions involved¹.



Professor Charles Farrugia taking the oath of office as Commissioner for Education

1 The Report consists of two sections:

- My views on an aspect of the Commissioner for Education's role; and
- Data pertaining to cases completed in 2014.

A selection of case notes completed in 2014 is contained in a separate publication entitled Case Notes 2014.

Public educational institutions in Malta have come to accept and embrace the conciliatory work of the Commissioner for Education; and so have the complainants themselves. Figures for the year under review demonstrate that the vast majority of the cases investigated came to a satisfactory conclusion where the complainants and the institutions complained against accepted the Commissioner's final opinion on the case. There were exceptions but these were too few to disprove the general rule that almost all complainants and the institutions of higher learning in Malta acknowledged the Commissioner's role as an honest and neutral broker.

Commissioners for Education – indeed all types of commissioners or ombudsmen - have the capacity to fulfil the equally important task as agents for change. In this function, they can motivate reviews of existing policies as well as encourage the introduction of new ones. A careful reading of the Case Notes publication, which deal with a selection of case-studies including the recommendations and the follow-up outcomes associated with them, reveals that the Commissioner's role as change agent functions well in local educational institutions. Thus, one notes that the Faculty of Education within the University of Malta implemented recommendations related to the assessment of Teaching Practice in the Bachelor of Education (Honours) with the result that complaints about this component of the course have been drastically reduced. Similar results have been achieved regarding staff career 'progression' and the review of students' final results at the Malta College of Science and Technology (MCAST). The Commissioner for Education also recommended procedures related to 'revision of papers' at the Institute of Tourism Studies (ITS), which adopted them



with success. Initiatives related to students with special needs generated discussions and changes that are relevant to all institutions and beyond in mainstream Secondary Education.

The Commissioner for Education has adopted the definition of a change agent given by Shawn Grimsley, namely:

“A change agent is a person from inside or outside the organization who helps an organization transform itself by focusing on such matters as organizational effectiveness, improvement, and development. A change agent usually focuses his efforts on the effect of changing technologies, structures, and tasks on interpersonal and group relationships in the organization. The focus is on the people in the organization and their interactions.”²

While conducting investigations, drafting reports, reaching final opinions and formulating recommendations, this Office invariably focuses on Grimsley's last sentence by emphasising the human element. Thus, the complainant remains a human being with a face, a name and a personal concern. The case, not the individual, is numbered for office administration purposes only (however, the case-studies contained in the Case Notes publication must refer to a nameless 'complainant' throughout in order to preserve anonymity and to comply with the country's data protection laws). The Commissioner constantly keeps in mind the awareness that a problem, which the institutions may regard as a minor administrative glitch, can take monumental proportions to the individual concerned. Furthermore, while the officials working in the educational institution can revert to and rely on the body's legal and organisational backup, individual complainants feel on their own struggling against what they regard as an overpowering and anonymous bureaucracies. In these circumstances, the Commissioner through the Ombudsman's Office intervene to sustain the complainant's resolve to get a fair deal, and at the same time to support the officials' efforts to deal fairly with the complaint. In such cases, change often occurs in both parties. The complainants come to understand that theirs was not the only viewpoint; they will appreciate that there were other considerations, which they had missed or ignored. The educational administrators come to realise that certain factors may have entered the equation to render the issue an unprecedented one, which needs a fresh approach or 'thinking outside the box'.

2 Grimsley, Shawn (2014): 'Change Agent – Definition and Role', *Praxus II Business Education*, Chapter 22, Section 14. <study.com>



Freshers' Week 2014

The Commissioner for Education can function as a change agent provided he approaches his duties with certain predispositions. Among these, sensitivity and authenticity are essential. The Commissioner must be sensitive towards the complainants, their frequent sense of fragility and the desolate feeling of fighting the bureaucracy of an overwhelming institution. The Commissioner must also be sensitive about the workings of the institutions concerned, their ethos, their traditions and the difficulty of setting up precedence, which might cause more harm than good. Above all, the Commissioner must be sensitive to his own motivations in dealing with cases.



The Commissioner for Education, Professor Charles Farrugia during one of the regular meetings with students' organisations

He must also be authentic and act in accordance with the values he seeks to promote in others. Thus, he must be open to suggestions, be willing to hear contrasting and conflicting viewpoints, be ready to change his *modus operandi* when it no longer promotes equity and fair treatment for all. As Nelson Mandela once said: “*One of the things I learned when I was negotiating was that until I changed myself I could not change others*”.

Professor Charles Farrugia
Commissioner for Education

Performance Review

Commissioner for Education

Table 2.1 - Complaint intake by institution (2012 - 2014)

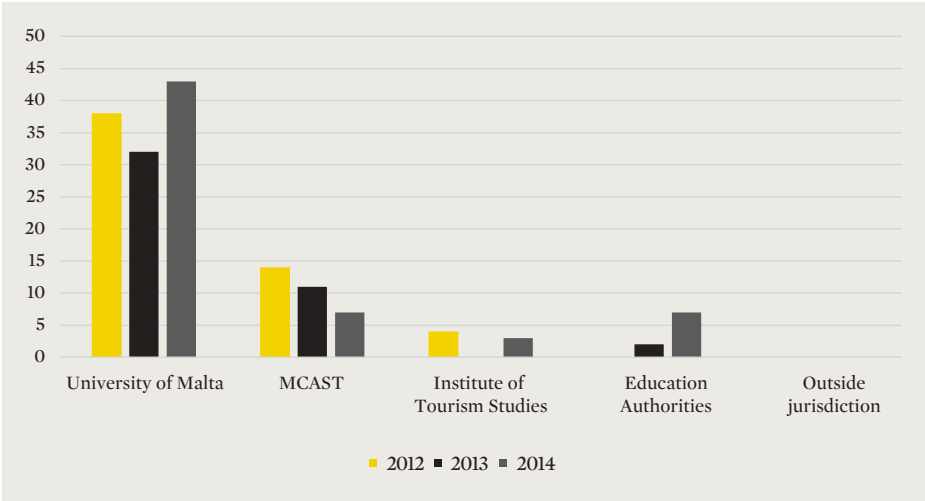
Institutions	2012	2013	2014
University of Malta	38	32	43
MCAST	14	11	7
Institute of Tourism Studies	4	-	3
Education Authorities	-	2	7
Outside Jurisdiction	-	-	-
Total	56	45	60

The data emerging from this table are self-evident. The complaints received in the year under review outnumber those of the previous two years and show an increase of 33 percent over 2013. The most apparent cause for the increase was the participation of the Ombudsman Office in the University’s Fresher’s Week.

It is to be expected that the number of complaints lodged against the University is greater than those against MCAST and ITS whose student and employee numbers are smaller.

The term Educational Authorities refer mainly to the Education Division and the Ministry for Education and Employment which operate the Students Scholarship and Maintenance Schemes.

Diagram 2.2 - Complaint intake by institution (2012 - 2014)



‘Others’ refer to members of the general public who are neither members of staff nor students of the three institutions of higher learning in Malta.

The Own Initiative case undertaken by the Commissioner for Education concerned absences at the Junior College.

Table 2.4 - Outcomes of finalised complaints (2012 - 2014)

Outcomes	2012		2013		2014	
Resolved by informal action	12	22%	4	8%	12	26%
Sustained	10	19%	3	6%	2	4%
Partly sustained	6	11%	5	10%	3	6%
Not sustained	11	20%	12	24%	14	30%
Formal investigation not undertaken/discontinued	12	22%	22	44%	10	21%
Investigation declined	3	6%	4	8%	6	13%
Total	54	100%	50	100%	47	100%

Table 2.3 - Complaints by institution classified by gender and status of complaint (2012 - 2014)

	University of Malta			MCAST			Institute of Tourism Studies			Education Authorities			Total		
	2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014	2012	2013	2014
Students															
Male	11	12	13	5	3	3	-	-	-	-	1	5	16	16	21
Female	15	8	15	3	2	2	-	-	-	-	-	1	18	10	18
Staff															
Male	6	7	7	3	4	1	4	-	2	-	-	-	13	11	10
Female	7	4	4	2	2	1	-	-	1	-	1	-	9	7	6
Others			3			-			-			1			4
“Total complaints by students and staff”	39	31	42	13	11	7	4	-	3	-	2	7	56	44	59
Own initiative cases	-	1	1	-	-	-	-	-	-	-	-	-	-	1	1
Outside jurisdiction	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	39	32	43	13	11	7	4	-	3	-	2	7	56	45	60

The Commissioner for Education closed 47 cases in 2014 and the remaining 13 cases in 2015.

The term ‘Informal action’ signifies interactions between the Commissioner for Education, the complainant and officials of the educational institutions concerned. In such cases misunderstandings are clarified to the satisfaction of all the parties concerned.

The term ‘Formal investigation not undertaken/discontinued’ occurs when simple misunderstandings are clarified or when complainants decide not to proceed with the complaint.

Investigations are ‘Declined’ when the Commissioner decides that complaints fall outside his jurisdiction or when he considers them of a trivial nature.

Diagram 2.5 – Outcomes of finalised complaints (2012 – 2014)

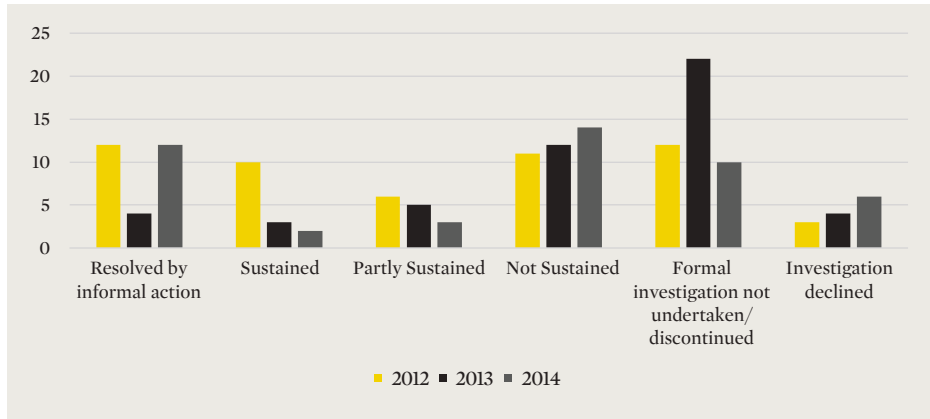
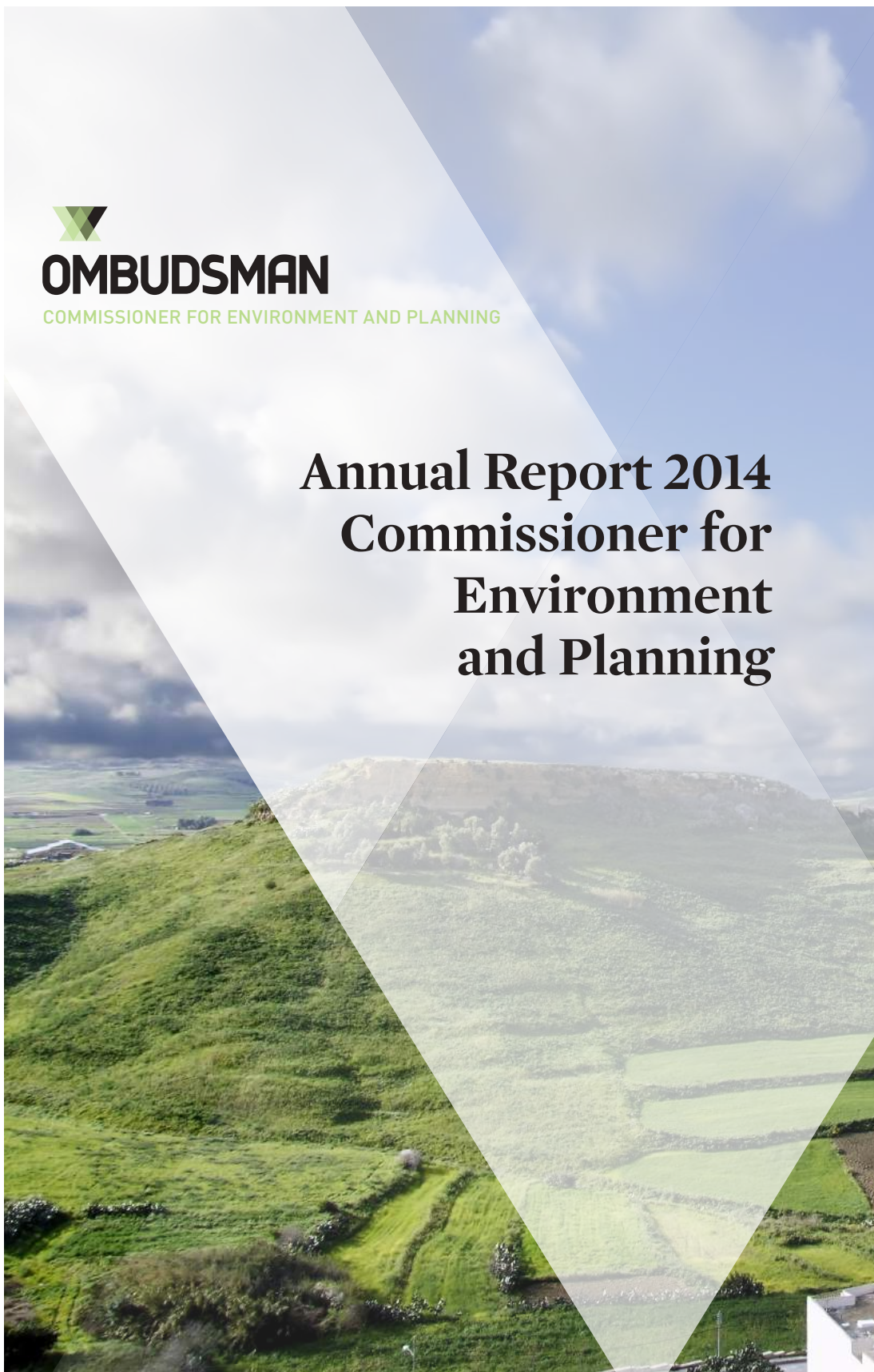


Table 2.6 - Complaint Grounds (2012 - 2014)

Outcomes	2012		2013		2014	
Unfair marking of academic work	9	16%	8	21%	15	25%
Special needs not catered for	-	0%	-	0%	2	3%
Promotion denied unfairly	9	16%	1	2%	4	7%
Post denied unfairly (filling of vacant post)	6	11%	4	11%	4	7%
Unfair/discriminatory treatment	28	50%	20	53%	27	45%
Lack of information/attention	4	7%	4	11%	7	12%
Own-initiative	-	0%	1	2%	1	2%
Total	56	100%	38	100%	60	100%

The 27 cases falling under the 'Unfair/discriminatory treatment' include 7 cases lodged against the Ministry for Education and Employment and were concerned with students' scholarships and maintenance grants. Another 11 cases concerning complaints relating to unfair treatment on academic grounds and 9 cases concerning unfair treatment on non-academic grounds.

Annual Report 2014 Commissioner for Environment and Planning



Ensuring citizens' rights for a better quality of life

As projected in the previous year's report, during the year in review a series of meetings were held with NGOs, to identify areas of collaboration, and also to discuss their concerns.

As a result, discussions are taking place with the Bicycle Advocacy Group (BAG) on problems encountered by cyclists on Maltese roads, and the need for a proper regulatory framework in accordance with EU legislation, particularly with respect to the use of 'pedelecs', bicycles with an electric motor assisting pedalling.



The Commissioner for Environment and Planning, Perit David Pace during one of the regular meetings with Environmental NGOs

Another result of these meetings was that a programme of collaboration with the Noise Abatement Society of Malta (NASOM) was started, aimed at an assessment on the state of transposition and implementation of EU Directives and legislation.

During the exercise, the MEPA, as the National Regulator for the Noise Directive implementation, was contacted. It was discovered that due to the impending MEPA demerger, the Environment Directorate was not being resourced sufficiently. As a result the noise mapping process could not be carried out.

In addition the transmission of data to Brussels, as part of the MEPA's regulatory function, was not being carried out regularly. Considering the impact that noise has on the quality of life, progress in the proper implementation and monitoring of the Noise Directive is essential.

There were four 'Own Initiative' cases opened in 2014. Two were interlinked since they deal in one way or another with the enforcement procedures and practices used by the MEPA.

Enforcement (or lack of it) has always been a contentious issue where the MEPA is concerned, and there is a growing perception that presently enforcement action has slackened.

A third case is researching into methods for the implementation of the 'shared space' concept within urban areas, particularly the town centres, where there is constant conflict between vehicular traffic pressure and pedestrian use.

This project has taken an innovative twist, since instead of being a formal investigation, it has taken the form of a collaborative exercise with Local Councils. There is even the possibility of EU funding for such a project. Discussions are under way and are expected to lead to a formal application for EU funds in the coming months.



The Commissioner for Environment and Planning, Perit David Pace addressing the media

The fourth case was opened following concerns raised by a Local Council on the lack of proper control of horse-drawn traffic in urban centres.

The case raises issues of traffic obstruction as well as those related to sanitary conditions in public circulation spaces. The Director of Local Government has informed that regulations are being drafted and are expected to be published towards the summer of 2015.

Caseload

There were 49 new cases opened in 2014, which is a drop of 20% compared to the new cases opened in 2013. However, indications in 2015 are that the level of new cases referred to this office is back to pre-2014 levels.

The total caseload in 2014 (new cases plus those pending at the end of 2013), amounted to 109. Of these, 59 were closed which is a slightly lower amount than the total of closed cases in 2013. The amount of 50 pending cases is also lower than that for the end of 2013.

These results are shown in graphic form below:

Table 3.1 Case Load – January – December 2014

Case Load	2014
Pending cases from 2013	60
New Requests for Investigation	49
Total	109

Table 3.2 Closed Cases – January – December 2014

Closed Cases	2014
Pending cases from 2013	37
New cases	20
Total	57

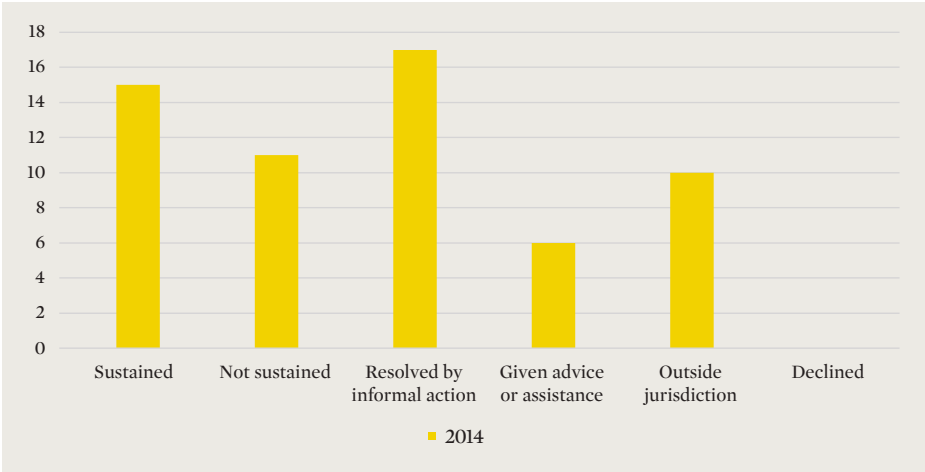
Table 3.3 shows the outcome of the 57 cases that were closed. Of these, complaints in 14 cases were sustained, 10 were not sustained, 17 were resolved by informal action, 6 were resolved by advice or assistance given, while 10 were found to be outside jurisdiction.

The total number of cases resolved by informal action, advice or assistance amounts to 23 which is over 40% of the total caseload. This is slightly lower than the figure of nearly 47% which were concluded in a similar manner in 2013, and is slightly surpassed by the amount of cases (24) which required a concluding report.

Table 3.3 Outcomes of closed cases – January – December 2014

Outcomes	2014	
Sustained	15	24.5%
Not Sustained	11	17.5%
Resolved by informal action	17	30.0%
Given advice or assistance	6	10.5%
Outside jurisdiction	10	17.5%
Declined	-	-
Total	59	100%

Diagram for table 3.3 – Outcomes of closed cases (2014)



Case typology

A review of the case typology for the new cases opened in 2014 once more confirms the previous years’ trend, in that the largest number of complaints received – 18 – were for undue delay or failure to act.

However this year, there was an identical amount of cases alleging decisions which were contrary to law or rigid application of rules, regulations and policies. In both cases, the figure represents 37% of the total number of complaints received.

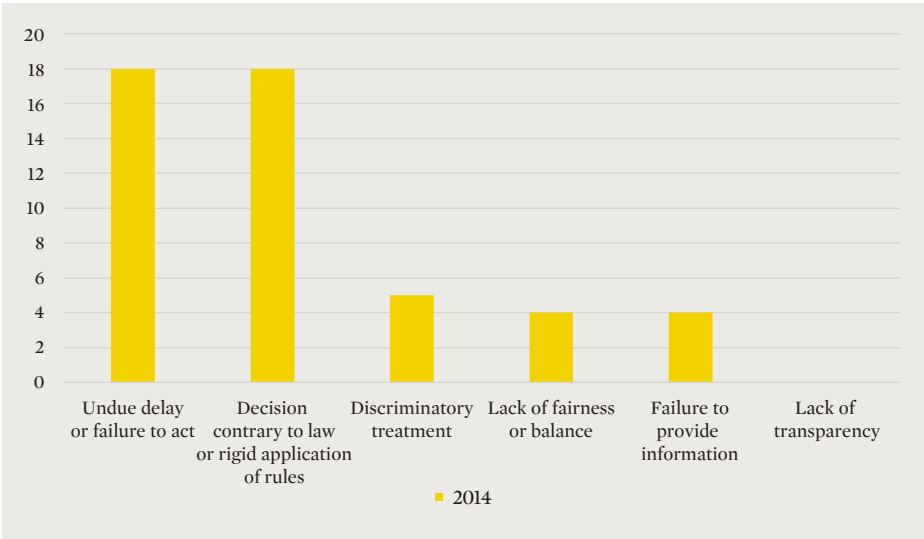
There were 4 complaints against lack of fairness or balance, representing 8% of the new caseload. A similar amount fell under the category ‘failure to provide information were received. Of the complaints received 5 complaints (10% of the caseload) were against improper discrimination. No cases which alleged lack of transparency were received in this period.

Table 3.4 shows these statistics in graphic form:

Table 3.4 – New Caseload by nature of Complaint – January – December 2014

Nature of complaint	2014	
Undue delay or failure to act	18	37%
Decision contrary to law or rigid application of rules	18	37%
Discriminatory treatment	5	10%
Lack of fairness or balance	4	8%
Failure to provide information	4	8%
Lack of transparency	-	-
Total	49	100%

Diagram for table 3.4 – New Caseload by nature of complaint (2014)



Perit David Pace

Commissioner for Environment and Planning



OMBUDSMAN

COMMISSIONER FOR HEALTH

Annual Report 2014 Commissioner for Health



Improving the quality of public health services for all

The year 2014 marks the second full year in office of Mr Charles Messina as Commissioner for Health. The Commissioners have now integrated completely in the set-up of the Office of the Ombudsman. Regular meetings are being held monthly between the Ombudsman, the three Commissioners and the Director General to discuss policy strategy, areas of concern, and coordination between the various sections of the Office and outreach programmes. These meetings are extremely useful to discuss common approaches on how to establish and maintain good relations with the public administration and how to best tackle problems when these persist. In these meetings, the Commissioners are having to opportunity to flag common difficulties and share their experience towards the improvement of the investigative and the administrative services put by the Ombudsman at their disposal.

Complaints and Investigation

Table 4.0 – Complaints received 2013 – 2014

Complaints Received	2013 (Jan – Dec)	2014 (Jan – Dec)
General Public	35	40
Employees with the Public Health Sector	28	37
Total	63	77

During 2014, seventy-seven (77) complaints were received, an increase of 22% over 2013, of which forty (40) were from the general public and 37 from employees working in the public health sector. During the year in review, the Commissioner for Health concluded 63 cases including 14 cases which remained pending from the previous year. (Table 4.0)

Table 4.1 Categories of complaints from the general public (Jan – Dec 2014)

Nature of Complaint	No of cases
Refusal to be sent abroad for treatment	3
Refusal to be given medicines free of charge	11
Given expired medicines	1
Admission to Old People's Home	2
Lack of reply	2
Radiological investigations	1
Refusal to be given European Health Insurance Card	1
Refusal to be given medical certificate	1
Request to be given medical supplies entitlement every six months instead of every two	1
Ineligible to apply for post of Clinical Chairman	1
Alleged inefficiency of hospital staff to handle complaints	1
Not given report from Directorate of Environmental Health	1
Requested deletion of certain details from Medical File	1
Ineligibility to be given IVF treatment	1
Out of Stock medicines	1
Non recognition of medical degree	1
Discrimination against non-Maltese regarding the validity period of the European Health Insurance Card	1
Request for Inquiry regarding treatment at Mater Dei Hospital	1
Treatment given by hospital doctor	1
Non-payment for services given	1
Discrimination in a call for quotations	1
Not given grave site at the Adolorata Cemetery	1
Hospital appointment	1
Discrimination for services at Gzira Health Centre	1
Non availability of domiciliary physiotherapy services	1
Health issues because of pigeons	1

From the complaints lodged by the general public, issues related to the right of free medicines topped the list for the third consecutive year. The Department of Health keeps insisting that patients have to abide by Protocols and guidelines issued by the Department of Health. The Commissioner, on various occasions insisted that Protocols must be based on medical indications. The Commissioner is of the opinion that although the Department is correct in preventing abuses, this cannot happen by denying patients the right given to them by the Social Security Act. If this approach persists, the Commissioner will ask the Ombudsman to refer the matter to the Health Committee of the House for Representatives.

Table 4.1 shows the nature of complaints lodged by the general public which show the vast and complex complaints which were investigated. Other complaints varied from lack of reply from the Health Authorities to refusal by the Department of Health to send patients for treatment abroad.

Table 4.2 Categories of complaints by employees within the Public Health Sector (Jan – Dec 2014)

Nature of Complaint	No of cases
Delay to be given promotion	7
Request for postponement of date to commence work denied	1
Change of roster	1
Unfairly transferred	2
Not allowed to submit tender	1
Not registered in Specialists Register	1
Discrimination regarding on call allowance	2
Ineligible to apply for Calls for Applications	6
Change of work contract	1
Refusal of teleworking	1
Forced to do certain duties	2
Not given post of Acting DNO	1
Request for remuneration for doing higher duties	1
Transfer withheld	1
Not given promotion	1
Not given Qualification Allowance	1
Misinterpretation of work agreement	1
Not given allowance	1
Discrimination in Calls for Application	1

Not given appropriate salary	1
Reinstatement to post	1
Non approval of unpaid leave	1
Unfairly transferred and not given appropriate duties in his new post	1

As shown in table 4.2 the main difficulties raised by staff working within the Public Health Sector are related to discrimination regarding on call allowance, ineligibility to apply for Calls for Applications and issues related to salaries.

On the discrimination of on call allowance and the salaries related issues, the Commissioner is still awaiting replies from the Department of Health. On the ineligibility to apply for Calls for Applications, the difficulty arose because those who complained were not aware of negotiations details between the Unions and the Department. Consequently when the Collective Agreements were signed, some of the public health sector employees were adversely hit. The employees concerned can seek redress in Court since such agreements are binding to both the Unions (representing the staff) and the Department, therefore the Office of the Ombudsman could not be of help.

Table 4.3 – Outcome of concluded cases (Jan – Dec 2014)

Outcome	Public	Staff	Total
Sustained	12	6	18
Not sustained	8	12	20
Could not be investigated	1	-	1
Advice given	6	-	6
Withdrawn by complainant	2	2	4
Still pending	11	17	28
Total	40	37	77

Table 4.3 shows the outcome of concluded cases. Of the seventy-seven (77) cases referred to the Commissioner for Health during 2014, eighteen (18) were sustained and recommendations were sent to the department, twenty (20) were not sustained and six (6) cases that just needed an advice and no investigation was undertaken. There was a case that could not be investigated and four (4) cases that were withdrawn during the investigation by the complainants. Investigation of the remaining twenty-eight (28) cases are still being investigated by the end of the year. All complaints received during 2013 were completed.

Table 4.4 – Balance of pending complaints by month (Jan – Dec 2014)

Months	Received	Still Pending
January	5	-
February	7	1
March	11	4
April	7	1
May	8	2
June	11	2
July	4	2
August	2	1
September	4	2
October	7	3
November	5	4
December	6	6
Total	77	28

Table 4.4 shows a monthly breakdown of complaints received which includes those complaints which are still pending by the end of the year.



The Commissioner for Health, Mr Charles Messina addressing the media

Own Initiative Investigations

From time to time, the Commissioner for Health initiates own initiative investigations on matters of general public interest.

During 2014, the Commissioner continued to work on own initiative investigations initiated in 2013 and reports the following progress:

Infants and Adults with Hearing Problems

This Own Initiative Investigation was initiated following articles published in local newspapers about the difficulties being faced by such persons.

The article stated that according to the Deaf People Association, the children were not being diagnosed early enough since babies were not screened for any hearing impairment before they left hospital. Another point raised by the Association was that, unfortunately, months and even years pass before parents realise their child has a hearing difficulty. They argued, that another factor is the long delay for an appointment to be set for a hearing test. Appointments were being scheduled some six to eight months after the child was referred to hospital. The Association also called on the authorities to ensure that the hearing aids be provided to all deaf people and that their quality be improved and delay tackled.



The investigation has been concluded and the report is being drafted to be submitted by the first quarter of 2015.

Waiting Lists at the Child Development Assessment Unit (CDAU) and Child Guidance Clinic (CGC), St Luke's Hospital

The Commissioner initiated an Own Initiative Investigation on the waiting lists at the Child Development Assessment Unit (CDAU) and the Child Guidance Clinic (CGC). These units assess, diagnose and treat children on out-patient basis. The children are assessed by a multi-disciplinary team which includes Paediatricians, Nurses, Psychologists, Physiotherapists, Occupational Therapists and Speech Language Pathologists.

During the investigation, the Commissioner noted that it seemed that there was a lacuna between the Psychology Services offered by the CDAU and the Department of Education. In 2013, as part of the investigation, the Commissioner held an extensive consultation process where all the players involved were given the opportunity to air their views on the situation and what is preventing the CDAU and CGC from giving the service to which these children with special needs are entitled, as of right, and within a reasonable time. As could be anticipated, some specialists within the unit expressed the need for additional manpower.

CGC also expressed the need for more IT equipment/software. This Office can't take a position or decide on the needs, particularly of additional staff, though it can safely be stated, that in respect of one of the professions involved, namely that of Psychologists, there is *prima facie* a very strong case for a significant increase in the number of Clinical and Educational Psychologists providing the service. It also transpired that there are other areas, especially the Education Sector, which is suffering from the lack of Psychologists (in that case, Educational Psychologists). There is in place, in the public service, a Unit responsible for carrying out of a Capacity Building Exercise, which Unit is empowered to determine the Human Resources needs within the public service.

The Commissioner had concluded the investigation and sent the report to the Department of Health and the Department of Education during the year in review.

Joint Own Initiative Investigation

During the year in review, for the first time since the introduction of the Commissioners within the Ombudsman's Office, the Parliamentary Ombudsman Chief Justice Emeritus Joseph Said Pullicino has authorised the Commissioner for Environment and Planning, Perit David Pace and the Commissioner for Health, Mr Charles Messina to carry out a joint Own Initiative Investigation on the '*Dumping of Sewage Slurry on Cultivated Land – Negative Impacts on Health and Environment*'.

The aim of this joint own initiative investigation was to establish whether there are grounds of concern regarding the effect which these practices may have on the environment and health. On his part, the Commissioner for Health was asked to focus his investigation on the health aspect of these practices. As part of his investigation, the Commissioner for Health, requested the Food Safety Commission to give its reaction. As part of this investigation, the Parliamentary Ombudsman initiated a Public Consultation inviting interested members of the public to forward their submissions on such practices.

Preliminary Investigations

Apart from the own initiative investigations, the Commissioner of Health continued to follow up a number of preliminary investigations he initiated during 2013.

The preliminary investigations which were initiated were the following:

- a) Waiting lists at the Medical Imaging Department, Bone Density Investigations and Gynaecology Ultrasound Unit at Mater Dei Hospital – from the preliminary investigation conducted it transpired that waiting lists have been reduced to reasonable levels;
- b) Organ Transplantation - Following a meeting to discuss the matter of the compensation to non-related live organ donors for loss of income incurred, like loss of work, when donating organs for transplant purposes, in 2013, the Commissioner for Health followed up the issue with the Ministry for Health. It was suggested that the compensation to donors should not be made by the patient or his/her relatives because the patient should not be burdened with financial affairs related to such transplants. This, apart from the fact, that there may be patients who would not be able to afford the expense not least those out of work or in receipt of Social Assistance.

The Bill about the Organ Transplant is being finalised by the authorities and most probably it will be discussed in Parliament during 2015.

- c) Medicines for Treatment of Hepatitis - In February 2012, Hepatitis B and C, were included in the revised list of the Schedule V of the Social Security Act. This entitled patients suffering from these conditions, to receive the medication free of charge. The Commissioner continued to seek clarification on why the medicines were still not available.

From the correspondence and information related to this situation, it was discovered that the medicines in question were not available apparently due to lack of funds since each medication would cost €75,000 for every patient. The Commissioner will continue to sustain his arguments that denying patients the free medicines is causing an injustice that needs to be remedied.

- d) *Entitlement to the Free Supply of Medicines under the Social Security Act* – the Commissioner for Health, for the third consecutive year, is expressing his concern that certain medicines are not being given for certain ailments because the hospital protocol so dictates.

The Commissioner have repeatedly argued that Protocols are there to serve as a guidance based on medical grounds and to prevent abuses. Protocols are not meant to deny patients for the medicines for which they are entitled to in terms of the Social Security Act.

- e) *Stroke Patients* – from reports in the media, it transpired that patients who are of the age of 70 and suffered a ‘stroke’ were not being admitted to the Neurology Ward at Mater Dei Hospital but to General Medical Ward. The Commissioner argued that this is discriminatory and asked for reconsideration of the decision. The Department of Health gave its assurance that all patients irrespective of age, are given the appropriate attention and treatment.

Personal Note

The Commissioner for Health will continue to do his utmost in solving individual complaints and helping citizens to seek justice when they experience an act of maladministration. However, at times he is finding it difficult when it comes to replies from the Department of Health. As shown in Table 4.8, there are 28 cases which have been pending at the end of the year, of which 18 (23%) had been pending for more than two months.

The Commissioner expects much quicker replies and feedback from the Department of Health. Justice delayed is justice denied.

Mr Charles Messina
Commissioner for Health

Appendices

Appendix A

Agreement reached with Transport Malta on complaints lodged alleging damages sustained due to road surface damages.

Over the past year the Office of the Parliamentary Ombudsman had been investigating a number of complaints lodged by members of the public who claimed payment for damages allegedly sustained by their vehicles due to road surface defects, which complainants claimed should have been addressed by Transport Malta. A number of meetings were held with authority officials and numerous correspondence was exchanged where it was agreed that a procedure and criteria to be adopted in processing such claims needed to be determined, formalised and published by the authority.

The Authority gave serious consideration to this matter and took up this suggestion and created an internal complaints handling mechanism for the assessment of claims relating to arterial and distributor roads as defined in the National Structure Plan. A document, indicating the procedure to be followed by the Roads and Infrastructure Directorate of Transport Malta (RID) and the manner in which the claims would be examined, assessed and decided was passed on to this Office for its comments and possible suggestions.

The Ombudsman considered this initiative of the Authority as laudable and noted that once this internal complaints handling mechanism was properly publicised, it would improve the resolution of pending issues with members of the public. The Ombudsman made a number of suggestions, which in his opinion, would render the procedure more effective and enable this mechanism to bring the Authority and claimants together so that an amicable and more effective determination of grievances could be reached within the shortest possible time and through the use of the cheapest methods.

These suggestions included:

- a) the acknowledgement of all correspondence received from claimants within pre-established short time-frames;
- b) a clear indication of the time limits applicable for the review and decision of claims;
- c) where the claim is considered as not having been adequately substantiated, claimants are to be provided with details specifying the findings of the Committee and indicating detailed reasons for the refusal of the claim, so that claimant could request a reconsideration of the decision in terms of the procedure established by the Authority.

The Ombudsman also pointed out that an alternative dispute resolution mechanism which is completely independent of the Authority should be created in addition to the internal mechanism envisaged by the Authority for the resolution of those claims which were not resolved by this internal committee, adding that the Authority should not be involved in the re-examination of a decision of the Committee since this could mislead the public.

The Ombudsman suggested that this independent Board would replace the Appeals mechanism envisaged in the Authority's guidelines and should be composed of competent persons whose decision is not dependant on approval by the Authority or any of its officials. Moreover, members of this board should be appointed for a preestablished term so as to ensure their independence and autonomy.

Recently the Ombudsman has been informed by the Authority that it has taken on board a number of his proposals and that these have been included in the Directorates' Operating Procedure. The Authority however informed the Ombudsman that it is of the opinion that at this stage it is premature to set up an independent board, since it is confident that the committee set up possesses the necessary knowledge and will provide a transparent and credible process to all parties concerned. The Authority however assured the Ombudsman that the option to include one or more independent members to the Board will be revisited periodically as the Authority is confident that eventually such member will add value to the Board. The Authority stated that it fully understands the position taken by the Office of the Ombudsman and will continue to give its total support in any investigation of any claims.

The Parliamentary Ombudsman appreciates the Authority's commitment to review the matter from time to time, as well as its cooperation and effort to improve customer service and the public administration. The Office will revert to the Authority periodically so as to monitor, when and if, further improvements can be made in line with the Ombudsman's recommendation.

It is to be pointed out that this internal committee reviews claims related to those roads which fall within the remit of Transport Malta and not the Local Councils. In the case of roads for which local councils are responsible complaints are to be addressed to the respective local council in the first instance and can then be referred to the Office of the Ombudsman if the grievance is not resolved.

The Office assures the public that if complainants are not satisfied with the outcome of a claim lodged with this internal committee, complainants can always refer the grievance to the Office of the Ombudsman for investigation.

Appendix B

The Ombudsman will continue with the investigation of complaints raised by Officers of the Armed Forces of Malta.

The Ombudsman refers to the debate in the House of Representatives held on 7 May 2014 during the second reading of the Bill amending the Armed Forces Act. During that sitting the Hon Dr Manuel Mallia, Minister for the Interior and National Security, affirmed Government's position to the effect that the Ombudsman does not have jurisdiction to investigate complaints received from AFM Officers and that, if anything, in terms of the Act that regulates the Armed Forces of Malta, these should be brought to the attention of the President of Malta by the Commander, through the Minister¹.

This declaration warrants a reply from the Ombudsman.

The Minister rests his case on a letter signed by an Investigating Officer within Office of the Ombudsman dated 16 October 2003, by which he declined to investigate a complaint lodged by an Officer in the Armed Forces in respect of a promotion. The Ombudsman has already informed the Armed Forces of Malta that in his considered opinion, that decision was manifestly mistaken since in effect it denies the right which the Officers enjoy under the Ombudsman Act to have recourse to him. Apart from other considerations that decision, ignored the basic and elementary legal principle that a specific law prevails over one of a general nature that preceded it. The Article in the Armed Forces Act (1970)² cited by the Minister regulates the procedure through which Officers may seek redress for any grievances which they may have. The Ombudsman Act

¹ The issue of complaints submitted by Officers of the Armed Forces of Malta is a different issue from that which had been considered by the House Business Committee of 9 May 2014. The latter concerns the Board established by the Ministry to investigate allegations of injustices before March 2013.

² Article 160 (2) Armed Forces of Malta Act provides that *"On receiving any such complaint it shall be the duty of the Commander to investigate the complaint and to grant any redress which appears to him to be necessary or, if the complainant so requires, the Commander shall through the Minister make his report on the complaint to the President of Malta in order to receive directions of the President of Malta thereon."*

(1995)³, on the other hand provides for specific redress for complaints on appointments, promotions, salary and pension rights.

During the previous administration, this matter had been the subject of discussion over several months between the Ombudsman and Brigadier Martin Xuereb, then Commander of the Armed Forces, the Office of the Attorney General, the Office of the Prime Minister and H.E. Dr George Abela, the then President of Malta. An agreement was reached that ensured that AFM Officers had the right to seek effective redress from the Ombudsman if they opt to refer their case to him.

According to this Agreement, an AFM Officer can opt to avail himself of his right to submit his complaint in terms of Article 160 of the Armed Forces Act, to the President of Malta, through the Commander of the Armed Forces and the Minister. In that case he would be considered to have renounced his right to seek redress from the Ombudsman. On the other hand the Officer could choose to submit his complaint in the first place to the Ombudsman while retaining his right to have his complaint referred to the President in case he was not satisfied with the Ombudsman's decision. The choice was his. This Agreement respects the rights of Officers under the two laws which apply in their case, besides also respecting the Constitutional hierarchy.

This Agreement was communicated to AFM Officers through a General Order issued by the Armed Forces of Malta on 11 November 2011.⁴ On the basis of this Agreement, the Ombudsman investigated and gave his ruling on a number of complaints raised by a number high ranking AFM Officers. His Final Opinion was considered by AFM and acted upon by the previous administration. Independently of the outcome, there was

³ Section 12 (3) (b) of the Ombudsman Act provides that the Act shall not applied to bodies listed in Part B of the First Schedule except *"in respect only of appointments, promotions, pay and pension rights of officers and men of the Force."*

⁴ Armed Forces of Malta – General Order 86 by Brigadier Martin Xuereb, Commander Armed Forces of Malta, 11th November 2011.

86. Complaints – Officers

1. Officers who feel aggrieved by the Commander's decision may:
 - a. In respect only of complaints concerning appointments, promotions, pay and pension rights refer their complaint for investigation by the Ombudsman in terms of Act XXI of 1995
Or
 - b. In respect of any type of complaint refer their complaint directly to the President of Malta for review in terms of Act XXVII of 1970
2. Officers who decide to refer their complaint directly to the President of Malta would be renouncing to their right to have have recourse to the Ombudsman in terms of Act XXI of 1995

AFM/4763/002/2010

AFM/5320/000/2010

agreement that the new procedure was clear and respected the rights of all concerned. Administrative justice was not only done but was seen to be done.

The Ombudsman maintains that he has jurisdiction to investigate complaints from AFM Officers in respect of appointments, promotions, pay and pension rights. It is the Law that gives the AFM Officers such a right and this right cannot be denied to them. So long as the law and the General Order remain in force, the Ombudsman is in duty bound to continue to extend his protection to those army Officers who complain to him in respect to appointments, promotions, pay and pension rights. He has done so and will continue to do so.

Besides correspondence with the Ministry, the Ombudsman has kept contact with H.E. Marie Louise Coleiro Preca, President of Malta and augurs that reason prevails so as to safeguard the citizen's rights.

For the above reasons the complaints received by the Ombudsman will continue to be investigated according to existing legislation and practices and in conformity with a law which safeguards the citizens' rights to a transparent and accountable administration.

No reason, other than that the Ombudsman does not have jurisdiction in such cases, has been forthcoming as to why the Armed Forces and the competent authorities are resisting that they submit their action to scrutiny of an authority established under the Constitution of Malta and mandated with the function of safeguarding the fundamental right of the individual to good public administration. It is clearly in the interest of all concerned and in particular the Officers, the Armed Forces and the competent authorities to allow the investigation of complaints submitted to the Ombudsman to take its normal course so as to ensure that everything has been done in accordance to justice and fairness.

12.05.14

Appendix C

Letter to the Speaker of the House on the relations between the Ombudsman and Committees of the House of Representatives



OMB/6/10/P10

24 ta' Marzu 2014

L-Onorevoli Dr Angelo Farrugia
Speaker
Kamra tad-Deputati
Il-Palazz
Il-Belt Valletta

Onorevoli Sinjur

Nirreferi għall-ittra u dokumenti li bghattli fl-14 ta' Marzu 2014, permezz tal-iskrivani tal-Kamra dwar il-korrispondenza li l-Onorevoli Dr Jason Azzopardi LL.D., M.P. għadda lilek fit-8 ta' Marzu 2014 in konnessjoni mal-proċess imhaddem mill-Kumitat imwaqqaf mill-Ministeru għall-Intern u Sigurtà Soċjali biex jinvestiga allegati ingustizzji fl-Armata skont tqarrija 140276 mahruġa minn dak il-Ministeru fit-18 ta' Frar 2014.

L-Onorevoli Azzopardi jispeċifika li għan-nom tal-Oppożizzjoni, kien qiegħed jitlob li l-Kumitat għax-Xogħol tal-Kamra jirreferi t-talba tiegħu lili biex ninvestiga l-kwistjonijiet minnu riferuti fit-termini tal-Artikolu 13(4) tal-Att dwar l-Ombudsman (Kap 385).

Dan l-Artikolu jistipula li –

“... kull Kumitat tal-Kamra tad-Deputati jista' f'kull waqt jirreferi lill-Ombudsman petizzjoni li tkun tinsab quddiem dak il-Kumitat għall-



konsiderazzjoni tiegħu, jew kull haġa li dwarha dik il-petizzjoni tkun tittratta. F'kull każ bħal dak l-Ombudsman għandu jinvestiga, kif sugġett għal kull direttiva speċjali tal-Kumitat, il-kwistjonijiet hekk lilu riferiti, kemm-il darba dawn ikunu jaqgħu taħt il-ġurisdizzjoni tiegħu, u jagħmel dak ir-rapport lill-Kumitat li jqis li għandu jagħmel. ...”

Sa fejn stajt niddetermina din hi l-ewwel okkażjoni kemm ilu mwaqqaf l-Uffiċċju tal-Ombudsman, illi Kumitat tal-Kamra tad-Deputati ikkunsidra talba simili u ha azzjoni dwarha. Tajjeb allura li jiġi speċifikat x'għandha tkun il-proċedura f'każijiet bħal dawn u meta u kif l-Ombudsman għandu jipproċedi skont il-provvediment fuq imsemmi.

Ninnota dan li ġej:-

1. Is-Subinciz 4 tal-Artikolu 13 jipprovdi li kull Kumitat tal-Kamra jista' jirreferi lill-Ombudsman “*petizzjoni*” li tkun tinsab quddiemu għall-konsiderazzjoni tiegħu. Il-Kumitat mhux tenut li jirreferi lill-Ombudsman materja li ma tkunx il-mertu ta' petizzjoni. Dan ifisser li l-petizzjoni trid tkun formulata fl-ewwel lok b'mod li l-istess Kumitat jintalab jikkunsidra l-mertu tagħha. Hu fil-kuntest ta' tali konsiderazzjoni, li l-Kumitat jista' jirreferi l-petizzjoni lill-Ombudsman.

2. It-terminu “*petizzjoni*” hu wiehed wiesgħa u jinkludi kull xorta ta' talba li biha tintalab azzjoni. Il-liġi ma timponi ebda limitazzjoni fuq min jista' jagħmel tali petizzjoni. Kull individwu jista' jagħmel petizzjoni ta' din ix-xorta lil kwalunkwe Kumitat fuq kwalunkwe haġa li taqa' fil-kompetenza tiegħu. Il-persuna li tista' tagħmel petizzjoni bħal din tista' tkun kemm fiżika kif ukoll morali. M'hemm xejn x'jipprekludi lill-Oppożizzjoni, kollettivament jew



individwalment, kif ukoll lil kull Membru Parlamentari illi jressaq petizzjoni għall-kunsiderazzjoni tal-Kumitat tal-Kamra.

3. Il-ligi ma timponi ebda forma speċifika kif petizzjoni bħal din għandha titwassal quddiem Kumitat tal-Kamra. Teżiġi biss li titqiegħed quddiemu għall-kunsiderazzjoni tiegħu.

4. Jispetta mbagħad lil dak il-Kumitat li f'kull waqt jiddeċiedi, fl-eżerċizzju hieles tad-diskrezzjoni tiegħu jirreferi l-petizzjoni li tkun tinsab għall-kunsiderazzjoni tiegħu lill-Ombudsman biex jinvestigaha. Fil-fehma tiegħi din tkun fost l-aqwa espressjoni ta' verifika tal-aġir tal-amministrazzjoni pubblika mill-organi parlamentari.

5. Dan ifisser illi tali riferenza tista' ssir biss minn Kumitat *qua* Kumitat, fit-termini tal-proċeduri li jirregolaw ix-xogħol tiegħu. Ma tistax issir fuq talba biss tal-persuna li tressaq il-petizzjoni la personalment, la permezz ta' xi Membru individwali tal-Kamra, jew tal-Oppożizzjoni, jew ta' xi hadd ieħor.

6. Barra dan, ir-riferenza mill-Kumitat għandha tkun li l-Ombudsman "... *jinvestiga, kif sugġett għal kull direttiva speċjali tal-Kumitat, il-kwistjonijiet hekk lilu riferiti...*". Dan strettament ifisser li r-riferenza trid tinkludi direttiva lill-Ombudsman biex jinvestiga u tista' tinkludi ukoll kwalunkwe direttiva speċjali li l-Kumitat jidhirlu xieraq li jagħmel, jekk dan ikun il-każ.

Il-fatti li jirrizultaw mill-ittra u d-dokumenti li bghattli fl-14 ta' Marzu 2014 għandhom jiġu verifikati fid-dawl ta' din l-analiżi qasira tas-subinċiż 4 tal-Artikolu 13 tal-Kapitolu 385 tal-Liġijiet ta' Malta.

Ippermettili ninnota s-segwenti:

1. Fil-fehma tiegħi, l-ittra tal-Onorevoli Azzopardi għan-nom tal-Oppożizzjoni ma tistax ma titqiesx li hi petizzjoni fit-termini tal-ligi. Kemm l-Onorevoli Membru personalment, kif ukoll in rappreżentanza tal-Oppożizzjoni, għandu kull dritt li jagħmel petizzjoni lil dan il-Kumitat tal-Kamra.

2. Mill-estratt tat-traskrizzjoni tal-laqgħa tal-11 ta' Marzu 2014 tal-Kumitat tax-Xogħol tal-Kamra komunikata lili, kif ukoll mill-ittra tiegħek tal-14 ta' Marzu 2014, jidher li d-deċiżjoni tal-Kumitat Permanenti kienet li kien hemm qbil li int tibgħat l-ittra tat-8 ta' Marzu 2014 lili. Minn imkien ma jirriżulta li dak il-Kumitat iddeċieda li jirreferi lili l-mertu ta' dik il-petizzjoni għall-investigazzjoni fit-termini tas-subinċiż 4 tal-Artikolu 13 li a bażi tiegħu saret. Fl-opinjoni tiegħi u sabiex jiġu evitati dubji dwar il-korrettezza tal-proċedura applikata taht dan is-subinċiż, tali referenza f'każi simili għandha issir b'mod formali mill-Kumitat kif espressament provdut.

Fiċ-ċirkostanzi u fin-nuqqas ta' tali referenza speċifika skont f'dak is-subinċiż, f'dan l-istadju nqis li ma għandix nibda ninvestiga l-petizzjoni magħmula mill-Onorevoli Azzopardi għan-nom tal-Oppożizzjoni. Kien ikun każ għal kollox differenti kieku l-petizzjoni saret mill-Onorevoli Membru għan-nom ta' persuna li thoss li għet aggravata b'xi att tal-Kumitat imwaqqaf mill-Ministeru għall-Intern u s-Sigurtà Nazzjonali biex jinvestiga allegati ingustizzji fl-Armata. Dan għaliex il-persuna aggravata jkollha interess personali fil-mertu u hi l-prassi ta' dan l-Uffiċċju li jinvestiga lmenti mressqa minn Membri Parlamentari għan-nom tal-kostitwenti tagħhom, anke jekk dan sa llum kien limitat.



Inkun grat jekk twassal din ir-reazzjoni tiegħi lill-Onorevoli Membri tal-Kumitat, filwaqt li nassigurahom mir-rieda tiegħi li fil-qadi tal-funzjonijiet tiegħi nassumi kull inkarigu lili minnhom mogħti fit-termini tal-Att dwar l-Ombudsman.

Qiegħed nipproponi li *in vista* tan-novità ta' dan il-każ u l-pubbliċità li nghatat lill-petizzjoni tal-Onorevoli Azzopardi ingħib l-iskambju ta' din il-korrispondenza a konjizzjoni tal-pubbliku.

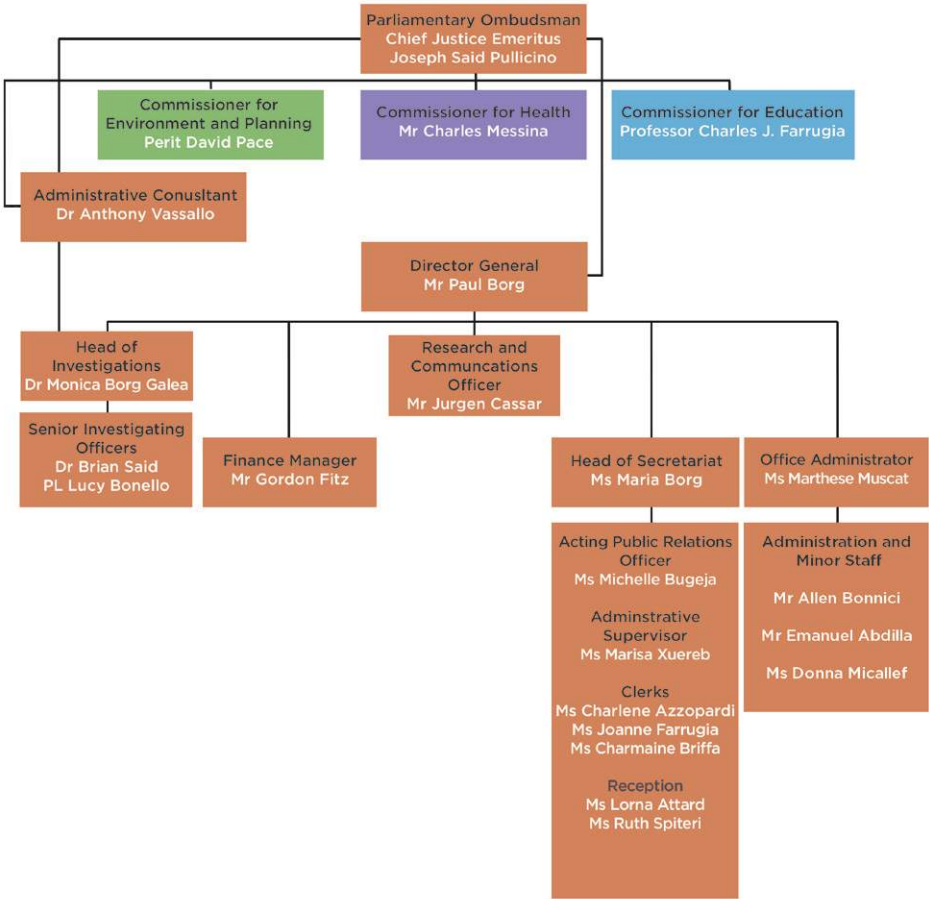
Inselli għalik

J Said Pullieiro
Ombudsman Parlamentari

Appendix D

Office of the Parliamentary Ombudsman Organigram

Staff Organisation Chart (on 31 December 2014)



Appendix E

Report and Financial Statements for the year ended 31 December 2014

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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 major issue for the year under review was the refurbishing works of the additional office space acquired by the Office of the Ombudsman which re-commenced in January after the necessary permit was approved by MEPA. The original tender costs were as follows:

Civil works	€ 254,940
Mechanical & Electrical	€ 313,194
New Lift	€ 38,174

The estimated cost of the civil works rose to € 454,952 taking the total cost of the project as at the end of 2014 to an estimated € 806,320. This was due to additional restoration work to bring the building to its original state and an improvement in the finishing works. The Office of the Ombudsman obtained an additional funding approval for € 586,900 over the granted subvention of € 850,000. A balance of € 233,497 was brought forward from 2013.

By the end of 2014 all major construction works had been completed with Levels 2 and 5 completed and in use and Level 3 in an advanced stage of completion and a new elevator installed. Works on the ground floor level did not start by year end due to unexpected delays. Works on level 4 were scheduled to start in 2015 while no works were scheduled on level 1.

Accruals amounting to € 84,252 were made for the cost of the lift and for civil works based on work certifications. However, no other provisions were taken for uncertified work relating to civil and restoration works which were still in progress.

The Office of the Ombudsman is responsible for ensuring that:

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

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

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

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



Paul Borg
Director General



Gordon Fitz
Finance Manager



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 6 to 17, which comprise the statement of financial position as at 31 December 2014, 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 2014, 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

April 2015

Statement of Comprehensive Income

		2014	2013
	Schedule	€	€
Income			
Government grant		1,436,850	749,950
Non-operating income (note 3)		<u>784</u>	<u>1,392</u>
		1,437,634	751,342
Expenditure			
Personal Emoluments (note 4)		(709,397)	(617,745)
Administrative and other expenses	1	<u>(198,499)</u>	<u>(148,894)</u>
		(907,896)	(764,639)
Total Comprehensive			
Income for the year		<u>529,738</u>	<u>(13,297)</u>

Statement of Financial Position

		2014	2013
	Notes		
Assets			
Non-current assets			
Property, Plant and Equipment	5	502,133	<u>103,036</u>
Current assets			
Receivables	6	17,598	6,250
Cash and cash equivalents	7	<u>457,493</u>	<u>237,831</u>
		475,091	244,081
Total assets		<u>977,224</u>	<u>347,117</u>
Equity and Liabilities			
Accumulated surplus		866,272	336,534
Payables	8	110,952	10,583
Total Equity and Liabilities		977,224	347,117

The financial statements on pages 6 to 17 were approved by the Office of the Ombudsman on 02nd March 2015 and were signed on its behalf by:



Paul Borg
Director General



Gordon Fitz
Finance Officer

Statement of Changes in Equity

	Accumulated Fund Total €
At 1 January 2013	349,831

Statement of Comprehensive income

Surplus for the year	(13,297)
At 31 December 2013	<u>336,534</u>

Statement of Comprehensive income

Surplus for the year	(page 6)	529,738
At 31 December 2014		<u>866,272</u>

Statement of Cash flows

	Notes	2014 €	2013 €
Cash flows from Operating activities			
Surplus for the year		529,738	(13,297)
Adjustments for:			
Depreciation		60,200	22,322
Loss on disposal of tangible fixed assets		-	257
Interest receivable		(784)	(1,392)
Operating surplus before working capital changes		589,154	7,890
(Increase) in receivables		(11,348)	(1,501)
Increase / (Decrease) in payables		100,369	(21,141)
Net cash generated from (used in) operating activities		678,175	(14,752)
Cash flows from Investing activities			
Payments to acquire tangible fixed assets		(459,297)	(59,092)
Interest received		784	1,392
Net cash used in investing activities		(458,513)	(57,700)
Net increase/(decrease) in cash and cash equivalents		219,662	(72,452)
Cash and cash equivalents at beginning of year		237,831	310,283
Cash and cash equivalents at end of year	7	457,493	237,831

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 2015.

2 Summary of significant accounting policies

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

Basis of preparation

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

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

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

Materiality and aggregation

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

New and revised standards

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

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

Property, plant and equipment (PPE)

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

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

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

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

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

Receivables

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

Cash and Cash equivalents

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

Payables

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

Revenue recognition

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

Foreign currencies

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

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

Critical Accounting Estimates and Judgements

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

Capital Management

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

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

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

Notes to the financial statements (continued)

3	Non-operating income	2014	2013
		€	€
	Bank interest receivable	748	1,392
		<u>748</u>	<u>1,392</u>
4i	Personal Emoluments		
	Wages and salaries	682,871	592,926
	Social security costs	26,526	22,819
		<u>709,397</u>	<u>615,745</u>
ii	Average No. of Employees	<u>23</u>	<u>22</u>

Notes to the financial statements (continued)

5i. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Air-condition.	Total
Cost	€	€	€	€	€	€	€	€
At 1 January 2014	103,999	22,263	30,202	32,079	37,852	75,193	12,173	313,761
Additions	380,421	1,283	2,843	12,770	14,407	1,825	45,748	459,297
Disposals	-	(761)	-	-	-	(252)	(1,677)	(2,690)
At 31 December 2014	484,420	23,546	32,284	44,849	52,259	76,766	56,244	770,368
Depreciation								
At 1 January 2014	48,858	20,846	24,692	27,696	29,252	47,208	12,173	210,725
Charge for the year	32,253	642	3,027	5,679	7,181	3,793	7,625	60,200
Release on disposals	-	-	(761)	-	-	(252)	(1,677)	(2,690)
At 31 December 2014	81,111	21,488	26,958	33,375	36,433	50,749	18,121	268,235
Netbook value								
At 31 December 2014	403,309	2,058	5,326	11,474	15,826	26,017	38,123	502,133

5ii. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Air-condition.	Total
Cost	€	€	€	€	€	€	€	€
At 1 January 2013	77,083	20,961	32,334	31,862	37,852	53,711	12,173	265,976
Additions	26,916	1,302	4,640	1,347	-	24,887	-	59,092
Disposals	-	-	(6,772)	(1,130)	-	(3,404)	-	(11,306)
At 31 December 2013	103,999	22,263	30,202	32,079	37,852	75,194	12,173	313,762
Depreciation								
At 1 January 2013	41,962	20,367	28,127	25,540	24,952	46,456	12,048	199,452
Charge for the year	6,896	479	3,337	3,286	4,300	3,899	125	22,322
Release on disposals	-	-	(6,772)	(1,130)	-	(3,147)	-	(11,049)
At 31 December 2013	48,858	20,846	24,692	27,696	29,252	47,208	12,173	210,725
Net book value								
At 31 December 2013	55,141	1,417	5,510	4,383	8,600	27,986	-	103,037

Notes to the financial statements (continued)

6 Receivables	2014 €	2013 €
Bank Interest receivable	106	167
Stocks (stationery)	9,818	-
Trade receivables	4,513	182
Prepayments	3,161	5,901
	<u>17,598</u>	<u>6,250</u>

7 Cash and Cash Equivalents

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

	2014 €	2013 €
Cash at bank	457,126	237,800
Cash in hand	367	31
	<u>457,493</u>	<u>237,831</u>

8 Payables	2014 €	2013 €
Trade payables	14,827	(881)
Accruals	96,125	11,464
	<u>110,952</u>	<u>10,583</u>

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables. As at 31 December 2014 payment was due to the three contractors responsible for refurbishing works carried out at the Office but which had not yet been certified, otherwise the Office had no unrecognised financial liabilities.

9 Fair values

At 31 December 2014 the fair values of assets and liabilities were not materially different from their carrying amounts.

Schedule

Administrative and other expenses

	2014	2013
	€	€
Utilities	18,835	17,267
Materials and supplies	7,265	8,064
Repair and upkeep expenses	9,311	8,680
Rent	11,392	6,366
International membership	1,850	1,850
Office services	4,025	15,712
Transport costs	12,128	11,601
Traveling costs	9,676	6,119
Information Services	13,052	7,864
Contractual Services	40,031	36,643
Professional Services	6,067	5,019
Training expenses	2,053	72
Hospitality	2,408	746
Incidental Expenses	-	152
Bank charges	206	160
Depreciation	60,200	22,322
Disposals	-	257
	<u>198,499</u>	<u>148,894</u>

Annual Report 2014



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Office open to the public as follows:

October – May 08:30am – 12:00pm

01:30pm – 03:00pm

June – September 08:30am – 03:00pm

www.ombudsman.org.mt

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