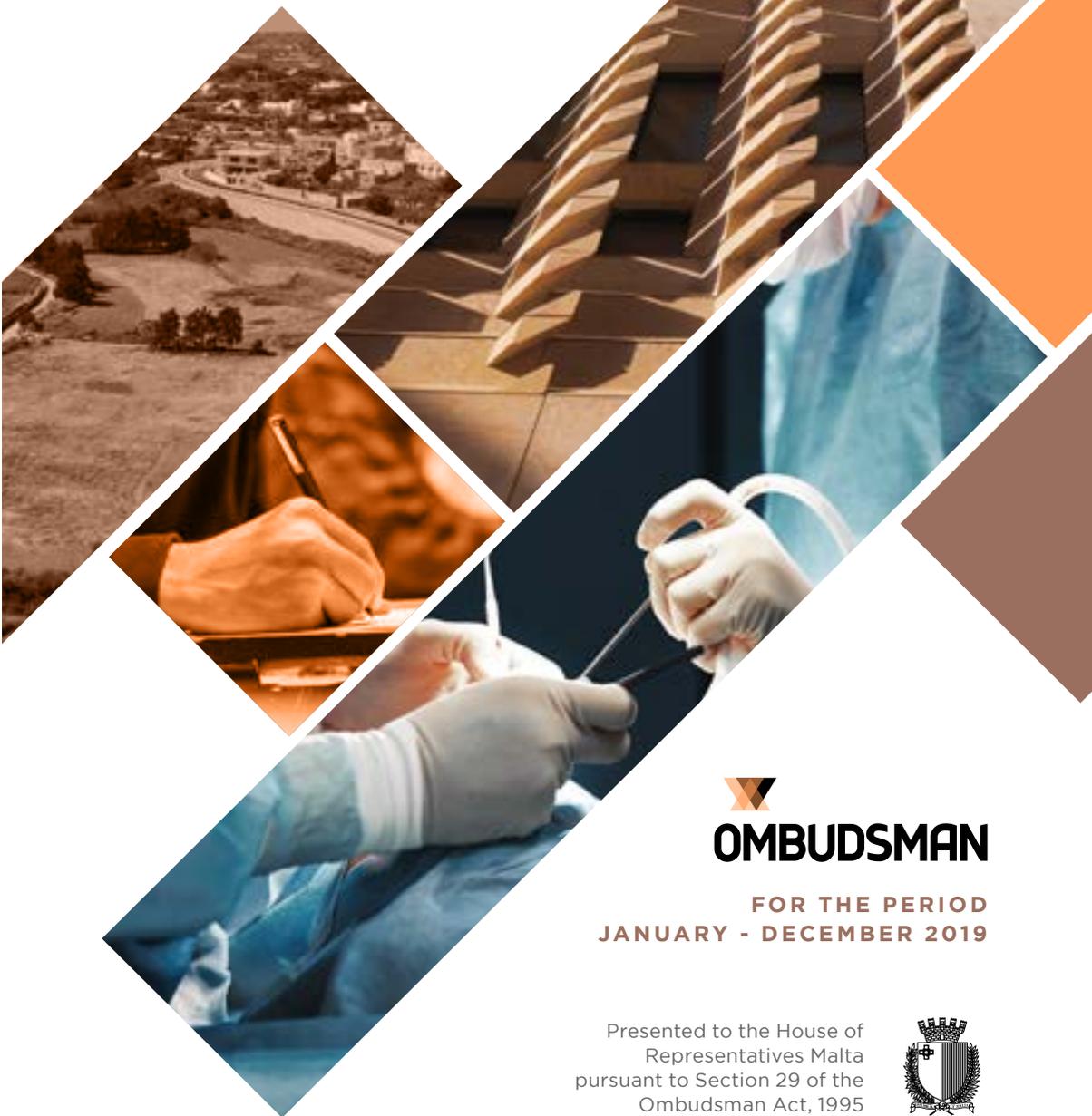


ANNUAL REPORT 2019

PARLIAMENTARY OMBUDSMAN MALTA



OMBUDSMAN

FOR THE PERIOD
JANUARY - DECEMBER 2019

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



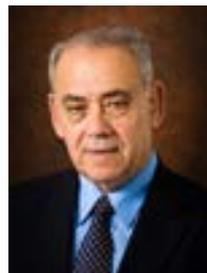


OMBUDSMAN

OMB/6/9/23

June 2020

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



Mr Speaker

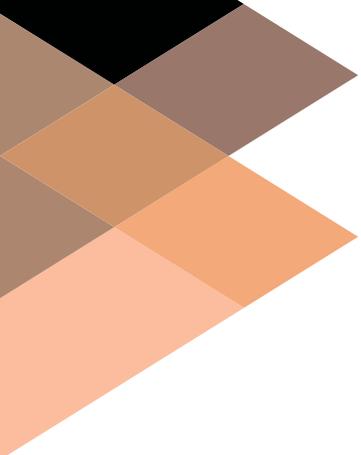
In terms of Section 29 of the Ombudsman Act 1995, I am hereby submitting the Annual Report concerning the performance of the Office of the Ombudsman for the period January to December 2019.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anthony C. Mifsud'.

Anthony C. Mifsud
Parliamentary Ombudsman



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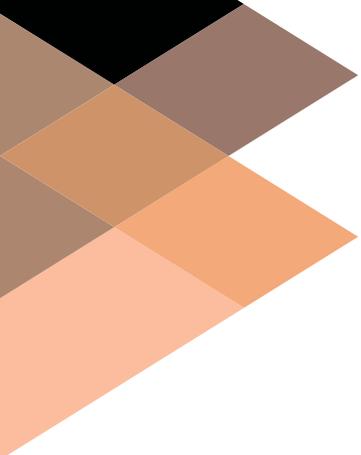
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PARLIAMENTARY OMBUDSMAN

ANNUAL REPORT 2019



A YEAR IN TURMOIL

2019 was in many respects a year of turmoil that brought about drastic changes in civil society, the public administration and government. Changes that are bound to have a lasting impact on the country's way of life, on how it is administered, on the empowerment of the citizens and hopefully, on strengthening the checks and balances required to secure the rule of law and curb abuse of power. The indicators are there.

Expert analysis of events have clearly shown what needs to be done. Whether such an essential project is carried out is another matter. It rests completely in our hands.

It was a year when civil society became more organised, vociferous and proactive. Spurred on by dramatic events that through concert, design or pure coincidence exposed the negative corruptive ties between big business and the public administration. Civil society was galvanised into action. This and other factors, eventually brought about the downfall in disgrace of an administration that enjoyed the backing of a sizeable majority of the electorate through implementing successful, economic policies.

FRAGILITY OF THE COUNTRY'S INSTITUTIONS

Most importantly from the Ombudsman's perspective was the worrying experience of the fragility of the country's institutions that seemed unable to cope with the added need to secure transparency and accountability of the public administration. Their inability and failure to promptly bring to justice those responsible for serious violations of the law gravely undermined the democratic credentials of the country. Authorities and institutions that have the specific function to keep the public administration under close scrutiny to curb abuse and transgression and to enforce the rule of law have been found and judged to be lacking in various respects.

It was not only civil society generally that clamoured for change. International organisations including the Council of Europe, the Venice Commission, Moneyval and others carried out thorough investigations on the state of the country's institutions. They found them to be seriously flawed and suggested

radical reforms to bring them in line with the basic requirements of a modern democratic state.

What is more worrying is that some of these investigations and reports by authoritative international institutions were made even before the morbid details of the sinister connections between big business and the public administration at its highest level, that are today known to have been the backdrop behind the assassination of investigative journalist Daphne Caruana Galizia, became known. Undoubtedly, 2019 has shown clearly that all was not well in the State of Denmark. Drastic reforms are required if the country's standing, trust, credibility and democratic credentials are to be restored.

The country has been through a period of stark contradictions. Economic success and material wellbeing at the expense of the disintegration of moral and ethical standards have undermined the democratic texture of society. Positive laws strengthening the rule of law and meant to curb corruption, like the Whistle Blower Act, the law removing the prescriptive period for crimes of corruption by holders of public office and that setting up the Office of the Commissioner for Standards in Public Life among others, were completely neutralised by an arrogant and obsessive culture of impunity enjoyed by persons flaunting the right friendships and connections and having substantial financial clout to influence the decisions of the public administration.

When these persons act in cahoots or with the connivance of politicians and public authorities and when those who have the duty to monitor, control and check abuse are either cowed into silence, or prone to turn a blind eye to tolerate, if not condone, abuse and violation of laws and regulations, the situation becomes dangerous. There will always be isolated cases of corruption in a public administration. That is inevitable. There are bound to be bad apples that need to be weeded out. However, when corruption becomes a way of life, when all are convinced that fat cats would by hook or by crook, get whatever they wanted, even if that breached laws and regulations applicable to all, if sanctioning of blatant irregularities that should normally lead to criminal prosecution and administrative penalties becomes the norm, the rule of law would be seriously prejudiced.

GENERAL CONSENSUS ON URGENT MEASURES

Events that happened during the year and the worrying facts that they revealed led to a general consensus that urgent measures had to be taken to stop the rot. A consensus that led to dramatic resignations and a change in Government, with a new Prime Minister who promised to make the necessary changes while stressing continuity that would bring about stability. Drastic measures that were seen by some to be a damage limitation exercise but which undoubtedly, manifested a stark awareness and admission that the reins of good governance had gone out of hand and that serious shortcomings had to be remedied. Government Ministers admitted that timely action should have been taken to stem corruption in government circles and to secure the rule of law while

sanctioning trespassers. It was famously admitted that *"in the country there were laws for gods and laws for animals"*.

The Ombudsman has throughout the years voiced serious concerns on administrative shortcomings that were undermining good governance, lack of transparency and accountability. Failure to provide correct and timely information to which the public is entitled, embracing policies, practices and procedures that favoured arbitrariness and improper discrimination were failures that needed to be urgently addressed. He has repeatedly called for positive and meaningful public participation in decisions taken by the Executive as an essential component of an open government that is a pre requisite for the enjoyment for the fundamental right to a good public administration.

RECOMMENDATIONS OF THE VENICE COMMISSION

In last year's annual report, the Ombudsman highlighted the recommendations made by the Venice Commission in its report reviewing the democratic credentials of the country and its proposals for constitutional, legislative and administrative reforms required to ensure good governance and to strengthen the protection and promotion of human rights and to safeguard the citizen's right to a good administration. He noted that the Commission's recommendations on constitutional amendments, separation of powers, the independence of the judiciary, law enforcement and the need to strengthen institutions, especially those tasked with bringing the public administration to account, reflected in the main the proposals made by his Office in its various pronouncements and publications. If anything, the Venice Commission gave his proposals added substance and legal authority.

Present circumstances have clearly shown the need to further strengthen the constitutional and legislative setup that can guarantee transparency and accountability of the public administration through stronger and more effective mechanisms that are fully independent and autonomous. Authorities set up by law that have a specific and exclusive function to monitor the public administration, like the Ombudsman, the Auditor General and the Commissioner for Standards in Public Life, should be constitutionally recognised and regulated and all their incumbents designated as Officers of Parliament.

The Ombudsman proposed that in the constitutional reform currently under way, these authorities should figure in the Chapter dealing with the "Legislature". Their status should be enhanced by giving them the role of instruments in the service of the House of Representatives, having wide investigative powers to keep the Executive to account. The method of appointment and removal of their incumbents, as well as their financial and administrative independence and autonomy, should follow a uniform, standardised model and be constitutionally guaranteed. The founding legislation of these institutions should allow for a measure of collaboration among them that would create a synergy that could develop into a watertight firewall and shield against malpractice in all facets of the public administration.

During the year under review small steps were taken in this direction but much more needs to be done. The Ombudsman can only reiterate his proposals. It is up to those who are entrusted with drafting constitutional proposals to take note and to forward them for the consideration of those who will ultimately decide whether they should be adopted. The final word should always be left in the hands of the people's elected representatives and the popular vote.

VISION FOR THE FUTURE

This vision of the Office of the Ombudsman places the institution as a leader in a proactive network at the service of Parliament to ensure and secure openness, transparency and accountability of the Executive when implementing legislation and regulations approved by it. A vision that goes beyond the traditional concept of the Ombudsman and his Commissioners as defenders of citizens' rights. If implemented it would however be a natural and progressive evolution of its functions and those of other analogous institutions within the same network.

This proposal was first made by the Parliamentary Ombudsman in his 2014 publication in which he made a number of suggestions on how the constitutional status of his Office could be strengthened. The Ombudsman re-proposes these suggestions for the consideration of the Constitutional Convention meant to bring about radical changes in the organs of the State to guarantee good governance and the rule of law. The radical reforms proposed by the Ombudsman require not only the political consensus that recognises the need to have a homogeneous structure of independent and autonomous authorities at the service of Parliament, charged with the function to monitor effectively the actions of the Executive, but also and perhaps more importantly, an informed public opinion and civil society that recognises that such a structure is essential to guarantee an open, transparent and accountable public administration.

Such a reform would easily integrate within a constitutional project that aims at strengthening the organs of the State, at enhancing the separation of powers, at re-dimensioning the excessive concentration of executive power in the person of the Prime Minister, and at empowering civil society and public participation in the management of public affairs.

COUNCIL OF STATE

A project that could envisage the setting up at the apex of its structure a Council of State modelled on the ones set up in the smaller Northern European countries like Belgium, the Netherlands and particularly Luxembourg. This Council would be constitutionally established to be fully independent with no executive power. Its functions would be purely advisory. It would be presided by the President of the Republic and would offer advice on matters that concern the correct conduct of public affairs.

The Council of State could be consulted by the Cabinet on proposed legislation before a law is submitted to Parliament and to give an opinion on its conformity to the Constitution, International Conventions and fundamental human rights. It would advise the President of the Republic on matters of

state that fall within the exercise of his/her functions. It would retain a general overview on the correctness of the public administration in the observance of the rule of law and where necessary giving its authoritative opinion. It could participate in the process of selecting bodies of high offices, authorities and institutions set up by the Constitution.

The Council of State would fill the void of not having a second chamber or Senate in the House of Representatives. An option that has been discarded since the 1947 Self-government Constitution as being cumbersome and financially unsustainable. The Council would be composed of a limited number of persons who enjoy the respect and trust of the country and could include among others former Presidents of the Republic, former Prime Ministers, former Chief Justices and former Ombudsmen, Auditor Generals and Commissioners of Standards in Public Life.

Such a Council of State would be another step in the decentralisation of power. The experience and expertise of its members would provide an additional welcome check on the exercise of power by those entrusted by the people to administer the common good.

For such a project to be realised however, it is essential that the members that compose the Council of State should have a track record of service in the interest of society, heading institutions and authorities with constitutional and legal structures that guarantee their integrity, autonomy and independence. In this context it would be necessary to analyse and establish whether the founding legislation of these institutions and authorities satisfies these essential requirements.

THE VENICE PRINCIPLES – A USEFUL CHECKLIST

In May of this year the Venice Commission for Democracy through Law approved a set of principles on the protection and promotion of the Ombudsman institution to be known as “*The Venice Principles*”. A document that proclaims the values of integrity, autonomy and independence to be crucial and vital to any ombudsman institution.

It emphasises that the Ombudsman is an important element in a State based on democracy, the rule of law, the respect for human rights and fundamental freedoms and good administration. It notes that the core principles of the Ombudsman institution include independence, objectivity, transparency, fairness and impartiality. It stresses that the right to complain to the Ombudsman seeking independent action against maladministration and alleged violations of human rights and fundamental freedoms, is an addition to the right of access to justice through the Courts.

Considering that there is no standardised model across the Council of Europe Member States to which Ombudsmen institutions need to conform, the Commission drew up a set of twenty five (25) Principles, laying down the standards and criteria which the founding legislation of an ombudsman institution should satisfy in order to secure its independence and autonomy and to allow it to freely and effectively exercise its functions. These Principles

set a high benchmark that ombudsmen institutions need to strive to attain. They provide a useful and precise checklist against which one can gauge the democratic credentials with which an ombudsman institution is endowed and whether it is built on a solid legal foundation, preferably at constitutional level.

The Venice Commission stated in its Opinion that States should adopt models that fully comply with these Principles aimed to strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country while ensuring an efficient and trustworthy service to its citizens.

OMBUDSMAN'S ANALYSIS

In its Ombudsplan for the year 2020, presented to the Speaker of the House of Representatives in September of 2019, the Office of the Ombudsman analysed these Principles in the context of its founding legislation, the Ombudsman Act as amended as well as the constitutional amendment that recognised it as a constitutional authority. In its analysis the Office sought to establish to what extent the Malta institution conformed to these Principles, in which areas it fell short and what further reforms were needed to achieve the optimum standard of excellence. As far as is known, this is the first benchmarking exercise that was conducted by an Ombudsman institution in any member country of the Council of Europe. It was a positive exercise that revealed what progress has been made and what failings needed to be addressed.

If all Member States were to carry out such an analysis, conducted within strictly scientific parameters, one would have a complete x-ray of the state of health of ombudsmen institutions in Europe. It would be possible to determine to what extent these institutions that are remarkable for their diversity and follow no standardised model, satisfy their common mission statement to contribute towards effectively strengthening democracy and providing adequate safeguards and protection against maladministration and abuse of power.

More importantly, such an exercise would determine to what extent ombudsmen institutions were autonomous and independent from the Executive and to what degree their recommendations offered appropriate remedies to aggrieved complainants. The Principles set out the basic requirements that ombudsmen institutions should satisfy to be recognised to have attained the desired rigorous standards that an ombudsman service should have in an evolved democratic society.

The analysis conducted by the Ombudsman showed that his institution generally conforms to the Venice Principles. It scores highly on the requisites of administrative independence and financial autonomy, with the Ombudsman and his Commissioners being recognised as Officers of Parliament enjoying security of tenure. In this respect, as well as regards the powers given to them to exercise their functions, the founding legislation of the Office fully satisfies the Venice Principles.

While there is room for improving and fine tuning, the Ombudsman Act as amended remains a progressive one that enables the Office to properly

exercise its functions. Of course, issues of lack of effective enforcement of those provisions in the Act regulating the proper conduct of investigations, including when persons fail to comply with orders given to provide information, as well as the reluctance of public authorities to take proper account of the final opinions of the Ombudsman and Commissioners and to implement their recommendations, especially when these are not in line with government policies, persist and need to be addressed.

GROWING MISCONCEPTIONS

This year there has been evidence of a growing misconception that complainants who have a monetary claim against the public administration, arising out of a perceived right, should have recourse to the courts to define the dispute. Some public administrators sometimes fail to understand that the Office of the Ombudsman was set up precisely to provide a safe, secure, fast, free and independent channel of communication that could lead to an amicable resolution of disputes and in default, to a clear opinion whether the disputed facts constituted maladministration.

There have been occasions when during the investigation of complaints, the Office got the impression that the public administration did not fully understand that it was in its interest to fully cooperate to establish the correct facts and finding a solution to complaints. These public authorities seem to consider the intervention by the Office of the Ombudsman as unnecessary interference in their administration. There have been occasions when some contested the right of the Office to enquire into matters that clearly fell within its jurisdiction.

Though undoubtedly these incidents are due mostly and hopefully, only to ignorance of the true nature of ombudsmanship and of the legislation that governs it, they cannot lightly be dismissed. There is need to re-introduce outreach sessions with public officers and officials in public authorities and entities to limit these untoward instances to a bare minimum.

GENERALLY POSITIVE CERTIFICATE

The Venice Commission in its ‘Opinion on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement’¹ approved in December 2018, gave a generally positive certificate to the Ombudsman institution in Malta. It reflected the main concerns and limitations that the Ombudsman has been stressing for some time calling for appropriate remedial actions to be taken. Concluding its Opinion on the institution, in line with its vision of the proposed constitutional reform, the Commission correctly places the Ombudsman within the section dealing with the legislative power.

Considering that the House of Representatives has no obligation to debate the reports and opinions of the Ombudsman and his Commissioners and that failure to provide information required for investigation could only be sanctioned through cumbersome court procedures, the Opinion recommends that:-
“...*The Freedom of Information Act should be up-dated, using available*

1 Opinion No 940/2018

international models, to guarantee the transparency of the administration vis-à-vis the media and the citizens.

In order to give the Ombudsman office sufficient weight, the Venice Commission recommends raising the rules on appointment and dismissals of the Ombudsman as well as his/her powers to the constitutional level. This concerns notably the right to information of the Ombudsman. Parliament should be obliged to debate reports addressed to it by the Ombudsman.”

IMPLEMENTING COMMISSION'S RECOMMENDATIONS – LACK OF CONSULTATION

The Ombudsman notes the Government's declared intention to implement the recommendations of the Venice Commission. He also notes that Bills amending the Ombudsman Act and the Constitution have been tabled before the House and given a first reading. He regrets however that to date he has been given no prior notice of the contents and substance of these Bills on which he expected to have been consulted beforehand. It is difficult to reconcile this lack of proper, prior consultation with a constitutional authority directly interested in the proposed legislation, with the widely flaunted principles of open government and public participation to which we should all subscribe.

If the Government intends to amend the Constitution to implement the recommendations of the Venice Commission, the Ombudsman expects that such amendments would be considered in the light of the Constitutional Reform Project that appears to be underway.

Introducing piecemeal constitutional amendments might be necessary to address serious democratic deficits in certain sensitive areas that require immediate attention also on the lines recommended by the Venice Commission. It might indeed be useful and commendable considering the extended time frame required to conclude a comprehensive revision of the Constitution. However, such limited, surgical amendments should not lose sight of the general overhaul that the Constitutional Convention is meant to carry out and of the drastic changes that it is expected to propose to strengthen the country's democratic institutions, to reframe and rebalance the separation of powers, and to ensure full transparency and accountability for the actions of the public administration.

REFORM SHOULD AIM AT A HOMOGENEOUS PROJECT

The Convention should aim at producing a homogeneous project inspired by the principle that the Constitution is there to serve the people and not those who govern them. Power has to be shared and therefore decentralised. It has to be exercised in the most transparent and accountable manner. For this purpose the legislative arm of the State, that should include autonomous institutions empowered to verify and check the public administration, should be radically reorganised. The distinction between the Legislature and the Executive should be more pronounced. The principle that the Executive, including the public administration in its various facets, should respond to Parliament and be subject to proper auditing by independent and autonomous institutions needs to be proclaimed and enshrined in the Constitution.

The vision for constitutional reform put forward by the Ombudsman would fit well within the context of the terms of reference of the Constitutional Convention that should draw up a model of government in which the organs of the State and national institutions are strengthened, while allowing the Executive the freedom to exercise its functions to administer the common wealth in the interest of the community and for the common good.

The Ombudsman reiterates his conviction that, while politicians and political parties have undoubtedly a vital role to play in designing constitutional amendments, these should certainly not be the result of secret and obscure negotiations between political parties, represented in Parliament or otherwise, that reflect compromises aimed to secure and protect present and future interests of those who govern, rather than implement the radical reforms that society needs.

It has to be acknowledged that constitutional reform is not a political game to be played solely by politicians, negotiating solutions aimed to preserve the *status quo* and as much as possible to retain the reins of power. It is imperative that the Convention should strongly involve the participation of all shades of civil society that should be given ample space and opportunity to put forward and debate proposals for reform and should not be expected to simply rubber stamp decisions already taken by politicians. The mistakes of the past should not be repeated. Moreover, the draft of the constitutional amendments needs to be finally approved by an informed electorate in a referendum.

FREEDOM OF INFORMATION, THE RIGHT TO PRIVACY AND DATA PROTECTION

In its Opinion on constitutional arrangements, the Venice Commission pointedly stressed the need to update the Freedom of Information Act to guarantee transparency of the administration *vis-à-vis* the media and the citizens. It similarly underlined the need to guarantee the right to information of the Ombudsman.

During the year under review, the issue of information again raised concerns that, if left unattended, could in the future present major difficulties to the Office of the Ombudsman in the exercise of its functions. These concerns regard:

1. The right to Freedom of Information and the duty of the public administration to provide it when requested to do so by the Office of the Ombudsman;
2. The duty to respect the principle of privacy of investigations and not to disclose unnecessary information that could prejudice the investigation or its confidentiality; and
3. The protection of data – can GDPR hinder investigations?

We shall briefly comment on these concerns.

1. THE RIGHT TO FREEDOM OF INFORMATION AND THE DUTY TO PROVIDE IT

It is regretted that even after twenty five years since the Ombudsman institution was set up, there are still public authorities, entities and departments that remain unaware of its real nature as an independent body charged with monitoring their actions and judging their correctness.

At best, some of them continue to consider it as an extension of the public service that should favour and implement government policies, providing a sort of glorified, customer care service through the investigation and processing of complaints. A Grievances Unit that is not expected to overstep its strict investigative functions by judging whether actions or inactions of the public administration are right or wrong, unfair, improperly discriminatory, contrary to law or according to a law that is unjust. Even less would they be willing to accept final opinions that determine that the aggravation complained of constituted a violation of human rights and fundamental freedoms. At worst, one gets the impression that at times, they consider the Ombudsman to be a cumbersome institution that needs to be tolerated, but as far as possible, kept at arms' length.

It is true that these are the exceptions and that often these public authorities are badly advised by lawyers who manifest complete ignorance of the basic provisions of ombudsman legislation, of its *ratio legis* and of the elementary concept that the Office of the Ombudsman is not a court of law. They persist in giving their clients misguided advice that if a person claims he has suffered an injustice which could be translated into a financial claim, that issue should be determined by the courts. The public authority would on the strength of such advice opt not to engage further with the Office of the Ombudsman.

INAPPROPRIATE LEGALISTIC APPROACH

Putting forward this and similar legalistic pleas is perfectly legitimate within a court of law, but totally inappropriate during an investigation by the Ombudsman or Commissioners. This would unduly result in delaying the investigation until the issue is cleared, often through reference to explicit provisions of the Ombudsman Act and laborious explanations of what should be manifestly obvious.

It is true that such sporadic incidents resulted during investigation of complaints against some of the larger public authorities that have wide contact with the public to whom they provide essential services. This tendency to adopt a legalistic approach during investigations runs counter to the Ombudsman's core function to ensure an open and transparent administration. It fails to recognise that the Ombudsman Act imposes on the Office the duty to determine complaints on the basis of whether the action or inaction of the public administration was right, just and reasonable, applying applicable laws and regulations but strongly tampered with equity, favouring justice rather than legality.

This is especially true when the alleged maladministration could have been caused by an incorrect or improper use of administrative discretion. When a

public authority adopts such a formalistic approach, expecting the Office of the Ombudsman to consider pleas that are out of place in an investigation on allegations of administrative failures or malpractice, the investigation is often stalled. If the required information is not forthcoming, no progress in the inquiry can be made at least until the investigating officers explain the provisions of the Ombudsman Act that make a failure to comply with the Ombudsman's request for information a sanctionable offence.

CONTESTING THE JURISDICTION OF THE OMBUDSMAN

What are more worrying are instances, fortunately few and far between, in which public authorities directly contest the right of the Office of the Ombudsman to require them to disclose information. There have been cases in the past in which a public authority directly contested the right of the Ombudsman to investigate complaints against it since it maintained, that the Office had no jurisdiction over it. When the public authority persists in such a claim, it is only through judicial proceedings that the issue can be finally determined.

There have been other instances where public authorities have pleaded that they could not divulge information required because legislation, or in some cases EU Regulations, bind them to secrecy under pain of criminal liability. In such cases, the Office had to engage itself with the legal advisers of the public authority to ascertain the correct interpretation of such non-disclosure clauses. It had to be established whether secrecy should be extended to comprise information required to investigate allegations of maladministration and malpractice, or even violation of laws and regulations by a competent non-judicial authority specifically tasked by law to do so like the Office of the Ombudsman. Even in such cases investigations are inevitably delayed, if not completely stultified.

2. THE DUTY TO RESPECT THE PRINCIPLE OF PRIVACY

The Ombudsman Act seeks to protect the confidentiality of information acquired by the Office of the Ombudsman during investigations, by imposing statutorily the duty that these have to be conducted in private. The law seeks to protect information given to the Ombudsman not only by the complainant but also by the public authority and other persons required to do so. It does so primarily so as not to prejudice the investigation but also to allow for the possibility of a successful mediation to resolve the complaint.

The law explicitly allows the Ombudsman to regulate his own procedures but imposes the requisite of privacy in the interest of both parties. Confidentiality would generate the required trust in aggrieved persons to seek the services of the Ombudsman and his Commissioners. Privacy is also imposed because the law wants to ensure that information provided to the Ombudsman by the public authorities being investigated, including sensitive and confidential material regarding the complaint, would only be accessible to the Office of

the Ombudsman and would be divulged to third parties only if and when it is essentially required. Had there not been this requisite of privacy, aggrieved persons would not feel secure to approach the Office to intervene on their behalf to vindicate their rights against the public administration.

This obligation to ensure confidentiality extends to the disclosure of details of the complainant, the nature of his/her complaint and information on the progress and outcome of the investigation. The Ombudsman is strongly of the opinion that while the principle of confidentiality binds him, the Commissioners, the investigating officers and all the staff of his Office, it should also be respected by the government departments and the public authorities that are subject and parties to his jurisdiction as well as parties and persons required to give evidence in the investigation. When they fail to do so, they would be seriously undermining the Ombudsman institution itself and the beneficial service it is meant to provide citizens.

That is the reason why the Ombudsman had in the Annual Report (2018) for last year, strongly objected to the manner in which the Office of the Principal Permanent Secretary had disclosed details of every complaint investigated by his Office, in the publication titled "*Governance Action on the Parliamentary Ombudsman's Annual Report 2017*". The Ombudsman stated that that publication, which could be considered to be a positive initiative in some respects, had disclosed details on complaints, their nature and the progress made during the investigations that could lead to the identification of complainants. This part of the publication even if well-intended, could constitute in the opinion of the Ombudsman, a breach of the General Data Protection Regulation (GDPR).

PUBLIC AUTHORITY SHOULD RESPECT CONFIDENTIALITY

More importantly, the Ombudsman maintained that publishing these details constituted a breach of that confidentiality that every public authority had to respect when dealing with investigations conducted by his Office. The Ombudsman recommended that the Principal Permanent Secretary should desist from divulging similar information on the same template when publishing his next publication on "*Governance Action on the Parliamentary Ombudsman's Annual Report 2018*".

The Principal Permanent Secretary did not agree with the Ombudsman's opinion. He insisted that his office had not committed any breach of the GDPR. In his second publication he followed with some modification the same pattern when providing details on the investigation of cases. Significantly however, he failed to make any reference to the issue of maintaining confidentiality as a core element of the investigative process to which all public authorities should adhere. The Ombudsman has expressed his opinion on that delicate matter and will stand by it.

COMMISSIONER FOR INFORMATION AND DATA PROTECTION GIVES ADVICE

He is on record that at this stage, he would not comment further. There is however one point in the last Governance Action report that needs to be noted.

In the second paragraph at page 6 mention is made of an advice given by the Information and Data Protection Commissioner to the Principal Permanent Secretary. That paragraph reads thus:

“The second clarification concerns the accusations by the Ombudsman that, our Governance Report in reply to his Annual Report for 2017, breached the General Data Protection Regulations. The competent authority to rule about any GDPR breach is the Commissioner for Information and Data Protection whom, in August this year, we requested to view our Governance Report and to give us a ruling thereon. We were given advice on mitigating risks and more importantly we received a clean bill of health as there was no breach of personal data in the said report. We have also taken on board the Commissioner’s advice to further safeguard citizens’ rights to privacy and are religiously adhering to it. Our aim in publishing the Governance Report is to account for our actions as a Public Administration in so far as we address complaints referred to us by the Ombudsman.”

OMBUDSMAN NOT CONSULTED

The Ombudsman does not dispute the good intentions of the compilers of these Governance reports. Indeed, he welcomes any corrective measures that they chose to make after taking on board the advice given to them by the Data Protection Commissioner. Nor does he dispute that the Data Protection Commissioner is the competent authority to implement the GDPR and that the Principal Permanent Secretary was within his rights to seek his advice.

Regrettably it is noted however that to date the Ombudsman has not been copied with the advice given by the Commissioner for Information and Data Protection to the Principal Permanent Secretary and that is of direct interest to his Office.

3. IS GDPR A THREAT TO INVESTIGATIONS?

The complex issues of the exchange of information, the need to secure personal data, the right to privacy and the duty to conduct investigations in a private manner came to the fore during the year under review in a more subtle and challenging manner.

Administratively, the Office took stock of the provisions in its General Data Protection Regulation (GDPR) that are applicable to it. In line with its provisions it has implemented a number of measures during the year to rationalise the administrative process on the preservation of personal data and other information contained in its records and archives. A procedure that does not present particular difficulty when sifting data that pertains to the management of the Office and its staff. However, given that the core function of the Office is to investigate complaints, greater care and sensitivity need to be taken when determining what personal information and other information accumulated in enquiries carried out along the years should be retained and what should be destroyed.

HISTORICAL MEMORY MUST BE PRESERVED

The historical memory of the Office that should allow for the possibility of academic research into the development and progressive functioning of ombudsmanship in the country needs to be preserved for future reference. The information retained should allow for the compilation of case law that requires that files containing information of in-depth investigations be kept for a considerable length of time. Indeed a case can be made that such files like the records of court proceedings should be kept indefinitely even if only electronically.

It is obvious that it is not sufficient to retain the originals of final opinions since most cases including ones that establish important administrative principles are resolved through mediation or otherwise, without the need to conclude a final opinion. Moreover and perhaps more importantly, one needs to consider that the merits of an individual complaint often has a life beyond the investigation itself. It could affect not only the life of a complainant who might need to refer to information acquired during that investigation in the future but information could also be required for the investigation of complaints by other persons faced with similar or connected aggravations.

RELUCTANCE TO PROVIDE INFORMATION

As a direct result of the growing awareness in the country on the need to observe the rules of data protection, the insistence that all government departments and public authorities have to act positively to implement them and the concern that failure to do so could risk the imposition of hefty fines, some authorities asked by the Office of the Ombudsman to provide information necessary for investigations have during the year been showing themselves increasingly wary of doing so. Some understandably expressed their concerns about providing information but eventually complied after being reassured by the Office.

The Office explained that the GDPR should not constitute an obstacle to the investigative process and that in its opinion, the GDPR did not apply to the transmission of personal data in such circumstances. Others however might not have been so easily convinced. In fact towards the end of the year, the investigation of a complaint against an Agency brought the issue to the fore. Clearly the matter will be discussed in-depth and determined next year, hopefully without the need for a judicial definition.

FUNDAMENTAL OBJECTIONS

The complaint concerns the conduct of a selection process and the agency was requested to provide detailed information not only on the exercise itself but also on the performance of complainant himself and other candidates who were involved in the process. Obviously no proper investigation of the complaint could be carried out unless this basic data and evidence was made available to the Office. It became clear that any request by the Office of the Ombudsman to any person asking for information, evidence or documentation regarding the complainant or third parties could face serious obstacles if the person or

authority from whom the information was being requested considered that the Office of the Ombudsman was subject to and had to fully comply with the GDPR in this respect.

This is a question that could have enormous impact on the conduct of investigations not only by the Office of the Ombudsman but also by all other authorities and institutions set up by law empowered to inquire into failings of the public administration, but not only. It is therefore useful and of general interest to identify the main points of contestation that could in the utmost good faith be put forward by persons required by the Office in the exercise of its functions to provide information and data about complainants and third parties. It is also proper to outline the legal arguments that sustain the contention of the Ombudsman that the GDPR in its present form if correctly interpreted should not be deemed to apply to the investigative process.

Any person or entity who considers that the Office of the Ombudsman was fully subject to the GDPR would necessarily need to follow the statutory procedures laid down in that Regulation before considering its request to disclose any information.

The Office could therefore be asked to sign a request of “Personal Data Form” that would be a clear sign that the right the Ombudsman has to ask and receive information required for the investigation is being conditioned to the approval of the Data Protection Officer of the body being investigated or of the person being asked to provide information. Signing the “*Personal Data Form*” would not only subject the Ombudsman to make an *ad hoc* request for personal data transfer, but also to indicate in that request what is the purpose for requesting the data. The Ombudsman would need to provide justified reasons as to why the information was required and for what purpose it would be used. He would be expected to explain in detail whether there is any law, regulation or policy that legitimates his right to request data. Such an imposition is unacceptable.

The Ombudsman cannot entertain such an imposition since it would put at risk the cardinal, statutory principle that “*in the exercise of his functions the Ombudsman (and his Commissioners) shall not be subject to the direction or control of any other person or authority*”. His Office is a constitutional authority tasked with investigating actions of the public administration in the exercise of its administrative functions. The Ombudsman Act elaborates clearly the role and remit of the Ombudsman and his Commissioners. It grants extensive powers to them to enable them to perform the duties assigned to them by law, including the power to request information and all documentation necessary for the investigation of complaints and this from any person who in their opinion could provide such evidence. The Ombudsman Act also specifies what information falls outside the purview and scrutiny of the Office of the Ombudsman. The law enjoins harsh penalties on those who fail to comply with requests to provide information and documentation required for the investigation of complaints.

When requesting such information under the powers granted to it by Article 19 of the Ombudsman Act, the Office performs a task carried out in the public interest and in the exercise of its official authority. Therefore the processing

of such personal data would be perfectly lawful in terms of Article 6(1)(e) of the GDPR. On the other hand, the person satisfying the request to provide information in such circumstances would be complying with a legal obligation and would therefore be processing the personal data lawfully. The only exception to these rules would be if the person or entity from whom information is being required by the Office of the Ombudsman was by law excluded from its jurisdiction. Clearly in such cases the refusal to provide the information would be fully justified at law.

ANOTHER CONCERN WITH MUCH WIDER IMPLICATIONS

Another concern of much wider implications could be put forward by persons requested by the Office of the Ombudsman to provide information or personal data regarding the complainant and/or third parties that is required for its investigations. It could be objected that they statutorily were obliged under the GDPR, to inform the other persons involved that the information concerning them has been transferred to the Office of the Ombudsman.

The crux of the matter relates in particular to Article 14 of the GDPR (and Recital 61 that is a guide to its interpretation) that one could argue imposes an obligation to inform the persons about whom information was being requested that their personal data was being disclosed to the Office of the Ombudsman. The Ombudsman views this proposition with grave concern. It is clear that there is an urgent need for an in-depth study of the impact of the GDPR on the investigative functions of the Office of the Ombudsman.

CORRECT INTERPRETATION

The Office is satisfied that there are sufficient elements in the interpretation of the provisions of the GDPR and its Recitals to exclude the investigative processes of the Ombudsman and his Commissioners from their application. This considered opinion would apply also to all other authorities set up by law that have the function to investigate the actions or inactions of the public administration. Any different interpretation would seriously undermine these authorities and institutions and stultify them in the exercise of their functions.

RECITAL 31

At this stage, it is sufficient to refer to Recital 31 that expressly provides:

“Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law”.

This Recital can only mean that entities like the Office of the Ombudsman, which have an “official mission” in the framework of an inquiry for investigation, could not be considered to be a recipient in terms of the GDPR. It is true

that recitals are meant to serve as a guide and do not form part of the actual articles of the Regulation. However, Recital 31 is specifically intended to cater for the independence and the necessary “*secrecy*” required when such entities are carrying out investigations. Consequently, entities or persons required to disclose data regarding third parties in connection with an inquiry carried out by such entities as the Office of the Ombudsman do not have any legal obligation to inform the persons involved about the disclosure of their personal data.

The Office believes that Data Protection Law should not be used as a shield to obstruct the monitoring of the proper functioning of the administration in general and against investigative bodies in particular. Moreover, even in this context it again emphasises the importance and necessity that investigations are carried out in private. Alerting persons falling within the purview of an investigation could very probably obstruct the search for truth and jeopardise the proper administration of justice.

CONFIDENTIALITY AND PRIVACY PARAMOUNT

As has been stated elsewhere in this Annual Report albeit in a different context, the mandatory provision that all investigations carried out by the Ombudsman and his Commissioners are to be conducted in private should extend to and be respected by all those who are in some way involved in the conduct of investigations. Informing data subjects that data relating to them has been transferred to the Office of the Ombudsman would not be ethically correct. It would seriously tamper with the principle of privacy enshrined in the Ombudsman Act and with the investigation itself. Such notifications are “*likely to render impossible or seriously impair the achievement of the objectives of that processing*” – the objectives being the private nature and the proper functioning of the Office’s investigative powers².

LAW NEEDS TO BE EXPLICIT

The Ombudsman is confident and convinced that the GDPR and its Recitals, if properly interpreted, comfort the stand that this legislation does not apply to his Office in the exercise of its investigative functions. It is admitted however, that the law is not explicit in this respect. It seems to allow for doubt in interpretation.

2 One of the exceptions to the general rule outlined by Article 14(1) of the GDPR that provides that Article 14 sub-articles 1-4 shall not apply where and in so far as:-

“(b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take appropriate measures to protect the data subject’s rights and freedoms and legitimate interests, including making the information publicly available;

(c) obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject and which provides appropriate measures to protect the data subject’s legitimate interests; or

(d) where the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.”

This especially when those who are burdened with the responsibility to interpret them, and who are perhaps fearful of the serious consequences in case of non-compliance, tend to err on the side of caution. The uncertainty has been compounded by the fact that the drafters of the Data Protection Act, that seeks to transpose the EU Regulation, failed to include in Section 4(1) that provides for the exceptions to the rule of general applicability of the law, data required for the purpose of the conduct of investigations by bodies and authorities set up by law with the express mandate to inquire into the conduct of the public administration in its many facets.

In fact sub-article (d) of that section *inter alia* limits the exclusion from the provisions of the Act to “... *competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties...*”.

While it is true that the EU GDPR Directive forms part of the domestic law of the country, the Data Protection Act fails to reflect those articles of the Directive that are meant to exclude from its effect even if not explicitly, constitutional authorities like the Office of the Ombudsman, the Auditor General, the Commissioner for Standards in Public Life, the Public Service Commission and others that essentially have an investigative function to monitor different areas of the public administration.

STRONG CASE FOR LAW REVISION

The Ombudsman is of the opinion that there is a strong case to be made for this uncertainty to be removed by an amendment to Section 4(1) of the Data Protection Act. This by including in this section that the Act shall not apply to the processing of personal data transferred to competent authorities set up by law solely for the purposes of investigating complaints against the public administration. These authorities as stated would comprise the Office of the Ombudsman, the Office of the Auditor General, the Office of the Commissioner for Standards in Public Life, the Public Service Commission and others.

Such an amendment would not of course, otherwise release the Office from its duty to protect and correctly use data containing personal information. While endeavouring to abide by its obligations under the GDPR and the Data Protection Act, the Office would continue to do its utmost to protect the privacy of individuals involved in the investigation. Having said that, it is of paramount importance that the Office’s investigations are not hindered in any way. The Office of the Ombudsman expects all public authorities, entities and the public administration to fully cooperate with its investigating officers in the search of the truth through secure investigations that are to be conducted in private.

Successful conclusion of such investigations can only be secured if all the data and information required are made promptly available and the principle of privacy and confidentiality is embraced and sustained by all persons and entities required by the Ombudsman to provide the information and data it requires.

TAILPIECE - NEED FOR MEANINGFUL REFORM

It has been a year of contrast and dramatic change fuelled by the desire to get to grips with major deficiencies in the conduct of public affairs, an awareness that action has to be taken to prevent a democratic implosion and to bolster and strengthen failing institutions before it is too late.

Towards the end of the year national outcry and international concern, ignited by dramatic events that laid out bare the rot that was corroding the public administration, precipitated a measure of change that would, hopefully at least, check the downhill, dangerous trend the country had embarked upon.

The outlook at the end of the year was turbulent but slightly positive. It will all depend on the extent that the major reforms, needed and promised in a spirit of continuity, will be meaningful, substantive, adequate and able to materially strengthen the democratic texture of the country. Reforms that have to favour, ensure and secure transparency and accountability and promote a high degree of active public participation.

Reforms that should radically change the public administration to ensure that the management of the common good is exclusively made in the interest of the collectivity and not in that of a corrupt few. Introducing reforms that prove to be merely cosmetic would do more harm than good. They would tend to encourage if not perpetuate practices and procedures that have been proved to be a fertile ground for abuse of power, clientelism, cronyism and corruption.

In such situations, that directly impact on the citizens' right to a good public administration, the Office of the Ombudsman is called upon to be vigilant and to monitor events as they develop. Careful not to involve itself in political debate or controversy, the Office should be prepared to contribute towards the ongoing debate on constitutional and institutional reform that one can safely forecast will peak in the coming months. This especially in those areas which directly concern the functions of the Office of the Ombudsman in the defence of citizens' rights and the affirmation of their fundamental right to a good public administration.

The political and social turmoil that the country witnessed especially in the second half of this year, inevitably slowed down the tempo of the public administration. The Office of the Ombudsman continued to exercise its primary function to receive and investigate complaints from aggrieved persons. The change of government that followed brought substantial changes in the reorganisation of ministries and government departments. As usually happens in such circumstances there will be changes of Permanent Secretaries and other key officials in the public administration as well as in the network of liaison officers that provide a direct and vital link with government departments and public authorities.

Such changes inevitably cause a major administrative upheaval in the secretarial and investigative departments that would have to be tackled. Familiarisation problems not only on a personal level but also on the functions

of the Office as a monitoring authority and how complaints already being investigated to be resolved. These issues are time consuming but the Office is well geared to face them.

ANNUAL REPORTS BY COMMISSIONERS

As required by law, this publication includes the annual reports of each of the Commissioners for Administrative Investigations. In it they give an account of the conduct of complaints they investigated during the year and what were the major concerns they had to put up with in the exercise of their functions. The Performance Review of each department of the Office provides details and breakdowns of the cases investigated as well as comparative information on the performance of previous years.

Statistical, comparative graphs and performance ratios over a span of years are useful to assess the efficiency and efficacy of the services provided by the Office. They help to identify shortcomings, to assess achievements and to plan ahead. They can provide indicators on what measures need to be taken to project the Office as a service that is closer to the people and what must be done to increase the trust of aggrieved citizens. Citizens need to be reassured that it is worthwhile to have recourse to the Ombudsman and Commissioners to seek redress.

However, care should be taken when interpreting basic statistical data since this can give a very misleading picture unless appreciated within its real context on the ground. Performance cannot be judged solely by reference to numbers. Numbers must be analysed and interpreted in the light of the many factors and different various circumstances that vary their weight and value. Every investigation presents a variable level of complexity that impacts on the time frame required for its resolution. Though it is important to make every effort to ensure that investigations are concluded within a reasonable time and always as expeditiously as possible, it is not possible to predetermine a definite, uniform time window within which investigations are to be concluded. There will always be factors beyond the control of the investigators that inevitably prolong the conclusion of the investigative process. This is especially so, in those complaints that concern merits that are sensitive and complex and which often require a policy decision by the public authorities involved.

ANNUAL REPORT HELPS OBJECTIVE ANALYSIS

These are sometimes complex situations that must be analysed objectively and critically by the Ombudsman, the Commissioners, the investigating officers and senior management to establish whether the inordinate delay in concluding an investigation could have been avoided. In conducting such an analysis the data provided in the annual report can provide a starting point to establish the reasons why the Office attained high percentage points in some areas while it failed to achieve its targets in others.

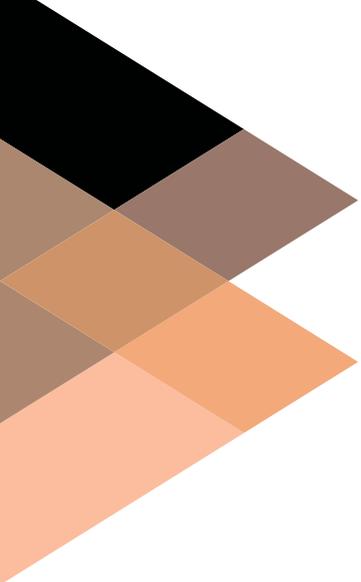
The Annual Report therefore should not be seen merely as a record of events, activities and performance of the Office of the Ombudsman. It should provide raw material that needs to be studied in-depth to identify what measures need to be taken not only by the Office itself but also by the public administration to ensure that the Ombudsman institution remains a valid, meaningful, independent and authoritative institution, accessible to aggrieved citizens to seek redress and to secure their right to a good public administration.

An institution that should be capable to rise to the occasion to meet the challenges that it is expected to face in the difficult times ahead.



NOTES FROM THE 2019 DIARY

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN



NOTES FROM THE OMBUDSMAN'S DIARY

OMBUDSMAN WELCOMES THE VENICE COMMISSION 'PRINCIPLES ON THE PROTECTION AND PROMOTION OF THE OMBUDSMAN INSTITUTION'

22 MARCH 2019

The Parliamentary Ombudsman, Mr Anthony C. Mifsud welcomed the 'Principles on the Protection and Promotion of the Ombudsman Institution', ("The Venice Principles") that were adopted by the Venice Commission during its 118th Plenary Session.

The 25 Principles play a key role in protecting existing Ombudsman offices who are facing threats, provide guidelines for the improvement of current Ombudsman Offices and set a template for new Offices where none are present. Ombudsman institutions now have a unique international reference text listing the legal principles essential to their establishment and functioning in a democratic society.

The Venice Commission described these principles as the most comprehensive checklist ever compiled to ensure an autonomous and independent Ombudsman institution. These range from his/her election or dismissal and the mandates of mediators, to financial and material guarantees necessary for their proper functioning.

PARLIAMENTARY OMBUDSMAN PRESENTS CASE NOTES 2018 TO PARLIAMENT

10 APRIL 2019

The Parliamentary Ombudsman, Mr Anthony C. Mifsud, presented the Case Notes 2018 to the President of the House of Representatives, the Hon. Anglu Farrugia.

The annual publication of case notes is meant to provide an inkling into the investigation of complaints carried out by the Ombudsman and the Commissioners, including considerations on which their final opinions are based and the type of remedy or redress that is recommended. This year's edition, as usual, tries to report cases that are of general interest and represent a good cross-section of the complaints investigated by the Ombudsman and the Commissioners.

In his foreword the Ombudsman notes that *"A number of final opinions have been sent to the Speaker of the House of Representatives following negative response from the public authorities to requests to implement our recommendations. We have indicated that to date none of these referrals have been actively considered by the House. There has been no response whatsoever."* The Ombudsman continued that *"One can safely conclude that this statutory procedure provided for in the Ombudsman Act, which was meant to be a final safeguard to provide redress against injustice to aggrieved citizens, is proving to be ineffective. This needs to be remedied."*

This concern was also highlighted by the Venice Commission in their opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement. In this respect, the Ombudsman welcomes the commencement of the legislative process initiated by Government in Parliament on changes suggested by the Venice Commission.



PARLIAMENTARY OMBUDSMAN PAYS A COURTESY CALL ON PRESIDENT GEORGE W. VELLA

11 APRIL 2019

The Parliamentary Ombudsman, Mr Anthony C. Mifsud, paid a courtesy call on H.E. George W. Vella, President of Malta.



THE COMMISSIONERS PAY A COURTESY CALL ON PRESIDENT GEORGE W. VELLA

26 APRIL 2019

The Commissioner for Health, Mr Charles Messina, the Commissioner for Environment and Planning, Perit Alan Saliba and the Commissioner for Education, Mr Charles Caruana Carabez called upon the President of Malta, H.E. George W. Vella.



THE AMBASSADOR OF SPAIN TO MALTA PAYS A COURTESY CALL ON THE OMBUDSMAN

8 MAY 2019

The Ambassador of Spain to Malta, H.E. Consuelo Femenía called upon the Parliamentary Ombudsman, Mr. Anthony C. Mifsud.



THE AMBASSADOR OF GREECE TO MALTA PAYS A COURTESY CALL ON THE OMBUDSMAN

14 MAY 2019

The Ambassador of Greece to Malta, H.E. Dimitrios G. Tsoungas called upon the Parliamentary Ombudsman, Mr. Anthony C. Mifsud.



THE COMMISSIONER FOR ENVIRONMENT AND PLANNING WRITES TO THE PRIME MINISTER FOLLOWING THE MELLIEHA BUILDING COLLAPSE

10 JUNE 2019

The Commissioner for Environment and Planning, Perit Alan Saliba sent a letter to the then Prime Minister, Dr Joseph Muscat pointing out that a number of laws are being broken within the construction industry, calling for criminal action to be taken against contractors who abuse.

The Commissioner highlighted that the law lays down that a distance of 76 centimetres must be kept between excavations and walls of existing buildings, but it is clear that this law is being ignored.

Letter to the Prime Minister is being produced in the Appendices as Appendix 1 Page 93

THE COMMISSIONER FOR ENVIRONMENT AND PLANNING SUBMITS HIS PROPOSALS TO AMENDED REGULATIONS AIMED AT PREVENTING DAMAGE TO THIRD PARTY PROPERTY.

19 JUNE 2020

The Commissioner for Environment and Planning, Perit Alan Saliba published a series of proposals to be included in amended regulations aimed at preventing damage to third party property.

The proposals came after all demolition and excavation work in Malta were halted when the wall of an apartment in Hamrun collapsed, the second such incident in a week and the third in two months.

The proposals of the Commissioner for Environment and Planning are being produced in the Appendices as Appendix 2 Page 97

THE PARLIAMENTARY OMBUDSMAN PRESENTS THE 2018 ANNUAL REPORT TO THE SPEAKER OF THE HOUSE

1 JULY 2019

The Parliamentary Ombudsman, Mr Anthony C. Mifsud, called upon the President of the House of Representatives, the Hon. Angelo Farrugia to present the Office of the Ombudsman's Annual Report for 2018.

During 2018, the Office of the Ombudsman received 553 complaints of which 313 were investigated by the Parliamentary Ombudsman, 102 were investigated by the Commissioner for Health, 84 by the Commissioner for Environment and Planning and the remaining 54 were investigated by the Commissioner for Education.

The 2018 Annual Report also highlights the initiatives taken by the Parliamentary Ombudsman and the Commissioners in their role as defenders of the citizens' rights.

UNACCOMPANIED MINOR REUNITED WITH HIS FAMILY - COOPERATION BETWEEN THE PARLIAMENTARY OMBUDSMAN AND THE SPANISH DEFENSOR DEL PUEBLO**22 JULY 2019**

The Office of the Ombudsman received a request for cooperation from the Office of the Spanish Defensor Del Pueblo concerning an unaccompanied minor who was given shelter in Malta after departing from Libya, and who claimed to have been separated from his family who were residing in a centre in Malaga.

The case had been brought to the attention of the Office of the Spanish Defensor Del Pueblo, UNHCR Spain and Malta branches by a Spanish NGO as the mother had expressed her will to be reunited with her son upon her arrival at the centre. These entities sought to see what could be done to reunite the minor with his mother and the Office of the Spanish Defensor Del Pueblo sought the assistance of the Maltese Parliamentary Ombudsman so that this family could be reunited. The Office of the Ombudsman took immediate action about this sensitive situation and contact was immediately made with the Ministry for Home Affairs and National Security, AWAS and other authorities involved in this process and is pleased to note that joint cooperation between all entities involved has led to the reunification of the minor with his family.



THE OMBUDSMAN AND THE COMMISSIONER FOR HEALTH MEET THE PARLIAMENTARY SECRETARY FOR CONSUMER PROTECTION AND PUBLIC CLEANLINESS, THE HON. DEO DEBATTISTA AND HIS DELEGATION.

30 JULY 2019

The Ombudsman, Mr Anthony C. Mifsud and the Commissioner for Health, Mr Charles Messina met the Parliamentary Secretary for Consumer Protection and Public Cleanliness, the Hon. Deo Debattista and his delegation.

During the meeting the issue of branded medicine was discussed.



OMBUDSMAN PRESENTS THE OMBUDSPAN 2020 TO THE SPEAKER OF THE HOUSE

12 SEPTEMBER 2019

In accordance with the provisions of the Ombudsman Act, the Ombudsman, Mr Anthony C. Mifsud, presented the Ombudsplan 2020 to the Speaker of the House of Representatives, the Hon. Anglu Farrugia.



The Ombudsplan 2020 outlined the 25 principles adopted by the Venice Commission aimed at protecting and promoting Ombudsman institutions. Ombudsman institutions now have a unique international reference text listing the legal principles essential to their establishment and functioning in a democratic society: The Principles for the Protection and Promotion of the Institution of the Ombudsman, or “The Venice Principles”.

The Ombudsplan also compared the ‘Venice Principles’ to the Maltese legislation and makes recommendations on how the Ombudsman legislation can be strengthened to make the work of the Ombudsman more effective and efficient.

The Ombudsplan 2020 was discussed in a special sitting of the House Business Committee on the 2nd of March 2020

THE COMMISSIONER FOR EDUCATION ADDRESSES A PRESS CONFERENCE ANNOUNCING AN OWN INITIATIVE INVESTIGATION ON THE SHORTAGE OF TEACHERS

17 SEPTEMBER 2019

The Commissioner for Education, Mr Charles Caruana Carabez announced an Own Initiative Investigation investigating the extent of shortage of teachers amid reports that the government was planning to recruit foreign teachers.



OMBUDSMAN MEETS A DELEGATION FROM THE EUROPEAN PARLIAMENT WHO WERE IN MALTA FOLLOWING DEVELOPMENTS IN THE INVESTIGATION INTO THE MURDER OF DAPHNE CARUANA GALIZIA

5 DECEMBER 2019

The Parliamentary Ombudsman, Mr Anthony C. Mifsud met a delegation from the European Parliament who came to Malta following developments in the investigation into the murder of Daphne Caruana Galizia.

The delegation was tasked to review the political and judicial developments in Malta and to continue its long-standing defence of the rule of law in the EU. The delegation was led by Sophie IN 'T VELD (Renew, NL), and made up of Roberta METSOLA (EPP, MT), Birgit SIPPEL (S&D, DE), Sven GIEGOLD (Greens/EFA, DE), Nicolaus FEST (ID, DE), Assita KANKO (ECR, BE) and Stelios KOULOGLOU (GUE/NGL, EL).

The Ombudsman was accompanied by Dr Monica Borg Galea, Head of Investigations and Mr Jurgen Cassar, Head of Communications and Research.







PERFORMANCE REVIEW 2019

CASES HANDLED BY
THE OFFICE OF THE OMBUDSMAN

PERFORMANCE REVIEW 2019

CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

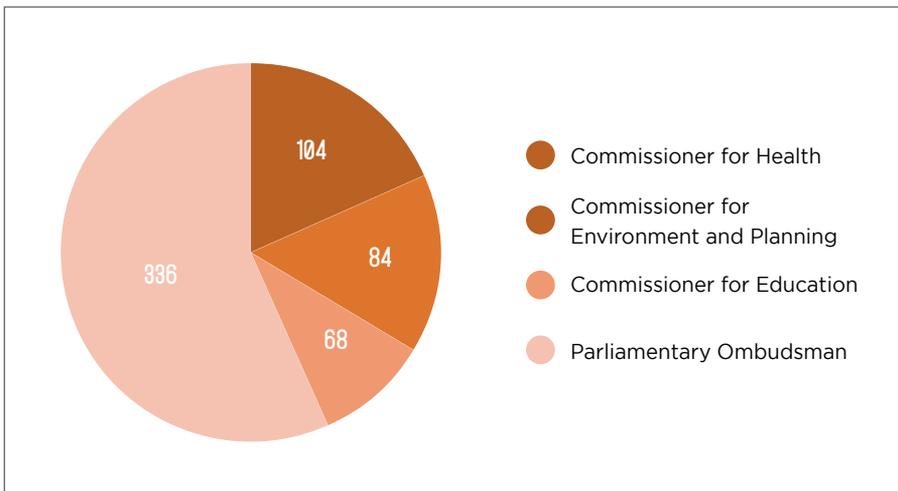
TABLE 1.1 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

2018 - 2019

	2018	2019
	No of cases	No of cases
Parliamentary Ombudsman	313	336
Commissioner for Education	54	68
Commissioner for Environment and Planning	84	84
Commissioner for Health	102	104
Total	553	592

DIAGRAM 1.2 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

2019



During the year under review, the Office of the Ombudsman handled 592 cases, an increase of 7% when compared to the cases received in 2018. As shown in Table 1.1 and Diagram 1.2, of the 592 cases, 336 were investigated by the Parliamentary Ombudsman, 7% more than 2018; 104 by the Commissioner for Health, an increase of 2% from 2018, 84 by the Commissioner for Environment and Planning, and 68 by the Commissioner for Education, 26% increase over the previous year.

IMPLEMENTATION OF OMBUDSMAN'S RECOMMENDATIONS

TABLE 1.3 – SUSTAINED CASES CLOSED DURING 2019 INCLUDING OUTCOME

	No of cases	Recommendation implemented	Recommendation partly implemented	Recommendation not implemented	Sustained - no recommendation made
Parliamentary Ombudsman	7	3	1	1	2
Commissioner for Education	5	2	-	3	-
Commissioner for Environment and Planning	4	2	2	-	-
Commissioner for Health	22	19	1	2	-
Total	38	26	4	6	2

In the Annual Report of 2018, in order to give a clearer picture of the outcome of the investigations conducted by the Office of the Ombudsman, and the implementation of the recommendations, table 1.3 was introduced.

In the year under review Table 1.3 shows that from the 7 sustained cases by the Parliamentary Ombudsman, 3 (43%) recommendations were implemented by the Public Administration, 1 (14%) was partly implemented and 1 (14%) was not implemented.

In the case of the Commissioner for Education, from the 5 sustained cases, 2 (40%) of his recommendations were implemented by the Public Administration, and 3 (60%) were not implemented.

The Commissioner for Environment and Planning sustained 4 of the cases investigated during the year under review, of which 2 (50%) were implemented, and 2 (50%) were partly implemented.

The Commissioner for Health had 22 sustained cases, of which the Public Administration implemented 19 (86%), 1 (5%) were partly implemented, and 2 (9%) were not implemented.

In total, from the 38 cases sustained by the Office of the Ombudsman, a total of 26 (68%) cases were implemented, 4 (11%) were partly implemented, and 6 (16%) were not implemented.

INCOMING COMPLAINTS

TABLE 1.4 – COMPLAINTS AND ENQUIRIES RECEIVED

1996 - 2019

Year	Written complaints				Total number Ombudsman's Office	Enquiries
	Ombudsman	Commissioner for Health	University Ombudsman/ Commissioner for Education	Commissioner for Environment and Planning		
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	32	56	92	623	462
2013	329	65	38	61	493	475
2014	352	77	60	49	538	581

2015	405	76	65	65	611	554
2016	361	82	59	55	557	579
2017	336	83	39	62	520	484
2018	313	102	54	84	553	438
2019	336	104	68	84	592	533

TOTAL CASE LOAD

In the previous Annual Reports Table 1.4 only outlined the Case Load of the Parliamentary Ombudsman leaving out the case load of the Commissioners. In order to avoid confusion and make the comparison between years more objective, as from this year the case load of the Commissioners has been included.

During the year in review, apart from the written complaints, the Office handled 533 enquiries, an increase of 22% when compared to 2018 (438). Table 1.4 and Diagram 1.5 show the number of enquiries and written complaints received by the Parliamentary Ombudsman since its establishment in 1995.

DIAGRAM 1.5 - OFFICE OF THE OMBUDSMAN - WORKLOAD

1996-2019

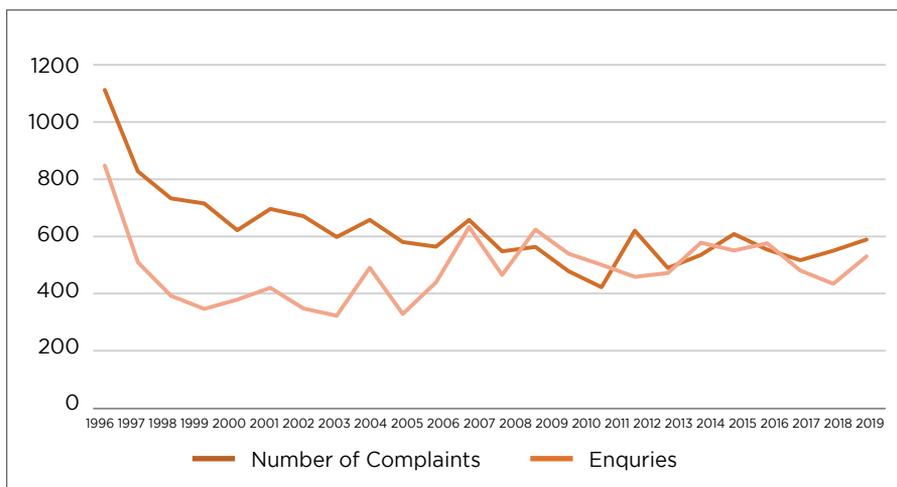


TABLE 1.6 - GENERAL ELECTIONS TREND

1997-2019

Year	No of Cases
1997	829
1998 (GE)	735
1999	717

Year	No of Cases
2002	673
2003 (GE)	601
2004	660
2007	660
2008 (GE)	551
2009	566
2012	615
2013 (GE)	493
2014	538
2015	611
2016	557
2017 (GE)	520
2018	553
2019	592

The last General Election in Malta was held in 2017, experience has shown that, when an election is held, the Office of the Ombudsman experiences a decline in complaints. Table 1.6 shows that the trend is then reversed in the year after a general election is held. This phenomena is attributed to the post-election euphoria, which sees many citizens seeking direct access to the Government to seek redress.

TABLE 1.7 – COMPLAINTS STATISTICS BY MONTH

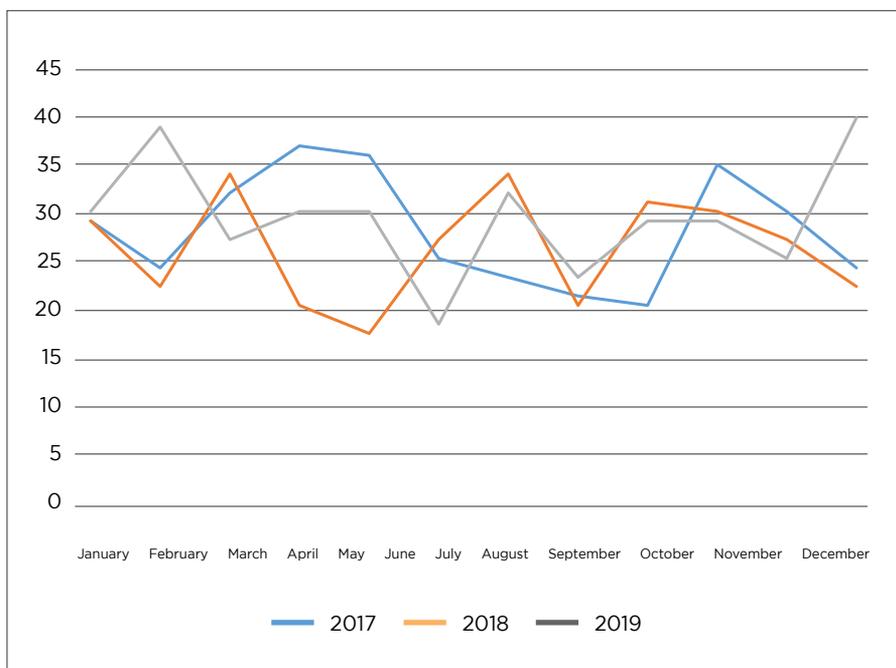
2017 - 2019

	Brought forward from previous year			2017			2018			2019		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
			123			168						183
January	29	27	125	29	41	156	28	30				181
February	24	29	120	22	25	153	30	39				172
March	32	36	116	34	36	151	19	27				164
April	37	21	132	20	17	154	31	30				165

May	36	31	137	17	15	156	33	30	168
June	25	18	144	27	17	166	20	18	170
July	23	21	146	34	25	175	48	32	186
August	21	23	144	20	25	170	22	23	185
September	20	20	144	31	24	177	25	29	181
October	35	29	150	30	36	171	30	29	182
November	30	22	158	27	23	175	23	25	180
December	24	14	168	22	14	183	27	40	167
Total	336	291		313	298		336	352	
Enquiries	484			438			533		

DIAGRAM 1.8 – COMPLAINTS STATISTICS BY MONTH

2017-2019



Between January and December 2019, the number of completed investigations increased from 298 in 2018 to 352 in 2019, an increase of 18%. At the end of 2019, the pending caseload stood at 167, which amounts to 9% less from the pending caseload at the end of the previous year.

TABLE 1.9 – COMPLAINTS RECEIVED CLASSIFIED BY MINISTRY AND RESPECTIVE DEPARTMENTS 2019

Autonomous			
Sector	No of Cases received	Investigated	Sector not involved
Office of the President	1	1	-
Other	1	-	1
TOTAL	2	1	1
Office of the Prime Minister (OPM)			
Sector	No of Cases received	Investigated	Sector not involved
Electoral Commission	1	-	1
Identity Malta	2	2	-
Identity Malta (Central Visa Unit)	1	1	-
Identity Malta (Citizenship and Expatriate Affairs)	15	10	5
Identity Malta (Passports)	1	-	1
Identity Malta (Public Registry)	2	-	2
Malta Financial Services Authority	2	1	1
Malta Gaming Authority	6	4	2
Office of the Prime Minister	5	4	1
People and Standards Division	15	6	9
RSSL (Resource Support and Services)	1	-	1
Public Service Commission	15	9	6
TOTAL	66	37	29
Ministry for the Economy, Investment and Small Businesses (MEIB)			
Sector	No of Cases received	Investigated	Sector not involved
Commerce	1	1	-
Economy, Investment and Small Business	2	2	-
Malta Industrial Parks	1	1	-
TOTAL	4	4	-

Ministry for Education and Employment (MEDE)

Sector	No of Cases received	Investigated	Sector not involved
Commission for Voluntary Sector	2	2	-
Education Department	12	8	4
Foundation for Tomorrow's School	2	1	1
Jobs Plus	3	2	1
MCAST	1	-	1
National Commission for Further and Higher Education	3	2	1
National Library	1	1	-
University of Malta	1	1	-
TOTAL	25	17	8

Ministry for Energy and Water Management (MEWM)

Sector	No of Cases received	Investigated	Sector not involved
ARMS	38	23	15
Enemalta	4	3	1
Engineering Resources Ltd	3	1	2
Regulator for Energy and Water Services	3	1	2
Water Services Corporation	4	4	-
TOTAL	52	32	20

Ministry for the Environment, Sustainable Development and Climate Change (MESDC)

Sector	No of Cases received	Investigated	Sector not involved
Environment, Sustainable Development and Climate Change	-	-	-
TOTAL	-	-	-

Ministry for European Affairs and Equality (MEAE)

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

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

Sector	No of Cases received	Investigated	Sector not involved
Department of Social Security	27	22	5
Foundation for Social Welfare Services	1	-	1
Housing Authority	9	8	1
TOTAL	37	30	7

Ministry for Finance (MFIN)

Sector	No of Cases received	Investigated	Sector not involved
Central Bank	1	-	1
Commissioner for Revenue (Capital Gains Tax)	3	2	1
Commissioner for Revenue (Customs)	2	2	-
Commissioner for Revenue (Inland Revenue)	6	3	3
Commissioner for Revenue (VAT)	2	1	1
Finance	1	1	-
TOTAL	15	9	6

Ministry for Foreign Affairs and Trade Promotion (MFTP)

Sector	No of Cases received	Investigated	Sector not involved
Foreign Affairs and Trade Promotion	-	-	-
TOTAL	-	-	-

Ministry for Gozo (MGOZ)

Sector	No of Cases received	Investigated	Sector not involved
Gozo Affairs	1	1	-
TOTAL	1	1	-

Ministry for Health (MFH)

Sector	No of Cases received	Investigated	Sector not involved
Health	1	-	1
TOTAL	1	-	1

Ministry for Home Affairs and National Security (MHAS)

Sector	No of Cases received	Investigated	Sector not involved
AWAS	1	1	-
Correctional Services	3	3	-
Detention Services	1	1	-
Home Affairs and National Security	7	6	1
Independent Police Complaints Board	1	1	-
Police	5	4	1
TOTAL	18	16	2

Ministry for Justice, Culture and Local Government (MJCL)

Sector	No of Cases received	Investigated	Sector not involved
Courts of Justice	3	-	3
Heritage Malta	2	2	-
Justice, Culture and Local Government	6	3	3
LESA	8	1	7
Local Councils	7	5	2
Malta Arbitration Centre	1	1	-
Public Broadcasting Services	1	1	-
TOTAL	28	13	15

Ministry for Tourism (MOT)

Sector	No of Cases received	Investigated	Sector not involved
Air Malta	7	4	3
Malta Tourism Authority	4	2	2
TOTAL	11	6	5

Ministry for Transport, Infrastructure and Capital Projects (MTIP)

Sector	No of Cases received	Investigated	Sector not involved
Engineering Professions Board	1	-	1
Infrastructure Malta Agency	7	4	3
Lands Authority	20	14	6
Land Registry	1	1	-
Planning Authority	1	1	-
Transport, Infrastructure And Capital Projects	3	2	1
Transport Malta	16	8	8
TOTAL	49	30	19
Outside Jurisdiction	26	-	26
TOTAL	336	197	139

Table 1.9 shows the complaints received classified by departments and public authorities according to each ministry's portfolio. The table categorises the number of complaints received, the number of complaints investigated with the departments and authorities concerned and those grievances that for different reasons were resolved without the need of involving the department or ministry concerned. Some of these cases are closed at a pre-investigation stage and therefore, the department, entity or ministry was not informed or involved during the investigation for one of the following reasons:

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

The following analysis focuses on the top five ministries by the number of complaints received. In all, the top five ministries attracted 232 complaints or 69% of the total amount of grievances lodged:

THE OFFICE OF THE PRIME MINISTER (OPM)

The Office of the Prime Minister (OPM) and the departments under its portfolio attracted the most number of complaints received. In all, it attracted 66 complaints, of which 37 (56%) were investigated with the department involved, and 29 (44%) were not.

MINISTRY FOR ENERGY AND WATER MANAGEMENT (MEWM)

The Ministry for Energy and Water Management (MEWM) attracted the second number of complaints received. From the 336 cases received by the Ombudsman, 52 cases (15%) were against a department or authority which falls under the MEWM. From the 52 complaints from aggrieved citizens, 32 (62%) were investigated, and the remaining 20 (38%) were seen without the need of involving the ministry. 73% of the complaints received were related to billing issues against ARMS Ltd.

MINISTRY FOR TRANSPORT, INFRASTRUCTURE AND CAPITAL PROJECTS (MTIP)

The Ministry for Transport, Infrastructure and Capital Projects (MTIP) attracted the third number of complaints received. From the 49 complaints lodged against this Ministry, 30 were investigated, and the remaining 19 were either concluded without an investigation or were investigated without involving the department concerned. Most of the cases related to the MTIP were against the Lands Authority (41%) and Transport Malta (33%).

MINISTRY FOR THE FAMILY, CHILDREN'S RIGHTS AND SOCIAL SOLIDARITY (MFCS)

The Ministry for Family, Children's Rights and Social Solidarity (MFCS) attracted 37 complaints, 11% of the complaints received by the Ombudsman, of which 30 were investigated and the remaining 7 were looked into without the involvement of the department concerned. The cases were mainly related to Social Security (73%) and housing issues (24%).

MINISTRY FOR JUSTICE, CULTURE AND LOCAL GOVERNMENT (MJCL)

The Office of the Ombudsman received 28 complaints from aggrieved citizens against the Ministry for Justice, Culture and Local Government (MJCL) of which 13 (46%) were investigated, and the remaining 15 (54%) were seen without the need of involving the ministry. Most of the cases were about the local enforcement system (29%) and the local councils issues (25%).

TABLE 1.10 – COMPLAINT GROUNDS

2017-2019

Grounds of Complaints	2017		2018		2019	
Contrary to law or rigid application of rules, regulations and policies	36	10%	41	13%	37	11%
Improper discrimination	37	11%	16	5%	25	7%
Lack of transparency	-	-	2	1%	1	1%
Failure to provide information	11	3%	11	4%	16	5%
Undue delay or failure to act	82	25%	79	25%	86	25%
Lack of fairness or balance	170	51%	164	52%	171	51%
Total	336	100%	313	100%	336	100%

DIAGRAM 1.11 – CATEGORIES OF COMPLAINTS RECEIVED (BY TYPE OF ALLEGED FAILURE)

2019

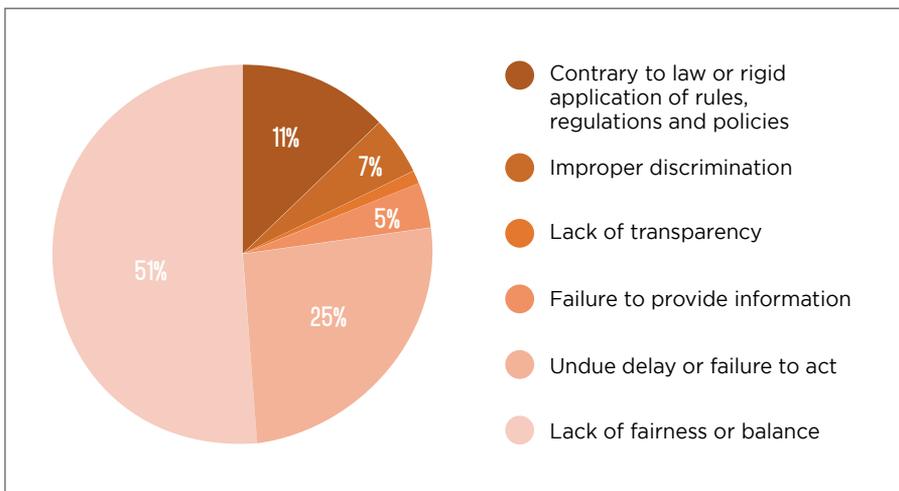


Table 1.10 and Diagram 1.11 show a detailed analysis of the complaints by the type of alleged maladministration. The most common complaints received from aggrieved citizens during 2019 were related to lack of fairness or balance which amounted to 51% of the complaints (171), followed by complaints alleging undue delay or failure to act that attracted 25% (86) of the complaints.

TABLE 1.12 – COMPLAINTS BY LOCALITY

2017-2019

Locality	2017	2018	2019
Attard	8	8	13
Balzan	7	8	3
Birgu	-	-	1
Birkirkara	19	20	24
Birzebbuga	5	5	9
Bormla	6	4	1
Dingli	2	5	4
Fgura	11	1	3
Floriana	1	1	-
Għargħur	1	-	1
Għaxaq	7	6	4
Gudja	1	6	-
Gżira	8	4	-
Hamrun	6	7	10
Iklin	2	4	1
Isla	-	1	1
Kalkara	-	3	2
Kirkop	2	2	2
Lija	2	1	3
Luqa	1	1	-
Manikata	1	-	-
Marsa	1	4	2
Marsaskala	8	8	15
Marsaxlokk	4	3	1
Mellieħa	5	3	5
Mġarr	-	2	2
Mosta	9	15	14
Mqabba	1	1	-
Msida	6	2	3
Mtarfa	1	2	1
Naxxar	7	8	10
Paola	8	9	7
Pembroke	5	5	7
Pietà	2	4	4

Qormi	6	1	5
Qrendi	1	3	2
Rabat	5	4	6
Safi	5	1	1
San Ġiljan	6	4	5
San Ġwann	11	11	15
San Pawl il-Baħar	8	18	17
Santa Luċija	1	3	3
Santa Venera	4	5	6
Siġġiewi	6	3	3
Sliema	9	11	15
Swieqi	3	6	8
Ta' Xbiex	1	-	-
Tarxien	11	4	7
Valletta	7	5	5
Xgħajra	1	-	-
Żabbar	15	11	8
Żebbuġ	13	7	4
Żejtun	5	5	9
Żurrieq	11	4	6
Gozo	29	16	19
Other	18	16	18
Overseas	13	22	21
Total	336	313	336

TABLE 1.13 – AGE PROFILE OF OPEN CASELOAD AT END

2019

Age	Cases in hand
Less than 2 months	31
Between 2 to 3 months	8
Between 3 to 4 months	11
Between 4 to 5 months	7
Between 5 to 6 months	14
Between 6 to 7 months	6
Between 7 to 8 months	7
Between 8 to 9 months	6
Over 9 months	77
Total Open files	167

Table 1.13 and Diagram 1.14 show the number of cases still under investigation that stood at 167 at the end of 2019.

DIAGRAM 1.14 – PERCENTAGE OF OPEN COMPLAINTS BY AGE [AT END 2019]

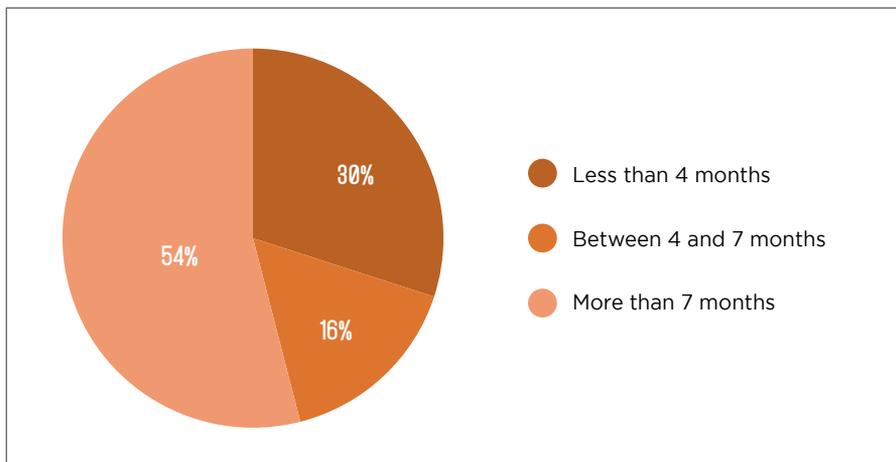


TABLE 1.15 – OUTCOMES OF FINALISED COMPLAINTS

2017-2019

Outcomes	2017	2018	2019
Sustained cases	18	22	7
Cases not sustained	63	37	55
Resolved by informal action	114	113	149
Given advice/assistance	35	42	52
Outside Jurisdiction	49	76	76
Declined (time-barred, trivial, etc.)	12	8	13
Total	291	298	352

DIAGRAM 1.16 – OUTCOMES OF FINALISED COMPLAINTS

2017 - 2019

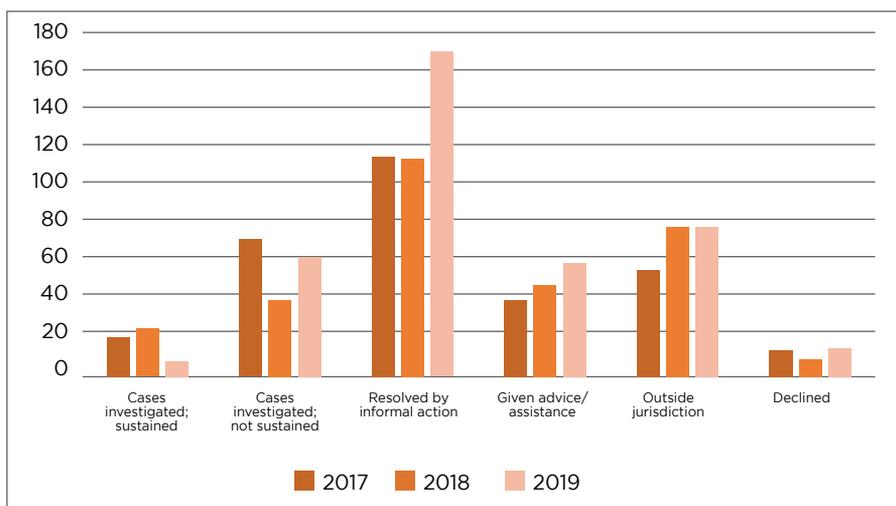


Table 1.15 and Diagram 1.16 show the outcome of the finalised complaints. In 2019, 7 of the finalised complaints were sustained by the Ombudsman with a satisfactory result for the complainant, a sharp decline from the previous years.

Also, 52 cases were finalised by giving advice or assistance and without the need to conduct a formal investigation. There were also 149 cases that were also solved by informal action while there were 76 cases that were outside the Ombudsman's jurisdiction.

TABLE 1.17 – TYPE OF MALADMINISTRATION IN JUSTIFIED COMPLAINTS

2017-2019

Grounds of Complaints	2017		2018		2019	
Contrary to law or rigid application of rules, regulations and policies	16	12%	22	17%	10	6%
Improper discrimination	13	10%	14	10%	9	6%
Lack of transparency	1	1%	-	-	-	-
Failure to provide information	10	7%	2	1%	11	7%
Undue delay or failure to act	45	34%	42	31%	55	35%
Lack of fairness or balance	47	36%	55	41%	71	46%
Total	132	100%	135	100%	156	100%

DIAGRAM 1.18 – CASES CONCLUDED AND FOUND JUSTIFIED

2017-2019

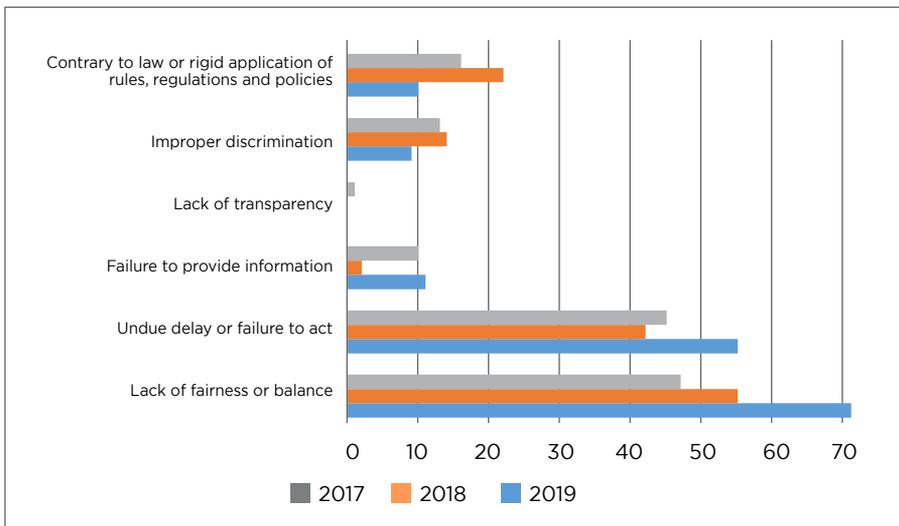


Table 1.17 and Diagram 1.18 illustrate the type of maladministration of justified complaints. Of the 156 justified complaints, 46% concerned lack of fairness or balance. The second most common type of complaints was about allegations that the administration delayed its action or failed to take action, amounting to 35% of the 2019 justified caseload.



COMMISSIONER FOR EDUCATION

ANNUAL REPORT 2019



OMBUDSMAN

ANNUAL REPORT 2019

COMMISSIONER FOR EDUCATION

The Commissioner has four sources of complaints: the University of Malta, MCAST, ITS and the Department of Education. These complaints originate, in each source, from students (or in the case of minors, parents of students) and secondly from the staff members of the entities.

The complaints concerning the Education Authorities top the list, but this is predictable, since the number of people they involve is far bigger than that of the three other entities. The complaints concerning this sector mostly comprise claims lodged by employees with regard to promotions or transfers, but when it comes to students 2019 showed a marked increase in complaints concerning stipends and scholarships. One reason for this is the period of semi-stasis noticed in the Maintenance Grant Stipends and Scholarship Schemes Board (MGSSB) resulting from transfers and resignations of key personnel. The withholding of maintenance grants on the ground of infraction of the rule which limits recipients to strictly 20 hours of paid work per week is, however, sometimes seen by the Commissioner to be so inflexibly applied that it gives rise to the suspicion that it is at times a cost-cutting exercise.

There was a marked increase in the number of complaints made by Gozitan personnel deployed in Malta, and these reflected their disappointment at being given practically no chance of finishing their stint in Malta and seeing their request for a transfer to Gozo being satisfied. The reason for this is that although there does exist a proper 'queue', this can be jumped by people who get certified as unfit for duty in Malta on medical grounds. Those without such medical certification are extremely suspicious of the way medical certification is obtained, and the People and Standards Division of the Office of the Prime Minister, which is responsible for the Board which decides whether a person is actually unfit to work in Malta, cannot dispute a specialist's certificate. Neither can the Commissioner, and because of this, such complaints drag on for a long time without any sign of solution.

With regard to the University, approximately half of the complaints originated from the staff and they concerned promotions in the main, whilst those originating from students concerned strong perceptions of shabby treatment by academic Boards or by Faculty members of students particularly but not exclusively in postgraduate courses. When it comes to interviews

relating to the induction or promotion of personnel, the University retains the bad practice of not keeping records of marks assigned to the various components examined by the interviewing Boards. This practice has been condemned by the Commissioner but the University persists in ignoring his advice. It is clear that such a bad practice cloaks selection processes in an impenetrable way, and the only reason which one may surmise for it is that of giving the University the freedom to select or promote whoever it wishes, even if the person selected does not have the same merit as others who are not. As a result, every inquiry into the propriety of selection processes founders on the rock of subjectivity, which is always claimed as having been the deciding factor.

In the case of MCAST, complaints were equally balanced between students and staff, and the numbers indicate a downtrend, possibly resulting from a tightening up of the middle management which had shown signs of stress caused by a rapid extension of services the previous year and a backlash resulting from the sectoral agreement signed in 2019.

Although the number of cases emanating from ITS is really small, it constitutes a four-fold increase on the previous year and probably results from the relocation of the premises from one end of the island to another, which created human problems.

Overall, and very gradually, one notes an increased sensitivity to unfair treatment, whether it is real or perceived, as well as an increasing public confidence in the Office of the Ombudsman. With regard to unfair treatment, however, one must also point out that quite a few complainants feel unfairly treated by the Commissioner if their claim is not upheld. There is a perception in a number of people that the Office of the Ombudsman is an institution which acts as a complainant's legal counsel, and they feel let down if what they regard as their lawyer does not sustain their claim. The Office of the Ombudsman must work harder to explain its nature, abstruse as it is, better.

One notices a substantial increase in cases resolved by informal action. This is the result of increasing confidence on the part of the Commissioner as well as of improved ability in bringing the parties together and achieving a satisfactory compromise without resorting to a final opinion. The Commissioner believes that this is the happiest solution, and constantly tries to make the parties reach such a solution but it depends not just on his ability but also on such factors as good-will and lack of animosity, which are not always present.

The institution which showed most willingness to co-operate was ITS, followed by MCAST, with the University coming a close third, whilst MEDE retained its convoluted and stodgy approach. MEDE gives the Commissioner the impression that his work is considered as a kind of bothersome intrusion which MEDE would gladly do without, rather than as a most necessary indicator of possible areas for improvement. MCAST accepted the evidence provided on various occasions and this eliminated the need on the Commissioner's part to publish a final opinion, but in the case of MEDE, the Commissioner's preliminary advice is always contested, and his recommendations are at Times adopted piece-meal or even ignored, in which case the matter is referred to the Minister, the Office of the Prime Minister and/or lastly to Parliament.

TABLE 2.1 - COMPLAINT INTAKE BY INSTITUTION

[2017 - 2019]

Institutions	2017	2018	2019
University of Malta	22	24	25
MCAST	6	10	7
Institute of Tourism Studies	1	0	4
Education Authorities	10	19	32
Outside Jurisdiction	-	1	-
Total	39	54	68

TABLE 2.2 - COMPLAINTS BY INSTITUTION CLASSIFIED BY GENDER AND STATUS OF COMPLAINT [2017 - 2019]

	University of Malta			MCAST			Institute of Tourism Studies			Education Authorities			Total		
	2017	2018	2019	2017	2018	2019	2017	2018	2019	2017	2018	2019	2017	2018	2019
Students	7	10	9	2	2	1	-	-	-	-	6	7	9	18	17
male															
female	9	5	8	1	2	2	1	-	1	2	5	7	13	12	18
Staff															
male	1	7	5	2	4	3	-	-	2	1	2	4	4	13	14
female	5	2	3	1	2	1	-	-	1	4	6	13	10	10	18
Others	-	-	-	-	-	-	-	-	-	2	-	-	2	-	-
Total complaints by students and staff	22	24	25	6	10	7	1	-	4	9	19	31	38	53	67
Own initiative cases	-	-	-	-	-	-	-	-	-	1	-	1	1	-	1
outside jurisdiction	-	-	-	-	-	-	-	-	-	-	1	-	-	1	-
TOTAL	22	24	25	6	10	7	1	-	4	10	20	32	39	54	68

TABLE 2.3 - OUTCOMES OF FINALISED COMPLAINTS

[2017 - 2019]

Outcomes	2017		2018		2019	
Resolved by informal action	1	3%	8	19%	16	27%
Sustained	4	12%	4	10%	5	8%
Partly sustained	-	0%	3	7%	-	-
Not sustained	22	67%	16	38%	24	41%
Formal investigation not undertaken/discontinued	2	6%	5	12%	6	10%
Investigation declined	4	12%	6	14%	8	14%
Total	33	100%	42	100%	59	100%

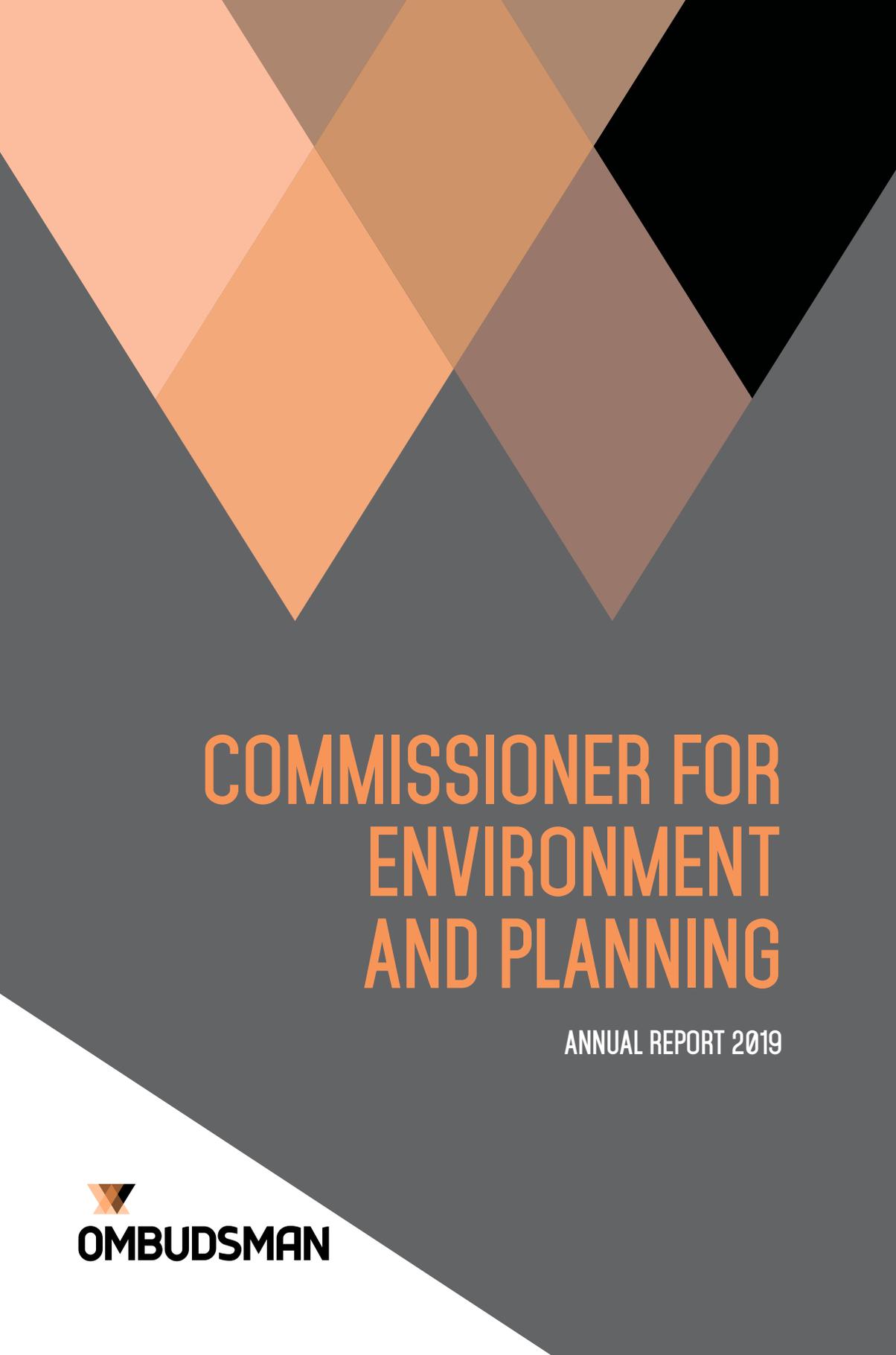
TABLE 2.4 - COMPLAINT GROUNDS

[2017 - 2019]

Outcomes	2017		2018		2019	
Unfair marking of academic work	3	8%	-	-	-	-
Special needs not catered for	4	10%	2	4%	-	-
Promotion denied unfairly	2	5%	5	9%	4	6%
Post denied unfairly (filling of vacant post)	4	10%	1	2%	2	3%
Unfair/discriminatory treatment	24	61%	44	81%	61	90%
Lack of information/attention	1	3%	2	4%	-	-
Own-initiative	1	3%	-	-	1	1%
Total	39	100%	54	100%	68	100%

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

Unfair discriminatory treatment	20
Unfair treatment regarding government stipends and scholarships	9
Unfair treatment on academic grounds	28
Unfair treatment on non-academic grounds	4
Total cases	61



COMMISSIONER FOR ENVIRONMENT AND PLANNING

ANNUAL REPORT 2019



OMBUDSMAN

ANNUAL REPORT BY THE COMMISSIONER FOR ENVIRONMENT AND PLANNING

This year, while we continued with the investigation of cases which were received in previous years, we initiated new investigations into complaints received this year, both those that fall within the environment and planning's remit as well as specialised cases assigned by the Ombudsman. This year we received the same amount of complaints as in the previous year and amongst these complaints, five were investigated on the Commissioner's own initiative. The latter cases were opened either following information released by the media or after anonymous information received by the Office. Although this Office adheres strictly to privacy principles, everyone still has the right to remain anonymous. In such circumstances, it would be helpful for this Office if the complainant provides his email address without disclosing his name, as this would enable us to gather the best information and to keep him informed of the outcome of his complaint.

TABLE 1: NUMBER OF CASES

	2019	2018
Pending cases from previous years	27	10
New requests for investigation	84	84
Total	111	94

Most of the cases carried forward from the previous year were closed, while 68% of the new cases received were also concluded this year. By the end of the year, there were 3 pending cases from previous years and 27 cases from this year.

TABLE 2: CLOSED CASES

	2019	2018
Pending cases from year 2018	24	8
New requests for investigation	57	59
Total	81	67

The message that this Office is an opportunity rather than a challenge for better public administration is made clearer as time goes by. When the Commissioner's recommendations are seriously implemented, this Office's scrutiny serves as a valuable opportunity for advancements in the administration. While every Government entity has a right to its opinion with regards to not accepting the Commissioner's recommendations, such decisions should not be taken lightly and in the case that it is not accepted, the same entity should provide the Commissioner with a valid and timely reason that motivated such a decision. This is the only way how the public administration can move forward with efficiency, consistency, transparency and without any discrimination. Through experience we know, that when Government entities decide not to take this Office seriously enough, some cases end up either as lengthy and costly litigations in Court that eventually lead to the depleting of resources or else in cases of long and complicated policy changing procedures notwithstanding this Office's efforts in pointing out to such entities that the problem does not lie in the policy itself but in the way the same policy was being implemented by the people entrusted to take decisions. In other cases it transpires that not enough effort is being made to prevent the Government from being liable for damages that will eventually lead to undue burden on public funds. Anyone entrusted with decision making should consider that whenever there is a doubt about the interpretation of a law, a regulation or a policy, the situation should be left as it stands, which means that the requested authorisation should not be approved before the latter doubt is totally clarified. If an authorisation is not issued, one has every opportunity to appeal or reapply, but when issuing an authorisation which should not have been issued, its negative impact would remain there forever, if not used as a precedent for further similar authorisations to be made. Questionable authorisations not only undermine the stakeholders' rights and the overall image of the country, but also affects the applicant's own rights as this would only provide him with a weak decision which could easily be revoked after time. In decision making, strict adherence to the law is crucial both for consistency in decision making and for ensuring that everyone is treated equally. Citizens, whether in their capacity as investors, developers or ordinary citizens do not need dubious authorisations to move forward. To the contrary, they need peace of mind that the authorisation they obtain would be strong enough to cast away any doubt that it could eventually be attacked, something which would in return reduce the risk involved in their investment.

The Planning Authority remained the dominating authority against which complaints were mostly received. In fact, two-thirds of all the complaints received were addressed to it. This is a substantial increase from last year's percentage of 50%. It is a very high percentage when one takes into consideration that this authority is attracting a number of complaints which is almost twice as much as the number of complaints lodged against all the other entities put together. During this year, various applications before this Authority raised a lot of controversy, where although the Commissioner could not intervene in view that such cases were still pending before the Authority, the Commissioner remained

vigilant and only intervened with the Authority concerned on proper initiative and in a general way. In these circumstances, the Commissioner also maintained a rigid caution not to intervene just because a case is mentioned in the media, and this in view of the fact that in most instances the issue raised would be general in nature rather than attributed to one particular case or another. On the other hand, one cannot refrain from taking action when the procedure adopted or the interpretation of any regulation or policy seems to be shifting to one side or another.

The number of cases lodged with this Office against the Building Regulation Office remained the same while the number of cases received against Transport Malta decreased. The number of cases concerning the Infrastructure Malta Agency increased after this agency assumed responsibilities which formerly pertained to Transport Malta. The other cases lodged against other entities as compared to last year are listed in the table hereunder.

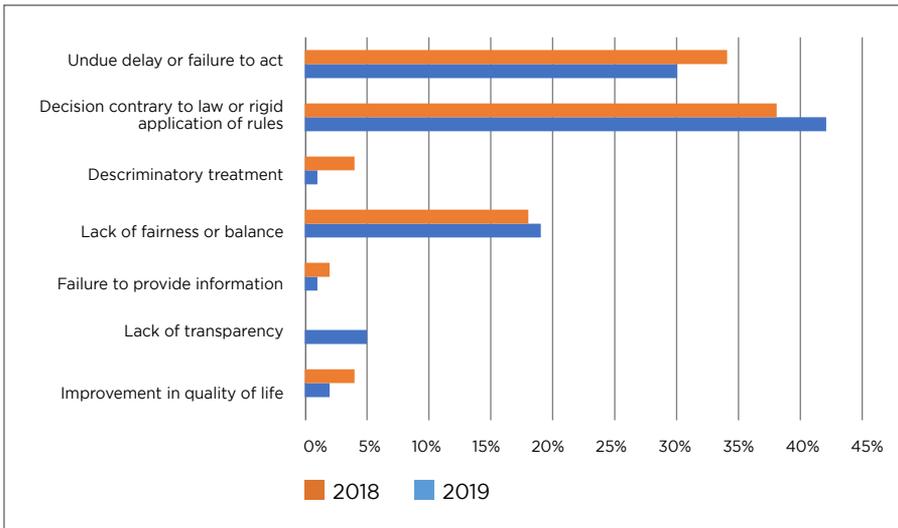
TABLE 3: GOVERNMENT ENTITIES SUBJECT TO COMPLAINTS

	2019	2018
Aġenzija Sapport	-	1
Building Regulation Office	7	7
Civil Protection Department	1	-
Enemalta	-	1
Environment and Resources Authority	1	-
Environmental Health Directorate	-	1
Housing Authority	2	1
Infrastructure Malta Agency	6	2
Jobsplus	1	-
Lands Authority	3	6
Local Council	1	5
Ministry for Transport, Infrastructure and Capital Projects	3	3
Occupational Health and Safety Authority	1	1
ORNIS Committee	-	1
Outside Jurisdiction	-	1
Planning Authority	54	42
Police	-	1
Superintendence of Cultural Heritage	1	3
Transport Malta	1	6
Water Services Corporation	2	2
Total	84	84

There was no significant change in the nature of complaints received except that there is a marked increase in the number of complaints concerning transparency. While it is considered as an accepted practice that private projects that have not yet been finalised are not made public while their relative application has not yet been validated, both in order to provide the public with the best and most accurate information and to maintain a level of consistency between what is actually processed and what is made public, the same procedure should not be applied in the case of public projects carried out from public funds on public land, which projects are often intended for the benefit of the public itself. Nor is the Planning Authority expected to publish itself information at an early stage of a project just because it has an advanced and accessible digital system. Although it is good that Government entities announce public projects through advertisement and audio-visual presentation in order to facilitate the understanding of the projects by a wide range of the public, there should not be anything that withholds the same Government entities from publishing all the project details as submitted by the same entity to the regulatory authorities. Government entities are not a commercial company which can decide to advertise its product to better succeed, therefore this Office shouldn't have to intervene for information that belongs to the public, to be actually given to the same public.

TABLE 4: CASELOAD RECEIVED BY NATURE OF COMPLAINT

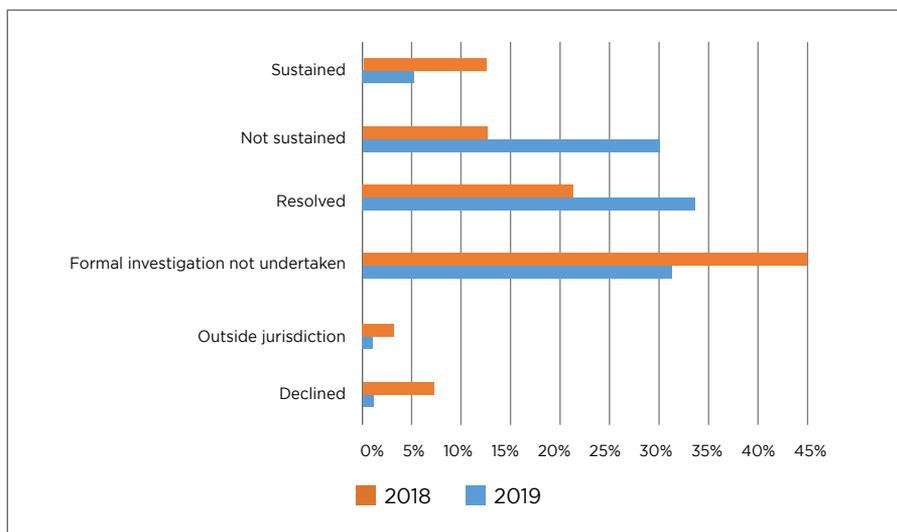
	2019		2018	
Undue delay or failure to act	25	30%	29	34%
Decision contrary to law or rigid application of rules	35	42%	32	38%
Discriminatory treatment	1	1%	3	4%
Lack of fairness or balance	16	19%	15	18%
Failure to provide information	1	1%	2	2%
Lack of transparency	4	5%	-	0%
Improvement in quality of life	2	2%	3	4%
Total	84	100%	84	100%



There was a drastic increase in the cases which were resolved without the need for the Commissioner to formulate a Final Opinion. This shows that the Government entities are aware that this Office's interventions often lead to a timely resolution of the case to everyone's satisfaction. There was also another drastic increase in those cases which were found to be unjustified, the main reason being that the Government entity has acted in all the parameters of the law. In all the four justified cases, the Commissioner's recommendation was accepted by the entity concerned. There are however two other cases on which a Final Opinion was formulated during this year but which have not yet been closed (hence not included in this table). These were submitted to the Prime Minister and to the House of Representatives. One of the cases concerns a recommendation which this Office made in May of this year regarding a Circular issued by the Planning Authority, which recommendation was rejected after the Authority itself had originally agreed with the conclusions in the same recommendation, whereas the other case concerns the register of contractors, about which no reply has been forthcoming from the Building Regulation Office as to how and whether it would be implementing the final recommendations made by this Office in September this year. One hopes that by the end of the year 2020 the Commissioner will be in a position to report the proper closure of these two cases as well.

TABLE 5: OUTCOME FOLLOWING FINAL OPINION

	2019		2018	
Sustained	4	5%	8	12%
Not sustained	24	30%	8	12%
Resolved	26	32%	14	21%
Formal Investigation not undertaken	25	31%	30	45%
Outside Jurisdiction	1	1%	2	3%
Declined	1	1%	5	7%
Total	81	100%	67	100%



SAFETY AT CONSTRUCTION SITES

The construction sites accidents that occurred this year forced the Commissioner to intervene through proposals which he based on existing laws and Court rulings, his clear aim being that of preventing the recurrence of any similar incidents. If, unfortunately, only a small number of these proposals were implemented, the same proposals served as a basis for constructive discussion both in non-Governmental organisations and in the media. When it comes to the citizens' health and safety, what is dictated by the law should leave no room for abuse, nor and even less should they serve as a way in which the same laws can in any way be circumvented.

TRANSPORT

This year we have also seen the continuation of a number of road works where one notes with satisfaction the change to multilevel junctions and new infrastructure catering for pedestrians and cyclists. One hopes that the attention given to pedestrians and to those who opt to use clean methods of transport continues, including sidewalks renovation. In 2018 the Commissioner drew the attention about the up keeping of sidewalks most of which are no longer good to walk on due to the number of obstacles one encounters including ramps, broken manholes, poles and ditches. The situation nowadays is getting worse because in the middle of the sidewalks one can also find large service boxes, more tables and chairs and even wires used to charge electric vehicles. There is a need for a national strategy that addresses these issues immediately and ensures that sidewalks are accessible and returned back to the public where priority should not be any more given to other users (such as services, cars, and trade). Incentives like teleworking and the use of videoconferencing in public meetings and appearances should also be favourably considered as such incentives would help decrease the number of cars on our roads and improve the quality of air that we breathe.

TOWARDS A BETTER ENVIRONMENT

Some may argue that it is now too late to intervene after the extensive development that has taken place in recent years. It's never too late. There is the need to put in place radical reforms that ensure that specific entities deal with specific aspects. If we have an authority whose role is to plan the Maltese landscape and the built environment, this authority should only focus on what makes up the Maltese landscape and the built environment and not delve into the internal planning, compliance with sanitary regulations, and measures on when and how construction is to be carried out. Such issues should be regulated by the Agency, preferably Authority, for Building and Construction. We have to make sure that the hundreds of thousands of Euros paid by those developers who do not cater for parking are used to build car parks and such funds should not be instead used to do any other community project which often further worsens the situation in our roads. In cases where the Superintendence or an entity issues a conservation order on a cultural or natural heritage, it should not only be ensured that undesired development does not take place but also that the preservation of the same cultural or natural heritage is incentivised. Hence, one should not abandon such sites and leave them in a degrading state just because the viability of making an investment on such site has been compromised by the same conservation order. It is only then that an environmental balance is reached and everyone is treated equally.

OMBUDSPLAN 2020

This year, for the first time, the Commissioners were invited to make their contribution to the Ombudsplan, which the Ombudsman is bound by law to present to the House of Representatives. This Ombudsplan outlined the challenges and the direction the Commissioner is expected to deal with next year. These include challenges related to access to information held by public entities, especially

during this technological era where information can be accessed from the comfort of one's own home. Another challenge is that of public involvement, which although absolutely necessary, is often, for various reasons lacking, a situation which sometimes leads the Commissioner to voice the citizen's concerns. Last but not least, the promotion of better access to justice where the balance should be reached not only after the decision has been taken, but also throughout the whole process ensuring that both commercial interests and environmental interests are debated on equal levels.

OTHER MATTERS

During this year, the Commissioner also participated in various meetings which in addition to helping the organising body itself in taking the best direction, such meetings also help keep both participants and the public up to date about the entity's work and the progress registered on particular issues. Similar meetings were held by the Environment and Resources Authority as a follow-up on the State of the Environment Report 2018. One hopes that this initiative will continue and that other Government entities will embark on similar trends.

CONCLUSION

Equity is essential and although anyone can lodge a complaint with this Office, the fact that the vast majority of complaints are lodged by objectors rather than applicants may in itself be an indication that economic progress is given priority over environmental protection. While it is true that money is an essential part of our lives, one should keep in mind that without good health, money will be worthless. The economic activity can always regain its growth, but if health and environment are left to deteriorate, it will be much more difficult for them to recover. We have big challenges ahead, so let's address them by finding the perfect balance in decision making and this after exposing all the information for public scrutiny and expediting the process with which one can find a fair and timely remedy.



The Commissioner for Environment and Planning, Perit Alan Saliba during a radio programme in which he explained his proposals amending the regulations aimed at preventing damage to third party property.



COMMISSIONER FOR HEALTH

ANNUAL REPORT 2019



OMBUDSMAN

ANNUAL REPORT 2019

COMMISSIONER FOR HEALTH

INTRODUCTION

During 2019, the Commissioner for Health received 103 complaints, similar to the amount received in 2018. The complaints received were 72 from the public and 31 from employees who work in the public health sector. During the year under review the Commissioner for Health concluded an Own Initiative Investigation on the improvement of services given by the Neonatal and Paediatric Intensive Care Unit.

During the year under review, a total of 64 cases were closed of which 45 concerned complaints received during 2019 and 19 were in respect of previous years.

The Commissioner for Health is still concerned by the great delay the Ministry for Health is taking to reply to the Commissioner's request for information. In fact 74% of the cases investigated by the Commissioner were referred to the Ministry for Health of which 43% are over one year old. The Commissioner is also preoccupied that 14 of his recommendations were not implemented by the public administration.

In the Annual Reports of previous years, the Commissioner had raised the issue of Protocols and the reluctance by the Ministry for Health to amend such Protocols which are discriminatory and in breach of the law which is also of grave concern. This issue is still not resolved and the Commissioner for Health is very disturbed by the attitude of the Exceptional Medicinal Treatment Committee.

PERFORMANCE REVIEW

TABLE 4.0 - COMPLAINTS RECEIVED

JAN - DEC 2019

Complaints Received	2018	2019
From the public	70	72
From employees in the Health Sector	32	31
Own Initiative Investigation	-	1
Total	102	104

TABLE 4.1 COMPLAINTS RECEIVED

JAN – DEC 2019

Against	No. of complaints
Ministry for Health	81
Ministry for the Family, Children's Rights and Social Solidarity	13
Office of the Prime Minister	5
Public Service Commission	2
Medicines Authority	1
Resources Support and Services Limited	1
Total	103

Table 4.1 shows that from 103 complaints received, 81 were against the Ministry for Health, 13 against the Ministry for the Family, Children's Rights and Social Solidarity, 5 against the Office of the Prime Minister and 2 against the Public Service Commission. The Medicines Authority and the Resources Support and Services Ltd had a case each.

TABLE 4.2 OUTCOME OF CASES RECEIVED IN THE YEAR 2019

JAN – DEC 2019

Outcome	No. of complaints
Sustained	13
Not sustained	15
Resolved by informal action	7
Advised	4
Withdrawn	3
Outside jurisdiction	3
Pending at Ministries/Department	57
Pending at Ombudsman	1
Total	103

Table 4.2 illustrates the outcome of the complaints received. In 2019, from the 102 complaints received, 13 cases were sustained, 15 cases were not sustained and 7 were resolved by informal action. It is pertinent to note the large amount of cases which are pending a reply from the Ministries or departments which amount to 55% of the 2019 case load.

Table 4.3, shows the age profile of pending cases. By the end of the year under review of the 58 pending cases, 27 were pending for over 6 months.

TABLE 4.3 AGE PROFILE OF PENDING COMPLAINTS

JAN TO DEC 2019

Age	Pending cases
Over 1 month	16
Over 2 months	4
Over 3 months	2
Over 4 months	6
Over 5 months	3

Over 6 months	7
Over 7 months	5
Over 8 months	2
Over 9 months	4
Over 10 months	3
Over 11 months	6
Total	58

TABLE 4.4 PENDING BY MINISTRY

JAN – DEC 2019

Department/Ministry	No. of complaints as at 31 December 2019	No of complaints as At 20 May 2020
Ministry for Health	44	38
Ministry for the Family, Children's Rights and Social Solidarity	06	01
Office of the Prime Minister	04	04
RSSL	01	-
Public Service Commission	01	01
Total	57*	44

*additional case is pending at Ombudsman

As shown in Table 4.4, the Ministry for Health tops the list of pending feedback by 44 (77%) cases which are pending some sort of reply or feedback. This is expected as the Commissioner's remit focuses on health related cases.

TABLE 4.5 CATEGORIES OF COMPLAINTS FROM THE GENERAL PUBLIC

JAN – DEC 2019

Nature of complaint	No. of complaints
Denied request for free medicines	25
Request to be sent abroad for treatment	3
Refund of medical expenses incurred abroad	3
Alleged discrimination by an EU Citizen	3
Delay to be given hospital appointment	2
Request for Certificate of Entitlement to free health care	2
Concern regarding a public health issue	2
Ownership of grave	2
Seepage of drainage in Private property	2
Clamping of car at Mater Dei Hospital	2
Deduction in pension	2
Non-recognition of degrees	2
Alleged lack of attention by hospital staff during final days of pregnancy	2

Revision of exam papers by the Medical Council	1
Lack of medical ethics	1
Inadequate attention by hospital Customer Care Office	1
Request for free Telecare	1
Request to be provided with required equipment	1
Request to be given sticker or a parking space for Ostomy patients	1
Request by a diabetic patient to be given a Glucose Monitoring Machine	1
Non delivered parcel	1
Failure to record emergency call due to alleged language barrier	1
Termination of employment	1
Request for transfer due to Medical Condition	1
Wrong interpretation of the law	1
Request for transfer from one Old People's Home to another	1
Refund to give free treatment to foreign patient	1
Request to be given Sickness Benefit	1
Unfair decision by the Grievances Board	1
Alleged unfair treatment	1
Objection to transfer Mount Carmel Hospital patient from one ward to another	1
Request for compensation for alleged maltreatment at the hospital	1
Request by patient to be given electric bed	1
Total	72

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

TABLE 4.6 CATEGORIES OF COMPLAINTS FROM EMPLOYEES OF THE PUBLIC HEALTH SECTOR JAN TO DEC 2019 – STAFF

Nature of Complaint	No. of complaints
Request for transfer	6
Alleged unfair selection process in a Call for Applications	5
Request for equal pay for equal work	2
Objection to refund money	2
Request for an allowance	2
Refusal to be given Telework	2
Request for promotion to higher grade	2
Unfair procedure for promotions	2
Delay to be registered as Specialist	1
Request to be given Deputising Allowance	1
New procedure to appoint Selection Board members	1
Refusal to be given Appointment	1
Alleged unfair work practices	1

Request to be paid on call allowance	1
Loss of income	1
Medical doctor to be given Contract A	1
Total	31

Similarly to the complaints lodged by the general public, the categories of the complaints received from the health sector employees are diverse in nature, totalling to 16 different types of complaints. As shown in Table 4.6 the most complaints by employees working in the Public Health sector relate to requests for transfers.

TABLE 4.7 CLOSED CASES

JAN - DEC 2019

	No. of complaints
Closed Cases from the 2016 Caseload	1
Closed Cases from the 2017 Caseload	1
Closed Cases from the 2018 Caseload	17
Closed Cases from the 2019 Caseload	45
Total	64

Table 4.7 illustrates the number of cases closed during the year under review. From the 64 cases closed by the Commissioner, 45 (70%) emanated from the 2019 caseload. During 2019 the Commissioner managed to conclude 19 cases which were pending from the previous years.

TABLE 4.8 TOTAL NUMBER OF PENDING COMPLAINTS

[2012 - 2018 - AS AT 31 DEC 2019]

	No. of complaints
Department / Ministry / Sector	
Ministry for Health	25
Office of the Prime Minister	8
Total	33

As shown in Table 4.8 at the end of the year under review, the Commissioner for Health had 33 pending cases of which 25 were against the Ministry for Health, and 8 were against the Office of the Prime Minister.

TABLE 4.9 RECOMMENDATION NOT IMPLEMENTED

JAN - DEC 2019

	No. of complaints
Department / Ministry / Sector	
Ministry for Health	11
Office of the Prime Minister	3
Total*	14

* one complainant opened Court Case

TABLE 4.10 – STATUS OF RECOMMENDATIONS NOT IMPLEMENTED

JAN – DEC 2019

Department / Ministry / Sector	No. of complaints
Cases referred to the Prime Minister (awaiting reply)	6
Cases referred to the Parliament (awaiting reply)	2
Referred to the Office of the Prime Minister (awaiting reply)	1
Referred to the Ministry for Health (awaiting reply)	4
Complainant opened a Court Case	1
Total	14

Table 4.9 and 4.10 show the status of the recommendations made by the Commissioner which were not implemented by the administration. Of the 14 cases which were not implemented 11 related to cases against the Ministry for Health and 3 against the Office of the Prime Minister.

The recommendations which were not implemented are about:

1. Introduction of a particular cancer drug on the Government Formulary List (pending since 2012)¹;
2. Screening of neonates for hearing loss (pending since 2015);
3. Discriminatory/Illegal Protocols (pending since 2013) and the Exceptional Medical Treatment Committee. Both issues are depriving patients from having the required treatment free of charge;
4. Refund of expenses incurred by patients who purchase medicines to which they were entitled.
5. Payment due to a nurse who accompanied her daughter for treatment abroad.
6. Withdrawal of disciplinary procedures taken against an employee.

On a positive note the recommendation made in 2015 to give Analogue Insulin to Type 2 diabetics was implemented in 2019. Previously this type of insulin was given only to Type 1 diabetics, because the Protocol (see point 3) so dictated.²

FROM PREVIOUS ANNUAL REPORTS

PROTOCOLS

There seems to be no end to the problem of Protocols because the Ministry for Health still refuses to amend the Protocols in spite of the fact that they were drawn up to be not only discriminatory but also in breach of the law (Social Security Act). The Commissioner for Health has been reporting on this issue these last six years. 28% of the complaints received by the Commissioner for Health are about medicinals. This itself is a fact which shows the public's concern. The problem which keeps the public administration to solve this long outstanding issue seems to be financial, however,

¹ Procured in 2020.

² Approved on 21 January 2020.

the Ministry is also reluctant to take one Protocol at a time and, if need be, to ask the Ministry for Finance to provide additional funds.

BRANDED MEDICINALS

As stated in last year's Annual Report this matter has been going on since 2016. The Ministry for Health has been persuaded that certain patients absolutely need branded medicines. However, the Exceptional Medicinal Treatment Committee (EMTC) continues to move the goal posts and instead of considering the requirements of the patients, continues to insist on seeing whether the medicinal would be required by other patients. The EMTC fails to understand that its remit and the purpose for which it was set up is to decide whether the particular patient's case is exceptional or not.

The EMTC does not want to consider the particular cases and instead recommended that the medicinal be included in the Government Formulary List.

The EMTC knows that it takes ages for a new medicinal to be included in the Government Formulary List because first it has to be approved by the Government Formulary List Advisory Committee, which meets irregularly, and then it goes to another other sieve, the Advisory Committee on Health Care Benefits, which meets even more irregularly.

In such situations the only means available to the Office of the Ombudsman is to invoke Section 22(4) of the Ombudsman Act and refer the matter to the Prime Minister and to the House of Representatives, however to date, this is also proving to be ineffective as to date none of these referrals have been actively considered by the House. There has been no response whatsoever. In the Foreword of the edition of the Case Notes 2018 the Parliamentary Ombudsman stated that *"One can safely conclude that this statutory procedure provided for in the Ombudsman Act, which was meant to be a final safeguard to provide redress against injustice to aggrieved citizens, is proving to be ineffective. This needs to be remedied."*

This issue was also brought up by the Venice Commission in their opinion on Constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement.

It seems that the functions of the Committee (EMTC) and that of the Central Procurement and Supplies Unit (CPSU) are not patient friendly because they are precluding patients from having what they really need. The patients will have no option but to put their hands into their pockets or seek help from somewhere else.

PRIVATISATION OF HEALTH SERVICES

The Commissioner for Health has requested the full text of the contracts signed between the Ministry for Health and Vitals/Steward Health Care. The Contracts have still not been made available to the Office of the Ombudsman.

ELASTIC STOCKINGS

In last year's Case Notes, it was reported that the Central Procurement and Supplies Unit (CPSU) has been, since 2017, refusing to buy extra-small and extra-large elastic stockings which are worn by certain patients susceptible to thrombosis. At the end of the year in review the problem still persists.³

3 Purchased in April 2020.

PRELIMINARY INVESTIGATIONS

During 2019 the following preliminary investigations were made:

- Meningitis Vaccines
- Shrouding of Corpses
- Services of medical officers in Homes for Elderly

The Commissioner for Health notes that he still has no feedback about the investigations which started in 2016 about Treatment for Diabetic Macular Degeneration.

OWN INITIATIVE

During the year in review, the Commissioner for Health carried out an Own Initiative Investigation about the improvement of services given by the Neonatal and Paediatric Intensive Care Unit. Several recommendations were made which were sent to the Ministry for Health.

Reply from the Ministry for Health is still awaited.

GOVERNANCE ACTION

In November 2019, the Principal Permanent Secretary in the Office of the Prime Minister issued a Publication entitled "*Governance Action*". This was in reply to the Ombudsman's Annual Report for 2018.

In page 7 of the publication it is stated that "*Furthermore, there was no instance where it concluded that there was any breach of law; policy or abuse of power by the Public Administration*".

This is not correct. Page 83(4) of the Annual Report 2018 mentioned recommendations which were not implemented even though the Ministry for Health used "*discriminatory/illegal protocols*". There was therefore (and still persists) "*breach of law or abuse of power*". Further down the same page of the Annual Report 2018 it was stated "*they (i.e. the recommendations) were meant to solve the discrimination and illegality created. The patients are purely and simply being oppressed*".

In page 7 of the publication it was also stated "*that some recommendations are considerably more complex in nature hence requiring in-depth analysis*". Even though the Commissioner agrees with this statement, this should not be taken as an excuse to keep the cases pending for years to the detriment of the patients.

The Commissioner would also like to comment on the remarks on pages 265, 285, 288 and 295 which states that "*Ombudsman recommending that protocols should be removed*". On the contrary, I always declared that protocols are necessary. It is the way in which they discriminate that is objectionable. The cases mentioned are still pending even though the matter was referred to the Prime Minister in terms of the Ombudsman Act.

The case mentioned in page 283 which relates to the issue of branded medicines was also referred to the Prime Minister and is still pending.

The Annual Report is not the proper fora to comment on each and every case mentioned in the Governance publication (pages 262 to 299), however the Commissioner for Health insists that if the departments cooperate with his Office such escalations will be avoided. Even the Principal Permanent Secretary himself stated

(in page 7) *“I believe this is an area where we need to secure a closer collaboration and exchange with the Ombudsman and Commissioners to minimise the need for such escalation”.*

CONCLUSION

The Commissioner for Health reiterates that the major issues outlined over the past years namely the issue of Protocol and the problems created by the Exceptional Medicines Treatment Committee are still not resolved.

Worse, the Ministry for Health is very reluctant to change its ways and in the meantime patients are suffering in silence. The only remaining option is now to refer the matter to the President of the House of Representatives who will be asked to bring this issue for the attention of the House Health Committee.



APPENDICES

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN

APPENDIX 1



COMMISSIONER FOR ENVIRONMENT AND PLANNING



Ref tagħna: CEP/3PI

10 ta' Ġunju 2019

Onor. Prim Ministru
Uffiċċju tal-Prim Ministru
Berġa ta' Kastilja
Valletta

Onor. Prim Ministru

Iż-żewġ binjiet li ċedew fil-gimghat li għaddew u inċidenti oħra simili li ġraw qabilhom wassluni sabiex niktiblek biex mill-esperjenza tiegħi bhala Perit, snin twal bhala esport tal-Qorti u issa Kummissarju fl-Uffiċċju tal-Ombudsman inwassallek il-hsibijiet tiegħi. Qed nikteb lilek bhala Prim Ministru billi dan is-sugġen jgħbor fih diversi dekastru, mill-Ministeru għall-Infrastruttura u l-Ippjanar sal-Ministeri tas-Saħħa, l-Gustizzja u l-Intern. Nagħmilha ċara li l-kontenut ta' din l-ittra m'għandux jittiehed b'referenza għaz-żewġ inċidenti riċenti li jinsabu taht investigazzjoni mill-Awtoritajiet ikkonċernati.

Artikolu 439 tal-Kodiċi Ċivili jistipula li hadd ma jista' jagħmel kwalunkwe skavar f'distanza ta' inqas minn 76 centimetri mill-hajt diviżorju. Madanakollu, jekk wiehed ikollu jdur dawra mal-gzejjer u jara l-pjanti sottoessni lill-Awtorità tal-Ippjanar jista' jinnota li din il-ligi qed tiġi skartata. Il-terzi jistgħu jiehdu biss passi permezz ta' proċeduri ta' Mandat ta' Inibizzjoni quddiem il-Qrati tagħna madanakollu, hafna drabi dawn il-proċeduri jimbew tard wisq jew minhabba problemi finanzjarji, jew minhabba li l-hajt diviżorju jkun proprjetà ta' diversi sidien jew inkella għal raġunijiet oħra. Proċeduri Kriminali mhux dejjem jistgħu jimbew billi anke jekk wiehed jista' jsostni li min jinjora l-obbligu ċar imsejjes b'dan l-Artikolu mhux biss jkun jippreġudika l-jeddijiet tal-gar imma jkun qiegħed bin-negliġenza jpoġġi f'riskju ċar il-hajja u l-proprjetà ta' terzi, għall-preżunzjoni kriminali hu meħtieġ li dan id-dubju jiġi ċċarat b'emenda fil-Kodiċi Kriminali.

4. Kull sit li fil-preżent jinsab skavat l'inqas mid-distanza preskritta għandu jiġi registrat sabiex jittiehdu l-mitigazzjonijiet opportuni.

Qed nissottometti dawn il-proposti fl-interess pubbliku u għall-attenzjoni immedjata tiegħek.

Insellimlek



Perit Alan Saliba
Kummissarju għall-Ambjent u l-Ippjanar

APPENDIX 2

PROPOSTI TAL-KUMMISSARJU GĦALL-AMBJENT U L-IPPJANAR GĦALL-ABBOZZ LI JEMENDA L-LIĠI SUSSIDJARJA MSEJĠĦA 'REGOLAMENTI DWAR L-EVITAR TA' ĦSARA LIL PROPRJETÀ TA' TERZI PERSUNI'

1. Għandu jinholq uffiċċju wieħed tal-Gvern bħala *ONE-STOP-SHOP* li jilqa' kul ilment dwar kull haġa relatata mal-ambjent, kemm jekk huwa ambjent mibni u kif ukol jekk huwa ambjent mhux mibni. Iċ-ċittadin qed jaħli ħafna żmien ifittex għand liema entità tal-Gvern għandu jirreferi l-ilment tiegħu b'konsegwenzi serji meta każijiet ikunu ta' natura urġenti. Taht dan il-*one-stop-shop* ikunu miġbura d-direttorati tal-infurzar ta' kull entità tal-Gvern sabiex l-infurzar ikun aktar effiċjenti u effettiv. Eżempju ċar: jekk x ħadd jilmenta li qed isir invjar mingħajr il-*harness* fuq faċċata qadima proprjetà tal-Gvern ma jintbagħtux ħames *enforcement officers*, wieħed tal-Awtorità tal-Ippjanar, iehor tal-*Building Regulation Office*, iehor tal-Awtorità tas-Saħħa fuq il-post tax-xogħol, iehor tas-Sovrintendenza tal-Wirt Kulturali u iehor tal-Awtorità tal-Artijiet immjantbagħal *enforcement officer* wieħed u l-erbgha l-oħra jintbagħtu fuq lantijiet tax-xogħol oħra fejr ikun hemm bżonn. Anke jekk *enforcement officer* ikun jinsab fuq biċċa xogħol f'lokalità u jidhul ilment dwar proprjetà oħra f'it passi l-bogħod, l-*enforcement officer* ikun jista' jispezzjona fl-iqsar żmien mingħajr l-ebda skariġġ żejjed ta' trasport.

2. Dan il-*ONE-STOP-SHOP* (*Government Authorities, Departments and Entities Related to the Environment Networking Group*) ikollu l-kompitu li:

- i. jwassal immedjatament l-ilment lill-*enforcement officer* li jkun fil-lokalità;
- ii. jzomm lill-entità/jiet ikkonċernati informati dwar l-istess ilment;
- iii. jzomm arkivju diġitali ċentrali tad-dokumenti kollha li jidhlu għand l-entitajiet tal-Gvern (u forsi 'l quddiem anke d-dokumenti strutturali mhejjija mill-Perit u r-riżultati tat-testijiet li jsiru) għad-dispożizzjoni kemm tal-istess entitajiet u kif ukol tal-pubbliku ġenerali u mhux b'inqas għall-Uffiċċju tal-Ombudsman. Dan l-arkivju jkun jixbaħ il-pjattaforma eżistenti tal-Awtorità tal-Ippjanar;

3. Sakemm ma tidholx fis-seħħ immedjatament pjattaforma *on-line* li tilqa' dawn id-dokumenti, għandhom isiru l-arranġamenti neċessarji sabiex il-*website* eżistenti tal-Awtorità tal-Ippjanar tintuża bħala pjattaforma għal dan il-għan. Dan għandu l-vantaġġi li:

- i. d-dokumenti relattivi jkunu disponibbli immedjatament *on-line*;
- ii. mill-*geoserver* tal-istess Awtorità tal-Ippjanar wieħed ikun jista' jsib faċilment dawn id-dokumenti mis-*site plan* tas-sit; u
- iii. dawn id-dokumenti jkunu disponibbli għall-Uffiċċju tal-Ombudsman għall-azzjoni meta jsiru allegazzjonijiet li l-Awtorità m'agixxietx, ħalli jiġi evitat dewmien meta l-Uffiċċju tal-Ombudsman joqgħod kull darba jitlob l-istess informazzjoni mingħand l-istess entità.

4. Minbarra l-*commencement notice* eżistenti li hawnhekk qed tissejjaħ il-*'building commencement notice'* u li tinkludi l-firma tal-bennej, l-iżviluppatur, is-*site manager* u l-Perit, għandha tiġi sottomessa wkoll *'prebuilding commencement notice'* li tinkorpora wkoll il-firma tal-kuntrattur tat-twaqqiegħ u tat-tħaffir. B'hekk, il-*one-stop shop* ikollu wkoll l-informazzjoni neċessarja li tindikalu wkoll meta sit jithalla mhaffer għal tul ta' żmien sakemm jinbeda x-xogħol tal-bini. F'każ li t-tħaffir u l-bini jsiru kontemporanjament, m'hemm xejn xi jzomm milli jiddaħħlu ż-żewġ *commencement notices* f'daqqa.

5. Id-distanza preskritta fl-Artikolu 439 tal-Kodiċi Ċivili għandha tiġi nfużata mid-Direttur fejn kull dokument sottomess għandu jirrispetta l-liggi u fin-nuqqas dan għandu jiġi riġettat ħlief meta: i) jiġi preżentat rapport ta' Perit li fuq in-naħa l-oħra tal-ħajt diviżorju hemm bitħa fonda aktar minn 76cm u t-terzi kontigwi aċċettaw permezz ta' skrittura li dan il-ħajt diviżorju jitwaqqa'; ii) meta fuq in-naħa l-oħra tal-ħajt diviżorju hemm proprjetà tal-istess sid; jew iii) meta l-ħajt diviżorju jinżel f'fond aktar mill-wiċċ eżistenti tas-sit li ser jiġi mhaffer però dan għandu jgħodd biss sal-fond tal-istess ħajt diviżorju. Il-Qrati tagħna stabbilew li dan l-Artikolu tal-liggi huwa ntiz sabiex tiġi evitata ħsara lil proprjetà ta' terzi (ara Sentenza Ċitazzjoni Numru 946/05 tal-25/05/2016) u

6. Il-proġetti li għadhom fil-*prebuilding stage* fejn il-permess tal-Awtorità tal-Ippjanar juri tħaffir fid-distanza preskritta mill-liġi għandhom jiġu emendati mill-Perit tal-proġett sabiex jiġu skont il-liġi. Eżenzjoni minn din il-miżura tista' tingħata biss fit-tlett każijiet imsemmija fil-paragrafu preċedenti.

7. Meta t-tħaffir fuq sit ikun diġà mibdi, qabel ma jsir kwalunkwe xogħol ieħor ta' tħaffir, dik il-parti mal-ħajt diviżorju mhaffra fid-distanza preskritta mill-liġi għandha tiġi rimpjazzata permezz ta' ħajt mimli bil-konkos jew bi struttura oħra simili skont ma jordna l-Perit.

8. Kwalunkwe ftehim privat li jippermetti l-ksur tal-Artikolu 439 tal-Kodiċi Ċivili għandu jiġi iddikjarat null u bla effett.

9. Aktar milli l-Perit u *s-site manager* għandhom ikunu fuq il-post meta jittieħdu deċiżjonijiet importanti, l-Perit u *s-site manager* għandhom, fi żmien tnax-il siegħa minn meta jittieħdu tali deċiżjonijiet, jissottomettu lill-*one-stop-shop* dawn l-ordnijiet bil-miktub u pjanta flimkien ma' prova li dawn l-ordnijiet bil-miktub u pjanta ġew mgħoddija lill-kuntrattur.

10. Dan l-abbozz neħħa l-obbligu tal-qtuġħ tal-kanal li r-regolamenti eżistenti jistabbilixxu li huwa neċessarju sabiex jitnaqqsu l-vibrazzjonijiet. Għalkemm wieħed jista' jaasal li jaqbel li dan il-kanal jista' jkollu konsegwenzi negattivi meta jsir bit-*trencher*, jekk dan il-kanal jitħaffer bis-sega (u mhux bit-*trencher*) hemm ċertu vantaġġi billi minbarra t-tnaqqis tal-vibrazzjonijiet, ikun jista' jiġi ikkontrollat aħjar it-tħaffir fid-distanza ordnata mill-Perit. Meta wieħed jaqta' trinka żgħira f'ħajt ukoll juża sega jew diska sabiex jimminimizza ċ-ċaqlieq fl-istess ħajt, aħseb u ara f'xogħlijiet ta' dan il-kobor. Dan il-qtuġħ bis-sega għandu jsir għal fond ta' metru w nofs mal-perimetru kollu tas-sit ħlief fejn jiġi iċċertifikat li l-magna ma tilħaqx jew fejn ikun hemm riperkussjonijiet negattivi skont ma jawtorizza d-Direttur. F'dan il-każ ma jistax isir tħaffir f'distanza tal-inqas metru u nofs mill-ħajt diviżorju ħlief b'makkinarju tal-id.

b'hekk jinbidel għal '*Regolamenti dwar is-Sigurtà f'xogħlijiet ta' twaqqiegħ, tħaffir u kostruzzjoni*'.

12. F'każ li l-ġar jinnota konsenturi li m'humiex *hairline cracks*, għandu jibgħat rapport dettaljat ta' Perit lill-Perit tal-proġett, *is-site manager* u lill-*one-stop-shop* li min-naħa tagħhom għandhom iwaqqfu x-xogħlijiet immedjatament sakemm jingħataw direzzjonijiet mod ieħor mid-Direttur. Dan għandu japplika kemm fil-faži tal-*prebuilding* u kif ukoll fil-faži tal-*building*.

13. Jekk fil-każ tal-aħħar ix-xogħlijiet jibqgħu għaddejnin xorta waħda, l-Perit, *is-site manager* u l-kuntrattur għandhom iwieġbu għal multi drastici kif ikkontemplat fil-liġi, liema multi għandhom ukoll japplikaw relattivament għal kull ġurnata sakemm ix-xogħol jieqaf definittivament. B'hekk min jieqaf mill-ewwel jeħel inqas multa daqs min jagħmel ta' rasu u jieqaf żmien wara.

14. Minħabba l-urgenza f'dawn is-sitwazzjonijiet, notifika fl-*email addresses* imniżzla fil-*commencement notices* għandha sservi bħala notifika skont il-liġi.

15. Għandhom jiġu ċċarati Proċeduri Kriminali taħt pjeni serji in sostenn għal dawn il-miżuri taħt il-principju li ħadd ma jista' jpoġġi l-ħajja ta' ħadd f'periklu ċar, partikularment il-ħajja tal-ġirien u tal-pubbliku li jkun għaddej mit-triq.

16. L-Artikolu tranżitorju 26(1) ma jistax jiġi applikat billi fid-data ta' dħul fis-seħħ ta' dawn ir-regolamenti ma jistax jiġi stabbilit b'ċertezza liema proġetti ser ikunu lesti fi żmien xahar mill-istess data. Ikun aħjar li dan l-Artikolu jinbidel sabiex jaqra li dawn ir-regolamenti ma japplikawx għal dawk il-proġetti li jinsabu fil-faži fejn is-saqaf ta' qabel tal-aħħar tlesta. F'dak il-każ jibqgħu japplikaw ir-regolamenti eżistenti.

17. Dwar it-tħaffir mibdi u li għad irid jitkompla:

- i. Kull tħaffir li fadal isir għandu jiġi registrat permezz ta' sottomissjoni ta' *prebuilding commencement notice*.

Definizzjonijiet:**a) Thaffir**

Kwalunkwe thaffir li jirrikjedi tkissir, tifrik, qtugħ, tħammil u titqib fil-materjal indipendentement jekk ikunx *loose material*, ħamrija, blat, turbazz jew materjal ieħor kif tgħallem il-ġurisprudenza (Sentenza Ċitazzjoni Numru 118/04 tas-16/05/2013).

b) Makkinarju tal-id

Jigger, jack hammer bil-kumpressur, spannar, *handheld chainsaw, chaser*, skalpell.

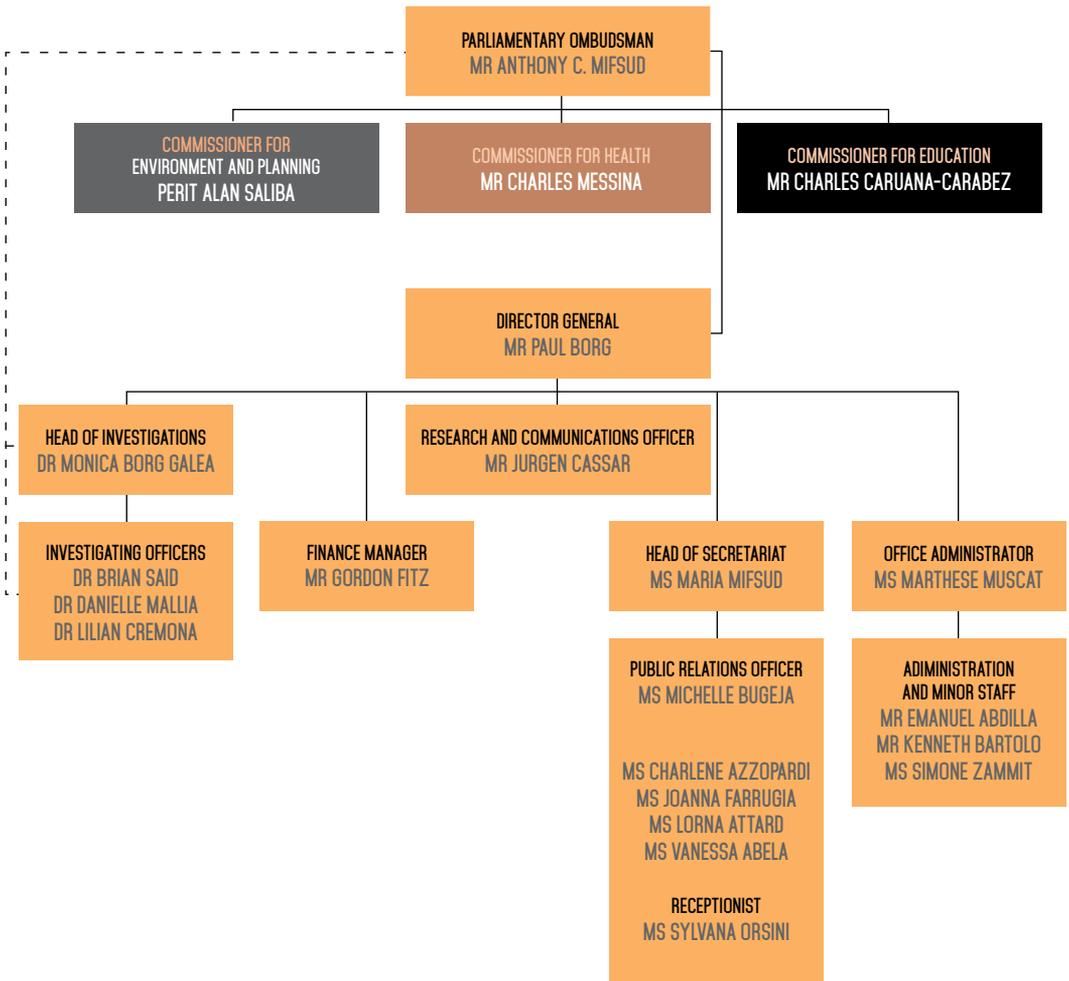
ċ) Hairline cracks

Qsim li jkun isegwi l-fili jew il-ġonot bejn l-elementi strutturali jew dawk ta' finitura u servizzi u li ma jkunx eħxen minn millimetru.

APPENDIX 3

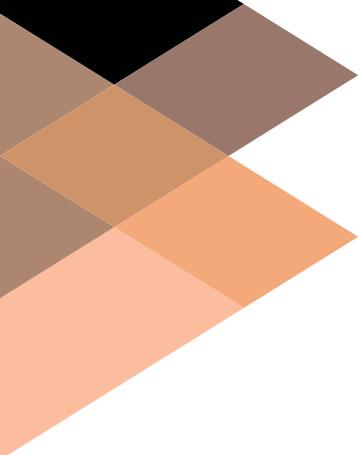
STAFF ORGANISATION CHART

AS AT 31 DEC 2019



LEGEND

- ADMINISTRATIVE RELATIONSHIP
- - - - FUNCTIONAL RELATIONSHIP



APPENDIX 4

REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2019

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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 Office of the Ombudsman is responsible for ensuring that:

- proper accounting records are kept of all transactions entered into by the Office, and of its assets and liabilities;
- 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



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Report of the Auditor General

To the Office of the Ombudsman

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Ombudsman set out on pages 5 to 16, which comprise the statement of financial position as at 31 December 2019, 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 2019, 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
May 2020

STATEMENT OF COMPREHENSIVE INCOME

		2019	2018
	Schedule	€	€
Income			
Government grant		1,300,000	1,150,000
Non-operating income (note 3)		101	116
		1,300,101	1,150,116
Expenditure			
Personal Emoluments (note 4)		(1,067,227)	(984,367)
Administrative and other expenses	1	(217,424)	(239,274)
		(1,284,651)	(1,223,641)
Surplus / (Deficit) for the year		15,450	(73,525)

STATEMENT OF FINANCIAL POSITION

		2019	2018
	Notes	€	€
ASSETS			
Non-current assets			
Property, Plant and Equipment	5	602,677	703,923
Current assets			
Receivables	6	46,787	16,592
Cash and cash equivalents	7	297,049	213,147
		343,836	229,739
Total assets		946,513	933,662
EQUITY AND LIABILITIES			
Accumulated surplus		943,350	927,900
Payables	8	3,163	5,762
Total Equity and Liabilities		946,513	933,662

The financial statements on pages 5 to 16 were approved by the Office of the Ombudsman on 3rd February 2020 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 2018	1,001,425
Statement of Comprehensive income	
Loss for the year	(73,525)
At 31 December 2018	<u>927,900</u>
Statement of Comprehensive income	
Surplus for the year	15,450
At 31 December 2019	<u>943,350</u>

STATEMENT OF CASH FLOWS

	2019	2018
Notes	€	€
Cash flows from Operating activities		
(Loss)/Surplus for the year	15,450	(73,525)
Depreciation	90,253	97,853
Disposal of tangible fixed assets	15,769	165
Non-operating income	(101)	(116)
Operating surplus before working capital changes	121,371	24,377
(Increase) in receivables	(30,195)	1,209
Increase / (Decrease) in payables	(2,599)	452
Net cash generated from operating activities	88,577	26,038
Cash flows from Investing activities		
Payments to acquire tangible fixed assets	(4,776)	(8,417)
Non-operating income	101	116
Net cash used in investing activities	(4,675)	(8,301)
Net increase in cash and cash equivalents	83,902	17,737
Cash and cash equivalents at beginning of year	213,147	195,410
Cash and cash equivalents at end of year	7 297,049	213,147

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 3rd February 2020.

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.

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

	2019	2018
	€	€
Bank interest receivable	101	88
Other		28
	101	116

4.1 Personal Emoluments

Wages and salaries	1,029,378	948,829
Social security costs	37,849	35,538
	1,067,227	984,367

4.2 Average No. of Employees

24	24
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NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

5ii. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2019	895,620	33,632	33,632	43,771	60,457	120,758	104,131	1,289,976
Additions	-	2,425	1,990	-	-	361	-	4,776
Disposals	(11,040)	(1,464)	(3,471)	-	-	-	(22,212)	(38,187)
At 31 December 2019	884,580	34,593	30,126	43,771	60,457	121,119	81,919	1,256,565
Depreciation								
At 1 January 2019	286,245	25,067	28,289	42,846	45,727	78,381	79,498	586,053
Charge for the year	58,073	4,495	2,208	343	4,910	7,798	12,426	90,253
Release on disposals	(2,944)	(1,195)	(3,471)	-	-	-	(14,808)	(22,418)
At 31 December 2018	341,374	28,367	27,026	43,189	50,637	86,179	77,116	653,888
Net book value								
At 31 December 2019	543,206	6,226	3,100	582	9,820	34,941	4,803	602,677

5I. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2018	895,243	32,426	29,452	42,607	60,457	118,445	104,131	1,282,761
Additions	377	1,404	2,400	1,164	-	3,072	-	8,417
Disposals	-	(198)	(245)	-	-	(759)	-	(1,202)
At 31 December 2018	895,243	33,632	31,607	43,771	60,457	120,758	104,131	1,289,976
Depreciation								
At 1 January 2018	227,435	20,649	26,268	42,398	37,935	71,182	63,370	489,237
Charge for the year	58,810	4,536	2,266	448	7,792	7,873	16,128	97,853
Release on disposals	-	(118)	(245)	-	-	(674)	-	(1,037)
At 31 December 2018	286,245	25,067	28,289	42,846	45,727	78,381	79,498	586,053
Net book value								
At 31 December 2018	667,808	11,777	3,318	925	14,730	42,377	24,633	703,923

6 Receivables

	2019	2018
	€	€
Stocks (stationery)	10,738	11,983
Trade receivables	1,166	281
Prepayments	34,883	4,328
	46,787	16,592

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:

	2019	2018
	€	€
Cash at bank	296,274	212,389
Cash in hand	775	759
	297,049	213,147

8 Payables

	2019	2018
	€	€
Trade payables	846	597
Accruals	2,317	5,165
	3,163	5,762

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

9 Fair values

At 31 December 2019 the fair values of assets and liabilities were not materially different from their carrying amounts.

SCHEDULE

Administrative and other expenses

	2019	2018
	€	€
Utilities	15,231	15,974
Materials and supplies	9,104	7,379
Repair and upkeep expenses	6,162	6,635
Rent	6,553	8,016
International membership	2,100	1,850
Office services	6,695	7,557
Transport costs	11,394	12,267
Traveling costs	23,671	14,796
Information Services	2,825	7,445
Outreach	1,404	2,950
Contractual Services	36,657	35,872
Professional Services	4,787	15,513
Training expenses	4,180	4,361
Hospitality	367	365
Bank charges	272	276
Depreciation	90,253	97,853
(Profit) / Loss on Disposals	(4,231)	165
	217,424	239,274

