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Raymond Scicluna
Skrivan tal-Kamra

Malta

OMBUDSMAN



PARLIAMENTARY OMBUDSMAN
FOR ADMINISTRATIVE INVESTIGATIONS

ANNUAL REPORT

2013

FOR THE PERIOD
JANUARY – DECEMBER 2013



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FOR ADMINISTRATIVE INVESTIGATIONS

MALTA

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

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OMBUDSMAN

MALTA

OMB/6/9/17

December 2014

The Honourable Dr A Farrugia
Speaker
House of Representatives
The Palace
Valletta

Mr Speaker

In terms of Section 29 of the Ombudsman Act 1995, I am hereby submitting my Annual Report concerning the performance of my Office for the period January to December 2013.

The report includes an oversight of the activities of my Office during that year, as well as relevant data regarding the conduct of the investigation of complaints. It also includes reports by the University Ombudsman, Commissioners for Health and Environment and Planning covering the same period.

Yours sincerely

J Said Pullicino
Ombudsman

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A YEAR OF CHANGE, CHALLENGES AND OPPORTUNITIES



The Parliamentary Ombudsman together with the University Ombudsman Professor Charles J. Farrugia, Commissioner for Health Charles Messina and Commissioner for Environment and Planning Perit David Pace, during a courtesy call paid on the Speaker of Parliament the Hon. Angelo Farrugia.

Introduction

2012 was a year of careful planning by the Parliamentary Ombudsman to chart the way forward to improve the services that his Offices are bound to provide to citizens to ensure a clean, transparent and accountable public administration.

2013 was a year when those plans were brought to fruition. The institutional reform of the Office, with the appointment of Commissioners for Administrative Investigations in specialised areas, was put in place with the appointment of Commissioners for Health, Education and Environment and Planning.

Major initiatives were undertaken to effect a radical administrative reform meant to improve the investigative and administrative structures of the Office. Preparatory work for the provision of more spacious and modern offices, fully equipped to the required standard to adequately house the Office of the Parliamentary Ombudsman and his Commissioners, were prepared. Works on this major structural development, that would allow space for further expansion if required, were in fact started towards the end of that year.

If 2012 could be said to be a year of planning and transition, 2013 was certainly a year of change, challenges and opportunities. It was also a year in which initiatives started during 2012 were consolidated and the full impact of these positive reforms began to be felt. While the core operational method of how the office provides its services to the public remained the same, there has been during this year a definite change in the way those services are being provided, with much needed expertise that was previously lacking, being injected in the investigation of cases.

"If 2012 could be said to be a year of planning and transition, 2013 was certainly a year of change, challenges and opportunities"

The reforms required a greater effort by the Ombudsman, Commissioners, Investigating Officers and staff to work as a team to ensure coordination between the various sections of the Office. This is required to provide an efficient, centralised and uniform service to the citizen. The administrative structures of the Office, that form the backbone of the services it provides, have been better defined and strengthened. The appointment of a Research and Communications Officer has led to major initiatives to bring to the attention of the public the services offered by the Office in the defence of their rights. That section of the Office is being instrumental in pushing forward the branding of the Office planned in previous years. It has started to convey the message how aggrieved citizens could make use of the services provided by the Ombudsman in a modern, attractive and easily accessible manner, utilising the latest IT technology. The foundations of these initiatives laid down during this year could certainly be built upon and improved through the implementation of effective outreach programmes next year.

All these major reforms, that have completely changed the way the Office operates, were taking place in a year that saw a change in Government, following general elections that returned to power a new administration that substituted another that had been in office for practically twenty five years. That event in itself inevitably required the Office to pause and take stock of a new situation that needed to be fully absorbed if citizens were to be reassured of the continued protection that the Office was bound to provide. 2013 was therefore undoubtedly a year of change. Change that inevitably brought about challenges and opportunities.



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

The change in Government

Building bridges with a new administration that was itself learning the ropes of Government, was a major task during this year. It is acknowledged that the Ombudsman institution was set up in 1995 with the unanimous consent of the political forces in the country. There was consensus that a modern, democratic State required an independent institution to audit the administrative acts of the Executive Government and to defend the citizen against acts of maladministration. The party now in Government strengthens this resolve through an electoral undertaking, that it would, during this legislature, *"take action to strengthen the Office of the Ombudsman with more resources and tools to improve the workings of this important institution".*

"Cooperation between the Office of the Ombudsman and the new Administration has to be patiently built, from day to day, based on mutual trust and understanding"

There is no reason to doubt it will not live up to that promise. Indeed the level of cooperation between the Ombudsman and the Government during its first months in Office, was satisfactory and on a par with that obtaining with the previous administration. Cooperation that has to be patiently built, from day to day, based on mutual trust and understanding.

The Ombudsman, the Commissioners and indeed all sections of the Office need to understand new policies, new styles and methods of governing, the approach that the new administration intends to adopt in its relations with the Office and its structures. Trust is built not only through personal contact but also and more importantly, through a correct knowledge of the new structures set up to administer the country. A new administration heralds a complete restructuring of Ministries, as well as public authorities and entities. These changes are inevitably accompanied by the introduction of new policies or a shift in existing ones, meant to implement the Government's electoral programme.

"The Ombudsman needs to ascertain that the new government is fully aware of the nature of his Office, of his constitutional function, his wide powers of investigation and the finality of his recommendations"

The Ombudsman and his staff need to digest and assimilate these changes. Rules and regulations meant to implement policies of the Government need to be analysed to ensure that they conform with the norms and laws that guarantee the individual's right to a good public administration. On the other hand, the Ombudsman needs to ascertain that the new government is fully aware of the nature of his Office, of his constitutional function as an auditor of the actions of the public administration, his wide powers of investigation and the finality of his recommendations. This had to be done at all levels of the administration to ensure that existing good relations would be maintained and improved.

The Ombudsman has to make sure that the new administration was fully aware of the potential of his Office to be an effective instrument to better the public administration. This is pivotal to the creation of the right synergy between the Ombudsman, Parliament, the Executive and the citizen.

It needs to be appreciated that a young, dynamic administration intent on introducing new practices and procedures to implement its electoral programme, inevitably creates a situation that presents new challenges to the Office of the Ombudsman that needs to adapt itself to a new style of Government, while ensuring that the basic rules of good governance that guarantee citizen's rights are strictly observed. Differences on how public affairs should be handled often create situations which require the Ombudsman to intervene with tact but fairness.

New policies proposed have to be assessed in the light of the approach the new administration takes when dealing with the Office. That approach would vary from one of mere tolerance of the institution as a necessary, inevitable evil, to one of appreciation and collaboration based on the realisation that the Office could be an effective instrument to improve the management of public affairs.

"Differences on how public affairs should be handled often create situations which require the Ombudsman to intervene with tact but fairness"

This was a process carried out during the latter half of the year. Progress has been made and bridges have been built. Trust and openness need to be nurtured and cultivated constantly. Work is still ongoing on these crucial values that are essential to maintain good relations with Government. Personal contact at all levels of the administration is crucial to the success of this exercise.

ESTABLISHING GOOD RELATIONS

Conscious of his constitutional role as an Officer of Parliament, tasked with the duty for mediating between the citizen and the Executive through the investigation of complaints alleging injustice and maladministration within the public administration in a wide sense, the Ombudsman understandably felt an impellent need for his Office to establish personal contact with the new administrators at all levels.

This personal contact is necessary to create the right synergy between the Ombudsman and the public administration that is conducive to a positive resolution of complaints. It lies at the core of the role of mediation that the Ombudsman needs to perform to try and resolve allegations of improper discrimination and injustice by the administration. Often these cases can be settled to the satisfaction of complainants by a simple, corrective administrative act. Sometimes it is merely a matter of informing the complainant how the issue had been correctly tackled, with the right application of existing laws and regulations, or by the proper exercise of administrative discretion. In other cases, complainants need to be reassured that they were not correct in seeking redress, because the facts complained of were wrongly perceived by them to be an act of maladministration.

In all these cases and others, establishing personal contact with the administrators, putting a face to a person charged with the duty to administer the facts that gave rise to the complaints, was essential to ensure transparency and accountability. It was also conducive to good governance, and greatly facilitates the correct and proper investigation of complaints, when this is required. It is positive to register that the new administration fully cooperated with the Ombudsman in this exercise to establish and promote good relations with his Office and this generally at all levels.

... at Ministerial level

Having allowed the new Government time to settle down and take stock of its new responsibilities, the Ombudsman and Commissioners scheduled meetings with Ministers and Parliamentary Secretaries to acquaint them with the nature of complaints they receive against departments falling under their responsibility. They provided information on the frequency of these complaints, their cause and what steps could be taken to remedy identified injustices. The exchange of this information proved to be very fruitful.

The Ombudsman and Commissioners stressed their availability to cooperate fully with the administration to identify systemic failures and recommend appropriate remedies. They stressed the important function of the Office as a catalyst for improving the public administration and that in this respect, the welcome introduction of added specialisation in the investigative process through the appointment of Commissioners was a very positive development that was bearing fruit.

"The Ombudsman and Commissioners stressed their availability to cooperate fully with the administration to identify systemic failures and recommend appropriate remedies"

Ministers and Parliamentary Secretaries were appreciative not only of the work done by this Office in the defence of the individual, but also, of its contribution towards ensuring a more transparent and accountable public administration. They extended their support and promised full collaboration with the Office in the exercise of its functions, while fully respecting its independence and autonomy as a constitutional authority. Major issues of concern and the introduction of new policies by the administration were also discussed.

Similar meetings, that went beyond mere courtesy calls, were also held with new Ministers and Parliamentary Secretaries following a Cabinet reshuffle and this in the same spirit.

... with the Principal Permanent Secretary and the Permanent Secretaries

The Ombudsman also held introductory meetings with the Principal Permanent Secretary and Permanent Secretaries of the various ministries. These meetings were extremely useful to acquaint the top officials of the civil service of the work conducted by the Office of the Ombudsman to audit the administrative acts of government. The Ombudsman found the PPS to be very positive and proactive in his approach to the Office and its functions. He was very aware of the relevance of the Ombudsman institution as an effective tool to monitor the procedures, practices and output of the departments, authorities and public bodies falling within his remit.

The PPS promised his full cooperation to the Ombudsman to whom he expressed his intention to collaborate in the efforts to secure a transparent and accountable public administration. He immediately agreed to organise a meeting with Permanent Secretaries



The Parliamentary Ombudsman presenting the Annual Report 2012 and the 32nd edition of the Case Notes to the Speaker of Parliament, Hon. Angelo Farrugia.

that was well attended, though a number of them were unavoidably absent. Some of these Permanent Secretaries are new to the job and do not have direct experience of administering a department at that level. However, they all expressed their willingness and readiness to understand fully the functions of the Parliamentary Ombudsman, his method of investigation and the import of his final opinions and recommendations.

"The Principle Permanent Secretary enjoined the Permanent Secretaries to give due weight to the Final Opinions of the Ombudsman and the Commissioners"

The PPS emphasised the need not only to show respect to the institution and the authority of the Ombudsman, but also on the need to cooperate with him in his investigations, answering promptly and objectively to his requests, and making available to him all the necessary documentation and information relevant to the investigation. The PPS enjoined the Permanent Secretaries to give due weight to the Final Opinions of the Ombudsman and the Commissioners. He directed them that as a rule, their recommendations were to be implemented, even if when necessary, the Final Opinions needed to be referred to higher authority asking for further instructions on the way forward.

The Ombudsman stressed the importance of having an effective structure of liaison officers in every department. This was essential to maintain an open channel of communication between the Ombudsman and the Permanent Secretaries. The procedures regarding the handling of complaints were also discussed.

... with liaison officers

The Ombudsman also held a meeting with the liaison officers that were either confirmed or newly appointed by the new administration. The meeting was well attended. Following a brief address by the Ombudsman stressing the importance of the role that these officers have as a pivotal link between his Office and the public administration, the liaison officers were invited to participate in a question and answer session. The level of participation was very good especially from those liaison officers operating in departments that are responsible for the provision of essential services to customers. It was clear that these liaison officers felt the responsibility of having good consumer protection mechanisms to ensure not only the provision of an efficient service but also ways and means through which consumers could address their complaints and seek redress when failures occur.

It is in these areas of public administration that the need for competent liaison officers is mostly felt. It is a fact that when a department is well served by a competent liaison officer, a good percentage of complaints received by the Ombudsman could be resolved satisfactorily through the prompt intervention of the liaison officer working in conjunction with the investigating officer assigned to deal with the case. It needs to be appreciated that at that level, the work of the Ombudsman is akin to that of a mediator between the citizen and the public administration.



The Parliamentary Ombudsman together with Dr Brian Said and PL Lucy Bonello, Senior Investigation Officers at the Office of the Ombudsman, addressing a question and answer session for the Liaison Officers who serve as a pivotal link between his Office and the public administration.



"Through the work of an efficient liaison officer, the aggrieved citizen can be well informed of the procedures that led the department to take the decision that led to the complaint"

Much of the work of the liaison officer is concerned not with the investigation of abuse and maladministration, but with the correction of administrative mistakes that are often the result of oversights or bad interpretation of rules and regulations. Through the work of an efficient liaison officer, the aggrieved citizen can be well informed of the procedures that led the department to take the decision that led to the complaint. Providing access to the correct information is often enough to satisfy the complainant that he was given a fair deal, even if his complaint was not justified.

First essential point of contact

These meetings at various levels of government were extremely useful to provide the Office with a first essential point of contact with the new administration. From the outset it has generally shown its willingness not only to facilitate the exercise of his functions, but also to appreciate the role of the Office as a mediator and an effective instrument to provide redress.

More importantly, the Ombudsman stressed the role of his Office as a tool to identify systemic failures in the administration and consequently, to suggest remedial measures that would result in an improvement in the practices and procedures of government. It is therefore imperative that such meetings should not be limited to one off courtesy visits. They should be sustained at all levels and serve as a means of exchange of ideas, and as a channel of communication that would help clear areas of misunderstandings when these arise.

It is essential that the Executive does not view the Office of the Parliamentary Ombudsman as its antagonist, acting in confrontation with it. It should consider it as an ally working with it towards the common aim of improving the public administration. While it is true that the main function of the Ombudsman is to investigate complaints and to recommend redress, once this is identified, the Ombudsman should be mindful of his other not less important function to be an instrument of change in favour of citizens.

STRENGTHENING THE INSTITUTION AND AN ISSUE OF JURISDICTION

An electoral undertaking

The Ombudsman has no doubt that this administration like the previous one, is in favour of a fully transparent and accountable provision of services to the people. It has no intention to consciously condone abuse, injustice, maladministration and abuse of power. It is convinced that it is not only in the interest of the country but also in its own interest to take remedial action whenever abuse is identified. This objective is clearly reflected in the electoral undertaking of the party now in government to strengthen the Ombudsman institution and to provide it with the services and support required for it to exercise its functions effectively.

"The Ombudsman has no doubt that this administration like the previous one, is in favour of a fully transparent and accountable provision of services to the people"

The Ombudsman too is convinced on the need to have a strong autonomous and independent institution that could provide aggrieved citizens with the means to protect their interests. An institution built on the hallmarks of honesty and integrity that the citizen can trust. The Ombudsman is convinced that the new administration will honour its undertaking. He will do his utmost to underline this promise when and if the need arises.

The Ombudsman's jurisdiction questioned

The strengthening of the institution can only be built on solid foundations if there is a correct awareness by the administration not only of the core functions of the Ombudsman to conduct a proper and effective audit of the administrative acts of the public administration, but also of the extent of the Ombudsman's jurisdiction as laid down in the Ombudsman Act. There has to be an acceptance of the principle that the service provided by the Ombudsman is primarily intended to grant aggrieved citizens the right to seek redress against perceived injustice caused by maladministration.

The investigation of complaints should therefore not only be considered as a right of individuals to expect and to exact a transparent and accountable public administration. It should also be considered to be a valid and useful tool in the hands of the public administration to assess and measure the level of correctness and propriety of the service provided by it to the public. It can be safely said that the Ombudsman performs the role of the conscience of the public administration, guiding it on the best practices to be applied when providing a service to the public, as required by the recognised principles of good administrative behaviour.

In this context, it is in the interest of the public administration to widen the limits of the Ombudsman's jurisdiction within the parameters established by the Ombudsman Act. This in the sense that, in case of doubt whether the Ombudsman has or has not the jurisdiction to investigate a complaint, both the Ombudsman and the public administration should decide in favour of an interpretation that would allow the Ombudsman to investigate the case. A

restrictive interpretation excluding the Ombudsman's jurisdiction would effectively mean depriving complainants from the right given to them by law of an added protection to seek redress for an injustice allegedly suffered.

It is pertinent to point out that the Ombudsman Act states that "*it shall be the function of the Ombudsman to investigate* ***any action*** *taken by, or on behalf of the government or other authority, body or person to whom this act applies being action taken in the exercise of their administrative functions*" (Article 13(1) of Act XXI of 1995). Parliament wished the Ombudsman to have as wide a jurisdiction as possible to investigate the administrative acts of government and entities falling under his remit. The Ombudsman Act carefully and explicitly lays down exceptions to this rule, limiting exclusions to the Ombudsman's jurisdiction to a specific list of persons and bodies to which the Act does not apply, as stated in Part A of its First Schedule, and to a number of matters not subject to investigation, as listed in the Second Schedule of the Act.

The Ombudsman and his Commissioners are Officers of Parliament accountable to it. They have been entrusted by Parliament to carry out an audit of the Executive's administrative actions providing them with powers and means to carry out their functions. It is clear that in the exercise of their functions, jurisdiction was to be the rule and lack of jurisdiction the exception. It is widely accepted today that the Office of the Ombudsman has developed into a major contributor in the net of checks and balances, devised by the Constitution to ensure a transparent and accountable public administration.

The Ombudsman institution was set up with the consent and unanimous approval of the House of Representatives. It has consistently enjoyed a high level of trust in the country and all shades of political opinion have recognised the integrity, autonomy and independence of the Holders of the Office of Ombudsman and Commissioners.

Since it was set up, there has never in fact been any issue on the interpretation of articles governing jurisdiction in the Ombudsman Act. Whenever a question arose, the decision of the Ombudsman on whether he had jurisdiction or not was always considered to be final and conclusive. It is therefore surprising that the Armed Forces of Malta and the Ministry for Home Affairs and National Security in November this year chose to put in doubt this established practice regarding the Ombudsman's right to investigate all complaints falling under his jurisdiction. The issue arose in connection with a number of complaints filed by officers in the ranks of Majors and Lieutenant Colonels, following promotion exercises carried out earlier this year. The Ministry and the AFM are contesting the right of the Ombudsman to consider complaints by officers unless they have previously followed the procedures laid down in the Armed Forces Act 1970.

The Malta Armed Forces Act 1970 in sub article 2 of Article 160, states that "*on receiving any such complaint* (from officers) *it shall be the duty of the Commander to investigate the complaint and to grant any redress which appears to him to be necessary or, if the complainant so requires the Commander shall through the Minister make his report on the complaint to the President of Malta to receive the directions from the President of Malta*".

Subsequently, the Ombudsman Act (ACT XXI OF 1995) in Part B of the First Schedule of Article 12 explicitly gives the Ombudsman jurisdiction to investigate "*The Armed Forces of Malta in respect only of appointments, promotion, pay and pension rights of* ***officers*** *and men of the Force*."

It is clear to the Ombudsman that the provision in the Ombudsman Act is subsequent to

that laid down in the Malta Armed Forces Act. It is a special law that derogates from a general law and should therefore prevail. The Armed Forces put the Ombudsman's interpretation in doubt way back in 2009. Following lengthy discussions between the Ombudsman, the Office of the President, the Office of the Prime Minister, the Commander AFM and the Attorney General it was agreed that any doubt as to the interpretation of these two laws should be cleared. The matter was resolved by the issue of a General Order dated 11 November 2011 providing that:

"1. Officers who feel aggrieved by the Commander's decision may:

a. in respect only of complaints concerning appointments, promotions, pay and pension rights refer their complaint for investigation by the ombudsman in terms of Act XXI of 1995,

or

b. in respect of any type of complaint refer their complaint directly to the President of Malta for review in terms of Act XXVII of 1970.

2. Officers who decide to refer their complaint directly to the President of Malta would be renouncing to their right to have recourse to the Ombudsman in terms of Act XXI of 1995."

This General Order that gives an adequate means of redress to officers was followed both by the previous and the present administration in the investigation of subsequent complaints filed by officers.

The Ministry and the AFM are today also questioning the validity of the General Order. The lack of agreement persists.

This incident, which could have been avoided through prior consultation once both parties agree that the right of officers to resort to the Ombudsman needs to be maintained, is regretted. It is hoped that the issue will be speedily resolved through negotiations and that the Ombudsman will be allowed to carry on with the investigation of these complaints. If there is lack of agreement the matter can only be definitively resolved through court action. A lengthy process that would ultimately prejudice complainants and that the Ombudsman wishes to avoid. An exchange of correspondence between the Ministry, the Armed Forces of Malta and the Ombudsman sheds more light on the issues involved that is being published as an Annex A in Page 74 of this document.

2013 - A YEAR OF NEW INSTITUTIONAL INITIATIVES

This was a year in which the Ombudsman was engaged in a number of new initiatives aimed at raising awareness that his Office could further develop into a valid and effective tool in the defence of the rights of the individual and in improving the public administration.

These initiatives culminated in the preparation and publication of three major reports that, in different ways, give an indication of how the Ombudsman institution could be put to further use in the interests of the community both by extending its services to cover areas that were hitherto outside its purview, as well as by providing valuable advice on how the public administration could be bettered and enhanced.

In all three documents the individual is at the centre of the Ombudsman's considerations and the emphasis remains on the need to ensure an efficient, open, transparent and accountable service.

The first document on the need to set up a National Human Rights Institution was made on the Ombudsman's own initiative. The second document that puts forward proposals on the strengthening of the Ombudsman institution was compiled following a request made to the Ombudsman by the Deputy Prime Minister and Minister for European Affairs and Implementation of the Electoral Manifesto. The third document on the Recommended Remuneration Mechanism for Holders of Political Office was drafted on the instructions of the Prime Minister by the Ombudsman in conjunction with the Auditor General and the Principal Electoral Officer.

The first Initiative

The document on the setting up of a National Human Rights' Institution was published in October 2013. It was the culmination of a seven-year campaign by this Office on the need to set up an NHRI in Malta. The proposal had a very lukewarm reception initially by the previous administration. It was only towards the end of the last legislature that the Ombudsman was given the go-ahead to formalise his proposal and to indicate to Government what type of NHRI structure he thought would be best suited to the country's needs. The intervening political crisis and general election precluded the Ombudsman from finalising his report.

On assuming Office, it was immediately apparent that the new administration intended to pursue in earnest the proposal to set up an NHRI. It embarked on a process of consultation and the document prepared by the Ombudsman can be considered to be his contribution to that process. It should also be considered as a further initiative by this Office to raise public awareness on the need to set up the necessary structures for an NHRI to further strengthen and safeguard the rights of the individual to enjoy fully the exercise of his fundamental rights.

In this document the Ombudsman reiterated his opinion that, rather than setting up a new authority that the country could ill-afford, his Office could provide the structure for the NHRI that would, under his chairmanship, act as an umbrella institution. He proposed that that institution would be an autonomous body, made up of the Ombudsman and the various commissioners and chairmen of national authorities and institutions that have a strong human rights content in their functions, together with a number of representatives from non-

governmental organisations dedicated to human rights protection. That institution would function independently and autonomously, benefitting from the authoritative experience and expertise of its members gained from their respective fields of operation.

"The Ombudsman proposed that the NHRI institution would be an autonomous body, made up of the Ombudsman and the various commissioners and chairmen of national authorities and institutions, and non-governmental organisations that have a strong human rights content in their functions"

The Government appears to be of the opinion that it would rather establish the National Human Rights' Institution through developing and widening the functions of the National Commission for the Promotion of Equality (NCPE). It is not yet clear how this is to be done and what structure is being envisaged. However, the Government has expressed its intention to publish a White Paper setting out its proposals by September next year.

In his concluding remarks of this document, the Ombudsman stated that:

"... there are various models of National Human Rights Institutions in Europe and elsewhere. It is the government's prerogative to choose the model best suited to Malta's needs. In making its choice the Government should endeavour not only to provide the individual with optimum protection for the enjoyment of his fundamental human rights, and this without unduly burdening the country with unnecessary additional expense, but also and more importantly it should ensure that the model chosen will merit and receive the maximum level of accreditation - an A status- with the ICC. As a Member of the European Union that should pride itself on the level of respect of fundamental rights and their observance, Malta deserves nothing less."

The Ombudsman will continue to follow closely developments in this area to ensure that the structure to be set up to serve as an NHRI would be completely independent from Government, would enjoy financial autonomy and fully conform to the Paris Principles.

The second Initiative

Another document, compiled this year and published in early January 2014, contains proposals on the strengthening of the Ombudsman institution. It sets out the basic essentials of the measures the Ombudsman believes could be taken for a correct evolution of the Institution in a modern democratic society. Each proposal is followed by a specific recommendation on what steps could be taken to bring the project to fruition.

The document was prepared following a request by Government in the context of a consultation exercise intended to give substance to an electoral promise in the Labour Party's Electoral Manifesto. This states that it was the intention of Government to strengthen the Office of the Ombudsman with more resources and tools to improve the working of this important institution.



Two initiatives taken by the Ombudsman during 2013 – The proposal for the setting up of a National Human Rights Institute in Malta and proposals 'On the strengthening of the Ombudsman Institution'.

In this document, the Ombudsman has addressed a wide spectrum of issues that are being debated locally and abroad, on how to render the Ombudsman institution a better and more effective instrument to audit the acts of the public administration, in the exercise of its functions as a defender of citizen's rights. It looks beyond the 2010 amendments that successfully introduced the setting up of Commissioners for Administrative Investigation in specialised areas and designate them as Officers of Parliament. A notable and successful development that radically changed and upgraded the way the Office of the Ombudsman functioned. This as a direct result of the injection of expertise that the Commissioners could draw on in the investigation of complaints in the areas falling under their specialisation.

This document builds on this improved institutional framework. It not only stresses the need for further specialisation if and when required, but also recommends that the Government should carry out a study to establish whether authorities and institutions set up by law that have functions akin to those of the Parliamentary Ombudsman could usefully be converged with his Office.

"The Government should carry out a study to establish whether authorities and institutions set up by law that have functions akin to those of the Parliamentary Ombudsman could usefully be converged with his Office"

The Ombudsman opined that most of these authorities and institutions regulated by their own founding laws tailored to their needs, do not completely conform to the Paris Principles. They cannot therefore be said to afford the citizen with the same level of protection that he enjoys when having recourse to the Parliamentary Ombudsman. Converging these institutions with the Office of the Parliamentary Ombudsman, while retaining their autonomy and independence, would obviate for this major defect in their structural set up. Convergence does not mean fusion.

The Ombudsman proposes that the converged authority, while being bound to conduct its investigations like other commissioners according to the provisions of the Ombudsman Act, would retain its identity and autonomy in the exercise of its functions as set out in its founding legislation that shall, for all other intents and purposes, remain operative.

This document also makes recommendations on how Parliament and the Executive could make fuller use of the services of the Parliamentary Ombudsman, within the existing functions set out in the Ombudsman Act. Powers given to the Prime Minister and to any Committee of the House of Representatives, to make use of the services of the Ombudsman to carry out specific investigations have rarely, if ever, been utilised.

The Ombudsman recommends that these powers, within the terms of Article 13 of the Act, should, where appropriate, be exercised. Any investigation carried out by the Ombudsman, now a constitutional authority, would have the obvious advantage of the hallmark of autonomy and independence, detaching it completely from partisan or political influence. Such referrals by the Prime Minister and the Committees of the House, would also fit in with the proposed institutional upgrade of the Office of the Ombudsman as an authority at the service of an autonomous Parliament, and accountable to it.

The document addresses the issue whether the Ombudsman's jurisdiction should be extended to cover the investigation of complaints regarding the provision of essential services previously provided by the Government or one of its agencies and now being given by the private sector in a free, liberalised, market economy. This is an issue that is being widely debated in international ombudsmen fora. It is being felt that with the Government assuming the role of regulator, the citizen is fast losing the protection that the Ombudsman institution afforded him, since his jurisdiction, as a rule, does not extend to the private sector. As a result, it is being felt that clients could not be guaranteed an open, transparent and accountable essential service, free of abuse and improper discrimination. They are being deprived of an adequate means of redress they previously had against the service provider.

"The Ombudsman made recommendations on how Parliament and the Executive could make fuller use of the services of the Parliamentary Ombudsman, within the existing functions set out in the Ombudsman Act"

The question the Ombudsman addressed in this document, is whether the law should provide that he should retain an oversight for the provision of a service that is of strong public interest, if the legislator considers that the service given to the consumer through the private service provider is essential in character.

Finally, the document deals with a proposal to extend the functions of the Ombudsman to other areas identified in the Government's Electoral Manifesto not hitherto subject to his jurisdiction. It also deals with ways and means of empowering the recommendations made by the Ombudsman when these are not accepted by the Executive. In this respect, the Ombudsman makes a number of proposals including the referral of those recommendations that so merit to Parliament and to its appropriate Committees that would be committed to consider them and take a political decision on them.

Such a procedure will ensure, that it would be the House of Representatives that would be the final arbiter on these reports filed by the Ombudsman and on whether his recommendations should be accepted. Its decision would be subject to the scrutiny of public opinion as this is politically, the ultimate forum in which the conduct of the public administration is judged.

In this publication the Ombudsman makes a number of other proposals and recommendations. It is a document meant for public consultation at the time when the Government decides to implement its electoral promise, to take steps to improve and strengthen the Ombudsman institution. In this document the Ombudsman expresses his opinion that the fact that the Government has deemed it fit to ask him for his views on how his Office should be strengthened, is in itself a positive indication that the administration is aware of the aspirations of citizens and that every effort would be made to realise them.

The Ombudsman will of course follow closely any developments in this field and is prepared to give his contribution towards any initiatives intended to provide the country with a stronger and more effective Ombudsman service so long as they retain the essential characteristics of independence and autonomy inbuilt in the Ombudsman Act. An Act which has been judged to be one of the most progressive and forward looking in Europe and elsewhere.

The third Initiative

The third major initiative of the Ombudsman during 2013 involved him in a Committee appointed by the Prime Minister in April to independently recommend a remuneration mechanism and levels of remuneration of Holders of Political Office. These include the President, Prime Minister, Ministers, Parliamentary Secretaries, Leader of the Opposition, Members of Parliament and other related Holders of Political Office, as defined in Annex 1 of Cabinet Memo 14 of 2008.

That Committee was set up in execution of a specific declaration to this effect in the Labour Party's Electoral Manifesto. As agreed with the Prime Minister, this Committee endeavoured to provide a basis for judgement in setting up a remuneration mechanism that would: a) ensure a consistent approach to remuneration across all Holders of Political Office, thereby increasing public confidence and ensuring transparency; b) contain expenditure of public funds within reasonable limits; and c) provide flexibility within clear criteria that regulate the proposed mechanism.

"It was the first time that the Parliamentary Ombudsman was given a direct mandate by the Prime Minister and moreover that, that mandate had to be executed together with two other holders of autonomous, constitutional authorities"



The Parliamentary Ombudsman Chief Justice Joseph Said Pullicino together with Auditor General Anthony C. Mifsud and the then Chief Electoral Commissioner Saviour Gauci signing the report commissioned by the Hon. Prime Minister on the remuneration mechanism and levels of remuneration of Holders of Political Office. Ms Vanessa A Tonna, who acted as secretary and research officer of the committee.

The Committee was made up of the Parliamentary Ombudsman, the Auditor General and the Chief Electoral Commissioner. It was the first time that the Parliamentary Ombudsman was given a direct mandate by the Prime Minister and moreover that, that mandate had to be executed together with two other holders of autonomous, constitutional authorities. This was a welcome novelty and a very successful experiment. In fact, it can be said that the exercise was an experiment in cooperation that benefitted all committee members, who contributed with their great experience in their respective fields towards the production of a comprehensive report that could form the basis for useful debate both in Parliament and among civil society.

The Committee was very ably supported by Ms Vanessa A Tonna from the Auditor General's Office, who acted as its secretary and research officer. She was mainly responsible for the compilation of data on which the report is based under the guidance of the Committee. The Committee met a total of thirty-one (31) times over nine months and was prepared to meet any stakeholders who were interested to make submissions to it. The report was finalised and presented to the Prime Minister on 31 December 2013.

"The three core, public values of transparency, accountability and professionalism must be strictly observed when establishing procedures to bring the proposed mechanism into effect"

While presenting this document the Committee made it clear to the Prime Minister that, once it had received the mandate from him, it was up to him as to whether and when, its

findings should be made public. The Committee submitted that the task entrusted to it should be seen as a further measure to secure the empowerment of citizens to exercise their fundamental right to good administration. Undoubtedly, the three core public values of transparency, accountability and professionalism must be strictly observed when establishing procedures to bring the proposed mechanism into effect and this irrespective of the model eventually chosen. These basic values led the Committee to the following conclusions:

a) that the determination of remuneration due to Holders of Political Office should not remain the exclusive prerogative of the Executive; and
b) both the mechanism to determine such remuneration and its subsequent workings should be subject to the scrutiny of Parliament and the ultimate decision should rest with the House of Representatives.

It was on these conclusions that the Committee structured its report and made its recommendations.

A further initiative - a look to the future

This year the Parliamentary Ombudsman floated a proposal on the setting up in Malta of an International Ombudsman Law Institute. He believes that there is scope for the setting up of such an institute to provide post graduate courses in Ombudsman Law in the wider context of the fundamental right of the individual to a good public administration.

The Institute would be an autonomous and independent seat of advanced learning in legal and public administration studies, promoting the role of the Ombudsman as a defender of citizens' right and a catalyst to improve the public administration.

"The scope for the setting up of such an institute to provide post graduate courses in Ombudsman Law in the wider context of the fundamental right of the individual to a good public administration"

The aim is to create a strong nucleus of graduates hailing mainly from countries from Southern Europe and North Africa abutting on the Mediterranean littoral that would, along the years, be of great benefit especially to those developing countries where democracy still requires support and encouragement.

The objective would be to contribute toward the development of a public service culture characterised by fairness, dedication, commitment, openness, transparency and accountability. With administrative transparency, accountability, zero tolerance for corruption and respect for human rights featuring high on the national agenda of several countries as a pre-requisite for economic development and growth, the role of the Ombudsman institution in the promotion of good administrative practice has gained a deeper focus.

The Ombudsman will be proposing that the project would be seeking the patronage among others, of the Government of Malta, the University of Malta and the Association of Mediterranean Ombudsmen. This is a major project that requires long term planning not

only to provide the material structures and infrastructure to house the Institute, but also, to lay the academic and financial foundations on which it could be built to ensure its viability and sustainability. Crucial to the success of the project is the setting up of scholarship schemes intended to facilitate the enrolment of suitably qualified candidates as students in the course.

The Ombudsman understands that funding is the major hurdle for the realisation of such a project, and that such a project can only be fruitfully realised through cooperation and collaboration among a number of key players having a mission in this field. The Ombudsman intends to finalise a document setting out this proposal that will be presented during the Annual Conference of the Association of Mediterranean Ombudsman (AOM) to be held in Tirana, Albania in June 2014.

The Ombudsman believes that the AOM has a vital role to play in bringing such a project to fruition. He intends to do his utmost to gauge whether such a proposal would obtain the required support and participation to encourage the promoters to take further steps to realise the project. This will be one of the major initiatives that the Ombudsman intends to pursue next year.

PARTICIPATING IN INTERNATIONAL FORA

During this year the Parliamentary Ombudsman did his utmost to ensure that Malta was adequately represented in meetings and conferences organised for Ombudsmen institutions in Europe and the Mediterranean.

Financial constraints necessarily limited participation and the Ombudsman had to be selective when determining which meetings to attend. A decision which was often conditioned by the theme of the meeting and its relevance in Malta's context. Priority was given to topics relating to fundamental human rights, immigration and the way the Office of the Ombudsman could be strengthened and made more relevant as an effective instrument to protect the citizen.

The Ombudsman and senior staff attending these conferences participated actively in the proceedings and their contribution, that often highlighted Malta's remarkable institutional development in recent years, aroused considerable interest and was greatly appreciated.

"Malta is making its mark as a country that has solid, democratic credentials and an Ombudsman institution that is recognised to be an essential tool to ensure a correct, transparent and accountable public administration"

On the other hand, Malta stood to gain a lot from the experiences of other countries. Personal contact with ombudsmen and mediators of much larger institutions focused on the exchange of views on how to tackle and resolve organisational problems and difficulties that arise when dealing with the public administration.

Inevitably, the core, identified issues are common to all countries. Surprisingly, these meetings show that the solutions proposed and sought are often also very similar. Participating in these meetings, not only by contributing papers as rapporteurs but also in the all-important informal contacts, has therefore proved to be very fruitful and rewarding. In its small way considering its limitations in human and financial resources, Malta is making its mark as a country that has solid, democratic credentials and an Ombudsman institution that is recognised to be an essential tool to ensure a correct, transparent and accountable public administration.

Participating in EU initiatives

Undoubtedly, Malta's membership in the European Union in 2004 has provided the Office of the Ombudsman with the opportunity to participate and contribute in activities organised both by EU institutions as well as by regional bodies set up to promote Ombudsmanship in Europe. Malta has for years been a full member of the European Network of Ombudsmen, as well as of the European Ombudsman Institute.

This year the Ombudsman attended the 9th National Seminar of the European Network of Ombudsmen held in Dublin between 15 and 17 September. The theme of the conference was *"Good administration and the rights of citizens in a time of austerity"*. A topic of great interest to all Member States that is in some countries of great relevance to the very existence of

Ombudsmen institutions, whose survival could be threatened in times of great austerity. The topics debated ranged from the need to restructure Ombudsman's offices to make them more efficient and customer friendly, to the need to reform the institutions to adapt themselves to times of austerity.

Topics that were of great interest to Malta that, at that time, was itself passing through a major restructuring exercise of the Ombudsman service, aimed to make the institution more customer friendly, more accessible through the appointment of specialised commissioners and more cost effective through a reorganisation of the investigative and administrative services provided by the Office.

The Office was also represented by its Head of Investigations, Dr Monica Borg Galea, at the ordinary General Assembly of the European Ombudsman Institute held in September of this year. That meeting marked the twenty fifth anniversary of the EOI. The subject specialisation, with a subsequent discussion plenary, dealt with *"The independence of the Ombudsman in Europe"*.

In many European countries that independence is put in doubt or is even under threat. In Malta we have the good fortune that its independence is today guaranteed not only by ordinary legislation but also by the fact that the Ombudsman institution has been recognised and entrenched as a constitutional authority, accountable to Parliament.

During the year this Office also participated in a number of initiatives by European institutions aimed at promoting awareness on the need of further protection of fundamental human rights.

The Head of Investigations attended a seminar organised by the European Agency for Fundamental Rights (FRA) of the Council of Europe held in October this year. The subject was *"The strengthening of fundamental rights protection together, in a changing human right's' landscape"*. One of the working groups that dealt with how one could enhance and develop strategic cooperation among national institutions and between national and European institutions, was of particular relevance to Malta. It came at a time when this Office was peaking its campaign for the setting up in Malta of a National Human Rights Institution.

Malta's representative took this opportunity to update Senior FRA Officials attending the conference of developments in Malta and discussed possible developments in this highly sensitive area. There was agreement that, whatever model is ultimately chosen for the setting up of an NHRI, it was imperative that it should have all the requisites necessary to attain the highest accreditation with the ICC.

A Senior Investigating Officer, Dr Brian Said was delegated to represent the Office at another conference organised by Fundamental Rights Agency (FRA) on *"Combatting hate crime in the EU"*. This conference was held in Vilnius, Latvia in November 2013. It touched on another topic that is becoming of great relevance in Malta as a result of the great increase in irregular immigration and its impact in Maltese society. Delegates were updated on an opinion of a European Agency for fundamental rights on the Framework Decision on Racism and Xenophobia, with special attention to the rights of victims of crime. An opinion that raised the awareness of this Office to the consequences of hate crime, the need to conduct proper and effective investigations and the urgency to afford appropriate redress and protection to victims.

The Mediterranean dimension

This year the Ombudsman was particularly active within the Association of Mediterranean Ombudsmen (AOM) of which Malta is a founder member. It has since its setting up acted as its Treasurer. As in previous years the finances of the Association were managed from Malta in close collaboration with the Secretariat at the Office of the French Mediateur and other committee members. Notwithstanding its financial limitations, Malta set an example to other association members by making small but significant contributions both financially and by making available its human resources.

The Parliamentary Ombudsman was requested by his Jordanian counterpart to help him in the organisation of the Annual Conference of the Association that was due to be held in Oman between 10th and 11th June 2013. Strengthened by the valuable experience that the Malta Office had gained when organising the highly successful meeting held in 2011, the Ombudsman could provide useful suggestions on the logistics of organising the conference as well as its organisation and financial sustainability.

The 7th Annual Meeting was in fact a very successful one. The subjects chosen for discussion were of great interest to all delegates and the Malta Ombudsman was invited to speak as a rapporteur on the effects of the current social economic situation in the Mediterranean on ombudsman institutions. A topic that attracted considerable interest, as could be seen by the very active debate that followed. Malta made a small financial contribution towards the organisation of the conference, when it became evident that the Office of the Ombudsman of Jordan could not meet the considerable expense involved on its own.

This Office also participated fully in the 4th Training Session for Mediators at the Training and Mediation Exchange Centre organised by the Ombudsman of the Kingdom of Morocco, in Rabat. The theme of the session was *'The Role of the Ombudsmen Institutions in simplifying administrative procedures and access public service'*. One of its Senior Investigation Officers, PL Lucy Bonello conducted a Module on the simplifying of administrative procedures which was well received by participants.

Malta had for a number of years been a regular contributor in organising these training sessions held in Morocco and its participation is greatly appreciated. This is a major initiative of the AOM. It considers education in the principles of good governance and ombudsmanship to be one of its principal objectives.

Public Sector Ombudsmen Group Meetings

For several years Malta has been an active member of the PSO which includes public services Ombudsmen from the United Kingdom and the Republic of Ireland as well as the Gibraltar Public Services Ombudsman, the Bermuda Ombudsman and the Cayman Islands Commissioner together with the Local Government Ombudsmen and the Housing Ombudsman for England.

Meetings of the PSO Group provide a valuable and interesting insight into the work and experiences of Ombudsmen in other overseas jurisdiction.

Unfortunately, financial constraints and the uncertain political situation obtaining in Malta made it impossible for the Ombudsman to participate in any of the 2013 PSO meetings. He did however have the opportunity to meet most PSO members during the EOI meeting. His Office is being regularly updated with PSO activities. He is hopeful to be able to resume attending PSO meetings next year.



PERFORMANCE REVIEW 2013

PERFORMANCE REVIEW 2013

CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

Table 1.1 – Cases handled by the Office of the Ombudsman (2013)

Sector	No of cases
Parliamentary Ombudsman	329
University Ombudsman* **Cases received till 1 October 2013 since on 1 November 2013 the term of Office of the University Ombudsman was abolished*	38
Commissioner for Environment and Planning	61
Commissioner for Health	65
Total	**493**

Diagram 1.2 – Cases handled by the Office of the Ombudsman (2013)

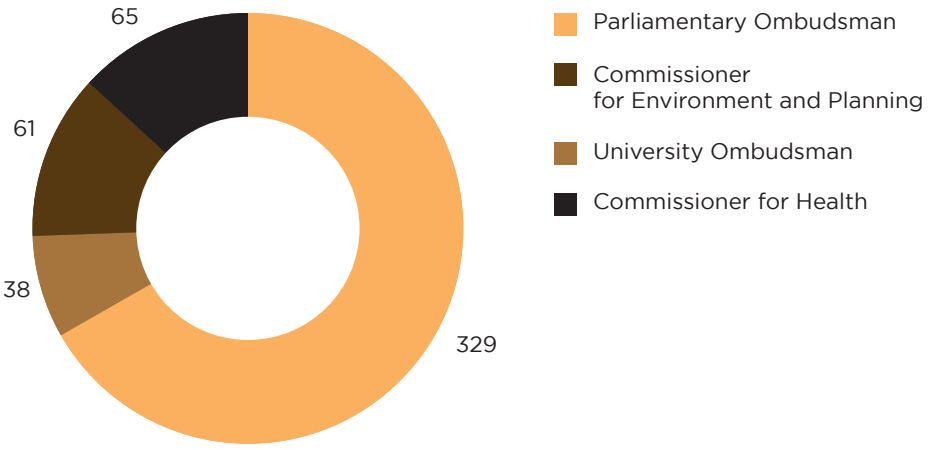


Table 1.1 and Diagram 1.2 show that during 2013, the Office of the Ombudsman handled 493 cases, of which 329 were investigated by the Parliamentary Ombudsman; 65 by the Commissioner for Health, 61 by the Commissioner for Environment and Planning and 38 by the University Ombudsman.

Incoming Complaints

Total Case Load

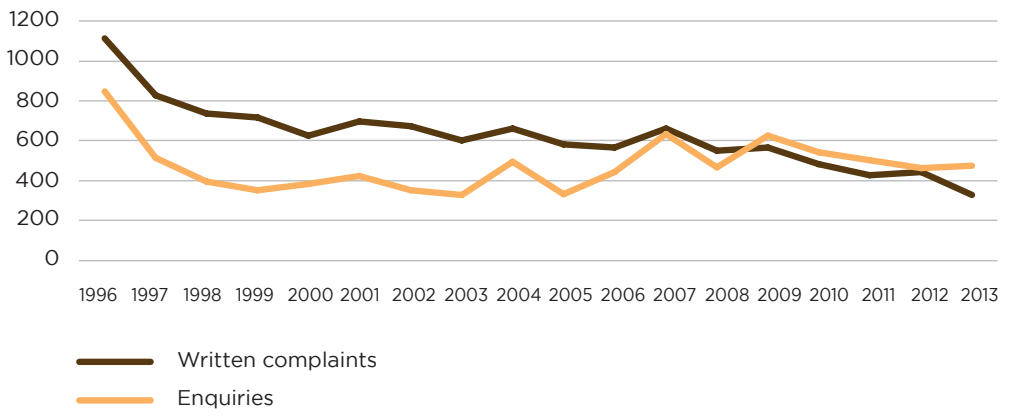
The total enquiries received in 2013 (475) increased marginally when compared to 2012 (462) whereas the number of written complaints during 2013 (329) decreased by 114 from 443 in 2012

to 329 in 2013. Table 1.3 and Diagram 1.4 show the number of enquiries and written complaints received by the Office since its establishment in 1995.

Table 1.3 – Complaints and enquires received (1996 – 2013)

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

Diagram 1.4 – Office of the Ombudsman – workload (1996 - 2013)



The decline in written complaints lodged with this Office is not a new phenomenon but it is mainly caused by the General Election held in March 2013. The decline in complaints is attributed to the post-election euphoria, which has seen many citizens seeking direct access to the Government to seek redress. Table 1.5 shows that the same trend was experienced during the past years whenever a General Election was held.

Table 1.5 – General Elections Trend

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







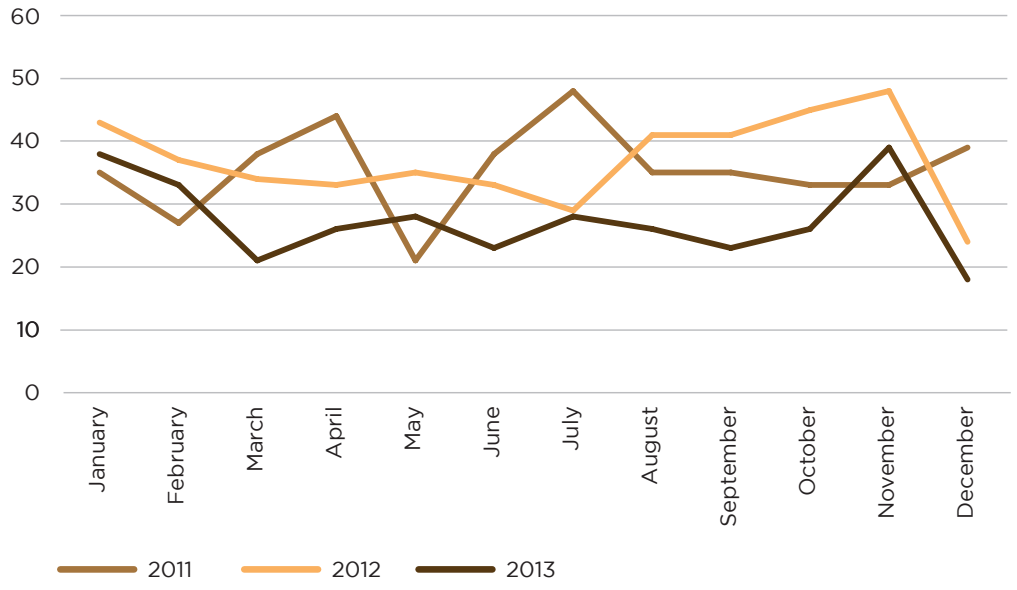
Monthly Complaints intakes and closures

Table 1.6 – Complaints Statistics by month (2011 – 2013)

Brought forward from previous year	2011			2012			2013		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
			249			238			263
January	35	30	254	43	41	240	38	42	259
February	27	37	244	37	33	244	33	33	259
March	38	29	253	34	37	241	21	50	230
April	44	33	264	33	29	245	26	42	214
May	21	29	256	35	44	236	28	42	200
June	38	23	271	33	27	242	22	27	195
July	48	30	289	29	31	240	29	23	201
August	35	24	300	41	32	249	28	28	201
September	35	33	302	41	25	265	21	56	166
October	33	83	252	45	50	260	26	18	174
November	33	57	228	48	35	273	39	28	185
December	39	29	238	24	34	263	18	19	184
Total	**426**	**437**		**443**	**418**		**329**	**408**	
Enquiries	**504**			**462**			**475**		

The total number of completed cases between January and December 2013 dropped to 408 from 418 the previous year (down by 10 or 2.5%), pending cases at the end of the year under review stood at 184, a decrease of 79 or 30%, pending cases from the previous year.

Diagram 1.7 - Complaints Statistics by month (2011 – 2013)



Distribution of public service sectors and authorities subject to investigation in 2013

Table 1.8 - Complaint numbers by type of public service sector (2011-2013)

Sector	2011	2012	2013
Armed Forces of Malta	6	15	36
Agriculture	1	2	-
Air Malta	1	16	7
Corradino Correctional Facility	3	-	1
Courts	4	4	6
Customs	-	-	2
Education	25	31	19
Elderly	-	6	2
Enemalta Corporation	-	14	3
Health	32	21	8
Housing Authority	12	14	8
Inland Revenue	28	14	11
Joint Office	2	4	5
Land	11	17	10
Local Councils	18	28	20

Sector	2011	2012	2013
Malta Enterprise	-	-	4
Public Administration HR Office	9	15	8
Malta Environment & Planning Authority	19	7	3
Police Force	18	15	11
Public Service Commission	5	7	12
Social Security	20	33	14
Tourism	2	2	2
Transport Malta	38	29	15
Treasury	2	-	6
University of Malta	2	6	4
VAT	3	5	4
Water Services Corporation	37	44	7
Employment and Training Corporation	8	7	6
Lotteries and Gaming Authority	1	2	5
Citizenship and Expatriate Affairs	1	1	6
Others	118	84	84
Total	**426**	**443**	**329**

Table 1.8 provides a breakdown of incoming complaints by areas of government and policy initiative.

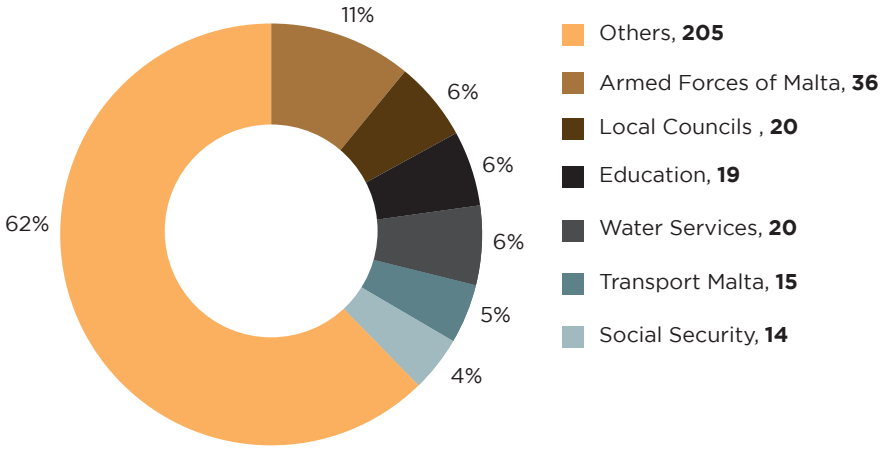
This table shows that there was a substantial increase of complaints lodged against the Armed Forces of Malta from 15 in 2012 to 36 in 2013, an increase of 140%. The Armed Forces of Malta topped the list of the top five public authorities by number of complaints received. Although the Local Councils from the fifth position in 2012, featured in the second position in 2013, it is pertinent to note that there was a decrease of 28% in the number of complaints against Local Councils, from 28 in 2012 to 20 in 2013. The same number of complaints were lodged against Water Services Corporation, which topped the list in 2012. In 2013, complaints concerning WSC went down to 20, a decrease of 55%, these also included complaints lodged against ARMS Ltd.

Education related complaints, kept the third place as in the previous year with 19 complaints compared to the 31 complaints in 2012, a noticeable decrease of 63%.

Fourth on the list are grievances caused by the Transport Malta which although still features in the top five list, cases lodged against this authority continue to decrease, from 29 in 2012, to 15 in 2013, a decrease of 48%. Transport Malta has topped the list in 2010 and 2011.

The Social Security Department placed fifth from second in 2012, with 14 cases a considerable decrease of 57% from 2012 (33 cases).

Diagram 1.9 – Shares of complaints received (2013)



In all, the top five entities attracted 124 complaints or 38% of the total amount of written complaints.

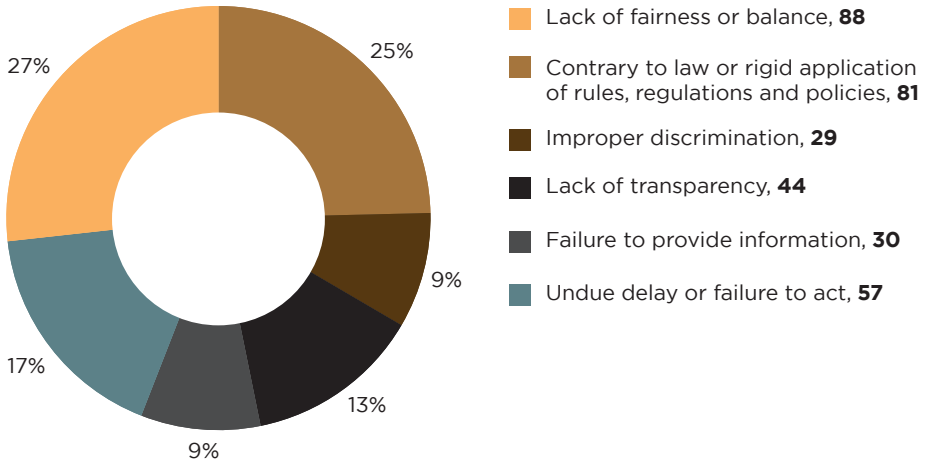
Complaint Grounds

Table 1.10 – Complaint Grounds 2011 – 2013

Grounds of Complaints	2011		2012		2013	
Contrary to law or rigid application of rules, regulations and policies	100	23%	104	24%	81	25%
Improper discrimination	50	12%	41	9%	29	9%
Lack of transparency	30	7%	51	11%	44	13%
Failure to provide information	32	8%	34	8%	30	9%
Undue delay or failure to act	89	21%	85	19%	57	17%
Lack of fairness or balance	125	29%	128	29%	88	27%
Total	**426**	**100%**	**443**	**100%**	**329**	**100%**

Table 1.10 shows a detailed breakdown of complaints that were dealt with during 2013 by the Office of the Ombudsman according to the type of maladministration that was alleged by complainants. This shows that as the previous year, the most common complaint is about lack of fairness or balance which amounts to 27% (88) of the total incoming caseload in 2013.

Diagram 1.11 – Categories of complaints received (by type of alleged failure) (2013)



In the period under review, for the second consecutive year there was a percentage increase in the number of complaints attributed to lack of transparency from 11% in 2012 to 13% in 2013. At the same time there was a reduction in the number of complaints attributed to undue delay of failure to act from 19% in 2012 to 17% in 2013; and in the number of complaints attributed to lack of fairness or balance from 29% in 2012 to 27% in 2013.

Complaints received classified by Ministry

Table 1.12 - Complaints received (classified by ministry) (2013)

	2013
Office of the Prime Minister*	60
Ministry for Energy and the Conservation of Water***	19
Ministry for European Affairs and Implementation of the Electoral Manifesto***	1
Ministry for Fair Competition, Small Business and Consumers**	7
Ministry for Finance***	21
Ministry for Gozo***	1
Ministry for Health***	8
Ministry for Health, the Elderly and Community Care**	3
Ministry for Home Affairs and National Security***	48
Ministry for Infrastructure, Transport and Communications**	7
Ministry for Justice, Dialogue and the Family**	7
Ministry for Resources and Rural Affairs**	2
Ministry for Social Dialogue, Consumer Affairs and Civil Liberties***	4

Ministry for Sustainable Development, the Environment and Climate Change***	3
Ministry for the Economy, Investment and Small Business***	8
Ministry for the Family and Social Solidarity***	21
Ministry for Tourism***	23
Ministry for Tourism, Culture and the Environment**	2
Ministry for Transport and Infrastracture***	9
Ministry of Education and Employment*	30
Ministry of Finance, the Economy and Investment**	19
Ministry of Foreign Affairs*	9
Outside jurisdiction*	17
Total	**329**

**January till December 2013*
***January till 9 March 2013*
****10 March till 31 December 2013*

Table 1.12 shows the complaints received classified by the Ministries responsible for the department or entity on which the public complained. Following the March 2013 General Election and subsequently the change in the administration, there was a change in the Ministries' composition. The table above lists the Ministries pre-general election and the new portfolios created by the new administration. The Office of the Prime Minister tops the list with the highest number of complaints - 60 complaints or 18% of the total case load. Followed by the Ministry for Home Affairs and National Security, which was one of the new ministries of the new administration (10 March – 31 December 2013) having 48 cases or 15% of the total case load.

Complaints received classified by Locality

Table 1.13 - Complaints by locality

Locality	2011	2012	2013
Attard	34	40	17
Balzan	4	8	2
Birgu	3	3	0
Birkirkara	29	31	29
Birżebbuġa	8	5	2
Bormla	4	5	1
Dingli	2	7	2
Fgura	9	6	7
Floriana	4	3	1

Locality	2011	2012	2013
Għargħur	-	1	2
Għaxaq	8	2	3
Gudja	4	3	5
Gżira	7	4	4
Ħamrun	5	10	5
Iklin	2	1	3
Isla	3	-	3
Kalkara	1	3	1
Kirkop	1	3	1
Lija	4	8	6
Luqa	6	7	7
Marsa	4	-	2
Marsaskala	8	8	5
Marsaxlokk	2	4	2
Mellieħa	4	4	10
Mġarr	2	4	2
Mosta	14	13	12
Mqabba	4	3	3
Msida	10	4	10
Mtarfa	1	1	1
Naxxar	15	11	12
Paola	8	5	4
Pembroke	3	5	4
Pieta'	3	6	7
Qormi	8	5	9
Qrendi	2	2	0
Rabat	9	7	7
Safi	3	2	1
San Ġiljan	5	7	6
San Ġwann	14	11	11
San Pawl il-Baħar	23	21	12
Santa Luċija	2	4	2
Santa Venera	8	5	7
Siġġiewi	5	3	5
Sliema	19	13	6
Swieqi	9	9	7

Locality	2011	2012	2013
Ta' Xbiex	3	2	0
Tarxien	7	10	5
Valletta	9	15	7
Xemxija	1	1	0
Xgħajra	2	-	0
Żabbar	15	11	12
Żebbuġ	10	8	4
Żejtun	9	15	5
Żurrieq	10	12	5
Gozo	19	26	15
Other	9	31	12
Overseas	9	5	16
Total	426	443	329

Age profile of open caseload in hand at end 2013

Table 1.14 – Age profile of open caseload at end 2013

Age	Case in hand
Less than 2 months	45
Between 2 to 3 months	32
Between 4 to 5 months	16
Between 6 to 7 months	12
Between 8 to 9 months	18
Over 9 months	61
Total Open files	**184**

Diagram 1.15 - Percentage shares of open complaints by age (at end 2013)

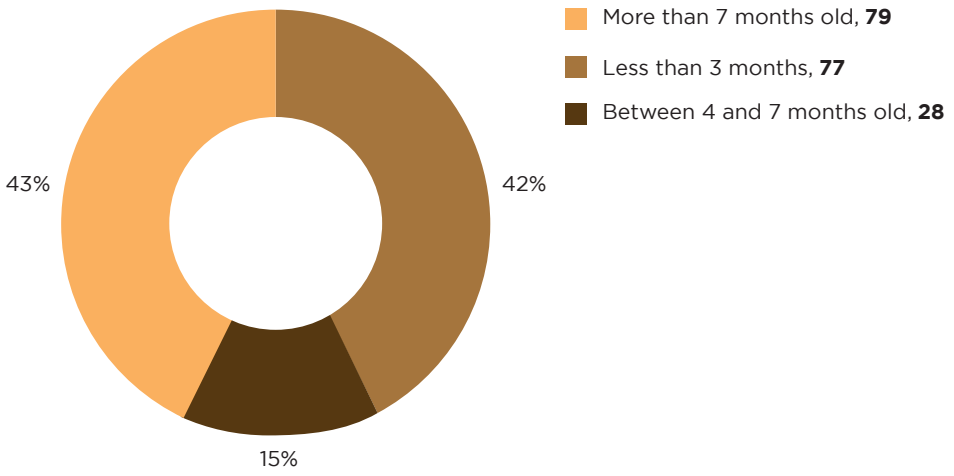


Table 1.14 and Diagram 1.15 show the number of cases still under investigation that stood at 184 at the end of 2013, a decrease of 79 cases or 30% less than the previous year.

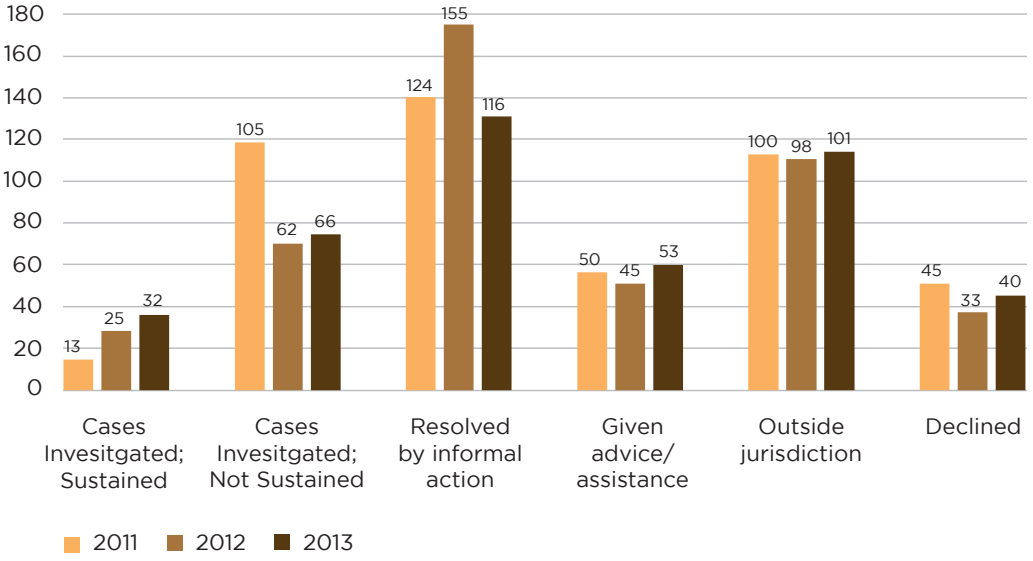
Outcome of finalised complaints

Table 1.16 – Outcomes of finalised complaints (2011 - 2013)

Outcomes	2011	2012	2013
Sustained cases	13	25	32
Cases not sustained	105	62	66
Resolved by informal action	124	155	116
Given advice/assistance	50	45	53
Outside Jurisdiction	100	98	101
Declined (time-barred, trivial, etc.)	45	33	40
Total	**437**	**418**	**408**

Table 1.16 shows the outcome of the finalised complaints of which 32 cases were found justified by the Ombudsman with a satisfactory outcome for the complainant. Of the 408 cases finalised during 2013, 53 cases were finalised by giving advice or assistance and without the need to conduct a formal investigation. There were 116 cases which were also solved by informal action. Cases that there were outside the Ombudsman's jurisdiction stood at 101 cases in 2013.

Chart 1.17 – Outcomes of finalised complaints (2011 - 2013)



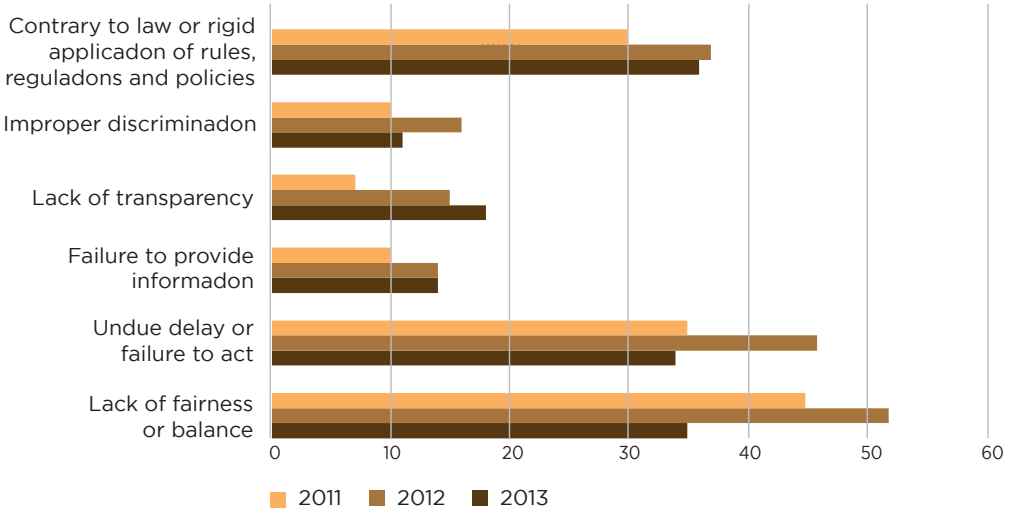
Type of maladministration in justified complaints

Table 1.18 – Type of maladministration in justified complaints (2011 - 2013)

Closing Status	2011		2012		2013	
Contrary to law or rigid application of rules, regulations and policies	30	22%	37	21%	36	24%
Improper discrimination	10	7%	16	9%	11	7%
Lack of transparency	7	5%	15	8%	18	12%
Failure to provide information	10	7%	14	8%	14	10%
Undue delay or failure to act	35	26%	46	25%	34	23%
Lack of fairness or balance	45	33%	52	29%	35	24%
Total	**137**	**100%**	**180**	**100%**	**148**	**100%**

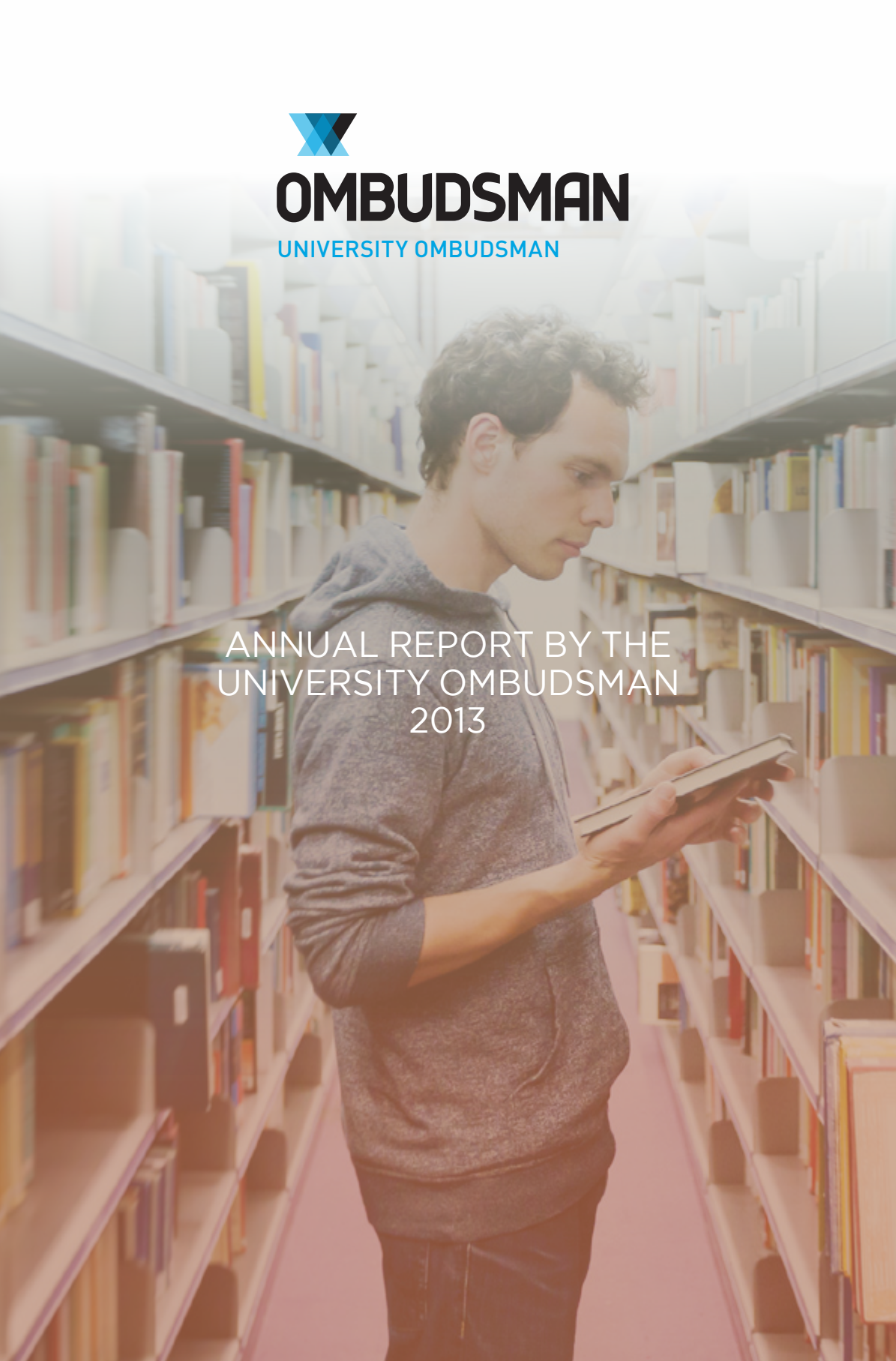
Amongst the main reasons for acceptance by the Ombudsman, Table 1.18 shows that complaints were about proven actions and decisions by public officials that were contrary to law or that were based on an inflexible interpretation and application of rules, regulations and procedures in 36 cases (24%); lack of fairness or balance in 35 complaints (24%); undue delay of failure to act by the state authorities in 34 complaints (23%); and lack of transparency in 18 cases (12%).

Chart 1.19 – Cases concluded and found justified (2011 – 2013)



OMBUDSMAN

UNIVERSITY OMBUDSMAN



ANNUAL REPORT BY THE UNIVERSITY OMBUDSMAN 2013

ANNUAL REPORT BY THE UNIVERSITY OMBUDSMAN 2013

The Office of the University Ombudsman ceased to exist on 31 October 2013. Malta's Ombudsman Act as amended in 2010 provides for the appointment of Commissioners for specialised areas, including Education. The role and functions of the Commissioner for Education substitute those previously carried out by the University Ombudsman.

The 1996 amendment of the Education Act established the Office of the University Ombudsman. The first holder of Office was Dr Joseph Brincat, a well-known practising lawyer, who was appointed on 1 October 1997. He resigned on 10 August 1998 when he re-entered the political arena. Professor Victor Griffiths, a retired renowned surgeon and former University Professor succeeded Dr Brincat in August 1998 and served two terms until August 2008.

Professor Charles J Farrugia was appointed University Ombudsman on 1 November 2008. Through the powers vested in him in terms of the Ombudsman Act, the national Parliamentary Ombudsman assigned the incumbent additional responsibilities besides those covering the University of Malta as laid down under the Education Act. These involved dealing with complaints lodged against the Malta College of Arts, Science and Technology (MCAST) and the Institute of Tourism Studies (ITS). The full merger of the services of the University Ombudsman within the Office of the Parliamentary Ombudsman was a most significant development that helped to consolidate the former's extended role and expanded duties. One also notes that the vast majority of overseas University Ombudsmen cater exclusively for complaints lodged by students. In contrast, Malta's University Ombudsman accepts and deals also with the concerns and complaints from academic and support staff as well as from students and staff aspiring to join one of the three institutions.



The work carried out by the Office of the University Ombudsman in 2013 built on the experiences acquired during the past four years. In fact, some complaints replicated those of previous years. These came mainly from students who expected higher grades for their academic efforts, and from staff who felt aggrieved at being denied a desired promotion. New complaints included protests against real or imagined changes in conditions of work, claims of discriminatory treatment between local and foreign students, and objections to accusations of plagiarism in submitted academic work. Furthermore, a marked trend became apparent in the lodging of complaints through the services of legal advisors in the mistaken belief that the complaint will be dealt with more expeditiously and/or more thoroughly. Obviously, this was never the case. The Office endeavoured to conclude all its cases within the shortest time possible and gave each complaint its due attention regardless of who lodged it and through what medium. Further details on the cases investigated in 2013 are found in the data and tables section of this report.

The problem of a speedy conclusion of cases, or lack of speed, presented a challenge. The institutions concerned have been taking longer to react to complainant's claims, to provide the requested data and to answer specific queries that need clarification for the completion of the investigation. Officials attributed the delays to heavier workloads and to a higher level of complexity in an increasing number of complaints. No doubt these reasons for delays cannot be ignored, but even if hackneyed and overused, the adage "*Justice delayed is justice denied*" still held true in such cases. The question of speed becomes particularly urgent in the case of students who risked losing a year of study if their problems were not solved before the commencement of the following academic year. As a result, failure to reach a resolution in time often led to another cause for a new complaint. Such instances justify this Office's insistence and persistence for speedy replies to investigative queries.

Experience during this fifth year of office confirmed once again the importance for educational institutions to provide information and keep all interested parties abreast with



The University Ombudsman, Professor Charles J. Farrugia, together with the Speaker of Parliament and the Parliamentary Ombudsman.



issues related to their concerns. This Office has been fortunate to deal with complainants who expressed appreciation for the completion of their cases regardless of whether their laments were sustained or not. A typical expression of appreciation said: "Why weren't these explanations given to me earlier? Had I known these facts, I would have saved myself months of worry and hassle!" The institutions concerned would have also averted endless bother, wasted time and unnecessary work for their staff. Both sides would have been spared the frustration and bad blood that ensue from unexplained silence, insufficient information, misinformation and prolonged litigation. For this reason, this Office has repeatedly promoted openness and transparency.

The University Ombudsman, like every 'honest broker', sought just solutions between the parties involved. Unfortunately, on numerous occasions he landed in the unenviable situation of satisfying one party, but not the other, or worse still, of pleasing neither. It would have been most gratifying if every case dealt with led to a win-win outcome. However, it is not his role to please but to ensure good administration, including fair treatment, equity, and the absence of improper discrimination. He has to act in full respect of the law and equity.

In this respect, the University Ombudsman had to remain impartial and neutral in all his dealings with complainants and the institutions involved. It was also his responsibility to ensure that the authorities treated individuals with respect, not as non-entities, faceless numbers, or people with no professional and self-pride.

As the statistics in this report illustrate, many of the complaints lodged were not sustained, and it became the University Ombudsman's duty to explain the reasons leading to a negative outcome. In such cases, the vast majority of complainants were obviously disappointed but accepted the final result with grace and in a number of cases with appreciation. In contrast, some officials resented conclusions and recommendations that censured their actions.

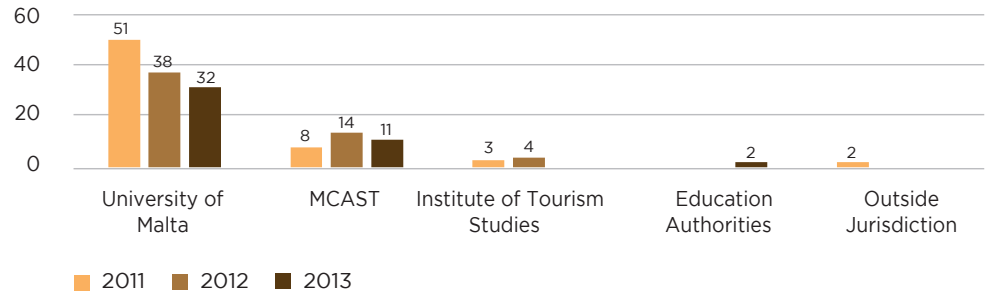
They considered it a weakness to admit to an unintended mistake or oversight. In these circumstances, the University Ombudsman had the duty to ensure that the institutions within his remit did not develop into organizations designed to look after themselves rather than the citizens they served. The University Ombudsman's Final Opinion may sometimes lead to sharp exchanges between him and the officials concerned, but skirting the problem will only increase public suspicions of collusion. These in turn will generate a loss of public trust and esteem for the institutions concerned as well as this Office. Officials at the University of Malta, MCAST and ITS, as well as the University Ombudsman himself, cannot afford such eventualities. Neither can the future Commissioner for Education.

Table 2.1 – Complaint intake by institution (2011 – 2013)

Institutions	2011	2012	2013*
University of Malta	51	38	32
MCAST	8	14	11
Institute of Tourism Studies	3	4	-
Education Authorities		-	2
Outside Jurisdiction	2	-	-
Total	64	56	45

*Of the 45 cases investigated during 2013, 38 cases were investigated by Professor Charles Farrugia in his capacity as University Ombudsman, while 7 cases were investigated in his capacity as Consultant to the Parliamentary Ombudsman.

Diagram 2.2 – Complaint intake by institution (2011 - 2013)



The number of cases are proportional to the number of students registered in each institution with the highest number studying at the University and the lowest at ITS. This factor represents one reason why the highest number of cases come from the University. The second reason is that the Office of the University Ombudsman has served the University since 1996 while the service became available at MCAST and ITS in 2008. A third reason for the highest number of cases coming from the University is the presence of the KSU which directs students' complaints to the Ombudsman's Office. No such facility exists at MCAST and ITS.

Table 2.3 – Complaints by institution classified by gender and status of complaint (2011 – 2013)

	University of Malta			MCAST			Institute of Tourism Studies			Education Authorities			Total		
	2011	2012	2013	2011	2012	2013	2011	2012	2013	2011	2012	2013	2011	2012	2013
Students															
- male	13	11	12	1	5	3	3	-	-	-	-	1	16	16	16
- female	29	15	8	2	3	2	-	-	-	-	-	-	31	18	10
Staff															
- male	5	6	7	2	3	4	3	4	-	-	-	-	8	13	11
- female	4	7	4	3	2	2	-	-	-	-	-	1	7	9	7
Total complaints by students and staff	51	39	31	8	13	11	6	4	-	-	-	2	62	56	44
Own-initiative cases	-	-	1	-	-	-	-	-	-	-	-	-	-	-	1
Outside jurisdiction	-	-	-	-	-	-	2	-	-	-	-	-	2	-	-
Total	**51**	**39**	**32**	**8**	**13**	**11**	**8**	**4**	**-**	**-**	**-**	**2**	**64**	**56**	**45**

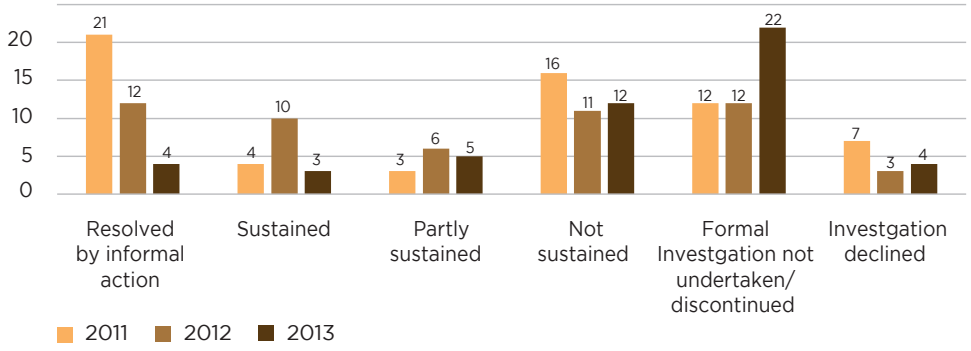
Data in Table 2.3 demonstrates a reduction in the number of complaints lodged during the year under review. It will be incorrect to interpret the data as a loss of interest in the services offered by the University Ombudsman. A careful analysis of the reasons leading to the decrease points to two developments. The first reflects greater attention taken by the institutions' officials to avoid causes for complaint. The second results from procedures that this Office and the three institutions have set to deal with and solve complaints in-house. The workings of the Access Disability Support Committee at the University, and the setting up of the Progressions Board and Appeals Boards at MCAST are examples of these developments. As a result, fewer grievances reach the University Ombudsman thus contributing to the utopian dream to render his services redundant.

Table 2.4 - Outcomes of finalised complaints (2011 – 2013)

Outcomes		2011		2012		2013*
Resolved by informal action	21	33%	12	22%	4	8%
Sustained	4	6%	10	19%	3	6%
Partly sustained	3	5%	6	11%	5	10%
Not sustained	16	26%	11	20%	12	24%
Formal Investigation not undertaken/discontinued	12	19%	12	22%	22	44%
Investigation declined	7	11%	3	6%	4	8%
Total	63	100%	54	100%	50	100%

*Chart 2.4 does not include cases investigated by Professor Charles Farrugia as Consultant of the Ombudsman on Education matters.

Diagram 2.5 – Outcomes of finalised complaints (2011 – 2013)



As noted in previous reports the two cells representing the "*Resolved by informal action*" and "*Formal investigation not undertaken*" can, perhaps should, be considered as one. The reason for this amalgamation results from the attempts of this Office to reach a resolution that is mutually satisfactory to both sides without the need to carry out a full-blown investigation. In this function the University Ombudsman fulfils the role of the "*honest broker*" helping each side to understand the point of view of the other to reach an equitable solution to all concerned. The real situation is more of a win-win outcome than the graphs represent.

Chart 2.6 - Complaint grounds (2011 – 2013)

Outcomes	2011		2012		2013*	
Unfair marking of academic work	20	31%	9	16%	8	21%
Special needs not catered for	1	2%	0	0%	-	-
Promotion denied unfairly	6	9%	9	16%	1	2%
Post denied unfairly (filling of vacant post)	4	6%	6	11%	4	11%
Unfair/discriminatory treatment	27	42%	28	50%	20	53%
Lack of information/attention	3	5%	4	7%	4	11%
Own initiative	3	5%	0	0%	1	2%
Total	**64**	**100**	**56**	**100%**	**38**	**100%**

* Chart 2.4 does not include cases investigated by Professor Charles Farrugia as Consultant of the Ombudsman on Education Matters.

Diagram 2.7 – Complaint grounds (2011 – 2013)

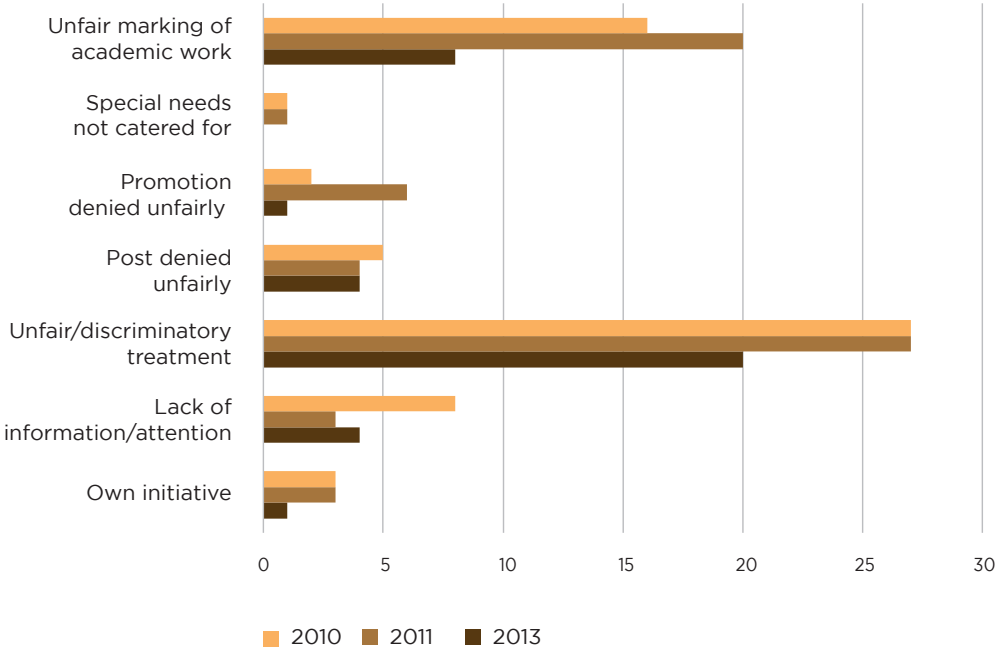




Chart 2.6 and Diagram 2.7 highlight data that is also much related. These are the cells entitled "*Unfair/discriminatory treatment*" and "*Lack of information/attention*". These cells also represent the two highest incidences. An analysis of the complaints often reveals that complainants do not always seek the cause of their ailments before resorting to the University Ombudsman. It also happens that when they do seek information, officers at the institution concerned do not provide it fully or provide it incorrectly. Hence with the intervention of the University Ombudsman correct and full information becomes available to the satisfaction of the complainant without the need of a full investigation and/or final report as explained earlier.

Personal Note

At the end of my term of office, I take this opportunity to thank all the personnel, from the highest to the lowest, at the Office of the Ombudsman for their support and assistance. I am certain that without their help, my duties would have been much more onerous and my aims to serve much harder to reach. For this I am most grateful.

Prof Charles J Farrugia
University Ombudsman

OMBUDSMAN

COMMISSIONER FOR ENVIRONMENT AND PLANNING

ANNUAL REPORT BY THE COMMISSIONER FOR ENVIRONMENT AND PLANNING



THE FIRST FULL YEAR OF ACTIVITY

The year in review marked the first full year of Office since Perit David Pace was appointed Commissioner for Environment and Planning in August 2012.

Following the change in Government after the March General Election, the Commissioner for Environment and Planning together with the Parliamentary Ombudsman paid courtesy visits to the new incumbents namely: the Hon. Michael Farrugia, Parliamentary Secretary for Planning and Simplification of Administrative Processes and the Hon. Leo Brincat, Minister for Sustainable Development, the Environment and Climate Change. Another courtesy visit together with the Ombudsman, the Commissioner for Health and the University Ombudsman, was paid to the new Speaker of the House, Dr Angelo Farrugia.

Caseload

There were 61 new cases opened in 2013. Of these, 28 were closed leaving 33 pending cases, of which, 21 cases were at investigation stage, 10 were awaiting the compilation of the report following the conclusion of the investigation, while 2 cases had been concluded with the issuing of the report. However, since the requested response to the recommendations carried in the reports had not yet been received, the cases could not be closed and classified accordingly. Therefore these cases continue to appear as 'pending' in the caseload when in actual fact the reports would have been concluded.

It has been noted that in certain cases where the replies have been received, the timeframe has not been satisfactory and this Office had to resort to various reminders and organise meetings to get the Authorities concerned to provide a reply.



From the caseload of 59 pending investigations brought over from 2012, 32 were closed leaving 27 cases pending. Of the, 27 pending cases, 19 were at investigation stage and 8 were awaiting the compilation of the report following the conclusion of the investigation.

As reported previously, part of the caseload taken over on assuming Office in 2012 were the pending caseload taken over from the MEPA Audit Officer. At the beginning of 2013 there were 35 such cases. These were reduced to 16 with the closure of 19 cases. Similarly, the caseload of 5 investigations transferred from the Ombudsman's caseload was reduced to 2.

The total caseload handled in 2013 therefore amounted to 120 cases, of which 60 were closed.

Table 3.1 Case Load (January – December 2013)

Case Load	2013
Pending cases from 2012	59
New Requests for investigation	61
Total	**120**

Table 3.2 shows that from the 2013 case-load, 19 cases formerly on the Audit Officer's list, 28 new cases received in 2013, 10 cases which were brought forward from the 2012 caseload and 3 cases transferred from the Ombudsman's Office were closed making a total of 60 closed cases in the period under review.

Table 3.2 Closed Cases (January – December 2013)

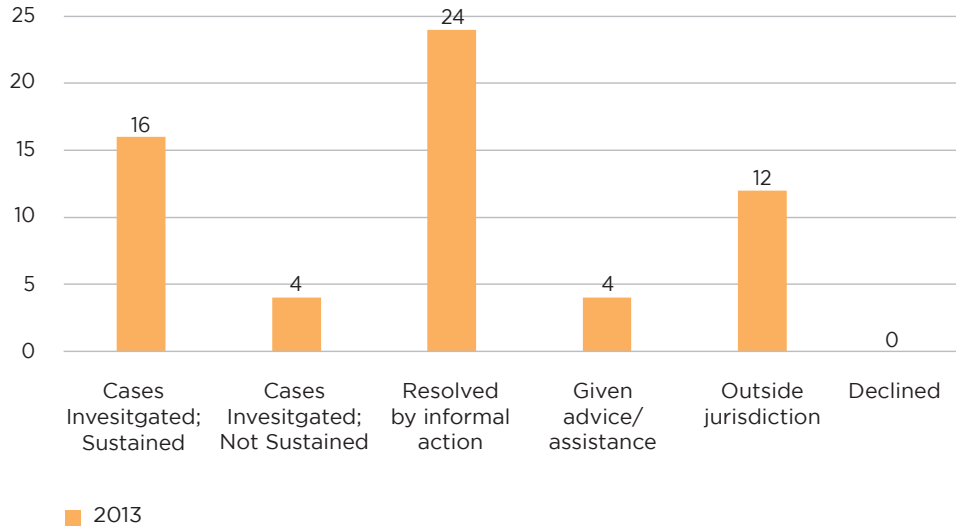
Closed Cases	2013
Pending cases from 2012	32
Pending New cases	28
Total	**60**

Table 3.3 outlines that during the year in review there were 60 cases on which an investigation was concluded. Of these, 24 (39%) of the cases were resolved by informal action, 16 (27%) cases were sustained, 12 (20%) cases were outside jurisdiction and 4 (7%) cases were not sustained.

Table 3.3 Outcomes of finalised complaints (January – December 2013)

Outcomes	2013	
Sustained	16	27%
Not Sustained	4	7%
Resolved by informal action	24	39%
Given advice or assistance	4	7%
Outside jurisdiction	12	20%
Declined	-	-
Total	**60**	**100%**

Diagram for Table 3.3



Case typology

A review of the case typology for the new cases opened in 2013 confirms the previous year's trend, is that the majority of complaints received – 23, amounting to almost 38% of the total case-load – were for undue delay or failure to act. Once more these complaints were mainly aimed against the MEPA's Enforcement Section.

These were followed by 21 complaints or almost 34% of the total case-load against decisions (mainly Mepa Boards) which were contrary to law or rigid application of rules, regulations and policies.

There were 11 complaints against lack of fairness or balance, representing 18% of the new caseload. This category doubled its share of the total cases opened. Of the received cases, 4 complaints were against improper discrimination. During the year in review, only one case which fell under the category 'failure to provide information was received. Similarily, the office received only one case which alleged lack of transparency.

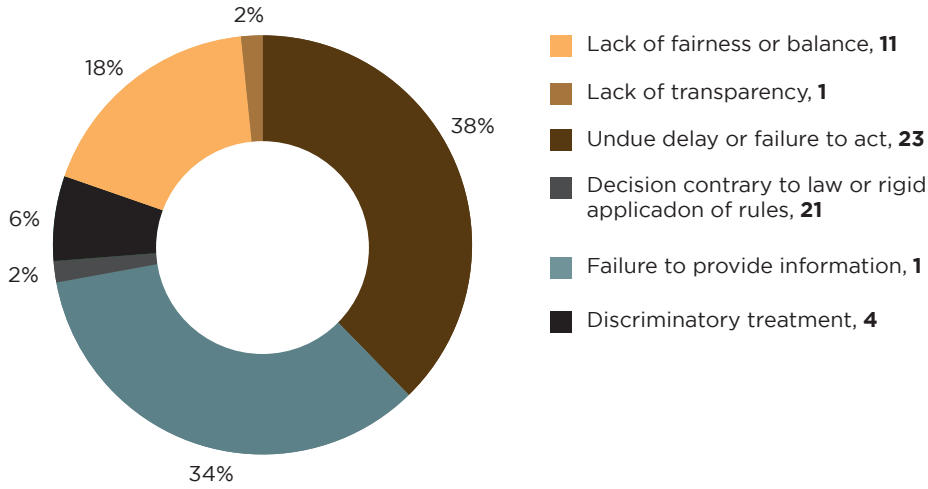
Table 3.4 - Caseload by nature of Complaint – August 2012 – December 2012

Outcomes	2012	
Undue delay or failure to act	23	38%
Decision contrary to law or rigid application of rules	21	34%
Discriminatory treatment	4	6%
Lack of fairness of balance	11	18%
Failure to provide information	1	2%
Lack of transparency	1	2%
Total	**61**	**100%**



The Commissioner for Environment and Planning, Perit David Pace addressing the media on an Own Initiative Investigation on the 'Extension of Catering Facilities into Public Areas'

Diagram for Table 3.4





Personal Note

2013 was a year of consolidation of the planned changes aimed at enhancing the quality of the service we provided. We assisted citizens seeking redress through formal investigations, guidance and mediation.

During the coming year, we intend to go a step further and extend our services to non-governmental organisations that have environment and planning interests in their functions, by inviting them for regular meetings aimed to address their concerns and discuss ideas for the improvement of public administration in issues related to environment and planning.

OMBUDSMAN

COMMISSIONER FOR HEALTH



ANNUAL REPORT BY THE COMMISSIONER FOR HEALTH 2013

ANNUAL REPORT BY THE COMMISSIONER FOR HEALTH 2013

Introduction

This is the second report since the appointment of the Commissioner for Health in August 2012. This report gives, the Commissioner, the opportunity to provide a comprehensive outline of the work conducted in his first full year in Office.

Complaints and Investigations

During 2013, 63 complaints were received of which 35 were from the general public and 28 from employees working in the public health sector.

Table 4.0 – Complaints received (2012 – 2013)

Complaints Received	2012 (Aug – Dec)	2013 (Jan – Dec)
General Public	18	35
Employees within the Public Health Sector	14	28
Total	**32**	**63**





The Commissioner for Health, Mr Charles Messina together with the Parliamentary Ombudsman addressing the media on an Own Initiative Investigation on 'Out of stock medicines, medical materials and surgical devices'

From the complaints lodged by the general public, issues related to the right of free medicines topped the list for the second consecutive year. Other complaints varied from citizens complaining about faulty medical apparatus at Mater Dei to refusal by the Department of Health to send patients for treatment abroad. Table 4.1 shows the nature of complaints lodged by the general public which show the vast and complex complaints which were investigated.

Table 4.1 Categories of complaints from the general public (Jan – Dec 2013)

Nature of Complaint	No of cases
Refusal by Department of Health to be given medicines free of charge	10
Out of order Dermatology Laser Machine	3
Inaction by Directorate of Environmental Health	1
Refusal by Zammit Clapp Home to give results	1
Refusal by Department of Health to send patient abroad	2
Improper attention at A&E Department, MDH	1
Clamping of car at MDH	1
Refusal by MDH administration to give operation date to a foreign patient because of a pending hospital bill	1
Lack of reply from Transport Malta following an injury	1
Delay to give out-patient appointment at MDH	1
Exorbitant cost of medicines	1

Refusal by Department of Health to introduce drug in Government Formulary List	1
Unprofessional behaviour by MMDNA nurses	1
Refusal by Medical Council to follow procedure	1
Refusal by MDH to give copy of file	1
Blood group of patient not included in hospital file	1
Lack of reply from Department of Health to hold Inquiry	1
Refusal to be given blue sticker by KNPD	1
Delay by MDH to give results of investigations	1
Lack of reply from MDH	1
Request for compensation for injury sustained whilst undergoing medical procedure	1
Exaggerated delay in being given date of operation	1
Total	**34**

Table 4.2 Categories of complaints by employees within the Public Health Sector (Jan – Dec 2013)

Nature of Complaint	No of cases
Promotion not given	9
Refusal to be given allowance	3
Unjust transfer	3
Psychological harassment	2
Delay to be allowed to follow career progression	2
Unfairly omitted from performing screening programme investigations	1
Great delay to be given certificate by Specialist Accreditation Committee	1
Unfair Collective Agreement	1
Unreasonable protocols for patients to be given free medicines	1
Not given increment in salary	1
Refusal by MDH to be informed of result of inquiry	1
Not being informed of Circular concerning a Call for Application	1
Unjust criticism by CEO - MDH	1
Unfair conditions of employment	1
Request for payment of arrears	1
Total	**29**

The similarity in the trend was also reflected in the nature of complaints lodged by employees within the Public Health Sector. Like 2012, complaints from employees alleging that were unjustly not given a promotion, topped the list of nature of complaints. Other complaints

were related to other working conditions and pay issues.

Table 4.3 – Outcome of concluded cases (Jan – Dec 2013)

Outcome	General Public	Employees - Public Health	Total
Sustained	9	8	17
Not sustained	8	12	20
Partly Sustained	1	-	1
Could not be investigated	1	-	1
Advice given	4	2	6
Withdrawn by complainant	3	-	3
Solved by informal action	3	-	3
Still pending	6	6	12
Total	**35**	**28**	**63**

Table 4.3 shows the outcome of concluded cases. Of the sixty-threes (63) cases referred to the Commissioner for Health during 2013, seventeen (17) were sustained and recommendations were sent to the department, twenty (20) were not sustained and three (3) cases were solved informally during the investigation and therefore there was no need of conducting the investigation. There were aslo six (6) cases that just needed an advice and no investigation was undertaken. From the remaining cases, three (3) cases were withdrawn by the complainants; one (1) could not be investigated; one (1) was partly sustained and twelve (12) cases were still being investigated by the end of the year.

Closure of Complaints

The Commissioner for Health adopted various ways to expedite the investigations. By the end of 2013, all complaints received between August 2012 and July 2013 were concluded.

The length of time taken to conclude a complaint depends on the nature and the subject matter of the complaint and the cooperation of the public authorities. An investigation might take longer than expected. Fifteen (15) cases received between August 2013 and December 2013, were still pending by the end of the year and discussions with the Department of Health were still in progress. The Commissioner for Health hopes to conclude these investigations by the beginining of 2014.

Own Initiative Investigations

Three Own Initiative Investigations which were initiated during 2012 were concluded during the first half of 2013 and the recommendations were sent to the Department of Health. By the end of the year 2013, no feedback indicating whether the recommendations made were being accepted had been received from the Department of Health.

The three investigations were about:

1. Waiting time to operate upon Orthopaedic Trauma patients

In December 2012, following information that patients suffering from Orthopaedic Trauma were not being operated within the first 24 hours as advised in the NHS Guideline 2011, the Commissioner for Health initiated an Own Initiative Investigation. It was alleged that Orthopaedic Trauma patients were being operated after quite some time. At times patients were being put on preoperative fasting unnecessarily as their operation was postponed at times more than once.

According to the Annual Surgical Operations Report 2012, 5,313 orthopaedic operations were performed, of which 1,952 were registered as emergency operation episodes.

As part of this investigation, the Commissioner held meetings with the Department of Orthopaedics, Department of Geriatrics, the Nursing Directorate, the Rehabilitation Consultant, and the Department of Anaesthesia. These meetings helped to identify the challenges and deficiencies of the area.

In February 2013, the Commissioner for Health concluded his investigation and submitted his recommendations to the Department of Health.

As a way forward, the Commissioner suggested that meetings with all the stakeholders should be held immediately in order to take decisions on substantial increase in the number of rehabilitation beds; the approval of the outreach orthopaedic system; and appoint a rehabilitation consultant.

The Permanent Secretary in the Ministry for Health replied that the recommendation for the setting up of an Orthopaedic Outreach Team had been implemented and operational. He continued that the Department was still planning to implement the other recommendations.

2. Waiting time for patients to be seen at the Accident and Emergency Department, Mater Dei Hospital

In the last quarter of 2013, following a long pending public outcry and the legitimate demand by citizens for a quality service in the national healthcare, especially in the waiting time for patients using the A&E at Mater Dei Hospital, the Commissioner for Health decided to carry out an own initiative investigation following consultation with the Parliamentary Ombudsman.

The aim of this investigation was to be able to submit recommendations to the Health Authorities, to cut down on waiting times for patients who check into hospital's A&E areas and towards the development of an improved framework within the same department.

Following discussions with stakeholders and a deep analysis of the procedures adopted at the A&E Department, the Commissioner identified various problems. In June 2013, the Commissioner concluded his own initiative report and outlined numerous possible solutions. The report was made public and was sent to the Prime Minister, the Minister for Health, the Leader of Opposition, and the Speaker of the House of Representatives and to all Members of Parliament.

In his conclusion, the Commissioner recommended different solutions which can be implemented with urgency, other measures that can be implemented in medium term and others which need long-term planning.

The Government's feedback, sent through the then Minister for Health, was that

the report was constructive and positive. However, there was no commitment on the implementation of the recommendations.

3. Out of stock medicines, Medical Materials and Surgical Devices

In November 2012, the Commissioner for Health started an Own Initiative Investigation, with the aim of analysing the situation of out of stock medicines, medical materials and surgical devices.

The provision of medical supplies, especially but not exclusively medicines, has always been problematic. It is not uncommon for medicines to be out of stock with the result that patients are constrained to purchase them from the retail pharmacies, if they can afford it. There have been instances when because of shortages of medical supplies, surgical operations and other interventions have had to be suspended until stocks were replenished.

The problem of out of stock medicine is a recurrent one, it features prominently and attracts criticism from many quarters. In the year 2011, the Health Authorities acknowledged this problem and in fact they appointed a Chief Executive Officer to lead the unit that deals with procurement of medicines, medical supplies and surgical devices.

During the investigation, the Commissioner for Health held numerous meetings with the Central Procurement and Supplies Unit and other relevant sections. During these meetings, the Commissioner explained the purpose of this initiative and discussed what could be done to facilitate the process to ensure that the problem of out of stock medicines be minimised and possibly solved.



As part of the investigation the Commissioner identified the main reasons that contributed to the shortages.

In April 2013, the Commissioner concluded the investigation and published his Final Opinion. In his report the Commissioner made several recommendations. In his conclusions the Commissioner stated that it is of utmost importance that the Central Procurement Supplies Unit staff should have the mentality of availability stocks rather than "out of stock" and work towards that goal, so that, as far as can be achieved, no medication will be out of stock. The Commissioner, however, acknowledged that this is a mammoth task which requires finance, systems and resources. The Commissioner continued that there is no doubt that the system has to be completely electronic and that he was confident that the staff are keen to adopt an electronic system, but in case a few would not feel comfortable with electronic equipment or are reluctant to retrain, they should be offered alternative duties.

In June 2013, the then Minister for Health, sent his reaction to the report and he informed the Commissioner that he commissioned an audit of the system. He also sent to the Commissioner an internal memo with the conclusion of the audit. It is known that the then Minister for Health had prepared a White Paper on the subject and a Commission to examine the proposals received was appointed. The closing date for the submission of comments was the 9 January 2014.

By the end of 2013, no feedback was received on what measures were being taken to tackle the problem.

During 2013, the Commissioner for Health continued to work on two other Own Initiative investigations which he started investigating during the last quarter of 2012. These investigations were about:

1. Infants and Adults with Hearing Problems

This Own Initiative Investigation was initiated in November 2012 following articles published in local newspapers about the difficulties being faced by such persons.

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

The investigation continued during 2013 and was finalised by the end of the year. The Commissioner started evaluating the facts and findings emerged from the investigation and intends to publish his Final Opinion with the recommendations during 2014.

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

The Commissioner initiated an Own Initiative Investigation on the waiting lists at the Child Development Assessment Unit (CDAU) and the Child Guidance Clinic. These units assess,

diagnose and treat children on out-patient basis. The children are assessed by a multi-disciplinary team which includes Paediatricians, Nurses, Psychologists, Physiotherapists, Occupational Therapists and Speech Language Pathologists.

During the investigation, the Commissioner noted that it seemed that there was a lacuna between the Psychology Services offered by the CDAU and the Department of Education. One of the preliminary reports stated that *'it would be more pertinent for the cases to be managed within a school context, hence by School Psychological Services. This will ensure that children are assessed and followed up by an Educational Psychologist.'* In view of this, the Commissioner held meetings with the Director General in the Directorate for Educational Services and the Director of the Student Support Services Department.

During the year in review, as part of the investigation, the Commissioner held an extensive consultation process where all the players involved were given the opportunity to air their views on the situation and what is preventing the CDAU and CGC from giving the service to which these children with special needs are entitled, as of right, and within a reasonable time. As could be anticipated, some specialists within the unit expressed the need for additional manpower. CGC also expressed the need for more IT equipment/software. This Office cannot take a position or decide on the needs, particularly of additional staff, though it can safely be stated, that in respect of one of the professions involved, namely that of Psychologists, there is *prima facie* a very strong case for a significant increase in the number of Clinical and Educational Psychologists providing the service. It also transpired that there are other areas, especially the Education Sector, which is suffering from the lack of Psychologists (in that case, Educational Psychologists). There is in place, in the public service, a Unit responsible for carrying out of a Capacity Building Exercise, which Unit is empowered to determine the Human Resources needs within the public service.

By the end of the year, the Commissioner had concluded this process and the compilation of facts and findings. The Final Opinion of this investigation will be sent to the relevant authorities in 2014.

Preliminary Investigations

The Commissioner for Health initiated a number of preliminary investigations during the end of 2012 which were continued during the year in review. The prelimenary investigations are done in order to decide whether if own initiative investigation is needed or not.

The preliminary investigations which were initiated were the following:

a) Waiting lists at the Medical Imaging Department, Mater Dei Hospital – from the preliminary investigation conducted it transpired that, apart from the investigations concerning waiting lists for MRI and ultrasound investigations, the other investigations are within reasonable limits.
b) Waiting lists for Bone Density investigations – from the preliminary investigation it transpired that the waiting lists at the Bone Density Unit are within reasonable limits.
c) Waiting lists at Gynaecology Ultra Sound Unit – following the preliminary investigation the Commissioner reported that the waiting time is within reasonable limits.

d) Organ Transplantation - Following a meeting with the Ministry for Health the matter of the compensation to non-related live organ donors for loss of income incurred, like loss of work, was mentioned. It was suggested that the compensation to donors should not be made by the patient or his/her relative because the patient should not be burdened with financial affairs related to such transplants. This, apart from the fact, that there may be patients who would not be able to afford the expense not least those out of work or in receipt of Social Assistance.

Following discussions with the Department of Health, it was agreed that Legal Notice 345/2012 which was issued on 16 October 2012 will be amended to rectify the matter. The revised Legal Notice is expected to be published during 2014.

e) Medicines for Treatment of Hepatitis - In February 2012, Hepatitis B and C, were included in the revised list of the Schedule V of the Social Security Act. This entitled patients suffering from these conditions, to receive the medication free of charge. Months later, it transpired, that the medicines were still not available. From the correspondence and information related to this situation, it was discovered that the medicines in question were not available apparently due to lack of funds.

During the year in review the Commissioner for Health continued to follow up this issue with the Department of Health but it was not confirmed that these medicines will be made available during 2014.

Other Preliminary Investigations

During the year in review, the Commissioner started other preliminary investigations on other issues before deciding to initiate an own initiative investigation.

The Commissioner conducted the following preliminary investigations:

Reports of malpractice at Rainbow Ward, Mater Dei Hospital – Following media reports alleging malpractice at Rainbow Ward at Mater Dei, the Commissioner decided to look into the matter. The complaint is still being investigated by the hospital authorities who sought the advice of the Commissioner for Non-Governmental Organisations, the Commissioner of Police, the Medical Council and the Council for Nurses and Midwives.

Staff shortage at Phototherapy Unit, Department of Dermatology & Venearology (PUVA), Sir Paul Boffa Hospital – Following reports reporting shortage of nurses at the unit which takes care of patients suffering from psoriasis at SPBH, the Commissioner felt that this merits to be looked into. After corresponding with the Chief Medical Officer, the Department of Health informed the Commissioner that a call for application to engage an additional nurse was issued and the selection process was concluded. The vacancies were fillled.

Waiting lists for the Electromyography (EMG) service at Mater Dei Hospital – The Commissioner was informed that there was a two year waiting list for a patient to undergo an EMG test. The Commissioner asked the Department of Health for their reaction on the matter. The Department informed the Commissioner that in order to tackle this problem, the

Department was taking action on various immediate, medium and long term plans. Although by the end of the year in review, the problem was still there, a Call for Tenders was issued during November 2013 to procure an additional Electromyogram Machine. It is therefore hoped that if an Electromyography Technologist will also be employed, so that the problem will be solved during 2014.

Certain clauses in the Health Act, 2013 – The Commissioner expressed his concern on certain clauses included in the Health Act 2013 and correpsonded with the Ministry for Health. By the end of the year in review there was no feedback from the Ministry.

Major difficulty

The major difficulty encountered by the Commissioner for Health was to persuade the Department of Health that it cannot create protocols which deny the right to a patient to be given medicines free of charge. This right is given by the Social Security Act but the Department is still not in agreement. This problem has been compounded by the enactment of the Health Act (XI of 2013) which established the appointment of an Advisory Committee on Healthcare Benefits (paragraph 22(1)) and by means of paragraph 22(5) the Committee "*shall retain the right to advise the Minister to restrict any form of entitlement on the basis of protocols*".

This Office is still arguing that this paragraph runs counter to the Social Security Act. The Department of Health has been asked to give its definite decision and if no reply is received the Ombudsman will decide whether to inform the Prime Minister and the Speaker of the House of Representatives.

Another major difficulty is the failure by the Health Authorities to inform staff of decisions which affect their well-being.

This was written in view of the fact that there were instances where staff were transferred on the basis of hearsay and the staff concerned were neither given the chance to defend themselves nor to give their version of events.

This Office is of the opinion that Management cannot treat its employees in a manner which negatively affects them unless there is valid justification of its decisions.

Quoting from the European Code of Good Administrative Behaviour issued by the European Ombudsman it is stated:

"Article 16

1. *In cases where the rights or interests of individuals are involved, the official shall ensure that, at every stage in the decision making procedure, the rights of defence are respected.*

2. *Every member of the public shall have the right, in cases where a decision affecting his [or her] rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken."*

"Article 18

1. *Every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.*

2. *The official shall avoid making decisions which are based on brief or vague grounds, or which do not contain an individual reasoning."*

"Article 20

The official shall ensure that decisions which affect the rights or interests of individual persons are notified in writing as soon as the decision has been taken to person or persons concerned.

The official shall abstain from communicating the decision to other sources until the person or persons concerned have been informed."

Personal Note

During the year in review, the first full year in Office, the Commissioner for Health adopted a quite proactive approach in dealing with the investigations. The investigations could have been faster and concluded before, had the Department of Health cooperated more with prompt replies when information was requested by my Office. Regrettably, I have to add that the Department of Health is too slow to answer. It is hoped that the situation will improve during the coming year.

Mr Charles Messina
Commissioner for Health

APPENDICES

APPENDIX A

CORRESPONDENCE BETWEEN THE OFFICE OF THE OMBUDSMAN AND THE MINISTRY FOR HOME AFFAIRS AND NATIONAL SECURITY ON THE ARMED FORCES ISSUE

HEADQUARTERS
ARMED FORCES OF MALTA
Luqa Barracks
Malta

Tel: 22494022
Fax: 21241001
Email: hq.afm@gov.mt

AFM/5752/000/2000

10 December 2013

Dr Brian Said LL.D.
Senior Investigating Officer
Office of the Ombudsman
11, St. Paul's Street,
Valletta.





COMPLAINTS – OMBUDSMAN
CASE NO N-0272
CASE NO N-0269
CASE NO N-0280
CASE NO N-0292
CASE NO N-0294
CASE NO N-0296
CASE NO N-0299
CASE NO N-0301

Sir,

Reference made to your letters regarding the above cases, where you requested documents and information further to complaints by various officers who failed to be promoted to the rank of Lieutenant Colonel or Colonel.

We note that Article 12.3(b) of the Ombudsman Act states that: *"This Act shall not apply to the bodies listed in Part B of the First Schedule to this Act, unless proof to the satisfaction of the Ombudsman is produced showing that all available means of redress have been exhausted".*

It has always been held on the basis of Article 160 (2) of the Malta Armed Forces Act that an officer may in any case require reference of his complaint to the President of Malta through the Minister and that this constitutes an "available means of redress" in terms of Article 12.3(b) of the Ombudsman Act. Vide Ombudsman Case D 0447 dated 16 October 2003 regarding complaint by Major (copy attached). In the circumstances, the Armed Forces of Malta submits in the first place that the Ombudsman Act does not apply to the present cases on the basis of Article 12.3(b) of that Act read in conjunction with Article 160 of the Malta Armed Forces Act.

From this it clearly transpires that your Office has also retained this irrebuttable interpretation. Therefore, we feel that in line with consistency and fairness, your Office should uphold its contention and instruct applicants to the appropriate channels according to law.

Yours sincerely,

S GALEA
Colonel
for Deputy Commander, AFM

MALTA Ombudsman

Case D 0447

16 October 2003

Major
Melnibone
Dun Mikiel Xerri Street
Attard BZN 05

Sir

I refer to your letter dated 15 October 2003, stating that on 1 and 21 July 2003, and on 7 October 2003 you lodged a complaint on failure to be promoted to Lieutenant Colonel in the Armed Forces. You complain that Commander AFM has failed to reply to your letters and you are therefore seeking the intervention of this Office.

As you may know, complaints by officers are regulated by Section 160 of the Malta Forces Act 1970. According to sub-section (2) if a complaining officer so requires, the Commander shall through the Minister make his report on the complaint to the President of Malta.

As there are other adequate means of redress in your case, your complaint is not admissible for investigation in accordance with the Ombudsman Act. However, you are therefore advised to be guided by the provisions of the Malta Armed Forces Act and, if you so wish, may request the Commander to report on your complaint to the President of Malta.

Yours faithfully

Dr Ivan D Mifsud
Investigating Officer

Copy: The Commander
Armed Forces of Malta
Headquarters

11 St Paul Street, Valletta, VLT 07 Malta Tel: 21247944/5/6 Fax: 21247924
E-mail: office@ombudsman.org.mt

Cases No N 0269, N 0272, N 0280, N 0299, N 0292, N 0294, N 0296, N 0301, N 0307, N 0310

17 December 2013

The Commander
Armed Forces of Malta
Luqa Barracks
Luqa

Att: Colonel C Galea

Sir

Your letter on the complaint raised by various officers of the Force dated 10 December 2014 refers.

The Ombudsman Act clearly states that the jurisdiction of this Office to investigate complaints on alleged grievances extends over "The Armed Forces of Malta in respect only of appointments, promotion, pay and pension rights of officers and men of the Force" – First Schedule, Part B of the Act.

In this respect it is clear that this provision creates a right in favour of any member of the Force to present this Office with his/her complaint if he/she feels aggrieved by a decision of the Force in connection with "appointments, promotion, pay and pension rights".

The complaint raised by the complainant officers refers to two promotion exercises, that is those from the rank of Major to Lieutenant Colonel and the second from the rank of Lieutenant Colonel to Colonel.

Your citing of Article 12(3)(b) of the Ombudsman Act does not exclude this Office from investigating the allegations brought to our cognizance because –

a. The right which an officer has to refer his grievance to the President of Malta is a discretionary one. Thus, the officer concerned may not to exercise it; and

b. The Ombudsman Act came into force much after the Armed Forces Act and accorded rights to any person, including members of the Force, to seek redress where the individual concerned alleges an injustice.

I cannot agree with you that redress to the President of Malta is the sole means of redress available to these complainants. In support of your argument you have presented a copy of a letter which my predecessor *omissis* sent to *omissis*, I must inform you that this has been superseded by events.

The argument you presented was used by Brigadier *omissis* (R'ted) during the investigation which this Office conducted in Cases H 0656 and I 0187. In his *Final Opinion* in Case I 1087 (which was accepted by the Permanent Secretary at the Ministry for Home Affairs and National Security) the Ombudsman had unequivocally concluded that officers were not obliged to submit their complaint to the President of Malta though they could if they chose so to do.

You may also wish to note that on the 11 November 2011 Brigadier M Xuereb issued a General Order stating as follows –

Complaints – Officers

1. Officers who feel aggrieved by the Commander's decision may –

a. In respect only of complaints concerning appointments, promotions, pay and pension rights refer their complaint for investigation by the Ombudsman in terms of Act XXI of 1995,

Or

b. In respect of any type of complaint refer their complaint directly to the President of Malta for review in terms of Act XXVII of 1970.

2. Officers who decide to refer their complaint directly to the President of Malta would be renouncing to their right to have recourse to the Ombudsman in terms of Act XXI of 1995.

The officers in question have not referred their grievance to the President of Malta and neither are they obliged to do so. As such they are within their right to petition the Ombudsman.

In terms of the foregoing I am reiterating my request for the files, documentation and information requested in terms of Article 19 of the Ombudsman Act by the 27 December 2013.

Yours faithfully,



Brian Said LL.D.
Senior Investigating Officer.

Case Nos. N 0272, N 0296, N 0307, N 0310;
Case Nos. N 0269, N 0292, N 0280, N 0294, N 0299, N 0301.

23 December 2013

Mr Kevin Mahoney
Permanent Secretary
Ministry for Home Affairs and National Security
201 Strait Street
Valletta VLT 1433

Sir

This Office is investigating a complaint which refers to two promotion exercises in the Army, namely that from Major to Lieutenant Colonel which was under your purview as Chairman of the selection board and the other from Lieutenant Colonel to Colonel.

The complainants are Majors – *omissis* - with regards to the matter of the selection board convened under your chairmanship and Lieutenant Colonels – *omissis* - with regards to the matter of accelerated promotions.

For the sake of accuracy I am referring here to the promotions granted by means of a General Order issued on the 16 September 2013 in the first instance and a General Order issued on the 2 October 2013 in the second instance.

There are various allegations which these complainants have submitted to the Ombudsman. These were communicated to the Commander of the Armed Forces of Malta on the 22 November 2013.

Colonel G Galea acting on behalf of the Deputy Commander AFM replied on the 10 December 2013. Colonel Galea's contention was that this Office did not have jurisdiction to investigate this complaint. This

Office does not agree with this interpretation and we transmitted our reasons for this to the Commander AFM on the 17 December 2014.

In the meantime, I am requesting the following information from you –

a. the files pertaining to these two promotion exercises,

b. any document, file or other papers which are relevant or concern these promotions, and

c. your comments.

The papers I refer to must include, *inter alia,* the assessment criteria, the recommendations which the previous Commander AFM submitted for the selection of the candidates, the reasons for the accelerated promotions of those promoted to Colonel, the qualifications (military and civilian) of the promotion board, the policy paper which justified the change of the promotion process and the points which each candidate obtained.

This Office is requesting that you submit this documentation by the 31 December 2013 in line with Article 19 of the Ombudsman Act.

The files and documentations must be submitted in original.

Yours faithfully

Brian Said LL.D.
Senior Investigating Officer

HEADQUARTERS
ARMED FORCES OF MALTA
Luqa Barracks
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AFM/5320/434/2013 Vol I

23 December 2013



Dr Brian Said LL.D.
Senior Investigating Officer
Office of the Ombudsman
11, St. Paul's Street,
Valletta.

COMPLAINTS – OMBUDSMAN

Dear Dr. Said,

Re: Cases No: No 269, No 272, No 280, No 299, No 292, No 294, No 296, No 301, No 307 and No 310.

Thank you for your letter of the 17 December 2013.

With all due respect to the Ombudsman we submit that the conclusion reached in your letter is not in line with the Ombudsman Act (Art 12 (3) (b) and with the Malta Armed Forces Act (Art 160 (2)).

The legal position as it results from the above quoted provisions is to the effect that an officer may not complain to the Ombudsman unless he has exhausted the remedy whereby he may refer his complaint to the H.E. The President in terms of Article 160 (2) of the Malta Armed Forces Act.

This legal position was confirmed by the Ombudsman's decision in case D0447.

It appears that at some point it was felt that an effort should be made to avoid a situation where the Ombudsman would have to review a decision taken by H.E. The President. An attempt to resolve this issue was made through the General Order of the 11 November 2011 to which reference is made in your letter.

That General Order however did not change the law to his right of recourse to the President.

Neither does the fact that there were occasions where the Government went along with recommendations from the Ombudsman in circumstances where the case had not been referred to H.E. The President change the law.

It is clear that the law cannot be changed by an internal General Order issued by the Commander or by adherence to the Ombudsman's recommendations in particular disputes.

In the circumstances we reiterate that it is the law which should be observed and that at this stage the office of the Ombudsman has no jurisdiction to enter into the merits of the above complaints.

Yours sincerely,

G GALEA
Colonel
for Commander, AFM

MEMO

To: Ombudsman
From: Brian Said
Date: 6th January 2014
Subject: Army Promotion Complaints

1. This Office is investigating the complaints of the following officers –

   - *Omissis* -

2. The Commander and the Permanent Secretary at the Ministry for Home Affairs and National Security have been requested to send us the documentation and information relative to the promotion exercises together with their comments.

3. Two promotion exercises were carried out – one from the rank of Major to Lieutenant Colonel effective 13th September 2013, and the second from Lieutenant Colonel to Colonel effective 27th September 2013. The latter instance was an accelerated promotion.

4. The complaints received cover both promotion exercises because the contested promotions concern the four "successful" officers, namely – *omissis* -, latterly of *Major* rank were promoted to *Lieutenant Colonels* on the 13th September 2013 and then to *Colonel* on the 27th September 2013. – *Omissis* - was appointed to Commander AFM and – *omissis* - to Deputy Commander AFM recently.

5.1. My investigation into the complaints necessitated a request from the Commander AFM on the 22nd November 2013 (vide Red 6 of Case No N 0272, green tag 1) for relevant information. The complainants are alleging discrimination at the hands of –

   i. the Selection Board constituted for the promotion to Lieutenant Colonel and
   ii. the authorities concerning the accelerated promotion to Colonel.

5.2. In this regard I asked for documentation relating to the military and civilian qualifications of all officers who sat for the interview, their past and current responsibilities, their overseas deployment and experience and their annual confidential reports.

5.3. On the issue of the *accelerated* promotion to Colonel, I insisted on an explanation of the exceptional case which necessitated this, why was this in the interest of the service and whether the previous Commander, -*omissis*-, had given his recommendations on this to the Minister.

6. This Office received a reply on the 10th December 2013 (vide Red 8 of Case No N 0272, green tag 2) which essentially informed us that we did not have any jurisdiction on the alleged grievances. Colonel *–omissis-* contention was that the officers concerned had to have recourse to the President of Malta in terms of Article 160(2) of the Armed Forces Act before submitting any complaint to the Ombudsman.

7. We rebutted this by means of a letter dated 17th December 2013 (vide Red 10 of Case N 0272, green tag 3). Our contention was that the officers may have recourse to the President and if they do they will forfeit their right to have their grievance reviewed by the Ombudsman. However, the officers are not obliged to seek redress from the President and if they so choose they may complain with this Office.

8. The Army did not agree with this. In a letter sent by Colonel *–omissis-* on the 23rd December 2013 (vide red 16 of Case N 0272, green tag 4) they repeated the same argument insisting that the officer complainants must have recourse to the President of Malta.

9. On the same day (23rd December 2013 – vide red 12 of Case N 0272, green tag 5) I sent a letter to Mr Kevin Mahoney, Permanent Secretary at the Ministry for Home Affairs and National Security. The purpose of my letter was to inform him that this Office was conducting an investigation into promotions which were under his purview as Chairman of the Selection Board, to communicate to him our disagreement with how the Army was trying to exclude the Ombudsman's jurisdiction and to request him to give us the files and other documentation pertinent to the promotions exercises.

10. Mr Mahoney did not send any information but he will meet you tomorrow on this issue.

11. The argument which the Army through Colonel *–omissis-* is raising was used by Brigadier *–omissis-* (vide yellow tag 1 in file OMB/6/10/CO1 – AFM Complaints Officers) during an investigation into the complaint of Lieutenant Colonel *–omissis-* (Case I 1087). In your *Final Opinion* you had unequivocally concluded that officers were not obliged to submit their complaint to the President of Malta though they could if they chose so to do.

12. Your conclusion was preceded by correspondence with the President himself, the Deputy Attorney General and the Office of the Prime Minister (vide Red 29, yellow tag 2). The impasse was created due to a difference in wording of the Maltese and English test of Article 160(2) of the Armed Forces Act.

    The English text states –

    On receiving any such complaint it shall be the duty of the Commander to investigate the complaint and to grant any redress which appears to him to be necessary or, ***if the complainant so requires*** [my emphasis] *the Commander shall through the Minister make his report on the complaint to the Present of Malta to receive the directions of the President of Malta.*

The Maltese text states –

Meta jirċievi dak l-ilment il-Kmandant ikollu d-dmir li jinvestiga l-ilment u li jagħti dak ir-rimedju li jidhirlu li jkun meħtieġ jew, ***jekk l-ilment ikun hekk jeħtieġ*** [my emphasis], *il-Kmandant għandu permezz tal-Ministru jagħmel rapport tal-ilment lill-President ta' Malta sabiex jirċievi d-direttivi tal-President ta' Malta.*

13. In a letter you sent to *–omissis-*, Deputy AG at the time, on the 22nd October 2009 (vide Red 5, yellow tag 4) you *inter alia* stated that the Ombudsman Act was enacted much later than the Armed Forces Act and once it specifically states that men of the force and officers may have recourse to the Ombudsman, then the Ombudsman Act which is special legislation should be allowed to prevail.

14. Dr *–omissis-* in an e-mail sent to *-omissis-* on 3rd March 2010 (vide Red 13, yellow tag 3) during the investigation of Case I 1087 stated that the words *"jekk l-ilment ikun hekk jeħtieġ"* could be understood as *"jekk fl-ilment ikun hemm talba għalhekk"*. He concluded that it was a matter for the complaining officer himself to choose whether to go to the President.

15. You had also written to the Commander on the 2nd December 2009 (vide Red 6, yellow tag 5) stating that after you conferred with the President, the latter was of the view there was no need for the Presidential remedy mentioned in the Armed Forces Act.

16. Your intervention led to a *General Order* by Brigadier Maurice Xuereb on the 11th November 2011 (vide Red 40, yellow tag 6) that officers could seek redress with the Ombudsman or with the President. If, however, they petitioned the President, they would be renouncing to their right to file a complaint with the Ombudsman.

17. The Army are now attempting to overrule your decision. *–omissis-* this is an attempt to prevent the officer complainants from using their right to contest an injustice which they perceive as having denied them promotion and, because, they are seeing this as an unjustifiable blemish on their qualifications and seniority by officers who are their juniors in some instances and who had not attained superior military and civilian qualifications. There are also allegations that the top tier of the Army *–omissis* - have not successfully attained a senior commander course and neither have they been deployed abroad on any length of time.

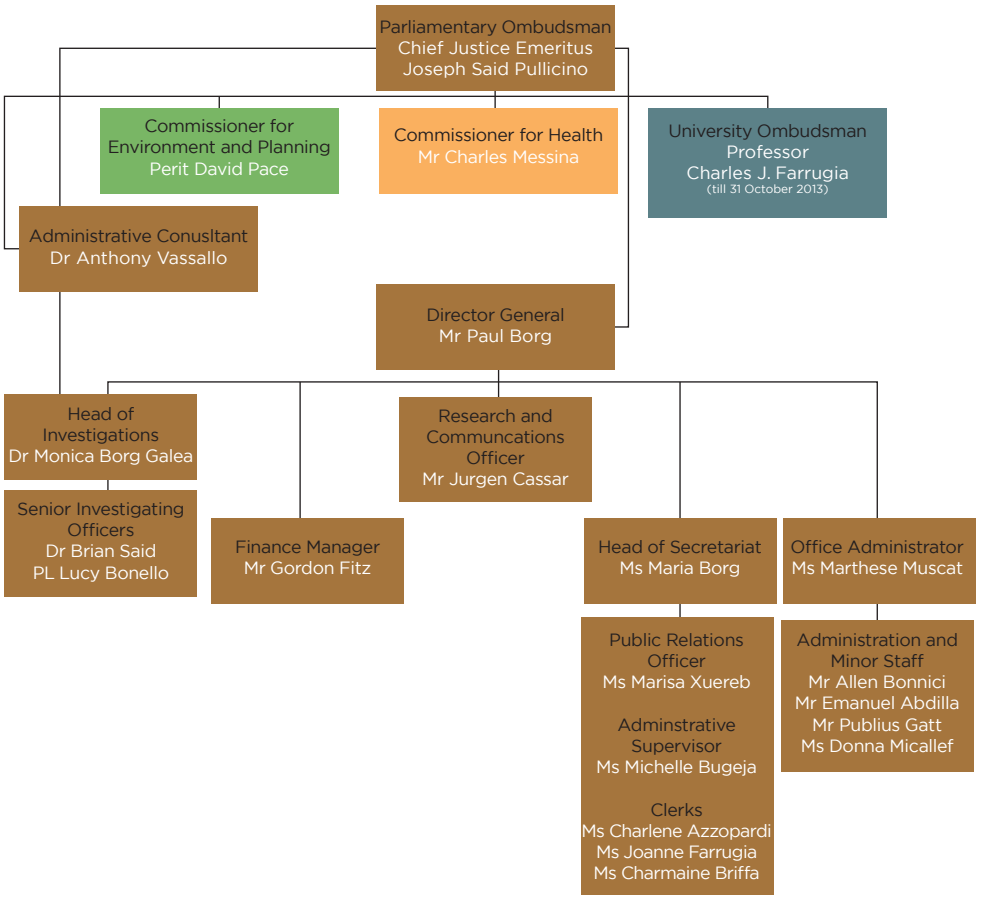
18. *–Omissis-*

19. *- Omissis-*

APPENDIX B

OFFICE OF THE PARLIAMENTARY OMBUDSMAN

Staff Organisation Chart (on 31 December 2013)



APPENDIX C

REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2013

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REPORT OF THE OMBUDSMAN

The Ombudsman presents the audited financial statements for the year ended 31 December 2013.

Principal Activity 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.

Review of the Year

During the year under review the Office of the Ombudsman registered a deficit of € 13,297 (2012 Surplus €161,819).

The convergence process within the Office of the Ombudsman was consolidated with the first full year of operation of the Commissioners for Health and Environment and Planning. In view of the 2012 Amendments to the Education Act the University Ombudsman was abolished with effect from the 1 November 2013 and as a result the Commissioner for Education was appointed on the 1 February 2014.

The Office embarked on an internal restructuring process in an effort to strengthen its management capabilities and internal structures and update the operational systems in order to be able to discharge its added responsibilities. The main structural changes were effected during 2013.

Refurbishing works for the additional office space acquired by the Office of the Ombudsman commenced in early 2013 but were stopped a few weeks later in view that the processing of the MEPA permit was delayed by objections raised by the National Commission Persons with Disability (KNPD). New plans were submitted to MEPA to accommodate the KNPD's demands and the MEPA permit was finally released in December 2013. Re-commencement of the project is now scheduled for the February 2014.

Statement of Responsibilities of the Office of the Ombudsman

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.



Gordon Fitz
Finance Officer



Paul Borg
Director General

AUDITOR'S REPORT

Statement of Comprehensive Income

	Notes	2013 €	2012 €
Income			
Government grant		**749,950**	782,997
M.E.P.A. Auditor grant		**-**	13,455
Non-operating income	3	**1,392**	1,915
		751,342	798,367
Expenditure			
Personal Emoluments	4	**(615,745)**	(495,535)
Administrative and other expenses	11	**(148,894)**	(139,013)
Conferences expenditure		**-**	(2,000)
		(764,639)	(636,548)
Total Comprehensive (Loss)/Income for the year		**(13,297)**	161,819

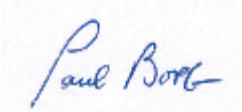
Statement of Financial Position

	Notes	2013 €	2012 €
Assets			
Non-current assets			
Property, Plant and Equipment	6	**103,036**	66,524
Current assets			
Receivables	7	**6,250**	4,749
Cash and cash equivalents	8	**237,831**	310,283
		244,081	315,032
Total assets		**347,117**	381,556
Equity and Liabilities			
Accumulated surplus		**336,534**	349,831
Payables	9	**10,583**	31,725
Total Equity and Liabilities		**347,117**	381,556

The financial statements on pages 6 to 14 were approved by the Office of the Ombudsman on 27th March 2014 and were signed on its behalf by:



Gordon Fitz
Finance Officer



Paul Borg
Director General

Statement of Changes in Equity

		Accumulated Fund Total €
At 1 January 2012		188,012
Statement of Comprehensive income		
Surplus for the year		161,819
At 31 December 2012		349,831
Statement of Comprehensive income		
Deficit for the year	(page 6)	(13,297)
At 31 December 2013	(page 7)	336,534

Statement of Cash flows

	Notes	2013 €	2012 €
Cash flows from Operating activities			
(Deficit)/Surplus for the year		**(13,297)**	161,819
Adjustments for:			
Depreciation		**22,322**	17,254
Loss on disposal of tangible fixed assets		**257**	-
Interest receivable		**(1,392)**	(945)
Operating surplus before working capital changes		**7,890**	178,128
(Increase)/Decrease in receivables		**(1,501)**	15,236
(Decrease)/Increase in payables		**(21,141)**	22,065
Net cash (used in)/from operating activities		**(14,752)**	215,429
Cash flows from Investing activities			
Payments to acquire tangible fixed assets		**(59,092)**	(12,721)
Interest received		**1,392**	945
Net cash used in investing activities		**(57,700)**	(11,776)
Net (decrease)/increase in cash and cash equivalents		**(72,452)**	203,653
Cash and cash equivalents at beginning of year		**310,283**	106,630
Cash and cash equivalents at end of year	8	**237,831**	310,283

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 27th March 2014.

2 Summary of significant accounting policies

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

Basis of preparation

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

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

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

Materiality and aggregation

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

New and revised standards

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

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

Property, plant and equipment (PPE)

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

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

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

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

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

Receivables

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

Cash and Cash equivalents

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

Payables

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

Revenue recognition

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

Foreign currencies

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

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

Critical Accounting Estimates and Judgments

Estimates and judgments 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 judgments 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**	**2013**	2012
		€	€
	Bank interest receivable	**1,392**	1,915
		1,392	1,915

4	**Personal Emoluments**		
i	Wages and salaries	**592,926**	476,307
	Social security costs	**22,819**	19,228
		615,745	495,535
ii	Average No. of Employees	**22**	18

5 Conferences expenditure

The Office contributed € 2,000 to the Association of Mediterranean Ombudsman for the annual Association conference held in Paris in June 2012. No contribution was made for the 2013 conference in Jordan.

Contribution for 2012 Paris conference	-	2,000
	-	2,000

6 Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Air-condition.	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2012	77,083	20,411	31,153	27,321	37,852	50,008	12,173	256,001
Additions	-	625	3,496	4,897	-	3,703	-	12,721
Disposals	-	(75)	(2,315)	(356)	-	-	-	(2,746)
At 31 December 2012	77,083	20,961	32,334	31,862	37,852	53,711	12,173	265,976
Depreciation								
At 1 January 2012	36,846	20223	27,708	22,770	20,652	44,918	11,827	184,944
Charge for the year	5,116	219	2,734	3,126	4300	1,538	221	17,254
Release on disposals	-	(75)	(2,315)	(356)	-	-	-	(2,746)
At 31 December 2012	41,962	20,367	28,127	25,540	24,952	46,456	12,048	199,452
Net book value								
At 31 December 2012	**35,121**	**594**	**4,207**	**6,322**	**12,900**	**7,255**	**125**	**66,524**

6 Property, Plant and Equipment

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

Notes to the financial statements (continued)

7 Receivables

	2013 €	2012 €
Bank Interest receivable	**167**	112
Trade receivables	**182**	3,026
Prepayments	**5,901**	1,611
	6,250	4,749

8 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:

	2013 €	2012 €
Cash at bank	**237,800**	310,177
Cash in hand	**31**	106
	237,831	310,283

9 Payables

	2013 €	2012 €
Trade payables	**(881)**	18,638
Accruals	**11,464**	13,087
	10,583	31,725

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables. As at 31 December 2013 the Office had no unrecognised financial liabilities.

10 Fair values

At 31 December 2013 the fair values of assets and liabilities were not materially different from their carrying amounts.

11 Administrative and other expenses

	2013	2012
	€	€
Utilities	17,267	18,278
Materials and supplies	8,064	5,455
Repair and upkeep expenses	8,680	9,582
Rent	6,366	3,366
International membership	1,850	1,735
Office services	15,712	8,404
Transport costs	11,601	8,961
Traveling costs	6,119	3,282
Information Services	7,864	13,029
Contractual Services	36,643	26,441
Professional Services	5,019	22,537
Training expenses	72	-
Hospitality	746	462
Incidental Expenses	152	91
Bank charges	160	136
Depreciation	22,322	17,254
Disposals	257	-
	148,894	139,013

N A O
National Audit Office
MALTA

Report of the Auditor General

To the Office of the Ombudsman

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Ombudsman set out on pages 6 to 17, which comprise the statement of financial position as at 31 December 2013,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 2013, 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

6th May 2014

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Office open to the public as follows:

October - May	08:30am - 12:00pm
	01:30pm - 03:00pm
June - September	08:30am - 12:30pm

www.ombudsman.org.mt