

## Report on Case No CEDUC-25-6346

### *The complaint*

1. The complainant is an Associate Professor within the Faculty of Laws of the University of Malta. The complaint was lodged with the Office of the Ombudsman on the 22nd July 2025.

2. On the 1st of October 2024, the complainant applied for promotion to full Professor in accordance with the provisions of the Collective Agreement (2019-2023, signed on the 19<sup>th</sup> February 2021) then, and still now, in force. On the 12<sup>th</sup> February 2025 the complainant made written submissions to the Rector (in his capacity of chairperson of the Promotions Board) in line with clause 29.7 of the aforementioned Collective Agreement. By letter dated 2<sup>nd</sup> May 2025, the Rector informed the complainant that his application for promotion to full Professor had been rejected. The complainant applied for reconsideration by letter of the 5<sup>th</sup> May 2025 addressed to the President of the University Council; and on the 18<sup>th</sup> July 2025 the Rector again wrote to the complainant to inform him that “*The Promotions Board agreed that, at this stage, it could still not present to Council for ratification your promotion to [full] Professor as there no grounds justifying a change from the original decision*”.

3. Shorn of all verbiage, the complaint is – in substance – that the Promotions Board (a) failed to abide by the provisions of the Collective Agreement regarding promotion to full professor, and, both in the original decision and in the decision upon reconsideration, the said Board took into account (b) irrelevant considerations and (c) failed to give proper reasons for the decisions taken.

### ***The investigation and findings***

4. It should be stated at the very outset that of the three Commissioners within the Office of the Parliamentary Ombudsman, the undersigned is the one with the most limitations upon his investigative functions. These limitations stem from Rule 18 of the Commissioners for Administrative Investigations (Functions) Rules 2012 (today S.L. 385.01). Although the promotion of academic staff, like their recruitment and engagement, is not specifically mentioned in sub-rule (2) of Rule 18, it can be said to fall within the general ambit of ‘academic policies and practices’. In practice, the undersigned has always taken the view that where recruitment or promotion is involved, the respondent entity (always a public education provider) is allowed, to use an expression taken from the constant caselaw of the European Court of Human Rights, ‘a wide margin of appreciation’. Notwithstanding this ‘wide margin of appreciation’, reflecting as it does the necessary subjective element of appreciation and discretion in any recruitment or promotion process or exercise, said margin of appreciation remains subject to the overriding requirement that it be not tainted with ‘evidence of maladministration’.

5. Maladministration would occur in the circumstances envisaged in sub-articles (1) and (2) of Article 22 of the Ombudsman Act. Although the undersigned is not bound by the legal categorisation or classification of the complaint or complaints as preferred by the complainant – the principle of *iura novit curia* applies to all investigations undertaken by the Office of the Parliamentary Ombudsman – it is clear from all the documents submitted by the parties and from the evidence received, that what are in issue in this case are items (a) and (c) of subarticle (1) and subarticle (2) of Article 22 (in relation to the exercise of a discretionary power).

6. Moreover, any remedies provided, whether administratively or at law, to avoid maladministration as above defined, like the process of reconsideration, must be practical *and* effective, and not theoretical or illusory. An underlying prerequisite for such practicality and effectiveness is the giving of cogent reasons for decisions taken.

7. The relevant provisions of law applicable in the instant case are clauses 26.8.d, 28.1 and 30.4 of the current Collective Agreement:

*“26.8.d **Professor:** Awarded to Associate Professors following a sustained record of excellent academic work carried out at Senior Lecturer level and Associate Professor Level, of not less than eight (8) years in total for distinction and excellence of academic and professional achievement that is recognised at the international level. This is the basic requirement for the application to be processed (the “**Requirement**”)*

*For the avoidance of doubt, only upon the Requirement being fulfilled, an applicant for promotion to Professor will be assessed in accordance with the following criteria (the “**Criteria for Promotion**”, as measured in terms of section 28):*

- (i) **Demonstrated Quality in Teaching:** A solid track record in teaching, including supervision of postgraduate dissertations, particularly Masters by Research and Ph.D; and excellent scholarship, mentoring and leadership;*
- (ii) **Research Output:** A sustained record of peer reviewed research output. To such end, peer assessment of an applicant’s research output will be sought from other universities; and*
- (iii) **Commitment to the University, outreach, society and the academic profession:** The applicant’s direct contribution to the University, society, culture and the economy at large and the international community will also be taken into consideration, and where extensive evidence may be seen, at the discretion of the Promotions Board, may partially compensate for any of the other two Criteria for Promotion referred to in paragraphs (i) and (ii) above.” (emphasis, underlining, added by the undersigned).*

...

“28.1 *Decisions to promote Resident Academic members of staff must be made as a result of a thorough evaluation of their performance in all areas of academic activity. It is recognised that the application and the weighting of criteria for promotion, and the means of fulfilling these criteria may vary among Faculties/Institutes/Centres/Schools to reflect their unique mission and purpose. Each applicant whose application is unsuccessful shall be given reasons, in writing, including an indication of any deficiency in performance.*” (emphasis, underlining, added by the undersigned).

...

“30.4 *The Board shall draft a general report indicating how the criteria are interpreted and applied by the Board. This report shall be periodically updated and presented to Council. This report shall be made available to the academic staff.*”

With reference to the last-mentioned clause, the document applicable to the instant case is titled ‘Interpretation of the Assessment Criteria by the Academic Promotion Boards’ approved by Council on 21<sup>st</sup> April 2022. This document, which by and large reproduces the wording of the Collective Agreement abovementioned, contains the following paragraph under the sub-heading ‘Promotion to Professor’:

“*In so far as research performance is concerned, two positive independent peer reviews as received through the ACU will generally be expected, in addition to strong personal references and solid contributions to teaching and learning and supervision of research. Contributions to the administration at the University, outreach and national affairs will also be considered. The board will also assess the candidate’s overall contribution to ensure that the applicant has attributes compatible with the profile of a Professor of the University.*” (emphasis, underling, added by the undersigned)

The underlined words are not to be found anywhere in the Collective Agreement. These words, as will be explained later, are of particular significance in and for the determination of this complaint. Suffice it to say, for the moment, that an interpretative document should remain within the parameters of that subject matter for which interpretation is required, and should never end up by going beyond or indeed against the provision of law that it purports to interpret – *præter* or *contra legem*.

8. Of the two ACU appointed external peer reviewers – who, for the sake of practicality will be referred to as PR1 and PR2 – one, PR1, recommended unhesitatingly the promotion of the complainant:

*“The candidate’s academic record shows considerable evidence of esteem and international peer recognition, such as invitations to speak in International Conferences, lecture tours and exceptional awards, such as the award of a [ ] Chair by the EU. These achievements enhance the candidate’s case for promotion considerably. [The applicant’s] research and academic record shows enough achievement to merit a full Chair, when compared with profiles of candidates in established European and American Law Schools, with which I am familiar. He will be an asset for his law School and his ambition and drive will take forward the International recognition of the School .... In the light of the above I am pleased to recommend the candidate’s promotion to a Professorship.”*

9. PR2, on the other hand, while praising the applicant’s achievements and most of his publications, states that his “... overall assessment is that [the applicant’s] application for promotion to Professor is at the weaker end of the spectrum with regard to research outputs.” PR 2 ultimately hitches onto the requirements for promotion “... at leading UK institutions.” In fact PR2 states:

*“For comparison, the panel may find it helpful to know that none of the applicant’s six nominated outputs would be assessed at my institution as being world-leading in terms of originality, significance and rigour (4\* descriptor, UK Research Excellence Framework 2021). Evidence of 4\* research outputs (or equivalent impact) is generally considered a requirement for promotion to Professor at leading UK institutions.”*  
(emphasis, underlining, added by the undersigned).

10. It is to be noted – a fact which seems to have escaped the notice of all the members of the Promotions Board, none of whom is legally qualified – that whereas PR1 is a professor of a legal discipline into which the complainant’s subject clearly falls, PR2 is a professor of Constitutional Law. Once again, as happened in CEDUC-21-2233, the Promotions Board ploughed ahead without taking into any consideration this subtle, but important, difference.

11. Against this backdrop of two in part divergent ACU reports but otherwise glowing recommendations (including from the Dean of the Faculty of Laws) and a C.V. that speaks volumes, the Promotions Board was expected to follow the law – the Collective Agreement – and make, and clearly show that it had made, an in-depth examination of all the other relevant criteria mentioned in the said Collective Agreement, and in particular of those mentioned in the second part of paragraph (d) of clause 26.8. This exercise should, if the Collective Agreement was to be followed and observed, have focused on the alleged shortfall of “research outputs”, and therefore taking into account not just six publications, but all the publications and the other compensatory criteria mentioned in the Collective Agreement (not in the UK Research Excellence Framework 2021 referred to by PR 2). Regrettably, as in CEDUC-21-2233, the said Board took the easy way out, and simply hitched onto the unsupportive report by PR2. Nothing in the minutes of the Promotions Board of the 9<sup>th</sup> April 2025 or in those of the 24<sup>th</sup> June 2025 indicates that such an exercise was carried out. Vague

expressions like “The Board duly took into account article 26.8d(iii) of the C.A.” or “following careful consideration” or “following a detailed analysis of [the applicant’s] request and claims” in no way satisfy the requirements of subarticle (2) of Article 22 of Cap. 385 because they contain no substantively cogent reasons underpinning the decision reached. Indeed, such expressions could be used merely as a smoke screen. When the Promotions Board wants to give cogently effective reasons, it does so – see, for instance CEDUC-25-2025. Even more palpably worrying is the fact that both the minutes of the 9<sup>th</sup> April 2025 and 24<sup>th</sup> June 2025 fall back squarely on the fact that one external peer reviewer was not supportive of promotion, indicating that as a matter of law the Board was insisting that there should invariably be two supportive external peer reviews, underscoring the pre-eminence of the interpretative document of the 21<sup>st</sup> April 2022 over the clear and unambiguous law, the Collective Agreement. On the contrary, the adverb ‘generally’ in the expression ‘will generally be expected’ clearly indicates an element of flexibility to which the Promotions Board did not want to be party or privy. What happened in this case is that the Promotions Board in practice delegated its function to the two ACU appointed foreign academics, thereby abdicating from its proper role.

### ***Conclusion and recommendation***

12. In sum, all the evidence, and particularly the documentary evidence, clearly shows that in its recommendations to Council the Promotions Board based its recommendation on a mistake of law (Art. 22(1)(c) of the Ombudsman Act, Cap. 385) and moreover failed to give sufficient reasons for its two recommendations (Art. 22(2) *in fine* of the same said Cap. 385).

13. For the above reasons, the said recommendations are to be considered as flawed and as amounting to acts of maladministration, and the complaint is upheld (sustained).

14. Given the lapse of time from when those recommendations were made and the fact that academics have the opportunity to re-apply periodically for promotion, the undersigned does not see any reason to recommend that the complainant be put in the same position that he was prior to the first examination by the Promotions Board of his application and its first recommendation to Council. That would, in the instant case, be a Byzantine exercise of no utility to anyone. Instead, the undersigned recommends that in considering future applications for promotion the Promotions Board/s should:

(a) pay careful attention to the specific area of expertise of the A.C.U. appointed external peer reviewers;

(b) apply scrupulously the provisions and criteria of the Collective Agreement from time to time in force; and

(c) in its minutes and in communicating its decision/s to the applicant (when such decision/s is/are in the negative) supply cogent, clear and detailed reasons for a negative decision or decisions.

Vincent A De Gaetano  
Commissioner for Education

27 February 2026