

ANNUAL REPORT 2020

PARLIAMENTARY OMBUDSMAN MALTA



OMBUDSMAN

FOR THE PERIOD
JANUARY - DECEMBER 2020

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





OMBUDSMAN

OMB/6/9/24

July 2021

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



Mr Speaker

In terms of Section 29 of the Ombudsman Act 1995, I am hereby submitting the Annual Report concerning the performance of the Office of the Ombudsman for the period January to December 2020.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anthony C. Mifsud', written in a cursive style.

Anthony C. Mifsud
Parliamentary Ombudsman



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PARLIAMENTARY OMBUDSMAN

ANNUAL REPORT 2020



OMBUDSMAN



A YEAR OF CRISIS, CHALLENGES AND OPPORTUNITIES

2020 marked the twenty-fifth anniversary from the setting up of the Ombudsman institution in Malta. It was a year of crisis, challenges and opportunities in which the Office had to live through a global pandemic that disrupted the country's way of life and work ethics. It had to follow the fallout of serious political and social turmoil that inevitably led to a major government upheaval to which the Office had to react and adapt. Major events that provoked serious challenges that needed to be faced. Challenges, that if well managed, could create opportunities that would not only help to overcome temporary setbacks but also help to provide incentives to streamline existing administrative structures and methods of handling complaints thereby improving the standard of the service provided to aggrieved citizens.

25TH ANNIVERSARY COMMEMORATED

During the last weeks of 2020 the Office celebrated its twenty-fifth anniversary with a programme that had to be radically curtailed and adapted to the reality of the ongoing pandemic. Plans to hold an international conference on significant topics of ombudsmanship had to be scrapped because of aggravating circumstances that led to lockdowns and severe restrictions on air traffic and the free movement of persons. The actual situation in the country reflected what was happening in other European states with the number of COVID-19 cases reaching an all-time high in the last quarter of the year following a brief relaxation of rules regulating incoming tourism during summer.

Throughout the year the outlook remained bleak and uncertain. The Office was therefore constrained to limit its commemorative programme to two major events; an official visit by His Excellency the President of Malta marking the occasion and the launch of a commemorative book entitled 'Serving People and Parliament – the Ombudsman institution in Malta 1995 – 2020'. Both events were held in November of that year.

OFFICIAL VISIT BY THE PRESIDENT

To mark this auspicious occasion, the President of Malta Dr George Vella, made an official visit to the Office of the Ombudsman on 6 November 2020. After meeting the Ombudsman, Mr Anthony C. Mifsud, the Commissioner for Health, Mr Charles Messina and the Commissioner for Environment and Planning, Perit Alan Saliba, the President was shown round the offices and introduced to the staff in the various departments individually.

The President later addressed the Commissioners and all the employees, gathered in full respect of social distancing regulations, on the roof of the building that enjoys magnificent views of the Grand Harbour.

PRESIDENT'S ADDRESS

In his address the President strongly appealed to the authorities concerned to take all necessary action to implement the Ombudsman's recommendations whenever possible. He forewarned that if the Final Opinions of the Ombudsman and his Commissioners were not respected and if their recommendations were not implemented by government departments and public authorities subject to its jurisdiction, the authority of the Office would be seriously undermined. Such an approach would negatively impact on the rule of law and the democratic life of the country.

The President stressed that no institution was more independent than the Office of the Ombudsman that gave objective and fair final opinions indicating ways how injustices suffered by aggrieved citizens could be remedied. He pointed out that it was "*...his conviction that individuals should not need to have a direct interest in an issue in order to draw the Ombudsman's attention to what they consider as wrong or unfair*". A telling comment that pointed to the need to amend the Ombudsman Act that to date requires a complainant to have a personal and actual interest in the merits of the complaint he files.

The President commended the Ombudsman, Mr Anthony C. Mifsud and all the staff of his Office for the invaluable work they carried out, despite the fact that the number of staff was relatively small when compared to the volume of cases they had to deal with. He pointed out that during the twenty five years since it was set up, the Office had become a part of the culture of the Maltese people and enjoyed great trust which he hoped would continue to grow. He also made reference to the fact that the reports of the Council of Europe's Venice Commission attached great importance to the Office of the Ombudsman. For this reason he urged that these reports should be debated calmly and serenely so that decisions could be taken as a nation on what other recommendations made could be adopted.

Finally, the President paid tribute to the memory of Mr Charles Caruana Carabez, the incumbent Commissioner for Education who had passed away a few days previously.

A COMMEMORATIVE BOOK LAUNCH

The other major event to commemorate the institution's twenty-fifth anniversary was the launch of a book entitled 'Serving People and Parliament – The Ombudsman institution in Malta 1995 – 2020', hosted by His Excellency the President of Malta, Dr George Vella at San Anton Palace. The book, edited by Professor Edward Warrington founding Director of the Institute of Public Administration and Management as well as former Head of the Department of Public Policy at the University of Malta, traces the development of the Ombudsman institution during the first quarter century of its existence. The book stresses its contribution in promoting good governance and the role of the Ombudsman as an effective instrument to ensure a transparent and accountable public administration to which every citizen is entitled.

The book endeavours to do so by drawing on the experiences of the three Parliamentary Ombudsmen who headed the institution since it was set up. It outlines their sustained efforts to guarantee the institution's autonomy and independence to provide aggrieved citizens with an effective means of redress for injustice suffered as a result of maladministration, improper discrimination or abuse of power. Through their contributions the book provides an insight into the efforts made throughout the years to strengthen the institutional and constitutional structures within which the Parliamentary Ombudsman and his Commissioners are required to operate while providing a service that is efficient, freely accessible to complainants and customer friendly.

In his learned contribution Professor Warrington considers that the value of the institution for the democratic development of a country goes well beyond the fundamental complaint handling service it provides for the benefit of ordinary people. He stresses that its mission statement has to be considered from a much wider perspective. He states *"It is to overlook one of the most important themes in the history of government specifically to slow, erratic and too often unsuccessful struggle for personal and community emancipation"*. Throughout his contribution Professor Warrington seeks to illustrate and underline the statement coined on the occasion of the institution's twentieth anniversary, that the Ombudsman should not only be considered to be the defender of the citizen but also the conscience of the public administration.

In this respect the following excerpt from the Foreword by Mr Anthony C. Mifsud the present Ombudsman, to the book is worth quoting: *"The Maltese Ombudsman originated during the last decade of the twentieth century, a time of far-reaching constitutional and administrative reforms. Two intertwined themes of these reforms were particularly relevant to the Ombudsman and remain at the heart of institution's mission today.*

The first concerns the interaction between government officials and ordinary people. Ambitious improvements were made and continue to be made in management systems, government organisation and administrative procedures to enhance the timelines, responsiveness and accessibility of an array of public services touching virtually every aspect of people's lives. Parallel initiatives – among them the creation of the Ombudsman – sought to improve

the consistency and transparency of administrative decisions, and to provide remedies to people who felt aggrieved by such decisions or by shortcomings in service delivery. Once again this is an on-going quest.

The second theme concerns the elaboration of constitutional checks and balances, particularly the ability of the House of Representatives to exercise oversight over policy-making, administration, service delivery and public finance. As an Officer of Parliament, the Ombudsman assists in this legislative oversight while retaining the freedom of action and institutional autonomy required to discharge his investigative and conciliatory roles”.

These considerations were perfectly in line with the thoughts expressed by the President when delivering his closing remarks during the book launch. He observed that the twenty-fifth anniversary of the Office of the Ombudsman coincided with a time of Constitutional renewal unprecedented in the history of the country *“For the first time, after years of discussing the need for reform of our Constitution by the previous Presidents, I have held a wide-ranging public consultation on what constitutional reforms citizens want to see in our Constitution. This exercise is now closed and will serve as a basis for the discussions we are expected to have in the Constitutional Convention, which will start working when the pandemic allows us”.*

In the context of these consultations on this Constitution the President referred to the report issued last October by the Council of Europe’s Venice Commission which attached great importance to the Office of the Ombudsman. More generally the President encouraged all those involved and interested to debate the report calmly and seriously in order to decide as a nation what further recommendations should be adopted from it, always within the parameters of obtaining political, legal and constitutional circumstances. He noted that over the past twenty-five years, the Ombudsman had investigated the complaints of tens of thousands of people and had been called a *“shield for citizens”*, *“the conscience of the public administration”* and *“the guardian of the rule of law”*. Interestingly he drew attention to the fact that in the country today there were tens of thousands of people who were not Maltese citizens. Although they enjoyed the fundamental rights and freedoms laid down in the Constitution, a considerable number of them suffered from social and cultural marginalisation and sometimes from economic exploitation. In this context he stressed that the Ombudsman should also be their shield. Sound and wise advice that the Office should heed and translate into greater efforts to ensure that the right to a good and just public administration should also be guaranteed to temporary visitors living and working in Malta, who are also entitled to the protection of the Office of the Ombudsman and the service that it provides.

CONSTITUTIONAL REFORM

The repeated references by the President to the reports of the Venice Commission on institutional and constitutional changes required to promote the rule of law in Malta, and the emphasis that he made on the need to implement its proposals to reform and upgrade the Ombudsman institution, modelled on submissions made

by the Parliamentary Ombudsman, were a positive sign of approval and support at the highest level of reforms that the Office had for some time been advocating.

It is true that the government had expressed its willingness to implement the recommendations of the Venice Commission and that the constitutional amendments introduced by Act XLII of 2020, strengthened the independence and autonomy of the Ombudsman by entrenching the method of appointment, removal and suspension of the Ombudsman, his right to conduct own initiative investigations, his right to access information and other essential functions. It is positive that these constitutional entrenchments can only be amended by a qualified two-thirds majority.

However as the Ombudsman correctly points out in the Ombudsplan he submitted to the House of Representatives last September, while it is not correct to say that the amendments were minor and of little consequence, they have to be viewed and appreciated in the light of the recommendations made by the Venice Commission as well as the radical reforms that need to be made to ensure good governance and an accountable and transparent public administration. It was in this context that the President encouraged the House of Representatives to debate the Ombudsman's reflections and recommendations more regularly. It should not limit itself to a debate of his Annual Report. This was a specific recommendation of the Commission that the Government failed to adopt.

The constitutional and legislative reforms in so far as they impact on the legislation governing the Ombudsman institution, are therefore steps in the right direction and are welcome. They seek to address some of the concerns of the Venice Commission and implement a number of its recommendations. They do not however go far enough and it is the Ombudsman's opinion that an opportunity has been missed to make a thorough review that would have introduced comprehensive amendments that could further strengthen the Office of the Ombudsman. Amendments that would also have reassessed the role of the Ombudsman together with that of the Auditor General and the Commissioner for Standards in Public Life, as three crucial institutions at the service of Parliament having the common function to monitor the actions of the Executive, giving added protection to citizens against maladministration and abuse.

IN-DEPTH REVIEW OF LEGISLATION

The Ombudsman has for some time been stressing the need to have an in-depth review of legislation governing these three institutions that would harmonize their respective setups and the constitutional guarantees they should enjoy. Such an exercise would enhance those provisions meant to ensure their independence and autonomy, allowing them full freedom to exercise their functions according to their founding legislation.

Such a harmonization would allow for a measure of synergy between the three institutions that could not only lead to further collaboration and interaction where appropriate, but also to their recognition as the primary monitoring institutions at the service of Parliament with the common aim of ensuring good governance and accountability.

Interestingly this proposal comes at a time when the President is actively promoting the convening of a Constitutional Conference and is taking positive steps towards realising such an initiative. It is an opportunity that the Office of the Ombudsman should not miss. The involvement of the Office in such a debate could be a challenge for the Office next year. It could prove to be a major contribution towards the ongoing debate on how the democratic structures that govern the country should evolve especially in the direction of the decentralisation of power strongly recommended by the Venice Commission.

NEED FOR ONGOING CONSULTATION

The Ombudsman has throughout the year stressed the need for ongoing consultations with his Office when constitutional amendments and draft bills that directly impact his Office are being considered. He has repeatedly acknowledged and shown his appreciation towards the high esteem in which the Venice Commission and other European institutions hold the Office of the Ombudsman. The Office recognises the attentive consideration they gave to the opinions his Office when asked to comment on the state of good governance and the rule of law in the country and to suggest ways and means how they can be improved. Consultations with these European institutions have been fruitful and often the recommendations made by them reflect many of the suggestions put forward by the Ombudsman.

A case in point which illustrates well this useful synergy are the submissions made by the Ombudsman to the Venice Commission in reply to a request made by it to give its reaction to the bills tabled by Government seeking to implement the legislative and constitutional changes recommended by the Commission in its Opinion of 9 October 2020. The submissions are worth recording and are being attached as an annex to this report.

This meaningful and regular consultation between the Office of the Ombudsman and European institutions contrasts with the failure of government to consult it on legislation that directly concern it. The Ombudsman is on record that there does not seem to be rules and practices that need to be followed in the use of impact assessment and stakeholders consultation when preparing government's legislative reforms. This is an area that needed to be addressed if the desired goal of full democratic participation was to be achieved.

Though White Paper and policy documents are often issued as a means of public consultation their effectiveness is doubtful. Consultation with stakeholders directly involved in proposed legislation of reform was generally lacking. This failure to consult the Office of the Ombudsman on legislation that directly concerns it was a case in point.

FAILURE TO IMPLEMENT COMMISSION'S RECOMMENDATIONS

When replying to queries by the Venice Commission aimed to establish to what extent the proposed amendments, eventually approved by Parliament, implemented its recommendations, the Ombudsman highlighted a number of deficiencies that still needed to be addressed. He stressed the failure of

government to accept the Commission's recommendations that the House of Representatives should not only debate the Ombudsman's Annual Report within a reasonable time but also the final opinions referred to it by the Ombudsman and his Commissioners when their recommendations to redress injustice had not been accepted. The Commission reiterated its support to the Ombudsman's proposal that these cases, exceptionally referred to Parliament should also be discussed by the appropriate Standing Committee of the House. This matter has remained unresolved.

Another no less important issue that continued to be debated during the year under review was the recommendation made by the Venice Commission to amend the Freedom of Information Act to guarantee transparency of the administration *vis-à-vis* the media and citizens. A recommendation that reflects and supports submissions repeatedly made by the Ombudsman.

The Ombudsman repeatedly voiced his concerns on the need to be given more clout when the Executive and the public authorities were not willing to provide information required for the conduct of the investigation of complaints. There had been situations where the public administration was reluctant to provide such information. Difficulties were being encountered as a result of the stance taken mostly by certain public authorities, that they were precluded from providing the required information because they feared of falling foul of the provisions of the EU General Data Protection Regulation (GDPR).

GDPR IMPLICATIONS RELATING TO THE OFFICE OF THE OMBUDSMAN

The complex issue of the GDPR implications relating to the processing of personal data carried out by the Office of the Ombudsman and more specifically, to the act of collecting personal data as part of ongoing investigations and the extent to which reports drafted in connection therewith may include personal data (in particular names and surnames) in unredacted form, needed to be addressed. It also had to be established to what extent such personal data contained in the said reports could be published directly by the Office of the Ombudsman and whether such data could be disclosed to the Speaker of the House of Representatives and if so, how such data could be publicised, as may be necessary, both by Parliament and by the Office of the Ombudsman.

The Office of the Ombudsman sought comfort on these highly technical issues by requesting a legal opinion from a leading law firm specialising in privacy law matters, Mamo TCV Advocates. The learned advice given provided the Office with substantial and clear guidelines on how to proceed when faced with objections to disclose information because of GDPR restrictions. Essentially, the advice given to the Office of the Ombudsman, with which the Office concurs, can be summarised as follows:

- It is incorrect to state that the Office of the Ombudsman should redact *all* names and other personal data from *all* reports in an indiscriminate manner on the basis of this being required by the GDPR.
- On the contrary, withholding such information *as a general position* might actually be against the public interest and may, in certain cases, even be

detrimental for the proper functioning of the democratic institutions lawfully established in Malta.

- This does not mean that by default, *all* personal data should be revealed in the Ombudsman's reports. There should be a strong legal basis – for example, the public interest ground – for disclosing/publishing such personal data. This is to be assessed on a case-by-case basis within criteria established in the legal opinion.
- On the basis of the said public interest ground it is important that the Ombudsman establishes that such disclosure/publication is in fact necessary to attain this goal of safeguarding the public interest before even including such personal data in the reports intended for publication.
- After exercising due care as to what is to be included in his report/s on a case by case basis and taking into account all of the advice given in the above-cited legal opinion, the Ombudsman would therefore have complied with his legal obligations in this regard under the Ombudsman Act and also the GDPR.
- Once the finalised report reaches Parliament in an unredacted form, it would be for Parliament to determine (as a separate controller) how to use the same and whether any parts of the Ombudsman's report should be redacted. A balance between the public interest (including the public's 'right to know') and the right to privacy of individuals named in the Ombudsman's report should always be established.

Finally and perhaps even more importantly, the legal opinion states that legislative intervention clearly elaborating on the notion of the public interest (or substantial public interest) in connection with the Ombudsman's functions is warranted. This would eliminate certain issues of interpretation that currently exist and which currently risk interfering with the important role and function of the Office of the Ombudsman.

CONCERNS OF DATA PROTECTION SHOULD NOT HINDER INVESTIGATIONS

Issues regarding data protection continued to be raised in the first half of the year under review. In a further legal opinion by the same law firm as cited above, the Office of the Ombudsman was strongly advised, *inter alia*, that "*data protection law should not be used as a shield to the proper functioning of administration in general and to investigative bodies in particular.*" For example, this point is particularly relevant in the context of the exceptions provided in Article 14(5) of the GDPR (exceptions from the obligation to provide information regarding data processing). The Office (of the Ombudsman) should (and shall) continue to emphasise the importance and the necessity that investigations are carried out in private since alerting persons falling under investigation by way of notices/communications may very well jeopardize the proper administration of justice. The stance that every investigation "*shall be conducted in private*" enshrined in Article 18(2) of the Ombudsman Act further cements the importance of confidentiality as intended by the legislator.

The above is, of course, without prejudice to the Office's general legal obligations including those of protecting all personal data entrusted to it as per the same GDPR. In fact, the said legal opinion underlines that the Office cannot disregard its general data protection obligations. It must strive to take appropriate measures to protect the data subject's rights and freedoms. This includes providing all necessary information in the form of a general privacy policy and this as per Article 13/14 of the GDPR, when no such exceptions/carve-outs are available or even appropriate. In this regard, the Office places great importance on the privacy of data subjects it interacts with and shall continue to take all those measures that it believes to be necessary to keep such data secure and ultimately, protected.

COVID-19 – A MAJOR CHALLENGE

2020 will surely be marked as the year in which humanity had to face a global pandemic that had and is still having a huge impact on people's lives, communities and their economic wellbeing. It has caused and is still causing grave health concerns, seriously disrupting our way of life and the wellbeing of society. Malta was not spared with the first recognised case of the disease appearing in March of that year with the number of cases reaching a massive spike in October.

The health authorities rightly introduced strict measures aimed to contain the spread of the disease that inevitably impacted negatively on the working methods of the public administration, even though many services continued to be accessible through a well-developed online network in most areas. Essential services continued to be provided, though certain sectors like education and health were undoubtedly the most to suffer.

Like the rest of the public administration the Office of the Ombudsman had to face the problems and challenges brought about by the pandemic. It took immediate steps to observe and scrupulously implement directives issued from time to time by the health authorities; both regarding the internal organisation of the Office as well as the physical access that the public was allowed, to avail itself of the services it provided.

As was strongly recommended by the health authorities since Covid-19 emerged, staff at the Office was as far as possible working remotely from home on certain days on a roster basis. Care was taken to ensure that all sections of the Office were adequately manned at all time to ensure that there was no break in service. Systems to monitor performance were introduced and the Office is satisfied that the overall results were positive. It is still an experiment in progress that needs to be closely followed to determine whether and to what extent, it is advisable to retain a measure of remote working when life returns to normal.

DECLINE IN CASE LOAD

As a direct result of the Covid-19 situation the Office experienced a substantial decline in its caseload of incoming complaints when compared to the previous year. It also experienced a similar decline in the number of enquiries received. Following directives by the health authorities the Office was closed down completely between March and May, with all staff working remotely. Since all government departments were in a similar situation the average length of time required to complete an investigation was inevitably lengthened. The general public was informed that the only available means to submit a complaint and to get in touch with the Office was via our website, email or telephone.

ADAPTING TO COVID

Management set up internal communication systems via teleconferencing and WhatsApp to keep contact with all our staff, sharing information and work practices. Similarly with all the tight travel restrictions in place throughout the year, contacts with international ombudsman institutions to which Malta is a member had to be maintained virtually. Teleconferencing and webinar facilities were organised and efficiently used. This enabled the Office to continue to carry out its duties as Secretary and Treasurer of the Association of Mediterranean Ombudsmen (AOM) thus contributing to keeping that important association alive and functioning during difficult times.

Similarly virtual meetings were held generally at their request, with representatives of European institutions including the European Legal Affairs Committee of the European Parliament and the Venice Commission. This novel way of communicating with all its obvious limitations, has been found to be very useful and efficient. During the year it has been tried and tested and its technical aspect fine-tuned. Virtual meetings allow for direct immediate contact that is both time saving and cost effective. It has universally been recognised to be one of the main solutions to the socio-political isolation provoked by Covid-19 that threatened to grind most human activity to a halt.

It was a major challenge for humanity but also for the Ombudsman's office in Malta that successfully changed it into an opportunity by developing and sustaining alternative means of communication that would continue to be made use of regularly and to good effect in normal times. During the many weeks of total or partial lockdown, it was through utilising these novel means of communication that the Office could continue to carry out its primary function to investigate complaints and to recommend redress for sustained injustice. Investigators strived to conclude pending investigations notwithstanding difficulties faced when dealing with government departments and public authorities working under similar conditions.

The Ombudsman and his Commissioners did not fail to keep track of issues that were affecting sectors of the population during those stressing months. Exercising their own initiative function, they intervened to draw the attention of public authorities to situations that needed to be attended to urgently. For example during the weeks that the Office was closed for the public, it expressed

itself on the situation of private tuition during the Covid-19 pandemic. It recommended simpler and more effective control over construction practices and gave its opinion on the way the Planning Authority was conducting public consultation meetings in view of the restriction imposed by health authorities. It also expressed itself on the need to protect people obliged to stay at home from the inconvenience caused by the construction industry particularly when carrying out excavation works.

The main tangible negative drawback as a direct result of the pandemic was the inevitable need to restrict personal contact with the public as much as possible. The Office insisted that complaints should be filed online or through the post. Complainants on their part became very wary of direct contact with our customer service. Moreover contact with public authorities and government department during the investigation of complaints had to be severely restricted to telephone and electronic exchanges, with personal contact reduced to a minimum.

This situation resulted not only in a lack of visibility generally but also, and more importantly, in a severe limitation in the process of investigation that depends heavily on one to one interviews with complainants and with representatives of public authorities. Much of the work in the handling of complaints revolves in a process of mediation aimed at reaching a compromise solution, or convincing complainant that he/she had not suffered an injustice or the public authority that it should provide redress, if the opposite was the case.

Obviously, during the year, most of these face to face meetings that are so important during the investigation of complaints and that often lead to positive results had to be severely curtailed. Initiating rigorous outreach activities to recoup the severe loss of visibility that the Office sustained during the year, have to be planned and executed once normality is restored.

EXTENSIVE MAINTENANCE WORK

Taking advantage of the forced lockdown and the marked decrease of physical activity within the Office, management embarked on a programme of extensive maintenance works that was long overdue. Structural repairs and overhaul of office equipment and services were undertaken and completed in time for when the Office resumed normal activity.

NEW CASE MANAGEMENT SYSTEM

The case load of the Office that comprises all enquiries made, complaints filed, own initiative investigations handled by the Ombudsman and his Commissioners utilising the services of his team of investigating officers, is managed through IT software referred to as Case Management System (CMS). The current CMS system has been used since the year 2000. It has since then served the Office well even though it lacked certain features and automation that primarily facilitate the handling of online complaints. The time had come for the Office to have a modern, fast and secure system that would enable the Ombudsman's Office to achieve the desired digital transformation required at this day and age.

Apart from the online integration, the Office urgently required a more efficient digital tool to handle and process complaints with flexible work flow rules, templates and ad hoc reporting. A system that would not only facilitate the process of investigation providing means for adequate follow up in a more transparent and accountable process, but also and perhaps more importantly, that would be more customer friendly providing direct access and information regarding the progress registered in dealing with complaints, to complainants and public authorities alike. A system that would however be tailor made to satisfy the particular requisites laid down by law that the Ombudsman was bound to follow in the investigation of complaints, especially those safeguarding privacy and confidentiality.

The Office embarked on an ambitious project to have a cloud based platform to serve as a backbone for the case management operations integrated within a new complaints website. The Office required a system which was of the latest technology and future proof that would allow for further development. Following the procurement process, the Office entrusted this project to Salesforce an international, reputable cloud based software company. It is envisaged that through their Maltese representatives Deloitte Digital, the project would be completed during the first half of 2021.

The realization of such a major overhaul in the way the Office fulfils its primary function, to provide redress to aggrieved citizens, will clearly necessitate a period of acclimatization and in-house training of all staff involved. It is a major challenge that was kick started towards the end of the year and should be brought to full fruition next year.

Anthony C. Mifsud
Parliamentary Ombudsman

NOTES FROM THE 2020 DIARY

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN

NOTES FROM THE OMBUDSMAN'S DIARY

COVID-19 PANDEMIC: THE OFFICE OF THE OMBUDSMAN ADOPTED A WORK FROM HOME POLICY

13.03.20

Due to situation caused by the Covid-19 virus, the Office of the Ombudsman implemented a work from home policy in order to safeguard the wellbeing of our staff and of the general public.

CONSTRUCTION WORKS: RECOMMENDATIONS BY THE COMMISSIONER FOR ENVIRONMENT AND PLANNING FOR SIMPLER AND EFFECTIVE CONTROL

20.03.20

In June 2019, the Commissioner for Environment and Planning, Perit Alan Saliba, had made various recommendations to the authorities with the main aim of voicing the citizens' concerns and restoring safety in the construction sector.

Construction Works Recommendations for simpler and effective control

- 1 Immediate setting up of the Building Construction Authority fully equipped with resources in proportion with the size of the Construction Industry.
- 2 Deterrents through criminal procedures, fines and direct actions to restore discipline in the industry.
- 3 Licensing and accredited courses for all suppliers and operators in the field supplemented by adequate building codes.
- 4 Imposition on developers to employ only licensed operators under a strict subcontracting regime.
- 5 Enforcement action on issues related to the BCA, OHS&A and PA mastered under the one roof of the Ministry for Law Enforcement.
- 6 Authority to recognise and give priority to neighbours' architect advice.
- 7 Authority to assist neighbours with professional and legal advice.
- 8 Shifting construction related responsibilities from the Planning Authority to the Building Construction Authority thus also shifting the same Planning Process.
- 9 Consider changing certain Planning Policies that are instigating added risks in construction sites.

OMBUDSMAN
COMMISSIONER FOR ENVIRONMENT AND PLANNING

During the same month, new regulations on the avoidance of damage to third parties were published, however, the fatal building collapse that happened a few weeks ago prompted the Commissioner to refresh these recommendations and call for more drastic measures.

The recommendations were sent to the Prime Minister and to the Committee set-up by the Prime Minister tasked with the review of building rules and practices.

NO PLANNING AUTHORITY BOARD MEETINGS SHOULD BE ALLOWED WHILE THE COVID-19 RESTRICTIONS ARE STILL IN PLACE

23.03.20

The Commissioner for Environment and Planning brought to the attention of the Planning Authority the fact that no Board meetings are allowed while the Covid-19 sanctions are still in place as these meetings have to be carried out in public according to the Development and Planning Act.

This is also in line with a notice issued by the same Planning Authority a week ago. Forging ahead with these meetings will seriously put into question the validity of the decisions taken during the same meetings.

The Commissioner for Environment and Planning is publishing the letter he sent to the Planning Authority.



EXCAVATION WORKS - PRESS RELEASE BY THE COMMISSIONER FOR ENVIRONMENT AND PLANNING

14.04.20

The law instructs contractors not to use a mechanical excavator with a hydraulic hammer attachment or a pneumatic drill before 8:00am, between 2:00pm and 4:00pm or after 8:00pm and all day on Sundays and public holidays.

Exemptions are allowed and further restrictions can be imposed at the discretion of the Building Construction Agency. No other construction works shall be carried out before 7:00am, or after 8:00pm or on Sundays and public holidays.

These restrictions follow Legal Notices that were issued a number of years ago.



COMMISSIONER FOR EDUCATION WELCOMES THE INITIATIVE TO ENSURE CERTAIN STUDENTS ARE EQUIPPED TO FOLLOW ONLINE LESSONS

15.05.20

The Commissioner for Education feels it is proper to give praise to Minister Bonnici's initiative to ensure certain students are equipped to follow online lessons.

At moments like these the under privileged suffer even more deprivation, and his pro-active stance as well as his own generosity are inspirational. All those in a position to help him with equipment are urged to do so.

CASE NOTES 2019 Tabled in Parliament**27.04.20**

The Case Notes 2019 was tabled in Parliament by the President of the House of Representatives, the Hon. Anglu Farrugia.

The Case Notes is a bi-lingual annual publication of summaries of selected cases investigated by the Parliamentary Ombudsman and the Commissioners. The publication provides an insight into the wide variety of complaints that are filed with the Ombudsman by aggrieved individuals in order to seek redress. It also sheds light on the different investigative approaches, the Ombudsman and Commissioners adopt and to what lengths, to convince the public authorities to implement their recommendations in order to redress identified injustices.

The 39th edition of the Case Notes includes some examples of complaints that have been resolved through a process of mediation. In the course of investigations it often becomes apparent that the complaint can be resolved through an exercise of mediation bringing together the complainant and the public authority that has given rise to the grievance.

Mediation requires patience and perseverance. The success or failure of a mediation process depends on the attitude of the parties concerned and their willingness to negotiate and compromise. The public administrator and the complainant need to recognise that mediation requires a give and take approach. The public administrator must show a readiness to avoid a rigid position where he is allowed a measure of flexibility in the exercise of his administrative discretion. On the other hand, the complainant must be prepared to make concessions and accept a just and equitable solution that affords him realistic and substantial redress.



OMBUDSMAN DISCUSSES THE GOVERNMENT'S PROPOSED LEGISLATIVE CHANGES WITH THE VENICE COMMISSION

22.05.20

During a conference-call meeting with the Venice Commission, the Parliamentary Ombudsman, Mr Anthony C. Mifsud, discussed the Government's proposed legislative changes for the implementation of the recommendations made by the Venice Commission in December 2018.

The meeting focused on the legislative changes to the Ombudsman Act, proposed by Government in a letter sent to the Venice Commission by the Minister for Justice, Equality and Governance, the Hon. Edward Zammit Lewis on 13th May 2020.

The Ombudsman expressed the following:

i. Constitutional amendments

The Ombudsman welcomes the Governments' proposal which recommends legal amendments whereby the provisions dealing with the appointment, removal and suspension of the Ombudsman will be included in the Constitution.

The Ombudsman has regularly and expressly suggested that in a redrafting of a new Constitution, the provisions regulating the Office of the Ombudsman and that of the Auditor General should be grouped together and placed in a separate title immediately after those regulating Parliament. The Constitution should recognise their status as authorities answerable to Parliament, entrusted by it to verify that the actions of the Executive conform to legislation enacted by it and satisfy the requisites of the right to a good public administration.

ii. Parliamentary Debates on Final Opinions sent to Parliament

The Ombudsman notes that the recommendation made by Government is limited only to the discussion of the Annual Report which outlines a generic picture of the work conducted by the Ombudsman and the Commissioners during the year in review. This falls short from the opinion made by the Venice Commission which recommended that Parliament should be obliged to debate reports addressed to it by the Ombudsman.

When the Ombudsman's recommendations for the award of appropriate redress are left pending or else are not accepted, from time to time, the Ombudsman and the Commissioners send copies of the reports and recommendations to the House of Representatives.

The Ombudsman has time and time again insisted that it should be the House of Representatives that should finally determine whether the opinion of the Ombudsman and the Commissioners, who are his officers, and the recommendations made by them to rectify administrative injustice, merited to be further discussed to determine whether they were correct and should be sustained.

He has therefore recommended that the Speaker should refer reports sent to him by the Ombudsman to the appropriate Standing Committee of the House and that such reference should be followed by a debate statutorily provided for in Standing Orders.

iii. Amendment to the Freedom of Information Act to guarantee transparency of the administration *vis-à-vis* the media and the citizens

One of the main concerns voiced by the Venice Commission in its Opinion relates to the availability of information that the Parliamentary Ombudsman and his Commissioners require from the public administration for the proper investigation of complaints.

In its proposals the Government made no reference to this issue.

The Office of the Ombudsman concurs with its statement in paragraph 100 that *“the Freedom of Information Act should be updated using available international models to guarantee transparency of the administration vis-à-vis the media and the citizens”*.

Even though information to the Office of the Ombudsman is generally forthcoming, the public administration, including public authorities, adopt a non-cooperative attitude when the subject matter of the complaint or the own initiative investigation does not conform with the government’s objectives or policies. This is fundamentally wrong and unacceptable.

THE PARLIAMENTARY OMBUDSMAN PRESENTS THE ANNUAL REPORT 2019 TO THE SPEAKER OF THE HOUSE

22.06.20

2019 – A YEAR OF TURMOIL. NEED FOR MEANINGFUL REFORM.

The Parliamentary Ombudsman, Mr Anthony C. Mifsud, called upon the President of the House of Representatives, the Hon. Angelo Farrugia to present the Office of the Ombudsman’s Annual Report for 2019.

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

The events that happened during 2019 and the worrying facts that they revealed led to a general consensus that urgent measures had to be taken. The Ombudsman has throughout the years voiced serious concerns on administrative shortcomings that were undermining good governance, lack of transparency and accountability. The Office of the Ombudsman, for years had been advocating the need for major reforms. Reforms that have to favour, ensure and secure transparency and accountability and promote a high degree of active public



participation. Reforms that should radically change the public administration to ensure that the management of the common good is exclusively made in the interest of the collectivity and not in that of a corrupt few. Introducing reforms that prove to be merely cosmetic would do more harm than good.

In this spirit, the Ombudsman welcomes the Opinion on proposed legislative changes adopted by the Venice Commission and the government's commitment to implement the Commission's proposals. The Ombudsman will contribute towards the ongoing debate on constitutional and institutional reform especially in those areas which directly concern the functions of the Office of the Ombudsman in the defence of citizens' rights and the affirmation of their fundamental right to a good public administration. In this respect he puts forward a number of proposals meant to strengthen the institution's constitutional and legislative set up that can guarantee transparency and accountability. This through stronger and more effective mechanisms that render them fully independent and autonomous. The Ombudsman stresses the need for the decentralisation of executive power and proposes the setting up of a Council of State.

CASE LOAD

During 2019, the Office of the Ombudsman received 592 complaints of which 336 were investigated by the Parliamentary Ombudsman, 104 were investigated by the Commissioner for Health, 84 by the Commissioner for Environment and Planning and the remaining 68 were investigated by the Commissioner for Education.

THE COMMISSIONER FOR HEALTH DECLARES THAT ALL EVENTS WHICH ATTRACT MASSES HAVE TO BE STOPPED IMMEDIATELY

30.07.20

The Commissioner for Health in the Office of the Ombudsman declares that he is in full agreement that all events which attract masses have to be stopped immediately.

The Commissioner believes that from evidence available, there is no doubt that action has to be taken lest the situation will become desperate.

In the past months, our healthcare professionals, the general public and businesses made huge sacrifices. It has to be ensured that what has been achieved is not lost.

At this stage direction from the Health Authorities is needed.



OMBUDSMAN PRESENTS THE OMBUDSPLAN 2021 TO PARLIAMENT

14.09.20

The Ombudsman Mr Anthony C. Mifsud presented the Ombudsplan 2021 to the Speaker of the House, the Hon. Anglu Farrugia.



COMMISSIONER FOR EDUCATION PASSES AWAY

15.10.20

It is with sorrow that the Office of the Ombudsman announces the sudden death of its Commissioner for Education, Mr Charles Caruana Carabez.

Mr Caruana Carabez was appointed as Commissioner for Education on 1 September 2017. He dedicated his life to promoting education and ensuring high educational standards. During his short term in office as Commissioner for Education he sought to advance good relations between the authorities and public educational institutions while defending the interest of aggrieved citizens seeking



redress against maladministration. He did so with a strong sense of purpose tempered with equity and humanity.

Mr Caruana Carabez had an outstanding career as an educator. He has served as teacher, lecturer and Head of Department at the Technical Institute, the Gian Frangisk Abela Upper Secondary and the University Junior College. He has been a member of the Council of the University, and member of the boards of the ITS, the National Book Council and the National Commission for Further and Higher Education. He has been a prolific contributor of articles to the press and has authored two books on English literature.

The Ombudsman, Commissioners and staff of the Office of the Ombudsman salute his memory and express their deepest condolences to the Caruana Carabez family.

OMBUDSMAN WELCOMES THE VENICE COMMISSION OPINION ON MALTA

16.10.20

The Parliamentary Ombudsman welcomes the recommendations made by the Venice Commission in its final opinion of the 8 of October on *'Ten Act and Bills Implementing Legislative Proposals'* in particular those referring to legislation governing the Ombudsman institution.

Government is invited to take on board these recommendations intended to further strengthen the institution.

VISIT BY THE PRESIDENT OF MALTA H.E. GEORGE W. VELLA

06.11.20



As part of the commemoration of the institution's 25th Anniversary, the President of Malta, H.E. George W. Vella visited the Office of the Ombudsman.

The President of Malta met all members of the staff and thanked them for the invaluable work they carried out. At the end of the visit, the Ombudsman presented the President with a donation collected by his Office for the Malta Community Chest Fund Foundation.



IT IS UNFAIR AND UNJUST FOR PATIENTS TO SUFFER DURING INDUSTRIAL DISPUTES

20.11.20

The Commissioner for Health in the Office of the Ombudsman has noted with satisfaction the agreement reached by UHM – Voice of the Workers and the Ministry for Health, regarding equal conditions of work of Steward Health Care employees and those employed by the Government, as reported in sections of the media. This concerned employees in the Allied Health Profession.

The dispute, took over 15 months to solve, including over two months of Industrial Action. The action affected not only those hospitals run by Steward Healthcare, but also Mater Dei Hospital from where patients needing rehabilitative treatment could not be transferred to Karin Grech Rehabilitation Hospital. Also, patients could not be transferred from one ward to another. This meant that at Karin Grech Hospital patients in the Admission/Quarantine ward could not be transferred to their proper ward.

The Commissioner would therefore like to appeal to the Unions – all Unions – not to use the patient as a pawn in order to exert pressure on the Ministry. On the other hand, the Ministry should take immediate action when a Union pin points a particular problem.

It is not fair and just for patients to be made to suffer.



LAUNCH OF THE BOOK 'SERVING PEOPLE AND PARLIAMENT - THE OMBUDSMAN INSTITUTION IN MALTA, 1995 - 2020'

25.11.20

The official celebration commemorating the 25th Anniversary since the establishment of the Office of the Ombudsman in 1995 was the launch of the book 'Serving People and Parliament - The Ombudsman Institution in Malta, 1995 - 2020' edited by Prof Edward Warrington. The launch was held at President's official residence, San Anton.

During his keynote speech the President of Malta, H.E. George W. Vella encouraged the House of Representatives to debate the Ombudsman's reflections and recommendations more regularly.

President of Malta George Vella said that although he is convinced that individual Members of Parliament take well into account the content of the Ombudsman's annual report, it would be better if the House of Representatives debates the Ombudsman's reflections and recommendations more regularly as, after all, is required by Article 29(1) of the Ombudsman Act and as also suggested by the Council of Europe's Venice Commission in its latest report.







The President acknowledged all those who have served as Ombudsman or Commissioner in his Office and commended them for the dignified way they had served or are serving the mission entrusted to them by Parliament. He also thanked all those who work or have worked in the Office of the Ombudsman, as well as the editor and all those involved in the publication *Serving People and Parliament: The Ombudsman Institution in Malta, 1995-2020*, a publication that he recommended to all those who care about the proper governance of our country.

The event was also addressed by the Ombudsman, Mr Anthony C. Mifsud, and by the book's editor, Prof. Edward Warrington.

The Speeches of the Ombudsman and Prof. Warrington are being reproduced as annex to this Annual Report.

THE LEADER OF THE OPPOSITION VISITS THE OFFICE OF THE OMBUDSMAN

30.11.20

The Leader of the Opposition, the Hon Bernard Grech visited the Office of the Ombudsman on the occasion of the 25th Anniversary from the establishment of the institution.



PERFORMANCE REVIEW 2020

CASES HANDLED BY
THE OFFICE OF THE OMBUDSMAN

PERFORMANCE REVIEW 2020

CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

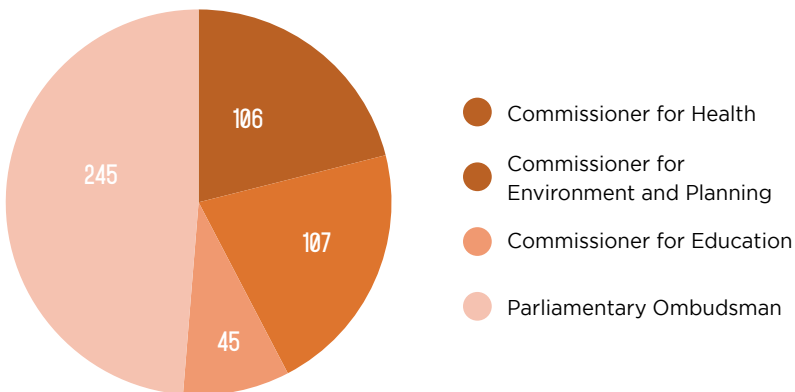
TABLE 1.1 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

2019 - 2020

	2019	2020
	No of cases	No of cases
Parliamentary Ombudsman	336	245
Commissioner for Education	68	45
Commissioner for Environment and Planning	84	107
Commissioner for Health	104	106
Total	592	503

DIAGRAM 1.2 – CASES HANDLED BY THE OFFICE OF THE OMBUDSMAN

2020



During the year under review, the Office of the Ombudsman handled 503 cases, 15% less when compared to last year's case load. As shown in Table 1.1 and Diagram 1.2, of the 503 cases, 245 were investigated by the Parliamentary Ombudsman, 27% less than 2019; 106 by the Commissioner for Health, an increase of 2% from 2019, 107 by the Commissioner for Environment and Planning, an increase of 27% from the previous year and 45 by the Commissioner for Education, 34% decrease from the previous year.

TABLE 1.3 – SUSTAINED CASES CLOSED DURING 2020 INCLUDING OUTCOME

	No of cases	Recommendation implemented	Recommendation not implemented	Sustained - awaiting outcome	Sustained - no recommendation made
Parliamentary Ombudsman	22	9	11	1	1
Commissioner for Education	8	4	4	-	-
Commissioner for Environment and Planning	15	12	3	-	-
Commissioner for Health	35	20	-	-	15
Total	80	45	18	1	16

Table 1.3 shows that during the year under review from the 22 sustained cases by the Parliamentary Ombudsman, 9 (40%) recommendations were implemented by the Public Administration, 11 (50%) were not implemented. Of the two remaining cases one was sustained and the Office of the Ombudsman was waiting for the reaction of the entity and the other was sustained but no recommendation was made.

In the case of the Commissioner for Education, from the 8 sustained cases, 4 (50%) of his recommendations were implemented by the Public Administration, and 4 (50%) were not implemented.

The Commissioner for Environment and Planning sustained 15 of the cases investigated during the year under review, of which 12 (80%) were implemented, and 3 (20%) were not implemented.

The Commissioner for Health had 35 sustained cases, of which the Public Administration implemented 20 (57%), and the rest, 15 (43%) were sustained but no recommendation was made.

In total, from the 80 cases sustained by the Office of the Ombudsman, a total of 45 (56%) cases were implemented, 18 (23%) were not implemented, 1 (1%) was awaiting outcome from the public administration and 15 (19%) even though sustained, no recommendation was made.

TABLE 1.4 – COMPLAINTS AND ENQUIRIES RECEIVED

1996 - 2020

Year	Written complaints					Enquiries
	Total number Ombudsman's Office	Ombudsman	Commissioner for Health	University Ombudsman/ Commissioner for Education	Commissioner for Environment and Planning	
1996	1112					849
1997	829					513
1998	735					396
1999	717					351
2000	624					383
2001	698					424
2002	673					352
2003	601					327
2004	660					494
2005	583					333
2006	567					443
2007	660					635
2008	551					469
2009	566					626
2010	482					543
2011	426					504
2012	623	443	32	56	92	462
2013	493	329	65	38	61	475
2014	538	352	77	60	49	581
2015	611	405	76	65	65	554
2016	557	361	82	59	55	579
2017	520	336	83	39	62	484
2018	553	313	102	54	84	438
2019	592	336	104	68	84	533
2020	503	245	106	45	107	498

TOTAL CASE LOAD

Table 1.4 and Diagram 1.5 show the total case load since the establishment of the Office of the Ombudsman in 1995. During the year in review, the Office handled 498 enquiries, 7% less when compared to 2019 (533). The major cause of drop in the complaints and enquiries is the effect of the Covid-19 pandemic on the operations of the institution.

DIAGRAM 1.5 – OFFICE OF THE OMBUDSMAN – WORKLOAD 1996-2020

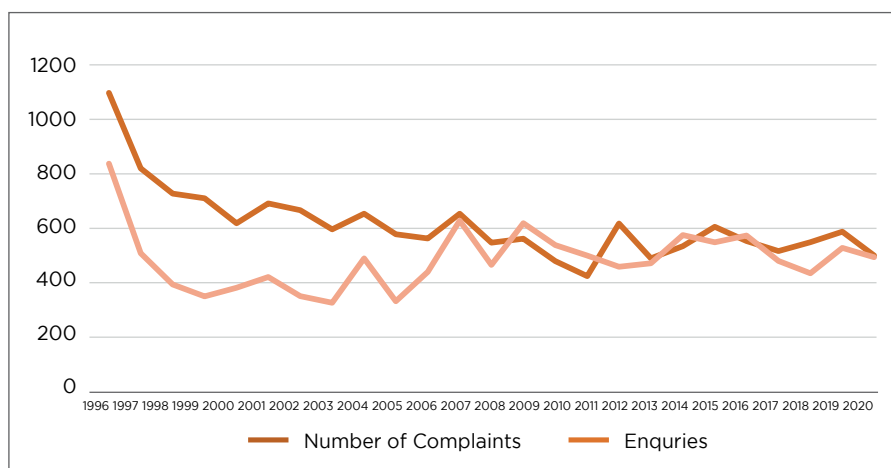


TABLE 1.6 – GENERAL ELECTIONS TREND 1997-2020

Year	No of Cases
1997	829
1998 (GE)	735
1999	717
2002	673
2003 (GE)	601
2004	660
2007	660
2008 (GE)	551
2009	566
2012	615
2013 (GE)	493

Year	No of Cases
2014	538
2015	611
2016	557
2017 (GE)	520
2018	553
2019	592
2020	503

Experience has shown that, when an election is approaching, the Office of the Ombudsman experiences a decline in complaints. This trend is then reversed in the year after a general election is held. This phenomenon is attributed to the post-election euphoria, which sees many citizens seeking direct access to the Government to seek redress. Table 1.6 shows the number of complaints investigated by the Office of the Ombudsman in years prior and after a General Election is held.

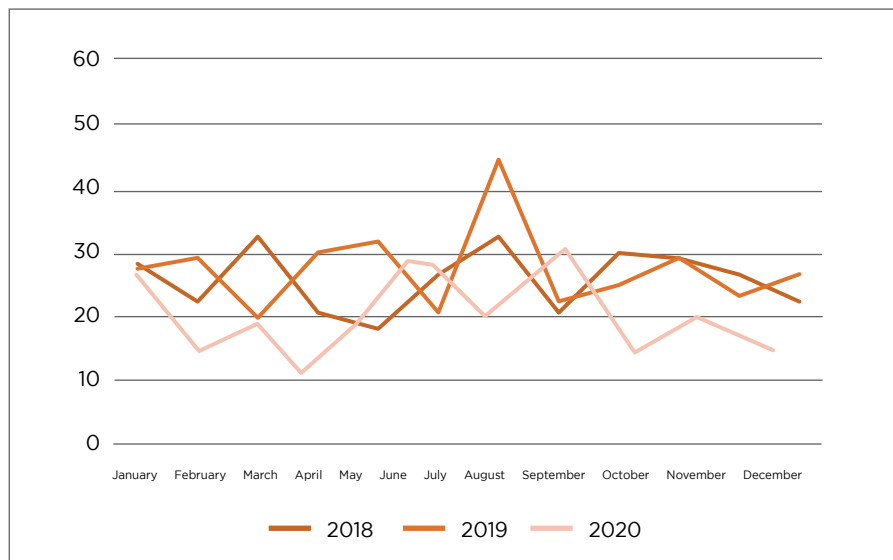
TABLE 1.7 – COMPLAINTS STATISTICS BY MONTH

2018 - 2020

Brought forward from previous year	2018			2019			2020		
	Incoming	Closures	In hand	Incoming	Closures	In hand	Incoming	Closures	In hand
			168			183			167
January	29	41	156	28	30	181	25	20	172
February	22	25	153	30	39	172	13	17	168
March	34	36	151	19	27	164	19	15	172
April	20	17	154	31	30	165	11	23	160
May	17	15	156	33	30	168	17	16	161
June	27	17	166	20	18	170	29	25	165
July	34	25	175	48	32	186	27	13	179
August	20	25	170	22	23	185	20	10	189
September	31	24	177	25	29	181	32	26	195
October	30	36	171	30	29	182	16	21	190
November	27	23	175	23	25	180	20	39	171
December	22	14	183	27	40	167	16	19	168
Total	313	298		336	352		245	244	
Enquiries	438			533			498		

DIAGRAM 1.8 – COMPLAINTS STATISTICS BY MONTH

2018-2020



Between January and December 2020 there was a drop of 31% in the number of completed investigations, from 352 in 2019 to 244 in 2020. This significant drop was a direct result of the Covid-19 situation. Following directives by the health authorities the Office was closed down completely with all staff working remotely. Since all government departments were in a similar situation the average length of time required to complete an investigation was inevitably lengthened and thus resulted in less closure of cases.

At the end of 2020, the pending caseload stood at 168, which is on the same levels of the previous year.

TABLE 1.9 – COMPLAINTS RECEIVED CLASSIFIED BY MINISTRY AND RESPECTIVE DEPARTMENTS 2020

Office of the Prime Minister (OPM)			
Sector	No of Cases received	Investigated	Sector not involved
Identity Malta	2	2	-
Malta Council for Science and Technology	1	1	-
Office of the Prime Minister	7	1	6
People and Standards Division	5	1	4
Public Service Commission	6	5	1
RSSL (Resource Support and Services)	10	10	-
TOTAL	31	20	11
Ministry for Agriculture, Fisheries and Animal Rights (MAFA)			
Sector	No of Cases received	Investigated	Sector not involved
Animal Welfare	1	1	-
TOTAL	1	1	-
Ministry for the Economy and Industry (MEI)			
Sector	No of Cases received	Investigated	Sector not involved
MIMCOL	1	1	-
TOTAL	1	1	-
Ministry for the Economy, Investment and Small Businesses (MEIB)			
Sector	No of Cases received	Investigated	Sector not involved
Air Malta	1	-	1
Economy, Investment and Small Business	1	1	-
Malta Enterprise	3	3	-
MIMCOL	3	2	1
TOTAL	8	6	2

Ministry for Education and Employment (MEDE)

Sector	No of Cases received	Investigated	Sector not involved
Council for the Voluntary Sector	1	1	-
Education Department	2	1	1
Jobs Plus	2	1	1
Life-long Learning	2	1	1
National Commission for Further and Higher Education	2	1	1
National Book Council	1	-	1
TOTAL	10	5	5

Ministry for Energy, Enterprise and Sustainable Development (MESD)

Sector	No of Cases received	Investigated	Sector not involved
ARMS	2	2	-
Malta Enterprise	1	-	1
TOTAL	3	2	1

Ministry for Energy and Water Management (MEWM)

Sector	No of Cases received	Investigated	Sector not involved
ARMS	13	10	3
Enemalta	1	1	-
Energy and Water Management	1	1	-
Regulator for Energy and Water Services	2	2	-
Water Services Corporation	3	3	-
TOTAL	20	17	3

Ministry for the Environment, Climate Change and Planning (MECP)

Planning Authority	1	-	1
TOTAL	1	-	1

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

Sector	No of Cases received	Investigated	Sector not involved
Department of Social Security	13	7	6
Family, Children's Rights and Social Solidarity	3	2	1
Housing Authority	1	0	1
Personal Assistance Fund	1	1	-
TOTAL	18	10	8

Ministry for Finance (MFIN)

Sector	No of Cases received	Investigated	Sector not involved
Central Bank	1	1	-
Commissioner for Revenue (Customs)	2	1	1
Commissioner for Revenue (Inland Revenue)	1	-	1
TOTAL	4	2	2

Ministry for Finance and Employment (MFE)

Sector	No of Cases received	Investigated	Sector not involved
Commissioner for Revenue (VAT)	1	1	-
Commissioner for Revenue (Inland Revenue)	1	-	1
TOTAL	2	1	1

Ministry for Finance and Financial Services (MFIN)

Sector	No of Cases received	Investigated	Sector not involved
Central Bank	1	1	-
Commissioner for Revenue (Capital Transfer Duty)	3	3	-
Commissioner for Revenue (Customs)	1	-	1
Commissioner for Revenue (Inland Revenue)	6	5	1
Commissioner for Revenue (VAT)	4	3	1
Finance and Financial Services	1	-	1
Malta Financial Services Authority	1	-	1
Malta Gaming Authority	1	-	1
TOTAL	18	12	6

Ministry for Foreign and European Affairs (MFEA)

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

Ministry for Gozo (MGOZ)

Sector	No of Cases received	Investigated	Sector not involved
Gozo Affairs	4	2	2
TOTAL	4	2	2

Ministry for Health (MFH)

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

Ministry for Home Affairs and National Security (MHAS)

Sector	No of Cases received	Investigated	Sector not involved
Independent Police Complaints Board	1	1	-
Police	1	1	-
TOTAL	2	2	-

Ministry for Home Affairs, National Security and Law Enforcement (MHSE)

Sector	No of Cases received	Investigated	Sector not involved
Armed Forces of Malta	1	1	-
Civil Protection Department	1	-	1
Correctional Services	1	1	-
Detention Services	1	1	-
Home Affairs, National Security and Law Enforcement	1	1	-
Identity Malta	1	1	-
Identity Malta (Citizenship and Expatriates)	2	1	1
Identity Malta (Public Registry)	1	-	1
Immigration	1	-	1
Local Enforcement System (LESA)	7	1	6
Parole Board	2	1	1
Police	8	2	6
TOTAL	27	10	17

Ministry for Justice, Culture and Local Government (MJCL)

Sector	No of Cases received	Investigated	Sector not involved
Local Enforcement System (LESA)	3	-	3
Malta Council for Culture and the Arts	1	-	1
TOTAL	4	-	4

Ministry for Justice, Equality and Governance (MJEG)

Sector	No of Cases received	Investigated	Sector not involved
Justice, Equality and Governance	2	-	2
National Commission for the Promotion of Equality	1	1	-
TOTAL	3	1	2

Ministry for the National Heritage, the Arts and Local Government (MHAL)

Sector	No of Cases received	Investigated	Sector not involved
Cultural Heritage	1	1	-
Heritage Malta	2	1	1
Local Council	11	9	2
Malta Libraries	2	1	1
TOTAL	16	12	4

Ministry for Social Accommodation (MSA)

Sector	No of Cases received	Investigated	Sector not involved
Housing Authority	3	3	-
TOTAL	3	3	-

Ministry for Social Justice and Solidarity, the Family and Children's Rights (MSFC)

Sector	No of Cases received	Investigated	Sector not involved
Department of Social Security	1	1	-
TOTAL	1	1	-

Ministry for Tourism and Consumer Protection (MTCP)

Sector	No of Cases received	Investigated	Sector not involved
Malta Competition and Consumer Affairs Authority	4	3	1
Malta Film Commission	2	1	1
Malta Tourism Authority	1	-	1
Medicines Authority	4	3	1
Tourism	4	3	1
TOTAL	15	10	5

Ministry for Transport, Infrastructure and Capital Projects (MTIP)

Sector	No of Cases received	Investigated	Sector not involved
Infrastructure Malta Agency	4	4	-
Lands Authority (Joint Office)	3	3	-
Lands Authority (Lands)	14	11	3
Transport, Infrastructure And Capital Projects	2	1	1
Transport Malta	13	8	5
TOTAL	36	27	9

Outside Jurisdiction**15****TOTAL****245****146****84**

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

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

The following analysis focuses on the top five ministries by the number of complaints received. In all, the top five ministries attracted 114 complaints or 47% of the total amount of grievances lodged:

OFFICE OF THE PRIME MINISTER

The Office of the Prime Minister (OPM) topped the list of ministries that attracted the largest number of complaints. From the 245 cases received by the Ombudsman, 31 cases (13%) were against a department or authority which falls under the OPM. From the 31 cases received 20 (65%) were investigated involving the department concerned and the remaining 11 (35%) were investigated without the involvement of the department or authority concerned.

MINISTRY FOR HOME AFFAIRS, NATIONAL SECURITY AND LAW ENFORCEMENT (MHSE)

The Ministry for Home Affairs, National Security and Law Enforcement (MHSE) and the departments under its portfolio attracted the second largest number of complaints received. In all, it attracted 27 complaints, of which 10 (37%) were investigated with the department involved, and 17 (63%) were not.

MINISTRY FOR ENERGY AND WATER MANAGEMENT (MEWM)

The Ministry for Energy and Water Management (MEWM) attracted the third largest number of complaints. From the 20 complaints received from aggrieved citizens, 17 (85%) were investigated, and the remaining 3 (15%) were seen without the need of involving the department/entity concerned. 65% of the complaints received were related to billing issues against ARMS Ltd.

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

The Ministry for the Family, Children's Rights and Social Solidarity (MFCS) attracted 18 complaints, of which 10 (56%) were investigated and the remaining 8 (44%) were looked into without the involvement of the department or entity concerned. The cases were mainly related to Social Security (72%).

MINISTRY FOR FINANCE AND FINANCIAL SERVICES (MFIN)

The Office of the Ombudsman received 18 complaints from aggrieved citizens against the Ministry for Finance and Financial Services (MFIN) of which 12 (67%) were investigated, and the remaining 6 (33%) were seen without the need of involving the ministry. Most of the cases were related to a department falling under the Commissioner for Revenue (78%).

TABLE 1.10 – COMPLAINT GROUNDS

2018-2020

Grounds of Complaints	2018		2019		2020	
Contrary to law or rigid application of rules, regulations and policies	41	13%	37	11%	26	11%
Improper discrimination	16	5%	25	7%	29	12%
Lack of transparency	2	1%	1	1%	1	1%
Failure to provide information	11	4%	16	5%	20	8%
Undue delay or failure to act	79	25%	86	25%	50	20%
Lack of fairness or balance	164	52%	171	51%	119	48%
Total	313	100%	336	100%	245	100%

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

2020

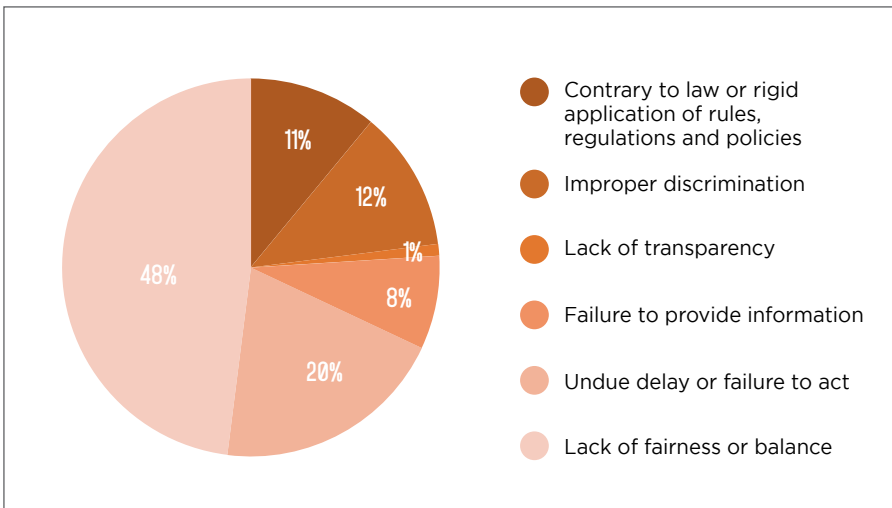


Table 1.10 and Diagram 1.11 show a detailed analysis of the complaints by the type of alleged maladministration. The most common complaints received from aggrieved citizens during 2020 were related to lack of fairness or balance which amounted to 48% of the complaints (119), followed by complaints alleging undue delay or failure to act that attracted 20% (50) of the complaints.

TABLE 1.12 – COMPLAINTS BY LOCALITY

2018-2020

Locality	2018	2019	2020
Attard	8	13	9
Balzan	8	3	6
Birgu	-	1	3
Birkirkara	20	24	11
Birzebbugia	5	9	6
Bormla	4	1	1
Dingli	5	4	1
Fgura	1	3	6
Floriana	1	-	2
Għargħur	-	1	-
Għaxaq	6	4	-
Gudja	6	-	1
Gżira	4	-	5
Hamrun	7	10	1
Iklin	4	1	-
Isla	1	1	-
Kalkara	3	2	-
Kirkop	2	2	1
Lija	1	3	1
Luqa	1	-	4
Marsa	4	2	1
Marsaskala	8	15	10
Marsaxlokk	3	1	-
Mdina	-	-	1
Mellieħa	3	5	5
Mġarr	2	2	1
Mosta	15	14	14
Mqabba	1	-	2
Msida	2	3	2
Mtarfa	2	1	2
Naxxar	8	10	4
Paola	9	7	4
Pembroke	5	7	1
Pietà	4	4	3
Qormi	1	5	5
Qrendi	3	2	1
Rabat	4	6	2

Safi	1	1	-
San Ġiljan	4	5	6
San Ġwann	11	15	8
San Pawl il-Baħar	18	17	8
Santa Luċija	3	3	2
Santa Venera	5	6	2
Sigġiewi	3	3	4
Sliema	11	15	10
Swieqi	6	8	8
Ta' Xbiex	-	-	1
Tarxien	4	7	1
Valletta	5	5	7
Xgħajra	-	-	-
Żabbar	11	8	9
Żebbuġ	7	4	3
Żejtun	5	9	5
Żurrieq	4	6	4
Gozo	16	19	15
Other	16	18	24
Overseas	22	21	12
Total	313	336	245

TABLE 1.13 – AGE PROFILE OF OPEN CASELOAD AT END

2020

Age	Cases in hand
Less than 2 months	27
Between 2 and 3 months	7
Between 3 and 4 months	11
Between 4 and 5 months	4
Between 5 and 6 months	17
Between 6 and 7 months	4
Between 7 and 8 months	2
Between 8 and 9 months	2
Over 9 months	94
Total Open cases	168

Table 1.13 and Diagram 1.14 show the number of cases still under investigation that stood at 168 at the end of 2020.

DIAGRAM 1.14 – PERCENTAGE OF OPEN COMPLAINTS BY AGE (AT END 2020)

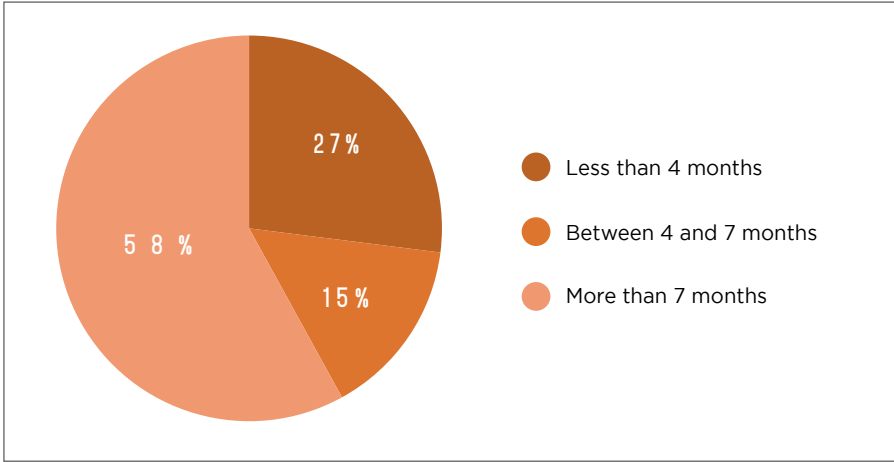


TABLE 1.15 – OUTCOMES OF FINALISED COMPLAINTS

2018-2020

Outcomes	2018	2019	2020
Sustained cases	22	7	22
Cases not sustained	37	55	45
Resolved by informal action	113	149	78
Given advice/assistance	42	52	36
Outside Jurisdiction	76	76	49
Declined (time-barred, trivial, etc.)	8	13	14
Total	298	352	244

DIAGRAM 1.16 – OUTCOMES OF FINALISED COMPLAINTS

2018 - 2020

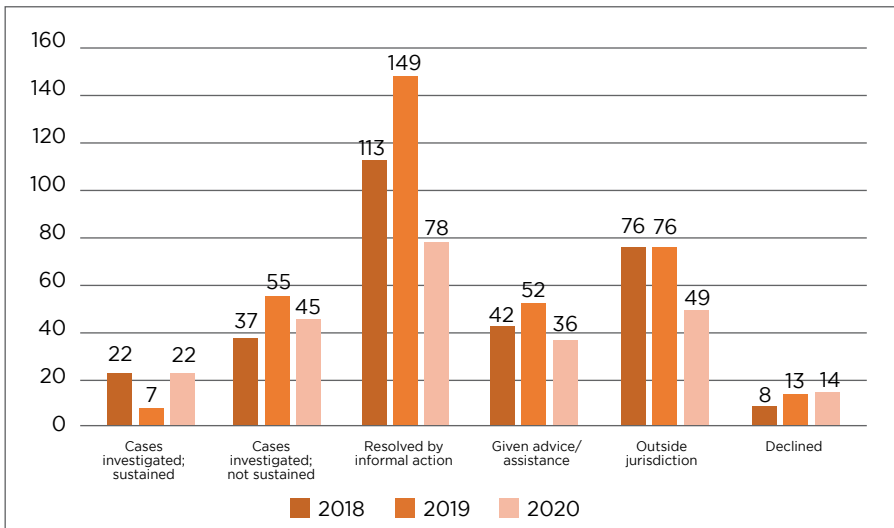


Table 1.15 and Diagram 1.16 show the outcome of the finalised complaints. In 2020, 22 of the finalised complaints were sustained by the Ombudsman with a satisfactory result for the complainant, an increase of 214% from the previous year.

Also, 36 (15%) cases were finalised by giving advice or assistance and without the need to conduct a formal investigation. There were also 78 (32%) cases that were also resolved by informal action while there were 49 (20%) cases that were outside the Ombudsman’s jurisdiction.

TABLE 1.17 – TYPE OF MALADMINISTRATION IN CONCLUDED AND JUSTIFIED COMPLAINTS 2018-2020

Grounds of Complaints	2018		2019		2020	
Contrary to law or rigid application of rules, regulations and policies	22	17%	10	6%	12	12%
Improper discrimination	14	10%	9	6%	4	4%
Lack of transparency	-	-	-	-	1	1%
Failure to provide information	2	1%	11	7%	11	11%
Undue delay or failure to act	42	31%	55	35%	39	39%
Lack of fairness or balance	55	41%	71	46%	33	33%
Total	135	100%	156	100%	100	100%

DIAGRAM 1.18 – CONCLUDED AND JUSTIFIED COMPLAINTS 2018-2020

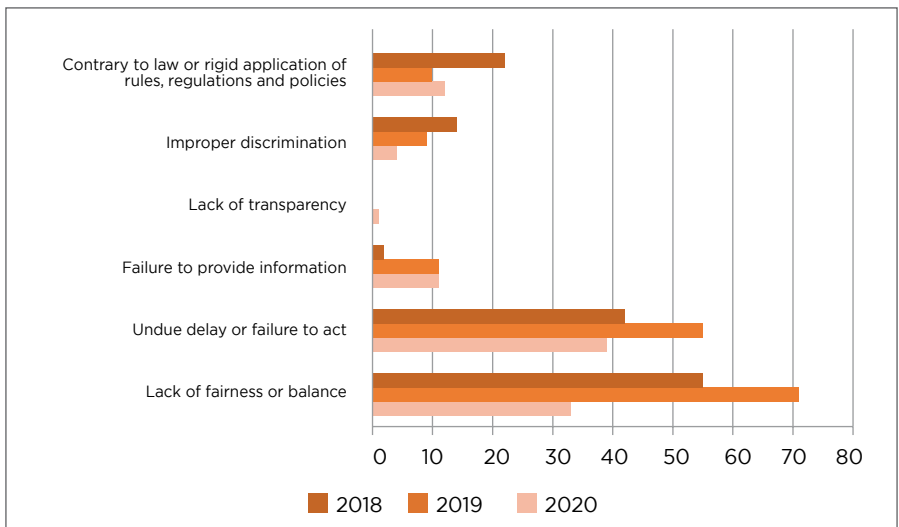


Table 1.17 and Diagram 1.18 illustrate the type of maladministration of justified complaints. Of the 100, justified complaints, 39% concerned allegations that the administration delayed its action or failed to take action. The second most common type of complaints were those concerning a lack of fairness or balance (33%).





COMMISSIONER FOR EDUCATION

ANNUAL REPORT 2020



OMBUDSMAN

ANNUAL REPORT 2020

COMMISSIONER FOR EDUCATION

The year 2020 was marred by the sudden death of the Commissioner, Mr Charles Caruana Carabez, on 15 October 2020. Until he was replaced on 7 January 2021 the pending investigations were temporarily being conducted by the Head of Investigations at the Ombudsman's Office. However no final reports could be drawn up until the new Commissioner was appointed.

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

While in the previous two years the complaints concerning the Education Authorities topped the list, 2020 saw the number of complaints in respect of the University of Malta and the Education Authorities level out. The complaints concerning the Education Authorities mostly comprised claims lodged by employees with regard to promotions or transfers, while those made by students referred mainly to stipends and scholarships.

With regard to the University, the situation remained more or less as in the previous year, with approximately half of the complaints originating from the staff - generally issues concerning promotion, whilst those originating from students concerned claims of unfair treatment by academic Boards or by Faculty members particularly but not exclusively in postgraduate, including doctoral, courses.

In the case of MCAST, complaints were, as in the previous year, equally balanced between students and staff. However, one cluster of complaints involving two particular members of staff suggests a worrying trend in this institution, notably the inability of the Senior Management Team to diffuse in real time potentially disruptive situations. The requirement imposed on MCAST by MEDE that all formal communication with the Office of the Ombudsman, and therefore also with the Commissioner, should be channelled through the Permanent Secretary of the said Ministry continued to be a cause of delay in the investigation of a number of complaints.

Overall, one could notice the trend, also observed in the previous year, of people becoming increasingly sensitive to unfair treatment, whether real or perceived, with a corresponding increase of public confidence in the Office of the Ombudsman.

There was a decrease in the number of cases resolved by informal action and an increase in the number determined by a finding that the complaint was justified. Nevertheless mediation and resolution by informal action remained the preferred course for the Commissioner. This course of action, however, can only be resorted to when there is no ingrained animosity between the parties and when both sides show a predisposition to dialogue rather than a propensity to stick to entrenched ideas – resulting often in a lot of entrenchment and very little by way of ideas.

The Commissioner continued pressing for the resolution of complaints within the shortest possible period of time, and consistently requested the respondent institution to forward information and/or reply to queries by a set date. Unfortunately the respondent institutions often failed to meet this requirement. In particular MEDE (as the Ministry responsible for Education was then designated) continued to give the Commissioner the impression that his work is considered as a kind of bothersome intrusion which the Ministry would gladly do without. The University, on the other hand was by far more responsive and forthcoming in the investigation process.

TABLE 2.1 - COMPLAINT INTAKE BY INSTITUTION

[2018 - 2020]

Institutions	2018	2019	2020
University of Malta	24	25	18
MCAST	10	7	8
Institute of Tourism Studies	0	4	1
Education Authorities	19	32	18
Outside Jurisdiction	1	-	-
Total	54	68	45

TABLE 2.2 - COMPLAINTS BY INSTITUTION CLASSIFIED BY GENDER AND STATUS OF COMPLAINT (2018 - 2020)

	University of Malta			MCAST			Institute of Tourism Studies			Education Authorities			Total		
	2018	2019	2020	2018	2019	2020	2018	2019	2020	2018	2019	2020	2018	2019	2020
Students															
male	10	9	7	2	1	1	-	-	-	6	7	5	18	17	13
female	5	8	8	2	2	-	-	1	-	5	7	3	12	18	11
Staff															
male	7	5	3	4	3	6	-	2	-	2	4	2	13	14	11
female	2	3	-	2	1	1	-	1	1	6	13	6	10	18	8
Others	-	-	-	-	-	-	-	-	-	-	-	2	-	-	2
Total complaints by students and staff	24	25	18	10	7	8	-	4	1	19	31	18	53	67	45
Own initiative cases	-	-	-	-	-	-	-	-	-	-	1	-	-	1	-
outside jurisdiction	-	-	-	-	-	-	-	-	-	1	-	-	1	-	-
TOTAL	24	25	18	10	7	8	-	4	1	20	32	18	54	68	45

TABLE 2.3 - OUTCOMES OF FINALISED COMPLAINTS

[2018 - 2020]

Outcomes	2018		2019		2020	
Resolved by informal action	8	19%	16	27%	13	21%
Sustained	4	10%	5	8%	6	10%
Partly sustained	3	7%	-	-	2	3%
Not sustained	16	38%	24	41%	19	31%
Formal investigation not undertaken/discontinued	5	12%	6	10%	16	26%
Investigation declined	6	14%	8	14%	5	9%
Total	42	100%	59	100%	61	100%

TABLE 2.4 - COMPLAINT GROUNDS [2018 - 2020]

Outcomes	2018		2019		2020	
Unfair marking of academic work	-	-	-	-	5	11%
Special needs not catered for	2	4%	-	-	2	4%
Promotion denied unfairly	5	9%	4	6%	-	-
Post denied unfairly (filling of vacant post)	1	2%	2	3%	2	4%
Unfair/discriminatory treatment	44	81%	61	90%	35	78%
Lack of information/attention	2	4%	-	-	1	3%
Own-initiative	-	-	1	1%	-	-
Total	54	100%	68	100%	45	100%

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

Unfair discriminatory treatment	12
Unfair treatment regarding government stipends and scholarships	8
Unfair treatment on academic grounds	13
Unfair treatment on non-academic grounds	2
Total cases	35



COMMISSIONER FOR ENVIRONMENT AND PLANNING

ANNUAL REPORT 2020



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ANNUAL REPORT 2020

COMMISSIONER FOR ENVIRONMENT AND PLANNING

Notwithstanding the will to improve issues related to fundamental rights and changes, or rather corrections, to rules and procedures being implemented as we speak, in the year of the pandemic, a record of 107 cases were received by the Commissioner, doubling the number of cases reached in 2016.

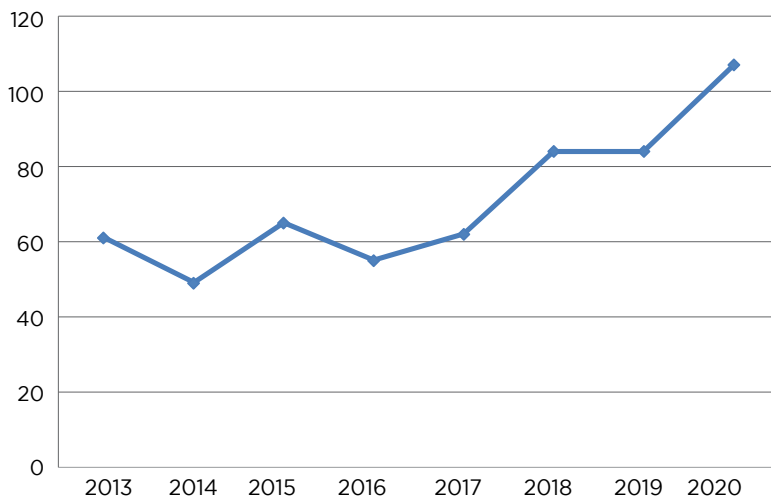
This year also switched the channels of communication with new Executive Chairpersons for both the Planning Authority and the Environment and Resources Authority and a Minister entrusted with the portfolio of planning, environment and construction.

Statistics throughout the years clearly show that majority of complaints are addressed against the Planning Authority, mainly directed towards discriminatory procedures adopted by the Authority, permits issued against the Authority's own policies and procedures and failures by the same Authority to hold its ground and take direct action against illegal developments.

Unfortunately, unlike the previous years, this year the Planning Authority failed to implement certain recommendations made by the Commissioner. This is very disappointing from various aspects. Primarily, the Authority does not justify its stand why it will not be implementing the recommendations that follow the investigation and a reasoned opinion. Secondly, non-implementing a recommendation does not necessarily mean that only one complainant will remain grieved as usually its implementation will also affect other citizens living nearby as well as other citizens suffering from similar grievances. Thirdly, the remedy enshrined in the Ombudsman Act - when recommendations are not implemented or when a satisfactory reply is not forthcoming - of forwarding the final opinion to the Minister and eventually to the Prime Minister and to the House of Representatives, is not having the desired effect. One can only hope that changes to the Ombudsman Act will provide citizens with adequate means of redress - notwithstanding the autonomous standing certain Government entities enjoy - similar to those decided by the Administrative Review Tribunal.

TABLE 1: NEW CASES 2013-2020

YEAR	2013	2014	2015	2016	2017	2018	2019	2020
NEW CASES	61	49	65	55	62	84	84	107



This chart shows the number of new cases since the appointment of the first Commissioner for Environment and Planning.

TABLE 2: NUMBER OF CASES

	2020	2019
Pending cases from previous years	30	27
New requests for investigation	107	84
Total	137	111

The cases hailing from previous years stand relatively low, with many waiting for information or action from the relative Government entity. No case is closed before it is first assured that the action promised is actually implemented. When no action following a final opinion is taken, the case is only closed after the Commissioner refers the matter to the Prime Minister or the House of Representatives in line with the Ombudsman Act.

TABLE 3: CLOSED CASES

	2020	2019
Pending cases from previous years	23	24
New requests for investigation	85	57
Total	108	81

During this year, most cases from previous years were closed, while 79% of the new cases received were also concluded during the same year. This is thanks to the collaboration of various Government entities against which complaints are addressed. When complaints are found not to qualify for an investigation or not to be sustained, complainants are usually informed within a short time-frame and the majority of the complainants understand and accept the reasons and the ruling given by the Commissioner.

TABLE 4: GOVERNMENT ENTITIES SUBJECT TO COMPLAINTS

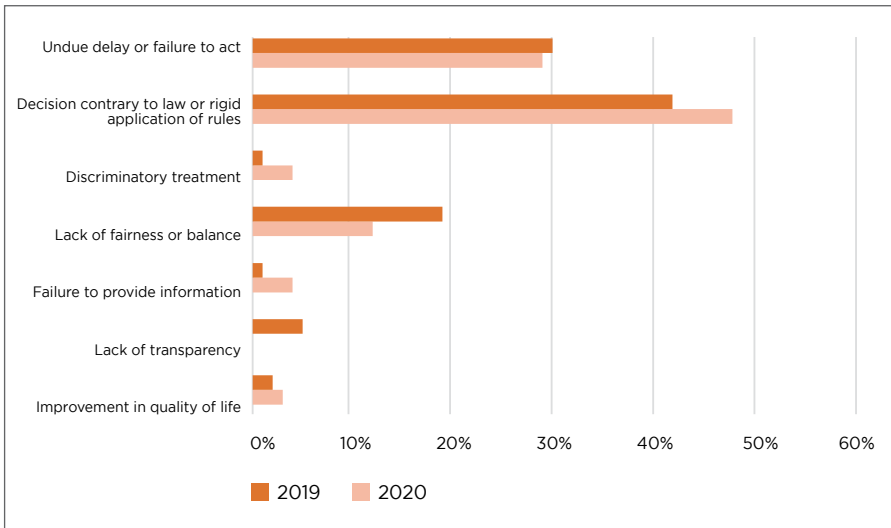
	2020	2019
Building Regulation Office/Building Construction Agency	4	7
Civil Protection Department	-	1
Enemalta	1	-
Environment and Planning Review Tribunal	1	-
Environment and Resources Authority	3	1
Housing Authority	1	2
Infrastructure Malta	9	6
Jobsplus	-	1
Lands Authority	7	3
Local Council	8	1
Ministry for Transport, Infrastructure and Capital Projects	1	3
Mount Carmel Hospital	1	-
Occupational Health and Safety Authority	1	1
Planning Authority	61	54

Police	1	-
Superintendence of Cultural Heritage	-	1
Transport Malta	6	1
Water Services Corporation	2	2
Total	107	84

The Planning Authority retains the highest case load with 57% of the new cases received this year. This year we also saw a significant increase in cases against Transport Malta and the Local Councils. Whilst Local Councils do sometimes also act as complainants, some complaints are also directed against the same Local Councils, in some cases for similar reasons the same Local Councils complain about. The increase in the number of cases against Transport Malta is understandable considering the volume of works related to the transport infrastructure that is underway.

TABLE 5: CASELOAD BY NATURE OF COMPLAINT

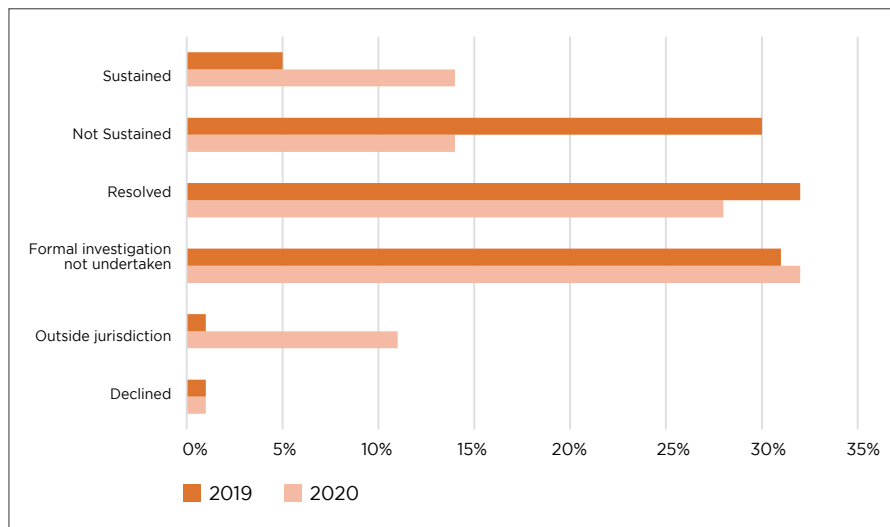
	2020		2019	
Undue delay or failure to act	31	29%	25	30%
Decision contrary to law or rigid application of rules	52	48%	35	42%
Discriminatory treatment	4	4%	1	1%
Lack of fairness or balance	13	12%	16	19%
Failure to provide information	4	4%	1	1%
Lack of transparency	-	-	4	5%
Improvement in quality of life	3	3%	2	2%
Total	107	100%	84	100%



Undue delay/failure to act and decision contrary to law/rigid application of rules remain predominant when it comes to the nature of the complaints received by this Office. As the preacher of non-discrimination, this Office is striving to see Government entities, particularly the Planning Authority, reaching a balance where direct action against illegalities is taken with the same enthusiasm and efficiency to the handing out of authorisations, and where complainants' requests are replied to in a quicker and better way. This is also mirrored in the fact that almost 85% of the cases received against the Planning Authority are filed by objectors. One can understand that the investment an applicant is willing to make on a proposal does not compare with the complainants' limitations to protect their rights from issues related to the same proposal, however, there should be a clear message that the Government entities are there not only for the applicants, but also for all the residents at large.

TABLE 6: OUTCOME FOLLOWING CLOSURE OF CASES

	2020		2019	
Sustained	15	14%	4	5%
Not Sustained	15	14%	24	30%
Resolved	30	28%	26	32%
Formal investigation not undertaken	35	32%	25	31%
Outside Jurisdiction	12	11%	1	1%
Declined	1	1%	1	1%
Total	108	100%	81	100%



This year, there was a significant increase of fifteen sustained cases. For the majority of these cases, the recommendations were accepted and these included cases related to the publication of information, failure to follow the adequate procedure in applications, inappropriate publication of site notice and holding public meetings online before adopting appropriate guidelines. The recommendations that were not implemented involved the case concerning the registration of contractors that was irregularly delegated by the Building Regulation Office, and a case concerning a regularisation application where the Planning Authority failed to inform the objector about the hearing without providing any remedial measure. The issue related to the regularisation process *vis-à-vis* the CTB (Category B) concessions was also not resolved and was referred to the Ombudsman to be forwarded to the Prime Minister and eventually to the House of Representatives. This case should have been easily resolved by revoking the Planning Authority Circular in question that, put simply, is punishing the owner twice for the same contravention. In another case, although the Ministry for Gozo failed to publish the information on a major public project, the matter was resolved when the Planning Authority eventually took it upon itself to publish this information. A case that involved changing the levels of the streets before an extensive area is developed, in order not to flood a square in a village core, was also not solved.

There were other cases where there was no need to formulate a final opinion after the entity involved took the required action. These included action by Transport Malta to remove huge eye-sores that spoiled incessantly our picturesque Grand Harbour and action by Infrastructure Malta to postpone and amend works at a tourist area and to remove a dangerous bottle-neck on a stretch of street. There were also various informal recommendations concerning changes to planning procedures that were taken in hand by the Planning Authority.

PLANNING PROCEDURES

Improvements on issues related to Development Planning were achieved following a number of investigations involving cases against the Planning Authority, namely:

1. all Schedule 1 applications are to be directed to the Planning Board;
2. publication of certain types of applications, even before validation;
3. all planning reports related to regularisation applications made available to the public;
4. interested third parties being informed about the Commission hearing date, even for regularisation applications;
5. not allowing changes in plans following the submission of minor amendment applications as interested third parties have only fifteen days from notification of receipt of the same application to submit representations;
6. informing interested third parties with the minor amendment decision notice;
7. requests for revocation can be submitted by any person without the requirement of an architect or lawyer;
8. appeals from revocation decisions are to be submitted within 30 days from the Board hearing date as established in the Development Planning Act rather than within 30 days from the decision publication date established in the Environment and Planning Review Tribunal Act;
9. in cases where an illegal development is not sanctioned through an application, this illegal development has to first be removed or else provided for through a bank guarantee before the permit is issued; and
10. the directorate is not to reject submissions by representees following update of the case officer report.

A number of complaints also lead this Office to intervene in respect to a number of permits that were being issued by the Planning Authority that exceeded the height limitation established in 2015 (DC2015). These permits were being issued with the condition that *“In case of demolition and redevelopment, the additional height that is being granted above the building height limitation shall not constitute a vested right in terms of Article 72(2)(b) of Chapter 552 of the Laws of Malta. Consequently, the eventual development on site must conform to all the plans, policies and regulations applicable at that time.”* The Commissioner highlighted the fact that this condition does not make sense since the Authority is not above the law, as Article 72(2d) of the same Act gives neighbouring developments the same rights due to legal commitments, independent of any conditions the Planning Authority may impose on individual permits. Whilst it is understandable that whole floors should not be sacrificed for minor differences in height limitations (especially when the relatively high lower floors have to be preserved for other justified reasons) the height limitation can still be protected by reducing the one-metre *opramorta* (parapet-wall) at roof level whilst moving any services to lower levels. Justifying this move on the grounds that the one-metre *opramorta* at roof level is compulsory does not hold since policy P35 of DC2015 imposes a one-metre parapet wall on the exposed facade only.

THE BUILT ENVIRONMENT

DC2015 drastically changed our streetscapes, gradually erasing the typical two-storey terraced developments to make way for condominiums. Generally speaking, DC2015 made one necessarily move to a villa area or else to an urban conservation area or a settlement to live in one or two-storey surroundings. Acknowledging that one can only go up since lateral expansion was exhausted under the 2006 rationalisation exercise, the Planning Authority should start thinking of pushing incentives to preserve not only the detached areas, traditional cores and settlements but also relatively modern areas. Furthermore, focusing development proposals analysis to the external fabric (and permitted uses) whilst shifting internal space considerations to the building aspect regulated by the eventual Building and Construction Authority will help to reach the required levels of attention necessary in finding the right balance to enhance the built environment.

CONSULTING ERA ON ODZ APPLICATIONS

Whilst one has to acknowledge the efforts done in giving the Environment and Resources Authority more clout when it comes to Outside Development Zone applications, particularly with the introduction of Legal Notice 454/20, the end of the tunnel is nowhere closer as ERA has to be given more powers on all Outside Development Zone applications and not simply on applications subject to the process of an Environmental Impact Assessment only.

ACCESS TO RAMBLERS

This year a lot of awareness was raised regarding barred accesses to countryside walks either through the blocking of openings in rubble walls or else through the mushrooming of no entry signs. The latter can be regulated by the authorities when similar signs face public footpaths by imposing the requirement of an authorisation whereas any works on rubble walls are already being regulated under the development planning act.

THE BUILDING AND CONSTRUCTION ACT

This year the Commissioner made further recommendations after the fatal collapse of March 2020, adding to the recommendations made in 2019. The finalization of the Building and Construction Act is only the first step of a long journey leading the industry to a desired level. Whilst hoping that this Authority will attract knowledgeable and reliant human resources, the full co-operation of the industry is a must for this Authority's assignment to prove successful. The industry is already co-operating by footing the neighbours' architect bills that will also be legally binding. The Commissioner would also like to see this co-operation extending to procedures relating to extensive excavation prohibitions by the Law Courts where similar requests are made cheaper, simpler and fast-tracked for neighbours, whereas the final decision is actually taken through

a more formal counter-claim presented by the developer so that the current burden on the neighbours is overturned. The Commissioner has and will continue to stress that the distance from the party-wall during excavations prescribed in the law by our forefathers should become the norm rather than the exception since what applied when excavations were done manually and near low buildings should apply even more when excavations are carried out using heavy machinery and adjacent to multi-storey buildings.

It is also important to highlight that the licensing or blacklisting of contractors by a specialized body can only be effective once it can be ascertained that works are not being done by unsupervised unlicensed labourers and blacklisted contractors who operate as sub-contractors.

On another but related note, the establishment of the Building and Construction Authority should seek the alignment of related laws, particularly the law related to the Ombudsman so that the portfolio of the Commissioner will also include this new Authority.

OMBUDSPLAN 2021

This year the Commissioner also contributed to the publication of the Ombudsplan and attended the related meeting in front of the House Business Committee. In this plan the Commissioner highlighted the need for improvements on transparency to be extended to public property and cultural heritage, for further involvement of the Environment and Resources Authority in outside development zone decisions and for adequate funding to non-government organisations and Local Councils in order to attain the right balance in development planning considerations. In this plan, the Commissioner also touched on the setting-up of the Building and Construction Authority and on other matters related to transport, with particular reference to the facilities for pedestrians on the road network.

CONCLUSION

Authorities related to building and construction, particularly the Planning Authority, are shaping the future of this country and the need to have the right people at the helms of these authorities is as important as one's need for the right medication. Scrutinizing only the chosen chairpersons of the authorities by the Public Appointments Committee is not enough and any new appointments in the future should also see this to include the Chief Executive Officers and members of the Council, Boards and Commissions. What, for example, has been stated in Parliament that the executive council of the Planning Authority has no decision powers does not hold ground when one considers that the major part of the processing and lobbying on applications is done by the executive whilst the executive also decides minor amendments, authorisations under the development notification order and also decides on building alignments and de-scheduling requests. This is not being mentioned to cast any doubts on the

existing officers and members but only as a suggestion to improve the public perception of this authority, supplementing the lauded introduction of the call for interested persons to fill similar important roles.

To conclude, the extraordinary circumstances of 2020 left no mark on the operations of the Office and this Office will continue hearing the complainants and giving them the help they deserve, even if this help should have come from the relative Government entity in the first place.



COMMISSIONER FOR HEALTH

ANNUAL REPORT 2020



OMBUDSMAN

ANNUAL REPORT 2020

COMMISSIONER FOR HEALTH

PERFORMANCE REVIEW

During 2020, the Commissioner for Health received 106 complaints, of which 56 were from the public and 50 complaints were from employees who work in the public health sector.

As shown in Table 4.1, compared to the previous year, the number of complaints remained on the same level, however there was a change in the trend from who the complaints were received. The complaints received from the public were 25% less from the 2019, however there was a substantial increase of 47% in complaints from staff.

The natures of complaints are very specific and vary from year to year. The following is a list of the most relevant complaints received during 2020.

From the public:

- Not given the required medicines
- The situation at Mount Carmel Hospital
- Deduction in pension
- Misinformation by the ART Clinic, Mater Dei Hospital
- Irregularity in a Call for Tender
- Not given Treatment due to Industrial Action
- Not sent abroad for treatment
- Substandard attention at certain Homes for the Elderly
- Cancellation of a confirmed order for the supply of surgical masks

From staff:

- Grade not included in recently signed Sectoral Agreement
- Unfair process by Selection Board regarding filling of a Post
- Situation at the Public Health Laboratory
- Unfairly found ineligible to apply for a Call for Applications

TABLE 4.1 - COMPLAINTS RECEIVED

JAN - DEC 2020

Complaints Received	2019	2020
From the public	72	56
From employees in the Health Sector	31	50
Own Initiative Investigation	1	-
Total	104	106

TABLE 4.2 COMPLAINTS RECEIVED

JAN - DEC 2020

Against	No. of complaints
Ministry for Health	75
Ministry for the Family, Children's Rights and Social Solidarity	11
Medicines Authority	5
Office of the Prime Minister	3
Social Care Standards Authority	3
Public Service Commission	1
Ministry for Gozo	1
Ministry for Home Affairs and National Security	1
Air Malta	1
Identity Malta	1
Ministry for Transport, Infrastructure and Capital Projects	1
Customs	1
Department of Contracts	1
MCCAA	1
Total	106

Table 4.2 shows that from 106 complaints received, 75 were against the Ministry for Health, 11 against the Ministry for the Family, Children's Rights and Social Solidarity and 5 against the Medicines Authority. The rest of the cases were spread on a number of entities as shown in the table.

TABLE 4.3 OUTCOME OF CASES RECEIVED IN THE YEAR 2020

JAN – DEC 2020

Outcome	No. of complaints
Sustained	26
Not sustained	20
Resolved by informal action	9
Advised	3
Withdrawn	4
Pending at Ministries/Department	43
Pending at Ombudsman	1
Total	106

Table 4.3 illustrates the outcome of the complaints received. In 2020, from the 106 complaints received, 26 cases were sustained, 20 cases were not sustained and 9 were resolved by informal action. It is worth noting that 41% of the 2020 case load are pending a reply from the Ministries or departments.

Table 4.4, shows the age profile of pending cases. By the end of the year under review of the 44 pending cases, 11 cases were pending for over 6 months.

JAN TO DEC 2020

Age	Pending cases
Less than 1 month	8
Over 1 month	6
Over 2 months	1
Over 3 months	9
Over 4 months	5
Over 5 months	4
Over 6 months	1
Over 7 months	1
Over 8 months	4
Over 9 months	-
Over 10 months	5
Total	44

TABLE 4.4 PENDING AT MINISTRY/ENTITY

JAN – DEC 2020

Department/Ministry	No. of complaints as at 31 December 2020	No of complaints as At 31 May 2021
Ministry for Health	31	22
Medicines Authority	5	5
Social Care Standards Authority	3	2
Office of the Prime Minister	2	1
Ministry for the Family, Children's Rights and Social Solidarity	1	1
Public Service Commission	1	-
Total	43	31

As shown in Table 4.4, the Ministry for Health tops the list of pending feedback by 31 (71%) cases which are pending some sort of reply or feedback. This is expected as the Commissioner's remit focuses on health related cases.

TABLE 4.5 CLOSED CASES FROM PREVIOUS YEARS

JAN – DEC 2020

	No. of complaints
Closed Cases from the 2016 Caseload	1
Closed Cases from the 2017 Caseload	1
Closed Cases from the 2018 Caseload	5
Closed Cases from the 2019 Caseload	24
Total	31

Table 4.5 illustrates the number of cases closed from previous years during the year under review. From the 31 cases closed by the Commissioner, 24 (77%) emanated from the 2019 caseload.

TABLE 4.6 TOTAL NUMBER OF PENDING COMPLAINTS (2012 – 2020 – AS AT 31 DEC 2020)

Department / Ministry / Sector	No. of complaints	As on 31/5/2021
Prime Minister	3	3
Office of the Prime Minister	4	3
Ministry for Health	83	94
Department of Social Security	2	1
SCSA	2	1
Medicine Authority	2	2
Law Courts (ex-officio or by complainant)	5	6
Parliament	2	2
Ombudsman	8	8
Total	111	120

As shown in Table 4.6 at the end of the year under review, the Commissioner for Health had 111 pending cases of which 83 were against the Ministry for Health.

TABLE 4.7 RECOMMENDATIONS NOT IMPLEMENTED UP TO JAN – DEC 2020

Department / Ministry / Sector	No. of complaints
Ministry for Health	8
Office of the Prime Minister	4
Total	12

TABLE 4.8 – STATUS OF RECOMMENDATIONS NOT IMPLEMENTED UP TO JAN – DEC 2020

Department / Ministry / Sector	No. of complaints
Cases referred to the Prime Minister (awaiting reply)	3
Cases referred to the Parliament	2
Total	5

Table 4.7 and 4.8 show the status of the recommendations made by the Commissioner which were not implemented by the administration. Of the 12 cases which were not implemented 8 related to cases against the Ministry for Health.

TABLE 4.9 RECOMMENDATION STILL UNDER CONSIDERATION

JAN – DEC 2020

Department / Ministry / Sector	No. of complaints
Office of the Prime Minister	3
Ministry for Health	7
Department of Social Security	1
Total*	11

Table 4.9 shows the number of cases which are still under consideration, of which 3 are still waiting feedback from the Office of the Prime Minister, 7 from the Ministry for Health and one from the Department of Social Security.

In his caseload, the Commissioner for Health has also six cases which are pending due to procedures in court.

FROM PREVIOUS ANNUAL REPORTS

PROTOCOLS

The issue of protocols still persists and the Commissioner for Health will continue to pursue unless the Department of Health agrees to review the cases with a “*clinical*” eye instead of an administrative eye only. Until this problem is solved, the patients will either continue to suffer or will have to seek help from Charities. The Ministry for Health still refuses to amend the Protocols in spite of the fact that they were drawn up to be not only discriminatory but also in breach of the law (Social Security Act). The Commissioner for Health has been reporting on this issue these last seven years.

EXCEPTIONAL MEDICINAL TREATMENT COMMITTEE

The issue of branded medicines also persists since 2016. Unless and until the Exceptional Medicinal Treatment Committee (EMTC) sticks to its Terms of Reference and consider every case on its own merits, no progress can be achieved. On the contrary cases will accumulate and the patients will have either to put their hands into their pockets or will also have to seek help from Charities.

PRIVATISATION OF HEALTH SERVICES

As reported in last year’s Annual Report, the Commissioner for Health has requested the full text of the contracts signed between the Ministry for Health and Vitals/Steward Health Care.

Another year has passed and copies of the contracts have still not been made available.

PRELIMINARY INVESTIGATIONS

During 2020 the following preliminary investigations were made:

- Entitlement of Health Facilities by British Citizens
- Use of Bisphenol A
- Barts Students
- Quarantine Leave
- Prescription of Anticoagulants vice Warfarin
- Treatment of Elderly patients in Government Institutions
- Covid-19

A preliminary investigation about Treatment for Diabetic Retinal Degeneration which was started in 2016 has still not elicited a reply from the Department of Health.

OWN INITIATIVE INVESTIGATIONS

Two own initiative investigations were concluded quite a while ago. One about Hearing Tests on neonates, and the other concerning Neonatal and Paediatric Intensive Care Unit (NPICU) which is the ITU for infants up to three years of age.

The report about the Hearing Tests was sent to the Department of Health on 22 January 2015 and the report on the NPICU was sent on 23 May 2019.

After six years, in March 2021, a pilot study, concerning the hearing tests, was initiated and it is hoped that the service will be available this year. Regrettably, very little or no action, has been taken about the NPICU report.

The Commissioner will continue to follow-up these cases.

CONCLUSION

The Commissioner for Health repeatedly highlighted major concerns and problems which his Office encounters year after year. The issues are:

- Delay to receive replies especially from the Department of Health
- The issue of illegal protocols;
- The issue of the Exceptional Medicinal Treatment Committee which does not act in the interest of the patients; and
- The provisions in the Ombudsman Act to refer not implemented recommendations to the Prime Minister and to Parliament are not producing any results. This Office finds it hard even to exert pressure for timely replies let alone, in certain cases, to persuade implementation of recommendations. This Office has often been criticised of being edentulous.

Meanwhile, in certain cases, complainants continue to suffer injustices.



APPENDICES

ANNUAL REPORT BY THE
PARLIAMENTARY OMBUDSMAN



APPENDIX 1

CORRESPONDENCE WITH THE VENICE COMMISSION ON THE BILLS TABLED BY GOVERNMENT SEEKING TO IMPLEMENT THE LEGISLATIVE AND CONSTITUTIONAL CHANGES RECOMMENDED BY THE VENICE COMMISSION

Schnutz Rudolf DÜRR
Head of Constitutional Justice Division
Venice Commission

17 September 2020

Dear Mr Durr,

I thank you for your email of 2 September. I appreciate the Commission's request to my Office to give it our reaction to the Bills tabled by Government seeking to implement the legislative changes recommended by the Commission in its Opinion of 8/9 October 2020.

Your request follows earlier exchanges that matured into a fruitful dialogue that in certain respects helped to improve the drafts as originally proposed. It is clear that the Commission is aware of the contributions made by my Office in a number of documents, most of them accessible from our website, on how the country's institutions needed to be strengthened and developed and in particular, how the Office of the Ombudsman and other constitutional authorities with a similar remit should have their independence and autonomy from the Executive fully guaranteed through constitutional safeguards.

Their status of institutions at the service of Parliament should be enhanced and, while retaining their identity and institutional autonomy, they can be developed into an integrated mechanism of investigative control and audit of the actions of the public administration. A mechanism that will strengthen a weak Parliament in respect of a very strong Executive, giving it tools to effectively control maladministration and check abuse of power.

My Office has given its reaction to the Acts/Bills presented by Government and in particular, its position regarding the amendments proposed and finally agreed, to Act No XLII of 2020 amending laws which regulate the Office of the Ombudsman in its Ombudsplan for the coming year presented to the Speaker of the House of Representatives on 14 September 2020. This document too will be available on our website once it is laid on the Table of the House. It is written in the Maltese vernacular but I can set out the main points of our submissions.

Need for Radical Reform Recognised

1. Repeated unequivocal declarations by leading exponents of government that it was conscious of the need for radical reform in the most important sectors of the public administration showed that the government is determined to realize a serious project on the lines recommended by the Venice Commission. This was a ray of hope that the country might be moving back on the road leading to a transparent and accountable public administration free from any shadow of corruption and abuse of power. An administration that would be subject to audit and control not only by courts that were really independent and that could ensure that the law is applied equally to all without fear or favour, but also subject to the scrutiny of authorities that were truly autonomous and independent like the Office of the Ombudsman, that would ensure that the conduct of those entrusted with the administration of the common good was transparent, accountable and free from maladministration or abuse of power.
2. It was comforting to note that Government really intended to realize such a reform in a serious and effective manner, while adopting and implementing the recommendations of the Venice Commission on improving and strengthening constitutional authorities entrusted with the management of public affairs. Those recommendations were accepted in principle and would as far as possible and consonant with the needs of the country, be translated into Bills to be submitted to Parliament.
3. These steadmills are the product of the fruitful consultation between Government and the Commission. One of these Bills that was eventually unanimously approved by Parliament, amends legislation regulating the Ombudsman institution. I welcomed this initiative though I expressed my regret that my Office was not consulted at any stage, either during the process of drafting of the Bill or during debate on all stages of the passage of the Bill through Parliament.

BILLS IMPLEMENT COMMISSION'S RECOMMENDATIONS

4. It is clear that the aim of this Bill, that has now become law and indeed all the other nine Bills, was limited to implementing the recommendations of the Venice Commission. This is as far as they go. They do not go any further. It is my view that in the case of the Act amending the Ombudsman legislation it could have gone much further. There is room for improvement not only regarding the extension of the constitutional protection to the institution but also to important aspects of the Ombudsman Act (Act XXI of 1995). Many proposals made by my Office in recent years have not been considered by the legislators and there are still important issues that need to be addressed.
5. It is not correct to say that these amendments were rather cosmetic and of little substance and that they did not really strengthen the institution. On the contrary, I feel that while I have reservation on the way they were introduced and that in certain respects they could have been more comprehensive and holistic, they are an important step forward as far as they went and reflected substantially the recommendations of the Commission. It is my opinion that the amendments would help the Ombudsman institution and other similar authorities to find their proper place in the constitutional, organisational structure that should eventually emerge from the proposed Constitutional Convention.

Milestone Amendments

6. The amendments to Article 64 of the Malta Constitution unanimously approved by Parliament, must surely be considered to be a milestone in the development of the Ombudsman institution in Malta. While previously the Constitution only ensured that there would be at all times an Ombudsman to investigate the actions of the public administration (and this in itself was a notable achievement), it is now securing constitutional protection though other vital elements essential to guarantee its independence and autonomy. These include the method of appointment, suspension and removal of the Ombudsman, the extension of full constitutional protection to the Ombudsman in the exercise of his functions, and identifying and underlining the wide powers he enjoys to investigate complaints. The Constitution now recognises his right to investigate complaints not only at the request of the injured party but also and more importantly, on his own initiative. The Constitution recognises the basic principle that in the exercise of his functions, the Ombudsman should not be subject to the direction or control of any other person or authority.
7. It is true that the legislator chose to extend this additional constitutional protection to the Ombudsman by transposing into the Constitution lock,

stock and barrel a number of articles from the Ombudsman Act. The Ombudsman therefore already enjoyed this status and protection under ordinary law. However granting the Ombudsman constitutional recognition and guarantees in these areas enhances the status of the institution. What is even more important is the fact that the protection accorded by the amendment of Act XLII of 2020 goes well beyond what the Commission's recommendations envisaged in its Opinion. In fact all these amendments are all inserted in Article 64 of the Constitution that as a whole enjoys the strongest guarantee in so far as sub-article 2 of Article 66 of the same Constitution provides that that Article cannot be amended unless a motion to that effect enjoys the approval of not less than two-thirds of all the member of the House of Representatives. This high level of constitutional protection extends to the right of the Ombudsman to conduct own initiative investigations as well as to the blanket principle that in the exercise of his functions the Ombudsman is not to be subjected to, the control or direction of any other person or authority. A constitutional entrenchment that only qualifies the constitutional and legal structures of the institution in Malta to be among the best and strongest in Europe. Undoubtedly the approval of these amendments give the Maltese Ombudsman a high placing when assessing the compliance of his institution to the Venice Principles.

8. I note that as originally proposed, the Bill amending the legislation governing the Ombudsman institution would have done away with the current method of appointment of the Ombudsman that under the Ombudsman Act, is made by the President of the Republic, acting on the recommendation of the House of Representatives made in a motion approved by not less than two thirds of its members. A procedure that in the case of the Ombudsman worked perfectly for twenty five years since the institution was set up. The Bill originally proposed the introduction of a system similar to that of the appointment of judges, that would ultimately have left the final decision in the hands of the Prime Minister, albeit following the approval by a simple majority or a motion in the House of Representatives. The Opposition strongly resisted the change and government accepted to withdraw its proposal and retain the previous system. It would have been a major retrograde step had this not taken place. The Office is satisfied that consultation between Government and Opposition on this issue has borne fruit. Clearly my Office would have opposed the change had it been consulted beforehand.

Good step forward – Missed Opportunity

9. I am on record that the constitutional amendments are a good, positive, welcome step forward. They are however in my opinion, a missed opportunity in so far as the legislator could have on this occasion addressed important issues to which my Office has been drawing attention for some time. These include:-
- a) the recognition in the Constitution of the fundamental right of the citizen to a good public administration, as well as the corresponding obligation of the State's duty to care and its liability for damages caused by its officials and independents in the exercise of their functions;
 - b) that the Ombudsman institution, that of the Auditor General and the Commissioner for Standards in Public Life should be acknowledged as constitutional authorities with the express functions to protect citizens from bad public administration and to hold those entrusted with the administration of the common good accountable for their actions;
 - c) that the incumbents of these high offices are considered to be Officers of Parliament;
 - d) in order to secure a measure of uniformity and eventually, a healthy synergy between these three institutions, it is recommended that basic rules governing their institutions and that ensure their independence and autonomy, are to be modelled on the same lines;

Same protection as Auditor General

- e) the Ombudsman has time and again noted that as things stand, the constitutional protection enjoyed by the Auditor General in Article 108 of the Constitution is much more detailed and extensive than that which his Office enjoys, even after the amendments recently made. The amendments under review in fact do not address for example;
 - (i) the constitutional guarantee that the salary, allowances payable to the Ombudsman and Commissioners should be payable from the Consolidated Fund even though the Ombudsman Act does provide for this. The Constitution should provide that there should be a Deputy Ombudsman, an Office that could be assigned to one of the Commissioners for the Administrative Investigations. Nor is the right of the Ombudsman to recruit the staff he requires for the exercise of his functions constitutionally sanctioned.

Guarantee of funding

10. The duty of Parliament to allocate adequate funds to the Ombudsman required for the exercise of his functions should also be constitutionally sanctioned. These funds, approved by Parliament, should also be a charge of the Consolidated Fund without the need of any other approval. The management of his finances of the Office of the Ombudsman should be subject only to audit of the Office of the Auditor General. The provision of adequate funding and the fiscal structures necessary to ensure the institution's independence and autonomy merit to be constitutionally safeguarded.

These and other related issues have been discussed in more detail in a number of publications by my Office, notably the most recent one being the Annual Report for 2019. These documents can be accessed in our website and should help to give a more comprehensive backdrop to my reaction to the amendments under review.

11. There are a couple of other points I will make.

Proof of corruptive acts

Part 2 of Act XLII of 2020 introduced two amendments to the Ombudsman Act. The first amendment provides that if during or after an investigation, the Ombudsman is of the opinion that there is evidence of any corrupt practice as defined in the Permanent Commission Against Corruption Act, the Ombudsman may refer his findings directly to the Attorney General. Similar amendments were introduced in a number of the ten Acts/Bills under review. It is meant to strengthen procedures in the fight against corruption and rightly so. It is a positive amendment, even though in the case of the Ombudsman it does not significantly break new ground.

The Ombudsman Act in fact gives the Ombudsman and Commissioners the right that, if during an investigation it results that there is substantial evidence of significant violation of duties of misbehaviour on the part of an officer or employee of any department, organisation or local council (and therefore this includes also an act of corruption), they have the duty to refer the matter to the competent authority including the police. In such cases however the Ombudsman can after having referred the case to the competent authority continue with the investigation. The new amendment, that is in addition to the one just quoted, gives the Ombudsman the power to refer his findings regarding corruptive acts directly to the Attorney General. In such cases he is bound to stop his investigation.

Interestingly the Ombudsman is not required to refer his findings to the Permanent Commission Against Corruption. The amendment is intended to ensure more effective procedures for investigations on allegations of corruption at the highest level. I can only be in complete agreement with such an amendment.

Debate on Final Opinions

12. The second amendment to the Ombudsman Act refers to the debate of the Annual Report of the Ombudsman in the House of Representatives. The amendment provides that such report has to be debated as soon as possible during a parliamentary sitting appointed for this purpose.

The Ombudsman Act gives the Ombudsman the right to refer to the House of Representatives final opinions concluded by him and his Commissioners, that have not been accepted by the public authorities that failed to implement their recommendations. The Ombudsman has for years been insisting that those final opinions that were referred by him to Parliament in exceptional cases, should be discussed in the appropriate Committee of the House and a political decision taken on their findings.

13. The Venice Commission fully understood the Ombudsman's position. In fact in its second Opinion it expressly commented that "The Government's comments provide that the Parliament should debate the Annual Report of the Ombudsman which would include important reports proposed by the Ombudsman. The Commission maintains in its Recommendation that in exceptional cases, the Ombudsman should be able to trigger discussions in Parliament on important reports also in between discussions on Annual Reports". The insistence of the Venice Commission correctly reflects the Ombudsman's position.
14. I strongly feel that an open discussion in Parliament on important final opinions by the Ombudsman is not only an exercise of accountability and transparency. It can also prove to be means to ensure enforceability of final opinions delivered by my Office. Fleetingly discussing such important cases during a debate on the Annual Report is surely not an adequate means of redress to an injured party who has suffered injustice at the hands of the public administration.

During the debate the Committee of this amendment the Opposition stood by the recommendation made by the Venice Commission but was unfortunately overruled. My Office will continue to pursue this goal.

Request for Information

15. The amendments do not address the recommendation of the Venice Commission that it would be necessary to give more clout to the Ombudsman's request for information when the Executive is not willing to provide such information. My Office has been faced with a situations where the public administration was reluctant to readily provide the information required for the investigation of certain complaints. While the Ombudsman Act gives my Office wide powers to access information and even determines

penalties for non-compliance with his summons, the law fails to establish a speedy judicial procedure to ensure that the person summoned readily provides the required information. An amendment to the Ombudsman Act to give to the investigating officers the tools required to conduct their investigations as speedily as possible is therefore required.

Appointment to High Public Office

16. An issue that has not been completely, satisfactorily resolved is the method of appointment of persons to occupy high public offices. The Government sought to tackle this concern of the Venice Commission by proposing that such appointments could be made by the President of Malta acting in accordance of the advice of the Cabinet of Ministers, instead of merely on the advice of the Prime Minister. In most of these cases the Opposition insisted and is still insisting such appointments should be made by the President acting on a vote by the House of Representatives enjoying at least a majority of two-thirds. These amendments have been put forward in response to the Commission's recommendation that excessive power in the hands of the Prime Minister to make appointments in key positions needed to be reduced.
17. While it is appreciated that the Opposition's insistence on a two-thirds parliamentary majority to fill a number of these positions could lead to horse training and even deadlock in a highly polarised, bi-partisan parliament, the solution proposed by government and eventually approved is largely cosmetic. It does not constitute an effective balance to the Prime Minister's executive power. This also for the reason that Malta's experience and culture have been that ultimately power will rest with the Prime Minister who enjoys full control over his Cabinet.
18. My Office has attempted to find a third way out of this impasse by suggesting the setting up of a Council of State that exist in small European States like Belgium and Luxenberg. This Council could be given the function to contribute towards identifying persons who are most suitable to occupy these high offices for their merit and experience. This proposal has been illustrated in last year's Annual Report and put forward as a proposal for consideration of the Constitutional Convention.

Persons of trust

19. Finally my Office has for years been highlighting the anomalous position of the appointment of persons to positions of trust. It has repeatedly pointed out that the system has been in place even before 2013 and was being abused both in number and in the quality of the positions to which these persons were appointed. The Ombudsman was and still is of the opinion that the system was bypassing constitutional provisions regulating employment in the public service and in practice could therefore be held to be unconstitutional. This has been the opinion of the Public Service Commission until 2013. There have been attempts to identify a legal basis for this practice and to gloss over this potential unconstitutionality. Attempts that were bound to fail because of lack of appropriate constitutional amendments to sanction and regularise such political appointments.

20. The Appointment (Persons of Trust) Bill is another attempt to establish a legal basis for the appointment of persons of trust. The Commissioner of Standards in Public Life has been given the function to oversee the conduct of some categories of these persons. In a recent decision dated 1 September 2020 following a complaint on the posting of political and offensive comments on Facebook involving by a person of trust employed in a government agency, the Commissioner made a number of negative considerations on the content of the Bill that I am reproducing as an annex to this document for your consideration. May I add that I am in full agreement with the assessment of the Commissioner for Standards in Public Life and his recommendations.

I trust that these comments adequately respond to your query for my reaction on the Bills under review.

Yours truly,

Anthony C. Mifsud
Parliamentary Ombudsman (Malta)

APPENDIX 3

DISKORS TAL-OMBUDSMAN, IS-SUR ANTHONY C. MIFSUD WAQT IT-TNEDIJA TAL-KTIEB 'SERVING PEOPLE AND PARLIAMENT' FL-OKKAŻJONI TAL-25 SENA ANNIVERSARJU MIT-TWAQQIF TAL-UFFIĊĊJU TAL-OMBUDSMAN

25 ta' Novemberu 2020

Eċċellenza, Sur Sammut, Sur Imħallef, Kummissarji, kollegi u mistednin,

Iltqajna llum biex infakkru l-ħamsa u għoxrin anniversarju mit-twaqqif tal-Uffiċċju tal-Ombudsman fl-1995. Dak iż-żmien kienu għaddejjin inizzjattivi kostituzzjonali u amministrattivi li saħħew il-kontabilità tal-uffiċjali tal-istat. Attrezzaw il-Parlament biex jaqdi aħjar id-dmirijiet leġiżlattivi u ta' skrutinju amministrattivi. Saħħew id-drittijiet taċ-ċittadin fir-rigward tal-Istat.

L-ewwel pjanijiet għall-anniversarju ħasbu f'sensiela ta' attivitajiet matul is-sena kollha: uħud minnhom kellhom jithassru minħabba l-imxija. Żammejna tnejn: iż-żjara tal-President ta' Malta fl-uffiċċju tagħna, u l-publikazzjoni tal-ktieb li għalih ingbarna hawn illum.

Iż-żjara tal-President seħħet ħmistax ilu: f'isem sħabi, inrodd ħajr lill-E.T. Dr George Vella ta' dan is-sinjal qawwi ta' apprezzament u appoġġ, f'isem l-Istat, għax-xogħol li jsir mill-Uffiċċju tal-Ombudsman. Inrodd ħajr lill-President ukoll talli għoġbu jilqagħna hawn fil-Palazz ta' San Anton biex inniedu l-ktieb *Serving People and Parliament*.

Il-ktieb jirrakonta l-istorja tal-Uffiċċju fl-isfond tal-iżviluppi kostituzzjonali, amministrattivi u soċjali li seħħew f'Malta matul l-aħħar kwart ta' sekl. Ma xtaqt li jkun biss *souvenir* tal-anniversarju: xtaqt li, permezz tar-riċerka u r-riflessjonijiet li nġabru fih, issir analiżi fil-fond tal-missjoni tal-Ombudsman kif żviluppat minn mindu twaqqaf l-Uffiċċju, u fejn tista' twassal fis-snin li ġejjin. Jinstemgħu diversi ilhna mill-paġni tal-ktieb, fosthom tiegħi u tal-predeċessuri tiegħi, tal-i-Speaker u ta' xi deputati parlamentari, kif ukoll l-analiżi tal-editur. L-isfond ta' dan id-diskors kollu hu l-ilmenti ta' Maltin u barranin li dehrilhom li xi parti mill-amministrazzjoni pubblika naqsithom għal raġuni jew oħra.

Fuq il-qoxra tal-ktieb tidher il-gardjola tal-Ponta tal-Isla thares fuq il-Port il-Kbir lejn il-Belt Valletta. Ix-xbieha tiġbor fiha l-qofol tal-missjoni afdana 'l-Uffiċċju tiegħi mill-Parlament, jiġifieri, li l-Ombudsman jħares id-dritt għal

amministrazzjoni tajba ta' kull min jgħammar f'pajjiżna, mingħajr ebda distinzjoni. B'widnejh jisma' l-ilmenti tan-nies fil-konfront tal-amministrazzjoni pubblika; b'għajnejh jixref fuq l-istituzzjonijiet governattivi bil-għan li jagħraf difetti fis-sistemi amministrattivi, jew attitudnijiet lejn l-awtorità, il-liġi u ċ-ċittadin li jistgħu jnaqqsu l-kwalità tas-servizzi pubbliċi li jingħataw lin-nies.

Certament, għalkemm għassies, l-Ombudsman mhux għadu tal-amministrazzjoni pubblika: għall-kuntrarju, sa mit-twaqqif tiegħu, l-Uffiċċju fittex li jrawwem spirtu ta' koperazzjoni u ta' rispett reċiproku bejnu u l-entitajiet governattivi li jaqgħu taħt il-gurisdizzjoni tal-Ombudsman. Mhux dejjem naqblu, u kultant insibu reżistenza għar-rakkomandazzjonijiet li ngħamlu wara stħarriġ bir-reqqa, imma napprezza l-koperazzjoni u l-attenzjoni li, aktar iva milli le, l-amministrazzjoni tagħti lili u lil sħabi.

Bħal dik it-tajra mnaqqxa fuq il-gardjola tal-Ponta tal-Isla, l-Ombudsman jgħares fil-bogħod, lil hinn mill-kurrenti u l-kontroversji politiċi. Għalhekk, kemm jien kif ukoll il-predeċessuri tiegħi hassejna d-dmir li noffru ta' kull sena, riflessjonijiet, ideat, pariri u proposti dwar il-governanza lill-Parlament, permezz tar-rapport annwali kif ukoll rapporti u studji oħra. Filwaqt li napprezza r-relazzjonijiet tajbin li hemm bejn l-Ombudsman u l-Parlament, nixtieq li nitkellmu aktar ta' spiss u aktar fit-tul dwar l-amministrazzjoni pubblika u l-governanza, bis-sehem sfiħ ukoll tal-kapijiet tas-Servizz Pubbliku u ta' korpi u awtoritajiet oħrajn.

Din ix-xewqa mqanqla minn għarfien li, fi żminijietna, l-integrità tal-governanza u l-effettività tal-amministrazzjoni saru sfidi kbar għal kull pajjiż. Huma l-mezzi ewlenin li bihom Stat iwieġeb għall-iżviluppi soċjali, ekonomiċi, ambjentali, teknoloġiċi u kulturali tas-seklu wieħed u għoxrin. Minbarra l-element tekniku/xjentifiku, dawn huma sfidi u żviluppi li jqajmu mistoqsijiet dwar id-dinjità tal-bniedem u l-gid tas-soċjetà. Mill-ilmenti li jistħarreġ, l-Ombudsman jaf tajjeb il-konsegwenzi kultant qawwijin li jista' ikollhom nuqqasijiet fil-governanza u l-amministrazzjoni fuq in-nies.

Quddiem l-isfidi ta' żminijietna, l-arti tat-tmexxija politika trid taħdem id f'id max-xjenza u t-teknika. Hawn jidhlu l-hekk-imsejħin 'uffiċjali tal-Parlament', fosthom l-Ombudsman u l-Kummissarji fi hdan l-Uffiċċju tiegħu. L-investigazzjonijiet tal-Ombudsman, bħal dawk tal-Awditur Ġenerali, jistgħu jgħinu lill-Parlament, lill-Gvern tal-ġurnata, u lill-amministrazzjoni pubblika jgħarf u aħjar difetti u nuqqasijiet f'sistemi, proċessi, organizzazzjoni u tmexxija maniġerjali. Xi kwalifiki għandna? Minn banda, l-Uffiċċju tal-Ombudsman kiseb esperjenza amministrattiva wiesgħa matul is-snin; mill-banda l-oħra, l-Uffiċċju jqiegħed fl-ewwel post in-nies li jużaw is-servizzi pubbliċi.

Fi żmienna, bosta servizzi essenzjali qed jingħataw minn azzjendi privati taħt is-sorveljanza ta' awtoritajiet regolatorji, iżda l-mekkanizmi biex jinstemgħu ilmenti tal-klijenti m'għandhomx is-setgħat u l-awtonomija li għandu l-Ombudsman. Minbarra dan, nies li mhumiex ċittadini mhux dejjem igawdu mill-ħarsien sfiħ tal-liġijiet u l-aġenziji governattivi ta' Malta. Għal raġunijiet soċjali u kulturali, uħud minnhom lanqas ma jkunu jafu bl-għajnuna u r-rimedji li joffru istituzzjonijiet bħall-Ombudsman. Għalhekk, donnu wasal iż-żmien li tiġi evalwata l-gurisdizzjoni tal-Ombudsman, bil-għan li jinkludi kull servizz meqjuż

‘essenzjali’; din hija materja għall-Parlament. Min-naħa tiegħi, ikun tajjeb li jitjiebu l-programmi ta’ *outreach* biex l-Ombudsman ikun magħruf aħjar u aktar aċċessibbli għan-nies l-aktar emarginati.

Sinjuri, kemm ilu li twaqqaf, l-Uffiċċju tiegħi ħadem bis-sħiħ b’riżq in-nies, fi spirtu ta’ lejaltà lejn l-Istat. Kiseb il-fiduċja tal-poplu u tal-Parlament. L-istima li jgawdi l-Ombudsman ta’ Malta fost il-fraternità internazzjonali tal-Ombudsmen jikseb ġieħ għar-Republika tagħna. Filwaqt li nsellem lill-predeċessuri tiegħi, lil sħabi u kollegi, nawgura li l-Uffiċċju jibqa’ tarka għaċ-ċittadin, u għassies tal-kuxjenza ta’ kull min jeżercita kariga pubblika jew jipprovdi servizzi essenzjali f’isem l-Istat.

APPENDIX 3

DISKORS TAL-PROF EDWARD WARRINGTON, EDITUR TAL-KTIEB 'SERVING PEOPLE AND PARLIAMENT – THE OMBUDSMAN INSTITUTION IN MALTA, 1995 – 2020' B'KOMMEMORAZZJONI TAL-25 ANNIVERSARJU MIT-TWAQQIF TAL-UFFIĊĠJU TAL-OMBUDSMAN – IL-PALAZZ SAN ANTON

25 ta' Novemberu 2020

Eċċellenza, Sur Sammut, Sur Imħallef, Kummissarji, kollegi u mistednin,

Iltqajna illum biex infakkru l-ħamsa u għoxrin anniversarju mit-twaqqif tal-Uffiċċju tal-Ombudsman fl-1995. Dak iż-żmien kienu għaddejjin inizjattivi kostituzzjonali u amministrattivi li saħħew il-kontabilità tal-uffiċjali tal-istat. Attrezzaw il-Parlament biex jaqdi aħjar id-dmirijiet leġiżlattivi u ta' skrutinju amministrattivi. Saħħew id-drittijiet taċ-ċittadin fir-rigward tal-Istat.

L-ewwel pjanijiet għall-anniversarju ħasbu f'sensiela ta' attivitajiet matul is-sena kollha: uħud minnhom kellhom jithassru minħabba l-imxija. Żammejna tnejn: iż-żjara tal-President ta' Malta fl-uffiċċju tagħna, u l-publikazzjoni tal-ktieb li għalih ingbarna hawn illum.

Iż-żjara tal-President seħħet ħmistax ilu: f'isem sħabi, inrodd ħajr lill-E.T. Dr George Vella ta' dan is-sinjal qawwi ta' apprezzament u appoġġ, f'isem l-Istat, għax-xogħol li jsir mill-Uffiċċju tal-Ombudsman. Inrodd ħajr lill-President ukoll talli għoġbu jilqagħna hawn fil-Palazz ta' San Anton biex inniedu l-ktieb *Serving People and Parliament*.

Il-ktieb jirrakonta l-istorja tal-Uffiċċju fl-isfond tal-iżviluppi kostituzzjonali, amministrattivi u soċjali li seħħew f'Malta matul l-aħħar kwart ta' seklu. Ma xtaqtx li jkun biss *souvenir* tal-anniversarju: xtaqt li, permezz tar-riċerka u r-riflessjonijiet li ngabru fih, issir analiżi fil-fond tal-missjoni tal-Ombudsman kif żviluppat minn mindu twaqqaf l-Uffiċċju, u fejn tista' twassal fis-snin li ġejjin. Jinstemgħu diversi ilħna mill-paġni tal-ktieb, fosthom tiegħi u tal-predeċessuri tiegħi, tal-i-Speaker u ta' xi deputati parlamentari, kif ukoll l-analiżi tal-editur. L-isfond ta' dan id-diskors kollu hu l-ilmenti ta' Maltin u barranin li dehrilhom li xi parti mill-amministrazzjoni pubblika naqsithom għal raġuni jew oħra.

Fuq il-qoxra tal-ktieb tidher il-gardjola tal-Ponta tal-Isla tħares fuq il-Port il-Kbir lejn il-Belt Valletta. Ix-xbieha tiġbor fiha l-qofol tal-missjoni afdana 'l-Uffiċċju tiegħi mill-Parlament, jiġifieri, li l-Ombudsman jħares id-dritt għal amministrazzjoni tajba ta' kull min jgħammar f'pajjiżna, mingħajr ebda distinzjoni. B'widnejh jisma' l-ilmenti tan-nies fil-konfront tal-amministrazzjoni pubblika; b'għajnejh jixref fuq l-istituzzjonijiet governattivi bil-għan li jagħraf difetti fis-sistemi amministrattivi, jew attitudnijiet lejn l-awtorità, il-liġi u ċ-ċittadin li jistgħu jnaqqsu l-kwalità tas-servizzi pubbliċi li jingħataw lin-nies.

Ċertament, għalkemm għassies, l-Ombudsman mhux għadu tal-amministrazzjoni pubblika: għall-kuntrarju, sa mit-twaqqif tiegħu, l-Uffiċċju fittex li jrawwem spirtu ta' koperazzjoni u ta' rispett reċiproku bejnu u l-entitajiet governattivi li jaqgħu taħt il-ġurisdizzjoni tal-Ombudsman. Mhux dejjem naqblu, u kultant insibu rezistenza għar-rakkomandazzjonijiet li ngħamlu wara stħarriġ bir-reqqa, imma napprezza l-koperazzjoni u l-attenzjoni li, aktar iva milli le, l-amministrazzjoni tagħti lili u lil sħabi.

Bħal dik it-tajra mnaqqxa fuq il-gardjola tal-Ponta tal-Isla, l-Ombudsman jħares fil-bogħod, lil hinn mill-kurrenti u l-kontroversji politiċi. Għalhekk, kemm jien kif ukoll il-predeċessuri tiegħi ħassejna d-dmir li noffru ta' kull sena, riflessjonijiet, ideat, pariri u proposti dwar il-governanza lill-Parlament, permezz tar-rapport annwali kif ukoll rapporti u studji oħra. Filwaqt li napprezza r-relazzjonijiet tajbin li hemm bejn l-Ombudsman u l-Parlament, nixtieq li nitkellmu aktar ta' spiss u aktar fit-tul dwar l-amministrazzjoni pubblika u l-governanza, bis-sehem sħiħ ukoll tal-kapijiet tas-Servizz Pubbliku u ta' korpi u awtoritajiet oħrajn.

Din ix-xewqa mqanqla minn għarfien li, fi żminijietna, l-integrità tal-governanza u l-effettività tal-amministrazzjoni saru sfidi kbar għal kull pajjiż. Huma l-mezzi ewlenin li bihom Stat iwieġeb għall-iżviluppi soċjali, ekonomiċi, ambjentali, teknoloġiċi u kulturali tas-seklu wieħed u għoxrin. Minbarra l-element tekniku/xjentifiku, dawn huma sfidi u żviluppi li jqajmu mistoqsijiet dwar id-dinjità tal-bniedem u l-ġid tas-soċjetà. Mill-ilmenti li jistħarreġ, l-Ombudsman jaf tajjeb il-konsegwenzi kultant qawwijin li jista' ikollhom nuqqasijiet fil-governanza u l-amministrazzjoni fuq in-nies.

Quddiem l-isfidi ta' żminijietna, l-arti tat-tmexxija politika trid taħdem id f'id max-xjenza u t-teknika. Hawn jidhru l-hekk-imsejnin 'uffiċjali tal-Parlament', fosthom l-Ombudsman u l-Kummissarji fi ħdan l-Uffiċċju tiegħu. L-investigazzjonijiet tal-Ombudsman, bħal dawk tal-Awditur Ġenerali, jistgħu jgħinu lill-Parlament, lill-Gvern tal-ġurnata, u lill-amministrazzjoni pubblika jgħarfu aħjar difetti u nuqqasijiet f'sistemi, proċessi, organizzazzjoni u tmexxija maniġerjali. Xi kwalifiki għandna? Minn banda, l-Uffiċċju tal-Ombudsman kiseb esperjenza amministrattiva wiesgħa matul is-snin; mill-banda l-oħra, l-Uffiċċju jqiġgħed fl-ewwel post in-nies li jużaw is-servizzi pubbliċi.

Fi żmienna, bosta servizzi essenzjali qed jingħataw minn azzjendi privati taħt is-sorveljanza ta' awtoritajiet regolatorji, iżda l-mekkanizmi biex jinstemgħu ilmenti tal-klijenti m'għandhomx is-setgħat u l-awtonomija li għandu l-Ombudsman. Minbarra dan, nies li mhumiex ċittadini mhux dejjem igawdu mill-ħarsien sħiħ tal-liġijiet u l-aġenziji governattivi ta' Malta. Għal raġunijiet

soċjali u kulturali, uħud minnhom lanqas ma jkunu jafu bl-għajnuna u r-rimedji li joffru istituzzjonijiet bħall-Ombudsman. Għalhekk, donnu wasal iż-żmien li tiġi evalwata l-gurisdizzjoni tal-Ombudsman, bil-għan li jinkludi kull servizz meqjuż 'essenzjali'; din hija materja għall-Parlament. Min-naħa tiegħi, ikun tajjeb li jitjiebu l-programmi ta' *outreach* biex l-Ombudsman ikun magħruf aħjar u aktar aċċessibbli għan-nies l-aktar emarginati.

Sinjuri, kemm ilu li twaqqaf, l-Uffiċċju tiegħi ħadem bis-sħiħ b'riżq in-nies, fi spirtu ta' lejaltà lejn l-Istat. Kiseb il-fiduċja tal-poplu u tal-Parlament. L-istima li jgawdi l-Ombudsman ta' Malta fost il-fraternità internazzjonali tal-Ombudsmen jikseb ġieħ għar-Republika tagħna. Filwaqt li nsellem lill-predeċessuri tiegħi, lil sħabi u kollegi, nawgura li l-Uffiċċju jibqa' tarka għaċ-ċittadin, u għassies tal-kuxjenza ta' kull min jeżerċita kariga pubblika jew jipprovdi servizzi essenzjali f'isem l-Istat.



APPENDIX 4

REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2020

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STATEMENT OF RESPONSIBILITIES OF THE OFFICE OF THE OMBUDSMAN

The function of the Office of the Ombudsman is to investigate any action taken in the exercise of administrative functions by or on behalf of the Government, or other authority, body or person to whom the Ombudsman Act 1995 applies. The Ombudsman may conduct any such investigation on his initiative or on the written complaint of any person having an interest and who claims to have been aggrieved.

The Office of the Ombudsman is responsible for ensuring that:

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

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

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

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



Paul Borg
Director General



Gordon Fitz
Finance Manager

REPORT OF THE AUDITOR GENERAL

To the Office of the Ombudsman

Report on the financial statements

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

February 2021

STATEMENT OF COMPREHENSIVE INCOME

	Schedule	2020 €	2019 €
Income			
Government grant		1,340,000	1,300,000
Non-operating income (note 3)		109	101
		1,340,109	1,300,101
Expenditure			
Personal Emoluments (note 4)		(1,102,023)	(1,067,227)
Administrative and other expenses	1	(223,175)	(217,424)
		(1,325,198)	(1,284,651)
Surplus for the year		14,911	15,450

STATEMENT OF FINANCIAL POSITION

		2020	2019
	Notes	€	€
ASSETS			
Non-current assets			
Property, Plant and Equipment	5	591,772	602,677
Current assets			
Receivables	6	33,776	46,787
Cash and cash equivalents	7	335,089	297,049
		368,865	343,836
Total assets		960,637	946,513
EQUITY AND LIABILITIES			
Accumulated surplus		958,261	943,350
Payables	8	2,376	3,163
Total Equity and Liabilities		960,637	946,513

The financial statements on pages 5 to 16 were approved by the Office of the Ombudsman on 3rd February 2021 and were signed on its behalf by:



Paul Borg
Director General



Gordon Fitz
Finance Officer

STATEMENT OF CHANGES IN EQUITY

	Accumulated Fund Total €
At 1 January 2019	927,900
Statement of Comprehensive income	
Surplus for the year	15,450
At 31 December 2019	943,350
Statement of Comprehensive income	
Surplus for the year (page 5)	14,911
At 31 December 2020	958,261

STATEMENT OF CASH FLOWS

	2020	2019
Notes	€	€
Cash flows from Operating activities		
Surplus for the year	14,911	15,450
Depreciation	100,740	90,253
Disposal of tangible fixed assets	13,370	15,769
Non-operating income	(109)	(101)
Operating surplus before working capital changes	128,912	121,371
Decrease/(Increase) in receivables	13,011	(30,195)
(Decrease) in payables	(787)	(2,599)
Net cash generated from operating activities	141,135	88,577
Cash flows from Investing activities		
Payments to acquire tangible fixed assets	(103,204)	(4,776)
Non-operating income	109	101
Net cash used in investing activities	(103,095)	(4,675)
Net increase in cash and cash equivalents	38,040	83,902
Cash and cash equivalents at beginning of year	297,049	213,147
Cash and cash equivalents at end of year	7 335,089	297,049

NOTES TO THE FINANCIAL STATEMENTS

1 Legal Status

In 1995, the Maltese Parliament enacted the Ombudsman Act and established the organization and functions of the Office of the Ombudsman. The main objective of the Office of the Ombudsman is to investigate complaints by the public against any action taken in the exercise of administrative functions by or on behalf of the Government or other authority, body or person to whom the Ombudsman Act 1995 applies. The Office of the Ombudsman is situated at 11, St Paul's Street, Valletta.

These financial statements were approved for issue by the Finance Manager and Director General on the 3rd February 2021.

2 Summary of significant accounting policies

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

Basis of preparation

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

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

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

Materiality and aggregation

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

Property, plant and equipment (PPE)

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

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

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

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

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

Receivables

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

Cash and Cash equivalents

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

Payables

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

Revenue recognition

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

Foreign currencies

Items included in the financial statements are measured using the currency of the primary economic environment in which the Office operates. These financial statements are presented in €, which is the Council's functional and presentation currency. Transactions denominated in foreign currencies are translated into € at the rates of exchange in operation on the dates of transactions. Monetary assets and liabilities expressed in foreign currencies are translated into € at the rates of exchange prevailing at the date of the Statement of Financial Position.

Critical Accounting Estimates and Judgements

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

Capital Management

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

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

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

NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

3 Non-operating income

	2020	2019
	€	€
Bank interest receivable	109	101
	<hr/> 109	<hr/> 101

4i Personal Emoluments

Wages and salaries	1,061,366	1,029,378
Social security costs	40,657	37,849
	<hr/> 1,102,023	<hr/> 1,067,227

ii Average No. of Employees

	<hr/> 24	<hr/> 24
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NOTES TO THE FINANCIAL STATEMENTS (CONTINUED)

Siii. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2020	884,580	34,593	30,126	43,771	60,457	121,120	81,919	1,256,566
Additions	-	2,611	10,350	14,509	74,043	1,691	-	103,204
Disposals	(20,000)	(560)	(4,524)	(4,281)	-	(1,938)	-	(31,303)
At 31 December 2020	864,580	36,644	35,952	53,999	134,500	120,873	81,919	1,328,467
Depreciation								
At 1 January 2020	341,374	28,367	27,026	43,189	50,637	86,179	77,116	653,888
Charge for the year	56,742	3,497	4,094	3,918	19,719	7,967	4,803	100,740
Release on disposals	(6,667)	(523)	(4,524)	(4,281)	-	(1,938)	-	(17,933)
At 31 December 2020	391,449	31,341	26,596	42,826	70,356	92,208	81,919	736,695
Net book value								
At 31 December 2020	473,131	5,303	9,356	11,173	64,144	28,665	-	591,772

5I. Property, Plant and Equipment

	Improvements to property	Office Equipment	Computer equipment	Computer software	Motor vehicles	Furniture and fittings	Aircondition	Total
	€	€	€	€	€	€	€	€
Cost								
At 1 January 2019	895,620	33,632	31,607	43,771	60,457	120,758	104,131	1,289,976
Additions	-	2,425	1,990	-	-	361	-	4,776
Disposals	(11,040)	(1,464)	(3,471)	-	-	-	(22,212)	(38,187)
At 31 December 2019	884,580	34,593	30,126	43,771	60,457	121,119	81,919	1,256,565
Depreciation								
At 1 January 2019	286,245	25,067	28,289	42,846	45,727	78,381	79,498	586,053
Charge for the year	58,073	4,495	2,208	343	4,910	7,798	12,426	90,253
Release on disposals	(2,944)	(1,195)	(3,471)	-	-	-	(14,808)	(22,418)
At 31 December 2019	341,374	28,367	27,026	43,189	50,637	86,179	77,116	653,888
Net book value								
At 31 December 2019	543,206	6,226	3,100	582	9,820	34,941	4,803	602,677

6 Receivables

	2020	2019
	€	€
Stocks (stationery)	10,677	10,738
Trade receivables	2,499	1,166
Prepayments	20,600	34,883
	33,776	46,787

7 Cash and Cash Equivalents

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

	2020	2019
	€	€
Cash at bank	334,629	296,274
Cash in hand	460	775
	335,089	297,049

8 Payables

	2020	2019
	€	€
Trade payables	-	846
Accruals	2,376	2,3175
	2,376	3,163

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

9 Fair values

At 31 December 2020 the fair values of assets and liabilities were not materially different from their carrying amounts.

SCHEDULE 1

Administrative and other expenses

	2020	2019
	€	€
Utilities	16,090	15,231
Materials and supplies	8,461	9,104
Repair and upkeep expenses	8,056	6,162
Rent	6,833	6,553
International membership	2,100	2,100
Office services	5,759	6,695
Transport costs	11,450	11,394
Traveling costs	1,068	23,671
Information Services	8,580	2,825
Outreach	-	1,404
Contractual Services	43,653	36,657
Professional Services	12,198	4,787
Training expenses	3,933	4,180
Hospitality	604	367
Incidental expenses	304	272
Depreciation	100,740	90,253
Profit on Disposals	(6,654)	(4,231)
	223,175	217,424



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The Office is open to the public as follows:

October – May 08:30am – 12:00pm
 01:30pm – 03:00pm

June – September 08:30am – 12:30pm

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