

Report on Case No CEDUC-21-2542***The complaint***

1. The complainant, who is a primary school teacher currently on a career break, filed her complaint with this Office on the 6th December 2021 after having exhausted all other possible avenues, both at Ministerial level and at Office of the Prime Minister (OPM) level, to find a solution to her grievance.
2. The complainant resides in Gozo with her husband and young family – two daughters now aged 5 and 2 years. For years previously she had regularly commuted from Gozo to Malta and back to attend to her teaching duties on the main island. She is currently fifth on the list of primary school teachers waiting to be deployed to Gozo. With the elder daughter approaching regular school age, in April 2020 the complainant applied for a career break in conformity with the provisions of item 2.3 of the Manual on Work-Life Balance Measures (hereinafter MWBM), which was duly granted by the Education Authorities.
3. In order to keep in touch with the education sector and also because the career break entailed a substantial diminution of income for the family, the complainant sought temporary employment (on a definite contract) in the private sector (a church school). Permission was repeatedly refused.
4. The complaint is, in substance, that by failing to take a holistic view of the particular circumstances of her case, and by denying her the possibility of working on a definite contract (whether full-time or part-time in a church-school, the complainant has been the victim of maladministration in terms of Art. 22 of the Ombudsman Act.

The legal parameters and the investigation

5. According to Article 13 of the Ombudsman Act read in conjunction with Article 22 of the same Cap. 385, an act of maladministration may result when in the exercise of its administrative functions and discretionary powers a government entity makes any decision, recommendation, act or omission which is, *inter alia*, “unreasonable, unjust, oppressive, or improperly discriminatory”, or which is “in accordance with a law or a practice that is or *may be* unreasonable, unjust, oppressive, or improperly discriminatory” (emphasis added). In like vein, there would be an act of maladministration when the decision, recommendation, act or omission is taken or made “for an improper purpose or on irrelevant grounds” (again, emphasis added). Needless to say, whether an act of maladministration has occurred must be determined *in concreto*, and not merely *in abstracto* – that is, the examination of all the facts and circumstances must be carried out in the light of the specific complaint or (in the case of an “own initiative” investigation, which is not the case here) in the light of a particularly targeted, even if initially hypothetical, situation.

6. From all the evidence gathered in the course of this investigation, including exchanges of correspondence (mainly by email) between the complainant and the Directorate of Human Resources of the Ministry for Education and the People and Standards Division at the OPM, no less than from the formal reply (letter of the 1st February 2021) of the above mentioned Ministry in response to the communicated complaint, the following scenario emerges:

- (i) As a primary school teacher in government service and with very young children, the only work-life balance measure available to the complainant was the “career break” as envisaged in item 2.3 of the MWBM. It is significant that, as specifically stated in the said Manual, the purpose of such break is to enable the public officer concerned to care for a child or for children under the age of 10 years. The public officer concerned stops working (and therefore stops receiving a salary) for a period not exceeding five years (subject to the various permutations and combinations as to the calculation of these five years as envisaged in the Manual).

(ii) Such a break, may, however entail collateral downsides. The most obvious is the financial aspect. Moreover, for a professional, such as a teacher, it is of paramount importance that he or she keeps abreast with developments in the field of education during the career break since the ultimate aim is to return to the classroom at the end of the break. It is trite knowledge that, at least for a truly dedicated teacher, every day in the classroom helps to hone didactic skills, and long periods away from the classroom may blunt those skills. The Commissioner is of the view that if a career break is really envisaged by the establishment as a way of helping a parent to take care of very young children, every reasonable effort must be made by the administration for that goal to be achieved without undue hardship, financial or otherwise, for the public officer.

(iii) When the complainant first sought to undertake work on a definite contract with a Church School in Gozo – something that would have enabled her to fully achieve the aim of a career break without at the same time remaining at home twiddling her thumbs – and sought “alternative employment”, permission was refused by the Directorate for Human Resources at the Ministry for Education on the grounds that there was a shortage of primary school teachers in the public sector. At this time the complainant had already applied (in April 2021) for a career break, and this was subsequently granted to her initially for the period 24/09/21 to 24/02/22, and then extended (on the 30th November 2021) from 25/02/22 to 23/09/22. It is hardly necessary to point out that by working on a definite contract in the private sector during a career break the complainant would in no way be exacerbating the shortage of teachers in the public sector. Such employment could only have the positive effect of enhancing the overall experience and purpose of a career break.

(iv) When the complainant insisted with the Directorate that the MWBM did not impose any conditions relative to restrictions on employment, the reply was that such employment in the private sector would constitute “*an abuse of such leave* [recte: career break]”.

(v) The complainant appealed to the One-Stop-Shop for Public Officers. In a terse reply dated 10th November 2021, the People and Standards Division at the OPM, while reiterating (quite unnecessarily) that work-life balance measures should normally be “*decided at line Ministries according to the needs of the Public Service ensuring that no service is disrupted*”, went on to state that the complainant had not suffered “any injustice” simply by quoting a part of a provision from the Public Service Management Code, namely the following paragraph: “*Public employees who benefit from work-life balance measures with the exception of remote working and flexi-time may not engage in private work or work with voluntary organisations, even after office hours*”. As already observed above, remote working and flexi-time are not an option for primary school teachers.

(vi) The complainant had already been granted by the Ministry an unpaid career break, so the reference in the abovementioned letter of the 10th November 2021 to the need not to disrupt the public service is, at best, a *non sequitur*. The reply also states that the complainant had not suffered any injustice by not being allowed to work on a definite contract (even part-time), without any indication that the specific and concrete circumstances of the complainant had been taken into account or considered in detail. The letter in effect takes the one-size-fits-all approach, and that once that there is a blanket prohibition on private work, that is the end of the matter.

(vii) But there is more. By quoting selectively just one paragraph of item (or paragraph) 6.2.3.1 of the Public Service Management Code, and omitting the next following paragraph to that quoted, the P&SD gave the erroneous impression (no doubt unintentionally) that under no circumstance may one undertake paid work when one is benefitting from a work-life balance measure other than remote working or flexi-time. This does not appear to be factually correct. The paragraph immediately following that quoted in (v), above, states: “*Nevertheless, those who wish to perform part-time work are not precluded from applying for work in government employment, subject to approval from the respective Permanent Secretary*”. This last quoted provision of the code creates a clear and manifest improper discrimination: a person in the complainant’s position may work part-time in government employment (notwithstanding the unpaid career break

and the fact that such career break is intended primarily to enable a public officer to care for very young children) but there is a blanket prohibition on seeking such employment in the private sector. This is not only discriminatory but, in the Commissioner's view, also unreasonable; and in the circumstances of the applicant, where part-time work in the Government sector in her line of work is practically impossible in Gozo, it is also oppressive (as is generally the case with all blanket prohibitions oblivious to the social and economic realities, needs and aspirations of individuals).

7. In other words, in the specific circumstances of the applicant, what was intended to be a measure aimed at securing "a better balance between workplace and workforce needs" (see the introduction to the MWBM) is in effect a measure causing hardship and stress.

Conclusion and recommendations

8. For all the above reasons, the Commissioner allows the complaint as well-founded in terms of Article 22 of the Ombudsman Act (Cap. 385) and recommends:

(a) that the complainant be allowed to work at least part-time and on a definite contract in the private sector in the educational field in Gozo even though benefitting from a career break; and

(b) that the last two paragraphs of item 6.2.3.1 of the Public Service Management Code be revisited to ensure that they do not undermine the whole purpose of the various work-life balance measures and in particular of the career break.

Vincent A De Gaetano
Commissioner for Education

23 February 2022