

Report on Case No CEDUC-22-2985

The complaint

1. The complaint was filed with the Ombudsman's Office on 8th June 2022. The complainant is a secondary school teacher of Maltese who graduated with a Master's degree (and therefore at MQF Level 7) (MTL) in 2018. In 2021 she successfully completed an MQF Level 5 undergraduate course in Maltese proofreading. Before undertaking this course she had been verbally assured by officers in the Education Division that, if she were successful in this course, she would be paid the "Qualification Allowance" paid to other teachers in an analogous position. However, after she finished the course she was told that in terms of the appropriate manual governing such allowances, she was not entitled to this allowance. This is the gist of the complaint.

The investigation and findings

2. The complaint was communicated (for the purposes of Article 18(1) of the Ombudsman Act) to the Permanent Secretary at the Ministry responsible for education on 10th June 2022, with a request for an explanation as to why the allowance was refused to the complainant. The official position of the Education Division, communicated to this Office on 13th June 2022, was (and still seems to be) that this allowance cannot be paid to the complainant as it would run counter to Clause 3.3.1 of the Manual of Allowances, and in particular of sub-clause (b) (ii) *in fine* which states that: "*In the case of the payment of an allowance for a diploma, the diploma offered by an officer where the entry requirement is at degree level, should be a post-graduate diploma.*"

3. While at face-value this explanation would appear justified, further investigation showed that the complainant appears to have been the first person to whom a new policy was applied just after she graduated, the practice having been different at the time when the complainant commenced her course in 2021 with the full knowledge of the Education Authorities.

4. In fact, from correspondence with this Office from the Directorate for Human Resources (18th November 2022) and from the legal adviser to the Ministry (2nd December 2022), no less than from a meeting held with Education Division officials on the 25th November 2022, it clearly results the complainant's problems began in November 2020. Pursuant to a Compliance Assessment Audit by the People and Standards Division (P&SD) at the Office of the Prime Minister (OPM), two Heads of Schools were found to be receiving an MQF Level 5 allowance in breach of the abovementioned Clause 3.3.1 (b)(ii). As stated in the communication of 2nd December 2022, **“Following this compliance assessment, officers applying for an MQF Level 5 qualification allowance, and whose appointment required a higher MQF level qualification, have since been, considered ineligible** for receipt of the qualification allowance in respect of qualifications at MQF Level 5 and have been notified accordingly.” (emphasis added).

5. It is clear from the above that that, irrespective of what the Manual of Allowances said, the practice within the Education Division was different at the time that the complainant commenced the proofreading course. She invested effort, time and money in pursuing it and therefore had a **legitimate expectation** that, having successfully completed it, she would be paid the allowance as she had previously been told would be the case.

6. But there is more. From the meeting of the 25th November 2022 it also resulted that there were at least 175 other persons in a position analogous (and therefore not necessarily identical) to that of the complainant, that is with an MQF Level 5 qualification (and therefore an undergraduate qualification) who were being paid, and presumably to date are still being paid, the qualification allowance as per clause 3.3.1. para (b)(ii) above mentioned, even though they have a higher degree (see Interim Opinion of 7 December 2022). Although in the tabulated list supplied to this Office, all these teachers are listed as having a ‘Diploma Level 5’, this is still an undergraduate qualification, and whether you call it a certificate, a diploma or higher diploma is immaterial. All these 175+ teachers have been regularly paid this allowance after having applied for it, and the application was approved by the Education Division. The point of regular application and approval by the Education Division is being emphasised to underscore that none of these teachers should be considered in any way to be at fault for being in receipt of the allowance in question since they followed proper procedure.

7. Under the Ombudsman Act, one of the forms of maladministration envisaged is when an act or omission is improperly discriminatory or is in accordance with a practice that is improperly discriminatory or which results in such discrimination (Art. 22(1)(b) of Cap. 385). A discrimination is improper when persons in analogous or relevantly similar situations are treated differently without there being an objectively justified reason for such difference in treatment, or if such difference – or absence of difference – does not pursue a legitimate aim or the means employed are not reasonably proportionate to the aim pursued.

8. From the evidence collected it is clear that the decision taken some time in 2020 to refuse “an MQF level 5 qualification allowance [where the] appointment required a higher MQF level qualification” (see communication of the 2nd December 2022, abovementioned) creates a glaring improper discrimination vis-à-vis the complainant, who in any case commenced her course before the blanket decision was taken by the Human Resources Directorate.

9. Since the Interim Opinion – containing in substance the above observations – was communicated to the relevant Ministry on 7th December 2022, no satisfactory explanation was forthcoming from that end as to why, in this case, the discrimination vis-à-vis to complainant was not to be considered as “improper”.

Conclusion and recommendation

10. For all the above reasons, the complaint is sustained.

11. The Commissioner, therefore, recommends that the complainant paid the MQF Level 5 allowance (with effect from the date on which she would have been entitled to it in accordance with the practice followed by the Education Division and before the “blanket decision” taken some time in 2020) in view of her legitimate expectation when she commenced the course and of the improper discrimination currently in force.

Vincent A De Gaetano
Commissioner for Education

3 April 2023