



Annual Report for 2021

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of the Standards in Public Life Act*

Office of the Commissioner for Standards in Public Life
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1 Introduction

1.1 The Commissioner for Standards in Public Life

The Standards in Public Life Act of 2017 (chapter 570 of the laws of Malta) came into force on 30 October 2018. In terms of this Act the Commissioner for Standards in Public Life is appointed by the President of Malta, acting in accordance with a parliamentary resolution that must be supported by the votes of at least two thirds of all members of the House of Representatives.

The nomination of Dr George Marius Hyzler as Commissioner for Standards was approved by the House of Representatives on 30 October 2018 through a resolution passed with the support of all parties represented in the House. He took his oath of office as the first Commissioner for Standards in Public Life on 12 November 2018.

This annual report covers the third full year of operations of the Commissioner and his office.

1.2 The role of the Commissioner

The ongoing functions of the Commissioner under the Standards in Public Life Act are the following:

- investigating the conduct of persons who are subject to the Act, either on his own initiative or on the basis of a complaint;
- examining declarations of assets and financial interests filed by persons who are subject to the Act;
- making rulings, at the request of persons subject to the Act, on whether an action they propose to take would be contrary to their ethical obligations under the Act (“negative clearance”); and
- ensuring that members of Parliament pay the administrative penalties to which they become liable if they miss parliamentary sittings without authorisation from the Speaker.

This report reviews the activities of the Commissioner in all four areas.

1.3 Who is subject to the Act?

The Standards in Public Life Act applies to members of the House of Representatives (including ministers and parliamentary secretaries) and persons of trust.

The Act defines the term “person of trust” to mean:

- persons who are engaged from outside the public administration to serve as consultants and staff in the private secretariats of ministers and parliamentary secretaries;
- persons engaged on trust to fill vacancies in the public administration that remain vacant following repeated public calls for applications; and
- any other persons engaged under article 6A of the Public Administration Act.¹

The Act obliges members of Parliament and persons of trust to observe rules of ethical conduct. The Act itself sets out two codes of ethics: one for members of Parliament, which appears as the first schedule to the Act, and one for ministers and parliamentary secretaries, which appears as the second schedule. Ministers and parliamentary secretaries are bound by both codes.

The Act makes persons of trust subject to the code of ethics for public employees that appears in another law, the Public Administration Act (chapter 595 of the laws of Malta).

¹ The definition of the term “person of trust” was changed by virtue of Act XVI of 2021, which amended the Standards in Public Life Act with effect from 9 April 2021. The definition quoted here is the revised version as introduced by the new law.

2 Complaints and Investigations

2.1 The Commissioner's investigative role

The Commissioner for Standards in Public Life can consider whether **members of Parliament**, including **ministers and parliamentary secretaries**, have:

- acted in breach of the law;
- broken any ethical or other duty set out by law, including the applicable code of ethics in the Standards in Public Life Act; or
- exercised discretionary powers in a way that constitutes an abuse of power.

The Commissioner can consider whether **persons of trust** have broken the code of ethics set out in the Public Administration Act.

The Commissioner can start an investigation on his own initiative or on receipt of a complaint. Any person can submit a complaint to the Commissioner. Complainants do not need to be personally affected by the matter they complain about.

However, the Standards Commissioner cannot investigate cases that occurred before 30 October 2018 – the date on which the Standards in Public Life Act came into force. Nor can he investigate a complaint if it is made more than thirty working days after the complainant came to know of the actions giving rise to the complaint, or more than one year from when those actions occurred.

Furthermore, the Commissioner cannot investigate cases that are the subject of legal proceedings or that are already under investigation by the police.

2.2 How the Commissioner handles complaints

The first step the Commissioner takes on receiving a complaint is to carry out a preliminary review to determine whether it can be investigated in terms of the Act. In many cases this can be determined immediately. In other cases preliminary inquiries may need to be made – for instance, to find out whether the alleged misconduct can be attributed to a person who is subject to the Act.

If the Commissioner decides that a complaint is not eligible for or does not merit investigation under the Act, he will inform the complainant accordingly and give reasons for his decision.

If the Commissioner decides to investigate a complaint, he will open an investigation. The Commissioner has the power to demand the production of documents. He can also summon witnesses to give evidence unless, by doing so, they would expose themselves to criminal prosecution. The Act sets out penalties for persons who refuse to cooperate with the Commissioner in the course of an investigation.

If the Commissioner finds from his investigation that a *prima facie* breach of ethics or of a statutory duty has occurred, he may follow one of two avenues. The first is to report his opinion to Parliament's Standing Committee for Standards in Public Life. This body is made up of two members of Parliament from the government side and two from the opposition, and it is chaired by the Speaker. If the Committee agrees with the Commissioner's findings, it can take remedial action as contemplated in the Act.

Alternatively, if the Commissioner finds that the breach was not of a serious nature, he may, following an admission of the charge, grant the person investigated a time limit within which to remedy the breach, for instance by making an apology. The Commissioner will close the case if the remedy is carried out to his satisfaction. This option, which emerges from article 22(5) of the Act, enables cases to be concluded more quickly than if they are referred to the Standing Committee for Standards in Public Life.

The Commissioner can also refer cases to the police or the Attorney General if it appears to him that crimes or corrupt practices have been committed. In addition, the Commissioner can refer cases to other authorities if he considers this appropriate.

2.3 Publication of reports by the Commissioner

On 2 April 2019 the Standing Committee for Standards in Public Life agreed, on the basis of a memorandum prepared by the Commissioner, that:

- if the Commissioner decides that a complaint does not merit investigation, he should inform the complainant accordingly but should not publicise his decision to this effect;
- if the Commissioner investigates a complaint but finds no breach of ethics, he should prepare a report on the case which he should forward to the complainant and the person investigated, and which he may also publish;
- if the Commissioner finds a breach of ethics but closes the case under article 22(5) of the Act, he may publish his case report in addition to forwarding it to the complainant and the person investigated;
- if the Commissioner finds a breach of ethics and refers the case to the Committee for its own consideration, it should be up to the Committee to decide on the publication of the case report. In this case the Commissioner would simply inform the complainant as well as the person investigated that he has concluded his report and that this has been submitted to the Committee.

It is the Commissioner's policy that where he is empowered to publish a case report, he should as a general rule be as transparent as possible. However, he reserves the right not to publish a report or to publish it in redacted form if he considers this necessary in the circumstances of a particular case.

Section 2.5.3 of this annual report deals with the publication of case reports during 2021.

2.4 Complaints

2.4.1 Status of complaints

The Commissioner for Standards in Public Life received a total of 111 complaints up to 31 December 2021. The status of these complaints as on the same date is shown in Table 1 below.

Table 1: Complaints received, resolved and pending – status on 31 December 2021

Complaints received	111
Complaints closed	93
Of which: Found ineligible for investigation	55
Withdrawn by complainant	1
Investigated and concluded	37
Complaints pending	18
Of which: Under preliminary review	12
Under investigation	6
Investigation suspended	–

2.4.2 Status of complaints: annual breakdown

Table 2 gives a breakdown of the same data by year. The period from 12 November 2018 (when the Commissioner for Standards was appointed) to 31 December 2019 has been taken as a single year for simplicity's sake.

Table 2: Complaints received, resolved and pending – annual breakdown

	2018–19	2020	2021
Complaints outstanding at start of year	–	11	16
Complaints received	29	41	41
Total number of outstanding and new complaints	29	52	57
Complaints closed	18	36	39
Of which: Found ineligible for investigation	7	23	25
Withdrawn by complainant	–	1	–
Investigated and concluded	11	12	14
Complaints pending at end of year	11	16	18
Of which: Under preliminary review	3	4	12
Under investigation	8	7	6
Investigation suspended	–	5	–

2.4.3 Ineligible complaints

Table 3 below indicates on what grounds complaints were found ineligible for investigation up to the end of 2021.

Table 3: Reasons why complaints were found ineligible for investigation

<i>Reason</i>	<i>2018–19</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
Complaint concerned person not subject to Act	2	3	6	11
Complaint concerned actions that did not amount to misconduct in terms of Act	1	9	11	21
Complaint was time-barred	1	2	3	6
Complainant was anonymous	3	1	1	5
Complaint was trivial	–	1	1	2
Complaint fell within remit of another authority	–	4	2	6
More than one reason	–	3	1	4
Total number of ineligible complaints	7	23	25	55

The most important reasons why complaints were found ineligible for investigation during 2021 were because they concerned persons who were not subject to the Standards in Public Life Act, or actions that did not amount to misconduct in terms of the Act.

Examples of persons about whom the Commissioner received complaints during 2021, but who were not subject to the Act, include members of government boards and chief executives of public entities. Members of government boards can be considered political appointees since most of them are chosen by ministers at their discretion. The same applies to the chief executives of some public entities. However, none of these are covered by the term “person of trust” as defined in the Act.

The Commissioner also considered complaints about actions that could not be considered misconduct even though the complainants found them objectionable. The following are examples:

- One complaint concerned a backbench MP who publicised a private business by means of posts in her personal social media account. However, backbench MPs are free to work and to embark on business ventures in a personal capacity. Hence there is nothing to stop them using their personal social media accounts to promote a private business in which they have a direct or indirect interest.
- Another complaint concerned a policy decision taken by a minister. Citizens are perfectly entitled to disagree with decisions taken by ministers, but this does not necessarily mean that those decisions are ethically wrong. The Commissioner cannot find a ministerial decision to be in breach of ethics unless it contravenes a specific provision of law or the ministerial code of ethics.

2.5 Investigations

2.5.1 Investigations concluded

The Commissioner concluded eleven investigations during 2021. This is the same as the number of investigations concluded in previous years. However, two of the investigations concluded during 2021 were unprecedented in their complexity, generating unusually long case reports and hundreds of pages of additional evidence. In 2021 investigations thus constituted a higher workload for the Commissioner's office than in previous years.

The number of investigations concluded by the Commissioner does not always correspond to the number of complaints closed after investigation. The Commissioner might receive more than one complaint about the same matter, in which case he would open a single investigation covering all related complaints. One of the cases investigated by the Commissioner during 2021 was the subject of two complaints while another case was the subject of three complaints. As a result the eleven investigations concluded during 2021 correspond to fourteen complaints.

The outcome of the Commissioner's investigations is summarised in Table 4.

Table 4: Outcome of investigations concluded by the Commissioner
(corresponding number of complaints given in brackets)

<i>Outcome</i>	<i>2018–19</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
Case referred to Parliament's Standards Committee	–	2 (2)	4 (5)	6 (7)
Case referred to other authorities	–	–	–	–
Case resolved by the Commissioner	3 (3)	4 (4)	1 (1)	8 (8)
Case report dealt with practices rather than individuals	1 (1)	2 (2)	–	3 (3)
Investigation was inconclusive	1 (1)	1 (1)	–	2 (2)
No misconduct found	6 (6)	2 (3)	6 (8)	14 (17)
Total number of investigations concluded	11 (11)	11 (12)	11 (14)	33 (37)

A total of five of the investigations concluded in 2021 resulted in a finding that a breach of ethics had taken place. The Commissioner referred four of these cases to Parliament's Standing Committee for Standards in Public Life. He resolved the fifth case himself under article 22(5) of the Standards in Public Life Act on the basis of an undertaking by the minister concerned to make every effort to avoid a recurrence of the same breach.

The remaining six investigations resulted in a finding that no misconduct had taken place. As a result the Commissioner did not uphold the related complaints.

2.5.2 Own-initiative investigations

During 2021 the Commissioner did not start any investigations on his own initiative. It is the Commissioner's policy that he should embark on own-initiative investigations only in cases that appear particularly serious in nature.

However, during 2021 the Commissioner concluded one investigation that he had started on his own initiative in late 2019. This case concerned the alleged detention of journalists in the Auberge de Castille following a late-night Cabinet meeting in November 2019. Shortly after starting his investigation, the Commissioner received a complaint about the same facts, so although this began as an own-initiative investigation, the case report still corresponds to one complaint.

2.5.3 Publication of case reports

During 2021 the Commissioner published case reports in all the instances where he was empowered to do so – that is to say six cases in which he found no misconduct following an investigation, and one case of misconduct that was resolved by him under article 22(5) of the Standards in Public Life Act.

Where the Commissioner refers a case to Parliament's Standards Committee, it is up to the Committee to decide whether and when to publish the Commissioner's case report. As already indicated, there were four such referrals during 2021. The Committee authorised the publication of the case report in three of these cases and withheld publication in one case. More information about these cases is given below.

All published case reports can be downloaded from the Commissioner's official website at <https://standardscommissioner.com/case-reports/>.

2.5.4 Publication of supporting evidence

The normal practice adopted by the Commissioner when concluding an investigation is to attach all necessary supporting evidence to the case report in the form of a series of annexes. Redactions to this evidence are made where necessary, for instance to avoid disclosing personal data such as identity card numbers and personal contact details.

The Commissioner adopted a different approach with respect to the last two case reports that he submitted to the Standards Committee during 2021. Both cases were complex and generated hundreds of pages of evidence – 306 pages in one case and 781 pages in the other. This made it impractical to gather all the evidence in a single volume together with the case report. In addition, in each case the Commissioner felt that certain evidence of a particularly private nature should not be available to the public. The reasons for this are set out in the relevant case reports.

In each of these two cases the Commissioner divided the supporting documentation into three categories:

- category A: documents published as annexes to the case report proper;
- category B: the main body of evidence, compiled in two separate volumes so as to limit the file size of each volume;
- category C: additional evidence that was withheld by the Commissioner.

In both cases the Commissioner forwarded the case report together with the two volumes of evidence in Category B to Parliament's Standards Committee. Redactions were made as necessary by the Commissioner to avoid disclosing personal data. The Category B volumes were published along with the case report upon the authorisation of the Committee. In one of the cases the Committee made a further redaction to the evidence before authorising its publication.

In both cases the Commissioner made the evidence in Category C available to the Committee for examination upon request by its members. Accordingly, this evidence was not published.

2.6 Referral of cases to the Standards Committee

The four cases referred by the Commissioner to Parliament's Standards Committee are briefly described below.

2.6.1 Case K/017 – alleged detention of journalists in the Auberge de Castille in November 2019

The Commissioner referred his report on this case to the Standards Committee on 11 February 2021. Two members of the Committee sought a ruling by the Speaker as to whether the case concerned a matter that was the subject of court proceedings, since the Standards in Public Life Act does not permit the Commissioner to investigate such matters. The Commissioner had considered this issue himself, but had come to the conclusion that the contemporaneous court case did not concern the same subject matter as his own investigation. It was for this reason that he had brought his investigation to a conclusion.

However, the Speaker ruled that the ongoing court proceedings concerned the same matter as the Commissioner's investigation, and consequently the Commissioner had acted *ultra vires* by proceeding with his investigation. The Commissioner set out his own views on this issue by means of an open letter to the Speaker dated 4 March 2021.² As a result of the Speaker's ruling, however, the Committee did not discuss the Commissioner's case report and did not authorise its publication.

² The letter is available from <https://standardscommissioner.com/wp-content/uploads/Letter-to-Speaker-2021-03-04.pdf>.

2.6.2 Case K/028 – *alleged use of public funds for personal publicity by a minister*

This case concerned the publication of official advertisements in the print media that prominently featured a photograph of then-Minister Carmelo Abela. The adverts prompted a complaint to the Commissioner alleging that they were intended as personal publicity for the minister at public expense.

The Commissioner referred his report on this case to the Committee on 17 March 2021. The Committee authorised the publication of the report on 14 April 2021, that is to say after a delay of almost one month. The Commissioner wrote to the Speaker on 9 April 2021 to express his concerns about this delay and to propose that henceforth, decisions regarding the publication of case reports should be made by the Commissioner, even where his reports are referred for the consideration of the Committee.³ The main reason for his concern was the fact that once reports were passed on to the Committee they were being leaked to the press, giving rise to unnecessary speculation.

On 28 April 2021 the Committee discussed the report but was unable to come to a decision on whether or not to adopt the report as a result of a tied vote. The Standards in Public Life Act gives the Speaker a casting vote in such cases, but the Speaker opted to abstain.

2.6.3 Case K/032 – *failure to declare income by a parliamentary secretary*

This case concerned the alleged failure by then-Parliamentary Secretary Rosianne Cutajar to include income from brokering a property sale in her declaration of income and assets. The Hon. Cutajar was serving as a backbench MP at the time of the property sale, but she was subsequently appointed parliamentary secretary. In this capacity she was obliged to complete a declaration of income and assets that covered the period during which she had allegedly received the brokerage fee, yet she did not include the said fee in her declaration. The Hon. Cutajar resigned as parliamentary secretary while the Commissioner was investigating the case.

The Commissioner presented his report on this case to the Committee, along with two volumes of supporting evidence, on 2 July 2021. The Committee authorised the publication of the case report and the two volumes of evidence on 5 July, a commendably short interval. On 9 November 2021 the Committee adopted the Commissioner's report and on 16 November it decided that the Hon. Cutajar should be admonished. This decision was communicated to the Hon. Cutajar by means of a letter dated 19 November 2021 from the Clerk of the House of Representatives.

³ The Commissioner's letter is available from <https://standardscommissioner.com/wp-content/uploads/Letter-to-Speaker-2021-04-09.pdf>.

2.6.4 Case K/036 – alleged award of a consultancy contract to a person who was not qualified to fulfil the contract

This case concerned the award by direct order of a consultancy contract to a friend of then-Minister Justyne Caruana, although the individual was allegedly unqualified to carry out the consultancy assignment.

The Commissioner presented his report to the Committee, along with two volumes of supporting evidence, on 10 December 2021. The Committee authorised the publication of all three documents (with a minor redaction in one of the volumes of evidence) on 14 December, again a commendably short interval.

On 22 December 2021 the Hon. Justyne Caruana resigned from office as minister. However, she subsequently instituted court proceedings to challenge the Standards in Public Life Act and the Commissioner's investigation of her case on constitutional grounds. Subsequently the Standards Committee halted its consideration of the case. The court proceedings are still under way.

3 Selected Issues Arising from Cases

3.1 Requirements to be met by complaints

Some of the persons investigated by the Commissioner for Standards during 2021 argued that the complaints against them did not merit consideration for various reasons.

In one case the person under investigation objected to the complaint on the grounds that it was based solely on media reports. He argued that the complainant had no personal knowledge of the case, did not present any proof to substantiate his allegations, and did not specify the nature of the alleged misconduct in precise terms.

However, the Commissioner took the view that it was not reasonable to expect a complainant to present proof of his or her allegations. It was the Commissioner's role to investigate the allegations and to determine whether or not they appeared *prima facie* valid. For the same reason there was nothing to prevent a member of the public from submitting a complaint about matters that he or she had read about in the media.

The Commissioner also observed that the Standards in Public Life Act did not oblige complainants to specify the nature of the alleged breach in precise terms. Nor did the Act require the Commissioner to conduct his investigation solely on the basis of the complainant's allegations. It was up to the Commissioner to frame the allegations in the context of the provisions of the relevant code of ethics.⁴

In another case, the person under investigation claimed that the complainant was attempting to further his own personal interests by means of his complaint. However, the Commissioner stated that it was not his role to consider what motivated a complaint. Under article 13(1)(b) of the Standards in Public Life Act, a complainant was not required to show any personal interest in support of his or her complaint. From this it followed that even if the complainant did have a personal interest in the case, he or she was not obliged to disclose it. The Commissioner therefore concluded that it was his role to consider only whether or not the complaint was valid. The fact that the complainant had an interest in the outcome of the case did not in itself invalidate the complaint.⁵

3.2 Complaints about persons who are no longer subject to the Act

A case considered by the Commissioner during 2021 concerned a person who had been a member of Parliament at the time of his alleged misconduct but who subsequently resigned his seat. At this point the person under investigation ceased to hold an office that was subject to the Standards in Public Life Act.

⁴ Report on case K/029 (18 February 2021), paragraphs 14–15, 18.

⁵ Report on case K/023 (5 May 2021), paragraph 50.

Legal advice obtained by the Commissioner in connection with another case during 2020 stated that “even where a person has resigned or otherwise been removed from his position as a person of trust, he may still be investigated by the Commissioner for any allegation concerning statutory or ethical breaches that he may have committed during the tenure of his post as a person of trust.”⁶ The Commissioner took the view that the same logic applied to MPs. A person who was an MP when the Commissioner started his investigation, but who subsequently resigned his seat, would therefore remain subject to investigation. The Commissioner noted, however, that the position might be different if the person who was the subject of the complaint ceased to be an MP before the Commissioner started to investigate that complaint.

The Commissioner also considered a ruling given by the Speaker on 11 January 2021 in a separate case which also involved a former MP. The Speaker had ruled that article 28 of the Standards in Public Life Act did not apply to persons who were no longer subject to the Act.⁷ However, the Commissioner observed that this article dealt only with the imposition of sanctions by Parliament’s Standards Committee. Hence the Speaker’s ruling did not apply to the Commissioner’s own powers of investigation under articles 13 and 19 of the Act. Nor did the ruling impede the Standards Committee from considering cases referred to it by the Commissioner under article 27.

Indeed, in the January 2021 case which prompted the Speaker’s ruling the Committee had upheld the Commissioner’s conclusion that the former MP was guilty of misconduct. The Committee had refrained only from applying sanctions under article 28. Were the Speaker’s ruling to be understood as meaning that the Commissioner could not continue to investigate a person who was no longer subject to the Act, the Committee would likewise have been unable to consider the Commissioner’s case report about that person. On this basis the Commissioner decided that he should continue to investigate the former MP in the case under consideration.⁸

3.3 The declaration of gifts by MPs

The above-mentioned case concerned an allegation that, when the former MP was still a member of Parliament, he and his family had benefited from a holiday abroad at the expense of third parties. The Commissioner found that the then-MP and his family had gone on holiday as guests of a Maltese businesswoman who was a long-time family friend. She had paid for their stay as well as that of her other guests.

The Commissioner considered whether the MP should have refused the holiday or else declared it prior to his resignation from Parliament. This issue was regulated by articles

⁶ Report on case K/024 (1 September 2020), paragraph 20.

⁷ See ruling at <https://www.parlament.mt/media/110039/s-413-11012021-applikabilita-ta-sanzjonijiet-lil-eks-mps-standards.pdf>.

⁸ Report on case K/031 (12 October 2021), paragraphs 26–29.

5(2)(b) and 5(2)(d) of the Code of Ethics for MPs, which appeared in the first schedule of the Standards in Public Life Act. Article 5(2)(b) of the Code prohibited MPs from accepting gifts from persons, groups or companies with a direct or indirect interest in legislation before the House of Representatives. Article 5(2)(d) obliged MPs to declare visits abroad that were financed in whole or in part by persons, groups or companies with a direct interest in legislation before the House.

The Commissioner found that the businesswoman did not have any interest in legislation before the House. Articles 5(2)(b) and 5(2)(d) of the Code did not therefore apply and the MP in question had been under no obligation either to refuse the holiday or to declare it.

The Commissioner noted, however, that articles 5(2)(b) and 5(2)(d) of the Code of Ethics for MPs were very limited in scope. They applied only if the person, group or company that gave a gift to an MP or financed an MP's visit abroad had an interest in legislation then before Parliament. Neither provision applied if an MP was given a benefit for his support of legislation already enacted by Parliament, or to pave the way for a bill that had yet to be presented in Parliament. Nor did the provisions apply to benefits given in connection with other parliamentary business – for instance, to induce MPs to vote in favour of a parliamentary resolution authorising the transfer of public land to a private entity, or to pose parliamentary questions on a particular subject.⁹

The Commissioner recalled that in July 2020 he had presented recommendations for the revision of the Code of Ethics for MPs and the Code of Ethics for Ministers and Parliamentary Secretaries.¹⁰ The revised codes as proposed by the Commissioner included broader provisions to regulate gifts. The Commissioner pointed out that although he had found no breach of ethics in the case under consideration, it still highlighted the need for the Code of Ethics for MPs to be revised along the lines of his recommendations.

3.4 Complaints on matters within the remit of other authorities

Article 13(1)(b) of the Standards in Public Life Act empowers the Commissioner to investigate possible breaches of “any statutory or any ethical duty” by persons subject to the Act. This means that the Commissioner can investigate not only alleged breaches of ethics but also alleged failures to perform duties emerging from law.

During 2021 the Commissioner considered how this provision should be interpreted. He took the view that it was not the intention behind the Standards in Public Life Act that

⁹ Report on case K/031 (12 October 2021), paragraphs 38 and 39.

¹⁰ *Revising the Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries: A Recommendation under Article 13 of the Standards in Public Life Act* (29 July 2020). Available from <https://standardscommissioner.com/wp-content/uploads/report-revised-codes-of-ethics.pdf>.

he should inquire into any alleged breach of the law by persons subject to the Act, because this would mean usurping the role of the police and other state authorities which were tasked specifically with enforcing legislation. On the contrary, a complaint that fell within the remit of another authority should normally be investigated by that authority in the first instance. If that authority upheld the complaint and found that the law had been broken, the Commissioner could then decide whether this also amounted to a breach of a statutory duty for the purposes of the Standards in Public Life Act.¹¹

In keeping with this the Commissioner took the view that, as a general rule, complaints alleging breaches of a law enforceable by another authority should be addressed by the complainant directly to that authority. If the alleged breach amounted to a crime, the complaint should be addressed to the police. It was not logical to report a matter to the Commissioner simply so that he could forward the report to the competent authority. In such cases, therefore, complainants were informed that they should refer the matter to the competent authorities.

3.4.1 Allegations of tax evasion

A partial exception to this general rule concerned allegations of tax evasion on the part of ministers or members of Parliament. The Commissioner decided that he should consider a complaint to this effect because article 13(1)(a) of the Standards in Public Life Act imposed on him the duty to verify declarations of income, assets and interests that were made by MPs under any law, including tax laws. This meant that he had a direct interest in the veracity of tax declarations by MPs.

However, the Commissioner made it clear that he would not assume the role of the tax authorities by declaring ministers or MPs guilty of shortcomings under tax legislation. The primary focus of the Commissioner for Standards in any such cases would be on the declarations of income and assets made by them for the purposes of the codes of ethics for MPs and ministers.¹²

3.4.2 Matters falling within the remit of the Speaker

During 2021 the Commissioner considered a complaint that a minister had failed to answer a parliamentary question in a satisfactory manner. The Commissioner noted that this matter fell within the remit of the Speaker. He found that the Speaker had already been requested to give a ruling in Parliament on whether the minister's reply was satisfactory, but in his ruling the Speaker had come to the conclusion that he did not have the power to intervene in the matter.

¹¹ Report on case K/025 (4 November 2021), paragraph 7.

¹² Report on case K/032 (2 July 2021), paragraphs 18 and 19.

The Commissioner took the view that it was up to the Speaker to interpret Parliament's Standing Orders. If the Speaker felt that he did not have the power to regulate replies to parliamentary questions, this could possibly be considered a lacuna in the Standing Orders. This lacuna did not represent grounds for the Commissioner to intervene in a matter that fell under the direct authority of the Speaker. It could be addressed only by means of an amendment to the Standing Orders. The Commissioner therefore decided that the complaint did not warrant investigation under the Standards in Public Life Act.

3.5 When private actions can be investigated

During 2021 the Commissioner considered complaints alleging that a member of Parliament had driven a vehicle in a dangerous manner and failed to abide by the instructions of police officers while on the road. The Commissioner considered this case in the context of, among other things, article 1 of the Code of Ethics for MPs, which obliged MPs to conduct themselves "at all times, both inside and outside the House ... in a manner which reflects the status and dignity of the House of Representatives."

The Commissioner considered whether MPs could be found in breach of article 1 of the Code of Ethics on account of conduct in a purely personal capacity. The Commissioner adopted the position that, as a general rule, he should not investigate actions by MPs that were not related at least indirectly to their role as MPs.

However, the Commissioner noted that in the case under consideration it was alleged that the MP had invoked his "parliamentary immunity" when he was approached by the police following the road incident. The Commissioner found that in actual fact MPs did not benefit from any such immunity. Nevertheless, he took the view that an MP who tried to use his parliamentary status to avoid responsibility for his actions could be undermining the status and dignity of Parliament, even if those actions were purely private actions. This potentially amounted to a breach of article 1 of the Code. The Commissioner therefore decided that he should investigate the case.

However, the same case became the subject of a police investigation, so the Commissioner suspended his own investigation as he was obliged to do by law. The police later brought criminal charges against the MP in question, but the court dismissed the case after hearing the evidence presented, and the MP was acquitted. At this point it became possible for the Commissioner to resume his own investigation. The MP was exonerated by the Commissioner as well on the basis of the court's findings.¹³

3.6 The investigation of Cabinet decisions

Article 20(1) of the Standards in Public Life Act empowers the Prime Minister to certify that the disclosure of particular information would affect the security of Malta or its

¹³ Report on case K/025 (4 November 2021), particularly paragraphs 8 and 9.

international relations; would be likely to seriously damage the national economy; would involve revealing the deliberations or proceedings of Cabinet or Cabinet committees; or would prejudice the investigation or detection of offences. The effect of a certification by the Prime Minister under article 20(1) would be to block demands for such information by the Commissioner.

Article 20(1) was invoked by the Prime Minister on a single occasion during 2021, in connection with a case concerning the award by direct order of a contract for the conversion of a hotel in Gozo into a home for the elderly. After the Commissioner wrote to the Minister for Gozo to pose questions about this case, the Prime Minister replied stating that the entire subject matter of the case concerned a Cabinet decision taken collectively by ministers in the context of a public health emergency. The Prime Minister certified for the purposes of article 20(1) that the provision of any information about the case would result in the disclosure of Cabinet deliberations and proceedings, and this applied also to any documents already provided to the Commissioner.

The Commissioner sought legal advice about the interpretation of article 20(1) of the Act. On the basis of this advice he came to the conclusion that while a certification from the Prime Minister under article 20(1) could prevent him from gathering certain classes of information, it could not stop him from investigating a case or obtaining information that did not fall within the specified classes.

The Commissioner therefore opted to continue his investigation of this particular case. He was able to gather sufficient information to arrive at a clear conclusion that there had been no wrongdoing on the part of the minister concerned.

However, the case led the Commissioner to consider whether ministers who committed a breach of ethics or an abuse of power would be exonerated if they did so while implementing a Cabinet decision. The Commissioner concluded that ministers remained responsible for their actions even if those actions were taken in the course of the execution of a Cabinet decision.¹⁴

3.7 The award of public contracts by direct order

In his deliberations on the same case the Commissioner considered whether the award of a public contract by direct order in itself amounted to an abuse of power. He noted that direct orders constituted an exception to the general rule under which contracts should be awarded following a call for bids (or, as it was termed in the Public Procurement Regulations, the open procedure). However, he concluded that the award of a contract by direct order did not necessarily represent an abuse of power because the regulations allowed it in particular circumstances.¹⁵

¹⁴ Report on case K/026 (21 July 2021), especially paragraphs 24 and 27.

¹⁵ Report on case K/026 (21 July 2021), paragraph 6.

The Commissioner returned to this issue while investigating a subsequent case. He took the view that, as a general rule, the mere fact that a contract was awarded by direct order did not in itself represent grounds for investigation. There had to be specific allegations of a breach of ethics or an abuse of a discretionary power in connection with the award of the contract if he were to investigate it.

The Commissioner observed that the Public Procurement Regulations set out a procedure for the approval of direct orders. However, such approvals were granted by an office within the Ministry for Finance that was not an authority on ethical matters and was not expected to address them. He therefore took the view that if a particular direct order raised ethical issues, those responsible would not be absolved for the simple reason that they had obtained approval in accordance with the regulations.¹⁶

3.8 The standard of proof to be applied by the Commissioner

Article 22 of the Standards in Public Life Act states that the Commissioner should arrive at conclusions on a *prima facie* (on the face of it) basis. The Act does not define this term. One case investigated by the Commissioner during 2021 led him to consider how the term *prima facie* should be understood in the specific context of the Act.

An analogous use of the term *prima facie* in criminal law describes the standard applied by an inquiring magistrate when deciding whether a person who is accused of a crime should stand trial. By this standard a trial can take place if there is credible evidence against the accused. The inquiring magistrate does not consider whether the evidence against the accused is contradicted by other evidence, because this is something for the trial to decide. The Commissioner took the view that he should not apply this standard to cases investigated by him under the Standards in Public Life Act, because it would mean referring practically every such case to Parliament's Standards Committee.

Once a criminal case goes to trial, it can result in a guilty verdict only if the evidence is strong enough to place the verdict beyond reasonable doubt. However, the Commissioner observed that this standard of proof could not apply to investigations under the Standards in Public Life Act. Had the Act intended this standard to apply, it would not have used the term *prima facie*.

The Commissioner therefore decided that he should base his conclusions on the preponderance of probabilities, which was the standard normally applied in civil court cases. This meant that he could reach a conclusion if the evidence was sufficient to induce in him a moral certainty as to that conclusion. The Commissioner also noted that, in his view, this same degree of proof was required at each stage of consideration of a case under the Act.¹⁷

¹⁶ Report on case K/036 (10 December 2021), paragraphs 19 and 21.

¹⁷ Report on case K/032 (2 July 2021), paragraphs 62–66.

4 Other Functions Arising from the Act

4.1 Review of annual declarations of assets by MPs and ministers

Article 13(1)(a) of the Standards in Public Life Act tasks the Commissioner for Standards in Public Life with examining and verifying declarations relating to assets and financial interests by persons subject to the Act. Members of Parliament, ministers and parliamentary secretaries are obliged by their respective codes of ethics to make such declarations on an annual basis. Declarations are made in the spring of each year setting out the position as on 31 December of the previous year.

Every minister and parliamentary secretary fills in a second declaration that is separate from his or her declaration as an MP. Both declarations are broadly comparable, except that the ministerial declaration form includes a field for annual income while the declaration form for MPs does not. The latter does, however, provide details of the MP's employment or profession outside Parliament.

In addition, the tax authorities are obliged by law to submit to the Speaker a statement setting out each MP's income for the year. These tax statements can be examined by the media and are also subject to verification under article 13(1)(a) of the Act. The law does not actually provide for these statements to be made available to the Commissioner for Standards, but a mechanism has been established whereby the Speaker seeks the consent of each MP for his or her statement to be forwarded to the Commissioner. Up to the end of 2021 no MPs had withheld their consent.

The procedure used by the Commissioner for Standards to examine declarations under article 13(1)(a) is first of all to scrutinise declarations and to highlight any shortcomings or anomalies in the information presented therein. Each MP's declaration is compared with his or her ministerial declaration (if applicable) and the income tax statement for the same year, if available. Declarations are also compared with those of previous years in order to form a picture of changes in each MP's financial position over time.

Letters are subsequently sent to MPs requesting them to clarify any shortcomings or anomalies in their declarations. Each letter explains that any information provided by the MP in reply will be kept confidential, provided that the Commissioner is satisfied with his or her explanation. However, the letter also states that the Commissioner is reserving the right to seek further clarifications or documentary evidence or to open a formal investigation in terms of the Act should he consider it necessary to do so.

During 2021 work continued with respect to the examination and verification of MPs' declarations for the years 2018 and 2019. The Commissioner issued clarification letters to eighteen MPs as part of this exercise. In some cases follow-up letters were sent. However, all of these cases were closed and none led to the opening of a formal investigation.

Work also started on the examination and verification of MPs' declarations for the year 2020. The Commissioner issued clarification letters to six MPs for this purpose. These cases remained pending as on 31 December 2021.

4.2 Negative clearance

Article 13(1)(c) of the Standards in Public Life Act empowers the Commissioner to give a ruling on whether a particular action constitutes misconduct, if such a ruling is requested by a person who is subject to the Act. If the Commissioner rules that the action is permissible, and the person who has requested the ruling acts accordingly, he or she cannot then be charged with misconduct under the Act. The Act refers to this procedure as negative clearance.

During 2021 the Commissioner received two requests for negative clearance.

4.2.1 The use of parliamentary envelopes and letterheads

The first request came from a member of Parliament who wanted to know whether he could use parliamentary envelopes and letterheads to maintain contact with his constituents.

The Commissioner found that it was established practice for Parliament to allocate 100 envelopes per week to each MP, and there were no restrictions on the use of these envelopes. The Commissioner therefore concluded that these envelopes could be used for correspondence with constituents.

The Commissioner also found that there were no written rules governing the use of parliamentary letterheads by MPs, but there had been instances when the Speaker requested MPs not to use them to advertise coffee mornings for constituents. This indicated that there were restrictions on the use of letterheads. On this basis the Commissioner concluded that MPs could use parliamentary letterheads to correspond with constituents, but only in connection with their role as MPs. MPs should not use parliamentary letterheads for correspondence relating to their electoral campaign or in the interests of their political party.

The Commissioner requested more information from the MP about his intended use of the letterhead. By way of reply the MP supplied the Commissioner with a draft letter that, in the Commissioner's opinion, would effectively have served to advertise himself as a candidate. The Commissioner therefore ruled that this was not an acceptable use of parliamentary letterheads.

4.2.2 Funding of promotional material

The second request for negative clearance received by the Commissioner during 2021 came from a consultant to a minister who wished to know whether a leaflet prepared

by the ministry for dissemination to the public conformed to the Commissioner's guidelines on government advertising and promotional material. The Commissioner had issued these guidelines earlier during the year (see section 5.2 of this annual report).

The Commissioner noted that the text of the leaflet had been written by the minister in the first person and made no reference to his ministry. This would lead the reader to believe that the leaflet was a personal communication from the minister. Moreover, the leaflet included a number of prominent photographs of the minister. It also lacked an official logo, although this was a minor point.

The Commissioner observed that his guidelines permitted the inclusion of some content referring to ministers in promotional material such as leaflets, provided that this content was limited "so as to avoid giving reasonable grounds for belief that the true aim of the publication is to promote the minister". The leaflet did not meet this requirement. The Commissioner therefore stated that he was unable to give clearance for the publication and dissemination of the leaflet as an official ministry document at public expense. The Commissioner stated that the minister might wish to consider issuing the leaflet as personal publicity for himself, provided that he bore all related costs including the design costs already incurred by the ministry.

4.3 Administrative penalties for non-attendance in Parliament

Article 13(1)(e) of the Act assigns to the Commissioner for Standards the role of writing to members of Parliament to inform them of any administrative penalties due by them for unauthorised absences from parliamentary sittings in terms of Standing Order 159 of Parliament's Standing Orders.

During the year under review, the Office of the Commissioner wrote to ten members of Parliament concerning administrative penalties due by them.

5 Other Activities

5.1 Persons of trust

On 9 April 2021 Act XVI of 2021 became law. With immediate effect it amended the definition of “person of trust” in the Standards in Public Life Act to mean:

- (i) any person engaged directly from outside the public service and the wider public sector to act as consultant or staff in the private secretariat of a minister; or
- (ii) any person engaged directly from outside the public service and the wider public sector to act as consultant or staff in the private secretariat of a parliamentary secretary; or
- (iii) a person engaged to fill a post that has remained vacant following “repetitive” public calls for applications; or
- (iv) a person who has been engaged according to the procedure established under article 6A of the Public Administration Act.

Act XVI of 2021 also amended the Public Administration Act to include provisions enabling ministers and parliamentary secretaries to engage persons in categories (i) to (iii) above. The amendments to the latter Act also specify that persons of trust should not be deemed public employees; they should be engaged on fixed-term contracts; and they are not entitled to indefinite status.

The old definition of the term “person of trust” in the Standards in Public Life Act included a provision specifying that persons of trust act as advisors or consultants to ministers or parliamentary secretaries or act “in an executive role”. It could be difficult to determine what constituted an executive role. This represented an unnecessary element of ambiguity which was eliminated by Act XVI of 2021.

On the other hand, the new definition as introduced by Act XVI of 2021 poses problems of its own:

- It applies only to persons engaged from outside the public service or the wider public sector to serve as persons of trust. This means that serving public employees who are engaged as consultants to ministers or as members of staff in ministers’ secretariats are no longer subject to the Commissioner’s jurisdiction under the Standards in Public Life Act.
- It provides for appointments on trust to fill longstanding vacancies in government departments and public sector entities – vacancies that should be filled on the basis of merit under article 110 of the Constitution. Persons engaged on trust to fill such vacancies are subject to the jurisdiction of the Commissioner. To members of the public, however, they will be indistinguishable from regular employees (who do not fall under the Commissioner’s jurisdiction), so it is unlikely that any misconduct on their part will be reported to the Commissioner.

This may limit the effectiveness of the Standards in Public Life Act as a mechanism of accountability with respect to persons of trust in government departments and public entities.

On 28 April 2021 the Office of the Commissioner updated its guidance note on persons of trust¹⁸ to reflect the new definition. This guidance note is intended to dispel public confusion about the term “person of trust” and to minimise the incidence of complaints to the Commissioner about persons who are not subject to the Standards in Public Life Act. The guidance note was originally published in October 2019 and updated for the first time in December 2020.

5.2 Guidelines on government advertising and promotional material

This annual report has already referred to a case concerning the publication of advertisements in the print media that were paid for by public funds but prominently featured a government minister. On 28 April 2021 Parliament’s Standing Committee for Standards in Public Life was unable to come to a conclusion on this case because of a tied vote, and because the Speaker, who wields a casting vote in such situations, chose to abstain. To explain his abstention the Speaker issued a statement which included the following passage:

In the circumstances the Chair agrees with the Commissioner for Standards in Public Life, and this as effectively also referred to by Minister Edward Zammit Lewis, that there should be guidelines also about how adverts are made. This in order that clear criteria may be established so that one may abide by them for reassurance that one is not by one’s actions breaching a regulation of the same Code of Ethics.

On 22 June 2021 the Standards Commissioner published a document entitled *Guidelines on Government Advertising and Promotional Material*. The document was published in draft form for public consultation purposes. The guidelines in the document were not intended as new rules. They were intended to indicate how the Commissioner proposed to interpret the Code of Ethics for Ministers and Parliamentary Secretaries in cases involving the publication of advertisements or the dissemination of promotional material by the government.

Following a period of public consultation, the guidelines were issued in definitive form on 2 August 2021.¹⁹ The definitive guidelines were amended in the light of the feedback received by the Commissioner so as to refer to persons of trust as well as ministers,

¹⁸ Available from <https://standardscommissioner.com/wp-content/uploads/persons-of-trust-guidance-note.pdf>.

¹⁹ The definitive guidelines can be downloaded from <https://standardscommissioner.com/wp-content/uploads/guidelines-government-advertising-promotional-material.pdf>.

given that persons of trust also fall under the Commissioner's jurisdiction. Persons of trust act on behalf of ministers and can therefore take decisions on the production of government advertising and promotional material that might give rise to an investigation by the Commissioner.

The guidelines acknowledge that the government has a duty to communicate with the public and has broad discretion to decide when to use advertisements or promotional material for legitimate purposes. However, ministers should not spend public funds on personal or political publicity. The guidelines are intended to ensure that this does not happen.

The guidelines cover not only advertisements but also, among other things, articles published against payment, leaflets, greeting cards, items distributed as gifts, and audio-visual material that is broadcast on television or social media – always if such material is paid for through public funds. Among other things, the guidelines state that:

- advertisements and promotional material produced by the government or public entities should not include partisan content;
- statements in advertisements and promotional material produced by the government or public entities should be factually correct;
- advertisements by the government or public entities (including advertorials) should not include the names or photographs of ministers;
- leaflets or other documents (other than advertisements and advertorials) issued by the government or public entities may include content that refers to ministers, as long as such content is strictly limited and contributes to the legitimate purposes of the document;
- government-sponsored publications should indicate that they are so sponsored for the sake of transparency; and
- ministers should direct public funds to the media for advertising purposes according to fair and objective criteria.

The guidelines acknowledge that they do not cover every situation that might arise. They make it clear that the absence of guidelines on any matter does not exonerate ministers from their obligation to observe the Code of Ethics for Ministers in all circumstances. The Commissioner will continue to consider alleged breaches of ethics that are not covered by the guidelines with direct reference to the Code of Ethics for Ministers and the Standards in Public Life Act.

5.3 EU-funded project to improve the integrity framework

During 2021 the Commissioner for Standards in Public Life presented a project proposal to the EU Commission's Directorate General for Structural Reform Support with a view to obtaining funding from its Technical Support Instrument. The proposal was accepted.

The project is entitled “Improving the integrity and transparency framework in Malta” and it is being carried out by the Organisation for Economic Cooperation and Development (OECD) at the Commissioner’s request. The project covers six key areas:

- increasing the effectiveness of the Commissioner’s office;
- a review of the Standards in Public Life Act;
- improving the process for collecting and verifying asset and conflict of interest declarations;
- strengthening the codes of ethics for MPs and ministers, and supporting implementation through tailored guidance;
- improving the policy framework for responsible lobbying; and
- improving communication on integrity.

The project was formally launched on 15 September 2021 at an event held at the Casino Maltese in Valletta and attended by the representatives of the OECD, the European Commission, the Government of Malta, the Opposition, other state institutions, the media and civil society. Speakers at the event included Dr George Marius Hyzler, Commissioner for Standards; Dr Edward Zammit Lewis, then Minister for Justice and Governance; Dr Stefan Zrinzo Azzopardi, then Parliamentary Secretary for EU Funds in the Office of the Prime Minister; Mr Daniele Dotto, Deputy Director (Support to Member States) and Head of Unit (Governance and Public Administration) within the European Commission; and Mr Jeffrey Schlagenhauf, Deputy Secretary General of the OECD.

From 23 to 26 November 2021 the OECD project team held its first fact-finding mission to Malta as part of the project. During this mission the first meeting of the project Advisory Group was held, as was the first meeting of the project’s Technical Working Group on Transparency, Lobbying and Conflicts of Interest. Both groups include representatives of the Government, the Opposition, constituted bodies and civil society. In addition, the OECD project team held direct meetings with project stakeholders.

The project remains under way and has a duration of 24 months. The first three reports, dealing respectively with the organisation of the Commissioner’s office, the Standards in Public Life Act, and the regulation of lobbying, are expected to be ready by July 2022. A further report on the codes of ethics for members of Parliament and ministers is projected to be finalised in September 2022.



At the official launch of the Commissioner's integrity and transparency project on 15 September 2021. Left to right: Mr Daniele Dotto and Ms Ciresica Lavinia Feyer (European Commission); Dr George Hyzler (Commissioner for Standards); Mr Julio Bacio Terracino and Ms Carissa Munro (OECD).



Dr Stefan Zrinzo Azzopardi, then Parliamentary Secretary for EU Funds within the Office of the Prime Minister, being introduced to Mr Dotto and Mr Bacio Terracino by Dr Hyzler.

6 Resourcing and Logistics

6.1 Staffing

As on 31 December 2021 the Office of the Commissioner for Standards in Public Life consisted of six members of staff including the Commissioner. Other than the Commissioner, staff members consisted of a Director General; an Assistant Director (Research and Communications); a Research Analyst and Investigator; an Office Manager/Personal Assistant; and a driver. The Commissioner is entitled to a driver as part of the terms and conditions of his appointment, which are the same as those of a judge. However, the driver also performs general office duties, including accompanying visitors to the office for security purposes. An organisation chart appears in Appendix 1 to this annual report.

In addition, the Commissioner retained a legal advisor, an auditor and a media consultant on a contract-for-service basis. The role of the legal advisor is to give advice on legal issues arising primarily from investigations. The role of the auditor is primarily to assist in the examination and verification of the declarations of assets and interests that are submitted by ministers, parliamentary secretaries and members of Parliament. The role of the media consultant is to provide support and advice in connection with communications with the media and the use of online platforms by the Office of the Commissioner.

6.2 Funding

The financial plan for 2021 as submitted by the Commissioner provided for a total of €633,260 in expenditure for the year, consisting of €362,987 in personal emoluments and €270,273 in operational and maintenance expenses. However the plan only requested €478,060 in funding since it was proposed to utilise an unspent balance from financial year 2020 that was projected as €155,200 in September 2020 when the plan for 2021 was drawn up.

The funds allocated to the Office of the Commissioner in Vote 5 as approved by Parliament amounted to €478,000, representing virtually the entire amount requested by the financial plan.

Actual spending by the Office of the Commissioner during 2021 amounted to €470,745, leaving a surplus of €7,255 for the year. This was primarily the result of the following factors:

- the fact that two positions for which the Office sought and obtained funding in 2021, those of Investigator and Administrative Assistant, were not filled during the year in question;
- funds budgeted for staff training and travel (the latter with a view to developing international links) were not spent on account of the COVID-19 pandemic;

- the need for specialised professional services to assist in the investigation of complaints turned out to be considerably less than expected.

In connection with the last point, article 11(2) of the Standards in Public Life Act states that the Commissioner “may in the conduct of an investigation engage, in a consultative capacity, any person whose particular expertise is essential to the effectiveness of the investigation”. The extent to which funds are actually used for this purpose depends on the nature and subject matter of the complaints received by the Commissioner and any investigations undertaken by him on his own initiative. Funds for specialised professional services should therefore be regarded as a contingency. However, it is important for the funds to be made available to avoid any situations in which the Commissioner is compelled to halt investigations or decline to consider complaints on account of insufficient funds.

The unspent balance as it was forecast in September 2021 was put towards the Office’s budgetary requirements for 2022, as set out in its financial plan for 2022.

Audited financial statements for the Office of the Commissioner covering the year to 31 December 2021 are presented in Appendix 2 to this report. The financial statements were audited by the National Audit Office as required by article 12 of the Standards in Public Life Act.

6.3 Premises

The Office of the Commissioner is located on the fourth floor of the Office of the Ombudsman at 11, St Paul Street, Valletta.

This arrangement allows for a degree of synergy between the two bodies, since both represent institutions of oversight that report to Parliament.

These premises were made available by the Office of the Ombudsman under a tenancy agreement whereby the Office of the Commissioner is required to pay €20,000 annually for a period of ten years in defrayal of refurbishment expenses that were incurred prior to the introduction of the Standards in Public Life Act, together with €1,463 as a contribution to rent payable by the Ombudsman to the Lands Authority. In addition, the Office of the Commissioner reimburses the Office of the Ombudsman for its share of electricity and water consumption within the building, together with part of the salary of the receptionist.

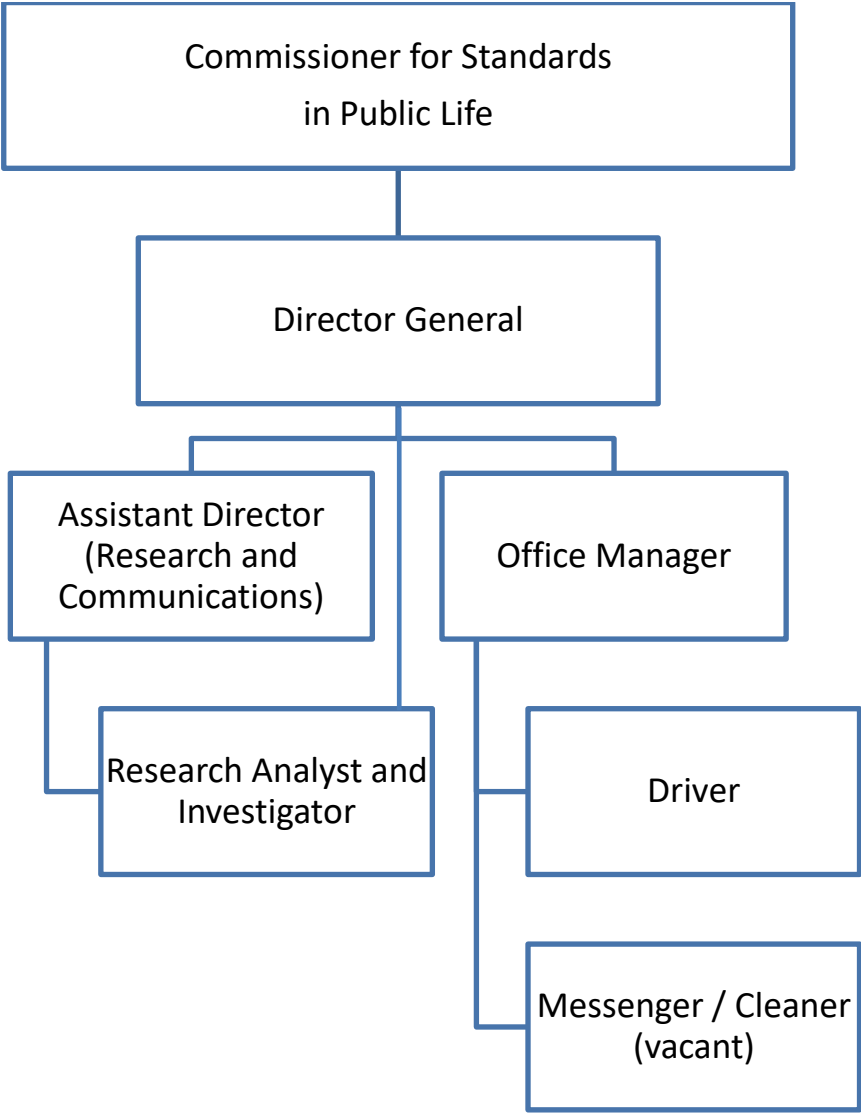
6.4 Vehicle

The Commissioner for Standards in Public Life is entitled to the same terms and conditions of a judge of the superior courts. The Commissioner is therefore entitled to an official car and driver.

Upon his appointment in November 2018, however, the Commissioner renounced to the use of an official car and instead used his own for office purposes. The Commissioner renounced to any compensation except for the reimbursement of fuel and other running costs including maintenance and upkeep. This resulted in considerable savings for the Office since it was not necessary to buy or lease a car. Fuel purchases were capped at the same limit as that applying to a judge. All expenditure on fuel for the car was counted towards the Commissioner's fuel allowance even though his car was occasionally used for office errands.

This arrangement remained in force during 2021.

Appendix 1 – Organisation Chart



Appendix 2 – Audited Financial Statements for the Year 2021

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Office of the Commissioner for Standards in Public Life

**Report and Financial Statements for the Year Ending
31 December 2021**

**STATEMENT OF RESPONSIBILITIES OF THE OFFICE OF THE COMMISSIONER
FOR STANDARDS IN PUBLIC LIFE**

The main role of the Commissioner for Standards in Public Life ("the Office") is to investigate allegations of misconduct by members of Parliament and persons of trust as defined in the Standards in Public Life Act (chapter 570 of the laws of Malta). The Commissioner may conduct any such investigation on his initiative or on the written complaint of any person.

The Office of the Commissioner 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 judgements 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.



Dr George Marius Hyzler
Commissioner for Standards in Public Life



Charles Polidano
Director General

*Office of the Commissioner for Standards in Public Life***INCOME STATEMENT****For the year ended 31 December 2021**

	2021	2020
	€	€
Income		
Government subvention	478,000	640,000
Expenditure		
Administrative and other expenses	166,240	101,138
Personal emoluments (note 5)	304,505	301,411
	470,745	402,549
Surplus for the year	7,255	237,451

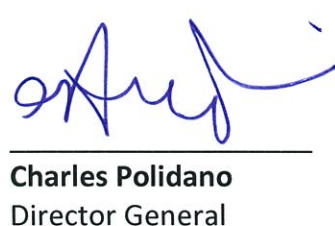
*Office of the Commissioner for Standards in Public Life***STATEMENT OF FINANCIAL POSITION****As at 31 December 2021**

	Notes	2021 €	2020 €
Fixed assets			
Intangible fixed assets	6	620	1,240
Tangible fixed assets	7	160,231	177,414
		<u>160,851</u>	<u>178,654</u>
Current assets			
Receivables	8	-	450
Bank	9	249,693	235,793
		<u>249,693</u>	<u>236,243</u>
Total assets		<u>410,544</u>	<u>414,897</u>
Long-term liabilities			
Leased liabilities	10	112,029	129,440
Current liabilities			
Leased liabilities	10	17,411	17,070
Payables	11	15,993	10,531
		<u>33,404</u>	<u>27,601</u>
Accumulated fund		<u>265,111</u>	<u>257,856</u>
Equity and liabilities		<u>410,544</u>	<u>414,897</u>

These financial statements were approved and authorised for issue on 19 July 2022 and signed by:



Dr George Marius Hyzler
Commissioner for Standards in Public Life



Charles Polidano
Director General

*Office of the Commissioner for Standards in Public Life***STATEMENT OF CHANGES IN EQUITY**

	Accumulated Fund €
At 1 January 2020	20,405
Surplus for the year	237,451
At 31 December 2020	257,856
Surplus for the year	7,255
At 31 December 2021	265,111

*Office of the Commissioner for Standards in Public Life***STATEMENT OF CASH FLOWS****For the year ended 31 December 2021**

	Notes	2021 €	2020 €
Cash flows from operating activities			
Surplus for the year		7,255	237,451
Add: Depreciation and amortisation		27,538	25,905
Add: Finance costs		2,930	3,265
Operating surplus before working capital changes		37,723	266,621
Decrease/(increase) in receivables		450	436
Increase/(Decrease) in payables		5,462	- 8,207
Net cash generated from operating activities		43,635	258,850
Cash flows from Investing activities			
Payments to acquire tangible fixed assets		- 29,735	- 30,887
Net cash used in investing activities		- 29,735	- 30,887
Net increase in cash and cash equivalents		13,900	227,963
Cash and cash equivalents at beginning of the year		235,793	7,830
Cash and cash equivalents at end of the year	9	249,693	235,793

*Office of the Commissioner for Standards in Public Life***NOTES TO THE FINANCIAL STATEMENTS****1. Legal status**

In 2017 the Maltese Parliament enacted the Standards in Public Life Act, which was brought into force on 30 October 2018. The main role of the Commissioner for Standards in Public Life is to investigate allegations of misconduct by members of Parliament and persons of trust as defined in the Act. The Office of the Commissioner for Standards in Public Life is situated at 11, St Paul Street, Valletta, Malta.

These financial statements were approved for issue by the Commissioner and the Director General on 18 July 2022.

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 applied to the year presented (January to December 2021).

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 Commissioner 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.

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

2. Summary of significant accounting policies (continued)

Revenue recognition

Revenue derived from the government's subvention is recognised when there is reasonable assurance that all the conditions attached to the subvention are complied with and the subvention will be received.

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.

Property, plant and equipment includes right-of-use assets in terms of IFRS 16. The accounting policy for right-of-use assets is included below in the section entitled 'Leases'.

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:

	%
Office equipment	20
Computer equipment	25
Computer software	25
Furniture & fittings	10
Motor vehicles	20

The contractual value of the leased premises is depreciated over the term of the lease after deducting the financial charge element of the contractual value.

NOTES TO THE FINANCIAL STATEMENTS**2. Summary of significant accounting policies (continued)**

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

Receivables

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

Intangible assets

An intangible asset is recognised if it is probable that the expected future economic benefits that are attributable to the asset will flow to the Office and the cost of the asset can be measured reliably.

Intangible assets are initially measured at cost. Expenditure on an intangible asset is recognised as an expense in the period when it is incurred unless it forms part of the cost of the asset that meets the recognition criteria.

Intangible assets with a finite useful life are amortised. Amortisation is charged to profit or loss so as to write off the cost of intangible assets less any estimated residual value, over their estimated useful lives. The amortisation method applied, the residual value and the useful life are reviewed, and adjusted if appropriate, at the end of each reporting period.

Website

The cost of the website is classified as an intangible asset and is amortised on a straight-line basis over four years.

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.

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

2. Summary of significant accounting policies (continued)

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.

Leases

The Office assesses whether the contract is, or contains, a lease at inception of a contract. A contract is, or contains, a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

The lease term is determined as the non-cancellable period of a lease, together with both (a) periods covered by an option to extend the lease if the lessee is reasonably certain to exercise that option; and (b) periods covered by an option to terminate the lease if the lessee is reasonably certain not to exercise that option.

The Office recognises a right-of-use asset and a corresponding lease liability with respect to all lease arrangements in which it is the lessee, unless otherwise stated below.

Where a right-of-use asset and a corresponding lease liability is recognised, the lease liability is initially measured at the commencement date at the present value of the lease payments that are not paid at that date, discounted by using the rate implicit in the lease. If this rate cannot be readily determined, the Office uses its incremental borrowing rate.

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 Office'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.

NOTES TO THE FINANCIAL STATEMENTS**3. 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. 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’.

4. Initial application of an International Financial Reporting Standard, early adoption of International Financial Reporting Standards and International Financial Reporting Standards in issue but not yet effective

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

There have been no instances of early adoption of standards and interpretations ahead of their effective date. At the date of statement of financial position, certain new standards and interpretations were in issue and endorsed by the European Union, but not yet effective for the current financial year. The Office of the Commissioner for Standards in Public Life anticipates that the initial application of the new standards and interpretation on 1 January 2022 will not have a material impact on the financial statements.

*Office of the Commissioner for Standards in Public Life***NOTES TO THE FINANCIAL STATEMENTS****5. Personal emoluments**

	2021	2020
	€	€
Wages and salaries	292,318	288,406
Social security costs	12,187	13,005
	304,505	301,411

In the period under review the Commissioner employed the equivalent of 6 full time employees.

6. Intangible fixed assets

	Website
	€
Cost	
At 31.12.2020 and 31.12.2021	2,480
Amortisation	
At 01.01.2020	620
Charge for the year	620
At 31.12.2020	1,240
At 01.01.2021	1,240
Charge for the year	620
At 31.12.2021	1,860
Net book value	
At 31.12.2020	1,240
At 31.12.2021	620

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS**7. Tangible fixed assets**

	Leased premises €	Motor vehicles €	IT equipment €	Other equipment €	Furniture & fittings €	Total €
Cost						
Additions	179,652	5,668	14,735	2,628	12,089	214,772
31.12.2019	179,652	5,668	14,735	2,628	12,089	214,772
1.01.2020	179,652	5,668	14,735	2,628	12,089	214,772
Additions	-	-	3,249	4,223	3,415	10,887
31.12.2020	179,652	5,668	17,984	6,851	15,504	225,659
01.01.2021	179,652	5,668	17,984	6,851	15,504	225,659
Additions	-	-	1,455	1,062	7,218	9,735
31.12.2021	179,652	5,668	19,439	7,913	22,722	235,394
Depreciation						
Charge for the period	16,407	1,134	3,684	526	1,209	22,960
31.12.2019	16,407	1,134	3,684	526	1,209	22,960
1.01.2020	16,407	1,134	3,684	526	1,209	22,960
Charge for the year	16,735	1,134	4,496	1,370	1,550	25,285
31.12.2020	33,142	2,268	8,180	1,896	2,759	48,245
01.01.2021	33,142	2,268	8,180	1,896	2,759	48,245
Charge for the year	17,070	1,133	4,860	1,583	2,272	26,918
31.12.2021	50,212	3,401	13,040	3,479	5,031	75,163
Net book value						
31.12.2019	163,245	4,534	11,051	2,102	10,880	191,812
31.12.2020	146,510	3,400	9,804	4,955	12,745	177,414
31.12.2021	129,440	2,267	6,399	4,434	17,691	160,231

*Office of the Commissioner for Standards in Public Life***NOTES TO THE FINANCIAL STATEMENTS****8. Receivables**

	2021	2020
	€	€
Prepayments	-	450

9. 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:

	2021	2020
	€	€
Cash at bank	249,693	235,793

10. Leased liabilities

On 20 December 2018 the Office of the Commissioner for Standards in Public Life entered into an agreement with another Government organisation to lease a floor within the premises of the said organisation for a period of 5 years, renewable by a further 5 years at the option of the lessee, for a charge of €20,000 per annum.

The Office of the Commissioner for Standards in Public Life believes that the likelihood of taking up the said option is high and therefore, in accordance with IFRS 16, the entire expected 10 year leased payments have been capitalised in the balance sheet. A 2% discount rate has been applied in calculating the present value of this lease obligation.

*Office of the Commissioner for Standards in Public Life***NOTES TO THE FINANCIAL STATEMENTS****10. Leased liabilities (continued)**

The present value of the lease payment obligations under finance lease are as follows:

	2021	2020
	€	€
Due within one year	17,411	17,070
Due within two and five years	73,198	71,762
More than five year	38,831	57,678
	129,440	146,510

The annual charge of €20,000 has been split between finance costs and depreciation as follows:

	2021	2020
	€	€
Depreciation	17,070	16,735
Finance charge	2,930	3,265
	20,000	20,000

11. Payables due within one year

	2021	2020
	€	€
Accruals	15,993	10,531

12. Financial assets and liabilities

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

13. Fair values

At 31 December 2020 and 2021, the fair values of assets and liabilities were not materially different from their carrying amounts.

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

14. 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 regular reviews of the working capital ratio ('Financial Situation Indicator'). This ratio was positive at the reporting date. The Office also uses budgets and plans to set its strategy to optimise its use of available funds and implements its commitments.

Report of the Auditor General to the Office of the Commissioner for Standards in Public Life

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Commissioner for Standards in Public Life set out on pages 39 to 52, which comprise the statement of financial position as at 31 December 2021, 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 Commissioner for Standards in Public Life's responsibility for the financial statements

The Office of the Commissioner for Standards in Public Life 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 Commissioner for Standards in Public Life 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, 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 Commissioner for Standards in Public Life as at 31 December 2021, 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 Standards in Public Life Act, 2018.



Auditor General

3 August 2022