



Who Are Persons of Trust? A Guidance Note

Under the Standards in Public Life Act (chapter 570 of the laws of Malta – referred to as “the Act” elsewhere in this document), the Commissioner for Standards in Public Life can investigate breaches of ethics by ministers, parliamentary secretaries, parliamentary assistants, members of Parliament and persons of trust.

The term “person of trust” as generally understood is broader in scope than the same term as defined in the Act. Not all persons who hold appointments on trust necessarily fall within the jurisdiction of the Standards Commissioner. The purpose of this note is to help the reader understand who is a person of trust, both in terms of the generally accepted meaning and as defined in the Act.

Employment on trust, the award of contracts for services, and appointments to boards and committees

Who are persons of trust? Generally speaking, persons of trust are also commonly known as political appointees – that is to say individuals who have been employed by the government of the day without the appropriate selection process.

It is important to distinguish between:

- persons who are employed on the basis of trust;
- persons engaged through contracts for services (usually as consultants or advisors); and
- persons who are appointed as members of boards, committees, commissions and similar bodies in public administration (including the governing boards of statutory authorities, government-owned companies and other public entities).

The award of contracts for services and appointments to boards and committees can both be seen as appointments on the basis of trust, in the sense that most persons in either category are chosen by the government at its discretion. Actually, however, neither contracts for services nor board and committee memberships amount to employment. Therefore individuals holding such contracts and members of boards and committees are not normally regarded as persons of trust.



So where do persons of trust work?

The majority of persons of trust hold positions in the private secretariats of ministers and parliamentary secretaries. Secretariat staff complements are limited to 37 persons in the case of the Prime Minister, 19 persons in the case of ministers, and 11 persons in the case of parliamentary secretaries. However, complements can be exceeded with the Prime Minister's approval.

The current administration has not imposed any limit on the number of persons within the above-mentioned complements that can be recruited from outside the public service, but the relevant manual does state that preference should be given to persons in the public service.¹

Secretariat positions tend to have standardised job titles. For instance, a minister's private secretariat is headed by a Chief of Staff. The equivalent position in the secretariat of a parliamentary secretary is titled Head of Secretariat. Other standard position titles include those of Private Secretary, Customer Care Officer, Coordinating Officer and Secretariat Officer. However, one should not exclude the possibility of some ministerial secretariats including non-standard positions.

Appointments on trust can also be made elsewhere in public administration. A circular issued by the then Principal Permanent Secretary in 2011 included "managerial positions (e.g. CEO, Senior Manager, etc)" and "technical positions (e.g. Manager News and Registered Editor, Biomedical Engineer)" as examples of posts that could be filled on the basis of trust.²

According to information disclosed by the government under the Freedom of Information Act, 683 persons held appointments on trust on 31 October 2017. Posts filled on the basis of trust included those of security guard, maintenance officer, and crane and forklift operator.³

Categorising persons of trust

The government distinguishes between different categories of appointments on trust. It reserves the term "person of trust" for those who are recruited on trust directly from outside public administration. On the other hand, serving public

¹ Government of Malta, "Engagement of Staff for Ministers' Secretariats", July 2017.

² "Engagement/Renewal of Engagement of Persons Appointed on a 'Person of Trust' Basis", OPM circular no. 21/2011, 14 December 2011.

³ *The Malta Independent*, "Around 700 People Employed on a Trust Basis or as Consultants by Government", 4 March 2018. Available at <http://www.independent.com.mt/articles/2018-03-04/local-news/Around-700-people-employed-on-a-trust-basis-or-as-consultants-by-government-6736185647>.



employees who are given appointments on trust are known simply as holders of “positions of trust”.

There are also policy consultants, advisors, and the holders of “other specific positions”. These individuals hold contracts of employment, unlike those engaged through fixed-term contracts for services as mentioned in page 1. Policy consultants work in a strategic unit that is headed by the minister’s Chief of Staff but is regarded by the government as separate from the private secretariat. Advisors and holders of other specific positions may be attached to government units and offices beyond the secretariat.

A government policy document states that none of these persons may exercise “executive powers over government matters and personnel.”⁴ However, there is an additional category of persons appointed on the basis of trust who are known as holders of “contracts of service” – as distinct from contracts *for* services – and who are not subject to this restriction.⁵ Such persons would normally fall under the responsibility of the ministry’s Permanent Secretary (the most senior official in the ministry) rather than falling directly under the responsibility of the minister or parliamentary secretary.

Do all persons of trust fall under the jurisdiction of the Commissioner for Standards?

The Standards in Public Life Act sets out its own definition of the term “person of trust”. This is limited to those individuals who serve in the private secretariat of a minister or parliamentary secretary and who act in an advisory, consulting or executive capacity. Only those falling within this definition are subject to scrutiny by the Commissioner for Standards in Public Life.

In time this definition may gain clearer boundaries by virtue of cases considered by the Standards Commissioner. So far, the Commissioner has investigated only one case concerning a person of trust. This case has established that persons of trust can fulfil an executive role *within* the private secretariat, even if they are precluded by government policy from exercising executive powers *outside* the secretariat.⁶ This addresses and resolves the apparent contradiction between

⁴ Government of Malta, “Policy on the Engagement of Persons/Positions on a Trust Basis”, 7 July 2017, p. 2.

⁵ Commissioner for Standards in Public Life, case report K/002 dated 5 July 2019, pp. 14–15. Available at <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K002-EN.pdf>.

⁶ Commissioner for Standards in Public Life, case report K/003 dated 12 April 2019, pp. 3–6. Available at <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K003.pdf>.



government policy and the definition of “person of trust” in the Act. It also ensures that persons of trust who perform executive functions within a private secretariat remain subject to the Act.

The Commissioner has rejected two complaints regarding individuals who do not fall within the definition of “person of trust” according to the Act. The fact that complaints were submitted against these individuals is to some extent evidence of the lack of understanding of who is a person of trust as defined in the Act.

Why are appointments on trust controversial?

It is widely accepted that ministers have the right to staff their private secretariats with people whom they personally trust. As a rule ministers would shoulder political responsibility for wrong-doing by persons appointed by them. They form part of the minister’s inner team.

Nevertheless, appointments on trust have attracted controversy. This is because, as already noted, appointments on trust are not limited to ministers’ secretariats. Appointments on trust are also considered controversial because they are widely regarded as being in direct conflict with the relevant provisions of the Constitution, since the Public Service Commission (an autonomous body tasked with upholding the merit principle in the appointment of government employees) is effectively bypassed and ignored.

Article 110 of the Constitution sets out an expectation that staff in public administration should be employed on the basis of merit. Appointments on trust outside ministers’ secretariats contradict this concept. In its annual report for 2011 the Public Service Commission stated that it had come across “a number of instances in which appointments on trust were used to fill administrative, managerial or technical positions”. The Commission expressed a concern that “appointments on trust could be used to avoid issuing calls for applications for vacancies that should be filled on the basis of merit.”⁷

Are appointments on trust lawful?

The Constitution makes no provision for appointments on trust, even in ministers’ secretariats. Article 124 of the Constitution defines non-military posts in government employment, with specific exceptions, as public offices, or posts in the public service of Malta. Article 110 requires such posts – again with specific exceptions – to be filled through appointments under the jurisdiction of the Public

⁷ Public Service Commission, *Annual Report 2011*, pp. 20–21. Available at <https://psc.gov.mt/en/Documents/Annual-Reports/Annual-Report-2011.pdf>.



Service Commission. None of the exceptions in either article caters for appointments on trust.

It is the practice for persons of trust to be employed on the basis of renewable fixed-term contracts that do not entitle them to permanent employment, no matter how long they serve. On this basis it has been argued that appointments on trust do not amount to employment for the purposes of the Constitution.⁸ In keeping with this, official government terminology tends to refer to appointments on trust as “engagements”.

However, articles 110 and 124 of the Constitution make no distinction between permanent and fixed-term appointments. Only acting appointments (short-term interim appointments, at the end of which the appointee reverts to his or her previous post) are exempted from article 110, and only if they are of two months or less in duration.

The Standards in Public Life Act specifies that a person of trust is someone who “has not been engaged according to the procedure established under article 110 of the Constitution”. This has led to criticism of the Act on the grounds that it is openly acknowledging and accepting unconstitutional employment.⁹ However, the reality is that persons of trust now constitute an important sector of public administration in Malta. The Act recognises this and establishes a mechanism through which many of them can be publicly held to account for their conduct.

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⁸ Office of the Principal Permanent Secretary, *Governance: Action on the Parliamentary Ombudsman’s Annual Report 2017* (November 2018), p. 8. Available at https://publicservice.gov.mt/en/Documents/Governance_Action_on_the_Parliamentary_Ombudsman_Annual_Report_2017.pdf.

⁹ Kevin Aquilina, “Assault on the Constitution”, *Times of Malta*, 2 May 2017. Available at <https://www.timesofmalta.com/articles/view/20170502/opinion/Assault-on-the-Constitution.646812>.