

Who are persons of trust? A guidance note

1 Introduction: political appointees, persons of trust and PEPs

Under the Standards in Public Life Act (chapter 570 of the laws of Malta), the Commissioner for Standards in Public Life can investigate breaches of ethics by **members of Parliament** and **persons of trust**.

The term “person of trust” is commonly understood as referring to political appointees, or individuals who have been given a job by the government of the day without a competitive selection process. However, the Standards in Public Life Act defines the term “person of trust” much more narrowly. Not all political appointees can be investigated by the Standards Commissioner. Over the years the Commissioner has had to reject several complaints against political appointees who were not persons of trust as defined by the Act.

Persons of trust have also been confused with politically exposed persons (PEPs). However, the term “politically exposed person” emerges from the legislation on money laundering and has nothing to do with the Standards in Public Life Act. In actual fact few persons of trust as defined in the Act are PEPs.

This guidance note aims to clarify the meaning of the term “person of trust” as set out in the Act. By way of background, this document begins by providing an overview of different categories of political appointees and exploring some issues relating to political appointments. Then it explains which of these categories are considered persons of trust in terms of the Act. Finally, it offers guidance to persons who are not sure if the individual they wish to complain about is a person of trust as defined by the Act.

2 Different kinds of political appointee

2.1 *Consultants and others engaged on contracts for services*

If the government of the day wishes to engage the services of a particular person, one way it can do so is to award that person a contract for services by means of a direct order – that is to say without a competitive bidding process. This mechanism is often used by the government to engage advisors or consultants.

Persons engaged by the government on the basis of a contract for services are not government employees, even if their contract involves full-time work. In legal terms they are simply providing a service, and they are paid a fee rather than a salary.

2.2 *Members of government boards and committees*

Many boards and committees form part of the machinery of government. These include boards that advise on policy; boards that decide on individual cases; and the governing boards of public authorities and other public sector organisations.

The members of most government boards and committees are chosen by ministers at their discretion. They resign on a change of government, giving the incoming government a free hand in appointing their successors. For these reasons they tend to be seen as political appointees.

2.3 *Staff in private secretariats*

All ministers and parliamentary secretaries appoint persons of their own choice to serve in their private secretariats. Chapter 7 of the *Manual on Resourcing Policies and Procedures*, issued by the Office of the Prime Minister, sets the following limits on the number of secretariat staff:

- Prime Minister’s secretariat: 37 persons;
- minister’s secretariat: 19 persons;
- secretariat of a parliamentary secretary: 11 persons.¹

Secretariat positions tend to have standardised job titles. The most senior person is known as the Head of Secretariat.² Other standard position titles include those of Private Secretary, Customer Care Officer, Coordinating Officer and Secretariat Officer. However, secretariats may also include non-standard positions.

Members of staff of secretariats can be chosen from among serving public employees or recruited from outside the public administration. All are chosen on trust, but only those recruited from outside the public administration are officially designated as persons of trust. Those who are already in public employment are designated as the holders of “positions of trust”.

Article 6A(1) of the Public Administration Act specifies that persons of trust should not be considered public employees. In administrative jargon they are “engaged” rather than employed. However, persons of trust are employees in every material respect. They receive salaries and are entitled to paid leave. In addition, they are engaged on renewable one-year contracts which specify that they are not entitled to indefinite

¹ *Manual on Resourcing Policies and Procedures* (30 March 2023), pp. 133–134. Available from https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual_on_Resourcing_Policies_and_Procedures.pdf.

² From 2013 to 2020 the head of a minister’s secretariat was known as the Chief of Staff, but this title is no longer used.

employment, no matter how long they serve: were they not employees, such a provision would be unnecessary.

2.4 Staff in associated units

Ministers also make appointments on trust to units that are closely associated with their secretariats but have separate complement limits.

The Office of the Prime Minister includes a Government Communications Unit, a Central Government Customer Care Unit, and a Central Parliamentary Questions Unit. The combined complement for these units amounts to 26 persons.

Furthermore, each ministry can establish a Strategic and Priorities Unit consisting of policy consultants. The Prime Minister can appoint eight policy consultants. A minister can appoint four and a parliamentary secretary can appoint two.

The distinction between persons of trust (those recruited from outside the public administration) and the holders of positions of trust (serving public employees) applies here too. Like their counterparts in secretariats, persons of trust in associated units are employees in fact though not in name. For this reason, policy consultants in Strategic and Priorities Units should not be confused with consultants engaged on contracts for services (see **section 2.1** of this guidance note).

2.5 Political appointments in top administrative posts

Some top officials in the public administration can be hand-picked by the government, even though they are not considered persons of trust. For example:

- The Principal Permanent Secretary is the top public officer (government employee) in Malta. He or she is effectively chosen by the Cabinet. However, only serving public officers can be appointed to this position.
- Permanent secretaries are the most senior public officers in ministries. They are chosen by the Public Service Commission, an independent constitutional body, after considering nominations by the Principal Permanent Secretary. The Commission is not obliged to appoint the persons nominated by the Principal Permanent Secretary, but it usually does so. Permanent secretaries must be serving public officers.
- Ambassadors of Malta abroad are chosen by the Prime Minister, who must consult the Public Service Commission if the chosen person is a public officer. If the chosen person is not a public officer, his or her appointment must be approved by Parliament's Public Appointments Committee. Some ambassadors are career diplomats, but others can be drawn from outside the public administration altogether.
- Various laws establish posts that carry the title of commissioner (Commissioner for Children, Commissioner for Older Persons, Commissioner for Animal Welfare).

Appointments to these posts are made by the government at its discretion, subject only to a requirement to consult certain third parties beforehand.

- Chief executives of public entities (authorities, agencies and other bodies that are owned or controlled by the government but legally separate from it) are often appointed on trust. In some cases the chief executive of a public entity can be appointed directly by the responsible minister, without reference to the entity's governing board.

2.6 *Political appointees in lower-level administrative posts*

Appointments on trust can be made to lower-level posts in government departments and public entities. There are two main provisions of law that allow for this:

- article 15(2)(a) of the Employment and Training Services Act; and
- article 6A(1)(c) of the Public Administration Act.

Article 15(2)(a) of the Employment and Training Services Act permits public entities to recruit employees on trust if they are authorised to do so by Jobsplus, the national employment authority. This provision was originally enacted as part of the Employment and Training Services Act of 1990 and carried over to the current law of the same name, which superseded the earlier law in 2019.

Article 6A(1)(c) of the Public Administration Act empowers ministers to recruit persons of trust to fill posts in government departments and public entities that have remained vacant following repeated calls for applications. This provision was added to the Act in 2021, but it codifies a longstanding practice. A government circular issued 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.³

Other legislation may also include provisions empowering the government to hand-pick employees. For example, regulations issued under the Public Administration Act give ministers the power to appoint the heads of “specialised units” without issuing calls for applications.⁴

Of all these, only persons appointed under article 6A(1)(c) of the Public Administration Act are officially designated as persons of trust.

³ OPM Circular no. 21/2011, entitled “Engagement/Renewal of Engagement of Persons Appointed on a ‘Person of Trust’ Basis” and issued on 14 December 2011.

⁴ See regulation 5(3) of the Organisation, Administration and Operation of Specialised Units Regulations (SL 595.43).

3 Why are political appointments controversial?

It is widely accepted that ministers have the right to staff their private secretariats with people whom they personally trust. It follows that ministers should shoulder particular responsibility in the case of wrongdoing by persons of trust. Nevertheless, political appointments have attracted controversy. There are various reasons for this.

3.1 *The number of political appointees*

Firstly, there are many political appointees. According to information disclosed by the government under the Freedom of Information Act, 683 persons held appointments on trust on 31 October 2017. This figure includes persons of trust and persons in positions of trust, but it excludes members of boards and committees.⁵

More recent data is not available.

3.2 *Political appointments outside ministers' secretariats*

Secondly, not all political appointees serve in ministers' secretariats. According to the information disclosed by the government in 2017, posts filled on the basis of trust included those of security guard, maintenance officer, and crane and forklift operator.

Such appointments have raised concerns about the integrity of public administration. In 2018 the Council of Europe's Venice Commission issued a report on Malta which stated that "*any exception to procedures that provide for appointments on merit are a danger to the quality of the civil service, which is the backbone of a democratic state under the rule of law*".⁶ A resolution issued by the Parliamentary Assembly of the Council of Europe in 2022 stated that "*The high number of political appointees and lack of legal regulations governing these positions increases the vulnerability of Malta's civil service to conflicts of interest and cronyism.*"⁷

The *Manual on Resourcing Policies and Procedures* states that persons engaged on the basis of trust "*will not enjoy executive powers on government matters and personnel*".⁸ This rule appears intended as a safeguard against abuse. However, it does not apply to

⁵ *The Malta Independent*, "Around 700 People Employed on a Trust Basis or as Consultants by Government", 4 March 2018. Available from <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>.

⁶ Venice Commission, *Malta: Opinion on Constitutional Arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement* (17 December 2018), paragraph 127. Available from [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)028-e#](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)028-e#).

⁷ Council of Europe Parliamentary Assembly Resolution 2451 of 2022, paragraph 7. Available from <https://pace.coe.int/en/files/30199#trace-3>.

⁸ *Manual on Resourcing Policies and Procedures*, page 126.

all political appointees, and it is not necessarily always observed even where persons of trust are concerned. When a Hate Crime and Speech Unit was set up within the Ministry for Home Affairs and National Security in 2019, a person of trust in the minister's secretariat was tasked with heading the Unit even though its role was not political.⁹

3.3 *The doubtful legality of political appointments*

Thirdly, the legality of many political appointments is open to question. Article 110(1) of the Constitution requires public officers to be appointed on merit. Article 124 of the Constitution defines the term "public officer" to mean, in effect, non-military government employees. The employees of public entities are not public officers, but they too must be recruited on merit by virtue of article 110(6). There are exceptions to these provisions, as in the case of permanent secretaries and ambassadors, but these exceptions are very limited and specific. There is no general exception allowing for appointments on trust in government departments and public entities. The Constitution does not even provide for appointments on trust in ministers' secretariats.

In 2018 the Venice Commission recommended "*adopting a constitutional amendment together with [a] clear legal basis, which strictly limits the appointments of persons of trust*".¹⁰ This recommendation was echoed by the Group of States against Corruption (GRECO) in 2019.¹¹

In 2021 the Public Administration Act was amended through the introduction of article 6A, which provided for the appointment of persons of trust. However, no changes were made to the Constitution. Furthermore, no limits on the number of persons on trust were added to the Act: instead, article 6A(3) provides for such limits to be set out in a manual. This purpose is served by chapter 7 of the *Manual on Resourcing Policies and Procedures*. The manual caps the number of staff in secretariats and associated units, but not persons of trust who are recruited to fill posts in government departments or public entities that remain vacant following public calls for applications.

When the amendments to the Public Administration Act were still in the form of a bill before Parliament, the then-Commissioner for Standards wrote to all members of Parliament to express his concern that the bill was not compatible with the Constitution. The Commissioner expressed particular concern about the provision permitting appointments on trust to unfilled vacancies in departments and entities. He noted that

⁹ Commissioner for Standards in Public Life, report on case K/024 (1 September 2020), paragraphs 16, 58–59. Available from <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K024.pdf>.

¹⁰ Venice Commission, *Malta: Opinion on Constitutional Arrangements*, paragraph 129.

¹¹ GRECO, *Fifth Evaluation Round: Preventing Corruption and Promoting Integrity in Central Governments (Top Executive Functions) and Law Enforcement Agencies – Evaluation Report* (22 March 2019), paragraph 26. Available from <https://rm.coe.int/grecoeval5rep-2018-6-fifth-evaluation-round-preventing-corruption-and-/168093bda3>.

it was up to the government of the day to decide how many vacancies it had in a given occupational group. He warned that the bill could, over time, *“lead to the recruitment of an increasing number of persons of trust, all of whom would owe their jobs to ministers, and many of whom would not necessarily be qualified or fit for their posts. This would politicise Maltese public administration and result in the further lowering of standards of ethical conduct and service delivery.”*¹²

4 Persons of trust in terms of the Standards in Public Life Act

4.1 What the law says

The law enacted in 2021 to amend the Public Administration Act also revised the definition of the term “person of trust” in article 2 of the Standards in Public Life Act. The revised definition is as follows:

“person of trust” means:

- (i) any employee or person engaged directly from outside the public service and the public sector to act as consultant or staff in the private secretariat of a Minister; or*
- (ii) any employee or person engaged directly from outside the public service and the public sector to act as consultant or staff in the private secretariat of a Parliamentary Secretary; or*
- (iii) a person engaged in the event that a post remains vacant following repetitive public calls for engagement; or*
- (iv) a person who has been engaged according to the procedure established under article 6A of the Public Administration Act.*

This definition corresponds to article 6A(1) of the Public Administration Act, which states that:

Ministers and Parliamentary Secretaries may engage directly, on a persons of trust basis, individuals from outside the public service and the public sector:

- (a) to act as consultants to a Minister or Parliamentary Secretary; or*
- (b) to act as staff of the Secretariat of a Minister or a Parliamentary Secretary; or*
- (c) in the event that following repetitive public calls for engagement, a post remains vacant:*

Provided that persons of trust shall not be deemed to be public officers or public employees.

¹² Unpublished letter dated 7 October 2020.

4.2 To whom does this definition apply?

The Standards in Public Life Act undoubtedly applies to:

- persons of trust in secretariats (see **section 2.3** of this guidance note);
- persons of trust serving as policy consultants in Strategic and Priorities Units (**section 2.4**); and
- persons of trust appointed to unfilled vacancies in government departments and entities under article 6A(1)(c) of the Public Administration Act (**section 2.6**).

Although persons of trust are not considered public employees, they are still required by article 3(1)(b) of the Standards in Public Life Act to observe the code of ethics for public employees.¹³ They can be investigated by the Standards Commissioner for breaches of the code.

The distinction between persons of trust and persons in positions of trust should be kept in mind. Persons in positions of trust – that is to say serving public employees who are engaged as secretariat staff or policy consultants – do not fall under the Act and cannot be investigated by the Commissioner for Standards.

It is not immediately clear whether the Standards in Public Life Act applies to persons of trust in associated units that **do not have a policy role**, such as for example the Central Government Customer Care Unit (**section 2.4**). Neither this Act nor the Public Administration Act refer to such units. However, article 6A of the Public Administration Act was enacted to “*provide a legal basis for the appointment of persons of trust*”,¹⁴ and it is the only provision of law under which persons of trust can be recruited to such units. If they are covered by the Public Administration Act, they are likewise covered by the Standards in Public Life Act.

Another area of uncertainty is whether the Standards in Public Life Act applies to persons engaged on a contract for services to advise ministers or parliamentary secretaries (**section 2.1**). Both this Act and the Public Administration Act refer to persons who are “engaged” to serve as consultants. This term does not exclude persons on a contract for services. Read as a whole, however, article 6A of the Public Administration Act can be understood as referring to persons who serve under a contract of employment, even if at the same time article 6A(1) says that they should not be considered employees. The question is whether this should condition the interpretation of the Standards in Public Life Act. This issue can only be resolved if the Standards Commissioner receives a complaint about a consultant or advisor who is serving under a contract for services.

¹³ The code is part of the Public Administration Act. A standalone version is available from <https://standardscommissioner.com/wp-content/uploads/Code-of-Ethics-POTs-current.pdf>.

¹⁴ See the statement of objects and reasons in Bill 159 of 2020, available from <https://parlament.mt/media/107601/bill-159.pdf>.

It is clear that there are various categories of political appointees to whom the Act does **not** apply. These include:

- members of government boards and committees (see **section 2.2**);
- senior public employees, including the chief executives of public entities (**section 2.5**); and
- persons employed on trust by public entities under article 15(2)(a) of the Employment and Training Services Act (**section 2.6**).

5 Making complaints about persons of trust

It can be difficult for members of the public to determine whether an individual is a person of trust who is subject to the Standards in Public Life Act. As this guidance note has shown, it is not enough to know what duties that individual is performing. A member of a minister's secretariat may be a regular public employee who is not subject to the Act. Conversely, a member of staff of a government department or a public entity may be a person of trust engaged under article 6A(1)(c) of the Public Administration Act.

However, the majority of staff in secretariats are persons of trust, and most staff in government departments and public entities are regular public employees. This means that the following rules of thumb apply:

- if an individual is serving in the secretariat of a minister or parliamentary secretary, there is a good probability that he or she is subject to the Standards in Public Life Act;
- if an individual is working in a government department or a public entity, it is very likely that he or she is not subject to the Act.

Unfortunately it is not possible to compile more definite rules. For this reason, members of the public who wish to make a complaint to the Standards Commissioner should do so even if they are not sure whether the Standards in Public Life Act applies to the individual they wish to complain about. The Commissioner will conduct the checks necessary to determine whether that individual is subject to the Act. If the Commissioner finds that he cannot investigate the complaint, he will inform the complainant accordingly and say why.