



# Who Are Persons of Trust? A Guidance Note

*Office of the Commissioner for Standards in Public Life*

*First issued 17 October 2019*

*Revised 28 April 2021*

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 generally understood as referring to political appointees – that is to say individuals who have been employed by the government of the day without a call for applications. However, the same term as defined in the Act is narrower in scope. Not all persons who hold appointments on trust necessarily fall within the jurisdiction of the Standards Commissioner.

The Commissioner has rejected three complaints alleging breaches of ethics on the part of individuals who could have been considered political appointees but were not persons of trust as defined by the Act. The fact that complaints were submitted against these individuals could indicate that the definition in the Act is not clearly understood.

This guidance note is intended to provide clarity. It provides an overview of the different categories of government employees who can be considered persons of trust; explores public controversies relating to their appointment; and explains which persons of trust can be investigated by the Commissioner in terms of the Act.

## **Employment on trust, contracts for services, and appointments to boards and committees**

In practice the government of the day uses one of three mechanisms if it wishes to engage the services of a particular person without going through a competitive selection process:

- employing the person on the basis of trust;
- awarding the person a contract for services (for example as a legal advisor) by means of a direct order, that is to say without a competitive bidding process; or



- appointing the person as chairperson or member of an official board or committee, including the board of directors of a public entity.

The term “person of trust” is usually limited to persons who have been employed on the basis of trust. Persons who hold contracts for services are not considered employees, and neither are members of boards and committees. For this reason they are not normally regarded as persons of trust.

## **So who are persons of trust?**

### *Staff in private secretariats*

The majority of persons of trust hold positions in the private secretariats of ministers and parliamentary secretaries. Secretariat staff complements are subject to the following limits that are set by the *Manual on Resourcing Policies and Procedures* issued by the Office of the Principal Permanent Secretary:

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

Secretariat positions tend to have standardised job titles. The most senior person is known as the Head of Secretariat.<sup>2</sup> 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.

### *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.

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<sup>1</sup> Office of the Principal Permanent Secretary, *Manual on Resourcing Policies and Procedures*, chapter 7 (version June 2020). Available from [https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual\\_on\\_Resourcing\\_Policies\\_and\\_Procedures.PDF](https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual_on_Resourcing_Policies_and_Procedures.PDF).

<sup>2</sup> Until January 2020 the head of a minister’s secretariat used to be known as the Chief of Staff, but this title is no longer used.



Furthermore, each ministry can establish a Strategic and Priorities Unit consisting of policy consultants. According to the manual, the Prime Minister can appoint up to eight policy consultants, while other ministers can appoint four and parliamentary secretaries can appoint two.

### *Persons of trust versus positions of trust*

All members of staff of secretariats and associated units are chosen on the basis of trust. However, not all are officially classified as persons of trust. The government reserves this term for those who are engaged directly from outside the public administration. Those who were already employed in public administration before being engaged in secretariats or associated units are officially classified as persons holding “positions of trust”.

### *Persons of trust and the exercise of executive powers*

According to government policy, neither persons of trust nor persons in positions of trust may “enjoy executive powers on government matters and personnel”.<sup>3</sup> This appears intended to mean that members of staff in a minister’s secretariat cannot give directions to government employees serving outside the secretariat.

However, this is not necessarily always observed in practice. When, in October 2019, a Hate Crime and Speech Unit was set up within the Ministry for Home Affairs and National Security, a member of the minister’s secretariat was tasked with heading the Unit even though its role was not political.<sup>4</sup>

### *Persons of trust elsewhere in public administration*

Appointments on trust can be made in the permanent machinery of public administration, that is to say outside ministers’ secretariats and associated units. This is a longstanding practice. A circular issued by the 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.<sup>5</sup>

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<sup>3</sup> *Manual on Resourcing Policies and Procedures*, p. 118.

<sup>4</sup> Commissioner for Standards in Public Life, report on case K/024, 1 September 2020. Available from <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K024.pdf>.

<sup>5</sup> OPM Circular no. 21/2011, “Engagement/Renewal of Engagement of Persons Appointed on a ‘Person of Trust’ Basis”, 14 December 2011.



Current policy permits appointments on trust in “technical and/or ancillary” positions that remain unfilled following public calls for applications.<sup>6</sup> The policy does not define what it means by “technical and/or ancillary”.

This policy is backed by legislation in the form of the Public Administration Act (chapter 595 of the laws of Malta), as amended by Act XVI of 2021. Article 6A of the Public Administration Act as amended caters for appointments on trust in ministerial secretariats and in posts elsewhere in the public administration that remain vacant following “repetitive” public calls for applications. Article 6A does not set any limits on the type of posts to which this mechanism might apply. It states only that the number of persons of trust and their conditions of employment should be determined by a “manual published by the Cabinet Office and laid on the table of the House”.

On 7 October 2020, while Act XVI of 2021 was still in bill form, the Commissioner for Standards in Public Life wrote to all members of Parliament to express his concern that the bill would permit appointments on trust in any occupational group of public employees as long as some vacancies in the group remained unfilled through normal public calls for applications. The scope for appointments on trust could be widened still further since it was up to the government of the day to decide how many vacancies it had in each occupational group. There was no requirement that those appointed on trust should be qualified for the vacancies they fill. On the contrary, the logic of the bill dictated that the qualification requirements should be waived (although the bill did not spell this out) since the aim was to fill vacancies for which qualified people are not available.

In his letter the Commissioner expressed the view that the bill would, 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.”<sup>7</sup>

### *Political appointments in top administrative posts*

Top posts within public administration can be filled by the government at its discretion without issuing calls for applications, as follows:

- By virtue of article 111 of the Constitution, ambassadors are chosen by the Prime Minister, who must consult the Public Service Commission if the chosen person is a civil servant. If the chosen person is not a civil

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<sup>6</sup> *Manual on Resourcing Policies and Procedures*, p. 119.

<sup>7</sup> Unpublished letter dated 7 October 2020.



servant, his or her appointment must be cleared by Parliament's Public Appointments Committee.

- 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 form part of the wider public sector rather than the government proper) are often appointed on the basis of trust.

None of the persons in these posts are officially considered persons of trust, notwithstanding the manner of their appointment.

In addition, article 92 of the Constitution empowers the Prime Minister to choose permanent secretaries (the administrative heads of ministries) and heads of government departments after consulting the Public Service Commission.<sup>8</sup> Permanent secretaries must be chosen from among serving civil servants, while heads of government departments must be chosen from among senior civil servants. In practice, most heads of government departments are appointed following calls for applications circulated internally within government.

### **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. It follows that ministers should shoulder particular responsibility in the case of wrong-doing by persons of trust.

Nevertheless, appointments on trust have attracted controversy. This is mainly because, as already noted above, appointments on trust are not limited to ministers' secretariats. According to information disclosed by the government under the Freedom of Information Act, 683 persons held appointments on trust on 31 October 2017 (including both persons of trust and persons in

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<sup>8</sup> Bill 157, currently before Parliament, proposes to amend the Constitution so that permanent secretaries would be chosen by the Public Service Commission rather than the government.



positions of trust). Posts filled on the basis of trust included those of security guard, maintenance officer, and crane and forklift operator.<sup>9</sup>

Article 110 of the Constitution sets out the general principle that employees in public administration should be recruited on the basis of merit. Appointments on trust to posts in the permanent machinery of public administration contradict this concept.

### **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 posts in the public service of Malta. Article 110(1) requires such posts – again with specific exceptions – to be filled through appointments under the jurisdiction of the Public Service Commission. The Commission is an independent body whose role is to uphold the principle of merit in public service appointments. None of the exceptions in either article cater for appointments on trust, save as already noted in the case of permanent secretaries, heads of government departments and ambassadors.

Public entities that are employers in their own right are not subject to the Public Service Commission. However, they are still obliged to recruit staff on merit by virtue of article 110(6) of the Constitution.

It is the practice for persons of trust to be employed on the basis of renewable one-year 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.<sup>10</sup> In keeping with this, official government terminology tends to refer to appointments on trust as “engagements”, and the Public Administration Act as amended by Act XVI of 2021 specifies that persons of trust should not be considered civil servants or public employees.

However, articles 110 and 124 of the Constitution make no distinction between permanent and one-year appointments. Only acting appointments (short-term

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<sup>9</sup> *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>.

<sup>10</sup> Office of the Principal Permanent Secretary, *An Analysis of the Commissioner for Standards in Public Life's Report K/002* (11 November 2019), pp. 8–9. Available from [https://publicservice.gov.mt/en/Pages/News/2019/20191112\\_AnalysisOfAttorneyGeneralReport.aspx](https://publicservice.gov.mt/en/Pages/News/2019/20191112_AnalysisOfAttorneyGeneralReport.aspx).



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.

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”.<sup>11</sup> Subsequently Act XVI of 2021 was enacted to establish a legal basis for the appointment of persons of trust. However, this Act did not provide for any amendments to the Constitution. In addition, as already noted above, the Act did not introduce any limits on the number of appointments on trust, instead providing for such limits to be set out in a government manual. The Venice Commission criticised the Act on both these counts while it was still in bill form.<sup>12</sup>

### **Which 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 definition has been amended by Act XVI of 2021 in keeping with the amendments made by the same Act to the Public Administration Act. As amended, the definition in the Standards in Public Life Act is limited to:

- consultants and other staff who serve in the private secretariat of a minister or parliamentary secretary, and who have been engaged directly from outside the public administration;
- persons engaged on the basis of trust to fill posts 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.

This definition does not cover persons in positions of trust – that is to say persons who were already serving public employees when they were engaged as secretariat staff. Such persons are therefore no longer subject to investigation by the Commissioner for Standards in Public Life.

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<sup>11</sup> Venice Commission, *Malta: Opinion on Constitutional Arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement*, 17 December 2018, p. 25. Available at [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).

<sup>12</sup> Venice Commission, *Malta: Opinion on Ten Acts and Bills Implementing Legislative Proposals Subject of Opinion CDL-AD(2020)006*, 8 October 2020, p. 18. Available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)019-e).



The definition covers policy consultants engaged from outside the public administration to serve in ministerial strategy units. The definition does not specify whether it covers persons of trust in any other units associated with ministerial secretariats. However, it applies to any persons of trust who are engaged from outside the public administration in terms of article 6A of the Public Administration Act. This provision constitutes the only legal basis for the engagement of persons of trust, whether they serve in secretariats or associated units. On this basis it appears that persons who are engaged on trust from outside the public administration to serve in any units associated with ministers' secretariats are subject to investigation by the Commissioner for Standards in Public Life.