

Public Service Commission

**ANNUAL REPORT
2013**

MALTA

Public Service Commission
The Palace, Republic Street, Valletta

<http://www.psc.gov.mt>

Cover photo: the façade of the Office of the Public
Service Commission.

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Acronyms

EU	European Union
HR	Human Resources
MoU	Memorandum of Understanding
OPM	Office of the Prime Minister
PAHRO	Public Administration Human Resources Office
PSC	Public Service Commission
PSMC	Public Service Management Code
SL	Subsidiary Legislation

Abstract

The Public Service Commission is set up in terms of article 109 of the Constitution.

This is the fifty-fourth annual report of the Commission, submitted to the Prime Minister in terms of regulation 33 of the Public Service Commission Regulations.

The report provides a brief description of the main activities of the Commission during the year 2013, in the execution of its constitutional functions of giving advice and making recommendations to the Prime Minister on matters relating to appointments, promotions, removal from office, and discipline within the Public Service.

Foreword



Mr Louis P Naudi

Chairman – Public Service Commission

The current Commission was appointed by the President of Malta acting on the advice of the Prime Minister in accordance with the provisions of Article 109 of the Constitution on the 18 June, 2013. During its short term of office, the Commission met more than the normal number of weekly meetings not only to make up for the backlog of cases which had accumulated but also to look to its remit to draw up for approval a new set of Draft Disciplinary Regulations to replace the current ones which had been in existence since 1999 in order to make them more user-friendly and simpler for adoption.

The Commission also undertook to bring into force the provisions of Regulation 14 of the Public Service Commission Regulations.

Details of the Draft Disciplinary Regulations as well as those relating to Regulation 14 of the PSC Regulations may be found further on in this report.

This report gives a brief outline of the activities of the Commission mainly during the latter half of 2013 principally to execute its constitutional functions of advising the Prime Minister on matters concerning appointments, removal from office, as well as discipline in the public service.

The Commission has also embarked on a much more extensive task of delegating more of its functions to line departments subject to their being broadly overseen by the Commission. The current Commission believes that it makes more sense to delegate functions to Departments and Ministries when they are effectively responsible for managing millions of monies provided to them by the exchequer. Naturally, certain safeguards will be introduced to ensure that its Mission Statement “to ensure that the principles of merit and equity and the exercise of justice in its disciplinary procedures are fully met.”

May I take the opportunity to record my appreciation of the long hours of work of the senior staff of the Commission as well as the unstinting work of junior officers who have ensured a smooth changeover during 2013 which was dominated by the General Elections. This is also generally reflected in the Report on the efficiency of the Commission which was drawn up at the instance of the Auditor General. The Commission intends to fulfil a good number of recommendations intended to strengthen the competence and efficiency of its principal functions.

It would be most inappropriate if I were not to publicly thank the previous Executive Secretary, Mr Charles Polidano, for his invaluable contribution in assisting the new Members of the Commission particularly during their initial phase. His experience throughout his appointment has served us all well, not least in his constant advice in their relatively new assignment and his lucid explanations in the various meetings held towards the end of the year to ensure that the Draft Disciplinary Regulations were approved by the Commission.

I. The Remit of the Public Service Commission

Mission statement

"To ensure, through ongoing monitoring and scrutiny, the provision of excellent public services in a delegated environment, through an efficient public appointment process which upholds the principles of merit and equity, and the exercise of just and efficient disciplinary procedures in the Public Service."

Statutory basis

The Public Service Commission is an independent and autonomous body established under article 109 of the Constitution of the Republic of Malta. It derives its authority and functions from articles 86, 92, 110, 111, 112, 114, 115 and 121 of the Constitution.

The fundamental role of the Commission is to make recommendations or to tender advice, as appropriate, to the Prime Minister, in the making of appointments to public offices, the removal of staff from public office, and the exercise of discipline over public officers.

In fulfilling its role, the Commission is guided by the principles of merit, equality of opportunity, impartiality, non-discrimination, transparency, the exclusion of patronage (political or otherwise), and fair and open competition, the latter within the parameters of agreements that exist between the Government and trade unions.

The procedures governing these functions are set out in the Public Service Commission Regulations, and in the Disciplinary Procedure in the Public Service Commission Regulations.

The regulations of the Commission are made by the Commission with the consent of the Prime Minister in accordance with article 121(1) of the Constitution.

II. Membership and Staff of the Commission

Composition

Article 109 of the Constitution of Malta states that the Public Service Commission shall consist of a Chairman, a Deputy Chairman, and from one to three other members.

Members of the Commission are appointed by the President, acting on the advice given by the Prime Minister after consultation with the Leader of the Opposition.

Membership

On 1 January 2013, the Commission was composed of Mr Paul A Attard as Chairman and Dr Jeannette Laferla as Deputy Chairperson, while the members were Ms Yvonne Micallef Stafrace, Ms Mary Vella and Mr Tonio Farrugia.

Following the expiration of the term of appointment of the Commission on 11 June 2013, the President of Malta approved the appointment of the new Commission for a term running for three years up to 17 June 2016. A notice to this effect, dated 28 June 2013, was published in the Government Gazette. The following table shows the present membership of the Commission:

Chairman	Mr Louis Naudi	(since 18 June 2013)
Deputy	Mr Salvu Fenech	(since 18 June 2013)
Members	Mr Franco Masini	(since 18 June 2013)
	Mr Vincent Piccinino	(since 18 June 2013)
	Mr Carmel Herrera	(since 18 June 2013)

Short biographies of the present Chairman and Members of the Commission are shown in *Appendix 1*, while a list of the previous Chairmen of the Public Service Commission is found in *Appendix 2*.

Number of meetings held

During the year 2013, the Commission held a total of 54 meetings during which it dealt with various matters and issues relating to appointments, promotions, and discipline, as outlined in more detail in this report.

The Office of the Public Service Commission

The Commission is served by a small dedicated team of public officers headed by the Executive Secretary, Public Service Commission, who is a senior public officer appointed to the position on a performance agreement for three years. During 2013, the position of Executive Secretary was held by Mr Charles Polidano. He was assisted by Mr Mario Tabone, Assistant Director (Support Services), and Ms Jacqueline Bonnici, Assistant Director (Public Service Commission).

A list of the previous Secretaries of the Public Service Commission is found in *Appendix 3*, while the staff complement and the total expenditure incurred in the running of the Office of the Public Service Commission for the year 2013 are shown in *Appendix 4*.

Method of work of the Commission

The business of the Commission is conducted either through the circulation of files, or during Commission meetings, generally held every Thursday with an agenda that covers policy issues and less clear-cut cases concerning recruitment, promotions, or disciplinary matters, that require discussion.

The Commission conducts disciplinary hearings in serious cases that may lead to dismissal. As laid down in the Disciplinary Regulations, at these hearings, the accused officer and the representative of the department concerned, together with their respective counsels, if they so wish, are given the opportunity to present their case before the Commission before it decides on the case. Oral hearings are also held when an officer appeals before the Commission, as provided for by regulation 30 of the Disciplinary Regulations, after being found guilty in

disciplinary proceedings that are decided at departmental level. An oral hearing may also be granted by the Commission, at its discretion, before a decision is taken on serious issues like the withholding of progression or the revocation of an appointment.

Meetings are occasionally held with the Principal Permanent Secretary to discuss Public Service policies and issues of common interest and concern, in order to promote mutual understanding and support, while fully respecting the constitutional position of the PSC. Senior public officers are at times invited to the meetings of the Commission, or for meetings with the Chairman and key members of staff, to discuss specific departmental or ministry issues related to particular cases or procedures. Their input on matters of interest or concern helps the Commission to understand better the difficulties and the problems faced by the Administration.

The decisions of the Commission are usually taken by consensus and every effort is made to reach total agreement in every decision.

PSC website

The website of the Public Service Commission can be found at <http://www.psc.gov.mt>. The website provides basic information on the Commission's role and functions, its current membership, how the Commission conducts its business, and the organisation of the Office of the Public Service Commission. The content of the site may be viewed in either the Maltese or the English language.

Several documents and templates were uploaded on the website during 2013, mostly concerning instructions and guidelines issued by the Commission. The current annual report, as well as reports for the years 2003 to 2012, can also be viewed and downloaded from the site.

A popular feature of the PSC website is the section entitled "Latest Selection Results", which is found at the top left side of the home page. Notifications appear in this section when selection results are published following approval by the Public Service Commission. This section is updated immediately following the publication of new selection results, which usually takes place on Thursdays or Fridays.

III. Recruitment and Promotions

Functions of the Commission relating to appointments

The functions of the Commission in relation to appointments are:

- to note the composition of selection boards nominated by Heads of Department;
- to approve the participation of non public officers sitting on selection boards;
- to approve selection methods and criteria, as appropriate;
- to give rulings on queries raised by selection boards on such questions as the eligibility of candidates;
- to verify and approve reports submitted by selection boards, and to publish selection results once approved by it;
- to consider petitions made in terms of section 1.1.17 of the Public Service Management Code in respect of appointments;
- to deal with other representations made to the Commission;
- to make, to postpone and to revoke appointments to public offices in Salary Scales 6 to 20, as applicable;
- to make recommendations to, and to advise, the Prime Minister in the making of appointments in the Public Service;
- to make recommendations to, or to advise, the Prime Minister, as appropriate, on the removal of staff from office and on the termination of appointments and performance agreements;
- to make recommendations to the Prime Minister regarding the extension of probationary periods and performance agreements;
- to withhold the progression of public officers in Salary Scales 6 to 20 from one scale to the next within the same grade; and
- to summon Heads of Department and selection boards to deal with any issue where necessary.

The role of the Commission, in line with its obligations, is to ensure that recruitment to, and promotions within the Public Service are made in an equitable, transparent, and impartial manner, free from patronage and discrimination, and based on the principle of merit.

Calls for applications

During 2013, 484 calls for applications were issued for the filling of vacancies in the Public Service. Out of these 484 calls, 171 were calls for applications open to applicants from outside the Public Service and were therefore advertised in the Government Gazette, while one other advertisement was published in the British Medical Journal. Another 270 calls were restricted to serving public officers and were published through Service-wide circulars issued by Ministries or by the department concerned. The remaining 42 calls, related to positions of Assistant Director, were advertised through circulars issued by the respective ministry.

Comparative figures for the last five years are given in the following table:

Table 2 - Calls for applications 2009 - 2013						
		2009	2010	2011	2012	2013
Open calls	Government Gazette	198	185	148	190	171
	British Medical Journal	2	1	1	-	1
	Placement Service Circular of the Institute of Physics and Engineering in Medicine (IPEM) of UK	-	1	-	-	-
	International Journal of Audiology	-	-	-	1	-
Internal calls	Service-wide circulars	103	70	67	209	253
	Departmental circulars	4	6	12	10	17
Calls for Assistant Directors	Ministerial circulars	54	55	62	134	42
Totals		361	318	290	544	484

Selection processes

During 2013, selection processes attracted 10,567 applicants. The selection boards interviewed a total of 6,745 candidates. The remaining 3,822 applicants were found to be ineligible, or withdrew their applications, or else failed to appear before the interviewing board.

Recommendations and advice to the Prime Minister

The Commission addressed 596 recommendations to the Prime Minister relating to appointments in terms of article 110 of the Constitution. These recommendations covered a total of 2,410 appointments. A statistical breakdown of these recommendations is given below:

Table 3 – Recommendations for appointments		Total
1.	Appointments following public calls for applications published in the Government Gazette	767
2.	Appointments following service-wide calls for applications	704
3.	Appointments following internal departmental calls for applications (departmental circulars)	67
4.	Appointment of Assistant Directors following ministerial calls for applications	48
5.	Other appointments (e.g. Acting appointments, appointment to substantive grade, granting of officer in scale status, promotions on the basis of length of service in terms of agreements with unions, re-employment/ reinstatement, employment on contract, etc.)	824
Totals		2,410

Furthermore, the Commission made a total of 216 recommendations relating to the extension of performance agreements, renewal of contracts of employment, postponement of appointments, backdating of appointment, termination of performance agreements on appointment to other positions, revocation of appointments, extension of probationary period, and withholding of progression and promotions.

The Commission gave advice to the Prime Minister in terms of articles 92(3), 92(4) and 111(1) of the Constitution on 45 occasions relating to the appointment or renewal of appointment of Permanent Secretaries, Heads of Department, and the appointment of Resident Ambassadors abroad.

Notifications

The Commission submitted 251 notifications relating to appointments in scales 6 to 20. These notifications covered a total of 1,498 appointments. A statistical breakdown of these notifications is given below:

Table 4 - Appointments through notification	Total
Appointments following public calls for applications published in the Government Gazette	771
Appointments following service-wide calls for application	683
Appointments following internal departmental calls for applications (departmental circulars)	44
Totals	1,498

The Commission submitted 80 other notifications relating to granting of officer in scale status, promotions on the basis of length of service in terms of agreements with unions, re-employment/re-instatement, postponement/backdating of appointments, renewal of contracts, revocation of appointments, withholding of progression and re-designation of 345 other officers.

Representations made to the Commission

During the year 2013, the Commission considered a total of 74 representations made directly to the PSC on various matters relating to selection processes in the Public Service as provided for by the Public Service Commission Regulations.

These representations were submitted in writing by applicants prior to the publication of selection results and mainly involved complaints by persons who had been found ineligible by selection boards after submitting their applications for the vacancies concerned.

In two cases, the Commission ruled that the selection process was to be suspended and a fresh call for applications was issued. In one other case, the Ministry concerned was

requested to appoint a Board of Inquiry to investigate allegations made by one of the candidates. The selection process was suspended until the Board of Inquiry submitted its report. In view of the conclusions reached by the Board of Inquiry, the Commission decided that a new Selection Board was to be appointed to assess candidates for the post.

The remaining 71 complaints were dismissed by the Commission.

Petitions relating to selection results

The Commission received 120 petitions - that is to say appeals on the part of individuals who believed that the result of the selection process was not a fair reflection of their merits.

One of these petitions was not made within the period of 10 working days allowed for this purpose in terms of section 1.1.17.5 of the Public Service Management Code. This petition was not, therefore, considered by the Commission. The period of 10 working days starts to count from the date when a notice is published to inform the public that the result has been issued. This notice is published on the website of the Public Service Commission. However, in the case of vacancies in scale 5 or higher where results are sent directly to applicants by post, the ten working days start to count from the date on which the result is received by the applicant concerned.

The Commission therefore considered 119 petitions, and it found in favour of petitioners in seven cases. In all seven instances, the Commission approved the publication of revised results.

The Commission ruled against the remaining 112 complaints.

IV. Discipline

Functions of the Commission relating to discipline

In terms of the Disciplinary Procedure in the Public Service Commission Regulations, the exercise of discipline in the Public Service is, subject to appropriate safeguards, largely delegated to heads of Government departments.

However, the following matters remain the direct responsibility of the Commission:

- The temporary suspension of public officers from the exercise of the powers and functions of their office; that is to say, suspension from work on half salary pending the conclusion of disciplinary or criminal proceedings against those officers. Temporary suspension is imposed where it is considered that, because of the nature of the charges against the officer, he or she should not continue to work until the case against him or her is concluded. Temporary suspension is not a disciplinary penalty, but a precautionary measure in the public interest, which does not imply any judgement as to the guilt or innocence of the officer facing charges. If the officer is acquitted of the charges, he or she is reimbursed the half-salary withheld during his or her suspension. If the officer is found guilty, the half-salary withheld is forfeited.
- The imposition of disciplinary penalties against public officers who are found guilty of a criminal offence by the Courts.
- Decisions as to the guilt or innocence of officers, and as to the penalties to be imposed on those officers, in disciplinary cases where the officers were notified by their Heads of Department that the charges against them could, if proved, lead to dismissal. After such cases are heard by a disciplinary board, they are referred to the Commission under regulation 26(2) of the Disciplinary Regulations, since a Head of Department does not have the authority to dismiss an employee on disciplinary grounds. However, a guilty verdict in such a case does not automatically result in the dismissal of the officer; the Commission has the discretion to recommend a

more lenient penalty even if it upholds the guilty verdict reached by the disciplinary board.

- Appeals from public officers against decisions taken by Heads of Department under delegated authority, in terms of regulation 30(1) of the Disciplinary Regulations.
- Representations by Heads of Department against the findings of departmental disciplinary boards, in terms of regulation 32.
- Requests for extensions of the time limits stipulated in the Disciplinary Regulations in terms of Regulations 22(5) and 41.

During 2013, the Commission delivered several rulings on issues relating to disciplinary proceedings conducted under delegated authority or other proceedings held directly before the Commission, as provided by the Disciplinary Regulations.

Disciplinary cases involving criminal proceedings against public officers

In terms of article 110 of the Constitution, the Commission made the following recommendations to the Prime Minister in respect of 81 cases involving criminal proceedings against public officers:

TABLE 5 - Recommendations concerning criminal cases	
Temporary suspension pending outcome of Criminal Court Cases	12
Lifting of temporary suspension “without prejudice” before conclusion of proceedings	7
PSC action following a “guilty” verdict by the Courts:	
• Dismissal	2
• Dismissal and forfeiture of salary	7
• Warning of dismissal and definite suspension without pay (1, 2, 3, or 5 days)	13
• Warning of dismissal, definite suspension without pay (1, 3 or 5 days) and forfeiture of salary	3
• Warning of dismissal	18
• Warning of dismissal and forfeiture of salary	6
• Definite suspension without pay (1 day)	7
Restitution of rights following a “not-guilty” verdict by the Courts	
• Refund of salary withheld	6
Total	81

The nine cases involving dismissal as shown in Table 5 include four cases where the court had imposed a general interdiction in terms of article 10 of the Criminal Code. A person under a general interdiction in terms of the Criminal Code cannot hold Government employment, and has to be dismissed from such employment.

In another 10 cases involving criminal proceedings, the employees concerned were acquitted. These employees had not been temporarily suspended on half salary, so no action was necessary on the Commission's part as a result of the court verdicts. The Commission noted the court sentence in each instance and agreed to consider the case closed.

Serious disciplinary cases with the possibility of dismissal

The Commission considered 3 disciplinary cases which were referred to it in terms of regulation 26(2) of the Disciplinary Procedure in the Public Service Commission Regulations, since the officers facing charges in these cases had been notified that the charges, if proven, could lead to their dismissal.

After giving all the officers involved and their respective Head of Department an opportunity to make oral representations, the Commission submitted the following recommendations to the Prime Minister:

Table 6 – Penalties recommended by the Commission in serious disciplinary cases	
Warning of dismissal (Indefinite) and suspension without pay (5 days)	1
Suspension without pay (1 or 2 days)	2
Total	3

Apart from the 3 cases listed in Table 6 above, there was one case where the Commission recommended that the disciplinary proceedings be invalidated on account of gross disregard of procedures. The Commission also recommended that the penalty imposed by the Head of Department be revoked.

In another case the Commission recommended the temporary suspension of the officer concerned.

Analysis of offences and penalties in cases decided by the Commission (criminal cases and cases potentially leading to dismissal)

The 81 criminal cases referred to in Table 5 above include 12 cases where the Commission recommended the temporary suspension of the officers concerned; 7 cases where the Commission recommended the lifting of temporary suspension pending any potential penalties that may appropriately be imposed; and 6 cases where the officers concerned were not found guilty. The remaining criminal cases were all served with a penalty as indicated in Table 5. Thus, taking into account the 3

disciplinary cases listed in Table 6, the total number of cases in which officers were served with a penalty by the Commission amounted to 59.

The exercise of discipline through delegated authority

The Commission continued to monitor the exercise of discipline by Heads of Department under delegated authority. This was done through reports which Heads of Department were required to submit regularly to the Commission, and which contained information about all disciplinary measures taken by them against public officers in terms of the Disciplinary Regulations.

The following table gives a breakdown of disciplinary action taken by Heads of Department during the last year:

TABLE 7 – Disciplinary action by Heads of Department		
Outcome:	2013	
Warning of dismissal and suspension from duty without pay	48	
Suspension from duty without pay	31	
Written warning (Regulation 20)	33	
Written warning (Regulation 19)	347	
<i>Subtotal: cases served with a penalty</i>	459	63%
Cases discontinued	17	
Officer charged resigned while case still pending (regulation 37)	22	
Verdict of 'not guilty'	34	
<i>Subtotal: cases not served with a penalty</i>	73	10%
<i>Pending Cases:</i>	200	27%
Total	732	

References back by the Prime Minister

The Prime Minister may, acting in accordance with article 86(1) of the Constitution, refer a recommendation back, once, to the Commission for reconsideration. During the year under review the Commission considered one such referral. The recommendation was revoked, and the Commission submitted a modified recommendation. The Prime Minister subsequently approved this recommendation, as required by article 86 of the Constitution.

V. Selected Issues and Rulings by the Commission

A. Policy matters and issues relating to recruitment and appointments

General Election 2013: recruitment, promotions and other action concerning public officers

The Commission's established practice for appointments in the Public Service was held in abeyance once Parliament was dissolved pending the general elections. Following a meeting held between the Chairman of the Commission and the Monitoring Committee which had been established in terms of OPM Circular 1/2013, it was agreed that selection results which reached the Commission by not later than 7 January 2013 were to be considered for publication. The Commission was also to recommend appointments to fill the pertinent vacancies in accordance with its normal procedures.

It was also agreed that selection results which reached the Commission after this date, but not later than 22 February 2013, were to be considered for publication. The final date on which such results could be approved for publication by the Commission was 28 February 2013. As a general rule, however, the Commission agreed not to recommend appointments deriving from such results until a new Cabinet was formed following the general elections.

Selection results which reached the Commission after 22 February 2013 were only published once the new Cabinet was formed following the general election.

With regard to its internal procedures, the Commission's policy, delegating the approval of next-in-line appointments to the Chairman was suspended. Consequently, with effect from 11 January 2013, next-in-line appointments were approved by the Commission, as opposed to the Chairman on his own.

Standardisation of appointments procedures with respect to internal and external calls for applications

The Commission determined that the procedure applicable to appointments following external calls for applications should apply also to appointments following internal calls. The procedure for the filling of vacancies following external calls for applications was approved on 12 January 2012. As a result, the Commission began to consider results for approval and publication immediately upon their submission by Selection Boards. Appointments were no longer recommended concurrently with the publication of the result, but after the expiry of the period allowed for petitions, provided that the recommendation by the Head of Department and verification by the Public Administration Human Resources Office (PAHRO) had been received by the Commission.

This procedure gave the Commission the option of withholding its recommendation for an appointment if it received a petition from an applicant contesting the result. In the event that the Commission found the petition to be justified, it would be in a position to consider remedial action without being faced with a *fait accompli* due to the fact that the vacancy had been filled.

The Commission considered however, that appointments to classroom posts in the Directorate for Educational Services were to remain subject to the procedure approved by the Commission whereby the Directorate could engage candidates to fill vacancies immediately following publication of the selection result, and the Commission would subsequently recommend a backdated appointment for the candidates so engaged.

Appointment of Permanent Secretaries

The Commission considered a proposal submitted by the Office of the Prime Minister for the appointment of Mr Mario Cutajar as Principal Permanent Secretary. The Commission confirmed its concurrence to this appointment in terms of article 92(3) of the Constitution.

Also, in March 2013, the Commission confirmed its concurrence, in terms of article 92(3) of the Constitution, with the proposed appointments of a number of officers as Permanent Secretaries in various Ministries for a period of three years. Three Permanent Secretaries were retained in their position.

Instrument of delegation authorising the Public Service Commission to make appointments in salary scales 6 to 20 in the Public Service

The Commission considered a proposal by the Administration to delegate the approval of recommendations for appointments to Permanent Secretaries. However, to eliminate unnecessary delays, the staff time and the transport costs that would be involved in the submission of recommendations from the Office of the Commission to Permanent Secretaries and back, the Commission agreed that the authority to make appointments was to be delegated to the Commission itself.

Accordingly, an instrument for the delegation of power to make appointments in salary scales 6 to 20 was issued in terms of article 110(1) and 110(2)(b) of the Constitution, empowering the Public Service Commission to approve appointments, postponements of appointments, revocation of appointments, and the withholding of progressions, within scales 6 to 20 (both scales included), for the purposes of further reducing unnecessary bureaucracy and expediting and simplifying the appointments process.

The Commission noted that by means of its reference to Regulation 4 of the PSC Regulations, the instrument of delegation catered for decisions taken previously wherein the Chairman of the Commission was authorized to recommend next-in-line appointments on the basis of selection results that had been approved by the Commission and published, and that were still within their validity period, and to recommend initial appointments which had been withheld following the publication of selection results in order to cater for the possibility of applicants' submitting petitions to contest the result.

It was agreed that, on the basis of its minutes or the Chairman's approval, as applicable, appointments, postponements or revocation of appointments, and the withholding of progressions and promotions, would be communicated to the relevant Permanent Secretary or Head of Department by e-mail. The e-mail would include instructions to Ministries or Departments concerning the steps required on their part to give effect to the appointments or other actions.

Grant of indefinite status to persons engaged on the basis of trust without reference to the Public Service Commission

On 17 January 2013, the Commission objected to the method of implementation of the grant of indefinite status to public officers in terms of the memorandum of understanding (MoU) which had been signed by the Government and the Union Haddiema Maghqudin on 14 January 2013. It had objected to the possibility that the grant of indefinite status would be used as a means to regularise the position of persons who had been employed in an irregular manner or on the basis of trust.

The Commission later became aware that a number of employees who had been engaged on the basis of trust, had subsequently been granted indefinite status without reference to the PSC. Most of these employees had been given indefinite status in 2007, but two had been given indefinite status in 2013, even though the Commission had directed that employees who had an objective reason in their contract should not be granted indefinite status without the prior approval of the PSC, following a full justification by the authority concerned.

The Commission argued that, in these cases, the administration had arrogated to itself a power that belonged to an independent external authority, namely the Commission. Thus the administration's decision to grant indefinite status had been *ultra vires* and invalid in the first place.

Standing selection panels in terms of regulation 14 of the PSC Regulations

Following a request by the Resourcing Directorate, Public Administration HR Office (PAHRO), an additional 38 persons, who were mainly former public officers, were included in the central list for retired public officers who could serve on Selection Boards.

The Commission enjoined that a separate standing selection panel was to be established in each ministry, as required by regulation 14(1) of the PSC Regulations and that any one person could form part of the standing selection panel of more than one ministry. Each ministry's panel was to be submitted for the Commission's approval, as required by regulation 14(1) of the PSC Regulations. Once a ministry's standing selection panel was approved by the Commission, no additional approvals were required if Selection Boards were constituted from

among serving public officers and members of the standing selection panel.

The Commission urged that each ministry would be assigned those persons from the list who were the most suitable, by virtue of their background and knowledge, to assess candidates for posts within that ministry, and that a fresh call for expressions of interest for members of standing panels was to be issued where no eligibility parameters pertaining to age or to the date of retirement were to be set.

Selection processes for specialized posts

The Commission noted that proposed nominations for selection boards for specialized posts were, at times, composed of one public officer, who was specialized in the field relating to each post, as Chairperson, and two other persons who appeared to lack relevant expertise.

The Commission considered that in the case of professional and specialized posts it could be difficult to defend the selection result in the event that petitions were received, given that two out of three members of the Board lacked the expertise to play a meaningful part in the selection process.

The Commission thus recommended that, in order to ensure that there was sufficient specialist input in the selection process for these posts, two specialized persons should form part of Selection Boards for such posts. If it was not feasible for a selection board to be composed of more than three members, then, one of the non-technical member was to be replaced by a nominee with specialist expertise.

B. Issues relating to disciplinary procedure

Interpretation of regulation 20(2)(a) of the Disciplinary Regulations

The Commission considered a query concerning the interpretation of regulation 20(2)(a) of the Disciplinary Regulations.

The query revolved around the interpretation of the time-frame stipulated in regulation 20(2)(a), which states:

“The Head of Department shall, as expeditiously as practicable and in no case later than thirty working days from the date when the alleged offence comes to his notice, or not later than ninety working days from the date of the signing of a report made in terms of the Inquires Act, prepare a written statement of charges against the officer concerned, setting out particulars of the evidence relied upon to support the charge or charges. The Head of Department shall also inform the officer whether in his opinion the charge or charges constitute a minor or a serious offence and whether the offence could lead to dismissal.”

The Director raising this query had asked whether this regulation required the Head of Department to sign the charge-sheet, or to deliver it to the accused, within 30 working days. He stated that in his interpretation, the phrase “*prepare a written statement*” implied that the Head of Department was required to sign the charge-sheet within the 30 working day time-frame, otherwise the charges would be time-barred.

The Commission noted that the wording of regulation 20(2)(a) allowed thirty working days to a Head of Department to draw up charges in connection with an alleged offence. The regulation did not stipulate that the charge sheet should reach the accused within 30 working days. The Commission took the view that this regulation provided for an additional reasonable period within which the charge sheet should reach the accused officer. The Commission noted that the timeframe of thirty working days was tight, particularly in cases requiring investigations before charges could be issued. Insisting that charges should reach the accused within the thirty working day timeframe could result in public officers absenting themselves from work so that charges would be time-barred due to non-delivery within the stipulated time-frame.

In this light, the Commission agreed that if a charge sheet is signed within 30 working days from the date of the alleged incident, and the

time taken for the delivery of the charges is reasonable, a disciplinary case should not be considered as time-barred.

Persons accompanying victims during disciplinary proceedings

Direction was sought from the Commission as to whether a victim of alleged sexual harassment might be accompanied by a person of his or her choice when either one appeared before the Disciplinary Board to give their testimony.

The Commission recalled that, on 2 December 2010, the previous Commission had agreed on the basis of legal advice given by its legal adviser, that an injured party in a disciplinary case was entitled to be represented or assisted by person of his or her choice, but any interventions from the injured party or his or her representative were to be made through the departmental representative.

Also, the Commission was aware that sub-section 7.3.10 of the Public Service Management Code (PSMC) states that during the preliminary investigation of complaints regarding sexual harassment, both the complainant and the alleged harasser had the right to be accompanied by a person of their choice.

As such, the Commission ruled that, given the sensitive nature of sexual harassment cases, it considered it appropriate if the alleged victim was allowed to be accompanied by a person of his or her choice whilst testifying before the Disciplinary Board. This decision was applicable to all disciplinary cases where the injured party was required to give testimony during a disciplinary hearing.

Enquiries regarding disciplinary procedures

In May 2013, the Commission considered two enquiries from the Ministry for Health as to whether:

- a person who had lodged a complaint against a public officer had the right to know the outcome of the disciplinary proceedings taken against the officer concerned;
- an accused officer could be given access to the documents contained in a patient's file, and whether the consent of the patient was required.

The Commission considered that both these cases were dealing with sensitive data. In this context, the Commission deemed it appropriate to obtain the views of the Information and Data Protection Commissioner. The latter was to be referred to regulation 6(1) of the Disciplinary Regulations, stating that an accused officer had the right to access all documents that were to be used by the prosecuting officer.

With regard to the first case, the Information and Data Protection Commissioner stated that the alleged victim had a legitimate interest in accordance with article 9(f) of the Data Protection Act, and a right to know the outcome of the case, including the penalty if the alleged perpetrator was found guilty. The Information and Data Protection Commissioner considered also that whether the alleged victim should be present during disciplinary proceedings or not, was not a question of data protection but a procedural issue that should be regulated by the PSC Disciplinary Procedure Regulations.

With regard to the second case, the Information and Data Protection Commissioner stated that, here one was speaking of 'sensitive personal data' and therefore article 13(a) of the Act applied in this case. The Information and Data Protection Commissioner considered that the law gave discretion to the Disciplinary Board in deciding how the defendant would be provided with documentary evidence to make his/her defence. Therefore, in those cases where the Disciplinary Board decided to grant the defendant copies extracted from the patient's medical file, formal instructions were to be given to the defendant to destroy all such copies after the conclusion of the case.

The Commission considered that the opinion of the Information and Data Protection Commissioner was in accordance with its own views and informed the Ministry concerned accordingly.

Drafting of New Disciplinary Regulations

An exercise to revise the existing Disciplinary Regulations was undertaken during 2013. The objectives of this exercise were:

- to address important omissions in the current regulations, namely the ability of the Commission to initiate disciplinary action, and the possibility of removal from office due to inability to perform one's duties;
- to simplify disciplinary procedures and to eliminate "procedural tripwires" whereby failure to comply with a particular procedural requirement in the regulations would call

into question the validity of disciplinary proceedings, even if the rights of the officer charged were not adversely affected;

- to make the regulations clearer and more user-friendly to HR practitioners with no legal background; and
- to maintain and indeed enhance the safeguards for the rights of the officer charged which are embodied in the regulations.

The Commission felt that, in the interest of simplification, HR practitioners and other public officers who were seeking guidance on disciplinary procedures should be able to rely on the regulations as their primary point of reference. To this end, a schedule had been included in the revised disciplinary regulations listing the officers and authorities who could exercise disciplinary control. This schedule was effectively intended to update and replace that in the instrument of delegation dated 1 November 1999.

The Commission also considered that all four instruments of delegation were to be replaced by a single, much simpler instrument of delegation which would simply refer to the relevant provisions of the regulations.

VI. Other Business of the Commission

Ombudsman

During 2013, the Office of the Ombudsman corresponded with the Public Service Commission on cases relating to complaints made to the Ombudsman. The Commission extended the fullest possible assistance to the Ombudsman, as regards both replying to queries and making relevant documentation available to the Ombudsman's Office.

Meetings with the Principal Permanent Secretary and other Officials

The Commission and the Principal Permanent Secretary met on several occasions during the year to discuss outstanding issues with the Administration and other business of the Commission.

As envisaged by the Public Service Commission Regulations, the Commission also held consultations with Permanent Secretaries, Heads of Department and selection boards through *ad hoc* meetings, whenever this was considered necessary.

Appendix 1

Biographies of the Chairman and Members of the Public Service Commission

Mr Louis P Naudi

Chairman, Public Service Commission (appointed on 18 June 2013)

Louis P Naudi is a former public officer. During his long career he occupied various positions in different areas and at different levels until, in 1997, Mr Naudi was appointed Permanent Secretary in the Ministry for Tourism and Culture and Chairman of the Inter-Ministerial Committee on Tourism.

In 1993, he was appointed as the first Director General in the Office of the Prime Minister. He was then principally responsible for drafting legislation and the setting up of Local Councils and with the overall responsibility for all the departments falling within the Office of the Prime Minister. He had been previously considerably involved in the setting up of the Public Transport Authority, in the constitutional changes to the citizenship laws and, in the setting up of Malta International Airport Company Ltd. He was also OPM's Coordinator on the Malta-EU Inter-Ministerial Steering Committee.

Earlier, in 1979, Mr Louis P Naudi had been appointed Deputy Director of Civil Aviation where he was mainly responsible for the handover of the airport complex from the British Authorities and for the registration of Air Malta's aircraft in Malta.

He was, at various times, appointed Secretary to the Board of MEDSERV and Director on the Boards of Cargo Handling Company Ltd., Tigne' Development Company Ltd., Selmun Palace Hotel Company Ltd., Malta International Airport Company Ltd., the Gaming Board and, the Malta Tourism Authority.

Mr Salvu Fenech

Deputy Chairman, Public Service Commission, (appointed on 18 June 2013)

Salvu Fenech was born in Dingli on 24th July 1937. He attended government Primary school and secondary education at the Lyceum. He had followed distant learning courses and attended seminars/fellowships at international institutes. He joined the Malta Civil Service in 1956 and had gained indepth knowledge of civil service regulations through attachments at various departments. In 1974 he had been detailed for duties with Telemalta Corporation. He was responsible for setting up administration and financial management and ended his tour of duties in the rank of General Manager. In 1983 he reverted back to the General Service where, after a brief stay at the Establishments Division

he was appointed Director of Civil Aviation in December 1983. There, he had concluded various treaties with third countries on civil aviation matters and represented the Maltese government at various Organizations - IACO, Eurocontrol and Joint Air Worthinous Authority. He retired from public service in July 1999. Since 1959 he was active in politics and even participated abroad in political movements. In 1966 he was elected member of the Bureau of the International Union of Socialist Youth.

Mr Franco Masini

Member, Public Service Commission (appointed on 18 June 2013)

Franco Masini, born in Victoria Gozo, was educated at St Aloysius' College and the University of Malta where he read Arts (History, Economics and Maltese) and Law (Legal Procurator). He served in senior management and administrative positions in the private sector. He was active in organised business occupying the post of President of the Federation of Industries, the Malta International Fair and the Malta Employers Association. He served on the board of directors of several major public companies including Air Malta plc, Bank of Valletta plc, APS Bank Ltd, Gozo Channel Co. Ltd and companies of the Farsons Group. He is a past member of the Broadcasting Authority, the Council of the University of Malta and, the Malta Council for Social and Economic Development. In 2002, the President of Malta awarded him the Medal for Service to the Republic (MQR) for "distinguished service to Malta".

Mr Masini had already served as a member of the Public Service Commission between 1996 and 1997. He is currently Chairman of the Industrial Tribunal and a Trustee of a number of Foundations.

Mr Vincent Piccinino

Member, Public Service Commission (appointed on 18 June 2013)

Vincent Piccinino is a retired public officer. Following a two-year course at St Michael's Teachers' Training College, he was appointed Teacher in 1969 but chose to take up a career within the Civil Service after obtaining a BA (Hons) degree in Public Administration from the University of Malta in 1983. Mr Piccinino spent over twenty-three years at the Office of the Prime Minister and, between 1996 and 1998, he also served as Private Secretary to the Prime Minister. In 2002, Mr Piccinino was appointed Director (Finance and Administration) at the Education Division, from where he was superannuated in 2006 on reaching retirement age.

Mr Carmel Herrera

Member, Public Service Commission (appointed on 18 June 2103)

Carmel Herrera joined the Malta Civil Service in September 1968 and retired from the Public Service in August 2011. Between 1972 and 1990, he served at the Department of Social Services from where he moved to the Ministry of Foreign Affairs.

There, he served both at the Bilateral Affairs and Multilateral Affairs Directorates and was Deputy Director of Protocol before moving to the Ministry of Health. He also served at the Ministry for Resources and Rural Affairs only to return to the Ministry of Foreign Affairs in 2008.

He served overseas at the High Commission in Canberra and at the Consulate in Sydney as Consul General.

He also served at the Embassy of Malta in The Hague, the Netherlands, spending the last seven months of his career as Chargé d'Affaires, a.i.

Appendix 2

Public Service Commission Chairmen

Mr Leslie Harold Gorsuch, CBE
05.08.1960 - 31.10.1963

Judge William D Harding, CBE, KM, BLitt, LL.D
05.11.1963 - 04.11.1971

Dr George Zammit, BA, BA (Hons) Lond, BD (Rome), LL.D
05.11.1971 - 31.10.1977

Dr Charles Cassar, MD, MRCP, PhC, KM, CSTJ
20.01.1978 - 19.01.1980

Mr Carmel Giuliano
20.01.1980 - 31.12.1981

Mr Godfrey Craig
12.01.1982 - 25.02.1984

Mr Maurice J V Bonello
01.04.1984 - 08.08.1986

Mr Paul V Attard
01.09.1986 - 11.08.1987

Dr Albert G Camilleri, BA, LL.D
12.08.1987 - 11.08.1992

Prof Edwin Borg Costanzi, BSc, BE&A, A&CE, MA (Oxon)
12.08.1992 - 11.05.1996

Mr Anthony Galdes, MOM, BA (Hons)(Econ), FCIB
12.05.1996 - 28.02.1997

Mr Joseph J M Curmi, MPA, DPA, FIFD
12.05.1997 - 11.06.2003

Mr Alfred Fiorini Lowell
12.06.2003 - 11.06.2010

Mr Paul A Attard, Dip Educ (Admin & Mgt)
12.06.2010 - 17.06.2013

Mr Louis P Naudi
18.06.2013 -

Appendix 3

Secretaries to the Public Service Commission

Mr H Miller, Secretary Designate
06.07.1960 - 16.12.1960

Mr H Miller, Secretary
17.12.1960 - 23.03.1969

Mr G Soler, Secretary
24.03.1969 - 08.03.1973

Mr A Piccinino, Acting Secretary
09.03.1973 - 30.11.1973

Mr C Vella, Acting Secretary
01.12.1973 - 21.09.1975

Mr P Vassallo Cachia, Secretary
22.09.1975 - 09.09.1983

Mr P V Attard, Secretary
01.01.1984 - 16.09.1985

Mr R V Mifsud, Secretary
23.12.1985 - 31.12.1988

Mr N Scicluna, Secretary
05.01.1989 - 26.11.1993

Mr J Bonello, Acting Secretary
27.11.1993 - 15.10.1995

Mr G Saliba, Acting Secretary
16.10.1995 - 03.12.1995

Mr J Bonello, Acting Secretary
04.12.1995 - 02.05.1996

Mr N Worley, Acting Secretary
03.05.1996 - 18.02.1999

Mr N Worley, Secretary
19.02.1999 - 12.04.2001

Mr R Saliba, Acting Secretary
13.04.2001 - 20.06.2001

Mr R Saliba, Secretary
21.06.2001 - 09.01.2004

Mr P Sammut, Secretary/Executive Secretary
10.01.2004 - 16.04.2010

Mr C Polidano, Executive Secretary
17.04.2010 -

Appendix 4:

Office of the Public Service Commission

(i) Staff complement

Staff in post as on 31st December 2013	
Category	No of employees in post
Senior management	Executive Secretary and Two Assistant Directors
Compliance and support staff	One Officer in Grade 5 One Research Officer
Administrative staff	Two Principals and one Asst. Principal
Executive staff	Two Executive Officers
Clerical staff	One Senior Clerk and three Clerks
Messengerial staff	One Messenger
Total	15

(ii) Commission's expenditure

Expenditure for the year 2013	
Item	€
Emoluments of the Chairman, Deputy Chairperson and Members of the Commission	84,903
Emoluments of the public officers attached to the Office of the Public Service Commission	309,966
Social security contributions	26,972
Operational and maintenance expenses	35,822
Total	457,663