





**ANNUAL REPORT  
2016**

**MALTA**

Public Service Commission  
46, Level 2, Spinola Palace Business Centre,  
St. Christopher Street, Valletta

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

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## Abstract

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

This is the 57<sup>th</sup> 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 2016 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)*

Undoubtedly, the year 2016 will best be remembered for the Commission's attention devoted to the decentralisation process. In tandem with the Administration's declared intention of subsidiarity, that is, that tasks which can usefully be performed by Ministries and Line Departments should be decentralised to them, the Commission embarked on a thorough overhaul of its procedures.

In the first place, the Commission's first challenge was to overcome its own mentality by letting go, under some supervision, a series of procedures which it had overseen over a considerable number of years. It did not make sense anymore that Permanent Secretaries and Heads of Department, on the one hand, were given increasing control over their finances running into millions of euros and, at the same time, controlling them unduly from, arguably, the most important objective: that of control over the recruitment process. Without adequate human resources at their disposal, recruited within an appropriate time-frame, it is unreasonable to expect departments to deliver what is expected of them in an efficient and orderly manner according to set deadlines. The Auditor General had some years back undertaken a review of the Government's recruitment policies and determined that in the majority of cases over twelve months were required to successfully conclude recruitment. This intolerable situation needed to be urgently attended to if the Electoral Programme of any Administration were to be effectively implemented over its five-year term of office.

The Commission, therefore, embarked on this exercise with purpose and determination and Legal Notice 333 of 2016 brought into effect a laborious exercise which had been undertaken over a number of months. Basically, Heads of Department have now been entrusted with the recruitment of their own personnel subject to controls, at a distance, by the Commission which has retained the right to revoke such delegated authority in cases where a Head of Department is proven to have been incapable of adhering to the Regulations. As a result, the recruitment process has been considerably reduced. The Commission now intends to embark on an Audit Programme to ensure that sporadic examinations are made to oversee the efficiency and effectiveness of the whole decentralisation process.



## 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 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 office, the removal of staff from public office, and the exercise of discipline over public officers (or, in other words, public service employees).

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 Appointments 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 states that the Public Service Commission shall consist of a Chairperson, a Deputy Chairperson, and from one to three other members.

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

### Membership

On 18 July 2016, the President of Malta approved the re-appointment of the Commission for a period of three (3) years. The Deputy Chairman was succeeded by Ms Marie-Lourdes Grech.

Table 1 - Membership of the Commission as at 31.12.16		
Chairman	Mr Louis P Naudi	(since 18 June 2013)
Deputy Chairperson	Ms Marie-Lourdes Grech	(since 18 July 2016)
Members	Mr Carmel Herrera	(since 18 June 2013)
	Mr Franco Masini	(since 18 June 2013)
	Mr Vincent Piccinino	(since 18 June 2013)

## The Members of the Commission

### Mr Louis P Naudi

*Chairman, Public Service Commission (re-appointed for a second term on 18 July 2016)*



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 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 the 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, Member of the Co-Operatives Board, 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.

**Ms Marie-Lourdes Grech**

*Deputy Chairperson, Public Service Commission (appointed on 18 July 2016)*



Marie-Lourdes Grech is a former public officer. During her long career in the Malta Public Service, she served in a number of offices, including the House of Representatives, even if for a brief period, and at the Embassy of Malta in Brussels for four years.

During the 37 years she spent at the Office of the Prime Minister, she occupied various posts and positions within different offices, including the Establishment Division, the Staff Development Organisation, the Operations and Programme Implementation Directorate and others. Before retiring from the Public Service in May 2016, Ms Marie-Lourdes Grech held the position of Director General at the Cabinet Office.



**Mr Carmel Herrera**

*Member, Public Service Commission (re-appointed for a second term on 18 July 2016)*



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 the 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 Charge' d'Affaires, a.i.

**Mr Franco Masini**

*Member, Public Service Commission (re-appointed for a second term on 18 July 2016)*



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 Economic and Social Development. In 2002, the President of Malta awarded him the Medal for Service to the Republic (MQR) for "exceptional service to Malta". In 2009 he was conferred with the *Giegh Ghawdex* award.

Mr Masini had already served as a member of the Public Service Commission between 1996 and 1997.

**Mr Vincent Piccinino**

*Member, Public Service Commission (re-appointed for a second term on 18 July 2016)*



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.

### **Number of meetings held**

During the year under review, the Commission held a total of 50 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 team of dedicated public officers headed by Ms Christine Schembri, Executive Secretary, (Public Service Commission), who is a senior public officer appointed to the position on a performance agreement for three years.

Throughout the year under review, Ms Schembri was assisted by Ms Jacqueline Bonnici, Assistant Director (PSC) and by Ms Angela Portelli, Assistant Director (Support Services).

A list of the previous Secretaries of the Public Service Commission is found in *Appendix 2*, while the staff complement and the total expenditure incurred in the running of the Office of the Public Service Commission for the year 2016 are shown in *Appendix 3*.

### **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 selection processes, promotions, or disciplinary matters that require discussion.

The Commission holds oral hearings in serious disciplinary cases that may lead to dismissal. As laid down in the Disciplinary Regulations, during these hearings, the accused officer and the representative of the department concerned, together with their respective counsel, 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.

### **Reference back by the Prime Minister**

The Prime Minister may, acting in accordance with article 86(1)(a) of the Constitution, refer a recommendation back, once, to the Commission for reconsideration. During 2016 the Commission considered nine such referrals. In five cases the Commission confirmed its previous recommendation and in two cases the Commission submitted a modified recommendation. These recommendations were subsequently approved by the Prime Minister as required by article 86 of the Constitution. There was one case where the Commission revoked its previous recommendation and one remaining case which was still being considered by the Commission as at 31 December 2016.

### **PSC Website**

The website of the Public Service Commission may be found at <http://www.psc.gov.mt>. The website provides basic information on the Commission's role and functions, its current composition, how the Commission conducts its business, and the organisation of the Office of the Public Service Commission.

Various documents and templates are uploaded on the website periodically, mostly concerning instructions and guidelines issued by the Commission. The current Annual Report, as well as reports for the years 2003 to 2015, can also be viewed and downloaded from the site.

### **III. Recruitment and Promotions**

#### **Functions of the Commission relating to appointments**

The fundamental role of the Public Service Commission is to ensure that Malta retains a career public service with a high standard of competence, efficiency and integrity. 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) in the exercise of discipline, and fair and open competition in the making of appointments. The removal of employees from public office also falls within the remit of the Public Service Commission.

Article 110 of the Constitution of Malta provides that power to make appointments to public offices and to remove persons holding or acting in any such offices shall vest in the Prime Minister, acting on the recommendation of the Public Service Commission. However, the same article also provides that the Prime Minister, acting on the recommendation of the Public Service Commission, may delegate in writing any of the aforementioned powers to such public officer or other authority as may be specified in the Instrument of Delegation.

Throughout the years several Instruments of Delegation have come into force, where certain powers were delegated to Permanent Secretaries and Heads of Department.

#### **Appointments**

By virtue of the instrument of delegation of 28 May 2013, the Prime Minister, acting on the recommendation of the Public Service Commission, delegated to the Commission the power to make and to postpone appointments to public officers below senior management level, and the power to withhold the progression of public officers in the same salary scales from one scale to the next within the same grade.

This instrument was superseded by that published on 25 September 2015. The latter empowered Permanent Secretaries and the Principal Permanent Secretary to:

- a. Make appointments to public offices, other than headship positions, provided that such appointments are made following a competitive selection process and on the basis of a valid order of merit;
- b. Postpone appointments to which para (a) refers;
- c. Extend fixed-term appointments or renew such appointments for subsequent terms, provided that any appointments so extended or renewed were initially made on the basis of a competitive selection process;
- d. Fill a position by lateral appointment without the need for a competitive selection process, as provided for in article 25 of the Public Administration Act (Cap. 497).

Consequently, on 1 February 2016, Directive 9 came into force. This directive set out the procedures which apply to selection processes and appointments under the authority of Permanent Secretaries in terms of the instrument of delegation approved by the Prime Minister for this purpose. Also from that date, the 1960 PSC Regulations were revoked and were replaced by two new sets of regulations – the PSC (General) Regulations and the PSC (Appointments) Regulations.

With the authority to conduct selection processes and to make appointments being delegated to Permanent Secretaries, the role of the Commission became more of a regulatory and investigative nature, where the making of appointments to public offices is concerned. To this effect, the Commission is empowered to issue directions to regulate any aspect of the selection process and to inquire into and investigate any selection process, on its own initiative or following receipt of representations or petitions lodged by aggrieved applicants.



The Commission is committed to establish an auditing mechanism in order to safeguard the merit principle in the selection process.

The Commission extends continuous support and guidance to directors of corporate services and HR managers, with a view to ensuring compliance and adherence to the new selection procedure.

### **Calls for applications**

During 2016, 500 calls for applications were issued for the filling of vacancies in the Public Service. Out of these calls, 150 were calls open to applicants from outside the Public Service and were therefore advertised in the Government Gazette. 274 calls were restricted to serving public officers/public sector employees and were published through service-wide/wider public sector circulars issued by line ministries or departments. The remaining 76 calls, relating to positions of Assistant Director, were advertised through circulars issued by the respective ministries.

## Comparative figures concerning calls for applications for the last five years - Table 2

Table 2 - Calls for applications 2012 - 2016						
		2012	2013	2014	2015	2016
Open calls	Government Gazette	190	171	245	179	150
	British Medical Journal	-	1	2	-	-
	European Society for Radiotherapy and Oncology	-	-	-	1	-
	Association for Neurological Sciences	-	-	-	1	-
	Journal of the European Federation of Organisations for Medical Physics	-	-	1	2	-
	International Journal of Audiology	1	-	-	-	-
Internal calls	Service-wide/Wider Public Sector circulars	209	253	272	312	262
	Departmental circulars	10	17	20	9	12
Calls for Assistant Directors	Service-wide circulars	134	42	101	104	76
<b>Totals</b>		<b>544</b>	<b>484</b>	<b>641</b>	<b>608</b>	<b>500</b>

### Selection processes

By virtue of Directive 9, which came into force on 1 February 2016, the authority to issue calls for applications, the appointment of the Selection Board, the setting of the selection criteria and weightings and the publication of the result have been delegated to Permanent Secretaries, who in turn may delegate this authority to Heads of Department within the respective ministry or to the director responsible for human resources.

The authorities may also make corrections to a call for applications without the need for the Public Service Commission's approval, provided that the amendments to the call are published and advertised with the same prominence as the original call.

An exception to the above provisions is the filling of posts in the General Service and Messengerial Grades and other posts/positions to be filled across the Public Service, which

are determined by the Principal Permanent Secretary and published through a central call for applications.

### **Recommendations and advice to the Prime Minister**

During the year under review the Commission addressed 194 recommendations to the Prime Minister. These recommendations related to the appointment to headship positions, re-designation of positions, extension of performance agreements, renewal of contracts, postponement of appointments, backdating of appointments, retroactive appointments, termination of performance agreements on appointment to other positions and lateral moves. Other recommendations refer to reversion to previous grades, revocation of appointments, re-employment/reinstatement, appointment of Executive Secretaries within Local Councils, regularisation of employment of staff in the Public Service and Grievances Unit decisions.

On 38 occasions throughout the year, the Commission gave advice to the Prime Minister in terms of articles 92(3), 92(4) and 111(1) of the Constitution in connection with appointments of Permanent Secretaries, Heads or Acting Heads of Department, and Resident Ambassadors abroad.

### **Notifications**

The Commission issued 851 notifications relating to appointments following selection processes, extensions of performance agreements, the grant of indefinite status, assimilation/promotions in terms of classification agreements, postponement/backdating of appointments, engagement/renewal of contracts, revocation of appointments and withholding of progressions/promotions.

## **Representations made to the Commission**

Regulation 23 of the Public Service Commission Appointments Regulations stipulates that an applicant for a vacant post/position who is found by the selection board not to satisfy the eligibility requirements for the post/position, or who is disqualified by the selection board for any other reason, and is of the view that the selection board has decided wrongly in his/her regard, may submit representations to the Commission within five working days from the date when action was taken to inform him/her that s/he has been found ineligible or otherwise disqualified.

In 2016, the Commission considered a total of 321 written representations made directly to the Commission on matters regarding selection processes relating to appointments in the Public Service, as provided for by the Public Service Commission Regulations. Most of the representations received were lodged by applicants prior to the publication of the selection results, and these mainly involved complaints by applicants who were declared ineligible by selection boards after applying for a particular vacancy.

The Commission ruled in favour of 47 applicants who were found to be eligible, while 268 applicants were confirmed as ineligible. On three occasions, the Commission ruled that the call be withdrawn and re-issued. Three representations were not yet decided upon as at 31 December 2016.

It can be noticed that during 2016 there was a significant increase in the number of representations lodged at the office of the PSC when compared to previous years. This increase was mainly due to the fact that during the year under review calls for applications for the filling of posts in the General Service Grades were issued. These applications attracted a large number of applicants as can be viewed below:

Post	Number of applicants	Number of representations
Clerk	923 applicants obtained a pass mark in the General Ability Test, out of whom the first 402 were called for an interview.	15
Principal	285 applicants obtained a pass mark in the General Ability Test and were called for an interview.	102

### Petitions relating to selection results

Regulation 24 of the Public Service Commission Appointments Regulations states that an applicant for a vacant post/position, who goes through all the stages of the selection process and who feels aggrieved by the result of the selection board on the grounds that the result does not reflect the merit principle, may petition the Commission for redress. A petition under this regulation should be submitted by the applicant within 10 working days from the date when action is taken to make the outcome of the selection process known to him/her.

In 2016 the Commission received a total of 125 petitions in respect of the results obtained by individuals who believed that the result of the selection process was not a fair reflection of their merits.

Eight of these petitions were not made within the 10 working days allowed for the submission of petitions in respect of appointments and promotions. These petitions were thus not considered by the Commission. With regard to posts or positions in Salary Scale 6 or below, the 10 working days start to count from the date on which a notification appears on the website of the respective Ministry, stating that the result has been issued. However, in the case of vacancies in Scale 5 or higher, where results are sent directly to applicants by registered post, the 10 working days start to count from the date on which the result is received by the applicant concerned.

In eight instances investigations were discontinued.

The Commission therefore considered 109 petitions.

In nine cases, the Commission upheld the petitions and directed that revised results were to be drawn up and re-published.

In 97 cases, the appeals were not upheld. Another three petitions were still being investigated as at 31 December 2016.

## 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 attend 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, on the other hand, the officer is found guilty, then the half-salary withheld is forfeited.
- The imposition of disciplinary penalties against public officers who are found guilty of a criminal offence by the Court.
- 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 Public Service Commission (Disciplinary Procedure) Regulations, 1999.
- Representations by Heads of Department against the findings of departmental disciplinary boards, in terms of regulation 32.

During 2016, 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, during 2016 the Commission made the following recommendations to the Prime Minister in respect of 38 cases involving criminal proceedings against public officers:

<b>Table 3 - Recommendations concerning criminal cases</b>	
Temporary suspension pending outcome of Criminal Court Cases	6
Lifting of temporary suspension "without prejudice" before conclusion of proceedings	10
<b>PSC action following a "guilty" verdict by the Courts:</b>	
• Dismissal and forfeiture of salary	4
• Warning of dismissal and suspension without pay (1 day)	1
• Warning of dismissal and forfeiture of salary	6
• Warning of dismissal for an indefinite period, employee refunded half salary withheld during the temporary suspension and deployed on clerical duties for a period of 4 years when the case would be reviewed	1
• Definite suspension without pay (1 or 2 days)	2
• Forfeiture of salary	1
<b>Restitution of rights following a "not-guilty" verdict by the Courts</b>	
• Refund of salary withheld	7
<b>Total</b>	<b>38</b>

### Oral Hearings

The Disciplinary Procedure in the Public Service Commission Regulations (S.L. Const.03) provides that, in its consideration of a case under certain circumstances, the Commission may give the opportunity of an oral hearing to the parties involved.

Regulation 16(2), which deals with disciplinary action after conviction on a criminal charge, stipulates that, if the Commission considers that the appropriate penalty following conviction on a criminal charge shall be

dismissal, or a warning of dismissal, or the forfeiture of any salary, in whole or in part, withheld during any period of suspension or temporary suspension, it shall inform the officer of his/her right to make written representations to the Commission within a period of 10 working days from such notification. The Commission shall consider such representations and it may give the officer the opportunity of an oral hearing before making a recommendation to the Prime Minister.

Whenever the Head of Department notifies an officer charged of a serious offence that, if proved, the charge could potentially lead to dismissal, the Commission shall give an opportunity to the officer charged and to the Head of Department to make oral representations before it, as required by regulation 26(2)(b).

Regulation 30(6), in Part VI of the Disciplinary Procedure in the Public Service Commission Regulations, entitled *Appeals from Disciplinary Decisions and Review of Past Recommendations of the Commission*, also requires that, in giving consideration to an appeal under this regulation, the Commission shall give an opportunity to the Head of Department and to the appellant to make oral representations.

One other instance where the Commission is required to give the opportunity of an oral hearing is when a Head of Department considers that an officer should be retired from the service in the public interest, in terms of regulation 35 of the Disciplinary Procedure in the Public Service Commission Regulations.

On its own initiative, the Commission also gives the opportunity of an oral hearing when it is informed by the Head of Department of the intention to terminate an officer's contract of engagement under the proviso of regulation 34. Although the Commission is not bound by the Disciplinary Regulations to hold an oral hearing in such cases, it considers that such good practice upholds the principle of natural justice. In 2016, the Commission convened 16 oral hearings.

### Serious disciplinary cases with the possibility of dismissal

During 2016, the Commission considered 16 disciplinary cases which were referred to it in terms of regulation 26(2) of the Disciplinary Procedure in the Public Service Commission Regulations, where the officers involved in these cases had been notified that the charges, if proven, could lead to their dismissal.

After giving both 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:

<b>Table 4 - Recommendations to the Prime Minister in serious disciplinary cases</b>	
Dismissal and forfeiture of half-salary	1
Warning of dismissal valid for one year	1
Suspension without pay for two and three days	2
Suspension without pay for two days and warning of dismissal valid for three years	1
Suspension without pay for five days and warning of dismissal valid for two years	1
Downgrading of charge from serious to minor and given a written warning	2
i) Temporary suspension imposed be lifted provided that employee be assigned duties to a different place of work within the same ministry; ii) Forfeits the half-salary withheld during employee's temporary suspension; iii) Suspended for five days without pay; iv) Warning of dismissal valid for two years.	1
Refund of salary withheld	2
Lifting of temporary suspension and refund of salary withheld	1
Lifting of temporary suspension without prejudice before conclusion of proceedings	1
Not guilty	3
<b>Total</b>	<b>16</b>

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

The 38 criminal cases referred to in Table 3 include six cases where the Commission recommended the temporary suspension of the officers concerned; 10 cases where the Commission recommended the lifting of temporary suspension pending any potential penalties that may appropriately be imposed; and seven cases where the officers concerned were not found guilty. The remaining criminal cases were all served with a penalty as indicated in Table 3. Thus, taking into account the nine disciplinary cases listed in Table 4, the total number of cases in which officers were served with a penalty by the Commission amounted to 24.

### 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 2016:

<b>Table 5 - Disciplinary action by Heads of Department</b>		
<b>Outcome:</b>	<b>2016</b>	
Dismissal	1	
Warning of dismissal and suspension from duty without pay	12	
Suspension from duty without pay	12	
Written warning (Regulation 20)	14	
Written warning (Regulation 19)	442	
<i>Subtotal: cases served with a penalty</i>	<b>481</b>	<b>86.4%</b>
Discontinued cases	39	
Officer charged resigned while case was still pending (regulation 37)	1	
Verdict of 'not guilty'	25	
<i>Subtotal: cases not served with a penalty</i>	<b>65</b>	<b>11.6%</b>
<i>Pending Cases:</i>	<b>11</b>	<b>2%</b>
<b>Total</b>	<b>557</b>	

## **V. Selected Issues and Rulings by the Commission**

### **A. Policy Matters and issues relating to recruitment and appointments:**

#### **Reckoning of service with public sector entities for the purpose of indefinite status with the Public Service**

Public officers holding a substantive grade, who were detailed/deployed with an entity following a transfer of function from the Public Service to the entity or in the interests of the Public Administration, and who were detailed/deployed 'indefinitely' with the entity, retained their inherent rights as public officers and the right to revert to the Public Service.

Officers who at the time of detailing happened to hold a position on a definite basis with the department concerned, were also detailed but were allowed to retain the public service position until the expiry of the three-year term. In the case of such officers holding a concurrent substantive grade, upon expiry of the three-year term these officers remained detailed 'indefinitely' on the basis of their substantive grade. Such officers who did not hold a concurrent substantive grade, but only the position on a definite basis, were detailed up to the expiry of the three-year term.

Officers who were detailed with their position, and who were still in their initial term at the time of detailing, lost their entitlement to indefinite status with the Public Service by virtue of such detailing, which entitlement they would have retained had they not been detailed. Hence, such officers were being short-changed.

In order to address this issue, the Administration submitted a set of proposals for the Commission's consideration, whereby public officers who held a definite position with the Public Service at the time of their detailing with an entity, irrespective of whether they held

a concurrent substantive grade, were to be entitled to indefinite status with the Public Service on the basis of such definite position and a comparable position with substantively the same tasks with the entity, after four years in terms of SL 452.81 entitled *Contracts of Service for a Fixed Term Regulations*, provided that such positions did not carry an objective reason in terms of same regulations. Such indefinite status was to be in the designation of 'Officer in Scale', and was to be tied to the salary scale of the public service position.

This proposal was to apply only in the case of officers detailed as a result of a transferability of function from the Public Service to an entity, and in cases where officers were identified to be detailed with an entity in the interests of the Public Administration.

In addition, officers who occupied Assistant Director/ Headship positions in the Public Service prior to their detailing, were to be entitled to indefinite status as Officer in Scale 5/tenured as Officer in Grade with the Public Service respectively, subject to having occupied such a position with the Public Service and with the entity conjointly for four/six years as applicable at that time.

The Commission considered that public officers should not be deprived of their inherent rights as a result of administrative requirements. Consequently, the proposed amendments were agreed to and approved without reservation.

### **Tenure of public officers performing higher duties for six years**

The Commission considered and agreed to a proposal put forward by the then Public Administration HR Office. The latter recommended that the policy stipulating that officers engaged in a post on a temporary back-to-back basis were to be given a permanent appointment in the post, subject to the conditions agreed upon, be applicable also in the case of officers engaged in a contractual position on a temporary back-to-back basis. This was proposed so as not to differentiate, in granting such an opportunity, between

officers appointed on a temporary back-to-back basis in grades/posts and those appointed in contractual positions. In such cases, officers were to be given indefinite status as 'Officer in Scale' after a six-year period. The rationale behind the proposal was mainly to act in accordance with regulation 4 of SL 452.81, which stated that *'Employees on a contract of service for a fixed term shall not be treated in a less favourable manner than comparable permanent employees ...'*

### **Decentralisation of processes**

In April 2015 the Commission had given the green light for the decentralisation of processes as far as progressions and promotions of General Service officers were concerned.

The authority to issue and to withhold same had been delegated to heads of department.

During the year under review, the Commission sanctioned a further delegation of authority whereby appointments through direct recommendation (i.e. appointments not following competitive selection and not arising from the provisions of the respective Classification Agreement) and renewals thereof - when Ministries/Departments submit their recommendation to the Public Service Commission for the making of a direct appointment or its renewal - were no longer to be referred to the Resourcing Directorate within the Public Administration HR Office, for verification purposes, but were to be referred directly for the Commission's consideration.

In addition, when the withholding/holding in abeyance of increments, progressions and promotions (based on a number of years' satisfactory service in terms of the respective Classification Agreement) was necessary, ministries/departments were to submit their recommendation directly to the Commission, both in the case of the General Service and the Departmental Grades, without copying in the Resourcing Directorate, within the Public Administration HR Office.

Whilst concurring with the proposal, the Commission urged that Heads of Department were to be reminded of



their responsibility and that they were accountable for each submission made to the Commission. It was expected that audits of these functions were to be carried out on a regular basis. To this effect, a letter-circular, issued on 17 March 2016, was sent to Permanent Secretaries, Directors General and Directors responsible for HR.

### **Meeting with the Principal Permanent Secretary**

Upon the appointment of the new Commission, the latter held a meeting with the Principal Permanent Secretary with a view to understanding better Government's thrust for good governance through accountability and transparency measures.

#### ***Key Performance Indicators (KPIs)***

The Principal Permanent Secretary not only referred to the large number of changes that were introduced during the previous three years, but he gave an overview of what was planned for the future. He explained that 12 Key Performance Indicators (KPIs) for the Public Service had been launched. That was a new concept for the Public Service, whereby clear targets to be reached within a specific timeframe were provided.

The Principal Permanent Secretary explained further that the Key Performance Indicators launched covered a wide span of sectors affecting citizens directly. The Commission welcomed the introduction of these measures.

#### ***Recruitment process in General Service Grades***

The Commission questioned the rationale behind the introduction of a computer-based test to assess candidates on their aptitude for recruitment purposes in General Service Grades. This was another new concept adopted by the Administration, whereby this method of testing was to replace the written part of the recruitment process.

The Principal Permanent Secretary explained that through this testing, the most suited candidates would be identified. The test was to be used for all selection processes for posts within the General Service. It was an objective method of assessing candidates, whereby the level of intelligence and mental ability could be assessed. Those who succeed would then sit for an interview, during which they would be given the opportunity to indicate their preference for work in four areas within the Public Service.

### ***Role of the Public Service Commission***

The Principal Permanent Secretary referred to Government's commitment to deliver a high quality service based on transparency, honesty and accountability. He acknowledged the important role played by the Commission in this regard, where, by its recommendations and directions, ministries and departments of Government are continually streamlined in one direction.

Whilst referring to the authority delegated to Heads of Department for the conduct of selection processes and the making of appointments, the Principal Permanent Secretary reflected about the role of the Commission. Apart from being an appellant body whereby aggrieved persons could lodge complaints, the Commission was also to conduct audits, to evaluate and to investigate selection processes.

To this effect, the Principal Permanent Secretary was informed that the Commission had set up a unit within its office, with a view to ensuring compliance by Heads of Department. As a matter of fact, the Commission reported that a number of audits had been carried out.

### **Selection criteria for the position of Assistant Director**

In October 2016, the Commission considered and approved a proposal from the People and Standards Division, OPM, for the revision of the selection criteria for the position of Assistant Director.

It was proposed that 15% of the total marks were to be allocated to skills required for the position, whereby the suitability of the candidate to the position was to be likewise assessed.

### **Extension of internal calls for positions to public sector employees**

The Commission agreed to a proposal whereby requests for extending internal calls for applications to employees of entities falling within the wider public sector would be considered by the People & Standards Division, OPM, without the need to seek its approval. The Commission, however, directed that it was to be informed whenever such approvals were granted.

### **Selection processes**

During the year under review, the Commission also decided upon a large number of requests, such as the deviation from the standard criteria and respective weightings and the deviation from the standard composition of selection boards.

### **Probation in the Malta Public Service**

In July 2016, the Commission had recommended that the Instrument of Delegation approved on 18 April 2009, regarding the delegation of the power to extend the probationary period for reasons of the officer availing himself/herself of special unpaid leave or reduced hours during the probationary period and to extend/terminate the probationary period for reasons of unsatisfactory performance, was to be revoked and replaced.

Instead, it recommended that the Instrument was to be replaced by another one which empowered Permanent Secretaries to extend/terminate the probationary period for

any reason that justified such action, provided that the officer concerned was given the opportunity to appeal to the Commission against the decision taken by the Permanent Secretary.

The Instrument of Delegation also made allowance for the automatic suspension or extension of the probationary period on account of absence from work on leave or otherwise, in circumstances where the PSMC provided for such suspension or extension.

The Commission also approved two proposals submitted by the then Public Administration, HR Office, OPM, regarding the duration of the probationary period and a new condition whereby public officers were not to be permitted to apply for a higher post or position solely on the basis of their current grade or position, unless they were confirmed in their current appointment.

### **Requirements for eligibility purposes**

During the year under review, the Commission encountered circumstances where applicants for posts/positions through internal calls for applications, were eligible to apply since they held an appointment within the Public Service, but were not eligible to take up appointment since, by that time, they had resigned from the post they had occupied.

In the circumstances, the Commission took the matter up with the then Public Administration, HR, Office. The latter was to ensure that calls for applications were to specify that eligibility requirements needed to be satisfied not only by the closing date of the call for applications, but also by the date of appointment.

### **Officer in Scale eligibility to apply for grades open to officers holding a substantive grade in the Malta Public Service**

The Commission had, in November 2015, considered requests regarding decisions taken by the Grievances' Unit in respect of five applicants who had, in 2012, applied for the posts of Assistant Technical Officer, and/or Technical Officer, and/or Senior Technical Officer. The Grievances' Unit had recommended that, in view of the complexity of the issues involved in these selection processes, all those who sat for the interview and had been successful were to be considered for appointment as Officer in Scale, on a personal basis, in the highest grade they had applied for and in which they were successful. The date of appointment was to be the same as that of the last appointment in the respective grade. The Commission had considered favourably this recommendation and apart from the five officers who had lodged the complaint with the Unit, another 13 officers were appointed Officer in Scale 11, 14 officers were appointed Officer in Scale 12, and five officers were appointed as Officer in Scale 13.

The Commission had also considered that, even if these officers did not lodge a complaint with the Grievances' Unit themselves, they were still to be considered eligible to apply for grades open to officers holding a substantive grade within the stream that carried the same scale as that of the Officer in Scale status, bearing in mind that they were granted Officer in Scale status by virtue of its decision following the recommendation of the Grievances' Unit.

To this effect, on 7 July 2016, a Memorandum of Understanding was reached between the Government and the General Workers' Union. By virtue of the agreement, public officers who held a grade in a particular stream and who were granted Officer in Scale status by virtue of a Grievances' Unit decision in the same scale of a higher grade in that stream, were to be considered eligible to apply for grades open to officers holding a substantive grade within the stream that carried the same scale as that of the Officer in Scale status.

## **B. Issues relating to disciplinary procedure**

### **New Disciplinary Regulations**

In the beginning of the second quarter of 2016, the Working Group tasked to review the Disciplinary Regulations led by the Commission's Executive Secretary, concluded the revision of the PSC Disciplinary Regulations. The other members of the working group were Ms Jacqueline Bonnici (*Assistant Director, PSC*), Ms Charmaine Busato (*HR Policy Manager*), OPM and the late Mr Eric Serracino (*Assistant Director, Discipline*), OPM.

The new Disciplinary Regulations, in draft form, were thoroughly discussed and examined by the Commission. Clearance from both the Information and Data Protection Commissioner as well as from the Office of the Attorney General was also obtained. Finally, the Regulations were presented to all stakeholders.

### **Rulings by the Commission regarding Disciplinary Procedures**

During the course of its work, the Commission addressed various queries from disciplinary boards and from officers in charge of Discipline within different departments. It provided advice and clarifications on the interpretation of procedure in respect of the Disciplinary Regulations. The following represent a few of the numerous queries received during 2016:

#### **i. Resignation of public officers while on a temporary suspension**

Direction was sought as to whether a public officer who had been temporarily suspended whilst undergoing police investigations was entitled to the refund of the salary which had been withheld from him during the period of his temporary suspension if he were to resign before any charges were brought against him.

Regulation 12(8) and regulation 38 were only applicable in respect of officers who resigned whilst undergoing disciplinary or criminal proceedings. In this case, no disciplinary or criminal proceedings had as yet been initiated against the officer concerned.

The Commission considered that since no disciplinary or criminal action had been instituted, then there were no pending proceedings against the officer. In the circumstances, if on his resignation from the public service the same situation subsisted, then the salary withheld from the officer during the period of the temporary suspension would have to be refunded to the officer.

**ii. Omission by Head of Department in applying regulation 20(2) of the Disciplinary Regulations**

The Commission was asked to give direction to a Disciplinary Board appointed to investigate disciplinary charges against an employee in terms of regulation 20(2) of the Disciplinary Regulations. The Chairperson explained that during the first hearing the lawyer assisting the officer charged had drawn the attention of the Board that the Head of Department had not informed the officer charged that he had failed to exculpate himself, as required by regulation 20(2)(e) of the Disciplinary Regulations. On that basis, the officer's legal representative contended that no further disciplinary action was to be taken.

The Commission considered that from the facts of the case, it transpired that the only step that had been omitted by the Head of Department was the one whereby the Head of Department had to inform the officer that he did not exculpate himself.

It was not considered that such omission brought about as a consequence the nullity of the charges, given that the officer was allowed the opportunity to reply to the charges in terms of regulation 20 and given that during the hearings before the Disciplinary Board the officer would be afforded the opportunity to present the case before the Disciplinary Board concluded the investigation.

### **iii. Time-frame for the implementation of a disciplinary penalty**

The Commission was asked to give direction as to the time-frame within which decisions by the Head of Department following disciplinary procedures were to be implemented.

One public officer was found guilty of two disciplinary charges which were initiated against him in terms of regulation 20 of the PSC Disciplinary Regulations. These two charges were classified as serious. In respect of the first charge, the Head of Department decided that the officer concerned should be suspended for one day, whereas, in respect of the second charge, the Head of Department decided that he be suspended for two days.

The Head of Department could not afford that this officer be suspended for three days due to some urgent deadlines which had to be met, thus, he enquired whether the implementation of his decisions could be delayed by one month.

The Commission noted that regulation 6(3) required that the officer is informed about his guilt or otherwise and the penalty to be imposed upon him by not later than 20 working days from the date the Head of Department took the decision. This regulation however did not state anything about when the penalty was, in actual fact, to be implemented.

The Commission determined that the penalty was to be implemented at the earliest possible, but in any case, by not later than 30 working days.

### **iv. Imposition of penalty**

The Commission's advice was solicited as to whether the number of days suspension given as a penalty by the Public Service Commission could be deducted whilst an officer was on sick leave.

The Commission considered that if the officer concerned was suspended while on sick leave, his salary would be



withheld while on certified sick leave, during which the officer was entitled to receive his salary by law, or to be paid sickness benefit under the Social Security Act.

In the light of the above, the Commission agreed that a penalty following disciplinary proceedings involving suspension from work was to be imposed when such officer reported for duty.

## VI. Other Business of the Commission

### Meeting of the Commission with H.E. the President of Malta



DOI Photo: Charles Zammit

On 25 November 2016, the Commission paid a visit to H.E. Marie-Louise Coleiro Preca, President of Malta, at the Palace, Valletta.

The Chairman, on behalf of all the members, thanked H.E. the President of Malta and explained that it was customary for the Commission to pay a visit to the President of Malta upon the commencement of its three-year mandate.

During the meeting, various subjects were discussed. Her Excellency the President of Malta stressed the importance of equal opportunity and social justice. Referring to the Commission's Constitutional role, she reminded those present of their duty to oversee that fairness and justice

prevail in the making of appointments within the Public Service.

The Chairman spoke about the changes which had taken place within the Public Service over the years. He referred to the ever increasing number of female participation in the labour market, an increase which augured well even if female participation in top management positions in Malta was still low.

In conclusion, the Chairman thanked Her Excellency for her cordial greetings. On behalf of the members of the Commission and the staff within the office of the Commission, the Chairman presented a donation towards the Malta Community Chest Fund Trust.



DOI Photo: Charles Zammit

## Appendix 1

### Public Service Commission Chairmen

**Mr L H Gorsuch, CBE**  
05.08.1960 - 31.10.1963

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

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

**Dr C Cassar, MD, MRCP, PhC, KM, CStJ**  
20.01.1978 - 19.01.1980

**Mr C Giuliano**  
20.01.1980 - 31.12.1981

**Mr G Craig**  
12.01.1982 - 25.02.1984

**Mr M J V Bonello**  
01.04.1984 - 08.08.1986

**Mr P V Attard**  
01.09.1986 - 11.08.1987

**Dr A G Camilleri, BA, LL.D**  
12.08.1987 - 11.08.1992

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

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

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

**Mr A Fiorini Lowell**  
12.06.2003 - 11.06.2010

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

**Mr L P Naudi**  
18.06.2013 -

## Appendix 2

### 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**  
10.01.2004 – 08.01.2010

**Mr P Sammut, Executive Secretary**  
09.01.2010 – 16.04.2010

**Mr C Polidano, Executive Secretary**  
17.04.2010 – 28.02.2014

**Ms C Schembri, Executive Secretary**  
01.03.2014 –

### Appendix 3:

#### Office of the Public Service Commission

##### (i) Staff complement

Staff in post as on 31 December 2016	
Category	No of employees in post
Senior management	Executive Secretary and two Assistant Directors
Compliance and support staff	One Officer in Grade 5 and four Compliance Officers (one on parental leave)
Administrative staff	Two Principals and one Assistant Principal
Executive staff	Two Executive Officers
Clerical staff	Two Clerks (one on unpaid leave to try alternative employment and one on long sick leave on no pay)
Messengerial staff	Two Messengers
<b>Total</b>	<b>17</b>

##### (ii) Commission's expenditure

Expenditure for the year 2016	
Item	€
Emoluments of the Chairman, Deputy Chairpersons and Members of the Commission	85,046
Emoluments of the public officers attached to the Office of the Public Service Commission	340,305
Social security contributions	26,416
Operational and maintenance expenses	94,015
<b>Total</b>	<b>545,782</b>











