GUIDELINES FOR GOOD GOVERNANCE

Recent years have witnessed growing appreciation among Maltese citizens of the obligation by public officials in the exercise of their administrative authority to provide quality service and to be guided by standards of good administrative behaviour in their relations with the public. This heightened awareness took place at a time of sharper focus in the European Union on the right of citizens to good administration.

The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union proclaimed by the European Parliament, Council and the Commission in December 2000 included the right to good administration (Article 41) and the right to complain to the European Ombudsman against maladministration by institutions and bodies of the European Union (Article 43) as fundamental rights of EU citizenship. The Charter featured in Part II of the Treaty establishing a Constitution for Europe that failed to be ratified.

The Treaty of Lisbon that made reference to a slightly modified version of the Charter of Fundamental Rights of the European Union proclaimed in Strasbourg in December 2007, was also not ratified by the end of 2008. As a result, even though the Charter is not yet a legally binding document and has no legal status, the European Ombudsman holds the view that institutions that proclaimed the Charter should respect its provisions and that failure to do so would constitute maladministration.

Although aimed at institutions within the EU, the concept of good administration promoted by the Charter is not limited to these institutions but applies also to public administration. Wide acceptance exists among the European Union of the rights and obligations that underpin the core principles of good administration and several Member States are already guided by these principles in the running of their administrations and institutions.

European Code of Good Administrative Behaviour

The concept of good administration was further elaborated in the European Code of Good Administrative Behaviour that was drafted by the European Ombudsman and adopted
by the European Parliament in September 2001. This Code is a vital tool for the European Ombudsman to investigate complaints about maladministration and serves as a guide and resource for public officials to promote the highest standards of administration.

The national commitment to promote best practice in public administration

Closer to home there have been several initiatives since the early 90s to promote a service-minded public administration in Malta that operates in a transparent and accountable environment and respects the legitimate right of citizens to efficient public service. The Office of the Ombudsman has been at the forefront of these initiatives and investigated in an independent and impartial manner thousands of complaints about poor service provision, omissions as well as breaches of rules and regulations by public authorities within jurisdiction. Other key aspects of its work have been a strenuous promotion of good administrative practice and high standards of conduct together with guidance to public bodies along the path of quality service delivery including a fair and consistent approach towards the provision of redress.

The Maltese government too has striven for a sustained improvement across the public service and channelled substantial resources towards institutional reform and a change agenda to upgrade the response of officials in fulfilling their responsibilities towards citizens. Regulatory frameworks were established; customer care protocols and quality service charters were introduced in government departments and public authorities that have an ongoing interface with citizens; a complaint management culture has been encouraged; and management attitudes to improved delivery have been enhanced. In terms of e-governance Malta has made considerable strides and a wide range of government operations now rely on the use of digital technology to provide service to citizens.

On the legislative front the government enacted the principles of good administrative behaviour as legally binding rules by means of the Administrative Justice Act (Act No. V of 2007) which lists the principles that administrative tribunals shall respect and apply in their relations with the public. The Freedom of Information Act (Act No. XVI of 2008) establishes a right to information held by public authorities to promote added transparency and accountability while the Public Administration Act (Act No. I of 2009) affirms courteous, expeditious and impartial public service delivery as leading values of public administration and as an instrument for the common good and provides for the application of these values and of the Code of Ethics throughout the Maltese public sector.

In April 2004 this Office published The Ombudsman’s guide to standards of best practice for good public administration and Redress: the introduction of a new culture in Maltese public administration to complement the government’s efforts in this direction. These two leaflets provided a checklist with standards of best practice for good administrative behaviour by public officials as a means of improving service quality and delivery to citizens and promoted the introduction of a code of practice for the award of redress for proven maladministration.

The right to good administration: basic principles and their practical application

This Office sees the time is now opportune to consolidate these two publications in a single text that sets out in layman’s terms for public authorities and citizens alike the principles of good administration together with various practical implications of these principles against which to measure the basic tenet that the public administration is there to serve citizens. Trust in public authorities can only be won and sustained if the fundamental values that underpin the goal of a competent public administration are backed by practical day-to-day applications in issues that affect citizens directly and if people detect a warm and genuine interest in their concerns by those who wield administrative power and authority.

In view of the useful work in this field by Ms Ann Abraham, UK Parliamentary and Health Service Ombudsman, to lay down general principles of good administration that are valid for all public services and to give a human and practical touch to their application that also serves as a tangible sign of their relevance to daily life, the Office of the Ombudsman has sought permission to draw on this material. The Office is thankful for the kind authorisation to affirm in this document the broad principles of good administration that should guide public authorities and to put flesh and substance on these principles by reference to day-to-day situations to underline the practical application of the guidelines as a means of fostering all-round good practice in the public service.

The values set out in this document constitute an extensive list of signposts to guide public officials in the way that individuals are to be dealt with and are meant to further promote effective application of the individual’s right to good administration. Since failure to follow these norms is generally indicative of deeper service breakdown, public service providers would do well to ensure that marks on their scorecard for their overall conduct towards citizens would reflect observance of the following key elements of good governance.
1. Act lawfully
   - act in accordance with the Constitution and binding international conventions
   All public bodies and authorities should uphold the Constitution in its various manifestations and international conventions wherever applicable. They should favour the protection of fundamental human rights and pre-empt their violation.
   - act in accordance with the law and with due regard for the rights of citizens
   All public bodies and authorities must comply with the law and give due regard to statutory obligations, powers and rules governing the service that they provide.
   - refrain from arbitrariness
   When applying statutory law in all its forms, decision-making public authorities should, where necessary, apply the principles of equity when discretionary powers allow them to do so.
   - observe due process
   All public bodies and authorities should ensure that in the exercise of their administrative functions they conform strictly to the rules of due process that guarantee a fair hearing to citizens.

2. Act reasonably
   - take proper account of established good practice
   Public authorities should apply in a consistent and equitable manner policies and procedures that conform to published and internal quality standards and follow established good practice.
   - provide efficient, effective and responsive service
   Staff should respect the policy framework set by public authorities and observe statutory duties and functions and published and internal service standards to which these authorities are committed.
   - take reasonable decisions objectively
   In their actions and decision-making public authorities should give due weight to the relevant administrative and legal grounds that support their activities and operations, ignore irrelevant considerations and balance the evidence appropriately, fairly and objectively.

3. Give citizens a fair deal
   - spend public funds with care and propriety
   Public authorities are to manage public money reasonably, diligently and in accordance with the norms of good governance.
   - ensure that service is citizen-focused and that people can access service easily
   Public authorities should provide services that are easily accessible to customers; their policies, procedures and regulations should be precise and easily understandable; and they must provide clear, accurate and complete information and advice about their service provision particularly where time limits or conditions might result in citizens missing out on entitlements to which they would otherwise be eligible.
   Enquiries and requests for information should be answered in an appropriate manner, promptly and without undue delay.
   - inform customers clearly about their rights and obligations
   Public authorities should ensure that customers are able to reach an informed understanding of their entitlements and allow them to have their views heard if rules, policies or procedures provide that interested parties should be heard, especially before measures are taken that affect adversely their rights and interests.
   - observe and fully keep all commitments given to customers
   Public authorities should meet published response times and timescales; provide customers with all necessary explanations in case they are unable to take action, reach a decision or deliver a service or benefit within an established time limit; and send a holding reply giving reasons for the delay and inform customers when they can reasonably expect to be served.
   Citizens not entitled to a particular service or benefit should be given the reason/s why they are not eligible and told of alternative services or benefits, where applicable.
   - give all reasonable assistance and deal with people helpfully and in a sensitive manner
   Public authorities should communicate effectively with customers and use clear language that people can readily understand and that is appropriate with particular attention to their feelings, privacy and convenience and with due regard to vulnerable and disadvantaged members of society.
Correspondence by members of the public including electronic mail and telephone communications is to be dealt with in accordance with deadlines for replies established by the public authority concerned.

- respond to customers’ needs flexibly and, where necessary, co-ordinate a response with other service providers

When dealing with people, public bodies should bear in mind the ability of citizens to get to grips with rules and procedures that are often complicated and should respond flexibly to the circumstances of each case.

Where more than one public body is concerned, the authorities should deal with customers in a co-ordinated way so that their needs are not overlooked; and if they are unable to help, they should refer their customers to other sources of help.

4. Provide open, accessible and accountable service

- be open and accessible about the organization’s policies and procedures

Public authorities should be transparent and information and advice to citizens about procedures and practices that regulate public schemes and programmes should be handled as openly as the law allows and be clear, relevant and timely.

- state criteria and explain the reasons behind decision-making

Public authorities are in duty bound to justify their conduct and should be open, truthful and credible when accounting for their decisions and actions; clearly state the criteria on which their decision-making was based; and communicate these reasons to the parties concerned in due time even in the case of an adverse decision.

- handle information properly and appropriately

Public authorities should handle and process information properly and appropriately in line with the law and respect rules on the protection of personal privacy, personal data and confidential information.

- provide accessible public offices and keep proper and appropriate records

Public authorities should use modern information and communications technology to enable the widest access to their service and maintain reliable and usable records as evidence of their activities. Their records management systems should be in line with recognized standards to ensure that documents can be retrieved and kept for as long as there is a statutory duty or need to do so.

- take full responsibility for their actions

Public authorities should take full responsibility for the actions of their staff.

5. Act fairly and proportionately

- treat people impartially, with respect and courtesy

Public authorities should always deal with people fairly and considerately; be prepared to listen to them; and not adopt an adversarial or defensive approach when things go wrong.

Public authorities should treat people equally and impartially; act objectively and respect the diversity of their customers; and ensure fair access to services regardless of background or circumstances.

- treat people without any improper discrimination or prejudice

The conduct of staff as well as actions and decisions by public authorities should be free from personal bias or interests or political pressure that could prejudice responses to customers.

Public authorities should not act in a way that unlawfully discriminates against or unjustifiably favours particular individuals or interests.

There should be equal treatment for members of the public regardless of nationality, reputation, gender, origin, religion or beliefs, disability, age or sexual orientation or because of who they are or whom they know.

- ensure that no conflict of interest exists

Public officials should decline any involvement with a decision or action where one has a conflict of interest, a potential conflict of interest or where there may be a perceived conflict of interest.

- deal with people and issues consistently and follow normal practice

People should be treated consistently and those in similar circumstances should be dealt with in like manner while any difference in treatment, administrative behaviour and practice is justified on legitimate grounds and by the objective features of the case in hand.

- ensure that decisions and actions are proportionate, appropriate and fair

When imposing penalties or charges to ensure compliance with the rules, public authorities should ensure that these measures are not out of proportion to the objectives pursued but are appropriate and fair to the individuals concerned.

When a service is based on a scheme of priorities, public bodies should ensure that the scheme is operated in an open and transparent manner.
Public authorities should allow for an internal review system so that adverse decisions can be reviewed by someone not directly involved in the first decision.

Upon realizing that a strict or inflexible application of rules, regulations or procedures could lead to an unfair result or create inequity, public authorities should address any such unfairness while ensuring that they do not exceed their legal powers.

6. Make amends for injustice or hardship resulting from maladministration or service failure

- **operate effective informal and formal complaint handling procedures for users of public service**

Public authorities should have in place effective complaint handling procedures for users of public service regarding the level and quality of service delivery to enable grievances to be investigated without bias, unlawful discrimination or prejudice and resolved quickly and to give fair and speedy redress in upheld grievances. Where appropriate, other individuals who may have suffered injustice or hardship as a result of the same maladministration or poor service should be awarded similar redress.

- **recognize the underlying principle for remedy**

When complaints are upheld, public authorities should aim to restore complainants to the position in which they would have been if the maladministration or poor service had not occurred in the first place. Where this is not possible – and many complaint cases fall in this category – the remedy offered should fairly reflect and be proportionate to the harm suffered by the injured party.

Public authorities should ensure that a range of appropriate responses is in place to remedy sustained cases of maladministration, poor service or shortfall in service standards that have led to injustice or hardship and should provide redress for justified complaints.

In many cases an apology and an explanation may be sufficient and appropriate and public bodies should not underestimate the value of this response. Prompt acknowledgement and apology can often prevent a complaint from escalating.

Public bodies should not regard the issue of an apology as a sign of weakness and should, according to the circumstances of each particular case, decide which organisational level an apology should come from, who should apologise and the most appropriate form of apology such as in person, by telephone or in writing.

In deciding an appropriate remedy public bodies should consider the views of an injured party although in these circumstances it is reasonable for them to take into account any way in which the party itself has contributed to, or prolonged, the injustice or hardship claimed.

Although each case must be considered on its own merits and criteria used by public bodies for redress should be flexible so as to allow them to take account of individual circumstances, at the same time decisions on remedies should give due regard to previous decisions on similar facts.

- **be open to proposals for redress**

There is no automatic or routine set of remedies for injustice or hardship resulting from maladministration or poor service; and when faults, mistakes or system failures are detected, public authorities should not hesitate to:

  - acknowledge them and admit error;
  - accept responsibility and explain what went wrong;
  - take steps to apologize to an injured party;
  - take remedial action such as, for instance, review the action or decision found incorrect; amend policies and procedures found ineffective, unworkable or unfair; give adequate notice prior to any change in rules, regulations and procedures, particularly those which adversely affect people’s entitlements; reconsider published material or procedures to prevent recurrence of the same problem; and
  - quickly and effectively and after considering all relevant factors, provide remedy that is suitable, reasonable and proportionate to the hardship and inconvenience suffered including the award of *ex gratia* financial compensation to make good any direct or indirect financial loss that may have resulted.

- **provide financial compensation to make amends for the wrong caused by maladministration**

Financial compensation to injured parties with justified grievances and found to deserve monetary benefits in restoration of their injured rights is meant to:

  - make up for entitlements due to citizens but which, for some reason or other, failed to reach them;
  - compensate for refunds or payments of benefits that were delayed or inappropriately withheld;
  - provide a measure of relief for opportunities which were wrongfully denied;
  - help to make up for the inconvenience, distress, moral, psychological as well as physical damage to which an injured party might have been unjustly subjected; and
• offer a level of financial compensation that reflects fairly the loss suffered by an aggrieved party.

On occasions when despite meeting statutory duties and service standards, the actions or decisions of public bodies bear more heavily on an individual, the authorities should respond flexibly to avoid or put right any such undue effect.

provide timely advice to customers about possibilities to complain or to appeal

Public authorities should clearly state the methods by which people can complain or appeal. They should provide details about appropriate organizational, institutional or independent ways of resolving problems including the name and address of the person or office with whom a complaint or appeal should be lodged, how to submit a complaint or an appeal and any deadline that may apply. They should also provide information about assistance and helplines for customers who might find this process daunting.

7. Seek continuous improvement

undertake a regular review of policies and procedures

Public bodies should review regularly policies, procedures and systems to ensure that maladministration or poor service is not repeated; actively seek and welcome all feedback, both compliments and complaints, for improved service provision; and show commitment to turn complaints and appeals into warning signals and lessons that are put into practice to further improve overall performance standards.

Finally it is important to point out that:

• at a time of heavy demand on public resources and the need to ensure their most effective use, public authorities should not use inadequate financial resources and other limitations as an excuse to justify unacceptable service provision or lower service quality standards;

• although in the award of financial compensation in cases of proven maladministration or poor service public bodies have to find a balance between an appropriate response to people’s justified concerns and acting proportionately within available resources, finite resources should not be used as an excuse for failing to provide a fair remedy;

• it is poor administrative practice to deal with complaints only as they arise and to fail to correct the root of these problems. Learning from complaints and offering timely and effective remedy ensures the best outcome in terms of cost effectiveness and benefits the service provider, the complainant, the taxpayer and the country at large. Learning from complaints is a powerful way of helping to develop the level of credibility of public bodies and authorities and to increase trust among citizens.

The standards given in this document against which service may be judged in the event of failure and criteria for the award of redress should not be applied mechanically. Public bodies and authorities should use their judgement and discretion in applying these principles to produce reasonable, fair and proportionate results.