



Annual Report for the Period from 12 November 2018 to 31 December 2019

*Issued in accordance with article 25 of
the Standards in Public Life Act*

Office of the Commissioner for Standards in Public Life
Valletta, Malta

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1 Introduction

1.1 Appointment of the Commissioner for Standards in Public Life

The Standards in Public Life Act of 2017 (chapter 570 of the laws of Malta, referred to as “the Act” from here on) came into force on 30 October 2018. In terms of the Act, the Commissioner for Standards in Public Life is appointed by the President of Malta, acting in accordance with a resolution of the House of Representatives that must be supported by the votes of at least two thirds of all members of the House of Representatives.

Dr George Hyzler’s nomination as Commissioner was approved by a resolution passed by the House of Representatives on 30 October 2018 with the support of all parties represented in the House. He took his oath of office as the first Commissioner for Standards in Public Life on 12 November 2018.

1.2 Timeframe of this report

This report, which is being issued in accordance with article 25 of the Act, covers the activities of the Commissioner from the date of his appointment to 31 December 2019. It reflects the Commissioner’s intention to adopt the calendar year as the basis for reporting and financial accounting.

Article 25 of the Act requires the Commissioner to present reports on his activities “at least annually”. To satisfy this requirement the Commissioner has issued an interim report covering his activities up to 11 November 2019. That report was presented in Parliament on 20 April 2020.

The interim report envisaged that a definitive report would be issued covering a timeframe extended to the end of 2019 and including audited financial statements, once these became available. The present document fulfils this aim and therefore supersedes the interim report.

Annual reports will be issued on a calendar year basis for 2020 and subsequent years, unless circumstances warrant more frequent reporting.

1.3 The role of the Commissioner

The Act assigns the following functions to the Commissioner:

- to investigate the conduct of persons who are subject to the Act;
- to examine declarations of assets and financial interests filed by persons who are subject to the Act;

- to make rulings, at the request of persons subject to the Act, on whether an action they propose to take would be contrary to their ethical obligations under the Act (“negative clearance”);
- to ensure that members of Parliament pay the administrative penalties to which they become liable if they miss parliamentary sittings without authorisation from the Speaker; and
- to make recommendations for the regulation of lobbying and the improvement of the codes of ethics applying to persons who are subject to the Act. Such recommendations should cover among other things the acceptance of gifts and limitations on employment after ceasing to hold office (“revolving doors”).

This report reviews the activities of the Commissioner in all five areas.

1.4 Who is subject to the Act?

The following persons are subject to the Act:

- ministers, parliamentary secretaries and parliamentary assistants;¹
- other members of the House of Representatives; and
- persons of trust, defined by the Act as persons who are engaged in the private secretariat of a minister or parliamentary secretary and who serve in an advisory, consultative or executive capacity.

The Act obliges persons in all three categories to observe rules of ethical conduct. The Act itself sets out two codes of ethics – one for ministers and parliamentary secretaries and one for members of Parliament. The Act makes persons of trust subject to the code of ethics for public employees that appears in another law, the Public Administration Act.²

¹ Parliamentary assistants (members of Parliament who provide support to ministers and parliamentary secretaries) have not been appointed since 2013. For this reason, no further reference to parliamentary assistants is made in this report.

² Malta has enacted two Public Administration Acts – the first in 2009 (chapter 497 of the laws of Malta) and the second in 2019 (chapter 595). The second Public Administration Act came into force on 1 March 2019, superseding the earlier Act and introducing a new code of ethics for public employees.

2 Complaints and Investigations

2.1 The Commissioner's investigative role

The Commissioner for Standards in Public Life can consider whether **ministers, parliamentary secretaries** and **other members of Parliament** have:

- acted in breach of the law;
- broken any ethical or other duty set out by law, including the applicable code of ethics in the Standards in Public Life Act; or
- exercised discretionary powers in a way that constitutes an abuse of power.

The Commissioner can consider whether **persons of trust** have broken the code of ethics set out in the Public Administration Act.

However, the Standards Commissioner cannot investigate cases that occurred before 30 October 2018 – the date the Standards in Public Life Act came into force. Nor can he investigate a complaint if it is made later than thirty working days from the day on which the complainant had knowledge of the fact giving rise to the complaint, or more than one year from when the fact giving rise to the complaint happened. Furthermore, the Commissioner cannot investigate cases that are the subject of legal proceedings or that are already under investigation by the police.

The Commissioner can start an investigation on his own initiative or on receipt of a complaint. Any person can submit a complaint to the Commissioner. Complainants do not need to be personally affected by the matter they complain about.

The first step the Commissioner takes on receiving a complaint is to conduct a preliminary review to determine whether it is eligible for investigation in terms of the Act. In many cases this can be determined immediately, while in others preliminary inquiries may need to be made – for instance, to find out whether the alleged misconduct can be attributed to a person who is subject to the Act. If a complaint is found eligible, the Commissioner opens an investigation.

If the Commissioner finds from his investigation that a breach of ethics or of a statutory duty has occurred, he has two main options. One option is to report the case to Parliament's Standing Committee for Standards in Public Life. This body is made up of two members of Parliament from the government side and two from the opposition, and it is chaired by the Speaker. If the Committee agrees with the Commissioner's findings, it can take remedial action as contemplated in the Act.

Alternatively, if the Commissioner finds that the breach was not of a serious nature, he may grant the person investigated a time limit within which to remedy the breach, for instance by making an apology. If the remedy is carried out to the Commissioner's satisfaction, he will close the case.

This option, which emerges from article 22(5) of the Act, enables cases to be concluded more quickly. This is an important consideration in its own right, for which reason the Commissioner has interpreted “not of a serious nature” as applying to any case remediable under article 22(5). So far the Commissioner has applied this procedure in all cases where he has upheld a complaint.

As a third option in cases where it appears to the Commissioner that a crime or a corrupt practice has been committed, he can refer the case to the Police or the Permanent Commission Against Corruption. He can also refer cases to other authorities if he considers this appropriate.

2.2 Complaints

2.2.1 Status of complaints

The Commissioner for Standards in Public Life received a total of twenty-nine complaints up to 31 December 2019. The status of these complaints as on 31 December 2019 was as follows:

Table 1: Status of complaints

Under preliminary review	3
Found not to be eligible for investigation	7
Complaints investigated	19
Of which:	
Still under investigation	8
Investigation concluded	11
Total number of complaints	29

2.2.2 Ineligible complaints

The table below indicates on what grounds complaints were found ineligible for investigation during the period under review.

Table 2: Reasons why complaints were found ineligible

Complaint concerned a person who was not subject to Act	2
Complaint concerned behaviour that did not fall under Act	1
Complaint was time-barred	1
Complainant was anonymous	3
Total number of ineligible complaints	7

Two complaints concerned persons who held what might be considered political appointments, but who did not fall within the definition of “person of trust” as set out in the Act.

A third complaint was found ineligible because it did not represent a *prima facie* breach of a statutory or ethical duty on the part of the person who was the subject of the complaint.

A fourth complaint concerned events that occurred before 30 October 2018, when the Act came into force. Article 14(1) of the Act does not permit the Commissioner to investigate such cases.

The remaining three complaints were not investigated because they were considered anonymous. Article 16 of the Act does not permit the Commissioner to entertain anonymous complaints.

Two of these complaints were received by post. One did not give the sender’s name or address. The other gave a name but no address or ID card number, meaning that the Commissioner could neither verify the sender’s identity nor ask for more details.

The third complaint was sent by email using an account with a free online service provider. Since such accounts can easily be created using a false name, the Commissioner asked for the sender’s ID card number as a means of identity verification. The sender refused to supply it, so this complaint was adjudged anonymous.

2.3 Investigations

2.3.1 Own-initiative investigation

During the period under review the Commissioner started one investigation on his own initiative. It was still in progress on 31 December 2019.

2.3.2 Number of investigations and number of complaints investigated

The Commissioner embarked on a total of nineteen investigations during the period under review.

Own-initiative investigations are a reason why the number of investigations undertaken in a given period may not necessarily correspond to the number of complaints investigated during the same period. During the period under review, however, the Commissioner received a complaint on the same matter as his own-initiative investigation shortly after he started it. This investigation therefore corresponds to one of the complaints listed as still under investigation in Table 1 above, and the number of investigations undertaken up to 31 December 2019 tallies with the total number of complaints investigated as given in the same table.

2.3.3 Investigations concluded

The Commissioner concluded eleven investigations by 31 December 2019. The outcome of these cases can be summarised as follows.

Table 3: Outcome of investigations

Case referred to Parliament's Standards Committee	–
Case referred to other authorities	–
Complaint upheld and resolved by the Commissioner	3
Case report deals with practices rather than individuals	1
Investigation inconclusive	1
Complaint not upheld	6
Total investigations concluded	11

During this period the Commissioner did not refer any cases for consideration by Parliament's Standing Committee for Standards in Public Life or by other authorities. The Commissioner did, however, forward all his case reports to the Committee for information purposes, as noted in section 2.4 of this report.

2.3.4 Complaints upheld

During the period under review the Commissioner upheld three complaints, resolving all three by means of the summary procedure under article 22(5) of the Act. One of these complaints concerned a person of trust, while the other two were separate cases involving the same minister.

The case involving a person of trust was resolved on the basis of an apology.³ The first case involving the minister was resolved on the basis of an undertaking by the minister to issue directions to his staff so as to ensure that the misconduct was not repeated.⁴ The second case was resolved on the basis that the minister had resigned from office by the time the case was concluded. While the minister's resignation was not connected to the case, it still constituted a remedy since he was no longer in a position to engage in the conduct that had given rise to the complaint.⁵

³ Report on case K/003, issued on 12 April 2019. All case reports cited in this report are available from <https://standardscommissioner.com/case-reports/>.

⁴ Report on case K/004, issued on 9 August 2019.

⁵ Report on case K/008, issued on 2 December 2019.

2.3.5 Investigation dealing with a general practice rather than the conduct of individuals

In one case the Commissioner decided to focus his investigation on a general practice rather than on the conduct of any individual. The investigation concerned a complaint about the engagement in government service of backbench members of Parliament.⁶

This particular case merits being singled out for the complexity of the issues it raised and the amount of research that had to be carried out to enable the Commissioner to arrive at his conclusions. In addition to research undertaken by the Office of the Commissioner, it was necessary to obtain specialist legal advice. Further information on this case is given in section 2.5.1 of this report.

2.3.6 Complaints investigated but not upheld

The Commissioner did not uphold six complaints following investigation. Three of these cases concerned the Prime Minister while the other three concerned ministers.

One of the latter cases concerned a complaint about selective invitations to the media for ministerial press events. Although the complaint was not upheld, the minister in question accepted the Commissioner's recommendation to invite all media to major press events in future.⁷

2.3.7 Inconclusive investigation

In one case the Commissioner's investigation was inconclusive, meaning that it was possible neither to prove nor to disprove the complaint. This was because none of the potential witnesses were willing or able to give information. The Commissioner did not issue a report on this case, concluding it instead by means of a letter to the complainant.

2.4 Publication of case reports

Ten of the eleven investigations concluded by the Commissioner up to 31 December 2019 resulted in the preparation of case reports in which the Commissioner set out his findings and conclusions. As noted in section 2.3.7 above, no report was issued on the remaining case because the Commissioner's investigation proved inconclusive.

The Commissioner can close cases himself or else refer them to Parliament's Standards Committee for its own consideration. Reports on cases closed by the Commissioner are still referred to the Standards Committee, but for information purposes only.

⁶ Report on case K/002, issued on 5 July 2019.

⁷ Report on case K/001, issued on 4 February 2019.

The Commissioner is empowered to publish reports on cases closed by him, and in the interests of transparency he has decided that as a general rule he should do so. He reserves the right not to publish a report or to publish it in redacted form if he considers this necessary in the circumstances of a particular case.

All ten case reports issued by the Commissioner during the period under review were published on his website at <https://standardscommissioner.com/case-reports/>. One of these reports was published in redacted form so as not to identify the complainant in view of the nature of the case.

2.5 Selected issues arising from cases

2.5.1 Backbench MPs in government service

One of the complaints received by the Commissioner asked him to consider whether or not backbench members of Parliament, meaning those MPs who did not hold office as ministers or parliamentary secretaries, were in a conflict of interest situation if they also served as employees of or consultants to the government.

In considering this complaint, the Commissioner opted to focus on the general practice of giving government appointments to backbench MPs on the government side. This approach was considered more practical than opening specific investigations on all government backbench MPs, particularly since the conclusions to be drawn about government appointments for backbench MPs depended not only on the merits of each individual case but on the total number of MPs so engaged. The larger the number of MPs serving with the government, the greater the potential impact on the autonomy of Parliament.

The Commissioner found that all backbench MPs on the government side had been engaged by the government in one capacity or another, mainly as consultants to ministries, chairpersons or members of government boards, or members of staff in ministers' secretariats. In his case report the Commissioner concluded that this practice was fundamentally wrong for a number of reasons, the most important of which was that it undermined the ability of Parliament to hold the executive to account. He recommended that the practice should cease.⁸

This case generated substantial coverage in the media, and the government committed itself to issuing a formal response to the Commissioner's report. The government issued its response on 11 November 2019. This took the form of a paper by the Principal Permanent Secretary which argued that the engagement of backbench MPs by the government was neither unconstitutional nor illegal, and it did not represent a conflict

⁸ Report on case K/002, issued on 5 July 2019.

of interest on the part of the MPs who were so engaged. The paper was based on legal advice that was published along with it.⁹

The Commissioner disagreed with the position taken by the Principal Permanent Secretary and his legal advisors. On 22 November 2019 the Commissioner issued a counter-statement setting out his reactions.¹⁰

2.5.2 *Persons of trust*

Article 2 of the Act defines a person of trust as “any employee or person engaged in the private secretariat of a Minister or of a Parliamentary Secretary wherein the person acts as an adviser or consultant to a Minister or to a Parliamentary Secretary or acts in an executive role in the Ministry or Parliamentary Secretariat, and where the person has not been engaged according to the procedure established under article 110 of the Constitution.”

During the period under review, the Commissioner issued a case report on one complaint concerning a person of trust. This case threw up the question of whether any member of staff in a minister’s secretariat could be considered as acting in an executive role in terms of the above-mentioned definition, since it was government policy that persons of trust should not hold executive powers over “government matters and personnel”. The potential implication of this policy was that members of staff in a minister’s secretariat might not be considered to be subject to the Act unless they fulfilled an advisory or consulting role.

However, the Commissioner found that the policy was intended to refer to the exercise of executive powers outside the narrow confines of the minister’s secretariat. The policy did not prevent a secretariat staff member from performing executive duties within the secretariat itself. Such duties still represented an executive role for the purposes of article 2 of the Act.

Furthermore, such duties did not necessarily have to be at a senior level. By analogy, in the public service of Malta the grade of Executive Officer was a junior grade in the same salary scale as that of Senior Clerk. Hence even a person holding a relatively junior position in a private secretariat might fall within the Act’s definition of the term “person of trust” on the basis that he or she fulfilled an executive role.¹¹

As noted in section 2.2.2 of this report, the Commissioner received two more complaints concerning persons who appeared to be political appointees in the sense that they had

⁹ The response and accompanying legal advice are available at https://publicservice.gov.mt/en/Pages/News/2019/20191112_AnalysisOfAttorneyGeneralReport.aspx.

¹⁰ Available at <https://standardscommissioner.com/other-documents/>.

¹¹ Report on case K/003, issued on 12 April 2019.

been employed by the government on a discretionary basis rather than through a call for applications, but they did not serve in the private secretariat of any minister or parliamentary secretary. Hence the persons in question did not fall within the definition of “person of trust” as set out in the Act, and the complaints could not be investigated. These complaints indicated that the definition was not easily understood by members of the public.

On 17 October 2019 the Commissioner therefore issued a guidance note to clarify this definition and to explain how it differs from the general understanding of the term “person of trust”. The guidance note can be downloaded from the Commissioner’s official website at <https://standardscommissioner.com/other-documents/>.

Another issue addressed by the Commissioner in relation to persons of trust is whether the Constitution of Malta permits appointments on trust. The Commissioner first considered this issue in his case report on the engagement of backbench MPs by the government, since some MPs served as persons of trust in ministers’ private secretariats. He took up the issue in the above-mentioned guidance note, and in a document published subsequently on constitutional reform (see section 4.4 of this report). The Commissioner’s view is that appointments on trust are unconstitutional in terms of the Constitution as it stands.

2.5.3 *Public communications by ministers*

During the period under review, the Commissioner dealt with four complaints concerning public communications by ministers.

The first complaint alleged that a minister was issuing invitations to his press events selectively to some media but not others. The Commissioner found that the relevant provisions of the ministerial code of ethics were not clear on whether ministers were obliged to invite all media to press events. The Commissioner therefore felt unable to uphold the complaint. However, he secured a commitment from the minister to issue invitations to all media in future, and he stated that in subsequent cases he would interpret the ministerial code of ethics in this light.¹²

The second complaint concerned an official statement issued by the same minister through the Department of Information (DOI). The complaint alleged that the statement was political in nature and constituted inappropriate use of official government facilities. The Commissioner upheld this complaint. He found that the statement was politically partisan in tone and, moreover, it dealt not with official matters but with legal proceedings instituted by the minister in his personal capacity.

The minister argued that it was a longstanding practice to issue statements of a political nature through the DOI. The Commissioner acknowledged this, but noted that his

¹² Report on case K/001, issued on 4 February 2019.

mission was to raise standards in Maltese public life. It would defeat this purpose and perpetuate an incorrect practice if he excused present-day misconduct on account of similar past behaviour. He closed the case on the basis of a commitment by the minister concerned to direct his officials not to make use of the DOI for such statements in future.¹³

The third complaint concerned a DOI statement issued by a different minister, and it raised much the same issues. The Commissioner found that in this case the subject matter of the DOI statement was directly related to the minister's official responsibilities. As a result he did not uphold the complaint. He did, however, note that one particular comment in the statement was unnecessary and bordered on the inappropriate. He therefore reiterated the call he had made in his report on the previous case for ministers to avoid issuing statements of a political nature through the DOI.¹⁴

The fourth complaint concerned the use of Facebook by the minister who was the subject of the first two of the complaints reviewed in this section. The complaint alleged that the minister was uploading partisan content to an official Facebook page. The Commissioner found that the page in question was in fact the minister's personal page: the complainant had been misled by a reply to a parliamentary question in which the minister's page had erroneously been listed as one of those maintained by the ministry.

Since the page belonged to the minister, he was free to upload partisan content to it. However, there was still cause for concern in that ministry staff were administering the page for the purpose of uploading content relating to the minister's official responsibilities. The minister was thereby misusing official resources to promote his own personal and political profile. This was in breach of the same ethical provisions that had been cited by the complainant. The Commissioner therefore upheld the complaint. He closed the case since the minister had in the meantime resigned from office for unrelated reasons.¹⁵

¹³ Report on case K/004, issued on 9 August 2019.

¹⁴ Report on case K/007, issued on 16 September 2019.

¹⁵ Report on case K/008, issued on 2 December 2019.

3 Other Functions Arising from the Act

3.1 Review of annual declarations by MPs and ministers

Article 13(1)(a) of the Standards in Public Life Act tasks the Commissioner with examining and verifying declarations relating to financial interests and assets by persons subject to the Act. Members of Parliament, ministers and parliamentary secretaries are obliged by their respective codes of ethics to make such declarations on an annual basis. Declarations are made in the spring of each year setting out the position as at 31 December of the previous year.

During the period under consideration, MPs, ministers and parliamentary secretaries presented declarations on their financial interests and assets as at 31 December 2018. The Commissioner embarked on the development of a methodology for the review and verification of these declarations. This work remained under way as of 31 December 2019.

3.2 Negative clearance

Article 13(1)(c) of the Act empowers the Commissioner to give a ruling on whether a particular action constitutes misconduct, if such a ruling is requested by a person who is subject to the Act. If the Commissioner rules that the action is permissible, and the person who has requested the ruling acts accordingly, he or she cannot then be charged with misconduct under the Act. The Act refers to this procedure as negative clearance.

During the period under review, the Commissioner received two requests for negative clearance. Both requests came from backbench members of Parliament, and both concerned the taking up of appointments in the public sector. The Commissioner granted negative clearance to both requests since the nature of each appointment was such that it did not constitute a conflict of interest for the member of Parliament concerned.

3.3 Administrative penalties for non-attendance in Parliament

Article 13(1)(e) of the Act assigns to the Commissioner for Standards the role of writing to members of Parliament to inform them of any administrative penalties due by them for unauthorised absences from parliamentary sittings in terms of Standing Order 159 of Parliament's Standing Orders.

During the period under review, the Commissioner agreed with the Speaker and the Clerk of the House of Representatives on the procedure to be adopted by their respective offices for cooperation in the fulfilment of this function. The Office of the Commissioner subsequently began writing to members of Parliament concerning

administrative penalties due by them with respect to the 2018/2019 session of Parliament.

3.4 Review of codes of ethics

Paragraphs (f) and (g) of article 13(1) of the Act empower the Commissioner to make recommendations for the improvement of the codes of ethics applying to ministers, other members of Parliament, and persons of trust. Such recommendations may deal with, among other things, lobbying, the acceptance of gifts, and restrictions on employment after ceasing to hold state office (“revolving doors”).

During the period under review, the Office of the Commissioner began to carry out research on these matters with a view to drawing up recommendations for change to the codes of ethics for ministers, parliamentary secretaries and MPs. The research encompassed practices in other countries as well as relevant recommendations by GRECO (the Group of States Against Corruption, a body within the Council of Europe). In June 2019, preliminary meetings were held separately with representatives of the government and opposition parliamentary groups to obtain their reactions to the proposals that were under consideration by the Commissioner.

By the end of the period under review, the research was largely complete. Proposals for the regulation of lobbying and revised draft codes of ethics were being drawn up as a basis for public consultation.

4 Other Activities

4.1 Participation in meetings of Parliament's Standards Committee

The Commissioner has attended every meeting held by Parliament's Standing Committee for Standards in Public Life. During the period under review the Committee met seven times.

In its first meeting, which was held on 22 January 2019, the Committee began discussing whether case reports drawn up by the Commissioner on the basis of his investigations should be published. On 11 March 2019 the Commissioner presented a memorandum to the Committee in which he proposed that –

- the Commissioner should publish his reports on cases where he found no misconduct following an investigation, or where the misconduct was resolved using the summary procedure under article 22(5) of the Act;
- if the Commissioner referred a case to the Committee for its own consideration, it would be up to the Committee to decide when to publish the Commissioner's case report;
- on the other hand, the Commissioner would not publicise complaints if he found no basis to investigate them;
- if there was evidence of criminal responsibility, the case would be referred to the Commissioner of Police or the competent authority without publication. In this case the Chairman of the Committee would be informed forthwith.

The Committee discussed this memorandum during its meetings of 12 March, 2 April and 26 July 2019. On 2 April 2019 the Committee agreed to the publication of case reports which found no misconduct, and on 26 July 2019 it agreed that the Commissioner could publish reports on cases resolved through the summary procedure.

On 5 July 2019 the Commissioner published his case report on backbench members of Parliament in government service (see section 2.5.1 above). This report could be published immediately since the case represented a new category, not covered by the Commissioner's memo of 11 March 2019, in which his investigation focussed on practices rather than misconduct by individuals.

It was particularly important for this case report to be discussed by the Committee since it concerned Parliament itself. The report was briefly discussed by the Committee on 26 July 2019 and again at its subsequent meeting of 12 November 2019, but both meetings were brief. The meeting of 26 July lasted three quarters of an hour and that of 12 November discussed only procedural issues before being adjourned.

The meeting of 12 November 2019 was the last to be held by the Committee up to the date of issue of this report.

4.2 Exchange of experiences with the UK

In January 2019 the Commissioner for Standards, Dr George Hyzler, together with Charles Polidano, Director General in his office, travelled to the UK for meetings with the Parliamentary Commissioner for Standards of the UK House of Commons and her staff. Dr Hyzler and Mr Polidano also met staff from the UK Committee on Standards in Public Life, which is a separate body. Meetings were held on 14 and 15 January.

During this visit Dr Hyzler invited his UK counterpart to visit Malta. Kathryn Stone, UK Parliamentary Commissioner for Standards, duly visited Malta in May 2019. She held meetings with Dr Hyzler and his staff, as well as with the Speaker and the Clerk of the House. Ms Stone was accompanied by the Hon. Kate Green MP, chairperson of the House of Commons Select Committee on Standards. Meetings were held on 23 and 24 May. In addition to one-on-one meetings, Ms Stone and Ms Green took part in a meeting of the Standing Committee for Standards in Public Life of the Maltese Parliament which was held on 24 May 2019.

4.3 Courtesy visit to the President

On 18 June 2019 the Commissioner for Standards paid a courtesy visit to the President of Malta. The Commissioner briefed the President on his role and activities. The Commissioner also informed the President that his office would be presenting proposals on constitutional reform for consideration by the Constitutional Reform Committee, a body chaired by the President.

4.4 Publication of proposals on constitutional reform

On 30 October 2019 the Commissioner presented a report on constitutional reform to the President in his capacity as chairperson of the Constitutional Reform Committee. The report, entitled *Towards Higher Standards in Public Life: Proposals to Modernise the Provisions of the Constitution on Parliament, the Judiciary and Public Administration*, was co-authored by the Commissioner and the Director General in his office. It was drawn up in response to the President's call for public submissions on constitutional reform. The report was subsequently published on the Commissioner's official website at <https://standardscommissioner.com/other-documents/>.

The document proposes constitutional changes with a view to strengthening the independence of Parliament and the judiciary, and reinforcing the principle of merit in appointments within public administration. Among other things, the report proposes that:

- Members of Parliament should be disqualified from the House of Representatives if they accept contracts of any kind from the government or public entities. Similarly, MPs should not be allowed to accept appointments as persons of trust or as members of government boards and committees.

- Judges and magistrates should be selected on merit following public calls for expressions of interest to fill specific vacancies in the judiciary. The government should retain its current power to overrule the selection process in exceptional instances, but it should publicise and justify any such cases.
- The Constitution should permit appointments on trust, but only in ministers' secretariats. Appointments elsewhere in public administration should as a general rule be made on merit. The Public Service Commission should be empowered to enforce the merit principle throughout public administration, not only in the Public Service as is currently the case.
- The chairpersons of the Public Service Commission and other constitutional commissions should be appointed by the President on the basis of a parliamentary resolution supported by at least two thirds of MPs. The same mechanism should apply to the appointment of the heads of the Armed Forces, the Police and the Security Service.
- Permanent Secretaries should be appointed by the President on the basis of merit, but the Prime Minister should have the right to object to any particular appointment. If the President accepts the Prime Minister's objection another selection process would be held to fill the post in question.

The report includes draft amendments to the Constitution that are based on these proposals.

4.5 Outreach

Following his appointment in November 2018, the Commissioner for Standards made himself accessible to the media in order to maximise public awareness of the existence and role of his office. To this end he accepted all requests for interviews from the media, appearing on One, Net, TVM, Malta Today, 103 – Malta's Heart, and Lovin Malta.

However, the Commissioner turned down requests to comment on cases under investigation or cases of potential ethical misconduct. His standard reply in connection with cases of potential misconduct is that he can enter into the merits of such cases only in the context of investigations under the Standards in Public Life Act.

The Commissioner extended his outreach efforts to students by means of a presentation entitled "Higher Standards in Public Life" which he delivered on 22 October 2019 to students following master's degree courses in the Department of Public Policy of the University of Malta. The presentation covered the role and activities of his office. The Commissioner also delivered a keynote address at a meeting of the Mini European Assembly (a project for students organised by the National Student Travel Foundation) which was held on 20 December 2019.

5 Resourcing and Logistics

5.1 Staffing

Up to 31 December 2019, the Office of the Commissioner for Standards in Public Life consisted of six members of staff including the Commissioner. Other than the Commissioner, staff members consisted of a Director General; an Assistant Director (Research and Communications); an Office Manager/Personal Assistant; and two support staff, a driver and a cleaner, both of whom also performed general office duties.

On 7 November 2019 the Office of the Commissioner issued a call for applications for the position of Research Analyst and Investigator in order to strengthen its capacity in both research and investigations. The intention was to fill this position early in 2020. An organisation chart is set out in Appendix 1 to this report.

In addition, the Commissioner retained a legal advisor and an auditor on a contract-for-service basis. The role of the legal advisor is to contribute to investigations, while the role of the auditor is to contribute to the examination and verification of the declarations of assets and interests that are submitted by ministers, parliamentary secretaries and members of Parliament.

The Commissioner's financial plan for 2019, as approved by Parliament, provided for the recruitment of two additional staff, a Consultant and a Research Analyst (Legal). However, the Commissioner opted not to fill these positions during 2019 or 2020.

5.2 Funding

The approved financial plan for 2019 provided for a total of €350,000 in expenditure for the year, consisting of €201,320 in personal emoluments and €148,680 in operational and maintenance expenses. However, the figure for personal emoluments as included in the plan represented a reduction by €128,000 over the amount required to cover the salaries of the proposed complement for 2019. This occurred as a result of a clerical error when the draft plan was presented to the Ministry for Finance through the House of Representatives for vetting.

As indicated above, the Office of the Commissioner limited its staff complement during 2019 to six persons including the Commissioner. It also restricted operational and maintenance expenditure to the essentials. This resulted in a reduction of the projected overall funding shortfall in 2019 to just €18,332. This amount was made available by the Ministry for Finance. Total expenditure by the Office of the Commissioner for 2019 was therefore projected as €368,332.

In the event, ongoing restraint in financial administration resulted in actual total expenditure for 2019 amounting to €347,927, producing a surplus of funding over

expenditure of €20,405. This amount will be put towards expenditure for 2020 and factored into budgetary projections for the following year.

Audited financial statements for the Office of the Commissioner covering the period to 31 December 2019 are presented in Appendix 2. The financial statements were audited by the National Audit Office as required by article 12 of the Standards in Public Life Act.

5.3 Premises

The Office of the Commissioner is housed on the fourth floor of the Office of the Ombudsman at 11, St Paul Street, Valletta.

This arrangement allows for a degree of synergy between the two bodies, since both represent institutions of oversight that report to Parliament.

These premises were made available by the Office of the Ombudsman under a tenancy agreement whereby the Office of the Commissioner is required to pay €20,000 annually for a period of ten years in defrayal of refurbishment expenses, together with €1,463 as a contribution to rent. In addition, the Office of the Commissioner reimburses the Office of the Ombudsman for its share of electricity and water consumption within the building, together with part of the salary of the receptionist.

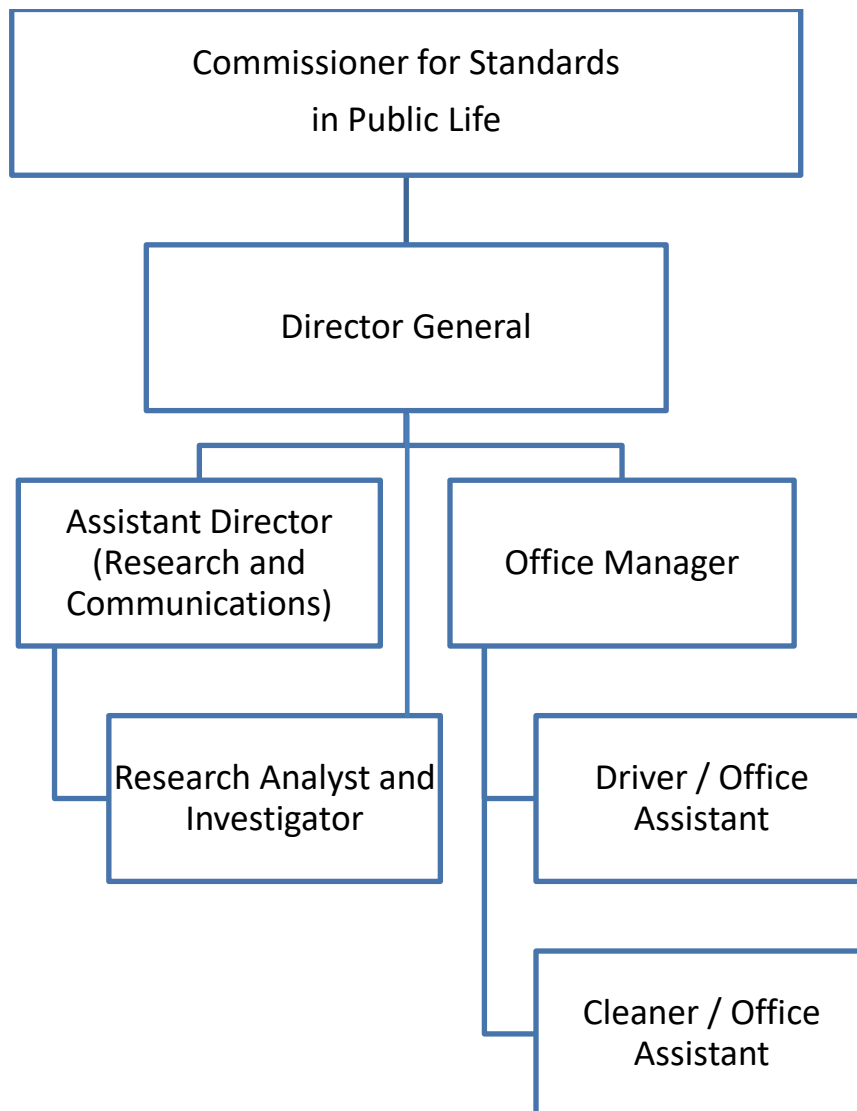
Under this arrangement it was the responsibility of the Office of the Commissioner to procure furniture for its own use. Considerable savings were achieved through the purchase of pre-owned as opposed to new-build furniture. This also enabled the office to be up and running within a few weeks of the Commissioner's appointment.

5.4 Website and branding

The Office of the Commissioner has developed a logo entirely using its own resources. The logo is an edited close-up photograph of one of the projections on the façade of the Parliament building, symbolising the close relationship between the Commissioner for Standards and the House of Representatives.

The Office launched its website on 24 May 2019. The site is fully bilingual. It was developed by a private contractor who was chosen following a call for quotations. However, the logo and photography was provided by the Office and the website is being updated and maintained by the Office.

Appendix 1 – Organisation Chart



Appendix 2 – Audited Financial Statements for the Period to 31 December 2019

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Office of the Commissioner for Standards in Public Life

Report and financial statements for the period ending 31 December 2019

STATEMENT OF RESPONSIBILITIES OF THE OFFICE OF THE COMMISSIONER FOR STANDARDS IN PUBLIC LIFE

The main role of the Commissioner for Standards in Public Life (“the Office”) is to investigate allegations of misconduct by members of Parliament and persons of trust as defined in the Standards in Public Life Act (chapter 570 of the laws of Malta). The Commissioner may conduct any such investigation on his initiative or on the written complaint of any person.

The Office of the Commissioner is responsible for ensuring that:

- proper accounting records are kept of all transactions entered into by the Office, and of its assets and liabilities;
- adequate controls and procedures are in place for safeguarding the assets of the Office, and the prevention and detection of fraud and other irregularities.

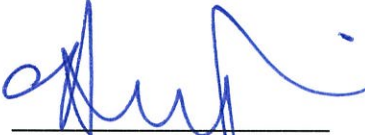
The Office is responsible to prepare financial statement for each financial period which give a true and fair view of the state of affairs as at the end of the financial period and of the income and expenditure for that period.

In preparing the financial statements, the Office is responsible to ensure that:

- appropriate accounting policies are selected and applied consistently;
- any judgements and estimates made are reasonable and prudent;
- International Financial Reporting Standards are followed;
- the financial statements are prepared on the going concern basis unless this is considered inappropriate.



Dr George Marius Hyzler
Commissioner for Standards in Public Life



Charles Polidano
Director General

*Office of the Commissioner for Standards in Public Life***INCOME STATEMENT**

	14 month period from 30.10.2018 to 31.12.2019 €
Income	
Government subvention	<u>368,332</u>
Expenditure	
Administrative and other expenses	82,954
Personal emoluments (note 4)	264,973
	<u>347,927</u>
Surplus for the period	<u><u>20,405</u></u>

Office of the Commissioner for Standards in Public Life

BALANCE SHEET

	Notes	31.12.2019 €
Fixed assets		
Intangible fixed assets	6	1,860
Tangible fixed assets	7	<u>191,812</u>
		<u>193,672</u>
Current assets		
Receivables	8	886
Bank	9	<u>7,830</u>
		<u>8,716</u>
Total assets		<u>202,388</u>
Non-current liabilities		
Leased liabilities	10	<u>146,510</u>
Current liabilities		
Leased liabilities	10	16,735
Payables	11	<u>18,738</u>
		<u>35,473</u>
Accumulated fund		<u>20,405</u>
Equity and liabilities		<u>202,388</u>

These financial statements were approved and authorised for issue on 5 May 2020 and signed by:



Dr George Marius Hyzler
Commissioner for Standards in Public Life



Charles Polidano
Director General

Office of the Commissioner for Standards in Public Life

STATEMENT OF CHANGES IN EQUITY

	Accumulated Fund Total €
At 30 October 2018	-
Statement of Comprehensive income	
Surplus for the period	<u>20,405</u>
At 31 December 2019	<u><u>20,405</u></u>

*Office of the Commissioner for Standards in Public Life***STATEMENT OF CASH FLOWS**

	Notes	14 month period from 30.10.2018 to 31.12.2019 €
Cash flows from operating activities		
Surplus for the period		20,405
Add: Depreciation and amortisation		23,580
Add: Finance costs		3,593
Operating surplus before working capital changes		<u>47,578</u>
(Increase) in receivables		-886
Increase in payables		18,738
Net cash generated from operating activities		<u>65,430</u>
Cash flows from Investing activities		
Payments to acquire tangible fixed assets		-55,120
Payments to acquire intangible fixed assets		-2,480
Net cash used in investing activities		<u>-57,600</u>
Net increase in cash and cash equivalents		7,830
Cash and cash equivalents at beginning of period		-
Cash and cash equivalents at end of period	9	<u><u>7,830</u></u>

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

1. Legal status

In 2017, the Maltese Parliament enacted the Standards in Public Life Act, which was brought into force on 30 October 2018. The main role of the Commissioner for Standards in Public Life is to investigate allegations of misconduct by members of Parliament and persons of trust as defined in the Act. The Office of the Commissioner for Standards in Public Life is situated at 11, St Paul Street, Valletta, Malta.

These financial statements were approved for issue by the Commissioner and the Director General on 5 May 2020.

2. Summary of significant accounting policies

The principal accounting policies applied in the preparation of these financial statements are set out below. These policies have been applied to the 14 month period presented (30 October 2018 to 31 December 2019).

Basis of preparation

The financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS) and their interpretations adopted by the International Accounting Standards Board (IASB). The financial statements have been prepared under the historical cost convention.

The preparation of financial statements in conformity with IFRS requires the use of certain critical accounting estimates. Estimates and judgements are continually evaluated and based on historic experience and other factors including expectations for future events that are believed to be reasonable under the circumstances.

In the opinion of the Commissioner and the Director General, the accounting estimates and judgements made in the course of preparing these financial statements are not difficult, subject or complex to a degree which would warrant their description as critical in terms of requirements of IAS 1. The principal accounting policies are set out below:

Materiality and aggregation

Similar transactions, but which are material in nature are separately disclosed. On the other hand, items of dissimilar nature or function are only aggregated and included under the same heading, when these are immaterial.

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

2. Summary of significant accounting policies (continued)

Revenue recognition

Revenue derived from the government's subvention is recognised when there is reasonable assurance that all the conditions attaching to the subvention re complied with and the subvention will be received.

Property, plant and equipment (PPE)

Property, plant and equipment are stated at historical cost less accumulated depreciation and impairment losses. The cost of an item of property, plant and equipment is recognized as an asset if it is probable that future economic benefits associated with the item will flow to the Office and the cost of the item can be measured reliably.

Subsequent costs are included in the asset's carrying amount or recognized as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Office and the cost of the item can be measured reliably. The carrying amount of the replaced part is derecognized. All other repairs and maintenance are charged to the income statement during the financial period in which they are incurred.

Property, plant and equipment includes right-of-use assets in terms of IFRS 16. The accounting policy for right-of-use assets is included below in the section entitled 'Leases'.

Depreciation commences when the depreciable amounts are available for use and is charged to the income statement so as to write off the cost, less any estimated residual value, over their estimated lives, using the straight-line method, on the following bases:

	%
Office equipment	20
Computer equipment	25
Computer software	25
Furniture & fittings	10
Motor vehicles	20

The contractual value of leased premises is depreciated over the term of the lease after deducted the financing charge element of the contracted value.

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

2. Summary of significant accounting policies (continued)

Property, plant and equipment (PPE) (continued)

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount. The carrying amount of an item of PPE is de-recognised on disposal or when no future economic benefits are expected from its use or disposal. The gain or loss arising from derecognition of an item of PPE are included in the profit and loss account when the item is de-recognised.

Intangible assets

An intangible asset is recognised if it is probable that the expected future economic benefits that are attributable to the asset will flow to the Office and the cost of the asset can be measured reliably.

Intangible assets are initially measured at cost. Expenditure on an intangible asset is recognised as an expense in the period when it is incurred unless it forms part of the cost of the asset that meets the recognition criteria.

Intangible assets with a finite useful life are amortised. Amortisation is charged to profit or loss so as to write off the cost of intangible assets less any estimated residual value, over their estimated useful lives. The amortisation method applied, the residual value and the useful life are reviewed, and adjusted if appropriate, at the end of each reporting period.

Website

The cost of the website is classified as an intangible asset and is amortised on a straight-line basis over four years.

Receivables

Receivables are stated at their net realizable values after writing off any known bad debts and providing for any debts considered doubtful.

Cash and cash equivalents

Cash and cash equivalents are carried in the balance sheet at face value. For the purposes of the cash flow statement, cash and cash equivalents comprise cash in hand and deposits held at call with banks.

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

2. Summary of significant accounting policies (continued)

Payables

Payables are carried at cost which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Office.

Leases

The Office assesses whether the contract is, or contains, a lease at inception of a contract. A contract is, or contains, a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

The lease term is determined as the non-cancellable period of a lease, together with both (a) periods covered by an option to extend the lease if the lessee is reasonably certain to exercise that option; and (b) periods covered by an option to terminate the lease if the lessee is reasonably certain not to exercise that option.

The Office recognises a right-of-use asset and a corresponding lease liability with respect to all lease arrangements in which it is the lessee, unless otherwise stated below.

Where a right-of-use asset and a corresponding lease liability is recognised, the lease liability is initially measured at the commencement date at the present value of the lease payments that are not paid at that date, discounted by using the rate implicit in the lease. If this rate cannot be readily determined, the Office uses its incremental borrowing rate.

Foreign currencies

Items included in the financial statements are measured using the currency of the primary economic environment in which the Office operates. These financial statements are presented in €, which is the Office's functional and presentation currency.

Transactions denominated in foreign currencies are translated into € at the rates of exchange in operation on the dates of transactions. Monetary assets and liabilities expressed in foreign currencies are translated into € at the rates of exchange prevailing at the balance sheet date.

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

3. Critical accounting estimates and judgements

Estimates and judgements are continually evaluated and based on historical experience and other factors including expectations of future events that are believed to be reasonable under the circumstances. The accounting estimates and judgements made in the preparation of the Financial Statements are not difficult, subjective or complex, to a degree that would warrant their description as critical in terms of the requirements of IAS 1 - 'Presentation of Financial Statements'.

4. Initial application of an International Financial Reporting Standard, early adoption of International Financial Reporting Standards and International Financial Reporting Standards in issue but not yet effective

IFRS 16

In the current year, the Commissioner for Standards in Public Life has early adopted IFRS 16 Leases (as issued by the IASB in January 2016). IFRS 16 introduces new or amended requirements with respect to lease accounting. It introduces significant changes to the lessee accounting by removing the distinction between operating and finance leases and by requiring the recognition of a right-of-use asset and a lease liability at commencement for all leases, except for short-term leases and leases of low value assets when such recognition exemptions are adopted. In contrast to lessee accounting, the requirements for lessor accounting have remained largely unchanged. IFRS 16 supersedes the following lease Standards and Interpretations upon its effective date: IAS 17 Leases, IFRIC 4 Determining whether an Arrangement contains a Lease, SIC-15 Operating Leases-Incentives; and SIC-27 Evaluating the Substance of Transactions involving the Legal Form of a Lease.

Impact of the new definition of a lease

The change in the definition of a lease mainly relates to the concept of control. IFRS 16 determines whether a contract contains a lease on the basis of whether the customer has the right to control the use of an identified asset for a period of time in exchange for consideration. This is in contrast to the focus on 'risks and rewards' in IAS17 and related interpretations.

The Commissioner for Standards in Public Life anticipates that the adoption of International Financial Reporting Standards that were in issue at the date of authorisation of these financial statements, but not yet effective, will have no material impact on the financial statements of the Office in the period of initial application.

*Office of the Commissioner for Standards in Public Life***NOTES TO THE FINANCIAL STATEMENTS****5. Personal emoluments**

	14 month period from 30.10.2018 to 31.12.2019
	€
Wages and salaries	254,190
Social security costs	10,783
	<u>264,973</u>

In the period under review, on average, the Commissioner employed the equivalent of five full time employees.

6. Intangible fixed assets

	Website
	€
Cost	
Additions	<u>2,480</u>
31.12.2019	<u>2,480</u>
Amortisation	
Charge for the period	<u>620</u>
31.12.2019	<u>620</u>
Net book value	
31.12.2019	<u><u>1,860</u></u>

*Office of the Commissioner for Standards in Public Life***NOTES TO THE FINANCIAL STATEMENTS****7. Tangible fixed assets**

	Leased premises €	Motor vehicles €	IT equipment €	Other equipment €	Furniture & fittings €	Total €
Cost						
Additions	179,652	5,668	14,735	2,628	12,089	214,772
31.12.2019	179,652	5,668	14,735	2,628	12,089	214,772
Depreciation						
Charge for the period	16,407	1,134	3,684	526	1,209	22,960
31.12.2019	16,407	1,134	3,684	526	1,209	22,960
Net book value						
31.12.2019	163,245	4,534	11,051	2,102	10,880	191,812

8. Receivables

	31.12.2019
	€
Prepayments	<u>886</u>

9. Cash and cash equivalents

Cash and cash equivalents consist of cash in hand and balances in bank. Cash and cash equivalents included in the cash flow statement comprise the following balance sheet amounts:

	31.12.2019
	€
Cash at bank	<u>7,830</u>

*Office of the Commissioner for Standards in Public Life***NOTES TO THE FINANCIAL STATEMENTS****10. Leased liabilities**

On 20 December 2018 the Office of the Commissioner for Standards in Public Life entered into an agreement with another government organisation to lease a floor within the premises of the said organisation for a period of 5 years, renewable by a further 5 years at the option of the lessee, for a charge of EUR20,000 per annum.

The Office of the Commissioner for Standards in Public Life believes that the likelihood of taking up the said option is high and therefore, in accordance with IFRS 16, the entire expected 10 year leased payments have been capitalised in the balance sheet. A 2% discount rate has been applied in calculating the present value of this lease obligation.

The present value of the lease payment obligations under finance lease at 31 December 2019 are as follows:

	2019
	€
Due within one year	16,735
Due within two and five years	70,355
More than five years	76,155
	<u><u>163,245</u></u>

In the period under review the annual charge of EUR20,000 has been split between finance costs and depreciation as follows:

	2019
	€
Depreciation	16,407
Finance charge	3,593
	<u><u>20,000</u></u>

Office of the Commissioner for Standards in Public Life

NOTES TO THE FINANCIAL STATEMENTS

11. Payables due within one year

	31.12.2019
	€
Trade creditors	11,964
Accruals	6,774
	<hr/>
	18,738
	<hr/> <hr/>

12. Financial assets and liabilities

Financial assets include receivables and cash held at bank and in hand. Financial liabilities include payables.

13. Fair values

At 31 December 2019 the fair values of assets and liabilities were not materially different from their carrying amounts illustrated in the balance sheet.

14. Capital management

The Office's capital consists of its net assets, including working capital, represented by its retained funds. The Office's management objectives are to ensure, that the Office's ability to continue as a going concern is still valid and that the Office maintains a positive working capital ratio.

To achieve the above, the Office carries out regular reviews of the working capital ratio ('Financial Situation Indicator'). This ratio was positive at the reporting date. The Office also uses budgets and plans to set its strategy to optimize its use of available funds and implements its commitments.

Report of the Auditor General

To the Office of the Commissioner for Standards in Public Life

Report on the financial statements

We have audited the accompanying financial statements of the Office of the Commissioner for Standards in Public Life set out on pages 26 to 38, which comprise the statement of financial position as at 31 December 2019, the statement of comprehensive income, statement of changes in equity and statement of cash flows for the period then ended, and a summary of significant accounting policies and other explanatory information.

The Office of the Commissioner for Standards in Public Life's responsibility for the financial statements

The Office of the Commissioner for Standards in Public Life is responsible for the preparation of financial statements that give a true and fair view in accordance with International Financial Reporting Standards as adopted by the European Union, and for such internal control as the Office of the Commissioner for Standards in Public Life determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

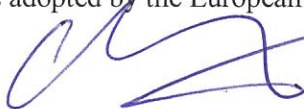
Auditors' responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the preparation of financial statements of the Office that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the internal control of the Office. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Office, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements give a true and fair view of the financial position of the Office of the Commissioner for Standards in Public Life as at 31 December 2019, and of its financial performance and cash flows for the period then ended in accordance with International Financial Reporting Standards as adopted by the European Union, and comply with the Standards in Public Life Act, 2018.



Auditor General
5th May 2020