Chapter 6

Performance Management in the Maltese Public Service

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Background

Performance appraisal in the Maltese Public Service dates back to pre-independence (Warrington, 1993:26). Reports assessing the performance, qualities, abilities and promotional prospects of officers were made by heads of department and supervisors. These reports were initially considered confidential but, over time, the scheme became an open appraisal. Employees were asked to endorse their performance rating report and if they disagreed to its contents, were entitled to appeal to a Reviewing Panel. “Open appraisal in a small society and the link between performance appraisal and judgements on promotability are cited as reasons why the system gradually fell into disuse” (ibid.:27).

In May 1988, the Public Service Reform Commission (PSRC) was set up to review the public service and proposed 11 strategic goals. These goals are:

1. Win public confidence in the service
2. Create a culture of excellence and integrity
3. Define the role of the public service
4. Develop administrative structure and management systems
5. Define and develop employee competence
6. Select and train the brightest and ablest
7. Improve the quality of management
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8. Invest in technology and plant
9. Increase planning and audit capabilities
10. Define and contain executive discretion
11. Institutionalise change

The reform programme was intended to create ‘A New Public Service for Malta’ (PSRC 1989:2). The pressure mounted on the public service to become more responsive to changing needs and rising expectations for a higher standard of living and in view of Malta’s application to become a full member of the European Union (von Brockdorff, 1991:1). There was a growing sense of urgency to deal with the problems of the public service before they would become more difficult to tackle. There was the need to establish a better alternative to the status quo.

The key components of the new public management are the following:
• Providing high-quality services that citizens value
• Providing the technological resources managers need
• Managerial autonomy from central agency controls: setting demanding targets for organisational performance
• Maintaining receptiveness to competition and an open-minded attitude about which public purposes should be performed by the private and public sectors
• Providing the human resources managers need.

For the purpose of this paper, the last component of the new public management (NPM) is being reviewed.

Providing the human resources managers need
 Policies and instruments must be devised to improve the utilisation of human resources in the public service. Human resource management must be delegated to line agency managers, enabling them to recruit, promote, assign and to reward and discipline staff.
Moreover, performance management and training and development are essential instruments for the line agency to enhance the efficiency and effectiveness of human resources in the public service. The objectives and recommendations of the PSRC were compatible with the new public management principles outlined above.

In order to define and develop employee competence and to select and retain the brightest and ablest (goals 5 & 6 of the PSRC Report), various projects were introduced within the Maltese public service.

A classification and re-grading exercise was devised in mid-1991; by December 1994, about 90% of all employees (i.e. about 29,000) were covered. Employees were also classified into fourteen different classes as a result of the separate collective agreements on each occupational category which had been finalised between Government and the unions. Each agreement included a salary structure for the relevant class, entry requirements for each grade, career progression, additional benefits and allowances, job descriptions and any other special arrangements. (A Profile of the Public Service of Malta, 1995:18-19)

The PSRC report recommended that the number of grades and salary scales were to be reduced from 86 to 20 and divided under 4 categories (PSRC 1989:53):

<table>
<thead>
<tr>
<th>Category</th>
<th>Grades</th>
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<tr>
<td>Category A</td>
<td>Top management</td>
<td>1 - 5</td>
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<tr>
<td>Category B</td>
<td>Senior to middle management</td>
<td>6 - 9</td>
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<tr>
<td>Category C</td>
<td>Technical, Executive and Supervisory</td>
<td>10 - 14</td>
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<tr>
<td>Category D</td>
<td>Tradesmen and Industrial grades</td>
<td>15 - 20</td>
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The aim behind the need to restructure went one step further: that of including performance-related contracts to Category A staff. Such incentives were deemed to attract staff of the right calibre to perform tasks of considerable significance and to introduce a
credible performance appraisal system which, was believed to be of critical importance in both selection and compensation (ibid.:53-54).

The PSRC recommended:

“A new performance evaluation system to be introduced in which the performance of employees is assessed against approved output and quality standards” (ibid.:17).

In 1992, the Management and Personnel Office (MPO), the Staff Development Organisation (SDO) and the Management Systems Unit (MSU) agreed to implement a pilot trial system of employee appraisal among fifty officers in 'Category B' - Scale 10 as well as among ‘Category A' officers who were not on a performance agreement (with the exclusion of certain categories of employees such as the Police, teachers, health care workers and professionals and the Armed Forces unless their main job is administrative or managerial) in September 1991. The year's results from this trial were analysed and used to support recommendations for the full Performance Management Programme (PMP) (Warrington, 1995:27).

“Performance management – setting targets linked to ministerial and departmental goals and holding individuals accountable for the achievement of those targets” (Grima, 2001:2).

This has been the driving aim of changes in the Maltese Public Service. Performance now matters more than procedures. Results are more important than rules.

Until 1995, the programme was approved in principle. Therefore, a decision was required to implement the programme among the selected group. The performance-related pay scheme complements the Performance Management Programme, as pay is tied clearly to performance. The scheme was introduced in July 1993 and it applied only to officers appointed to ‘Top Structures, Category A' positions, i.e. all Permanent Secretaries, Directors General and Directors (Warrington, 1995:26-31). A formal assessment takes place at the end of the annual financial year; however, half-yearly reviews are also held.
The performance pay is categorised and awarded to Category A staff as follows:

- Commendable performance 5%
- Superior performance 10%
- Exceptional performance 15%

Phase I of the full Performance Management Progamme (PMP) was launched through an MPO letter circular of 3rd March 1994 with the main objective of "developing better and closer working relationships between managers and their employees ... (having) agreed targets ... to produce a jointly agreed work plan" (MPO Circular BI/No. 3/94).

The concept of a performance management programme signalled an important step in the development of modern management practice in the Maltese Public Service. This programme requires that employee performance is evaluated by the immediate supervisor.

Phase II of the PMP was launched in 1996 and this involved the extension of implementation to general service officers in the grades of Principals and Executive Officers.

"Many employees greeted the new performance management programme with scepticism, as they believed that PMP was just one more work programme that offered nothing in return and gave PMP little importance. The greater majority of supervisors and employees has diligently applied themselves to the elements of PMP and as a result has gained meaningful benefits from their participation" (Izzo, no date: i).

**Purpose of Performance Management**

Performance management is the process of creating a work environment or setting in which people are able to perform to the best of their abilities. Performance management is an entire work system that begins when a job is defined and ends when an
employee leaves the organisation. It is owned and driven by line management in different Divisions or departments. Performance management is used as a substitute for the traditional appraisal system.

**Objectives of Performance Management System?**
Performance appraisal is critically important in both selection and compensation. Neither can be administered without a credible performance appraisal system. The PSRC report recommended that:

- For the purpose of the award of pay for performance, a system of annual performance appraisal be instituted, in which an employee’s performance is assessed against previously agreed targets or approved performance standards.
- For purpose of promotion, as hoc performance appraisal reports be drawn up in which the ability, expertise and experience of the employee is assessed.
- Different performance appraisal reports be adopted for different categories of staff including management, professional, technical, clerical and industrial staff.

**Principles of Performance Management**
The principles of performance management can be summarised as follows:

- It translates organisational goals into individual, team, department and divisional goals.
- It helps to clarify organisational goals
- It is a continuous and evolutionary process, in which performance improves over time.
- It relies on consensus and cooperation rather than control or coercion.
- It encourages self-management of individual performance.
• It requires a management style that is open and honest and encourages two-way communication between supervisors and employees.
• It requires continuous feedback.
• Feedback loops enable the experiences and knowledge gained on the job by individuals to modify organisational objectives.
• It measures and assesses all performance against jointly agreed goals.
• It should apply to all staff; and it is not primarily concerned with linking performance to financial reward.

**Key Activities**
Performance Management is best described as a continuous, self-renewing cycle (see Figure 1).

*Figure 1: An Individual's PMP within a Government Department*

The main activities that need to be considered when planning the programme are:
• The importance of prioritising what is expected to be achieved by the department for the year ahead; and
• The individual's objectives (tasks) are linked to and are congruent
with the priorities of the department’s business plan. The individual’s objectives must be specific and measurable in terms of quantity, quality, time and cost; generalisations must be avoided (MPO, 2000:19).

- **Individual Objectives** – which defines expectations; what the individual has to achieve in the form of objectives, how performance will be measured and the competencies needed to deliver the required results. This is the performance planning stage.

- **The Action Plan** – which sets out the actions people intend to take to develop themselves in order to extend their knowledge and skills, increase their levels of competence and to improve their performance in specified areas. This is the performance development stage.

- **Managing Performance throughout the year** – action is taken to implement the performance agreement and personal development plan as individuals carry out their day-to-day work and their planned learning activities. It includes a continuous process of providing feedback on performance, conducting informal progress reviews, updated objectives and, where necessary, dealing with performance problems.

- **Performance review** – the formal evaluation stage when a review of performance over a period takes place, covering achievements, progress and problems as the basis for a revised performance agreement and a personal development plan.

**The Performance Management Programme (PMP)**

This a programme to help employees provide better public service through the organisation of work and delegation of responsibility using a system requiring the planning and assessing of work by
supervisors and each respective subordinate who mutually establish work standards and performance measurements and ensure regular communications and the development of consensus on all such matters.

**How the PMP process works**

Supervisors shall advise their employees of the period of time which a PMP cycle is to cover (normally 12 months). Each employee shall prepare the first draft of their PMP and meet with their immediate supervisor to reach consensus and finalise the contents of the document. If necessary, the next level supervisor can assist the parties to reach a consensus. Once completed, the form is signed by both parties and a copy provided to the employee. The original document is to remain with the immediate supervisor for subsequent review meetings until after the annual review.

Once a PMP document is finalised, the supervisor and employee are to meet regularly on predetermined schedules to review the employee's progress to that point in time and to discuss any matters that might impede progress or obstruct the successful carrying out of duties.

The performance ratings resulting from such meetings are to be noted in the appropriate areas of the form. These performance assessments are to be endorsed by both the supervisor and the employee near each review date, as scheduled on the PMP form.

At the completion of each annual cycle, the immediate supervisor is to fill out the final areas of the PMP concerning overall performance of the employee over the entire PMP period, after meeting with the employee to provide assessment and feedback of such assessments. A copy of the final document shall also be issued to the employee at that time.

If an employee is transferred or assigned to another job in the department, a new PMP will be required. A copy of the old PMP with updated assessments may then be given to the new supervisor. A new PMP is also required if an employee changes site locations
or ministry.

Once the PMP form is completed, it is inserted in the employee's official personal file at the Human Resource Branch.

The next level supervisor should be regularly informed of the status of an employee's PMP performance by the immediate supervisor. The PMP form is to be updated, especially if an employee is due for progression or promotion.

In the case of changes in the activities/tasks of the employee, these are added to the former plan.

**Forming a Work Plan**

The objectives are generally derived from the Mission Statement written in the Book of Estimates. From such objectives, tasks can be identified. What tasks in this job are the most important and best contribute to the strategic directions of goals set? In the absence of strategic plans, the question asked is: What are the most important elements performed in this job? From these questions, the key duties can be chosen and written into the PMP work plan.

**Validating a Work Plan**

The first essential task in forming a work plan is to decide upon the key duties.

- **Completeness** - the work plans should represent a balance of all the tasks performed in a specific job and not just one or two.
- **Job relation** – work plan tasks must only be those duties over which the employee has responsibility and accountability. Employees must be given sufficient authority to permit them to make decisions and participate in the determinations that affect the quality and output of their work.
- **Validity** – the work plan tasks must always be realistic and achievable.
• **Clarity** – both the immediate supervisor and employee need to agree upon the meaning of details and terms used in a PMP. Sometimes it may be necessary to write in additional specifics to clarify the understandings reached.

• **Joint development** – all sections of a PMP are to be mutually agreed upon by an employee and immediate supervisor. In situations where it may be difficult to reach consensus, the next level supervisor can be requested to assist.

**Performance Measurements**
Measurements can often be expressed in terms of quality, quantity, time and costs.

**Quality Measurements**
Staff often use the work performed by many employees during the course of providing a service. As a result, the majority of tasks require quality performance – a high proportion of accuracy and neatness and delivery of quality customer care and service. The degree to which an employee displays such performance and behaviour are essential elements of modern service.

**Quantity Measurements**
Numerical aspects of work are often indicative of performance. For example, the number of clients served or the number of files processed. Numbers are sometimes reasonable performance indicators in certain jobs; however, they should always represent an average performance level.

**Time Measurements**
Good service is often dependent upon work being done and
information being given on time. Many tasks require deadlines, expediency and promptness. Accordingly, time can be used as a fair and realistic performance measurement in many jobs.

Cost Measurements
These measurements refer to assignments having financial aspects such as working within specific cost parameters. Duties such as procurement and the care and control of supplies are examples.

Measuring Supervisor’s Performance
Many employees are in charge of, or responsible for, the work of others. In such situations it may be desirable to measure their behaviour and communication skills. The following measurements are used:

1. Does the employee provide sufficient time to staff who request time for assistance?
2. Does staff seek out this employee when they need help or feel unsure of the proper course of action?
3. Does the employee attempt to help everyone who needs assistance?
4. Does the employee provide helpful solutions to the problems of those who sought assistance?
5. Does the employee treat subordinates with respect and sensitivity or was there an authoritative and/or overbearing approach in the administration of duties?

Measuring the Work Performance of an Official
Many jobs are regulatory or authoritative in nature. The performance of a senior employee as to how powers are exercised can be measured, with the guidance of the following questions:
• Does the employee regularly exercise duties with courtesy and sensitivity?
• Is the employee always patient and understanding with another party’s point of view?
• Does the employee enforce all the regulations that are meant to be upheld?
• Are there an acceptable number of complaints/queries regarding the work of the employee when performing their job?

**Establishing a Training Plan at the beginning of a PMP**

During the preparation of a PMP, an immediate supervisor has the responsibility to review the skills and abilities of their employee as compared to the requirements of the job to which they are being assigned.

If an employee requires training, the supervisor should assist the employee to acquire the necessary skills so that the employee can successfully perform all the duties of the job. A supervisor should determine with the employee the best method used to acquire the requisite skills and abilities needed in their job. The employee has the responsibility to participate and develop the necessary skills.

**Validating Training after Implementation**

• Supervisors are to ascertain and document the employee’s training experiences and determine the level or degree of learning acquired by the employee.
• Verify that the employee has acquired the skills, knowledge and/or abilities that were planned to be learned in a course.
• Determine and document the level of expertise or the degree to which the employee has achieved by attending the course.
• Assess the training supplier to ensure that the facilities, instructors and programmes were appropriate and a reasonable value of the expense in terms of time and money were obtained.
The Redress System
Within the PMP programme there are two main activities regarding measuring and assessing an employee’s performance. There are regular progress performance assessment meetings that should be held on a scheduled basis. There is to be a final and global performance review meeting at the end of each full PMP term. There is an obligation for the supervisor and the employee to ensure that these meetings take place. Either party can initiate such reviews.

The PMP Rating System
Aspects of performance that a supervisor needs to rate during a PMP cycle are:

- Regular assessments of ongoing performance of PMP tasks underway.
- Regular assessments of any work underway which may not be specified in the PMP but are also part of an employee’s duties.
- Overall assessments of performance upon completion of work plans.

A rating is awarded when:

- performance or results clearly exceed the measurement and expectations of a work plan.
- More output was produced that prescribed by the quantity measurements of a work plan.
- The provision of activities or tasks take place earlier than as prescribed by the time frames in a work plan.
- The costs and/expenses related to work plan activities or tasks are below the projections in the work plan.

B is a good rating which indicates competent performance. B rating can be awarded when:

- The performance of a task or activity meets the measurement expectations of a work plan.
• The output produces was precisely that which was specified by the work plan measurements.
• The work performed was of the same calibre as that prescribed by work plan measurements.
• The costs and/or expenses related to work plan activities or tasks turn out to be exactly as projected in a work plan's measurement.

C is an acceptable assessment as it is also considered as a 'pass' mark. C rating can be awarded when:
• The performance of a task or activity for the most part was acceptable, although some results were less than expected by the work plan measurements.
• The output produced conformed for the most apart to the work plan measurements.
• The quality of the work performed was for the most part acceptable despite some occasions when the results were not precisely to the standards specified by work plan measurements.
• The time frames where adhered to for the majority of the work as stated in the work plan measurements.
• The costs of tasks or activities although varied from the projected amounts, were reasonably acceptable.

D is a warning assessment that performance did not meet the majority of the criteria established in the work plan and improvements are expected within a reasonable time so that further action will not be necessary.

D rating indicates that performance in most areas or overall did not measure up to the mutually agreed upon expectations of the work plan measurements.

F is a serious assessment which indicates that the work and performance is totally unacceptable and if the employee is to avoid disciplinary action, early substantial improvements in work output would need to be made.
Final Overall Assessment
Section 6 in the PMP document provides the possibility for the employee and supervisor to add a final, general comment to the overall annual assessment in section 5 of the same document. The next level supervisor may also insert comments on proceedings, especially if the PMP document is required for promotion/progression purposes, or when the employee and supervisor are in disagreement over the supervisor's appraisal of the employee's performance.

This section is to be addressed and signed at the end of the full validity period of the PMP document.

Benefits of a Performance Management Programme
The PMP process contributes to better public service and improved employee motivation through:

• Initiating formal work planning and training to support employee performance through out 12-month cycles.
• Facilitating consensus and feedback between employees and supervisors concerning performance through regularly scheduled discussions and reviews.
• Assisting supervisors and employees to define realistic performance expectations, thereby improving communication and contributing to the improvement of morale.
• Promoting employee training and development to utilise new technology and acquiring new skills.
• Providing meaningful feedback to employees though regular progress reports and annual assessments with supervisors (PMP leaflet, Department of Policy & Planning, MPO-OPM).

The benefits of PMP are various:
• If applied consistently, the programme provides the supervisor with clear and defined work plans.
• The employee learns about priorities and can identify important
objectives. Personal satisfaction and sense of achievement are gained and self-development is improved.

- The customer and taxpayer also benefit by receiving better results and an efficient service. Respect for the public service is boosted and the citizen at large becomes more inclined to support new initiatives.

**Rhetoric and Practical Gaps of the Performance Management Programme**

In spite of the structured administrative framework and widespread acknowledgement that PMP is an effective management tool, difficulties attached to its proper functioning exist. These include lack of willingness of line managers to support a change in culture, claims of unfairness and prejudice, lack of time to conduct reviews and inconsistencies. PMP is also considered by some as an instrument that promotes individualism at the cost of collectivism and teamwork.

**Difficulties**

From some interviews carried out with public officers, the following difficulties have been encountered:

- The effectiveness of the PMP is dependent on the skills and knowledge of the individuals who operate it – the supervisor and the employee. It has become evident that one of the most important areas requiring improvement has been the need to enhance the capability of both supervisors and employees in relation to the performance management process.

- The appropriate management skills required to manage the PMP process are not acquired from simply being placed in a management position. Short-term courses for supervisors and employees provided by the Staff Development Organisation
help, but it is up to the individual to demonstrate interest and willingness to learn.

- The **time factor** is another drawback. Supervisors and employees may agree to fall back on past PMP stereotypes with all the ensuing dangers of making inappropriate judgements about people's ability and performance. Such an occurrence, downgrades PMP to a mere administrative chore and a post-mortem exercise rather than a dynamic process of substance aimed at delivering results through regular reviews. These actions defeat the whole purpose of PMP.

- Some supervisors may **confuse performance with personality**. If the supervisor does not get along with the employee, low ratings may be awarded, even though performance is at a satisfactory level. Due to possible personal conflicts with the supervisor, these could have a great impact on ratings of work performance. In this respect, performance evaluations become a reflection of personal opinion and attitude by the supervisor towards the employee.

- The current performance evaluation system discourages employees and destroys morale. Employees who pay attention to their job, work hard and are conscientious are at times assessed and rated on the same scale as those who do not perform so well. In this respect, employees suffer **demotivation**.

- Although the performance management programme has proved to be of greater importance to most employees, yet there are a few who argue that since the introduction of the PMP, they have never been assessed. Others are not conscious of the importance of the PMP and are still viewing it as **another form to fill**, since employees are being presented with the assessments and asked to sign the form without holding any discussions or explanations on their performance.

- In the Public Service, it is assumed that employees ought to know what their department's mission is. In reality, there seems to be a **general lack of interest** among employees to familiarise
themselves with the objectives and values of their department. This disinterest makes the cascading process of objectives envisaged in PMP more difficult, as the micro activities carried out at the front line level of delivery are disconnected with the macro issues of the organisation's objectives. The performance management programme works best if there is clarity about overall 'corporate' business strategy and values (Armstrong, 1995:30).

These are the problems that have to be addressed if results from the implementation of PMP are to be further secured. If PMP is to gain more credibility and effectiveness, there must be an in-depth understanding of the process and willingness to embrace a new culture of delivering a customer-driven service in an efficient, economic and effective way.

In spite of the above difficulties, the PMP has changed the Maltese Public Service dramatically. In the past, performance management often meant rating employees using the trait-based instruments such as neatness or punctuality, as opposed to a direct focus on work output. The evaluation tended to be secretive; the employee was not permitted to participate and was not informed of the rating received. On the contrary, the PMP is participative. It involves the employee as well as the supervisor, particularly in the setting of goals at the beginning of the rating period and in the appraising of results. The PMP is task oriented; it is based on results as opposed to personal traits and results are measured against pre-defined goals and targets. It is also developmental where the evaluation process goes further than simply to rate employees. It assists in improving performance and identifying any training needs or other form of support required.

Notwithstanding the scepticism that surrounds the introduction of the performance management programme, it would be incorrect to generalise and conclude that the system is not working. However, it is difficult to conclude the extent of contribution of PMP in this
success. This is because it was not the only initiative introduced to target inefficiencies and lack of accountability and no study on its specific impact in terms of costs and benefits has yet been carried out.

Another recent development was the introduction of Quality Service Charters at the beginning of 2002. The Charters are a collective effort to provide a more efficient and effective service to the customers of public service departments (Charter Support Unit, 2000). Moreover, Quality Service Charters change the way public officers carry out their duties. The customer is now meant to be at the very centre of the services the department concerned provides. Finally, the Quality Service Charter was meant to change public perceptions of the public service. Those departments who did not commit themselves to the new customer oriented initiatives and remained too faithful to traditional bureaucratic methods, have lagged behind.

The Delegation of Disciplinary Authority
Another New Public Management initiative is the delegation of disciplinary powers to department heads in the year 2000 (MPO Annual Report, 2000:13). The Public Service Reform Commission (PSRC) recommended in its first-stage report that the Public Service Commission (PSC) (Disciplinary Procedure) Regulations of 1977 should be reviewed. This is because public managers required the authority to deal with disciplinary offences such as absenteeism, poor output, pilfering and waste, in an effective and efficient manner (PSRC Report, 1989:15).

Moreover, the Disciplinary Regulations had to be reviewed for the following reasons:
• To overcome the dysfunctions of a centralised administration this resulted in endemic delays in the disciplinary system, as in others. Every disciplinary case of every department has to go through to the Office of the Prime Minister and finally through
the Public Service Commission (PSC) to award the penalty.

- To increase accountability. Accountability is a fundamental principle which is closely linked to decentralisation.
- To safeguard the rights of alleged defaulters, in order to ensure a fair system of delegation.
- To improve the control over staff. (Interview with the Director of the Employee Relations Department at the MPO). This was crucial to improve the efficiency and effectiveness within the public service which might eventually ‘win back public confidence in the Service’ (PSRC Report, 1989:5).

Following the need to delegate disciplinary powers to department heads, the PSRC outlined the necessary proceedings to delegate authority over discipline. Amongst these, the PSRC identified the key decision-makers and also emphasised the need to withdraw delegated powers in exceptional circumstances (ibid.).

Following the recommendations of the PSRC, the PSC, together with the Employee Relations Department at the MPO, initiated discussions regarding amendments to the PSC Disciplinary Regulations of 1977. The experience that the MPO accumulated throughout the years as regards discipline was an essential asset for the PSC while the new Regulations were being drafted. A large number of situations which cropped up since 1977 were not adequately catered for in the existing Disciplinary Regulations. All the policies which were established throughout the years by the MPO in order to resolve certain contingencies, had to be incorporated within the new Regulations. For instance, what happens if a public officer is undergoing disciplinary proceedings and dies or resigns in the meantime?

The Disciplinary Regulations had to be reviewed irrespective of Malta’s integration with the European Union. The delegation of Disciplinary Regulations to Heads of Department was a managerial issue and both political parties were committed to this management principle. Nevertheless, it was necessary to check whether the new
Regulations were in conformity with European Union legislation. Consequently, the imposition of fines was replaced with the introduction of a suspension as a penalty which had to be awarded to alleged defaulters *(ibid.)*.

The PSC drafted the new Disciplinary Regulations that had to be discussed with the Trade Unions. The PSC together with the MPO sought to consult and communicate with the various Trade Unions about amendments to the Disciplinary Regulations because “a change cannot be imposed on public servants, or else it would be resisted. Public servants, together with their representatives, had to belong to that change” *(ibid.)*.

**Safeguards**

Assuming that power corrupts and absolute power corrupts absolutely, then the PSC had to establish the necessary mechanisms to safeguard the rights of public officers. To this end, the 1999 Regulations include safeguards to ensure:

**The right of appeal** – only serious disciplinary cases can be appealed to the PSC. However, if a public officer can prove that there has been an irregularity during proceedings, even for minor offences, there can be an appeal to the PSC. This is an important safeguard for public officers against arbitrariness on the part of Heads of Department. (Interview with the Chairman – PSC).

**Consistency and Uniformity of Treatment** – The Regulations themselves list clearly the procedure to be followed by Heads of department for every disciplinary case. This ensures that discipline is not exercise haphazardly as Heads of Department are controlled by the Regulations. The PSC decided to introduce a schedule of penalties, providing for a minimum and maximum penalty for each category of offence, so as not to leave too much discretion to departmental Heads. Moreover, an indicative list of offences, categorised under minor offences and serious offences, was also provided by the PSC (Regulation 29(3): Schedule of Offences and
Penalties). In this list of offences, due importance is given not only to conduct but also to performance.

**PSC control over exercise of delegated authority** – The new Disciplinary Regulations provide that the PSC could enquire into allegations on *prima facie* evidence of abuse or misuse of authority by a Head of Department. As a result:

"... the PSC may at any time recommend to the Prime Minister that the Instrument of Delegation be totally withdrawn or withdrawn in respect of particular public officers or other authorities, and that, upon such a recommendation being made and until the Prime Minister acts upon such a recommendation, the powers delegated by the Instrument shall be totally suspended or suspended only in respect of particular public officers or authorities, as may be stipulated in the recommendation made by the Public Service Commission". (The PSC {Disciplinary Procedure} Regulations (1999).

The power to dismiss a public officer was reserved to the PSC (Interview with the PSC Chairman). Various initiatives were also resorted to in order to achieve one of the prime objectives of the new Disciplinary Regulations: improve control over staff. All those public officers that refrained from improving their conduct would have to face harsher penalties. For instance, four recorded offences that are committed within a period of 24 months automatically lead to dismissal (MPO Annual Report, 2000:13).

The draft of the new Regulations was examined by the Attorney General and the new Disciplinary Regulations were published as a legal notice in November 1999. The Constitution of Malta {Section 110 (1)} vests the authority to remove and exercise disciplinary control in the Prime Minister acting on the recommendation of the PSC. However, the Constitution provides that the disciplinary authority of the Prime Minister may be delegated, again acting on the recommendation of the PSC.

In November 1999, the Prime Minister approved an Instrument of Delegation which authorises Heads of Department to take
disciplinary action in terms of the new PSC (Disciplinary Procedure) Regulations, 1999. The Instrument of Delegation also stipulated who were to be the delegated officers and their respective areas of jurisdiction. Disciplinary Regulations were also delegated to certain heads of entities that have public officers under their supervision, such as the Chairperson of the Transport Authority. All supervisory officers were also empowered to admonish public officers under their supervision. (The PSC (Disciplinary Procedure) Regulations, 1999:42). The new Disciplinary Regulations came into effect on 1st February 2000.

During the year 2000, several initiatives were undertaken by the Employee Relations Department within the Management and Personnel Office, to assist line departments in the proper management of disciplinary cases in terms of the new 1999 Disciplinary Regulations (MPO Annual Report, 2000:13). The Employee Relations Department organised training sessions for the top-level management including the human resource managers of every ministry. The human resource manager is responsible for all the human resource (HR) policies of every ministry, even though the Head of Department has ultimately got the authority to resort to disciplinary action. Thus, the human resource manager must be conversant with HR policies, since the required assistance has to be provided to the Head of Department to apply the new Disciplinary Regulations. (Interview with the Director – Employee Relations). A dossier on disciplinary procedures containing guidelines, notes and specimen letters accompanied by case notes was provided to every Head of Department and human resource manager alike. Every Head of Department was then required to disseminate information on the new Regulations within the department. (Interview with the Assistant Director at the Employee Relations Department at the MPO).
New Concepts of the Public Service Commission (Disciplinary Procedure) Regulations 1999

What are the new legitimate powers of Heads of Department? What is the role of the Public Service Commission in the new Disciplinary Regulations? Does a supervisory officer have the authority to resort to disciplinary action? What are the safeguards in the new Disciplinary Regulations that protect the rights of the Public officer charged?

Regulation 18 – Admonition

One of the concepts behind the delegation of the Disciplinary Regulations was to devolve disciplinary powers down to the lower managerial levels within every department. Heads of Department were disinclined to take disciplinary action prior to the new Regulations due to:

- Loads of paper work, red tape and long administrative procedures;
- Time-consuming to deal with all disciplinary cases, including minor offences (*ibid.*)

As a result, a supervisory officer has the authority, under the new Disciplinary Regulations, to admonish a public officer for minor misconduct, minor breach of discipline and unsatisfactory work (*The PSC {Disciplinary Procedure} Regulations, 1999:42*). Supervisory officers deal with the minor offences that do not require the intervention of the head of department. Furthermore, the idea that discipline is not something which is only reserved to the Head of Department was introduced. The public officer should be given the opportunity to exculpate him/herself. The admonition is recorded and kept by the supervisory officer but is cancelled six months from the day it is administered (*ibid.*). A supervisory officer is required to report to the Head of Department if a public officer is admonished for three times within a period of six months and when a disciplinary offence requires sterner treatment (*ibid.*).
Supervisory officers do not have the authority to issue charges and inflict penalties to public officers. Such power pertains to the Head of Department. (Interview with Assistant Director – Employee Relations Department).

When the Head of Department receives a report regarding an alleged disciplinary offence from a supervisory officer, or if according to his/her personal judgement, disciplinary action has to be resorted to, then a Head of Department can either follow Regulation 19 – Summary Discipline or else Regulation 20 which deals with the disciplinary procedure for minor and serious cases (See Figure 2).

Figure 2: An Individual's PMP within a Government Department

| If the public officer exculpates himself/herself: |
| A completed record will be entered in the personal file but not in the record of service. |

| If the public officer admits to the charge: |
| The Head of Department should decide on the penalty and communicate the decision to the public officer. A completed record will be entered in the personal file and the record of service. |

| If the public officer does not reply: |
| The Head of Department should convene a Disciplinary Board within 20 working days from the day that the reply was due. |

| If the Head of Department considers that the reply does not exculpate the public officer: |
| The Head of Department should convene a Disciplinary Board within 20 working days from the receipt of the reply by the public officer. |

Source Mamo (2002:4)

Regulation 19 – Summary Discipline
A Head of Department can issue a written warning against an
officer for minor misconduct, minor breach of discipline and unsatisfactory work. The public officer has 10 working days to reply. The written warning is cancelled 12 months from the time it is administered. (The PSC (Disciplinary Procedure) Regulations, 1999:42).

**Regulation 20 – Disciplinary Procedure for Minor and Serious Cases**

Heads of Department are empowered to issue a charge against a public officer not later than 30 working days after an offence is allegedly committed. The statement of the charge should indicate whether the case is considered to be a minor or serious one (*ibid.*). Regulation 29 (3) of the new Disciplinary Regulations categorises offences, to guide Heads of Department (*ibid.*:57-58).

Concurrently, a Head of Department may also summarily suspend a public officer, or in serious and criminal cases suspend the officer pending interdiction and then recommend to the PSC that the officer should be interdicted. Summary suspension occurs when a Head of Department suspends a public officer for 2 days which may be extended to 5 days, “...on grounds of alleged misconduct or breach of discipline or from disobeying lawful orders, whether written or verbal, or for the purpose of properly carrying out investigations into an alleged offence” (*ibid.*:38).

If the Head of Department considers that it is in the public interest that an officer should be interdicted from the exercise of the powers and functions of office, then the Head may suspend the officer pending a decision on his/her interdiction. The Prime Minister is then responsible to decide whether interdiction is to be resorted to, on recommendation of the PSC (*ibid.*:38-40). If a disciplinary offence contains a criminal element, then the Head of Department should seek the advice of the Attorney General as to whether criminal or disciplinary proceedings have to be initiated. No action other than suspension and interdiction may be taken.
against a public officer until criminal proceedings are concluded, including any appeals (*ibid.*: 40). After the criminal case is concluded, the charge is delivered personally to the public officer, who is given ten working days to exculpate him/herself in writing (see Mamo 2002:11).

**Disciplinary Boards**
Disciplinary Boards are appointed to investigate charges, establish the facts and communicate findings to the Head of Department and the public officer charged. The disciplinary Board is composed of a Chair and two other members, who are usually officers of the Department and are not connected with the case. The Chair should not be less than two salary scales above the office charged and the two members should be at least one salary scale above the public officer charged. The public officer charged may petition the PSC if it can be shown that a member of the Board is prejudiced against him/her. In such cases, the disciplinary proceedings will be suspended (Mamo, 2002:5). The right of an employee to be assisted by a Union representative during the preparation and presentation of the disciplinary case has been retained. Moreover, the public officer charged also has the right to know the decision of the Head of Department or the PSC within twenty working days. (Interview with the Assistant Director of the Employee Relations Department – OPM).

At the conclusion of investigations, the Board communicates its findings to the Head of Department and the public officer charged. The report of the Disciplinary Board includes an opinion whether the public officer has, in fact, committed the offence and details of matters which alleviate the gravity of the case. However, the report of the Board should *not* include any recommendation on the penalty to be imposed (Mamo, 2002:6).

The power to dismiss a public officer was not delegated to the Heads of Department, but reserved to the Prime Minister acting
on the recommendation of the PSC (Interview with the PSC Chairman). The only penalties that may be awarded by a Head of Department are those according to Regulation 29(4) Penalties of the MPO: namely, a written warning, suspension, suspension with ‘warning of dismissal’. (The PSC [Disciplinary Procedure] Regulations, 1999:55). (See Figure 3).

Figure 3: Decisions regarding a Disciplinary Case

<table>
<thead>
<tr>
<th>Cases which cannot lead to dismissal</th>
<th>Cases which could lead to dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td>The public officer may make</td>
<td>Head of Department should send</td>
</tr>
<tr>
<td>representations to the</td>
<td>a copy of the findings of the</td>
</tr>
<tr>
<td>Head of Department</td>
<td>Disciplinary Board to the PSC.</td>
</tr>
<tr>
<td>Within 10 working days.</td>
<td></td>
</tr>
<tr>
<td>Head of Department will consider</td>
<td>The PSC would give the</td>
</tr>
<tr>
<td>any representations made and</td>
<td>Head of Department and the</td>
</tr>
<tr>
<td>take a decision on the charge</td>
<td>public officer the opportunity to</td>
</tr>
<tr>
<td>and the penalty.</td>
<td>make oral representations.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The PSC should make a</td>
</tr>
<tr>
<td></td>
<td>recommendation to the Prime Minister</td>
</tr>
<tr>
<td></td>
<td>for approval.</td>
</tr>
</tbody>
</table>

Source Mamo (2002:4)

In summary, the Disciplinary Regulations authorise Heads of Department to carry out the full procedure and to award penalties themselves, in all disciplinary cases except those that could lead to dismissal. In such cases, the Head of Department still issues charges and appoints a Disciplinary Board. The findings of the Board are referred to the PSC for the final decision about the penalty
to be awarded. (Interview with the PSC Chairman). Consequently, the role of the PSC and MPO has been altered. ‘The role of the PSC has changed from one of exercising discipline itself, to one of an appeal body’. (ibid.).

The disciplinary system in operation has restrained the mandatory referral of disciplinary charges to central MPO. In fact, the MPO has now assumed a monitoring role, in providing advice and support to line departments in the processing of disciplinary cases and in ensuring that the new Regulations are correctly applied. (Interview with Director – Employee Relations). Every department is required to submit quarterly reports on discipline to the PSC and the MPO, so as to check amongst others, whether time limits have been maintained and the penalty that was awarded, on a case-by-case basis (ibid. and Interview with the PSC Chairperson).

**Results of the new Disciplinary Procedure**

The MPO and PSC are quite satisfied with the way the exercise of discipline is being handling by Heads of Department. Initially, numerous stumbling blocks hindered the implementation of these Regulations. Such problems included the difficulty to establish the new Disciplinary Procedure within the departments. The PSC is also aware of the pressure emerging from the small-scale characteristics of the Maltese Islands, on Heads of Department while taking disciplinary action. Some of the pressures are political while others stem from the social characteristics of Maltese society. The PSC chairman is convinced that ‘there are sufficient safeguards in the Regulations that will not allow that to happen’. (Interview with the PSC Chairman).

The PSC anticipated some of the problems. For instance, the PSC expected that one Head of Department could be harsher than another. The PSC provided a schedule of offences and a corresponding penalty schedule to ensure consistency and uniformity of treatment (ibid.). The PSC also thought that all those
public officers that were declared guilty and awarded a penalty, would end up appealing. However, this has not happened, which illustrates that Heads of Department are disciplining public officers in most cases (*ibid.*).

The MPO has drawn up statistics of disciplinary cases which have been initiated and concluded under the 1999 Disciplinary Regulations, during the period 1 February 2000 to 31 December 2000. Formal cases decreased during the period February 2000 to December 2000. This outcome was expected by the MPO. The Heads of Department had to become accustomed to the procedure. For the period 1 January 2001 up to 31 December 2001, formal cases increased again to the same level prior to the new Regulations (Interview with the Director - Employee Relations). The number of admonitions increased from 197 in 2000 to 600 in 2001 (*ibid.*). Therefore, "one can notice a trend where discipline is going down to the lower levels" (*ibid.*).

According to the PSC Chairman, the first indications reveal that there were no serious problems during the implementation of the new Regulations. Statistics have to be analysed on a wider span of time, rather than just two years for certain problems to be identified. One such issue is whether Heads are pressing charges or not. (Interview with the PSC Chairman). What are the costs and benefits involved in implementing the new Regulations? What are the difficulties which are being encountered by Heads of Department during the implementation of the new Regulations? To answer the above questions, interviews were conducted with Directors of Finance and Administration in two large ministries.

**Education Division**

The Education Division consists of seven different directorates. The Director of Finance and Administration is responsible for the Human Resource (HR) Unit. One of the roles of the HR Directorate is to provide the required assistance and the technical expertise to
the different directorates to implement the new Disciplinary Regulations through a Disciplinary Officer.

The Disciplinary Officer gathers all the 'correspondence' which is generated for every disciplinary case within the different directorates. The application of the new Disciplinary Regulations is monitored on a case-by-case basis. The time limits and the awarded penalty are checked for correspondence to the classification of the offence. Information is received from the different directorates to be included in the quarterly returns forwarded to the MPO and PSC.

The HR Unit encounters problems with the new Disciplinary Regulations. These may be classified as:

- Compliance with the Disciplinary Regulations
- Control over staff: that is, whether disciplinary action is being resorted to by Directors and supervisory officers when required.

Compliance with the Disciplinary Regulations
The Disciplinary Officer does not always receive timely and correct information from the directorates. Relevant information is often found to be missing or incorrect. Consequently, some of the disciplinary cases are discontinued. For instance, teachers' attendance was inspected at a public school and a number of teachers were missing. The Disciplinary Officer processed the information and filed the charges. Most of the teachers petitioned the charge as some were sick, on leave or had permission from the Head of School to absent themselves. As a result, most of the cases were discontinued as the inspectors failed to investigate the reasons behind their absence before reporting them to the Disciplinary Officer.

Disciplinary Boards are to be composed of public officers within certain salary scales. Although the Education Division is large, there is a shortage of staff within some of these scales. Very often, the same public officer has to preside as the Chair in every Disciplinary Board for a period of three months. (Interview with the Director of Finance and Administration).
The Director of Finance and Administration stated that it is not always easy to distinguish between a minor and serious offence. In some cases, the Director has to rely on his/her personal judgement supported with empirical evidence to classify an offence, especially when the evidence is not clear. For example, a public officer is misbehaving due to family problems. Personal problems should not become an excuse for public officers to justify misconduct at the place of work. However, every offence has to be thoroughly investigated before a charge is issued. (Interview with Director Finance and Administration).

There is also a problem of awarding the right penalty to the corresponding offence. For example, teachers are required to attend an in-service course every two years. Most fail to attend or reschedule attendance to these on-going courses. In the year 2000, 33 public officers were reported to the Disciplinary Officer. The Director of Operations thought that this offence was a serious matter, whereas the Disciplinary Officer considered it a minor offence. The Director of Finance and Administration agreed with the former. 28 cases out of the 33 were discontinued, as the teachers justified their absence. Four teachers were not found guilty after the Disciplinary Board's intervention. One public officer was declared guilty, but awarded a minor penalty when the offence was classified as serious. The Director of Finance and Administration associated this problem with the organisational culture of the Education Division.

Control over Staff
Statistical data of disciplinary cases is the only means to monitor whether disciplinary action is being resorted to or not. Data also reveals those Directors and supervisory officers who adopt the 'soft' approach as opposed to the 'firm' one when exercising discipline. In the case of serious offences leading to dismissal, there is political pressure for such disciplinary cases to be discontinued. The Disciplinary Officer cannot force any manager to exercise
disciplinary action.
In contrast, MPO views middle management within the Education Division as failing to exercise disciplinary action. Some Heads of School cannot distinguish between an admonition and a charge, even though guidelines on ‘the responsibilities of supervisory officers’ were distributed. The Disciplinary Officer collects a quarterly report on the number of admonitions issued by every supervisory officer. Some of these reports are submitted at the beginning of the first quarter with nothing to report!

**Health Division**

Compliance with the Regulations
The Health Division consists of ten different directorates. The HR Directorate has a disciplinary officer whose role is to manage the new regulations for all the directorates. In practice, this did not prove successful. Information is transferred from one directorate to another but there have been instances when the right information was not being delivered to the right people, at the right time and the right place! This created a bottleneck in the system because information was not forthcoming and there was lack of consultation from various directorates. Disciplinary action was not being exercised within the stipulated time limits. As a result, there are two disciplinary officers within the Health Division – one is posted at Head Office and the other at St Luke’s Hospital. The present system is more efficient and effective. In 2001, the Health Division had 463 disciplinary cases, but 200 cases were discontinued. Unlike the Education Division, cases were discontinued mainly because the charged officers exculpated themselves, rather than due to mismanagement. Most of the other cases were declared guilty or not guilty by the Disciplinary Board. Only one public officer was dismissed after criminal proceedings were resorted to (Interview with the Disciplinary Officer).
Control over Staff
The Director of Finance and Administration highlighted that different management approaches have been adopted by supervisory officers, depending on whether the public officer belonged to the Administrative Class or the Industrial Class. In order to attain the objective of improving control over staff, the Disciplinary Officer believes that lower-level discipline has to be integrated with the normal rules of conduct since middle management has now been empowered to exercise limited discipline over staff. In 2001, 400 admonitions were issued within the Division. The following year, the number declined. The Disciplinary Officer claims that a number of supervisory officers, such as Nursing Officers are not accustomed to clerical and administrative tasks and would rather adopt the ‘soft’ approach to exercising discipline. (Interview with the Disciplinary Officer).

Difficulties
Circulars were sent to every Head of Department, stating dates of the delegation of the new Regulations. Formal seminars with the Department Heads and HR representatives were held immediately after the new Regulations came into effect. Is the MPO together with the PSC aware of the difficulties that the departments under examination are presently encountering during the implementation of the new Disciplinary Regulations?

“Administrative reform is very much like pushing a large stone uphill. Left to itself, it tends to slide backwards”.

The MPO provides its assistance to line departments whenever required. Is the assistance provided reactive?
The PSC monitors the application of the new Disciplinary Regulations on a quarterly basis and examines statistical data
regarding the number of disciplinary cases to monitor whether public officers are being disciplined by Heads of Department and to examine the application of the new Regulations. Statistical data fails to illustrate the difficulties encountered by the departments under examination. The PSC chairman insists that it is still too early to identify certain problems from the statistical data and the first indications do not reveal that Heads of Department are failing to press charges (Interview with PSC Chairperson). However, from the above, the Divisions under analysis reveal that not all government departments experience this.

To conclude, it appears that, so far, the delegation of the new Disciplinary Regulations has failed to yield satisfactory outcomes. Yet, reform is a journey, rather than a destination.

Abbreviations Used

MPO - Management & Personnel Office
MSU - Management Systems Unit
NPM - New Public Management
OPM - Office of the Prime Minister
PMP - Performance Management Programme
PSC - Public Service Commission
PSRC - Public Service Reform Commission
SDO - Staff Development Organisation
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**MPO Circulars**

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**MPO Letter Circulars**

MPO Letter Circular BI/No. 3/94 - addressed to Directors of Corporate Services, Directors of Finance and Administration and Director of Human Resources (Health Division) - Performance Management Programme – March 1994.

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