

By Raphael Vassallo



# Equality control

Every now and again, a single court sentence stands out from the rest on the basis of its implications for future decisions. The recent ruling by the Industrial Tribunal, which fined a company €2,000 over a single throwaway comment by a male employee, was a classic case in point.

Apart from clearly illustrating that 'sexual innuendo at the workplace' is now a more expensive hobby than it ever used to be in the past, the ruling was unique in that it firmly defined verbal abuse – in this case, a vulgar joke – as an example of 'harassment'.

Dr Komina Bartolo, Commissioner at the National Commission for the Promotion of Equality, agrees that it was a landmark ruling that should serve as a stark warning to companies. But she also believes the case itself represents only the tip of an iceberg, in a country where sexual harassment is rife.

"There is definitely under-reporting of sexual harassment," she begins when we meet at the NCPE offices at Gattard House, Blata l-Bajda. "We get to hear of many other cases that do not make it to the Industrial Tribunal. In fact we have just launched a research project to come up with statistics and information on why people do not report individual cases..."

Even without such research, a few possible reasons immediately spring to mind. Dr Bartolo explains that in cases of sexual harassment, very often the victims themselves would be put off by the inevitable publicity such cases generate.

But while the Industrial Tribunal may be effective in cases of sexual harassment, there are other, less public avenues a victim may choose to take. One of these avenues is provided by none other than the NCPE itself, and the Commission has in fact handled 20 such complaints over the past three years.

"However, there is a difference. Unlike a court of law, the NCPE has no judicial powers: we can't pass sentence, or order a company to pay compensation. On the other hand, one can get such remedy from the Industrial Tribunal..."

For this reason alone, it is all the more indicative that so few people have to date come forward with their complaints to NCPE.

"In our experience, not all victims are necessarily looking for redress. Sometimes, it is psychologically helpful just to have someone to tell them that: yes, it is an issue; that their complaints are in fact justified..."

From this perspective, awareness (or the lack thereof) can be seen to be very much an issue. And as illustrated by certain pu... reac-

tions to recent 'verbal harassment' ruling, it is clear that not everyone is aware of (or for that matter, agrees upon) the definition of sexual harassment to begin with.

Dr Bartolo stresses that 'sexual harassment' is but one form of discrimination on the basis of gender.

"To my mind, the law is clear in this regard. Any conduct of a sexual nature can be defined as sexual harassment. It does not have to take the form of physical abuse... and the abuse doesn't even have to be verbal. It could be an email, a screen-saver, a text message... if it's unwanted, unwarranted and of a sexual nature, then it qualifies."

Here, she takes the opportunity to dispel another misconception: this time, that an element of 'repetitive behaviour' may also be necessary. This was echoed by the lawyer representing the company that was fined for harassment, who recently wrote: "it is arguable whether a single instance of an admittedly vulgar verbal interjection, even with the sexual innuendos identified by the Tribunal, can constitute sexual harassment

at law..."

"That is not correct," Bartolo promptly replies. "Again the law is very clear on this point. Even a single instance is enough."

"Coming back to the ruling itself, while the Commission generally welcomed the message sent out by the tribunal, it has strong reservations regarding the fine itself. In fact, the NCPE is currently recommending an upward revision of the penalties.

"I admit it's very difficult to come up with a sum, and say 'that would be an effective deterrent'. But yes, I do think that the current penalties are not enough. Let's face it: €2,000 is nothing in this day and age, especially when you consider it is the company, not the individual, that is held liable..."

Be that as it may, it is also a fact that such a delicate subject will invariably pose difficulties of its own. I point out to the Commissioner that accusations of 'sexual harassment' are very often construed as vindictive reactions to (for instance) a refusal to a request for a pay rise; or the withholding of a promotion; or any of a thousand other personal reasons that have no sexual overtones whatsoever. Does this tally with her own experiences in investigating such claims?

Dr Bartolo nods. "Yes. From our experience there have been cases where it was found that no sexual harassment had taken place..."

She argues that this, too, provides further reason for companies to have clear policies and guidelines in place.

"Another project launched by the NCPE in July, entitled ESF 3:47 - Unlocking the Female Potential, is in fact aimed at encouraging equal opportunities at the work place. One of the aims of the project's campaign is to look into various companies, and invite them to apply for an 'Equality Mark'..."

'Equality Marks' are awarded to companies which can prove – emphasis on the word 'prove' – that they are 'gender friendly'. One such proof would be the existence of a functional sexual harassment policy in place... something which Dr Bartolo points out is not actually mandatory for companies at law.

"Having a sexual harassment policy is an important first step, but is not enough on its own. Ideally, companies should also have a person at hand who knows the law: who knows the procedures to be followed in case of a report; to help the victim fill the necessary forms, and so on. Employers – who are after all the ones to be held legally responsible in case of a conviction – should facilitate the procedures as much as possible. Representatives of the NCPE

are currently meeting these companies, and looking into various things: for instance, comparing different pay slips for male and female employees who are holding same positions, hence testing if they ensure equal pay for work of equal value principle."

On the subject of male and female pay slips, I draw the Commissioner's attention to a recent EU study which suggests that Malta's gender-gap seems to compare favourably with those of other EU member states.

Using an admittedly complicated grading system, Malta's gender pay gap was placed at 9.2 – and to give an idea of the scale, at the top of the list (i.e., the country with the highest difference between male and female salaries) was Estonia at 30.3. Italy was the lowest, at just 4.4.

These statistics seem to contradict an earlier study by the NCPE – although the methodologies employed by the NCPE and the National Statistics Office (which collated the data for the Commission) were different.

Reacting to the apparent discrepancy, Dr Bartolo explains that the EC study was accurate within the parameters in which it was conducted.

"The EU study presents a true picture, I have no doubt about that. But when you look into the matter more closely, the picture is rosier than it is in reality."

Among the issues affecting the interpretation of these figures is that the EC report did not take into consideration the amount of overtime, as well as differences in bonuses and other forms of payment.

Even when these are considered, Bartolo agrees that the gender pay gap in Malta is not very high when compared to other countries. But she warns that this, in itself, is no reason to be complacent.

"At 9.2, even if not particularly high by international standards, the gender pay gap is still there. We can't afford to rest on our laurels and pretend that everything is OK..."

Perhaps the most significant of the factors affecting our rating is the fact that Malta currently has the lowest incidence among EU member states of female participation in the workforce. Again, there have been notable improvements of late; but Dr Bartolo argues that a lot of work still has to be done.

"There has been an upward trend in recent years, but female participation in the workforce is still very low. Part of the reason for this is cultural. There is still the widespread perception that a woman's place is in the home. In particular, the majority still believes that children suffer when

## LATCH-KEY CHILDREN

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the mother – as opposed to either of the parents – is not at home to look after them. There needs to be a culture change in this regard..."

On the plus side, the Commissioner also points out that this cultural mindset is not all-pervasive.

"There are more girls than boys going on to higher education, and statistics indicate that on average, girls are doing better than boys academically. But this in turn means that we have a high level of female graduates, which the workforce then loses out on when they hit the fertility bracket, between the ages of 25 and 35..."

Dr Bartolo points towards numerous factors to account for this situation. One issue that may be holding Malta back in this regard concerns the apparent incompatibility between work and school hours. She points out how, as a rule, schools start later and finish earlier than typical working hours.

"Most schools nowadays start at 8.30am, while work hours – at least, in the public service – start at 7.45am. Similarly, schools finish early: Church schools at around 1.30pm, state schools at 2.30pm

## JUSTICE

**Not all victims (of sexual harassment) are necessarily looking for redress. Sometimes, it is psychologically helpful just to have someone to tell them that: yes, it is an issue; that their complaints are in fact justified**

As recent developments have clearly illustrated, sexual innuendo at the workplace is no laughing matter. Dr Romina Bartolo, National Commissioner for the Promotion of Equality, talks about sexual harassment, the gender pay gap and other equality matters



PHOTOGRAPHY BY RAY ATTARD

## ROMINA BARTOLO

**AGE: 38**

**STATUS: Married with two children**

**PROFESSION: Notary Public**

**QUALIFICATIONS: MA EUROPEAN**

**FAVOURITE BOOKS: HARRY POTTER**

and among private schools, the latest close at 3pm."

In some cases the overlap is even longer. "Shop assistants work until 7pm: four hours after their children would have finished school..."

Apart from greatly impairing the ability of one of the parents to be at home when the children come back from school, Dr Bartolo points that this overlap creates additional problems of its own.

"Often you see children on a street corner waiting on their own to be picked up after school... sometimes for half an hour or more. Personally I am very much against 'latch-key children', but in many cases parents find that they are left with no option because of the pressures of work. The situation is clearly not ideal..."

So what does the NCPE suggest? Dr Bartolo claims that Malta may

stand to learn from the experience of other countries in this regard.

"Abroad, schools nowadays tend to have more or less the same hours as typical office hours. This doesn't necessarily mean more lessons for the children; instead, the schools offer in-house extra-curricular activities until around 5.30pm – the same time parents generally finish work."

Bartolo explains that in Malta as elsewhere, such non-academic activities outside school hours are already widely acknowledged as healthy for the children concerned.

"After school, many parents take their children to music lessons, dance lessons, and various other extra-curricular activities which we have all come round to recognising as being beneficial to the child's development. As things stand, however, this also

adds stress to the parents' already busy schedule. Parents who have school-age children often complain that they don't have enough time to keep up, between driving the children from one lesson to another. It would be in everybody's interest for the same activities to be offered together at the same school..."

Apart from a reform of school hours, a key plank in the NCPE's proposed strategy is a drive to open more childcare centres throughout the island. Here, Dr Bartolo acknowledges that the situation has already improved enormously.

"Until around seven years ago, there were hardly any childcare centres at all. Today, there are over 40 across the island. Still, however, there is room for improvement..."

Nor was it the childcare centres themselves that were previously

lacking: Dr Bartolo points out that until recently, there were no proper guidelines or regulations, either.

"A childcare centre is not just a place where you dump your children while you go to work. The environment must also be beneficial to the child."

Bartolo rattles off a list of minimal requirements that have recently come into force for the regulation of these centres.

"Each centre has to have an outdoor area. There have to be interactive games and activities for the children; there has to be some form of control on different age groups

– you can't have eight-year-old children together with two-year-old toddlers. And there is also a ratio to be adhered to according to the children's age bracket: you can't have, for instance, 20 children to each carer..."

For all these improvements, Dr Bartolo is however the first to concede that there may be some way to go before Malta can claim to fully meet the conditions of the Lisbon Agenda.

"All this does not necessarily mean that we are there yet. We are much closer than we were seven years ago, but there is still some distance to go."