



National Commission  
for the Promotion  
of Equality for  
Men And Women

Kummissjoni Nazzjonali  
ghall-Promozzjoni  
ta' l-Ugwaljanza  
ghall-Irgiel u n-Nisa

# National Commission for the Promotion of Equality

## Investigations Report

Renee Laiviera

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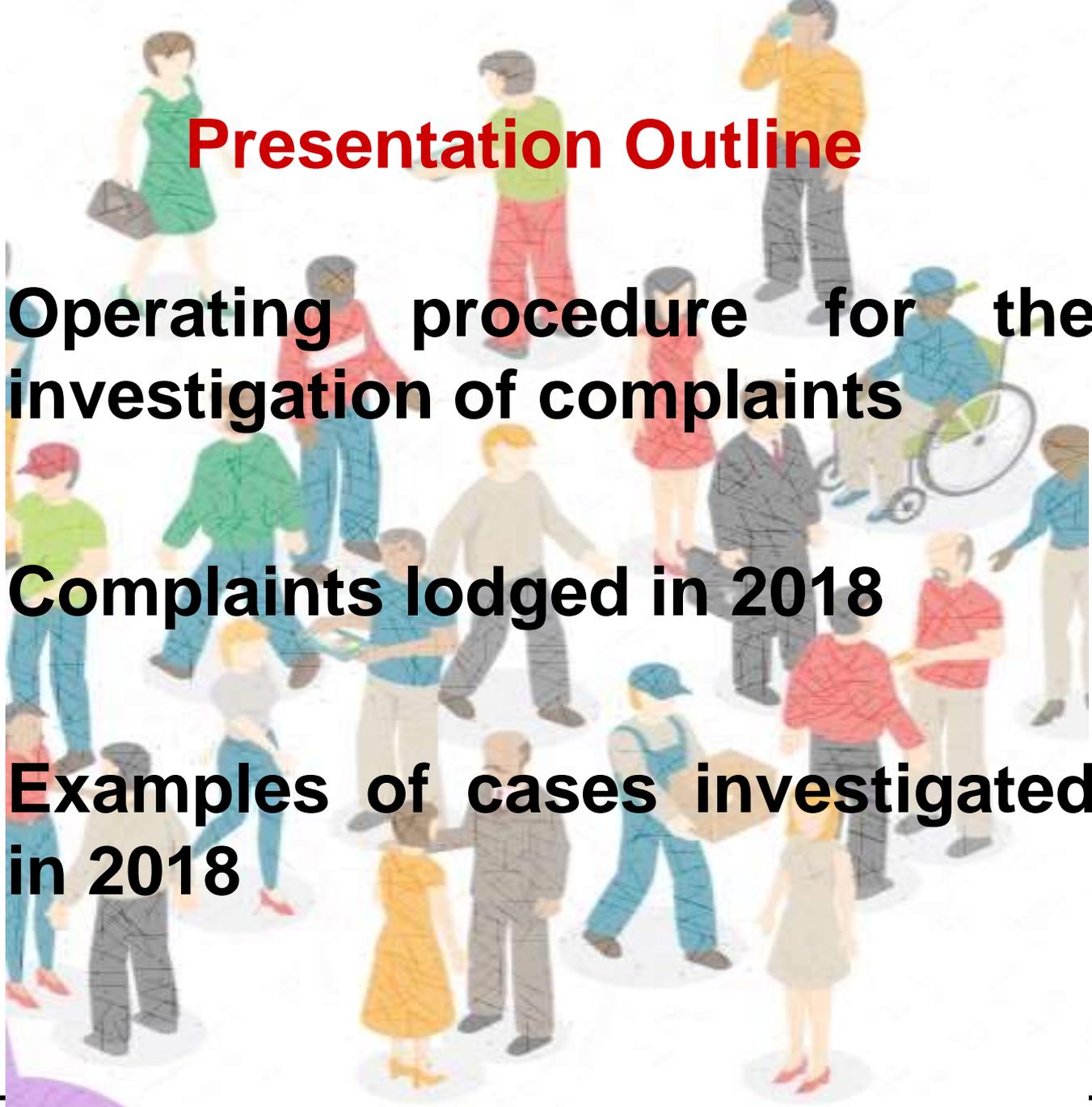
NCPE

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# Presentation Outline

- **Operating procedure for the investigation of complaints**
- **Complaints lodged in 2018**
- **Examples of cases investigated in 2018**





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# Operating procedure for the investigation of complaints





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# Legal provisions for NCPE's investigative function

- CAP 456 – Equality for Men and Women Act

NCPE can “*independently investigate complaints of a more particular or individual character to determine whether the provisions of this Act are being contravened with respect to the complainant and, where deemed appropriate, to mediate with regard to such complaints*” [Art. 12(1)(h)]

- L.N. 316 of 2011 – Procedure for Investigation Regulations, 2011
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# Lodging of complaints

- Complaints to be made in writing on NCPE's Complaints Form available on:
  - NCPE's website ([www.equality.gov.mt](http://www.equality.gov.mt))
  - NCPE's offices
  - via email/postal mail upon request
- The Officer (Complaints & Clients' Support) may provide assistance in filling the Complaints Form on request
- Complaints Form acknowledged within 3 working days



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# NCPE's process following the receipt of a complaint

- Commissioner determines whether complaint falls within NCPE's remit; ie: discrimination on basis of:
  - sex or family responsibilities, sexual orientation, age, religion/belief, race/ethnic origin, gender identity, gender expression and sex characteristics in employment, education, banks and financial institutions
  - race/ ethnic origin and gender in the provision of goods and services





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# NCPE's process following the receipt of a complaint

As of 2016, NCPE's remit was extended to receive complaints with regards to the freedom of movement for workers in the EU





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# Investigation procedure (1)

Complaints Form is sent to alleged harasser/employer/service provider who is requested to provide written report vis-à-vis the complaint lodged within ten working days



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## Investigation procedure (2)

- Meetings held with parties concerned.
- Commissioner accompanied by legal advisor during sittings (recorded)
- Submissions are sent to the relevant party/parties



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# Opinion

- In conclusion, NCPE's Commissioner issues an opinion as per Equality Act provisions
- NCPE's Commissioner may:
  - Find the complaint is proved and thereupon take the necessary action
  - Refer the matter to the competent authority for redress
  - Dismiss the complaint





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## Ex-officio investigations

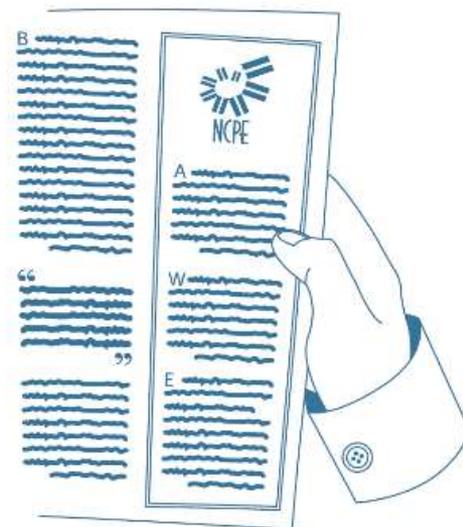
Should the Commission become aware of any alleged discriminatory act, practice or malfunction obstructing equality in various spheres of society, the Commissioner may consider initiating investigations on any matter falling within NCPE's remit



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# Complaints lodged in 2018





# Complaints lodged in 2018

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	Women		Men		Ex Office		Total
	Direct	Indirect	Direct	Indirect	Direct	Indirect	
<b>Sex</b>	5	0	1	0	5	0	<b>11</b>
<b>Sexual Harassment</b>	1		0		0		<b>1</b>
<b>Race/Ethnic Origin</b>	0	0	1	1	4	0	<b>6</b>
<b>Gender Identity/ Gender Expression/Sex Characteristics</b>	0	0	0	0	0	0	<b>0</b>
<b>Age</b>	0	1	0	0	1	0	<b>2</b>
<b>Sexual Orientation</b>	0	0	0	0	0	0	<b>0</b>
<b>Religion/Belief</b>	0	0	1	0	0	0	<b>1</b>
<b>Freedom of Movement</b>	2		2		0		<b>4</b>
<b>Not within NCPE's remit</b>	0	0	14*	0			<b>14</b>
<b>Total Complaints Lodged</b>							<b>37**</b>

\* Lodged by one individual.

\*\* One ex officio investigation, and one complaint, covered two grounds.



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# Examples of cases investigated in 2018





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## Case A: Alleged discrimination on the grounds of sex (1)

### *Complaint lodged by:*

- Male complainant alleging discrimination on the grounds of sex

### *Events of the case:*

- Complainant applied for work as a beauty therapist at a Spa
- Whilst being qualified, experienced and capable in the field, his efforts proved unsuccessful



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## Case A: Alleged discrimination on the grounds of sex (2)

### *Investigation:*

- Spa Managing Director insisted that complainant lacked experience and that most clients are women who prefer a female therapist
- Complainant submitted various documentation to substantiate his claim e.g. newspaper advert, detailed CV, invoices and timesheets of work carried out in the field etc.

### *Opinion:*

Commissioner deemed that:

- Complainant was qualified to perform the job
- Adverts published by Spa stated that training was being offered
- Spa employs several therapists and so could easily introduce a female therapist for waxing of private parts of female clients when so required



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## Case B: Complaint alleging unfair treatment based on race and ethnic origin (1)

### *Complaint lodged by:*

- Male complainant alleging unfair treatment based on race/ethnic origin in accessing the justice system

### *Complaint:*

- The public may submit complaints to the Small Claims Tribunal in Malta either via the usual channels in the Law Courts or electronically
  - Law Courts website is available in Maltese and English however, electronic submission of complaint can only be done in Maltese
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## Case B: Complaint alleging unfair treatment based on race and ethnic origin (2)

*Opinion:*

Commissioner opined that:

- Policy related to the language of the Law Courts is objectively justified by a legitimate aim
- Court of Law has a right to conduct its proceedings in a language of its choice
- The facts of the case are not tantamount to unfair treatment or of denied access to social or tax advantages on the basis of race and ethnic origin

NCPE Commissioner further recommended that in case a request for translation, translation costs should be borne by either the Registrar of the Courts or by the party who is adjudicated at fault.



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## Case C: Alleged discrimination on the grounds of Freedom of Movement (1)

### *Complaint lodged by:*

- Female complainant alleging discrimination on the grounds of Freedom of Movement

### *Events of the case:*

- Complainant alleged unjust revocation of right to residence and unjust revocation of registration certificate.



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# Case C: Alleged discrimination on the grounds of Freedom of Movement

- Complainant explained that after transferring her residence to Malta in accordance with article 9 of Directive 2004/38EC, with the aim of eventually securing a job in Malta, she was ordered to leave.
- Consequently, Complainant's son, was also refused residence
- She received a letter stating revocation of residence as she resulted to still be working in the UK



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# Case C: Alleged discrimination on the grounds of Freedom of Movement

- Complainant stated that during period indicated she was in a pre-retirement working phase.
- Complainant explained that she met both the financial and insurance requirements of her host country. Her position could be described as a cross border worker, since besides working in the EU she was still returning on a regular basis to her residence in Malta.
- Complainant also stated that the fact that she was seeking employment in Malta did not mean that she would not abide by the terms and conditions of her retirement agreement with her UK employer.



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# Case C: Alleged discrimination on the grounds of Freedom of Movement

Opinion:

- Failure to sufficiently delve in complainant's case leading to unjust revocation of right to residence and of registration certificate
- Right to free movement restricted without justification
- Complaint upheld and justified



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**Thank you**