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LegCo Panel on Constitutional Affairs

Background Paper prepared by Legislative Council Secretariat

Issue of employees of subvented welfare organisations taking up public offices

Purpose

This paper summarises past discussions held by the Panel on the issue of employees of tertiary institutions funded by the University Grants Committee (UGC), the Hospital Authority (HA) and subvented welfare organisations taking up public offices.

Background

2. In 1999, the Bills Committee on Elections (Corrupt and Illegal Conduct) Bill expressed concern about the different arrangements adopted by UGC-funded institutions and public-funded bodies in respect of their staff taking up public offices, and whether the arrangements should be standardised. The Bills Committee agreed to refer the matter to the Panel on Constitutional Affairs for follow up.

Discussions held by the Panel

1998-1999 and 1999-2000 legislative sessions

3. The Panel discussed the issue at the meetings on 25 October and 20 December 1999. The relevant bureaux and departments having policy responsibility for UGC-funded institutions, the HA and subvented organisations in the welfare sector explained to the Panel the arrangements adopted by these organisations in respect of their staff engaging in public offices.

4. UGC-funded institutions had issued guidelines governing their employees' engagement in outside practice, including taking up public offices. While there was no standardised guideline for all UGC-funded institutions, some institutions adopted similar arrangements but made adjustments to suit their individual circumstances. For staff engaging in remunerative outside practice, one or more of the following arrangements would apply -

- (a) requiring the staff concerned to contribute a percentage of the income derived from outside practice to the institution;
- (b) reducing the salary of the staff concerned on a pro-rata basis commensurate with the reduction in output against the institution's normal requirement, if the reduction in output was 50% or below; and/or
- (c) requiring the staff concerned to take no-pay leave or change his appointment at the institution to a part-time status during the tenure of the public office, if the reduction in output exceeded 50%.

5. The Human Resources Policy Manual of HA set out guidelines on arrangements for staff taking up public service. Depending on the proportion of normal working hours to be spent in taking up the public office, the salary of the staff concerned would be reduced on a pro-rata basis commensurate with the declared proportion of time to be taken up in the public office. If an employee's engagement in the public office was considered as substantially restraining him from fulfilling his roles and responsibilities, he might have to take no pay leave or change the nature of his appointment during the tenure of the public office in accordance with the guidelines.

6. The Hong Kong Council of Social Service (HKCSS) was the main coordinating body of the non-governmental organisations (NGO) in the welfare sector. It had issued a set of administrative guidelines in respect of NGO employees taking up public offices for the reference of its member agencies. The guidelines made no reference to adjustment of salary and benefits of employees engaging in public offices. The Administration advised that NGOs did not normally deduct the salary and benefits of their staff taking up public offices. The sort of public service social workers were mostly involved in was voluntary work without any remuneration.

7. Some Panel members were concerned about the different arrangements adopted by UGC-funded institutions, the HA and the welfare sector. They were of the view that the Administration should consider promulgating a set of standardised guidelines across the board to ensure transparency and fairness. Members also found the situation in the welfare sector most unsatisfactory. For instance, in the case of Miss Rosanna WONG Yick-ming who was at the same time a Member of the Executive Council, the Chairman of the Housing

Authority and the Executive Director of the Hong Kong Federation of Youth Groups, no adjustment was made to her salary and benefits. The Panel agreed that the Chairman should write to convey members' concerns and views to the Chief Secretary for Administration.

8. In her reply dated 25 February 2000, the Chief Secretary for Administration advised that to have a set of standardised guidelines across the board would be difficult to implement and unlikely to be feasible, given the different roles of the organisations, the nature of the employees' work and the public offices in question. The Administration remained of the view that individual organisations, as autonomous subvented bodies and as the direct employers, must retain the flexibility to decide on the arrangements for their staff engaging in public offices that best suit their needs. This was not a matter that Government should seek to direct from the centre.

9. Having considered the reply of the Chief Secretary for Administration and the situation in the welfare sector, the Panel decided to request the Administration to draw up guidelines for staff of subvented organisations in the welfare sector taking up public offices by making reference to the guidelines promulgated by UGC-funded institutions and the HA. In reverting to the Panel in writing on 20 April 2000, the Secretary for Health and Welfare advised that the Social Welfare Department (SWD) was drafting a set of guidelines for NGO employees engaging in public offices. The proposed guidelines would be ready in the latter half of 2000.

10. On 5 March 2001, the Secretary for Health and Welfare advised that the draft guidelines would be put forward for comment by a working group responsible for developing guidelines on best practices for subvented NGOs. The working group was formed under the Lump Sum Grant Steering Committee recently set up under the chairmanship of the Director of Social Welfare.

2000-2001 legislative session

Panel meeting on 7 May 2001

11. At the meeting on 7 May 2001, the Administration advised the Panel that unlike the guidelines issued by UGC-funded institutions and the HA which were for compliance within their organisations, the SWD guidelines would only set out the broad principles for the reference of NGOs. The Administration also advised that the guidelines for NGOs were expected to strike a pragmatic balance between encouraging and enabling staff to honour their civil duties on the one hand, and proper use of subvention money as public funds on the other.

12. Members were of the view that the SWD guidelines should be issued for compliance of NGOs, instead of for their reference only. In addition, the

guidelines should include specific provisions on adjustment of salary and benefits of employees of NGOs taking up remunerated public offices.

Panel meeting on 9 July 2001

13. The Administration briefed the Panel on the draft guidelines for NGOs in the welfare sector on employees taking up public offices. A copy each of the Administration's paper and the draft Guidelines (LC Paper No. CB(2)2042/00-01) are at **Appendix I**.

14. Some members were dissatisfied that according to paragraph 14 of the draft Guidelines, the Board Chairman/Agency Head was only strongly advised, but not required, to put in place a procedure of adjustment of salary and benefits for employees taking up remunerated public offices. The Administration explained that in the absence of a service-wide subvention policy stipulating any requirement to withhold or adjust subventions for such purpose, it was not appropriate for SWD to impose the rule on subvented welfare NGOs. The Administration also pointed out that the arrangements put in place by the HA and the UGC-funded institutions were initiated by the respective organisations themselves.

15. The Panel was dissatisfied with the draft Guidelines in that members' repeated requests for promulgation in the Guidelines specific provisions on adjustment of salary and benefits for compliance by the NGOs had not been acceded to. Members requested the Administration to provide a set of revised guidelines for the consideration of the Panel.

Council Business Division 2
Legislative Council Secretariat
8 February 2002

For Discussion
on 9 July 2001

LC Paper No. CB(2)2042/00-01(03)

**LegCo Panel on Constitutional Affairs
Taking Up of Public Offices by
Employees of Subvented Welfare Organisations**

Purpose

This paper presents to Members a draft guideline for subvented welfare organisations on the issue relating to their employees taking up public offices.

Background

2. During previous discussions at the Constitutional Affairs Panel, SWD undertook to consider Members' suggestion on drawing up a set of guidelines for subvented organisations, taking reference from similar guidelines promulgated by the Hospital Authority and tertiary education institutes.

3. In the previous meeting on 7 May 2001, SWD proposed to draw up such guidelines in the context of "Best Practices". SWD also plans to consult the Lump Sum Grant (LSG) Steering Committee before the guidelines are issued to NGOs.

Progress

4. In line with the analysis as promulgated in the discussion paper presented to Members on 7 May 2001, SWD has drawn up a draft guideline (Please refer to the Annex)

5. This proposed guideline is drawn up in the context of "Good Practices" in the LSG Manual (Edition 2) that provides advice and guidelines to NGOs in respect of good management practices and processes which will be taken into account in the performance evaluation of NGOs. To date, draft guidelines have been drawn up in respect of corporate governance. The draft has been discussed by the Lump Sum Grant Steering Committee and the Committee's advice is being circulated

to NGOs for comments. With the assistance of the Corruption Prevention Department of the Independent Commission Against Corruption, best practice modules have been drawn up for NGOs' reference in areas of procurement and staff administration. What we intend to do with the proposed guideline on the taking up of public offices by employees of NGOs is in line with the spirit and practice governing the welfare subvention arrangement.

6. The proposed guideline aims at striking a pragmatic balance between encouraging and enabling staff to take up civil duties in community participation on the one hand and proper use of government subvention money on the other. It sets out broad principles which are of essential reference for both the employees and agency head/Board Chairman. It includes the need for subvented staff to consult their agency head or Board Chairman before accepting public service, the need for ongoing review to safeguard the performance of Funding and Service Agreement activities not being affected, and also some suggested procedures of adjustment of salary/benefits for staff taking up remunerated public offices.

7. We note the concern of Members in previous discussions about such guidelines, especially in respect of adjustment to salary where the public office is remunerated, being promulgated for reference, rather than for compliance. However, Members will appreciate that in the absence of a service-wide subvention policy stipulating any requirement to withhold or adjust subventions for such purpose, it is not appropriate for SWD to enforce the rule in subvented welfare NGOs. As a matter of fact, the arrangements put in place by the Hospital Authority and tertiary education institutes are initiated by the respective organisations themselves.

8. SWD plans to consult the Lump Sum Grant Steering Committee on the draft guideline before it is issued to NGOs for comments.

Advice

9. Members are invited to comment on the content of the draft guidelines at the Annex.

Social Welfare Department
June 2001

**Guidelines for Subvented NGOs in Welfare Sector on
Employees taking up Public Offices**

Purpose

Under the present subvention policy, there is no rule governing how a subvented organisation should treat its staff in terms of their participation in public offices. The Social Welfare Department (SWD) however sees the merit in promulgating some general guidelines for reference by the management of subvented welfare NGOs. These guidelines will help NGOs draw up their respective agency practices governing their employees taking up public offices.

2 With the introduction of the Lump Sum Grant (LSG) subvention system for welfare NGOs as from 1 January 2001, it is recognised that some general guidelines on the subject to be issued by SWD would be useful and necessary. While encouraging flexibility in using resources to meet community needs, the LSG mode of operation continues to lay emphasis on the proper use of subvention money, i.e. to fund the delivery of welfare services stipulated in the Funding and Services Agreement (FSA) which sets out clearly the respective duties and responsibilities of SWD as the funder and NGO as the service provider. NGOs have to satisfy the requirement that subvention money is spent in providing quality service, and meeting the performance standards as stipulated in the FSAs.

3 The Department understands that it would not be practicable to prescribe a set of standardized guidelines for compliance by all subvented NGOs. In reality, the nature of public office and the demands of these appointments put on the appointees vary significantly from one to the other. The Department would not like to see rigid rules and barrier that frustrate or inhibit people taking up public services appointments especially at a time we are advocating a more open government and value the advice and input from professionals and stakeholders in our work.

4 The guidelines are meant to strike a pragmatic balance between encouraging and enabling staff to take up civil duties in community participation on the one hand and proper use of subvention money on the other.

5 Each subvented NGO, being an independent entity, should be allowed the autonomy and flexibility to determine how its financial and

manpower resources be deployed and the actual course of action to take when employee occupying subvented positions takes up a public office. The proposed guidelines on staff taking up public offices should become part of the administrative procedures to promote and foster best management and human resource management practices. Individual NGOs are expected to formulate their own internal procedures on the subject based on these guidelines. SWD can offer advice to them in the process if necessary.

Guidelines for employees of subvented NGOs

6 As a general rule, an employee of a subvented NGO who wishes to take up public office should consult the Board Chairman/Agency Head in writing and obtain their consent before accepting the public office.

7 The employee should seek to understand and be sure that his/her involvement in the public office would not bring forth any negative effect to his/her service and performance in his/her post in the subvented NGO before putting up the request.

8 In his/her written request for approval, the employee has to provide details of the tasks and responsibilities in the public office, including the expected workload, time involvement, constituency to be served, etc. to facilitate the management's assessment on his/her application. Details regarding the proportion of normal working hours and after-office hours to be spent in the public office should be clearly stated.

9 If there is any change in the duties/working condition of the public office which affects or may affect his/her service in the subvented NGO, the employee should notify the Board Chairman/Agency Head in writing and obtain their consent to continue with the public office.

10 The employee should refrain from raising/campaigning for funds from his/her Agency clients, advertise or perform election activities and obligations while on duty in the subvented organisation.

Guidelines for Board Chairman/Agency Head

11 While considering an employee's request for taking up a public office appointment, Board Chairman/Agency Head should consider if the employee's role and duties in the public office would have conflict of interest with the Agency and its service recipients. Besides, the extent of negative effects that may possibly be brought about by the employee's involvement in the public office to the normal discharge of his/her duties in the subvented service should be taken into account.

12 After granting approval to an employee to take up public office, Board Chairman/Agency Head should keep a clear and complete record of an employee's involvement in public office. The employee's performance should be reviewed during the regular staff appraisal exercise to ensure that his/her commitment in the public office has not caused any adverse effect to his/her normal duties. If the employee is found failing to fulfill his/her role or have deteriorated in performance, the Board Chairman/Agency Head should take appropriate measures to reconsider the approval for him/her to continue with the public office.

13 If an employee has to perform duties related to his public office in normal office hours, the Board Chairman/Agency Head may consider approval for the employee to take leave and/or to reshuffle his /her normal working hours to facilitate such activities. If an employee has to perform his public office duties in his office hours, there should be a proper record for the Board Chairman/Agency Head's information.

14 The Board Chairman /Agency Head is strongly advised to put in place a procedure of adjustment of salary/benefits for employees taking up remunerated public office after taking into consideration the proportion of normal working hours to be spent in taking up the public office.

15 Board Chairman/Agency Head should consult the staff and the Board of Directors when developing the Guidelines/Procedures for internal reference.

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