

Chairman and Honourable Members,

We are against the Management-Initiated Retirement Scheme of the Hong Kong Institute of Education (HKIEd) mainly on the basis, we respectfully submit, that it offends natural justice in the following three aspects:

1. The screening procedure as approved by the Council and made known to staff was not followed.
2. The criteria for assessing whether a staff member is "surplus" to the Institute are not defined and made known to staff.
3. The Institute Review Committee, which proposes the provisional list of staff to be made redundant, is also the same Committee which considers appeals by the staff members on the list.

Screening procedure not followed

The Institute has stated that the aim of the Management-Initiated Retirement Scheme is to upgrade the teaching profession of staff in the HKIEd to meet the future needs of society. It has also promised that the implementation of the scheme will be 'as fair and transparent as practicable' and that the selection of individual staff members for redundancy will be by means of a procedure agreed by the Council. The fact is that the aim was changed mid-way and the procedure not followed.

The Council-approved procedure has built in a screening process to shortlist certain staff members for consideration under the scheme. Procedure C (Annex A) sets out very clearly to the effect that not all staff are eligible for redundancy, but **only** those staff members who are assessed to have not attained or moved successfully towards attaining the qualification required (defined by whether they have made an effort to acquire a higher degree etc.) will be shortlisted by the Human Resources Department for consideration for redundancy by the School Review Committee and then the Institute Review Committee to determine if they should be made redundant on grounds of either being surplus to the Institute or lacking the qualification required to teach at a university-level institution. This is in line with the aim of the scheme to upgrade the teaching profession of staff in the HKIEd to meet the future needs of society and serves as an important precautionary measure to prevent abuse of the scheme.

The fact is that most staff members have been made redundant on grounds of surplus irrespective of whether they have met the screening criterion. The aim to upgrade staff was abandoned mid-way and the major purpose of the scheme is now to dismiss staff members surplus to the Institute. Without the screening process, any one, irrespective of whether they have attained the qualification required, or close to attaining the qualification required, or not making any effort to attain the qualification required, could be targeted for redundancy, contrary to the intention and the procedure approved by the Council. This abuse of procedure is not allowed under the Administrative Law.

The criteria of "surplus" not defined

The term "surplus" is not defined under the scheme and the Institute has never announced the criteria adopted to assess whether a staff member is "surplus". Without clearly defined criteria for "surplus", nobody knows why a particular staff member is targeted and made redundant. The Institute also refuses to give individual staff members its reasons for identifying or deciding a staff member as "surplus". As a result, the selection of "surplus" staff appears arbitrary. Some staff members with doctoral degrees are made redundant, so are some pursuing doctoral degrees under sponsorship by the Institute's Development Programme (and hence taxpayers' money). There is a phenomenon that some staff members with the required qualifications or who are actively pursuing the required qualifications are worse off than their counterparts who have not started a doctoral programme or who have terminated their doctoral studies. The lack of well-defined criteria for "surplus" has given the management absolute power. Absolute power easily lends itself to abuse. We never know if a staff member was dismissed for political or financial reasons, or on personal bias grounds, or for other reasons not being related to the stated of the scheme. This also sets a precedent of suppressing academic freedom in HKIED.

Appeal body

The Institute Review Committee made the decision on the prima facie list of staff members to be made redundant. The staff members are given only two weeks to challenge the decision, to the same committee and if they so wish, also to make an oral representation to the Committee. This appeal mechanism is not fair as the same body is asked to re-consider their previous decisions and there is no guarantee that they will look at them in an impartial manner, unprejudiced by their pre-conceptions. At

the Institute, even the assessment a student's work has to be moderated by two lecturers to ensure impartiality. There should be an independent body to consider appeals from the staff members affected.

Question for HKIED

HKIED, as a public body, is required to exercise its powers in compliance with the rules of natural justice. Please explain why the scheme was conducted in a manner which might have offended natural justice as stated in our submission.

Anti-MIRS Committee
18th Oct, 2001

Annex A

A Message from the Acting Director

Dear Colleagues,

Following the decision of the HKIED Council, the Institute is now proceeding to implement the Management-Initiated Retirement Scheme (MIRS). This scheme is designed in such a way that it is applicable to both substantiated and transferred staff, and will enable transferred staff, on either Frozen Pension (FP) or the Mixed Services Pension (MSP), to be eligible for immediate pension rights upon early retirement. The scheme was formally submitted to the Government in July 2001. Final negotiations are now proceeding on matters mainly related to financial payments beyond those which are contractual requirements.

I hope staff members will understand that the MIRS is a necessary step in the development of the Institute. Society's expectations of schools and teachers are rising rapidly. To allow these expectations to be realized, the Government's policy is to continuously upgrade the quality of the teaching profession and to introduce major reforms to the education system. One aspect of this upgrading is that teaching will become an all graduate and all trained profession. To meet these challenges, it is important that the Institute has a teaching staff with the expertise and qualifications appropriate to teach at degree and postgraduate levels.

We will endeavour to ensure that the implementation of the MIRS is as fair and transparent as practicable whilst also ensuring confidentiality. An external Consultant will be engaged for the implementation of the MIRS, which will allow staff to obtain advice and maintain the process is as confidential as possible. A document describing the key features of the proposed MIRS including eligibility, the criteria, and the procedure is attached for your reference.

Those aspects of the scheme which relate to financial benefits (beyond those which are payable contractually) are, as noted above, subject to further negotiations with and approval of the Government. Once these are finalized we will inform staff members immediately.

If you wish to obtain further clarification on the MIRS, please contact Mr. S.K. Hau,

Head of Human Resources
(Resources and Administration)

or Mr. Norman Ngai, Deputy Director

Regards,

Professor Paul Morris
Acting Director

<p style="text-align: center;">Key Features of the Proposed Management-Initiated Retirement Scheme</p>

Management-Initiated Retirement Scheme by way of Redundancy

The Institute has explored various options which would allow a retirement scheme to be introduced, taking into consideration a range of factors. These factors include: the interest of the staff concerned, the pension regulations pertaining to former civil servants, the legal and contractual commitments of the Institute, and the future needs of the Institute. Advice was sought from a variety of relevant sources including the UGC, the Civil Service Bureau and the Institute's legal adviser. After carefully considering the various factors and taking into account the advice obtained, the Institute has decided that the optimal way forward is to introduce a Management-Initiated Retirement Scheme (MIRS) by way of redundancy. Such a scheme, under which certain employees are asked to leave the Institute due to redundancy, would best suit the Institute's needs as transferred staff on either the Frozen Pension (FP) or the Mixed Services Pension (MSP) being compulsorily "retired" should be eligible for immediate pension rights under a compulsory MIRS.

Eligibility for the Management-Initiate Retirement Scheme

2. The MIRS, which is compulsory in nature, will be applicable to all staff members (in particular, academic staff members) who are on the Government pension or the HKIED Superannuation Scheme. The selection of individual staff members for the MIRS, will be by means of the procedure agreed by the Council (described in paragraph 5) below and selection will be based on the following criteria;

- (a) The staff member whose academic discipline/expertise is surplus to or will not match the future needs of the Institute as an institution

predominantly teaching at the degree and postgraduate levels, and/or

- (b) The staff member has not attained or moved successfully towards attaining the qualification normally needed to teach in a university-level institution. The followings are illustrations of this criterion:
 - (i) The staff member does not possess a Master degree or above level qualification; or
 - (ii) The staff member has not shown any effort to pursue a higher degree (to be defined as research master degree (i.e. M.Phil) or above); or
 - (iii) The staff member has not been able to acquire his/her chosen higher degree supported by the Institute's staff development programme within a reasonable period after the maximum period of sponsorship for that particular staff development programme ended; or
 - (iv) The staff member is still under the support of the Institute's staff development programme for his/her chosen higher degree studies but he/she performs consistently poorly in his/her chosen higher degree studies as confirmed by his/her programme supervisor.

Target Population

3. The target population will include:

- (a) All teaching staff members who are on transferred terms from the Government (i.e. transferred staff either on the Frozen Pension or the Mixed Service Pension),
- (b) All teaching staff members who are in the HKIED Superannuation Scheme; and
- (c) Exceptionally, non-teaching staff members who are on transferred terms from the Government or on the HKIED Superannuation Scheme * (Subject to approval by the Government)

4. For the teaching staff criteria (a) and/or (b) as set out in paragraph 2 above will apply. For non-teaching, staff, only criterion (a) but subject to replacing "academic

discipline/expertise" by "professional skills/expertise" will apply.

Procedure

5 The Institute is eager to work out a scheme that is fair transparent and practicable. It is also fully committed to ensure strict confidentiality in the whole process. The following procedure will be adopted in identifying the staff members for early retirement under the MIRS:

- (a) An external consultant will be engaged up-front to assist in the entire exercise.
- (b) A School Review Committee (Management-Initiated Retirement Scheme) (SRCMIRS) will be established at the School level, which will be chaired by the Dean of the School concerned and with members to include the Heads of relevant Departments and the Deputy Director (Academic). In the case of the School of Early Childhood Education, 2 senior staff members of the School will be nominated by the Dean of the School to be members of the SRCMIRS. The Head of Human Resources will serve as the Secretary and the external Consultant will participate in meetings of the SRCMIRS.
- (c) The Human Resources Department will provide to the SRCMIRS (copied to Directorate members) a list of teaching staff who are assessed to have fallen under criteria (b) as set out in paragraph 2(b) above.
- (d) The SRCMIRS, taking into consideration the following factors:
 - (i) the future needs of the School/Department;
 - (ii) the profile expertise and qualifications of individual staff members;
and
 - (iii) the two criteria as mentioned in paragraph 2 above,

will recommend to the Institute's Review Committee (Management-Initiated Retirement Scheme) (IRCMIRS) the staff members identified as redundant under the MIRS, with written justifications for each and every case. It will thus be the responsibility of the SRCMIRS to include in the final list to be submitted to the IRCMIRS staff who are assessed to have fallen under criteria (a) and/or (b) as set out in paragraph 2 above.

- (e) The Director and individual Deputy Directors, in consultation with their Heads of Offices/Centres, may also recommend to the IRCMIRS non-teaching staff members who are identified as redundant under the MIRS, with reference to the criteria in paragraph 2(a) above but as modified in paragraph 4 above
- (f) The IRCMIRS, to be chaired by the Director and include as Members the Deputy Directors, the Deans and a member of the Staffing Committee of the Council who is not an existing HKIED staff member, will review all names submitted and form a view as to whether there is prima facie case for asking all or any of the staff on the recommended lists to leave the Institute under the

MIRS. The Head of Human Resources will serve as the Secretary and the external Consultant will participate in all meetings of the IRCMIRS.

- (g) The external Consultant, upon the decision and instruction of the IRCMIRS, will approach confidentially those staff members whose names are on the list as decided by the IRCMIRS and inform them of the prima facie decision that they are redundant to the needs of the Institute.
- (h) The staff members being notified will be given a 2-week period to provide any documentation or evidence to the Directorate to demonstrate that the assessments made by the SRCMIRS and/or the IRCMIRS are incorrect.
- (i) The IRCMIRS will further consider any documentation/evidence provided by the staff members concerned, and hear a presentation from the staff members, if the staff members so wish, and make the final decision.
- (j) The external Consultant will convey the final decision to the staff members concerned, and agree with the individual staff members on their respective final date of departure from the Institute. The Head of Human Resources will then send a formal letter to the staff members concerned. Staff members who are asked to retire early under the MIRS will be given 3 months' notice, unless otherwise stipulated in their employment contract.
- (k) The IRCMIRS will eventually report to the Council's Staffing Committee for information the final list of staff members who are identified as redundant and will be asked to leave the Institute.