

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Mechanism for Handling Staff Complaints

Purpose

This paper briefs Members on (a) the principles governing the application of conduct and discipline provisions against civil servants who have misconducted themselves; (b) the mechanism for ensuring that complaints and views made by civil servants against other civil servants are handled in an impartial manner; and (c) the safeguards that are in place to prevent the misuse of conduct and discipline provisions against civil servants who have expressed views and/or made complaints in good faith.

Background

2. On 6 April 2006, the Ombudsman's Office published the findings of its investigation into the operation of the medical fee waiver system.

3. The Chairman of the Panel noted that, according to the investigation report, a Medical Social Worker in the Social Welfare Department ("SWD"), who spotted a mistake in the approval of a medical fee waiver by one of her colleagues in a specific case and reported the finding to her supervisor, was warned by her supervisor not to disclose this case to outside parties "with threat of disciplinary action, against causing embarrassment to the Administration". The Chairman also noted from subsequent media reports that according to SWD, the Medical Social Worker was reminded by departmental management in writing of the need to observe the general principle on conduct and discipline which requires civil servants not to engage in activities or behaviour that may bring the service into disrepute.

4. The Chairman of the Panel has invited the Administration to provide a written response on the following issues -

- (a) the follow-up actions taken, or to be taken, by the Civil Service Bureau ("CSB") in respect of this case, and whether any disciplinary actions have been or will be taken against the civil servants concerned; and
- (b) application of the general principle on conduct and discipline which requires civil servants not to engage in activities or behaviour that may bring the service into disrepute and the relevant statistics, including -

- (i) the circumstances under which individual civil servants are reminded of the need to observe the general principle mentioned above, and the sanctions for non-compliance;
- (ii) the number of cases in the past three years in which civil servants were reminded of the need to observe the general principle mentioned above, and the sanctions/actions taken against the civil servants concerned for non-compliance; and
- (iii) whether any measures and mechanisms are in place to prevent abusive application of the general principle mentioned above; if yes, the measures and mechanisms involved; if not, how to prevent abuses.

5. In the context of the above case, a Member of the Panel has asked for a discussion with the Administration on the effectiveness of the current mechanism in the civil service for handling complaints and views raised by civil servants.

General principles on conduct and discipline

6. The Administration is committed to upholding high standards of conduct and probity within the civil service. The core values that civil servants at all levels are expected to share and uphold include: commitment to the rule of law; honesty and integrity; impartiality in carrying out public functions; accountability for decisions and actions; political neutrality; and dedication, professionalism and diligence in serving the community.

7. When discharging their duties, civil servants are required, amongst other things, to -

- (a) comply strictly with applicable laws;
- (b) carry out lawful instructions from supervisors and comply with government regulations and procedures;
- (c) work with colleagues in cooperative team spirit to deliver effective and efficient service;
- (d) work with care and diligence;
- (e) strive to achieve set performance targets; and
- (f) be courteous at all times.

8. The above rules of conduct and general requirements are set out in various Civil Service Regulations (“CSRs”), supplemented by other official instructions laid down in circulars and memoranda circulated by CSB and departmental management to civil servants at regular intervals. They are also highlighted in the “Civil Servants’ Guide to Good Practices”, a booklet that is distributed to each and every civil servant.

9. The rules of conduct are backed by sanctions. A civil servant renders himself liable to disciplinary action if he fails to observe any government regulations or official instructions; or, by his actions, brings the Government service into disrepute. He faces a punishment of up to dismissal, depending on the gravity of his acts of misconduct. This general principle is spelt out in CSR 410, which is re-produced in Annex A.

Mechanism for handling complaints and views raised by civil servants

10. CSB has promulgated a set of general guidelines in its Circular No. 20/91 on staff complaints procedure, dealing with expressions of dissatisfaction or feeling of injustice by any member of staff of a bureau/department about the treatment he has received from other staff in his bureau/department or from the management. A summary of these guidelines is set out in Annex B. Briefly, the guidelines stipulate that all complaints will be dealt with in confidence; and that a civil servant will not be penalized for a complaint made in good faith. Thus there is no question of holding a civil servant making a report or complaint in good faith liable for disciplinary action under CSR 410 (paragraph 9 above refers).

11. Based on this set of guidelines, the management in each bureau/department has promulgated its own detailed departmental procedure taking account of departmental condition and requirement. The aim is to provide a staff complaint procedure which is simple to implement, fair to the staff, well-publicised and effective. If after following the prescribed procedure which provides for appeals to higher authorities, the officer making the report or complaint is not content with the response he has received from his Permanent Secretary or Head of Department, he may report the matter to the Secretary for the Civil Service, the Chief Secretary for Administration and ultimately the Chief Executive.

The case quoted in the Ombudsman’s report (paragraph 4(a) above)

12. SWD has provided CSB with an account of how the Department handled the complaint from the Medical Social Worker in question. We are examining this account, with a view to determining whether the way in which the Medical Social Worker’s complaint had been handled is in line with the guidelines prescribed in CSB Circular No. 20/91. Depending on the outcome of the examination, we will consider whether any follow-up action need to be taken against any civil servant involved in the case. As an established practice, we do not comment on individual disciplinary cases.

Safeguards against misuse of the discipline provisions (paragraph 4(b) above)

13. We do not have information on the circumstances under which individual civil servants are reminded of the general principle on conduct and discipline which requires civil servants not to engage in activities or behaviour that may bring the service into disrepute. We also do not have information on the number of cases in the past three years in which civil servants were reminded of this general principle on conduct and discipline.

14. We attach the utmost importance to due process and natural justice in the administration of disciplinary proceedings and punishments against civil servants for any acts of misconduct (including acts which are alleged to have brought the Government service into disrepute).

15. Under the Public Service (Administration) Order, when a civil servant is alleged to have committed an act of misconduct (other than unlawful conduct which falls within the jurisdiction of the Court and is covered in the following paragraph), the question of whether the accused officer is guilty or not is determined by inquiry officers appointed from outside the department the accused officer works in. The determination of the inquiry officers is made on the basis of factual evidence presented to them at a hearing during which the accused officer is given reasonable opportunities to contest any evidence adduced against him. Upon determination that the accused officer is guilty of the specified act of misconduct, the relevant authority may impose a disciplinary punishment against him depending on the gravity of the misconduct.

16. For alleged unlawful conduct by a civil servant, the determination of guilt or otherwise rests with the Court. With regard to a civil servant convicted of a criminal offence, the relevant authority may impose a disciplinary punishment against him on top of the penalty handed down by the Court. The gravity of the offence and other relevant factors including the circumstances in which the offence was committed and the extent to which the civil servant's criminal act has brought the Government service into disrepute will be taken into account when determining the level of punishment.

17. The Public Service Commission discharges an independent role in advising the Government on various matters relating to the civil service, including the discipline of civil servants. An officer who is aggrieved by the decisions of the disciplinary authority may petition the Chief Executive. He may also seek a legal remedy through judicial review proceedings.

Annex A

- CSR 410 (1) An officer who commits any breach of Government Regulations or any other official instructions, whether oral or written, or who by his actions brings the Government Service into disrepute is liable to dismissal or lesser punishments depending upon the gravity of the case.
- (2) Disciplinary provisions governing Government officers are contained in the Public Service (Administration) Order and the Public Service (Disciplinary) Regulation - see Annexes 3.1 and 3.2. Certain members of the disciplined forces are subject to disciplinary provisions in their respective Ordinances, Regulations and Rules (e.g. Police Force Ordinance (Cap. 232), Fire Services Ordinance (Cap. 94), Prison Rules (Cap. 234, subsidiary legislation), etc.).

**A summary of the guidelines for handling staff complaints
as set out in CSB Circular No. 20/91**

General principles

Each Bureau/Department is required by CSB Circular No. 20/91 to observe the following key rules in the formulation and administration of its staff complaint procedure that best suits its operational requirements -

- (a) any member of staff having a cause to make a complaint (including an expression of dissatisfaction or feeling of injustice about the treatment he receives from other staff in his bureau/department or from the management) may do so orally or in written form to his Head of Bureau/Department;
- (b) all complaints will be dealt with in confidence, and complainants are expected to identify themselves. The identity of the complainant will not be revealed, without his consent, to anyone other than those involved in investigating the complaint;
- (c) an officer will not be penalized for a complaint made in good faith; and
- (d) it is important to be fair to both the complainants and those against whom their complaints are directed in the investigation of complaints.

Machinery

2. The procedure to deal with staff complaints in each Bureau/Department should be simple, direct, speedy, effective and well-publicised. More specifically, -

- (a) each Bureau/Department must designate one or a number of its officers as Staff Complaints Officers, each of whom may be assisted in his task by other officers. A Staff Complaints Officer should, where practical circumstances permit, be stationed in the same office as the staff for whom he is responsible;
- (b) the procedure for dealing with complaints from staff should be read by all staff on first reporting for duty in each Bureau/Department. It should also be re-circulated for staff's information at least once a year. Each general registry in a Bureau/Department should keep a copy of the procedure and, where appropriate, the procedure should be displayed on the notice board in the office for easy reference; and

- (c) each Head of Bureau/Department should inform staff (i) of a more senior officer who may be approached in case a complaint is to be made against a Staff Complaints Officer or when the individual concerned is dissatisfied with the way his complaint is being handled; and (ii) that when lodging his complaint with the Bureau/Department, a complainant may, if he so wishes, at the same time copy his complaint to the Secretary for the Civil Service for information.

Procedure for dealing with individual complaints

3. The main steps are set out below -

- (a) the Staff Complaints Officer(s) in a Bureau/Department receives and acknowledges a complaint in writing or, in the case of an oral complaint, records it in writing and confirms the record with the complainant as soon as practicable;
- (b) the Staff Complaints Officer maintains case files and records for complaints received to facilitate the monitoring of progress in processing the complaints and any necessary follow-up actions;
- (c) the Staff Complaints Officer investigates the complaint in such a manner as may be justified by the circumstances of the case. The investigation may include interviewing the complainant and other persons, subject to the complainant's agreement to reveal his complaint to such other persons. Complaints about corruption or other forms of crime will immediately be referred to the relevant enforcement agency, usually the Police or the Independent Commission Against Corruption, for investigation;
- (d) the investigation of a complaint should normally be completed and a reply issued within three months after receipt of the complaint or within a reasonable timeframe prescribed by the Head of Bureau/Department. Any investigation which cannot be completed within the prescribed timeframe should be drawn to the personal attention of the Head of Bureau/Department. The Staff Complaints Officer should send an interim reply to the complainant on the progress of the matter as appropriate; and
- (e) the Staff Complaints Officer submits, after investigating a complaint, a report with his recommendations to an officer (usually a Directorate officer) authorized by the Head of Bureau/Department to approve the issue of replies to the complainants. The officer authorizing the reply to the complainant may, if he considers that the importance of the matters at issue so justifies, refer a case to the Head of Bureau/Department for consideration before a reply is issued.