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Panel on Education

Background brief prepared by the Legislative Council Secretariat for the special meeting on 6 July 2009

Grievances and complaints mechanisms of the University Grants Committee-funded institutions

Purpose

This paper summarizes the major concerns expressed by the Panel on Education (the Panel) on the grievances and complaints mechanisms of the University Grants Committee (UGC)-funded institutions.

Background

2. In May 2001, the then Secretary for Education and Manpower commissioned the UGC to launch a comprehensive review of higher education in Hong Kong. The review covered all aspects of higher education provision, including the governance of the UGC-funded universities. In March 2002, the UGC published the review report entitled "*Higher Education in Hong Kong*" (the Report). After consultation with the Panel and the stakeholders on the Report, the UGC submitted its final recommendations to the Secretary for Education and Manpower in September 2002. The Government accepted most of the UGC's final recommendations, and announced in November 2002 the blueprint for the further development of higher education in Hong Kong. Under the blueprint, the UGC-funded universities were required to review their governance and management structures including the grievances and complaints mechanisms to ensure that they were "fit for the purpose". The Report stated that one issue "*which might be usefully included in the internal review is the fitness for purpose of mechanism to settle internal university disputes or to review administrative decisions. A possibility being considered elsewhere is the appointment of an Ombudsman for the sector.....In Hong Kong, the remit of the Office of the Ombudsman could be extended to cover the UGC sector.*" The governing bodies of the UGC-funded institutions started their

"fit for the purpose" reviews in 2003 and had completed their reviews by 2008.

Deliberations of the Panel

3. Over the past few years, the Panel held a number of meetings to discuss and receive views from deputations on matters relating to the grievances and complaints mechanisms of the UGC-funded institutions. The major concerns raised by members are summarized in the ensuing paragraphs.

Establishment of an independent inter-institutional redress mechanism

4. Members noted with concern that many staff associations of the UGC-funded institutions had no confidence in the existing mechanisms for handling complaints lodged by staff against individual UGC-funded institutions and considered the mechanisms ineffective. The details of the existing grievances and complaints mechanisms adopted by the UGC-funded institutions are in **Appendix I**. Members pointed out that complaints relating to the primary and secondary school sector could be handled by the Education Bureau in accordance with the relevant codes of aid. However, complaints in the UGC sector were not dealt with by any authority. Staff complaints in the UGC sector often led to legal proceedings or were widely reported in the media. In the view of members, neither the Court nor the Legislative Council (LegCo) was the appropriate forum for handling complaints against the UGC-funded institutions. Resorting to the Court would involve huge legal cost, whereas turning to the media or LegCo would politicize the matter.

5. For the purpose of effectively resolving complaints and grievances lodged by staff of the UGC-funded institutions, some deputations proposed the establishment of an independent inter-institutional redress committee. According to their proposals, such a committee should be statutory in nature, and its members should be drawn from the management and staff of the institutions and eminent members of the community. This committee should supplement and not replace the existing complaints and grievances mechanisms of individual institutions. Most deputations considered that an independent redress mechanism was of utmost importance in maintaining academic freedom and ensuring the handling of complaints in an impartial and transparent manner. Such a mechanism would work effectively as only persons with good understanding of the operation of tertiary institutions would become members of the committee.

6. There was, however, a view that given the unique history, mission, tradition and characteristics of each university, an inter-institutional redress mechanism would obscure its uniqueness, and there might be difficulties for it to function properly and smoothly in a timely manner. Instead of setting up such a mechanism, it was suggested that each university should develop its

own redress mechanism that was tailored to its unique characteristics.

7. Members in general supported the establishment of an elected inter-institutional complaints body to handle complaints lodged by staff in the UGC sector. Members considered that the establishment of an independent redress mechanism would provide a stable working environment for staff to concentrate on teaching and research work. The Panel passed a motion at its meeting on 17 July 2008 urging the Councils and the administrative arms of all UGC-funded institutions to establish an elected independent inter-institutional complaints committee.

8. In its written response to the motion, the Heads of Universities Committee (HUCOM) stated that it did not support the proposal to establish such a committee. In its view, review and appeal mechanisms had been in place in all UGC-funded institutions for handling staff and student grievances and complaints. These mechanisms involved elaborate procedures conferring on the parties concerned substantial rights and opportunities to be heard, to defend and to appeal. Considering the complexities of university operation and management and the wide range of institutional differences that existed across the UGC-funded sector, it would be extremely difficult if not impossible for such an institutional complaints committee to function effectively and achieve its intended purpose. All UGC-funded universities enjoyed institutional autonomy and their Councils were vested with statutory powers to deal with appeals. Any parties who felt aggrieved could also lodge appeals to judicial bodies. If an inter-institutional complaints committee could super-impose its rulings on these bodies, it would be tantamount to usurping the legal powers of the university Councils, infringing on the autonomy of the institutions, and slighting the judgements of the courts. It was also questionable whether the mediation or decision from the committee would carry enough weight to be binding on the parties concerned. The response of HUCOM is in **Appendix II**.

9. In the Administration's view, all the UGC-funded institutions had established appeal and grievances mechanisms which were unique to the particular circumstances of each institution. The Administration considered that the suggestion to establish an independent inter-institutional redress mechanism would undermine the institutions' autonomy in handling staff matters and complaints having regard to their own policies, practices and individual circumstances. The Administration respected the views of HUCOM and the Councils of the UGC-funded institutions concerning the establishment of an inter-institutional redress mechanism. The Administration pointed out that the institutions had conducted the "fit for the purpose" reviews and the reviews were not one-off. It would encourage the institutions to improve communication with stakeholders.

10. Similarly, the UGC was of the view that individual institutions were in

the best position to handle complaints lodged by their staff. The UGC was concerned about the possible effect of the suggestion on institutional autonomy as currently the authority and responsibility for handling complaints laid with the individual institutions. It also doubted the effectiveness of such a mechanism, given that the policies and practices adopted by different institutions varied according to their respective roles, missions and needs. The UGC supported the HUCOM's view to protect institutional autonomy which had been considered and endorsed by the Councils of the institutions. At the same time, UGC considered it important that the established grievances and complaints handling mechanisms in the institutions should be transparent and made known to staff. The UGC considered that greater participation of persons not directly connected with the institutions at the final level of appeal might be useful, and had discussed that informally with the heads of the UGC-funded institutions.

11. Members considered that the Administration and the UGC should assume a more proactive role to ensure fairness, openness and impartiality in handling staff grievances and complaints in the UGC sector. The Administration and UGC could not shirk their responsibility under the shield of institutional autonomy. Some members considered that the UGC's suggestion of increasing the participation of external persons at the final level of appeal was no different in effect from the proposal of establishing an inter-institutional complaints committee provided that the same group of persons was appointed by the institutions.

12. To facilitate further discussion on the proposal for the establishment of an inter-institutional complaints committee, members requested the Legal Service Division of the Secretariat to provide legal advice on the HUCOM's response, in particular on the view that the setting up of an inter-institutional complaints committee was tantamount to usurping the legal powers of the university Councils, infringing on the autonomy of the institutions, and slighting the judgement of the courts. The legal advice of the Division had been issued to members vide LC Paper No. LS88/08-09 on 2 July 2009.

Extension of The Ombudsman's remit to cover the UGC sector

13. Members noted the recommendation in the Report to explore the possibility of extending the remit of The Ombudsman's to cover the UGC sector. Some members considered that such an option should be pursued. Others opined that extending the jurisdiction of The Ombudsman to cover the UGC sector could not resolve the problem of staff grievances and complaints since The Ombudsman could only handle procedural but not academic matters, and increasing external participation and transparency in handling grievances by the institutions should be a better approach.

14. The UGC advised that it had received mixed reactions about the

proposal of extending the jurisdiction of The Ombudsman to cover the UGC-funded institutions during the consultation. The university Councils held a strong view that in line with the spirit of institutional autonomy, institutions should handle internal personnel matters themselves. The university Councils also pointed out that section 8 of The Ombudsman Ordinance (Cap. 397) specifies that The Ombudsman shall not undertake investigation in, among other things, personnel matters such as appointments, dismissals, pay and conditions of service, etc.

15. The Administration shared the UGC's view but agreed to explore the feasibility of extending the jurisdiction of The Ombudsman to cover the UGC sector as requested by members.

Relevant papers

16. A list of the relevant papers on the Legislative Council website is in **Appendix III**.

Council Business Division 2
Legislative Council Secretariat
2 July 2009

**Summary of the Existing Grievances and Complaints Mechanisms of the
University Grants Committee-funded Institutions**

<u>Institution</u>	<u>Present Position</u>
City University of Hong Kong (CityU)	<ul style="list-style-type: none">• The University has established appeal procedures for handling grievances and complaints in relation to staffing matters, which are applicable to staff members who feel aggrieved by personnel decisions affecting them. The University's Regulations Governing Staff Discipline deal with grievances/complaints other than those on personnel matters.• Staff members are encouraged to consult the Head of Department or seek advice from the Human Resources Office first to consider whether the issue can be resolved without invoking the formal process.• Staff members who feel aggrieved by personnel decision may submit an appeal in writing to the President. The President will decide whether to appoint an Appeal Authority to consider the appeal. The Appeal Authority shall determine whether to form an Appeal Committee to assist and advise the Appeal Authority in reviewing the appeal. The decision of the Appeal Authority will be final.• Other grievances or complaints shall be made in writing and lodged with the President, Deputy President, Director of Human Resources or Head. Mediation will be conducted subject to consent of the complainant and the respondent. An investigator or the Head will conduct investigation if mediation is not forthcoming or fails, and will make recommendation to the President whether disciplinary proceedings are to be pursued. The President's decision will be final.

<u>Institution</u>	<u>Present Position</u>
	<ul style="list-style-type: none"> • The appeal and grievances mechanisms are incorporated in the University's Staffing Procedural Manual which is accessible on the University's intranet. The Regulations Governing Staff Discipline form part of the University's employment contract. They can also be accessible on the University's intranet. • The Appeal Procedures for staffing matters were last revised in September 2003. The Regulations Governing Staff Discipline were last revised in July 2007.
Hong Kong Baptist University (HKBU)	<ul style="list-style-type: none"> • The University's Grievance Procedures deal with all work-related grievances/complaints. Specific guidelines and procedures have also been laid down to deal with various types of grievances/complaints. • Staff members are encouraged to raise and discuss any work-related concern/grievance/complaint with their immediate supervisors in the first instance, or with a senior level if the immediate supervisor is involved. • Should informal resolution fail, or if a staff member so wishes, he/she may write to the appropriate authority (Vice-President or the President & Vice-Chancellor, as appropriate in accordance with the established procedures) to initiate the formal procedures to handle his/her grievance/complaint. Work-related grievances/complaints will be handled by a Conflict Resolution Committee. The President/Vice-Chancellor or the Vice-President may appoint a relevant Panel, in accordance with the respective guidelines and procedures, to attend to the respective grievance/complaint. • Any staff member who is not satisfied with the outcome of enquiry by the

<u>Institution</u>	<u>Present Position</u>
	<p>Committee on Conflict Resolution may write to the President & Vice-Chancellor who may refer the matter to be considered by an Appeal Committee, of which the decision will be final. For decisions of relevant Panel, the staff member can write to a higher level authority for appeal and the final decision shall rest with that authority.</p> <ul style="list-style-type: none"> • Procedures are made known to staff members via Personnel Office Circulars, Staff Handbook, and homepage of the Personnel Office. • The procedures were first established in 2002-2003, which will be reviewed in 2007-2008; and thereafter subject to periodic review every three to four years.
Lingnan University (LU)	<ul style="list-style-type: none"> • The University administers appropriate procedures for handling staff grievances and complaints on matters directly associated with the staff members' employment relationship with the University. • In general, under the existing mechanism, a staff member who has a grievance or a concern about the administration of a University policy is encouraged to try to resolve it by working with his Department/Unit Head or the University's Human Resources Office. • Respective Appeals Committees are responsible for handling appeals against termination and non-renewal of contract for academic and non-academic staff. Grievance, other than that relating to termination of employment and non-renewal of contract, which is not resolved informally at the levels of the Head of Department/Unit and/or the Human Resources Office may be presented in writing to the Office of the President, which may appoint an Investigation Committee to

<u>Institution</u>	<u>Present Position</u>
	<p>deal with the case. The Committee shall report its findings and recommendations to the President. The final decision rests with the Council.</p> <ul style="list-style-type: none"> • The functions and procedures of the Appeals Committee are widely publicized in the University through the campus computer network. A Staff Handbook including the relevant procedures is available on the website of the University for easy reference by staff members. • The procedures for handling grievances and complaints, like other staffing policies and procedures, are closely monitored by the University. They are subject to review on a periodic basis in the light of relevant developments. The Council Appeals Committee conducted a review of its procedure in June 2007.
The Chinese University of Hong Kong (CUHK)	<ul style="list-style-type: none"> • The University has established procedures for handling various types of complaints and grievances, e.g. sexual harassment complaints, complaints related to personnel matters, as well as other general complaints or disciplinary matters. • The existing administrative arrangements allow a staff member to resolve grievances or handle complaints in preliminary stages, with the guidance of his/her supervisor(s) and/or the University's Personnel Office. Mediation is also encouraged before formal procedures are triggered. • There are detailed procedures for handling various types of complaints. Generally, the formal procedures consist of: establishing whether there is a <i>prima facie</i> case; forming an Investigation Committee to undertake formal investigation; allowing representation/defense by the complainant; allowing appeal or review as applicable; and approving final decision/action.

<u>Institution</u>	<u>Present Position</u>
	<ul style="list-style-type: none"> • Where a review/appeal procedure is stipulated, the case will be handled by a separate committee / officer with appropriate authority (other than the one handling the complaint in the first place) as stipulated in the relevant procedures. The final decision rests with the committee or officer with duly delegated authorities. • The staff associations of the University are kept informed of, or consulted on, the various currently-in-force procedures. The established procedures are made known to the parties concerned and where appropriate, published in the Staff Handbook and the University website. • The University keeps the procedures on handling complaints or grievances under review from time to time, having regard to changing statutory provisions, the working environment and the development and needs of the University. For example, the procedures for handling sexual harassment complaints were last reviewed in September 2007.
The Hong Kong Institute of Education (HKIEd)	<ul style="list-style-type: none"> • The Institute has established procedures for handling work-related grievances and complaints made by a staff member, or a group of staff members, against any individual or a group of staff members. • Any staff member may refer the complaint to his or her immediate supervisor, or Head of Department/Unit who shall determine the nature of the complaint and attempt to resolve it informally at the departmental level. • If the complaint cannot be resolved at departmental level, the complaint may be

<u>Institution</u>	<u>Present Position</u>
	<p>referred to a relevant Vice-President. The Vice-President shall refer the complaint to the appropriate Department/Unit for further investigation or to the Grievance Committee for further investigation.</p> <ul style="list-style-type: none"> • If the complainant is not satisfied with the decisions made by the relevant decision authority, he/she may lodge an appeal in writing. The Appeal Authority will review the entire case and decide on the appropriate course of action. The decision of the Appeal Authority shall be final. • The Procedures for Resolving Staff Grievances are posted in the Institute's intranet and staff members are able to retrieve the grievances and complaints mechanisms / procedures when needed. • Review of the procedures will be conducted as the Institute deems fit. The Institute is now in the process of reviewing the grievances and complaints mechanisms/procedures.
The Hong Kong Polytechnic University (PolyU)	<ul style="list-style-type: none"> • The University has established procedures for handling grievances and complaints which have proven to have worked well over the years. In order to further refine these procedures and consequent upon the Report of the Governance and Management Review Committee appointed by the University Council, the University Management appointed a working group to conduct a comprehensive review of all existing regulations governing appeals and grievances by staff in PolyU. The PolyU Council approved in June 2007 a new Policy on handling staff grievances and appeals as proposed by the University Management. A set of new Procedures for handling grievances and appeals established in accordance with the approved Policy has been implemented since

<u>Institution</u>	<u>Present Position</u>
	<p>March 2008.</p> <ul style="list-style-type: none"> • The new Procedures handle all staff grievances including allegations concerning sexual harassment and violation of the University Code of Ethics, and appeals against decisions on human resources-related issues. • The new Policy puts greater emphasis on facilitating the conciliation of a grievance at an early stage. All parties concerned including staff members, supervisors, Heads of Department and the Senior Management Committee members are expected to make every attempt to resolve a complaint, as informally as possible, to the satisfaction of all parties concerned. • The relevant authority, the Grievance and Appeal Committee, the Review Committee or the Director of Human Resources and the Legal Counsel as appropriate, will investigate the complaint by scrutinising and considering all relevant documents. During the investigation process, the Grievance and Appeal Committee may take any action it deems appropriate or necessary including interviewing the parties concerned or seeking further information/evidence on the case. • The decisions of the Grievance and Appeal Committee, the Review Committee or the Director of Human Resources together with the Legal Counsel (or as the case may be, a small group chaired by a senior staff member and comprising the Director of Human Resources and the Legal Counsel) on complaints under their purview shall be final. • The new Procedures were announced to the University community in January 2008. They are also included in the Staff Handbook which is accessible by staff members any time via the University Portal.

<u>Institution</u>	<u>Present Position</u>
	<ul style="list-style-type: none"> • The University will review the implementation of the new Procedures from time to time.
The Hong Kong University of Science and Technology (HKUST)	<ul style="list-style-type: none"> • The University has established a set of Staff Grievance Procedures for handling employment-related grievances and complaints which do not fall under appeal mechanisms of separate University procedures. • In general, under the existing mechanism, a staff member who has a relevant grievance/complaint is encouraged to try to first resolve it by working with supervisors within the unit(s)/department(s) involved. • Complaints are handled at and escalated to management levels, i.e. from immediate supervisor, Head of Department, Dean/Vice-President and then to President. A Hearing Committee shall be established to resolve the matter in case of need. The Hearing Committee shall provide the President with a written report of its findings. The President will then issue a final decision. If the staff member is not satisfied with the decision of the President made after the conduct of a formal hearing, an appeal may be made to the Chairman of the University Council. The Council Chairman shall, in consultation with the Chairman of the Human Resources Committee, decide on a course of action. The decision of the Council Chairman will be final. • The Staff Grievance Procedures were announced vide an internal circular and are also posted on the University's staff intranet. • The regulations provide that the Staff Grievance Procedures will be kept under

<u>Institution</u>	<u>Present Position</u>
	review by the University.
The University of Hong Kong (HKU)	<ul style="list-style-type: none"> • The University has established procedures for handling staff grievances and complaints of all types. • Complaint should be referred to immediate supervisor/Head of Department/Dean of his/her Faculty, who shall attempt to clarify the nature of the complaint, and to resolve it. • A complaint that is not resolved may be referred to a Pro-Vice-Chancellor in writing. The case may also be referred to the Chairman of a Grievances Panel. If the Chairman of the Panel does not resolve the complaint, he shall set up a Committee of Enquiry for further investigation. Final decision rests with the Council of the University. • Procedures are set out in the Staff Manual and on the University's website. • There is no fixed timetable for review on the procedures. On completion of the investigation of a case, the Grievances Panel normally reviews the procedures in the light of its experience in the case. The procedures were revamped in 2004, and the current regulations and procedures were introduced in November 2004. The mechanism was examined in connection with a recent investigation held a few months ago, and no change was deemed necessary.

Source : Extracted from Annex B to LC Paper No. CB(2)1655/07-08(01) provided by the University Grants Committee Secretariat in April 2008.

HUCOM response to the motion of the LegCo Panel on Education urging the UGC-funded institutions to establish an elected independent inter-institutional complaints committee

- 1 Review and appeal mechanisms are already in place in all eight member universities of HUCOM for handling staff and student grievances and complaints. These mechanisms involve elaborate procedures conferring on the parties concerned substantial rights and opportunities to be heard, to defend and to appeal. Whilst such mechanisms can always be improved in the light of changing environments and the changing expectations of staff and students, the principles of openness, fairness and justice have been and will continue to be upheld. There are also proper channels for staff and students to monitor and question the policies and operations of their universities.
- 2 Considering the complexities of university operation and management and the wide range of institutional differences that exist across the UGC-funded sector, it will be extremely difficult if not impossible for such an inter-institutional complaints committee to function effectively and achieve its intended objective. We are of the view that complaints and appeals from staff and students can be more effectively and expeditiously handled by members of the same institution, who have a better understanding of the mission, tradition, and culture of their own university. We fail to see how an inter-institutional complaints committee would improve our mechanisms, except to prolong the processes and time in settling any disputes or problems.
- 3 All UGC-funded universities enjoy institutional autonomy and their Councils are vested with statutory powers to deal with appeals. Any party who still feels 'aggrieved' after the Councils have ruled can lodge further complaints/appeals to the judicial bodies. It is difficult to conceive how an inter-institutional complaints committee can super-impose its rulings on these bodies. It will be tantamount to usurping the legal powers of the university councils, infringing on the autonomy of the institutions, and slighting the judgements of the courts.
- 4 Whilst not all grievances and complaints are directly related to employer/employee relations, the solution to many disputes essentially depends on the readiness of both parties to accept or enforce the decisions/agreements reached. It is questionable whether the mediation or decision from such an inter-institutional complaints committee will carry enough weight to be binding on the employer or the employee.
- 5 An inter-institutional complaints committee would therefore be an extraneous channel for appeal. It can replace neither the existing appeal mechanisms in the universities nor the judicial processes. It is highly unlikely that its decisions would be respected or readily executed by the parties concerned. Given the above concerns, HUCOM cannot support the proposal to establish such a committee.

**Relevant papers on
Grievances and complaints mechanisms of the University Grants
Committee-funded institutions**

Meeting	Date of meeting	Paper
Panel on Education	17.5.1999 (Item IV)	Minutes Agenda
Panel on Education	27.9.1999	Minutes CB(2)2875/98-99(01) CB(2)2895/98-99(01) CB(2)2895/98-99(02)
Panel on Education	17.4.2000 (Item VIII)	Minutes Agenda
Panel on Education	18.3.2002 (Item IV)	Minutes Agenda
Panel on Education	26.3.2002 (Item I)	Minutes
Panel on Education	2.4.2002 (Item I)	Minutes Agenda
Panel on Education	7.5.2002 (Item I)	Minutes
Panel on Education	2.12.2002 (Item I)	Minutes
Panel on Education	17.2.2003 (Item IV)	Minutes Agenda
Panel on Education	3.3.2003 (Item II)	Minutes Agenda
Finance Committee	11.4.2003	Minutes Agenda
Panel on Education	21.6.2004 (Item IV)	Minutes Agenda
Panel on Education	5.7.2004 (Item I)	Minutes Agenda

Meeting	Date of meeting	Paper
Panel on Education	11.1.2005 (Item I)	Minutes Agenda
Panel on Education	26.1.2006 (Item III)	Minutes Agenda
Panel on Education	14.5.2007 (Item V)	Minutes Agenda
Panel on Education	9.7.2007 (Item III)	CB(2)2071/06-07(06) CB(2)2357/06-07(04) CB(2)2357/06-07(05)
Panel on Education	17.7.2008 (Item II)	Minutes Agenda
Panel on Education	9.2.2009 (Item VI)	Minutes Agenda

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