

# 立法會 *Legislative Council*

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## **Panel on Welfare Services**

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 11 January 2016**

#### **Best Practice Manual for non-governmental organizations receiving Lump Sum Grant subvention and salary adjustment arrangement for their staff**

#### **Purpose**

This paper gives a brief account of Members' past discussion at the Council and relevant committees on the Best Practice Manual ("BPM") for non-governmental organizations ("NGOs") receiving Lump Sum Grant ("LSG") subvention and salary adjustment arrangement for their staff .

#### **Background**

2. The Administration appointed the Lump Sum Grant Independent Review Committee ("LSGIRC") in January 2008 to assess the overall effectiveness of the LSG subvention system ("LSGSS") and identify areas and scope for improvement. In the Review Report on LSGSS submitted to the Administration in December 2008, LSGIRC put forward a total of 36 recommendations. One of the recommendations was that the welfare sector should develop BPM for NGOs on various management issues, including human resource management, financial management, corporate governance and accountability. LSGIRC also suggested that the Lump Sum Grant Steering Committee ("LSGSC") should work with the welfare sector in drawing up BPM. According to LSGIRC, the welfare sector might consider setting out in BPM two levels of guidelines. Level One guidelines are those that NGOs are expected to follow unless there are strong justifications not to do so; Level Two guidelines are those that NGOs are encouraged to adopt.

3. The Social Welfare Department ("SWD") appointed the Hong Kong Polytechnic University to conduct a consultancy study on the production of BPM. A Project Steering Committee<sup>1</sup> ("PSC") was set up under LSGSC to oversee the consultancy study and monitor the progress. PSC had come up with a BPM framework with a total of 18 items. The Administration collected views from stakeholders including NGO management and staff unions on the preliminary framework of BPM from December 2012 to August 2013. After consolidating views from the sector, the preliminary framework of BPM was modified and submitted to LSGSC for discussion. LSGSC reached consensus on 14 out of the 18 items. Of the 14 consensus items, seven were agreed at Level One and the other seven at Level Two. Details of these 14 items are set out in **Appendix I**. The remaining four items without consensus are all under human resource management ("the remaining four items"). Details of these four items are set out below –

- (a) staff remuneration: to develop and implement a fair pay policy with due recognition of working experience and good performance;
- (b) pay policy: to provide salary structure with starting point to staff and a communication channel to collect views on the pay policy;
- (c) administration of transfer and termination with regard to time-defined contracts: to set out policy on the transfer of post, renewal and termination of time-defined employment contracts and recognition of work experience to define salary and fringe benefits while drawing up employment contracts; and
- (d) decision making with regard to time-defined contracts: to make decision on time-defined contracts according to the rules and procedures known to existing and prospective staff.

4. A Working Group comprising representatives from NGO management, staff side, service users and independent members was set up under LSGSC

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<sup>1</sup> Chaired by the Assistant Director (Subventions) of SWD, PSC comprises non-official LSGSC members who are representatives from four different groups, namely the NGO management, staff union representatives, service users and independent members, in addition to SWD representatives.

to flesh out the implementation details of the 14 consensus items. The draft BPM and the implementation plan as recommended by the Working Group was endorsed by LSGSC in April 2014. BPM was formally launched on 1 July 2014.

## **Members' deliberations at the Council and relevant committees**

### Corporate governance of NGOs

5. Given that BPM was the primary initiative put forward by LSGIRC to improve the corporate governance and human resource policies of NGOs, most Members considered that BPM should be binding on NGOs to ensure its effectiveness and compliance by NGOs. The Administration advised that during the first three years of implementation of BPM, NGOs must review their policies to ensure that they complied with the requirements in BPM. Many NGOs were working hard to enhance the projection and management of LSG and provident fund reserves as well as the transparency of information. They were also striving to enhance staff remuneration packages and the employers' contribution rate of provident fund. In addition, some NGO governing boards were reviewing their roles, membership and communication channels, with a view to enhancing their corporate governance and accountability.

6. In reply to Members' concern about the handling of NGOs' non-compliance with BPM, the Administration advised that NGOs were required to submit self-assessment checklists to SWD by end of October on an annual basis to report the implementation progress of BPM. The first self-assessment checklists should be submitted to SWD by the end of October 2015. If an NGO could not meet the Level One requirements, SWD would examine the circumstances and consider measures to enable the NGO concerned to meet the requirements. If the NGO concerned persistently failed to comply with BPM requirements, SWD would submit the case to LSGSC for discussion and follow up. The Administration would conduct sharing sessions for NGOs to share their experience and practices on the implementation of BPM. The Administration would continue to proactively maintain communication and interaction with the sector, and carefully follow up on the implementation of BPM.

### Two-level guidelines in BPM

7. Some Members pointed out that the welfare sector was very

concerned about the excess reserves kept by subvented NGOs as it had adversely affected the remuneration of staff and service delivery. Notwithstanding this concern, the guideline in respect of the optimal level of reserve was placed under Level Two in BPM. They took the view that both the Level One and Level Two guidelines were fundamental principles for governance of NGOs and should be merged into one set of guidelines in order to achieve a binding effect on NGOs to use public money properly.

8. According to the Administration, in the light of their diversities in developments, some NGOs might encounter difficulties in complying with some of the BPM guidelines. In view of such difficulties, these guidelines were placed under Level Two. For example, as the structure of governing boards of NGOs might vary according to the different mix of services provided by NGOs, some of the guidelines under corporate governance were placed under Level Two.

9. At its meeting on 12 May 2014, the Panel on Welfare Services passed a motion requesting that both the Level One and Level Two guidelines in BPM should be mandatorily followed and subject to public scrutiny. Representatives of staff and service users should also be included in the boards of directors of NGOs so as to enhance communication and governance.

10. The Administration advised that there was a BPM guideline which requested NGOs to establish effective channels of communication between the governing boards, the management, staff and service users, so as to ensure that feedback from staff side and service users on LSG-related matters could be received. According to the Administration, BPM could only be implemented successfully with the consensus and co-operation of the management and staff side of NGOs as well as service users. It was not feasible to enforce all BPM guidelines (particularly, the Level Two guidelines) in a mandatory manner when NGOs still had practical difficulties in implementing some of the guidelines.

#### Guidelines on salary adjustment arrangement in BPM

11. Some Members were concerned that some NGOs had not made corresponding salary adjustments for their staff according to Civil Service Pay Adjustment ("CSPA") after receiving the additional subvention on salary adjustment ("additional subvention"). They urged the Administration to consider requiring NGOs to use additional subvention arising from CSPA exclusively for salary adjustment for staff.

12. The Administration explained that as the salary structures of NGO staff had been delinked from the civil service, NGOs were not required to model on the civil service in devising the employment terms. Nonetheless, the additional subvention was meant for pay adjustment for subvented staff. NGOs were reminded to use the additional subvention solely on staff in subvented services, and NGOs had responded positively. The Administration would monitor through subvention inspection on whether the subvention was spent on recognized activities under the ambit of the Funding and Service Agreements.

13. Some Members expressed concern that staff who had departed some NGOs before the payment date of salary adjustment ("departed staff") were not provided with backpay in accordance with the 2014-2015 CSPA. These Members enquired whether both serving and departed staff of NGOs receiving LSG subvention were eligible for back payment arising from CSPA.

14. The Administration advised that salary adjustment was one of the Level One guidelines under BPM. According to BPM, in using the additional subvention, NGOs were required to either adjust the salary by the same respective percentage of CSPA or use the full amount of the additional subvention for staff. All NGOs were able to satisfy this requirement. The issue of whether departed staff should be provided with backpay was raised when the guidelines on salary adjustment were drawn up for inclusion in BPM. A conclusion had been reached at that time that eligibility of departed staff for backpay would not be addressed in BPM.

15. Noting that some NGOs had neglected the BPM requirement for using the additional subvention, some Members opined that there was no monitoring of the operation of LSGSS and questioned about the effectiveness of BPM. According to the Administration, under LSGSS, NGOs should have flexibility in utilizing the subvention and autonomy in determining the structure and adjustment of salary. The Administration had reminded NGOs that their staff should be duly informed of the salary adjustment arrangement and reasons for the adjustment arrangement. According to the information collected from some 140 subvented NGOs by SWD, many of them had indicated that they were reviewing the salary structure and the arrangement for use of the additional subvention.

16. As NGOs were only encouraged, but not required, to provide backpay for their serving staff, some Members were gravely concerned that NGOs

were given too much autonomy in the disbursement of backpay. They worried that some NGOs might not provide backpay even for their serving staff. Pointing out that civil servants who left the civil service after April were entitled to backdated salary adjustment, they urged the Administration to impose the same requirement on NGOs.

17. The Administration advised that in utilizing the additional subvention, NGOs had different considerations, e.g. human resource management, salary adjustment policies set out in the terms and conditions of the employment agreements/contracts/staff manual, etc. It was expressly stated in some employment agreements/contracts that backpay would not be provided for staff who had departed the organizations and staff of these NGOs were well aware of such arrangement. The Administration, however, agreed that the existing salary adjustment arrangement should be enhanced.

18. Some Members were of the view that as annual CSPA was made having regard to changes in cost of living, salary adjustment should therefore be provided for both serving and departed staff of NGOs. Factors such as staff performance, the spirit of employment agreements/contracts, etc. were therefore irrelevant in considering the provision of backpay. They called on the Administration to impose conditions on service contracts with NGOs to ensure that the back payment problem would be rectified. Some other Members, however, did not consider non-provision of backpay for departed staff a major cause of concern so long as NGOs acted according to the terms and conditions of the employment agreements/contracts.

#### Utilization of additional subventions for bonus payments

19. Noting that some NGOs had spent the additional subventions on paying bonus of a large amount to serving staff, some Members were gravely concerned that these NGOs would not keep up their service quality. They worried that in order to save up a larger sum for bonus payments, these NGOs might recruit fewer employees and reduce staff remuneration, resulting in deterioration of their service quality. Provision of bonus payment for staff of NGOs should therefore be forbidden. Some other Members, however, took the view that using the additional subvention for incentive payments could motivate good performers to do even better and did not see any problem with the arrangement.

20. The Administration advised that it noted the social welfare sector's concerns about incentive payments. A mechanism was in place for requiring NGOs to have strong justifications for major decisions,

e.g. resource deployment. NGOs were also required to establish a mechanism for seeking the support of their governing boards or management committees of these decisions and put the relevant discussions on record. While NGOs were required to use the LSG reserve for the intended services, they could also use the reserve for enhancing service quality, staff training and service development.

21. Some Members were of the view that the Administration should consider segregating the additional subvention from LSG and making clear to NGOs that the additional subvention was not part of LSG. The additional subvention should not be provided for NGOs at the commencement of the service contracts but in the second year of the contract period. If the additional subvention had not been exhausted, NGOs had to return the balance to the Administration. The Administration, however, advised that the proposed arrangement ran against the spirit of LSG.

#### Follow-up on the remaining four items

22. Given that the remaining four items were the major concerns of NGO staff, some Members urged the Administration to include the four items in BPM. The Administration advised that while the management of NGOs considered that it was a good start to place them under Level Two, the staff side insisted on placing them under Level One. The Working Group under LSGSC would continue to discuss the four items with a view to incorporating them into BPM once consensus could be reached.

#### **Relevant papers**

23. A list of the relevant papers on the Legislative Council website is in **Appendix II**.

## Details of the 14 consensus BPM items

BPM Items (14 items endorsed)	Level One	Level Two
<b>A. Financial Management</b>		
<i>Management of LSG Reserve</i>		
<b>1. Maximised use of LSG reserve</b> <u>Principles</u> (i) NGOs are required to ensure that the reserve is fairly, reasonably, properly and effectively used for the intended purposes as stipulated by SWD. (ii) NGOs should maximise the use of the reserve in order to maintain or strengthen service delivery and implement strategic development plans, including building up a staff team with high quality.	✓	
<b>2. Optimal level of LSG reserve</b> <u>Principles</u> (i) NGOs should, having regard to their sizes and actual needs, develop planning and evaluation mechanisms on their own to determine the appropriate level of reserve, and monitor it effectively through appropriate years of projection. (ii) NGOs should be cautious but not be too conservative or aggressive when estimating the required amount of accumulated LSG reserve.		✓
<b>3. Status of LSG reserve</b> <u>Principles</u> NGOs are required to, through convenient,	✓	

<p align="center"><b>BPM Items</b> <b>(14 items endorsed)</b></p>	<p align="center"><b>Level One</b></p>	<p align="center"><b>Level Two</b></p>
<p>effective and timely channels, disseminate information about the LSG reserve in a reader-friendly format to staff members and the public. Such information should include briefly a plan on how the reserve will be used in the future.</p>		
<p align="center"><i>Use of PF Reserve for Non-snapshot staff</i></p>		
<p><b>4. Usage of PF reserve</b> <u>Principles</u> NGOs are required to maximise the use of PF reserve for non-snapshot staff for the designated purpose so as to enhance staff morale and their sense of belonging to the organisations.</p>	<p align="center">✓</p>	
<p><b>5. Status of PF reserve</b> <u>Principles</u> NGOs are required to use convenient, effective and timely channels to disseminate information about the PF reserve to staff members, including a brief plan on how the PF reserve will be used in the future.</p>	<p align="center">✓</p>	
<p><b>B. Human Resource Management</b></p>		
<p align="center"><i>Salary Package Policy and Administration</i></p>		
<p><b>6. Salary adjustment</b> <u>Principles</u> NGOs are required to spend the subvention for salary adjustment for the designated purpose by making timely adjustment to the salary for all staff members subvented by LSG.</p>	<p align="center">✓</p>	

<p align="center"><b>BPM Items</b> <b>(14 items endorsed)</b></p>	<p align="center"><b>Level One</b></p>	<p align="center"><b>Level Two</b></p>
<p><b>C. Corporate Governance and Accountability</b></p>		
<p><i>Management Strategies</i></p>		
<p><b>7. Communication</b> <u>Principles</u> NGOs should establish effective channels of communication amongst the governing board, the management, staff and service users, to ensure that feedback from staff and service users on LSG-related matters can be received.</p>		<p align="center">✓</p>
<p><b>8. Term of office of the Governing Board</b> <u>Principles</u> NGOs should establish a succession mechanism for their governing board members, where there are no such restrictions in relevant legislation or constitution, to ensure the sustainable development of the board.</p>		<p align="center">✓</p>
<p><b>9. Roles of Governing Board</b> <u>Principles</u> Regarding LSG-related matters, NGOs should enhance the knowledge of their board members on the NGOs and their SWD-subvented services through various effective and appropriate arrangements so as to strengthen their leading roles.</p>		<p align="center">✓</p>
<p><i>Responsibilities of the Governing Board and NGOs' Decision Making on Important Management Issues of SWD-subvented Services under LSGSS</i></p>		
<p><b>10. Delineation of roles and responsibilities of governing board</b> <u>Principles</u></p>		<p align="center">✓</p>

<p align="center"><b>BPM Items</b> <b>(14 items endorsed)</b></p>	<p align="center"><b>Level One</b></p>	<p align="center"><b>Level Two</b></p>
<p>(i) The roles, responsibilities and membership of the governing board and the relevant committees should be clearly defined and put on record.</p> <p>(ii) NGOs should properly delineate the terms of reference between governing board members and senior management.</p>		
<p><b>11. NGOs’ Decision Making on Important Management Issues of SWD-subvented Services</b></p> <p><u>Principles</u></p> <p>(i) NGOs should consult their staff and service users on important issues that affect them.</p> <p>(ii) According to paragraph 5.6 of the LSG Manual, generally speaking, the NGO’s governing board should consult the staff first before there are any changes that may affect them, including -</p> <p>(a) changing the existing establishment structure;</p> <p>(b) changing the remuneration package or the working conditions; and</p> <p>(c) re-engineering and rationalising the service delivery modes, and the corresponding manpower redeployment that may become necessary.</p> <p>(iii) According to paragraph 5.8 of the LSG Manual, NGOs should consider involving service users as far as practicable in service re-engineering, changing the existing service delivery mode, and monitoring compliance with service performance standards. Service users’ feedback may be obtained through a variety of means such as service user liaison groups, discussions or opinion surveys.</p>		<p align="center">✓</p>

<p align="center"><b>BPM Items</b> <b>(14 items endorsed)</b></p>	<p align="center"><b>Level One</b></p>	<p align="center"><b>Level Two</b></p>
<p><b>12. NGO’s Decisions Made on Important Management Issues of SWD-subvented Services</b></p> <p><u>Principles</u> NGOs should disseminate to their staff and service users in a timely manner the decisions made on important management issues related to LSGSS.</p>		<p align="center">✓</p>
<p align="center"><i>Roles and Duties of NGOs in Complaints Handling</i></p>		
<p><b>13. Composition, Duties and Responsibilities on Handling Complaints at Different Levels</b></p> <p><u>Principles</u></p> <ul style="list-style-type: none"> <li>(i) For LSG-related complaints, NGOs are required to develop a sound mechanism and policy to clearly spell out the personnel in handling complaints at different levels and their respective responsibilities and duties at each level.</li> <li>(ii) NGOs are required to ensure that all levels of staff involved in complaints handling are free from any conflict of interest.</li> <li>(iii) NGOs are required to ensure that both the complainant and the parties being complained against are aware that the complaint concerned is being handled in accordance with the procedures set out by the NGOs/the LSG Independent Complaints Handling Committee (IHC).</li> </ul>	<p align="center">✓</p>	
<p><b>14. NGOs’ Policies and Procedures on Complaints Handling</b></p> <p><u>Principles</u></p> <ul style="list-style-type: none"> <li>(i) For LSG-related complaints, NGOs are</li> </ul>	<p align="center">✓</p>	

<p align="center"><b>BPM Items</b> <b>(14 items endorsed)</b></p>	<p align="center"><b>Level One</b></p>	<p align="center"><b>Level Two</b></p>
<p>required to strictly follow established policies and procedures, as well as the personnel composition to handle the complaints in a fair manner, with appropriate monitoring and appeal/review mechanisms.</p> <p>(ii) NGOs are required to comply with the ICHC's complaints handling procedures and requirements in handling the complaints concerned.</p>		
<p align="right"><b>Total</b></p>	<p align="center"><b>7</b></p>	<p align="center"><b>7</b></p>

Source: Annex II to the Administration's paper (LC Paper No. CB(2)1430/13-14(04)) for the meeting of the Panel on Welfare Services on 12 May 2014.

## Appendix II

### Best Practice Manual for non-governmental organizations receiving Lump Sum Grant subvention and salary adjustment arrangement for their staff

Committee	Date of meeting	Paper
Panel on Welfare Services	17 March 2008 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	16 May 2008 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	19 December 2008 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	12 January 2009 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	17 January 2009 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	9 February 2009 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	14 May 2010 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	11 June 2012 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	12 May 2014 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	11 May 2015 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	Finance Committee	2 April 2015

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Legislative Council	4 June 2015	<a href="#">Official Record of Proceedings Pages 106 to 167</a>

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