

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Legal Assistance for Frontline Enforcement Staff of the Food and Environmental Hygiene Department

PURPOSE

This paper provides information on the legal assistance scheme previously run by the Food and Environmental Hygiene Department (“FEHD”), known as the Private Solicitors Scheme (“PSS”).

BACKGROUND

PSS

2. The PSS was first implemented in the two municipal services departments (i.e. the then Urban Services Department and the then Regional Services Department) in the late 1980s with the approval of the then Municipal Councils for the then General Duties Teams responsible for hawker control duties. FEHD continued to operate the PSS upon its establishment in 2000. Legal assistance under the PSS was provided to eligible departmental staff when they were involved in alleged criminal offences arising from their discharge of enforcement duties. Eligible staff included members of the Hawker Control Officer Grade when they performed law enforcement duties against illegal hawking under the Public Health and Municipal Services Ordinance (Cap. 132), and since 2003 members of the Health Inspector Grade and Foreman Grade who performed law enforcement duties against spitting, littering, dog fouling and unauthorised display of bills or posters under the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570), the Public Health and Municipal Services Ordinance and the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

3. Under the PSS, FEHD appointed a private solicitor’s firm to provide legal services to eligible staff when they were involved in Police investigation (including giving statements to the Police) relating to

allegations made against them arising from their discharge of enforcement duties. The staff would also be provided with legal representation in court should they be subsequently charged with criminal offences (other than corruption-related offences). During the six-year period from 2005 to 2010, a total of 20 officers (all Hawker Control Officer Grade members) involved in 11 cases were provided with legal assistance under the PSS. The total expenditure incurred was around \$117,000.

Service-wide Legal Assistance Scheme

4. All civil servants (including those in FEHD who were covered by the PSS) are eligible to apply for legal assistance under the service-wide legal assistance scheme operated by the Civil Service Bureau (“CSB”). Under this scheme, civil servants may be provided with legal assistance when they are involved in criminal proceedings, civil proceedings or death inquests, etc. arising from the performance of their official duties. With regard to criminal proceedings, legal assistance may be provided to a civil servant charged with a criminal offence if the officer was acting in the course of his duty when the alleged offence was committed and the offence is not corruption-related. Upon receipt and approval of an application for legal assistance from a civil servant, CSB will request the Legal Aid Department to appoint a suitable outside solicitor/counsel to represent the civil servant in the court proceedings.

5. The service-wide legal assistance scheme has been operating smoothly. Applications are processed expeditiously, generally within the performance target of nine working days upon receipt of all the necessary information. In the six-year period from 2005 to 2010, there were about 300 applications under the service-wide legal assistance scheme from civil servants who were involved in criminal proceedings, civil proceedings or death inquests, etc. arising from the performance of their official duties. Over 90% of the applications were approved and an expenditure of some \$13 million was incurred. Most of the rejected cases were outside the ambit of the scheme.

CESSATION OF PSS

6. The operation of the PSS was kept under regular review by CSB from time to time. Having regard to the significant (albeit not complete) overlap in the coverage of the PSS and the service-wide legal assistance scheme and the smooth operation of the latter, we concluded that the PSS should be discontinued with effect from 1 January 2011.

Staff Concerns

7. Relevant FEHD staff associations have expressed concern that frontline staff, in particular members of the Hawker Control Officer Grade who perform hawker control duties, are prone to direct conflict, and sometimes bodily contacts, with alleged offenders in the discharge of enforcement duties. They consider there is a continued need for the PSS as the service-wide legal assistance scheme does not provide legal assistance during the investigation process. Some staff associations have suggested that since the PSS had existed for quite some time, it should continue to operate despite the availability of the service-wide legal assistance scheme. They have also maintained that the continued provision of the PSS was one of the conditions accepted by the Administration when the Foreman Grade was regraded to the Hawker Control Officer Grade in 1994 and that the same undertaking was given when FEHD was established in 2000.

The Administration's Views

8. We appreciate the challenges faced by the concerned staff in FEHD when discharging their law enforcement duties. We note there are other civilian grades officers who are required to perform law enforcement duties. For example, staff in the Tobacco Control Office of the Department of Health perform enforcement duties against illegal smoking under the relevant legislation; staff in the Leisure and Cultural Services Department and the Housing Department perform various enforcement duties against illegal smoking, littering, dog fouling, spitting, etc. in facilities under their respective Department's purview under the relevant legislation; and traffic wardens of the Police Force perform enforcement duties against illegal parking, etc. Disciplined services grades staff have to perform various enforcement duties under the relevant legislation. All of them may also, in the course of discharging their duties, be involved in conflict and bodily contacts with alleged offenders. They may also be required to assist the Police in any subsequent investigation. Over the years, they have done so in the absence of any legal assistance at the pre-charge stage for during this stage, what is important is for the concerned civil servants to state all the facts relevant to the investigation process.

9. Separately, FEHD management has confirmed that it could find no record of any undertaking given to staff on the continued provision of the PSS in the context of the 1994 regrading exercise and when the Department was set up in 2000.

Preparation for Cessation of PSS

10. Before the cessation of the PSS came into effect, FEHD management has –

- (a) discussed with and informed the concerned staff unions of the forthcoming cessation of the PSS;
- (b) held a total of 67 training/briefing sessions in November and December 2010 to familiarise staff of the affected grades with the provisions and contents of the service-wide legal assistance scheme and other related information such as how to make proper entries in staff notebooks about enforcement actions taken and how to give statements to the Police if required;
- (c) distributed training/briefing materials on the service-wide legal assistance scheme and its application procedures, etc. to concerned staff through the departmental intranet, email, or paper copies. Each district/section has also been provided with a number of VCDs on the subject for distribution/viewing of the staff concerned; and
- (d) incorporated information on the service-wide legal assistance scheme into the induction training programmes for newly appointed staff and refresher training courses for serving staff.

11. The Department will continue with its established practice of organising induction and refresher training courses for newly recruited and serving staff responsible for carrying out law enforcement duties on how to discharge their responsibilities and how to deal with possible confrontational situations when discharging their duties.

ADVICE SOUGHT

12. Members are invited to note the information in this paper.

Civil Service Bureau
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