



Summary of events of an employment matter involving Katrina Bach, Chief Executive of the Department of Building and Housing

Introduction

- 1 This summary provides background information on the raising of a personal grievance by a staff member of the Department of Building and Housing (the Department) against her employer Katrina Bach, the Chief Executive of the Department (the Chief Executive), and the subsequent disciplinary process initiated by the State Services Commissioner with respect to the actions of the Chief Executive.
- 2 It is intended to provide sufficient information around what occurred, the process followed and the outcome. The purpose is to satisfy the public interest in this matter while at the same time preserving the privacy of the parties and others involved in the process.
- 3 The State Services Commissioner (the Commissioner) believes that the public has a legitimate interest in expecting allegations against senior officials in the Public Service to be properly investigated and where misconduct is found to have occurred, that appropriate action is taken and seen to be taken.

Background

- 4 On or about 23 May 2011 a staff member raised a personal grievance about the way in which the Chief Executive had treated her. The staff member alleged two specific incidents as well as a third more general allegation. The first incident was said to have occurred on 29 March 2011 where the staff member said the Chief Executive spoke harshly and swore at her. The second incident was said to have occurred on 27 April 2011 where the Chief Executive put her hands on the staff member's head and said "what is going on in that head of yours ...". The more general allegation related to negative language and comments directed towards the staff member by the Chief Executive.

Process

- 5 The personal grievance was first raised with the State Services Commission, which advised that the personal grievance should be raised directly with the Chief Executive of the Department, as the employer.
- 6 The reason for this is that, under the State Sector Act 1988, a chief executive of a Public Service department is the employer of all those persons employed in the department and therefore an employee must raise a personal grievance with the chief executive who must deal with the matter independently of any other person.
- 7 The Commissioner however made it clear that he expected the Chief Executive to put into place an employment investigation process that was fair and independent.
- 8 The Chief Executive put into place an employment investigation process. An independent lawyer, Stephanie Dyrberg, was instructed to undertake the investigation. The Chief Executive delegated her decision-making role in respect of the outcome of the personal grievance to Ms Karen Sewell, then Acting Chief Executive, Ministry of Education, and removed herself from the decision-making process.

- 9 Ms Dyrberg commenced her investigation in June 2011 and provided her findings in a report dated 19 October 2011. The report was provided to Ms Sewell as the decision-maker. A copy of her report was provided to the Commissioner on 21 October 2011.
- 10 Ms Dyrberg found that the two specific incidents had occurred but found that the general allegation was not made out.
- 11 Ms Sewell then used the report, together with her own findings, to reach her own views on the personal grievance and how it should be resolved. On 7 November 2011 Ms Sewell provided her written decision on the personal grievance to the Department and to the Commissioner. Ms Sewell accepted the independent report's overall findings that the two specific incidents occurred, but did not regard the first incident as being of a particularly serious nature. Ms Sewell also accepted the independent report's findings that the general allegation was not made out. She found that the Chief Executive's conduct towards the staff member was not appropriate. Ms Sewell concluded that the behaviour was not intended to cause harm or distress, and therefore was not bullying, but in both incidents amounted to a breach of the Department's Code of Conduct and in one of the incidents amounted to a breach of the Department's Harassment and Discrimination in the Workplace policy. In coming to her decision, Ms Sewell took into account that the Chief Executive intended no such result and was unaware of the staff member's feelings at the time of the incident.
- 12 Ms Sewell noted the failure of the Department's initial internal process which created additional pressure, unknown to the Chief Executive. The Chief Executive was not made aware of the complaint until 28 May 2011.
- 13 Ms Sewell said that it was important that the circumstances at the time were understood and taken into account. She noted the Department and the Chief Executive were under immense pressure and working to tight deadlines in responding to the National Emergency in Christchurch.

Resolution of the Personal Grievance

- 14 Ms Sewell attended mediation with the staff member concerned, as the Department's representative, and reached a settlement with the staff member. That settlement is confidential between the Department and the staff member.
- 15 In approaching this matter, Ms Sewell had legal advice and was guided by the Auditor-General's guidelines for Public sector employment settlements.

Position of the Chief Executive

- 16 Once the personal grievance was settled between the staff member and the Department, the Commissioner was required to consider the Chief Executive's conduct in light of the findings and decide what action he should take as the employer of the Chief Executive.
- 17 The Commissioner's decision to enter into an employment process with the chief executive was based on the findings of the investigation. The findings established after a thorough investigative process that there was an issue that the Commissioner was required to address. The Commissioner did not wish to carry out a parallel investigation given this would duplicate the one already in train, and would be unreasonably onerous on the parties and witnesses alike.
- 18 The Commissioner wrote to the Chief Executive outlining his concerns. He subsequently met with her on a number of occasions and considered the matters put forward by her in relation to the incidents.
- 19 In arriving at his decision, the Commissioner took into account the context, heavy workload and personal circumstances of the Chief Executive, including the impact the

National Emergency had on her. He concluded that the conduct of the Chief Executive in relation to the staff member:

- 19.1 was inappropriate in relation to the incident in which the Chief Executive swore at the staff member and unacceptable in relation to the incident in which the Chief Executive put her hands on the staff member's head; and
 - 19.2 breached the Department's policies and Code of Conduct.
- 20 He also concluded that the Department failed to adequately deal with the matter when it was brought to the attention of relevant staff. As a consequence of this process, the Department has reviewed its policies and practices for handling staff complaints.
- 21 The Commissioner then decided on the following:
- 21.1 He issued the Chief Executive with a warning;
 - 21.2 He will work with the Chief Executive to assure himself of the Department's work in improving its policies and practices for handling staff complaints;
 - 21.3 The Department will work with the Commission and external parties to review its workload pressures and resource requirements;
 - 21.4 He advised the Chief Executive that there would be a monetary consequence for her through the operation of the annual performance management system.

Conclusion

- 22 The Commissioner holds the bar high for the conduct and behaviour of chief executives and expects the highest standards of them. The conduct of the Chief Executive in this matter fell below the standards expected of her.
- 23 The Commissioner, however, is pleased that the Chief Executive acknowledged responsibility for her actions and ensured that the investigation and decision-making processes were independent.