



Office Memorandum

To: All Fund Staff and Employees

April 9, 2004

From: Margaret Kelly

Subject: **Report on Conduct (2000–2003)**

Since the Fund's Ethics Office was established in early 2000, the Fund has dealt with almost 50 misconduct cases. The attached report clarifies the procedures followed in misconduct cases, and provides information to staff on the rules and regulations concerning staff conduct, the number and type of misconduct cases handled, and the number and form of disciplinary measures imposed when allegations of misconduct were substantiated. The Report complements the information contained in the three Annual Reports issued by the Ethics Officer.

In light of the experience gained since the Ethics Office was established in early 2000 and to implement the recommendations contained in the Report of the External Panel on the Fund's Dispute Resolution System approved by management,¹ GAO No. 33, the Code of Conduct, and the Terms of Reference as well as the procedural Guidelines of the Ethics Officer are being revised and will be issued in the first half of 2004. The main changes to be incorporated by these revised rules and regulations include:

- the staff member's right to have a representative (attorney) present at an investigative interview, rather than leaving this determination to the Ethics Officer's discretion, as is currently the case;
- the staff member's right to comment on the Report of Investigation before a decision is taken on whether or not to charge the staff member with misconduct; and
- the modified role of the Ethics Oversight Committee.

Attachment

¹Review of the Fund's Dispute Resolution System, EBAP/02/51, April 17, 2002

Report on Conduct (2000–2003)

Prepared by the Human Resources Department
April 9, 2004

This Report provides information on the rules and regulations concerning staff conduct, on the number and type of misconduct cases involving staff members handled since the Fund's Ethics Office was established in early 2000, and the number and form of disciplinary measures imposed when allegations of misconduct were substantiated. The Report complements the information contained in the three Annual Reports issued by the Ethics Officer.

Rules and regulations

The goals of the International Monetary Fund require that all who work for this institution observe the highest standards of ethical conduct, consistent with the values of integrity, impartiality, and discretion. These standards of conduct are prescribed by Rules N-3 through N-10 of the Rules and Regulations of the Fund, which have been clarified and further developed by certain General Administrative Orders (GAOs) and the Code of Conduct, issued in July 1998. GAO No. 33 sets forth the disciplinary measures that the Fund may impose on staff members who fail to observe the required standard of conduct and prescribes procedures to be followed in connection with the imposition of such measures.

Procedures for investigation, disciplinary authorities, and disciplinary measures in misconduct cases

General overview

Allegations of misconduct are typically brought to the attention of the Managing Director, the relevant Department Head, or the Director of the Human Resources Department (HRD). Before a staff member is charged with misconduct, the facts of the situation need to be established.² For this purpose, the Ethics Officer or a senior staff member is asked to undertake an investigation by management or the Director of HRD. In some cases, the Office of Internal Audit (OIA) or an outside investigator is requested to undertake this investigation. In cases involving GAO No. 34 (clearance of publications and public statements), the Director of the External Relations Department (EXR) or his designee normally undertakes the investigation, in accordance with sections six and eight of the GAO. If an investigation

²If the facts of the cases are undisputed, the Responsible Official may decide that a full investigation by the Ethics Officer or another investigator is not warranted to determine whether or not to charge the staff member with misconduct.

finds sufficient evidence that the staff member has violated Fund rules, the staff member is charged with misconduct. Before a final decision is made on whether the charge is sustained and disciplinary measures are imposed, the staff member is given the opportunity to comment on the report of the investigation. The Managing Director, the Director of HRD, or a Department Head may impose disciplinary measures depending on the grade of the staff member and the nature of the disciplinary measure to be imposed. The procedures for undertaking investigations, the Responsible Official for imposing disciplinary measures, and the type of disciplinary measures imposed are discussed below.

Investigating procedures

When the Managing Director or Director of HRD receive allegations that a staff member's behavior has not been consistent with the Fund rules on staff conduct, the Ethics Officer or another investigator ("investigating officer") is requested to carry out an investigation.

In those instances where matters are brought directly to the attention of the Ethics Officer by parties other than the Managing Director or the Director of HRD, the Ethics Officer undertakes a preliminary investigation. If, on the basis of this preliminary investigation, he concludes that a full investigation is not warranted, he closes the case. If he determines that a full investigation is warranted, he submits a Report of Preliminary Inquiry to the Ethics Oversight Committee (chaired by the Director of HRD) with a recommendation that he be authorized to conduct a full investigation and prepare a Report of Investigation (ROI). The Oversight Committee will determine whether a formal investigation is warranted and the appropriate parameters of such an investigation. In some cases the Oversight Committee may determine that the information contained in the Report of Preliminary Inquiry provides sufficient basis for the responsible official to proceed, in which case the matter is referred directly to management or to the Director of HRD for follow up.³

If a formal investigation is warranted, the investigating officer obtains evidence pertaining to the case, including the information presented by the complainant (staff member or other party who brought the allegations) and the respondent (staff member subject to investigation). The investigating officer also interviews others who may be able to offer information or evidence related to the investigation. In carrying out investigations, the investigating officer has the right to direct access to staff members, contractual employees, and vendor personnel. Staff members under investigation are advised before the interview about the matter being investigated. At the discretion of the investigating officer, they may be accompanied by

³Note that the role and responsibilities of the Oversight Committee will change once the revised Procedural Guidelines on the Conduct of Investigations into Allegations of Misconduct are issued.

someone of their choice, including a lawyer, to interviews with the investigating officer.⁴ All staff, employees, and vendors are expected to cooperate with the investigating officer and to make available all pertinent information. Upon completion of his or her investigation, the investigating officer prepares and submits an ROI to the Director of HRD or, in the case of B-level staff, the Managing Director.⁵ Pending the completion of an investigation and a decision on the matter, the staff member may be relieved of specific duties by the Head of Department or be placed on administrative leave with pay by the Responsible Official in accordance with GAO No. 13.

After receiving an ROI from the Ethics Officer or other investigator, the Responsible Official needs to determine whether to charge the staff member with misconduct. If, on the basis of the report, the Responsible Official concludes that the charge should be dismissed or that no disciplinary action should be taken, he or she notifies the staff member of this conclusion in writing.⁶ However, if the Responsible Official determines that there are material grounds for charging a staff member with misconduct, he or she informs the staff member in writing of the substance of the charge and provides the staff member with a copy of the ROI submitted by the Ethics Officer or other investigating officer. The staff member is given adequate opportunity (usually two weeks) to respond to the charge of misconduct before a final decision is made.

Disciplinary authority

The official authorized to impose disciplinary measures depends on the grade of the staff member and the nature of the disciplinary measure:

⁴Note that it will be entirely up to staff members as to whether to be accompanied by a representative (attorney) to investigative interviews once the revised Procedural Guidelines on the Conduct of Investigations into Allegations of Misconduct are issued.

⁵Note that even though the practice, based on the Ethics Officer Terms of Reference and Procedural Guidelines, is that all cases involving B-level staff are reviewed by the Managing Director, Section 9 of GAO No. 33 only requires that these types of cases be decided by the Managing Director when the disciplinary measures to be imposed include reassignment, demotion, or termination of employment.

⁶Note that staff members will have the right to comment on the ROI before—and not after—a decision is taken on whether or not to charge a Respondent with misconduct, once the revised Procedural Guidelines on the Conduct of Investigations into Allegations of Misconduct are issued.

- **Disciplinary measures may be imposed by the Director of HRD**, when the cases involve A-level staff, **or by the Managing Director**,⁷ when the cases involve B-level staff.
- **Heads of departments** also have the authority to give written warnings and formal written reprimands to the staff members in their department for neglect of, or failure to perform, the duties of employment, including failure to observe regulations regarding the performance of work, insubordination, refusal to obey a reasonable order from a supervisor, and unauthorized absence from duty or tardiness without justifiable cause.⁸

Disciplinary measures

GAO No. 33 sets out the disciplinary measures that may be imposed for misconduct. These range from a written warning to the termination of Fund employment (Box 1).

Box 1. Disciplinary Measures (Section 8 of GAO No. 33)

Disciplinary measures may take one or more of the following forms:

- written warning;
- formal written reprimand;
- reassignment;
- ineligibility for specific salary increases;
- forfeiture of specific benefits or allowances;
- reduction in salary;
- demotion; and
- termination of employment.

The severity of the disciplinary measures imposed should be commensurate with the seriousness of the misconduct. In determining the seriousness of the misconduct and in deciding the disciplinary measure(s) to be imposed, the Responsible Official takes into consideration the nature of the misconduct, and the circumstances in which it occurred. In particular, the Responsible Official considers (i) the extent to which the misconduct adversely reflects upon the integrity, reputation, or interests of the Fund; (ii) the extent to which the misconduct involves intentional actions or negligence; (iii) whether the misconduct involves

⁷The Managing Director may delegate this authority to one of the Deputy Managing Directors.

⁸This Report only includes information on the cases of misconduct referred to the Director of HRD or the Managing Director, and not cases handled directly by department heads.

repeated actions or behavior; and (iv) the prior conduct of the staff member. Employees and vendors are required to cooperate fully with the Ethics Officer or other investigator. Failure to cooperate with the investigator or attempts to interfere with the investigation could be grounds in and of itself for a finding of misconduct and is a relevant consideration in determining the disciplinary measures imposed.

Once the Responsible Official has made a determination as to whether misconduct has occurred and, if so, the seriousness of the misconduct in light of the factors identified above, he or she notifies the staff member in writing of his or her conclusions and of the disciplinary measure(s) to be imposed.

To preserve confidentiality in misconduct cases, all documentation related to misconduct cases is kept in a centralized confidential file in the office of the Director of HRD. The Responsible Official provides information regarding each case only to those staff members who have a business need to be informed. These staff members are required to treat such information in a confidential manner.

Misconduct cases (2000–2003)⁹

Management and the Director of HRD have reviewed a total of 46 misconduct cases between January 2000 and December 2003, 38 involving A-level staff and 8 involving B-level staff. A breakdown of the total number of cases by type is provided in Table 1.

Table 1. Breakdown of Misconduct Cases by Type (2000–2003)

| Type of Misconduct | Number of Cases |
|---|-----------------|
| Discrimination and harassment, including sexual harassment | 10 |
| Unpaid taxes and/or misuse of Tax Allowance Payments (TAPs) | 8 |
| Provision of incorrect information in support of requests for Fund benefits | 7 |
| Abuse of G-5 visa privileges | 5 |
| Improper use of Fund time and/or resources | 4 |
| Other | 12 |
| TOTAL | 46 |

⁹The Director of EXR or his designee have investigated four cases in which staff were alleged to have failed to observe the requirements set forth in GAO No. 34. Additionally, OIA has been involved in five cases where leaks of confidential information have occurred. One of these cases required disciplinary measures, and is covered in this section of the Report.

The Responsible Official concluded that misconduct had occurred in almost 60 percent of the 46 cases (29 cases).¹⁰ In all cases resulting in a finding of misconduct, the Responsible Official imposed one or more disciplinary measures. Table 2 lists the types of disciplinary measures imposed during this period.

Table 2. Disciplinary Measures Imposed (2000–2003) 1/

| Action | Number of Cases |
|--|------------------------|
| Written warning | 1 |
| Formal written reprimand | 8 |
| Reassignment | 1 |
| Ineligibility for specific salary increases | 1 |
| Forfeiture of specific benefits or allowances 2/ | 4 |
| Reduction in salary | 4 |
| Demotion | 2 |
| Termination of employment | 10 |

1/ The number of disciplinary measures exceeds the number of cases in which disciplinary measures were imposed, as more than one disciplinary measure was taken in some cases.

2/ In cases of misstatements in support of Fund benefits, staff are always required to repay any overpayment, plus interest, plus a financial penalty of 100 percent of the overpayment, in addition to any other disciplinary measure to be imposed.

Below are some considerations about the main types of disciplinary cases reviewed.

- **Unpaid taxes and/or misuse of Tax Allowance Payments (TAPs).** These cases are usually triggered by a Tax Levy from the Internal Revenue Service sent to the Fund. Typically, the staff member involved has failed to pay federal and/or state income taxes over the course of one or several years, and for which purpose the staff member had applied and received tax allowances from the Fund. Misuse of the TAPs is a serious violation. In most cases this is sufficiently egregious to warrant immediate termination, as provided for in Section 7.05 of GAO No. 5, because (i) U.S. citizen staff are required to pay federal and state income tax on their Fund remuneration; and (ii) the staff member has usually applied for and received tax allowance payments from the Fund to meet these liabilities. This type of disciplinary case also includes contractual employees who have failed to pay their legitimate taxes, based on their

¹⁰The Ethics Officer investigated 44 cases during this period, concluding in 28 cases that at least one of the allegations was substantiated. Of the 28 cases, there were findings of misconduct in 27 cases and a total of 35 disciplinary measures were imposed. There were also findings of misconduct in the two cases where the Ethics Officer was not involved, and disciplinary measures were imposed in each case.

Fund income, for which they do not receive TAP resources. The majority (7 out of 10) of misconduct cases that have resulted in the separation of the staff member are related to the misuse of the TAPs. In one case, the contractual employee's failure to cooperate with the Ethics Officer was a factor in determining the disciplinary actions imposed.

- **Misstatement of spouse income for purpose of TAP and/or child allowance.** These cases involved staff members who made material misstatements of spousal income relevant to the amount of Spouse and Child Allowance and/or TAP for which they were eligible. In all these cases, the staff members involved were requested to repay the amounts he or she was not entitled to, plus interest, plus a financial penalty equal to 100 percent of the overpayment involved. Additional disciplinary measures were imposed in some cases, ranging from a formal written reprimand to a salary reduction.
- **Abuse of G-5 visa privileges.** These cases involve G-4 visa holders who have violated the relevant rules on G-5 employment, for example, by failing to pay appropriate wages (including overtime) to the G-5 domestic employee, by failing to ensure that the G-5 domestic employee assigned to him or her is not working for someone else, or by failing to pay all or some of the requisite federal and state taxes applicable to the employment of his or her G-5 visa domestic employee. Because the circumstances surrounding these cases vary considerably from case to case, the disciplinary measures imposed in connection with abuses of G-5 visa privileges have ranged from a formal written reprimand to a demotion with a salary reduction and, in most cases, the immediate forfeiture of the privilege to employ a G5 domestic employee. In one case, the staff member's attempt to frustrate the Ethics Officer's investigation by making false statements was a factor in determining the disciplinary actions imposed.
- **Discrimination and harassment, including sexual harassment.** Of the 10 cases reviewed during the relevant period, 3 involved allegations of sexual harassment. There were findings of misconduct in 2 of the 10 cases, and in both instances the staff member involved was separated from the Fund. This reflects the utmost importance the Fund attaches to promoting a work environment free from discrimination and any type of harassment. In one case, the seriousness of the underlying behavior of the staff member warranted his or her separation but, if the disciplinary measure had fallen short of separation, the staff member's failure to cooperate with the Ethics Officer would have also been considered by the Responsible Official when determining the disciplinary measures to impose in that case.
- **Improper use of Fund property and resources.** These cases are usually triggered by allegations that a staff member is employing Fund property for uses other than the official business of the Fund or is devoting excessive time during working hours to private matters. A rule of reason applies to the personal use of Fund premises or equipment. For example, the use of e-mail from your Fund computer for personal

purposes is permissible as long as this does not encroach on work time, overburden the electronic network, or involve a significant extra expense for the Fund. There was a finding of misconduct in one of these cases and disciplinary measures were imposed. In one case, the staff member's interference with the Ethics Officer's investigation was a factor in determining the disciplinary actions imposed.

- **Other cases.** This group encompasses a wide range of cases, including conflicts of interest, misrepresentation of facts or information at the time of recruitment, unauthorized public statements, and disclosure of confidential information. There were findings of misconduct in 7 of 12 cases. The disciplinary measures imposed ranged from a warning to the separation of one staff member.

Conclusion

Staff are expected to maintain the highest standards of conduct. Sound judgment and common sense will usually ensure that actions conform to this requirement. It is, however, advisable to seek guidance from the Ethics Officer if there are questions or concerns regarding the Fund rules on staff conduct. Staff who rely in good faith on the advice of the Ethics Officer will not be subject to disciplinary measures for actions taken on the basis of such reliance.