

## **Grievance Procedures – Public Interest Grievances**

### 1.1 Introduction

The Commission, as a public body, has a duty to conduct its affairs in a responsible and transparent manner. It is committed to the highest standards of openness and accountability. This part of the Grievance Procedures is intended to assist persons who are engaged by or to work in/with the Commission who believe that they have discovered improper practices or misconduct relating to the running of the Commission or work related activities of employees of the Commission to report these in a constructive manner.

The policy is designed to provide a framework which will assist persons who are engaged by or to work in/with the Commission so that they will feel confident about raising grievances or disclosing information which is believed to show malpractice or misconduct, and assist in investigating and acting on grievances raised.

### 1.2 Who does this policy cover?

This policy is for any person who has an employment contract with the Commission, is on secondment to the Commission, is engaged as an independent consultant by the Commission or is a contractor or supplier of services to the Commission.

### 1.3 What grievances does it cover?

This part of the Grievance Procedures is only intended to cover grievances related to the public interest. Such grievances might include:

- Criminal activity, such as accepting a bribe;
- Financial or administrative malpractice;
- Misconduct or improper behaviour;
- Failure to comply with legal obligations such as those set out in the Securities and Futures Ordinance;
- Endangering occupational health or safety;
- Attempts to suppress or conceal information relating to any of the above.

## 1.4 Principles and safeguards

- 1.4.1 The Commission will treat all disclosures made to it in a confidential manner to the extent that keeping the identity of the person making the disclosure confidential does not hinder a fair investigation (e.g., normally fairness would require that the person about whom the allegation is made be informed of the identity of his/her accuser).
- 1.4.2 All persons concerned (including those assisting in connection with and those handling the grievance) are reminded to keep the matter confidential.
- 1.4.3 This policy does not release the person from his/her statutory duty of confidentiality under the Securities and Futures Ordinance. Please refer to section 378 of the Securities and Futures Ordinance for details and note that any person who contravenes this provision is committing an offence and may be prosecuted.
- 1.4.4 Concerns that are raised anonymously will only be considered at the discretion of the Audit Committee who will take into account the seriousness of the allegations raised, the credibility of the allegation and the likelihood of confirming the allegation from sources that can be verified.
- 1.4.5 The person about whom a grievance has been raised, must be informed of the allegation and the evidence in support of the allegation and must be allowed to state his/her position and make comments prior to the conclusion of any investigation or inquiry.
- 1.4.6 The person who raises a grievance must provide those who are investigating the matter internally or as part of an inquiry with all reasonable assistance.
- 1.4.7 An employee, whether the person lodging the grievance or against whom it is lodged, may be accompanied at any interview or meeting by one companion, provided that the employee makes the request in advance and it is reasonable and appropriate (which is to be decided at the sole discretion of the Commission). The companion must be an employee of the Commission. When choosing a companion, it should be kept in mind that it is not appropriate to ask to be accompanied by a colleague whose presence at an interview or meeting would prejudice the investigation, who might have a conflict of interest or who is involved in the investigation. It should be noted that an employee is not under any obligation to act as a companion. However, if the employee does act as a companion, he/she should keep the matter confidential.

## 1.5 Procedures

1.5.1 Stage 1 – A person covered by this policy should prepare a written statement of his/her grievance and ensure that the Commission Secretary or the Chief Counsel receives it and also provide a copy to the Chief Operating Officer (COO). If the person requires assistance to prepare a written statement, he/she can approach the Commission Secretary or the Chief Counsel in the first instance for advice. The recipient will acknowledge receipt of the written statement normally within 5 working days. The recipient will:

- a) Explain this part of the Grievance Procedures to the person.
- b) Refer the case to the appropriate person (the **Case Handler**) for further consideration as set out below:
  - If it relates to an employee who is at the level of Senior Director or below, or if it concerns some matter which is not about an employee or member of the Commission<sup>1</sup>, then the matter will be referred to a committee of all of the Executive Directors for further action.
  - If it relates to a member of the Commission, then the matter will be referred to the Audit Committee (excluding any Non-Executive Director about whom the grievance has been raised, if applicable) for further action.

1.5.2 Stage 2 – Process

- a) The Case Handler will conduct an initial review of the information provided and determine whether the grievance warrants further action. If it is decided that the grievance warrants further action, the Case Handler will decide on the type of investigation to be undertaken, e.g. internal investigation, independent inquiry and/or referral of the matter to the law enforcement and/or regulatory agencies. Once a decision is reached, the Case Handler will inform the person raising the grievance in writing whether further action is proposed.
- b) Where the Case Handler is the Committee of all of the Executive Directors but it considers that an independent inquiry is necessary due to the complexity or seriousness of the matter, then the grievance is to be referred to the Audit Committee to consider the scope of the inquiry, who should carry out such an inquiry and the terms of reference.

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<sup>1</sup> See section 1 of Schedule 2 to the Securities and Futures Ordinance (SFO) and also the definition of “member” in Schedule 1 to the SFO. Member of the Commission includes any executive director (including the Chief Executive Officer) and also any non-executive director of the Commission.

### 1.5.3 Stage 3 – Investigation

- a) If the matter is to be the subject of an internal investigation, the Case Handler may nominate members of staff or engage external consultants to investigate the matter further, i.e. to gather and assess the information and to produce a report on the findings. The investigation will take place as soon as possible.
- b) Investigations should not be carried out by any party who has an interest in the matter.
- c) Once the relevant facts have been established, a report will be prepared. The Case Handler will then make a decision on the matter.

### 1.5.4 Stage 4 – Feedback

- a) A summary of the investigation report which is prepared for consideration by the Case Handler will be made available to the person who raises the grievance after completion of Stage 3. The person against whom the grievance is raised shall also be informed of the main findings of the investigation.
- b) The Case Handler will inform the person who raised the grievance and the person against whom the grievance is raised of the action to be taken, if any, the reasons and the right to appeal. Once the Case Handler makes a decision on the matter, the person(s) concerned will be informed in writing, normally within 10 working days.

### 1.5.5 Stage 5 – Appeals

- a) If the person who raised the grievance or the person against whom the grievance is raised is dissatisfied with the decision because he/she believes that the procedures have not been followed properly or that the decision reached by the Case Handler was one which no reasonable person could have reached, then he/she may appeal in writing within 10 working days of the date of receipt of the written decision as follows:
  - If the Case Handler was a committee of all of the Executive Directors, to the Audit Committee;
  - If the Case Handler was the Audit Committee, to the Commission Board except that where the grievance has been raised about a member of the Commission, that person will recuse himself/herself.
- b) Appeals may be submitted directly or via the Commission Secretary or the Chief Counsel.

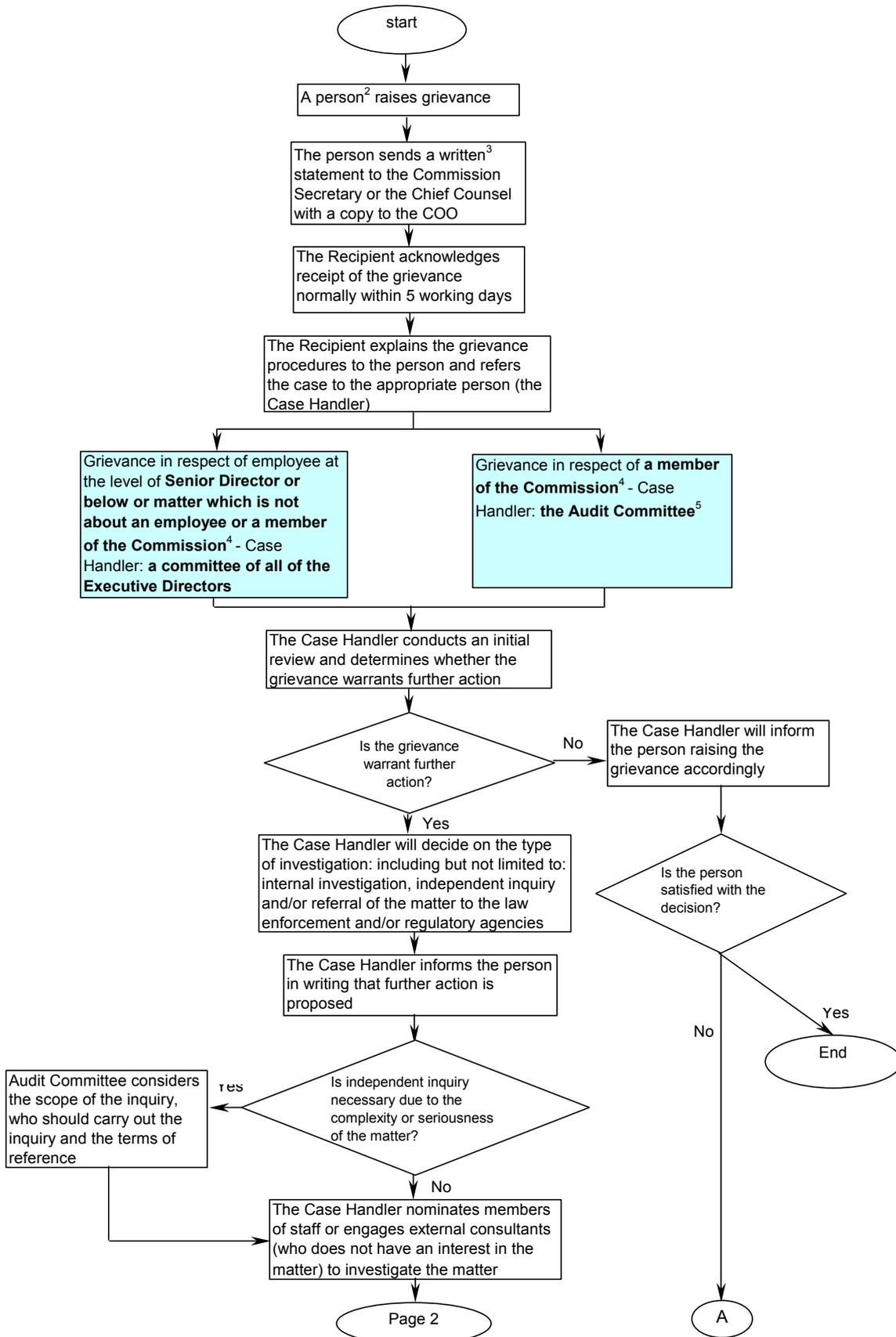
- c) Decisions made at the appeals stage shall be final.
- d) The person(s) concerned will be informed in writing of the decision with a copy to the COO.

#### 1.5.6 Stage 6 – Reporting

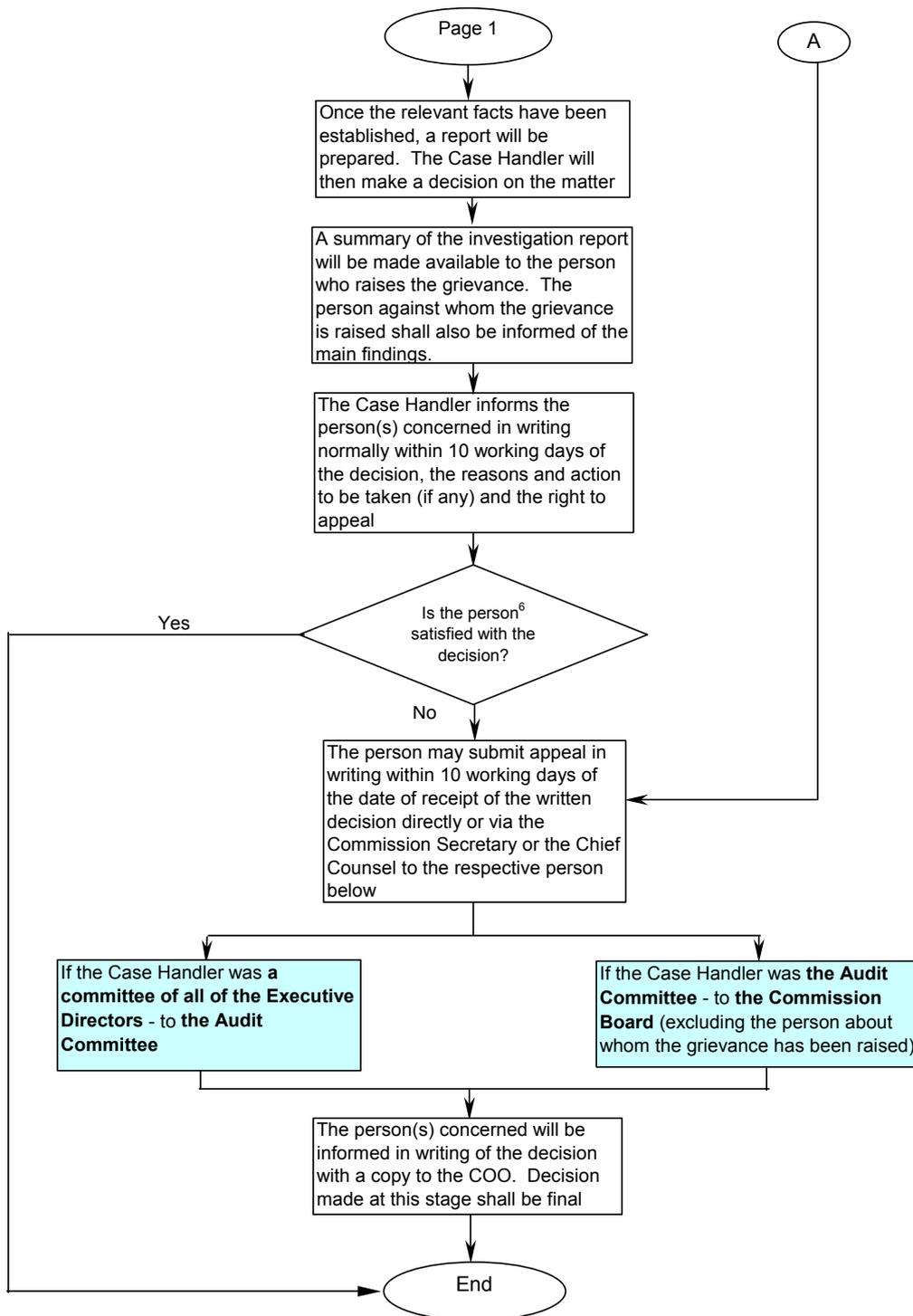
A quarterly report will be made to the Audit Committee providing information on any grievances raised and any decisions taken in respect of them under this part of the Grievance Procedures. Any matter requiring immediate attention will be brought to the Audit Committee by the Case Handler as soon as possible.

The flow chart illustrating the procedures is at Annex for reference.

### Grievance Procedures (Public Interest)<sup>1</sup>



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**Remarks:**

- <sup>1</sup> Grievances might include 1. Criminal activity, such as accepting a bribe; 2. Financial or administrative malpractice; 3. Misconduct or improper behaviour; 4. Failure to comply with legal obligations such as those set out in Securities and Futures Ordinance; 5. Endangering occupational health or safety; 6. Attempts to suppress or conceal information relating to any of the above.
- <sup>2</sup> This policy is for any person who has an employment contract with the Commission, is on secondment to the Commission, is engaged as an independent consultant by the Commission or is a contractor or supplier of services to the Commission.
- <sup>3</sup> If the person requires assistance to prepare a written statement, he/she can approach the Commission Secretary or the Chief Counsel in the first instance for advice.
- <sup>4</sup> Member of the Commission includes any executive director (including the Chief Executive Officer) and any non-executive director of the Commission.
- <sup>5</sup> Excludes any Non-Executive Director about whom the grievance has been raised, if applicable.
- <sup>6</sup> Either the person who raised the grievance or the person against whom the grievance is raised.