

Conclusions and Recommendations

Having established the facts indicated in the previous sections of this report, the Board reached the following conclusions and is submitting the recommendations also listed hereunder:

- (i) the conditions of employment of these care workers are primarily regulated by the Hospitals and Clinics Wages Council Wage Regulation Order, which was issued in 1977. Although the rates of payment indicated in this Wage Regulation Order are updated annually to reflect the cost of living adjustment (COLA) approved by Government in the context of the Budget exercise, this Wage Regulation Order has not undergone any comprehensive review for the last three and a half decades. Moreover, the grade of care worker does not specifically feature in this Wage Regulation Order and, for enforcement purposes, the Department of Industrial and Employment Relations has benchmarked this grade with the lowest of those grades listed in the Wage Regulation Order, namely the grade of Hospital/Clinic Attendant.

The Board of Inquiry recommends that the appropriate steps should be taken as soon as possible to carry out a comprehensive review of this Wage Regulation Order that would take into consideration the developments that have taken place during the intervening years in this particular sector of the labour market;

- (ii) a combination of several factors, including, as stated above, long term administrative inaction on a review of the relative Wage Regulation Order and a conscious decision of the public contracting authorities to apply their established policy on the award of contracts to the cheapest tenderer, even in the case of tenders for the provision of employment services, without however stipulating in

the relative tender document reasonable minimum remuneration rates, has produced a gross anomaly in relation to these care workers. In fact, while a care worker assigned to a public entity in terms of any of the three contracts in question has to satisfy more stringent eligibility requirements than those expected from a care worker in the Public Service, a contracted care worker is currently legally entitled to a salary of €7979.43 per annum (although most of these care workers actually receive marginally higher rates of payment) as against a salary of €10,816 payable to a care worker on entry in the Public Service. This gap widens considerably in subsequent years of service.

The Board of Inquiry recommends that, until a new Wage Regulation Order has been issued, this anomaly should be redressed, at least in part, if new tendering processes are carried out for the procurement of care worker services. As already indicated above, this could be achieved if more reasonable minimum remuneration rates are stipulated in the tender document;

- (iii) the contracts concluded with Support Services Ltd. for the provision of care workers to various entities in the Ministry of Health, and probably also contracts concluded with other companies for the provision of other types of employment services to public entities (e.g. cleaning and security services), include a number of provisions that are intended to safeguard the conditions of employment of these workers. In a preceding section of this report, a reference has been made to Article 37 of Annex II to one of the above-mentioned contracts, which enables the Government contracting authority to suspend the contract in the event that the contractor is charged before a Court of Criminal Jurisdiction with an alleged breach of labour legislation and eventually to terminate a contract if the contractor is found guilty of the charge.

However, if these provisions are to be effective, the contracting authority has to be properly equipped to manage these contracts. In Contracts Circular No. 5 of 2011, the Director General (Contracts) insists that 'public officials are also to be sensitive to the rights and obligations of all workers engaged on public

procurement contracts' and, therefore, 'encourages Departments and public sector organisations to set up a mechanism that monitors the conditions of work of all workers engaged on public procurement contracts'. Although this Circular was issued in April of this year, the Board of Inquiry has no evidence whatsoever that any such mechanism has been established or is being contemplated in the Ministry of Health and the Board, therefore, recommends that steps should be taken by the Ministry to set up this mechanism without any further delay;

- (iv) the tender documents issued in relation to the contracts in question impose an obligation on prospective tenderers to provide a substantial amount of information, of both an organisational and a financial nature, that is obviously intended to enable the tender evaluation team to carry out a due diligence exercise on the competencies, financial stability and creditworthiness of the bidding companies. The Board of Inquiry is of the opinion and recommends that, in the case of all tenders for the procurement of employment services, this due diligence exercise should be widened to include an in depth evaluation of a tendering company's relations with its employees and of its record of respect for their legitimate rights. This would require formal consultations with the Department for Industrial and Employment Relations and a tenderer with a record of repeated and valid employee complaints to the Department or who has been convicted on more than one occasion of breaches of labour legislation should be excluded from the tendering process;
- (v) as requested in its terms of reference, the Board of Inquiry has reviewed the agreement (contract) which the company in question, Support Services Ltd, enters with its employees. A copy of this agreement is attached as Appendix D to this report. The Department of Employment and Industrial Relations has confirmed that this agreement is compliant with the pertinent labour legislation. However, as indicated elsewhere in this report, the existence of such an agreement has not prevented the submission of a significant number of complaints to the Department, some of which were deemed to be justified while others were not.

In this respect, the Board of Inquiry has noted that, in dealing with these complaints, the Department has invariably adopted a persuasive approach and has refrained from taking punitive legal action, this, according to the Department, to foster and to maintain a good employer/employee relationship. The Board appreciates the considerations that motivate this approach and notes that the employer in question has invariably rectified the irregularities pointed out to him by the Department but feels that a limit has to be applied and recommends that henceforth, in the event of repeated complaints that are deemed to be justified, the Department should seriously contemplate pursuing criminal proceedings against the company. This would trigger the suspension or termination provisions contemplated in Article 37 of Annex II to the indicated contract.

In the course of its inquiry, the Board interviewed a number of interested parties as well as serving and former employers of the company who all registered various complaints in relation to this particular employer. The uniformity of these complaints, including complaints of employee intimidation, would indicate that at least some of these complaints are justified.


- (vi) in the course of its meetings with representatives of the various interested entities in the Ministry of Health, the Board noted that there is very little, if any, awareness of the importance and of the need for regular policy analysis and evaluation of this particular human resource management arrangement, namely the engagement of staff through public procurement arrangements. Indeed, currently the only criterion in determining whether and how this recruitment option should be pursued is the availability of a sufficient financial allocation under the relative budget line in the financial Estimates.

It is the opinion of the Board that the Ministry should develop a competence; ideally in the Office of Human Resources, to conduct regular policy reviews of this arrangement, *inter alia* in relation to the following:

- the circumstances that would warrant the adoption of this recruitment arrangement in lieu of other, perhaps more traditional, recruitment procedures;
- a cost-benefit analysis of adopting this particular recruitment arrangement;
- the effectiveness of the service being delivered by a contractor;
- the actual competencies of the staff being provided by the contractor;
- the advisability of awarding all contracts for the provision of care workers to the same contractor, which is the current situation. This situation places the Ministry in a vulnerable position, especially in event that the above-mentioned Article 37 of Annex II of the Contract (Suspension and Termination of Contract) has to be invoked.



Mr. Joseph Scicluna
Chairman



Dr. Cynthia Scerri De Bono
Member



Mr. Frank Pullicino
Member

23 August 2011