
INVESTIGATION REPORT

TAMING THE FLAMES OF AN OFFICE **AFFAIR**

A. INTRODUCTION

On 12 February 2020, the Ombudsman received an anonymous letter from employees of the Samoa Fire and Emergency Services Authority (the Authority), alleging differential treatment through extramarital affairs, unfair promotions, and abuse of Government funds. The complaint raises important issues that have already been aired in the public domain and are dealt with in this report.

B. ISSUES

1.0 Extramarital affairs between senior management and lower level staff members.

The complaint exposed two extramarital affairs in the Authority that have led to a number of issues that will be discussed later in this report.

Under section 40(d) of the SFESA Act 2007:

“A member is guilty of a disciplinary offence...who is behaving in a manner which is disrespectful or improper and which is likely to incite public disapproval of the Authority”

Both of these affairs were posted publicly on Facebook in 2018 and again in 2020, inciting public disapproval of the Authority. If there is evidence of these extramarital affairs, then the members involved must face disciplinary action.

Is there evidence of these extramarital affairs in the Authority?

- Extramarital Affair 1

The complaint details that there is an affair between AAA of the Training Division and BBB of the Fire Safety Division. It was relayed that the affair spans more than ten (10) years and that the Commissioner was very much aware of this but steered clear from disciplining the pair. Graphic video footage was also submitted to the Investigation confirming this affair.

In response to preliminary enquiries, records show that both members were given a final warning by the Commissioner on the 17 February 2020, with conditions that should this extramarital affair ever resurface, both members will face instant termination.

With this information, the Ombudsman deems it unnecessary to investigate further. Disciplinary action has been imposed (although rather late) by the Commissioner.

- Extramarital Affair 2

The complaint details that there is an ongoing affair between XXXX and YYY of the [REDACTED]. According to the Authority’s response, these allegations against XXXX and YYY are currently on hold for the Chairman of the Board to return and conduct his preliminary investigation.

Both members vehemently deny the affair. Unfortunately, this is not supported by the evidence submitted to the Ombudsman.

FESA staff members have witnessed on numerous occasions since 2017, violent and public displays of anger from YYY's wife towards XXXX at the FESA Station, accusing XXXX of having an affair with her husband. Numerous accusations were thrown about, namely that of XXXX texting YYY during late hours of the night and XXXX's personal items (ie. a towel with XXXX's daughter's name on it) being found at YYY's house at Falelauniu. The Investigation also sighted official documentation, proving that XXXX transferred \$200 into YYY's personal account between 2017 and 2018. This stopped when YYY's wife found out and confronted them about it. Both parties admitted that XXXX loaned \$1,500/\$2,000 from the bank on YYY's name and credit because she could not loan anywhere else. This is quite odd for a Manager to ask someone such a personal favor especially given the fact that he is from a different team at the Authority who makes less than half her salary. She could not quite remember why she did not ask this favor of her Principal HR at the time.

There was also an incident where YYY's wife chased after XXXX in a vehicle upon seeing her attempt to pick up her husband on the side of the road. This was witnessed by all staff members on shift because the pursuit wound up at the Apia Fire Station where XXXX took refuge. The Investigation asked why she ran instead of talking to YYY's wife, she mentioned that she did not want to at the time. YYY's wife eventually sought assistance from the Commissioner himself who assured her that he would look into it.

The Investigation was told that YYY and XXXX no longer try to hide their relationship. During and after work hours, YYY and XXXX would be seen in each other's company. XXXX's Government issued vehicle FESA22 is often seen entering the Faleata Station between 5.30pm and 6.00pm and heading straight to the Training quarters where YYY is often stationed. They have been seen leaving the Training quarters as early as 3am in the morning, freshly showered and getting ready for the day.

Prior to YYY's promotion to Faleata, XXXX would specifically request YYY's immediate supervisor at the time to have YYY drive her around for errands and even to DDD related side events in Savaii. There were also eyewitnesses that confirmed that YYY was sleeping in XXXX's room during a management retreat at St Therese Resort in 2018 and again at an office event in Savaii prior to that. Only late last year, YYY and XXXX were both in New Zealand at the same time, and were witnessed holidaying together.

The overwhelming evidence is that there is an extramarital affair between YYY and XXXX. If this is not an extramarital affair, at the very least, the Investigation can also confidently conclude that there is a 'special' relationship between YYY and XXXX.

Finding 1: YYY and XXXX are engaged in a special relationship that is neither appropriate nor professional. It has incited disapproval not only from the public via social media but it has affected their families and members of the Authority as a whole.

The office was informed of three more affairs continuing in the office, some also including other senior officers. According to one source, *'it has spread like wildfire in the office because it is being perpetrated by its most senior members'*. Extramarital affairs are neither appropriate nor legal (ie. as it also amounts to adultery); they are adversely affecting the morale of the office.

This behavior is tantamount to sexual harassment and it is not a novel issue in the Authority. Apparent consent does not negate a claim of sexual harassment. Sexual harassment is not about sex. It is about the abuse of power or authority in a sexual dimension or context. The Supreme Court of

the United States notably has maintained that an employee's submission to a sexual act is not truly voluntary if the harasser has the power to fire, demote, blackball or deny benefits to that employee.

Finding 2: There is a budding culture of inappropriate relationships, extramarital affairs/adultery at the Authority.

2.0 Differential Treatment

It was relayed to the Investigation that it has become common knowledge that YYY receives special treatment because of his special relationship to XXXX. YYY is often seen getting a new uniform on a frequent basis when he requests it from the DDD when all other staff members have to go through a rather lengthy process of justification before they can do so. Although this is not reflected in YYY's personal records,¹ there are more than a few witnesses who testify that this is the case. In order to get overtime or any other special request approved, staff members would approach YYY to relay the request to DDDs because it would automatically be approved by XXXX. Ever since YYY was transferred to the [REDACTED], staff members have witnessed an increase in new resources to the [REDACTED] (eg. new kitchen utensils, a stereo, refreshments for training etc) when this was never the case.

In September 2020, YYY went missing from work for 2 weeks to get a traditional tattoo (pe'a). YYY never gaged proper authorization from his supervisor and the Commissioner at the time before he took leave. The Investigation asked DDDs how this happened, and to their understanding, YYY made a mistake when entering details to take leave; he filled out an annual leave form for 1 week when he in fact should have applied for annual leave for 2 weeks. This did not take away from the fact that he did not use the proper channel of authorization as is the normal process for annual leave before he took it. YYY was therefore demoted to [REDACTED]. YYY relayed that this decision upset him and he took a few more days off, of his own volition in retaliation. Interestingly enough, on YYY's disciplinary record, he was already issued a final warning on 24 October 2019 for multiple occasions of insubordination dating back to 2012.² DDDs recommended suspension and that his records reflect having taken leave without pay. The Investigation asked why termination was not recommended given that he was on his final warning. The reply was that this is not the practice and numerous other employees are on their final warning but are still given a second and third final warning.

The purpose of disciplinary action is to correct, not punish, work related behavior. Each employee at the Authority is expected to maintain standards of performance and conduct as outlined in the Authority's legislation, regulations, policies and the Commissioner's Orders. Proven and repetitive deviance from these standards as is the case here with YYY should be met with firm disciplinary action. **No disciplinary action was instituted against YYY for the repetitive instances of insubordination before 2019 when they arose as per his personnel file.** This failure led to an even more complex web of unfair administrative decisions as will be revealed later on in this report.

¹ For every new uniform, an employee has to fill in a form and justify why he needs a new one. Each uniform issuance is recorded in the employee's personnel file.

² May 2012 (proven allegation of abusive and insulting words to another staff member); June 2012 (proven allegation of using insulting words (ie. swear words) to another staff member); November 2018 (insubordination to an Assistant Commissioner); and October 2019 (insubordination to a Commander in a public place);

Finding 3: YYY has no respect for authority or protocol(s) at the Authority. This is evident through his working history and the way that he spoke of Management and the office as a whole to the Investigation.

Finding 4: In practice, the disciplinary process at the Authority is so grossly ignored as to be effectively dormant.

This leads us to a graver revelation of how YYY's special relationship to XXXX allegedly paved the way for YYY's promotion from Senior Firefighter to Station Officer (two levels above his position at the time) in 2018.

2.1 YYY's promotion [REDACTED]

YYY entered the Authority as a [REDACTED] in 2009. In 2010, he was promoted in the Fire Safety Division as a [REDACTED] (2 positions above [REDACTED], refer to Annexure A: Promotional Flow Chart). He held this position for the next eight years until the 4th April 2018, when he wrote to the Commissioner, requesting a review of his salary. In his letter, YYY outlined his experience and long term service which he believes warranted a promotion. On the 24th April 2018, YYY's immediate supervisor ([REDACTED]) agreed and recommended that YYY be promoted to [REDACTED] (1 position above [REDACTED], refer to Annexure A). However, a decision was not finalized on YYY's request at that point in time.

According to the Authority's HR Manual 2019, there are promotional assessments in between each level. These are requirements that need to be satisfied before a promotion is awarded as should have been done with the issue of YYY's request for promotion.

Finding 5: No evidence was found of a performance appraisal or a promotional assessment being taken by YYY to warrant a promotion throughout his 10 year tenure at the Authority.

On the 9 May 2019, interviews were conducted for two (2) [REDACTED] vacancies at the Authority ([REDACTED]). YYY applied for both vacancies. By the end of the interviews, the panel unanimously selected YYY as the successful candidate for the position of [REDACTED]. Chairing the panel was YYY's [REDACTED], who was thoroughly impressed with YYY. It was noted that she had interviewed YYY before for other positions throughout the years and he was apparently not as impressive on those occasions as he was during the interviews for Station Officer.

Before the results were made official however, evidence was brought forward of YYY allegedly 'cheating' during his interview. Papers were found in YYY's possession of interview questions and answers that MMM distributed to the Interview Panel. According to the evidence gathered, the MMM of the panel followed the outline of questions to the 'T'. The other two panel members deviated by only two other questions.

An investigation was conducted by the Commissioner into the allegation. YYY admitted that the papers were his, and that he had sought help from XXXX who assisted him in providing answers to the interview questions. XXXX also admitted to this. On Friday, the 2 August 2019, the Executive decided to re-advertise the position based on the evidence collected.

Before the position was re-advertised, YYY wrote to ██████████ of the SFESA Board of Directors, complaining against the Authority's failure to address his request to review his salary as per his letter dated 4 April 2018. He also referenced the Authority's unfair treatment of overlooking him for the two (2) ██████████ positions that he had applied for. It was also made known to the Investigation that YYY threatened to write to the Ombudsman.

The ██████████ conducted his own informal assessment of the matter and met with the SFESA Commissioner. They reached the consensus to uphold the decision by the Interview Panel and appoint YYY as the new ██████████ ██████████. On the 4th November 2019, YYY was formally handed a letter of offer to his new position. In that same letter, his salary was back-dated to be effective from 17 June 2019, when the other Station Officer of ██████████ commenced employment.

This is perhaps where things get even more complex. A day after his promotion to ██████████ YYY was issued a final warning for an act of insubordination against his Commander on 24 October 2019 and three other acts of insubordination and insulting words dating back to 2012. As an additional condition of this final warning, he was transferred to the ██████████ as a ██████████ ██████████. Essentially, room was made at the ██████████ to accommodate YYY as a ██████████ ██████████.

Finding 6: It was unjust to appoint YYY as ██████████ and award him back pay even when it was confirmed that he did 'cheat' during the interview. This is not fair to the other candidates that prepared thoroughly without YYY's advantage for the interviews.

Finding 7: It was unreasonable to enmesh four different instances of insubordination on YYY's disciplinary record (2012-2019) in a final warning and transfer him to the ██████████ ██████████ as a ██████████ where he had no formal training or experience. This is not fair to the firefighters who have put in the work for a promotion in the ██████████ only to be occluded by YYY's new position. The position should have been properly advertised as per normal processes.

Finding 8: Section 40 of the SFESA Act 2007 provides proper procedure for an appeal commission (which includes the Chairperson and 2 other directors of the Board) to hear a member's grievance against a decision of the Commissioner. Due process should have been followed in light of YYY's grievance against the Authority.

3.0 Misuse of Government Funds

The Investigation was alerted that there is a misuse of funds at the Authority by XXXX herself and a select few of her staff members ('the VVV') that report directly to her. It was alleged that the VVV would hardly be found at the workplace throughout the day but would somehow be working late into the evening (ie. sometimes until 3am the next morning) and weekends and be compensated for it as overtime³ and on-call allowance⁴ almost every fortnight. The allegation further extends that on

³ Under section 1.20 of the HR Manual 2019, overtime is granted upon approval by the Commissioner or a pre-approved form. During weekdays, overtime is calculated on a time and a half basis of the applicant's current rate of pay. On Sundays and public holidays, overtime is calculated on a double time basis of the applicant's current rate of pay

⁴ On-call allowance is awarded as compensation where staff members who are off duty may be required to be in attendance of a fire, an emergency response or a special operation (see section 1.21 of HR Manual).

occasions where the shift workers/firefighters do respond to emergency related incidents, they would often have to wait months for compensation or none at all because of alleged deficits in the budget. Sometimes they are told that they missed the deadline for submitting requests for overtime and were therefore unable to claim any. The VVV denies these allegations completely.

The Investigation therefore requested pay slips over a 6 month period (ie. December 2019 to May 2020) to ascertain whether there is cause for concern. **Since December 2019, XXXX and MMM have individually been receiving an average of \$300 to \$1,901 in on-call allowance and overtime as compensation for extra hours worked on a fortnightly basis** (except for the pay period from the 16 Dec - 29 Dec 2019, as XXXX was on leave). The Investigation attaches to this report, a matrix of these amounts per pay period for ease of reference. The justification for extra hours worked varies from the review of contracts, to payroll, travel reports, data entry, food ordering, budget preparations, quarterly reports, annual plans etc.

There are a number of concerns with this finding. Primarily, on-call allowance is intended for staff members attending a fire, an emergency or a special operation, not for administrative reports that could have been done within normal working hours (ie. 40 hours). Although it was argued to the Investigation that this arrangement may have been authorized by the Commissioner, it is technically, a misuse of allowance budgeted by the Government for emergencies. Firefighters are frontline workers who operate under stressful and life-threatening situations, justifying at the very least, extra compensation (ie. on-call and overtime) for their services to the public.

The Investigation considered whether there was an excessive workload, justifying the need for the VVV to request overtime every fortnight. Under the previous CCC, less than six staff members operated and catered to a total FESA staff of just over a hundred without resorting to working overtime every fortnight. To date, there are more than fifteen staff members under DDDs alone.⁵ The question is, why is the work not being delegated to other members of the division for efficiency? Food ordering and data entry can easily be delegated to a junior officer. Why was it necessary for the VVV to work overtime for such mediocre tasks? The VVV agrees with the Investigation that work could have been delegated to junior staff and in turn minimize the need to work overtime. **Unfortunately, this admission therefore means that compensation for overtime was not always justified and is tantamount to misuse.**

Finding 9: There is evidence to suggest that there is a misuse of funds at the Authority by the VVV.

Shocking still is the allegation that [REDACTED] are also being asked to put aside specific monetary amounts for XXXX (\$100/\$50), MMM (\$50/\$20), TTT (\$20/\$10), and UUU (\$20/\$10) when they show up to uplift their monthly allowances. These allowances are enveloped and handed out in cash by DDDs to the [REDACTED] without any pay slips to attest to the hours that they have worked during their rosters. They are required to sign in and sign out when called for duty but are only made to sign next to their names in a book when uplifting their allowances in cash envelopes. The VVV do not deny that they have been ‘gifted’ monies by the [REDACTED] but they were adamant that it was not done under duress.

The Investigation also received voluntary and alarming evidence about XXXX’s employment history, pointing to more allegations of financial misappropriation and affairs which is what

⁵ There are five [REDACTED]

eventually prompted her termination by a former employer. How XXXX managed to secure a managerial position soon after at the Authority, irrespective of these blemishes on her character is quite odd. XXXX has relayed to the Investigation that she is actively seeking employment elsewhere in the public service and will not be re-applying to the Authority.

C. OTHER ISSUES

The Investigation was informed that are very little, if any, thorough or independent internal investigations of any matter being conducted. On top of unaddressed extramarital affairs and questionable recruitment selections in the office, the DDDs have been criticized by employees for the lack of proper investigations to ascertain fault in instances where the Authority's assets have been accidentally damaged by employees. Employees have been forced to make repayments on damaged SFESA properties without their consent or evidence of irregularity reports.

Heavy disapproval was also relayed to the Investigation of new policies being implemented by DDDs without proper consultation in the workplace, such as the new SFESA Human Resources Manual 2019 ('the new Manual'). Although it was argued that the new Manual complements the SFESA Terms and Conditions 2016 ('the old Manual'), it is a complete rewrite of the old Manual with stark differences in allowances paid to management and DDDs and entitlements to leave.

Concern has also been raised in the selection of recruit firefighters. Evidence suggests that promises have been made to the [REDACTED] that their casual service is an advantage towards becoming enlisted as permanent staff. There are [REDACTED] that have served for more than 12 months who still have not been handed their written test results from DDDs whereas people with no prior experience in firefighting have been accepted as recruits into the Authority. This has prompted allegations of nepotism and favoritism.

D. CONCLUSION

Affairs at the workplace are often overlooked and brushed aside as a private matter between parties, (one or both being legally married) that is unrelated to their work performance. This could be viewed a somewhat different perspective in a jurisdiction where adultery is not a criminal offence. Samoa is one of the last few jurisdictions in the world that criminalizes adultery. On that ground alone, extramarital relationships in the workplace is objectionable, especially in the public service where public confidence is pivotal and a paramount consideration. This logic follows the universal narrative that requires employees to declare 'conflicts of interest' in any workplace. An extramarital affair is 'a personal interest' that can influence one's professional judgment or actions. As seen in this case, an affair between two legally married employees has led to a host of complications. It has affected opportunities for promotion due to differential treatment, broken marriages, and has adversely affected the morale and image of the Authority in the public eye.

At the core of the multiplicitous issues raised in this report, is the pain of disgruntled employees who feel oppressed by inappropriate work behavior and prejudicial practices that are tailor-made to benefit a select few. This is perhaps in part a result of inactive or more or less inconsistent monitoring of internal procedures by the Authority's most senior management. Policies and procedures address pertinent issues that apply to all employees. They are rendered useless if employers neglect to adhere to them or fail to effectively communicate them to employees.

There is also a hint here of Corporate Governance interfering or intruding inappropriately into the normal administration of the Authority under the Commissioner's hat. There are legislations and guidelines in place to ensure the boundaries of this relationship is observed.

Efforts need to be taken to educate managers on workplace policies and ethics to ensure a thorough understanding of what behavior is acceptable and how to correct inappropriate behavior. In that same light, the Authority needs to take active steps to educate, train and involve its employees in policy and procedure to prevent frustrations 'boiling over' from the brim as this Investigation has observed throughout the course of its enquiry.

The Investigation offers the following remedial recommendations on the issues raised by the complaint(s) to the office.

E. RECOMMENDATIONS:

Recommendation 1: Disciplinary action is to be imposed against XXXX for violating section 40(d) of the SFESA Act 2013 (engaging in a 'special relationship' with YYY that has incited disapproval from the public). We refer the issue(s) of financial misappropriation against XXXX and MMM to the Ministry of Finance and the Audit Office for further investigation as there is reason to believe that the misuse may span to more than the 6 month period the Investigation randomly selected for this specific enquiry. These latter findings will determine whether or not there is room to institute criminal charges.

Recommendation 2: Disciplinary action is to be imposed against YYY for violating section 40(d) of the SFESA Act 2013 (continuous engagement in a 'special relationship' with XXXX that has incited disapproval from the public) and being absent from work without proper authorization as per his admission to the Investigation.

Recommendation 3: It is recommended that it be added into the SFESA HR Manual 2019 that staff members are prohibited from engaging in extramarital affairs or any form of romantic relationships that may amount to adultery. This is becoming a common occurrence at the Authority and is disrespectful, improper and incites public disapproval against the Authority.

Recommendation 4: It is recommended that the Human Resource Division pays due attention to the personnel files of each employee and ensure that disciplinary action is recommended upon evidence of misconduct as per the disciplinary processes laid out in section 1.15 of the Human Resource Manual 2019.

Recommendation 5: It is recommended that all SFESA staff members are to be appraised on their performance on a frequent basis and required to undergo a promotional assessment before they are awarded promotions in the office. This ensures that the administrative decision of awarding a promotion is based on fair and relevant considerations.

Recommendation 6: It is recommended that all volunteer firefighters are given payslips for the hours they worked upon receiving their monthly allowances. This ensures transparency and integrity in financial reporting and management. Gratuity payments from volunteer firefighters to members of DDDs to cease.

Recommendation 7: It is incumbent on all Government agencies to conduct thorough background checks of persons considered for managerial positions in the public service to prevent repeated patterns of questionable and defective work behavior.

Recommendation 8: It is recommended that there be an investigation team (at least 2 members) at the Authority to handle all internal and external complaints against members of the Authority.

Maiava Iulai Toma
Ombudsman

30 November 2020