

**立法會**  
**Legislative Council**

LC Paper No. CB(1)483/02-03  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/PS/1

**Panel on Public Service**

**Minutes of meeting**  
**held on Monday, 18 November 2002 at 10:45 am**  
**in the Chamber of the Legislative Council Building**

- Members present** : Hon TAM Yiu-chung, GBS, JP (Chairman)  
Hon LI Fung-ying, JP (Deputy Chairman)  
Hon LEE Cheuk-yan  
Hon CHEUNG Man-kwong  
Hon HUI Cheung-ching, JP  
Hon CHAN Kwok-keung  
Hon Bernard CHAN, JP  
Hon Andrew WONG Wang-fat, JP  
Hon Howard YOUNG, JP  
Hon Tommy CHEUNG Yu-yan, JP  
Hon Michael MAK Kwok-fung  
Hon Albert CHAN Wai-yip  
Hon LEUNG Fu-wah, MH, JP
- Members absent** : Hon Kenneth TING Woo-shou, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Public officers attending** : **Agenda Item IV**  
  
Ms Anissa WONG, JP  
Acting Permanent Secretary for the Civil Service  
  
Mrs Jessie TING, JP  
Deputy Secretary for the Civil Service (2)

Miss Jennifer MAK, JP  
Deputy Secretary for the Civil Service (3)

**Agenda Item V**

Ms Anissa WONG, JP  
Acting Permanent Secretary for the Civil Service

Mrs Jessie TING, JP  
Deputy Secretary for the Civil Service (2)

**Clerk in attendance :** Miss Salumi CHAN  
Chief Assistant Secretary (1)5

**Staff in attendance :** Ms Rosalind MA  
Senior Assistant Secretary (1)9

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Action

- I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)261/02-03 — Minutes of meeting on 23 October 2002)

The minutes of the meeting held on 23 October 2002 were confirmed.

- II. Information paper issued since last meeting**  
(LC Paper Nos. CB(1)141/02-03(01) and (02) — Letter dated 24 October 2002 from the Secretary for the Civil Service with the findings of the survey on the performance of the civil service)

2. Members noted the information paper provided by the Administration.

**III. Proposed discussion items for the Panel meetings to be held from December 2002 to June 2003**

(LC Paper No. CB(1)260/02-03(01) — List of outstanding items for discussion)

3. The Chairman reported that he had discussed with the Secretary for the Civil Service (SCS) on 15 November 2002 on the discussion items proposed by members and the Administration for the Panel meetings to be held from December 2002 to June 2003. He then briefed members on the proposed discussion items set out in LC Paper No. CB(1)260/02-03(01).

4. The Chairman pointed out that except for the item on "Voluntary Retirement Scheme", all other proposed items had been assigned a tentative date for discussion. SCS was aware of members' concern about the Administration's latest plan for the implementation of the Scheme and agreed to brief the Panel on the subject in due course.

5. The Chairman also pointed out that the proposed discussion items for the meetings to be held from December 2002 to June 2003 were tentative and would have to be reviewed and updated in due course to meet the needs of the Panel and the Administration.

6. Members agreed that the following items be discussed at the next regular meeting scheduled for 16 December 2002:

- (a) Training in the civil service; and
- (b) Management of stress at workplace in the civil service.

**IV. Disciplinary mechanism in the civil service**

(LC Paper No. CB(1)260/02-03(02) — Paper provided by the Administration)

Briefing by the Administration

7. The Deputy Secretary for the Civil Service (3) (DSCS(3)) advised that the paper provided by the Administration presented an overview of the civil service disciplinary mechanism and how its operation had been streamlined and improved since 2000. She highlighted the following points for members' reference:

- (a) Following a review of the disciplinary mechanism in the context of the Civil Service Reform, the Civil Service Bureau (CSB) had introduced a new mechanism in April 2000. The disciplinary procedures had been

streamlined, and a Secretariat on Civil Service Discipline (SCSD) had been set up to centrally process all formal disciplinary cases under the Public Service (Administration) Order (PS(A)O). With the implementation of the new mechanism, the processing time had generally been shortened, whilst preserving the principles of natural justice;

- (b) A number of safeguards had been built into the disciplinary mechanism under PS(A)O to ensure that officers accused of misconduct were given a fair hearing and reasonable opportunities to defend themselves; and
- (c) With effect from 1 November 2002, Permanent Secretaries/Heads of Department (HoDs) had been empowered to impose punishment (other than dismissal) on Category A officers below Point 34 of the Master Pay Scale (MPS) or equivalent under the PS(A)O. Hitherto, their authority covered Category A officers below MPS Point 14. The further devolution of authority was expected to help further shorten the time taken to process disciplinary cases whilst preserving the principles of natural justice.

8. DSCS3 assured members that the Administration would review the disciplinary mechanism from time to time to enhance its effectiveness.

### Discussion

#### *Statistics*

9. Referring to the statistics on the disciplinary cases for 2000-01, 2001-02 and 2002-03 (up to 30 September 2002) provided in Annexes A and B of the paper, the Chairman asked for the rank of the officers involved in the cases. DSCS(3) said that a rough indication based on cases processed was as follows:

<u>MPS Point of officers Involved in the disciplinary cases</u>	<u>Percentage of total number of disciplinary cases</u>
Below MPS Point 14	About 55%
MPS Point 14 to below MPS Point 34	About 30%
MPS Point 34 and above	About 15%

#### *Effectiveness of current disciplinary mechanism*

10. Mr CHEUNG Man-kwong opined that based on the limited information provided in the paper, it was difficult for members to assess the effectiveness of the current civil service disciplinary mechanism. In his view, the Administration should provide more details of the disciplinary mechanism, such as the procedures involved in processing a disciplinary case, the disciplinary authority for different ranks, the role

of the Public Service Commission (PSC), the appeal channel for the officers concerned, etc. Mr Andrew WONG shared Mr CHEUNG's view. At members' request, DSCS(3) undertook to provide the required information after the meeting.

11. Quoting figures from the annual reports of PSC from 1998 to 2001, Mr CHEUNG Man-kwong pointed out that PSC had raised queries on about 20% of the disciplinary cases on which it was consulted. This high percentage cast doubt on whether the disciplinary cases had been handled fairly by the Administration. DSCS(3) advised that some of the questions raised by PSC were for clarification purpose only and were resolved after the Administration had provided more information. She also pointed out that since the establishment of SCSD in April 2000, the central processing of disciplinary cases by a dedicated and experienced team of staff had not only shortened the processing time but had also maintained greater consistency in the process.

12. Quoting figures from the annual reports of PSC again, Mr CHEUNG Man-kwong pointed out that in 2000 and 2001 (i.e. after the establishment of SCSD), PSC had raised queries on 27 and 22 disciplinary cases respectively, and the Administration had subsequently adjusted the level of punishment in 23 and 16 cases respectively. Mr CHEUNG was concerned that SCSD was not operating effectively. DSCS(3) pointed out that for the majority of the cases, the discrepancies on the level of punishment were about the extent rather than the type of penalty. To facilitate exchange of views on precedent cases, SCSD met regularly with PSC. In view of the fact that SCSD had only become fully functional in 2001-02, it was expected that further improvements could be made in the years to come.

#### *Due process*

13. Referring to paragraph 9(d) of the paper, Mr LEUNG Fu-wah noted that the accused officer would be given sufficient opportunities to explain his case. He requested the Administration to elaborate on the details of the arrangement. DSCS(3) said that the accused officer would be given opportunities to make representations at different stages of the proceedings. Before the commencement of the hearing, SCSD would brief the accused officer on the related procedures. Materials and documents to be presented to the inquiry officer in support of the disciplinary charges would be given to the accused officer before the hearing to facilitate his preparation for defence. The accused officer would be given sufficient opportunities to explain his case and to call witnesses to support his defence at the hearing. Officers who felt aggrieved might make representations to the Chief Executive (CE) and/or seek judicial review of their cases.

14. At the request of Mr HUI Cheung-ching, DSCS3 agreed to provide the number of previous disciplinary cases in which the officers concerned had made representations to CE.

15. Responding to Mr LEUNG Fu-wah, DSCS(3) said that if the accused officers pleaded guilty to the disciplinary charges, early hearings would be arranged and the procedures involved in the disciplinary proceedings would be simpler. Nevertheless, these officers might not necessarily be awarded lighter penalties, as the level of punishment would be determined on a number of factors, including the nature of the misconduct committed and whether the misconduct was directly related to the officers' core duties.

16. Referring to some civil service staff associations' feedback about the cases where supervisors had made false allegations against their subordinates, Mr Michael MAK considered that the principle of "giving the benefit of the doubt to the defendant" under the common law should be applied in civil service disciplinary proceedings to safeguard the interests of the accused officers. The Acting Permanent Secretary for the Civil Service and DSCS(3) pointed out that civil service disciplinary proceedings were not legal proceedings, but were part of the civil service staff management mechanism. Instead of following strictly the practices adopted in court proceedings, the application of the principle of natural justice and the provision of sufficient opportunities for the accused officers to defend and explain themselves were considered more appropriate. They also pointed out that disciplinary hearings would only be arranged if there was adequate prima facie evidence to charge the accused officer of the alleged misconduct. The Department of Justice would be consulted at different stages of the proceedings where appropriate to ensure that the inquiries were conducted properly and that the findings were supported by evidence.

17. Mr Michael MAK maintained his view that the principle of "giving the benefit of the doubt to the defendant" should be applied in civil service disciplinary proceedings to safeguard the interests of the accused officers. The Chairman and Mr Andrew WONG shared Mr MAK's view. Mr WONG considered that if such a principle was not applied in the disciplinary proceedings, the accused officer would be put in a very unfavorable position. Referring to previous cases where supervisors had made false allegations against their subordinates, he considered it essential to put in place sufficient safeguards to ensure a fair hearing.

18. DSCS(3) pointed out that the Administration was mindful of the importance of due process and had included in the disciplinary mechanism a number of safeguards for the protection of the rights of the accused officers. She stressed that the accused officers would be given fair hearings in which independent inquiry officers would consider the evidence and statements given by the accused officer, his supervisors and other relevant parties before determining whether the alleged misconduct was established. If the alleged misconduct was established, SCSD would seek the view of the relevant HoD on the punishments to be awarded, with reference to precedent cases of comparable nature. The disciplinary authority would then consult PSC on the recommendations made by the relevant HoD before making decision on the punishment to be awarded.

19. Responding to Mr Andrew WONG, DSCS(3) said that disciplinary cases involving officers of the same department in the same incident could be grouped together for consideration at the same hearing. The accused officers would be consulted on the arrangement of individual or group hearings and their preference would be respected.

*Level of punishment*

20. Mr Albert CHAN queried whether the current disciplinary mechanism was a fair mechanism, as officers of different ranks who had committed the same type of misconduct were awarded different levels of punishment. In general, officers at higher ranks were awarded lighter punishment than officers at lower ranks. DSCS(3) clarified that that was not the case. She reiterated that the Administration was mindful of the importance of due process in disciplinary proceedings. A number of safeguards had been built into the disciplinary mechanism under PS(A)O to ensure that officers accused of misconduct would be given a fair hearing and reasonable opportunities to defend themselves, irrespective of their ranks. In determining the level of punishment, the disciplinary authority would consider carefully the gravity of the misconduct taking into account the nature and circumstances of the case, and where appropriate, facts revealed in the relevant court proceedings in the case of criminal convictions. The rank of the officer concerned was irrelevant. A heavier penalty would be awarded where the misconduct committed by the officer concerned was directly related to his core duties and where the delivery of public service was adversely affected. PSC, a statutory body which gave impartial advice to the Government on civil service appointment and discipline matters, was consulted on the level of appointment. DSCS(3) also assured members that the principles of natural justice would be upheld in the processing of disciplinary cases and the officers concerned would be treated fairly and equally.

21. To facilitate members' consideration of the issue, Mr Albert CHAN and Mr LEUNG Fu-wah asked for more details of the statistics on "Punishment awarded in the civil service following completion of formal disciplinary proceedings" provided in Annex B of the paper. At the request of Mr CHAN and Mr LEUNG, DSCS3 agreed to provide a breakdown of the cases showing:

- (a) the rank of the officers concerned and the strength of each rank;
- (b) the types of misconduct committed by the officers concerned; and
- (c) the types of punishment awarded to the officers concerned.

*Disciplinary cases involving criminal offences*

22. Pointing out that the number of cases involving criminal offences referred to PSC for consultation had increased from 28 to 52 from 1998 to 2001, Mr CHEUNG

Man-kwong asked whether there was an upward trend in the total number of disciplinary cases handled by the Administration, and the types of criminal offences involved. In reply, DSCS(3) said that each year, there were about 200 criminal cases processed under the PS(A)O , and the majority of such cases were related to traffic offences. For cases related to traffic offences, the officers concerned might not be subject to punishment if the offences were not related to their core duties and the delivery of public service was not adversely affected. Responding to Mr CHEUNG 's further enquiry, DSCS(3) advised that there had been cases where civil servants were involved in serious criminal offences such as corruption or theft. At Mr CHEUNG's request, DSCS(3) undertook to provide a breakdown of the types of misconduct committed by the officers involved in the disciplinary cases listed in Annex B of the paper.

23. As civil servants who had committed criminal offences would be subject to punishment awarded under the civil service disciplinary proceedings in addition to the penalty imposed by the court, the Chairman and Mr CHAN Kwok-keung asked whether the civil servants concerned were in fact subject to double penalty. If that was the case, Mr CHAN considered it unfair to the civil servants concerned, as their private sector counterparts who had committed the same offences were not subject to double penalty. DSCS(3) advised that the Administration had not conducted any comparison study on the disciplinary proceedings or the level of punishment awarded in the public and the private sectors. However, she stressed that the Administration was committed to upholding a high standard of probity in the civil service. Prompt disciplinary action would be taken against civil servants who had committed misconduct. In the case of a criminal conviction, formal disciplinary action would be considered and in determining the level of punishment, the disciplinary authority would consider carefully the gravity of the misconduct taking into account the nature and circumstances of the case, and where appropriate, facts revealed in the relevant court proceedings.

24. Mr Michael MAK asked for the efforts made by the Administration in upholding a high standard of probity in the civil service. DSCS(3) explained that over the years, CSB had been working closely with the Independent Commission Against Corruption (ICAC) and departments to promote a clean civil service and to instil a culture of integrity amongst staff. Efforts made by CSB and ICAC in this respect in the past few years included reviewing and updating the central guidelines on the conduct and integrity of civil servants; assisting departments in drawing up supplementary guidelines on avoidance of conflict of interest and acceptance of advantages; and providing support to departmental managers in promoting integrity and good conduct through training and experience sharing.

#### *Further devolution of authority*

25. Mr Michael MAK expressed concern about the further devolution of authority to Permanent Secretaries and HoDs to impose disciplinary punishment on



Category A officers below MPS Point 34. He enquired whether departmental consultative committees had been consulted on the devolution and their comments on the changes. DSCS(3) responded that the Administration had briefed the staff sides on the further devolution of authority before the implementation of the changes on 1 November 2002. The staff representatives were mainly concerned about the safeguards in the disciplinary mechanism after the devolution. The Administration had assured them that the existing built-in safeguards in the disciplinary mechanism would be preserved after the devolution.

*(Post-meeting note: The information provided by the Administration in response to members' concern in paragraphs 10, 14, 21 and 22 above was circulated to members vide LC Paper No. CB(1)501/02-03(01) on 11 December 2002.)*

**V. Review of Duty Mileage Allowance**

(LC Paper No. CB(1)260/02-03(03) — Paper provided by the Administration)

Briefing by the Administration

26. The Deputy Secretary for the Civil Service (2) (DSCS(2)) briefed members on the paper provided by the Administration. She advised that the current formula for determining the Duty Mileage Allowance (DMA) rates covered both the fixed costs and the running costs of a vehicle. In the Director of Audit's Report No. 33 published in October 1999, the Director had commented that the Government was over-generous in reimbursing an officer for more than the direct cost incurred by him when using his private vehicle for duty journeys. The Administration had subsequently reviewed the formula for determining DMA rates in the light of the Director's comments and identified room for improvement. The Administration considered that as the vehicle owner had to bear the fixed costs anyway upon the purchase of a vehicle, it was not justified to reimburse DMA claimants for the fixed costs of their vehicles. However, the Administration considered it reasonable to reimburse the claimants for the full running costs incurred for their duty journeys. Taking account of the updated running costs of a vehicle, the Administration proposed that the DMA rates be revised, with effect from January 2003, to \$2.07 per kilometre (km) for motor vehicle and \$0.77 per km for motor cycle and scooter.

27. DSCS(2) further pointed out that adjustment to the DMA rates was currently based on the changes in the cost of components covered by DMA. The existing method for adjusting the DMA rates was far too complicated and there was no mechanism for regular adjustments. To facilitate future adjustments and to ensure that the DMA rates were adjusted regularly, the Administration proposed that the DMA rates be adjusted annually on 1 April, starting from 2004, in accordance with the

year-on-year changes in the relevant components of the Composite Consumer Price Index for the 12-month period ending December of the preceding year.

28. DSCS(2) added that the current formula for determining DMA rates had been approved by the Finance Committee (FC) of the Legislative Council on 13 July 1990. Subject to members' support to the proposed DMA rates and annual adjustment mechanism, the Administration intended to seek the approval of FC at its meeting on 20 December 2002.

### Discussion

#### *Eligibility for DMA*

29. Mr CHEUNG Man-kwong commented that the paper provided by the Administration did not contain sufficient details for members to consider the proposed revision of DMA rates. Pointing out that his main concern was about whether there were any cases of abuse by DMA claimants, Mr CHEUNG sought information on the departments in which officers were eligible for DMA, the rank of the officers concerned and the criteria for assessing their eligibility for the allowance.

30. While appreciating Mr CHEUNG Man-kwong's concern, DSCS(2) pointed out that any possible abuse of DMA and the review of the formula for determining DMA rates were two separate issues. She advised that civil servants who used their private vehicles for duty journeys to works sites or other sites in remote areas were eligible to claim DMA. In processing applications for DMA claims, the departmental management would need to be satisfied that such claims were operationally justified and would verify the claims. Based on the claims pattern in 2001-02, the top-spending departments in DMA payments were the Housing Department, Architectural Services Department, Highways Department and the Police. . Responding to Mr CHEUNG's further enquiry, DSCS(2) advised that the departmental management would, in considering whether the mileage claimed for a duty journey was reasonable, take into account various relevant factors, such as the assignments allocated to the claimant, the distance of the journey, etc.

31. At the request of Mr CHEUNG Man-kwong, DSCS(2) agreed to provide additional information on the subject to the Panel and in the paper to FC, including the departments in which officers were eligible for DMA, the rank of the officers concerned and the criteria for assessing their eligibility for the allowance.

#### *Proposed reduction in DMA rates*

32. Mr CHEUNG Man-kwong noted that the Director of Audit had recommended that the DMA rates should be reduced to cover only the direct cost, i.e. the fuel cost, incurred for duty journeys. As the Administration's current proposal was more generous than the Director's recommendation, Mr CHEUNG asked whether the

Administration had sought the views of the Director on its proposed adjustment to the DMA rates. In response, DSCS(2) advised that the Administration had taken the Director's recommendation into consideration before finalizing its proposal. The Administration took the view that as DMA was intended to provide a fair recompense for eligible officers who, for operational reasons, use their private vehicles for duty purposes, it would be reasonable to reimburse the claimants the full running costs incurred for their duty journeys. The Administration had not sought the views of the Director on its latest proposal.

33. Mr Andrew WONG considered the arrangement for officers to use their private vehicles for duty journeys cost-effective, as it had reduced the public expenditure on the purchase and maintenance of departmental vehicles as well as the travelling time. He therefore considered it reasonable to reimburse the eligible officers for both the fixed costs of their vehicles and the running costs incurred for their duty journeys. In other words, the revision in DMA rates was unnecessary. He cautioned that the reduced DMA rates might discourage officers from using their own vehicles for duty journeys, thus increasing the expenditure on departmental transport. Moreover, much longer travelling time would be required if the officer travelled by bus. Mr Michael MAK shared his concern. DSCS(2) assured members that in reviewing the formula for determining DMA rates, the Administration had taken into account the comments of the Director of Audit and the staff sides, and considered various options. The Administration considered the current proposal reasonable.

34. In response to Mr CHEUNG Man-kwong's enquiry on the formula for the computation of the cost for repairs and maintenance, DSCS(2) referred members to paragraph 10 of the paper. She explained that the cost of repairs and maintenance was calculated at 10% of the average capital cost for a certain mileage of selected motor vehicle models. At Mr CHEUNG's request, DSCS(2) undertook to provide further information on this point to the Panel and in the paper to FC.

*Financial implications of the proposed reduction in DMA rates*

35. Ms LI Fung-ying commented that the financial implications set out in paragraph 12 of the paper were not comprehensive. Apart from the Administration's estimated savings resulted from the proposed revision in the calculation and adjustment of DMA rates, the possible increase in expenditure on departmental transport should also have been included in the paper. Referring to the staff feedback that the reduced DMA rates would discourage officers from using their own vehicles for duty journeys, thus increasing the demand for departmental transport, Ms LI sought information on the estimated increase in expenditure in this regard. Mr Michael MAK was also concerned about the cost-effectiveness of the proposal.

36. DSCS(2) pointed out that the estimated savings for 2002-03 and the years thereafter were rough estimates only, as the actual savings would depend on the mileage claimed by eligible officers. At this stage, the Administration did not expect

that the proposed reduction in DMA rates would result in a sudden rise in the demand for departmental transport. As a general rule, departmental management would ensure that officers used the most economical means of transport for duty journeys wherever operational requirements permitted. Nevertheless, the actual savings achieved by the reduction in DMA rates could be reviewed after the implementation of the proposal.

37. Responding to the Chairman's enquiry, DSCS(2) said that departmental management might allow officers to use taxis for duty journeys if this was considered the most suitable means of transport taking into consideration the availability and appropriateness of departmental transport and other means of public transport. She also pointed out that departmental management had the flexibility in determining the appropriate means of transport to be used under different circumstances as long as the principles of efficiency and economy were adhered to.

*Staff consultation*

38. Noting that the DMA rates for motor vehicle would be reduced from \$3.44 per km to \$2.07 per km, Mr Michael MAK considered the reduction substantial. He asked whether the Administration had consulted the departmental consultative committees concerned. DSCS(2) referred members to paragraph 13 of the paper and pointed out that the Administration had consulted the staff sides of the four Central Consultative Councils and the relevant departments on the proposals. The Police Force Council had specifically requested to retain the insurance element in the formula to take into account the additional insurance premium normally charged on police officers for driving their private vehicles for duty journeys. The Administration had consulted the Office of the Commissioner of Insurance and the insurance trade, and had been advised that insurance premium for a motor vehicle was determined by a number of factors. There was no evidence to suggest that additional insurance premium would definitely be charged on a vehicle used for work-related purposes. While appreciating staff's concerns, the Administration expected that duty-related mileage would form only a relatively small portion of the total mileage of an officer's private vehicle. The Administration remained of the view that the fixed costs of a vehicle should be borne by the vehicle-owner himself and the DMA should cover only the running costs directly related to the use of the vehicle for duty purposes.

*(Post-meeting note: The information provided by the Administration in response to a member's concern in paragraphs 31 and 34 above was circulated to members vide LC Paper No. CB(1)501/02-03(02) on 11 December 2002.)*

**VI. Any other business**

39. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 1  
Legislative Council Secretariat  
12 December 2002