

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1152/03-04  
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seen by the Administration)

Ref : CB2/PS/2/03

**Panel on Welfare Services**

**Subcommittee to study issues relating to the Comprehensive Social  
Security Assistance and Social Security Allowance Schemes**

**Minutes of the first meeting  
held on Friday, 2 January 2004 at 2:30 pm  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon LEE Cheuk-yan (Chairman)  
Hon Cyd HO Sau-lan  
Hon LEUNG Yiu-chung  
Dr Hon LAW Chi-kwong, JP  
Hon LI Fung-ying, JP  
Hon Michael MAK Kwok-fung  
Hon WONG Sing-chi

**Member absent** : Hon CHAN Yuen-han, JP

**Public Officers attending** : Items II and III

Mr Paul TANG, JP  
Director of Social Welfare

Mrs Brenda FUNG  
Principal Assistant Secretary for Health, Welfare and Food  
(Elderly Services) 2

Mr LI Kok-ming  
Acting Assistant Director (Social Security)  
Social Welfare Department

Mr LAI Shiu-bor  
Chief Social Security Officer (Social Security) 2  
Social Welfare Department

Miss Cecilla LI  
Chief Social Work Officer (Family and Child Welfare) 1  
Social Welfare Department

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (2) 4

**Staff in attendance** : Mr LEE Yu-sung  
Senior Assistant Legal Adviser 1

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**I. Election of Chairman**

Mr LEE Cheuk-yan was elected Chairman of the Subcommittee.

**II. Proposed terms of reference and workplan of the Subcommittee**  
(LC Paper No. CB(2)834/03-04(01))

2. Members agreed to revise the proposed terms of reference as follows -

"To study issues relating to the Comprehensive Social Security Assistance and the Social Security Allowance Schemes, taking into consideration the views of the public, service users and non-governmental organisations providing welfare services."

3. Director of Social Welfare (DSW) sought clarification as to whether the issues of "Ending Exclusion Project for single parents on CSSA" and "Supplementary Provision for CSSA", tentatively scheduled for discussion at the Panel on Welfare Services in February 2004, should be considered by the

Subcommittee. The Chairman considered that these two issues should be dealt with by the Panel. Members agreed.

4. The Chairman then sought members' view on the workplan of the Subcommittee.

5. Ms LI Fung-ying said that the Subcommittee should focus on understanding the difficulties encountered by new arrivals unable to meet the seven-year residence requirements for Comprehensive Social Security Assistance (CSSA), and the exercising of discretionary power under the CSSA Scheme to waive the residence rule. The Chairman suggested and members agreed to hold a hearing by end of February/early March 2004 to listen to the views of the deputations in that regard.

6. The Chairman suggested to consider in four months' time, say, in April 2004, as to whether the Subcommittee should continue its work until the end of the current legislative term or to refer any outstanding issue(s) to the Panel on Welfare Services for follow-up. Members agreed.

### **III. Residence requirements for Comprehensive Social Security Assistance and Social Security Allowance**

(LC Paper No. CB(2)834/03-04(02))

7. Introducing the Administration's paper, DSW highlighted the operation of discretion under the CSSA Scheme to waive the seven-year residence rule, financial implications of the new residence requirements for CSSA, and other forms of assistance and support for new arrivals who were not eligible for CSSA.

8. Mr WONG Sing-chi noted that DSW's discretionary power to grant assistance to a person who did not meet the residence requirements for CSSA was delegated to Senior Social Security Officers (SSSOs) of the Social Welfare Department (SWD). Notwithstanding this, Mr WONG pointed out that there remained the concern that frontline staff of the Social Security Field Units (SSFUs) would turn down a CSSA application solely on the ground that the applicant could not satisfy the residence rule.

9. Acting Assistant Director of Social Welfare (Social Security) (ADSW(Atg)) assured members that there was no question of such a situation, as Social Security Assistants (SSAs) were required to submit reports to Social Security Officers (SSOs) on all CSSA applications whose applicants were unable to satisfy the residence rule. ADSW(Atg) pointed out that upon receipt of CSSA applications from persons unable to satisfy the residence rule, SSAs would need to interview

the applicants to find out all relevant information needed to establish whether there was genuine hardship. Such information included means of the applicant's livelihood since arrival, cause of the present hardship, resources available and possible sources of help in Hong Kong, and possibility of the applicant returning to his place of origin. As CSSA was not the only form of assistance for people in need, SSAs would also need to explore other forms of assistance and support available for new arrivals. The aforesaid information collected would then be submitted to SSOs in the form of a written report to enable them to decide whether there was a case for recommending to SSSOs to exercise discretion under the CSSA Scheme to waive the residence rule. If SSOs should decide the cases were worthy of assistance, reports would be submitted to SSSOs recommending such. Based on the reports received, SSSOs would decide whether or not the applicants should be waived of the residence rule or whether more information would be needed before taking a decision.

10. DSW supplemented that when in doubt on whether CSSA should be granted to persons who did not meet the residence requirements, SSSOs would confer with the Assistant Director of Social Welfare (Social Security). To ensure that the exercising of discretion under the CSSA Scheme to waive the residence rule was fairly, sensibly and consistently applied, all seven SSSOs met regularly to share experience on the operation of such. DSW further said that if a CSSA applicant was not satisfied with the decision made by SWD, he could lodge an appeal with the Social Security Appeal Board (SSAB). The SSAB was an independent body whose members were appointed by the Chief Executive from outside the civil service.

11. The Chairman asked whether internal guidelines for granting waiver of the seven-year residence rule could be provided to members, and whether these guidelines were different from those used when the residence requirements for CSSA was one year.

12. Responding to the Chairman's first question, DSW said that basic principles on the operation of discretion under the CSSA Scheme to waive the residence rule together with illustrative case examples had already been given in paragraphs 3 and 4 of the Administration's paper and further elaborated by ADSW(Atg) in paragraph 9 above. DSW further said that it was not practicable to develop specific rules for establishing whether a person unable to satisfy the residence rule had genuine hardship, as each case had to be considered on its own merits. As to the Chairman's second question, ADSW(Atg) replied in the negative.

13. Ms LI Fung-ying noted from paragraphs 11 to 16 of the Administration's paper that other forms of assistance and support were available to new arrivals irrespective of their length of residence in Hong Kong. In the light of this, Ms LI

asked whether SWD staff would take the initiative to help those new arrivals unable to meet the seven-year residence rule and to see to it that they got the types of assistance and support they needed.

14. DSW responded that not all new arrivals who were refused CSSA were in need of other services or support, and where appropriate, SSFU staff would refer their cases to the Family Services Centres/Integrated Family Service Centres of SWD for follow-up. Chief Social Work Officer (Family and Child Welfare) 1 said that if the needs of the person concerned could not be met by the welfare services provided by SWD, actions would be taken to refer his/her case to the appropriate non-governmental organisations (NGOs) and/or to help him to apply for grants from the charitable trust funds. All referrals to NGOs would be closely monitored by social workers of SWD to see that the persons concerned got the assistance and support they needed. DSW supplemented that in view of SWD's close partnership with NGOs and the organisations responsible for administering the charitable trust funds, no major problems had occurred in cases referred to NGOs for follow-up and in the applications of grants from the charitable trust funds.

15. Mr Michael MAK asked the following questions -

- (a) What were the numbers of CSSA applications waived of the residence rule in recent years;
- (b) What were the numbers of successful appeal cases lodged with SSAB against the decisions of DSW not granting waiver of the residence rule under the CSSA Scheme in recent years; and
- (c) Whether the number of SSSOs needed to be increased from the existing seven, as DSW might have to resort more to his discretionary power to grant assistance to those in cases of genuine hardship but unable to satisfy the seven-year residence rule implemented on 1 January 2004.

16. ADSW(Atg) responded that as at the end of November 2003, there were some 600 CSSA cases involving 800-odd recipients who did not meet the one-year residence requirement.

17. Regarding Mr MAK's second question, ADSW(Atg) said that very few new arrivals, if any, had lodged appeals with SSAB against the decisions of DSW not granting waiver of the residence rule in the past one to two years. This was due to the fact that unsuccessful applicants were made understood by SSFU staff why waiver of the residence rule under the CSSA Scheme could not be granted to them

and/or that other forms of assistance and support could meet their needs.

18. As to Mr MAK's last question, ADSW(Atg) considered that the existing number of SSSOs was sufficient to cope with the CSSA caseload for the time being. This was because the effect of the seven-year residence rule would not become apparent until at least one year after its implementation on 1 January 2004, having regard to the fact that the previous residence rule was one year. DSW supplemented that appropriate actions had been taken to ensure that the seven-year residence rule was brought to the attention of potential migrants, so that they might take into account the new policy in deciding whether to migrate to Hong Kong. It was therefore envisaged that the number of cases seeking waiver of residence rule should not be significantly increased following the implementation of the new policy on 1 January 2004. In the light of this, there was no plan to increase the manpower of SSFUs, including SSSOs, at this stage.

19. Mr LEUNG Yiu-chung said that relying on other forms of assistance and support, such as emergency relief, grants from charitable trust funds and assistance in kind, to assist new arrivals unable to satisfy the residence rule was far from satisfactory. Not only was such an approach piecemeal, these other forms of assistance and support only served to tide people over temporary financial hardship. Ms Cyd HO echoed similar views expressed by Mr LEUNG.

20. Chief Social Security Officer (Social Security) 2 assured members that for cases of genuine hardship, discretion would be exercised to exempt the persons concerned from meeting the seven-year residence rule for CSSA. DSW supplemented that the main reasons for not waiving the residence rule for new arrivals were because they had resources available and/or had relatives or friends in Hong Kong who could help them. DSW further said that although some assistance and support were intended to tide people over temporary financial hardship, others, such as employment support services and the Intensive Employment Assistance Projects, served to help new arrivals move towards self-reliance.

21. Responding to Mr LEUNG Yiu-chung's enquiry about the time needed for consideration of waiver of the residence rule, ADSW(Atg) said that this would take about one week, including announcing the result to the applicant, on the condition that the person concerned had provided all the requisite information.

22. In order to better help members understand the operation of discretion under the CSSA Scheme to waive the residence rule, the Chairman requested SWD to provide some case examples where waiver of the residence rule was not granted in the past. DSW agreed to consider.

23. Ms Cyd HO said that if SWD was truly concerned about the plight of new arrivals unable to satisfy the residence rule, it was inconceivable that no information on the number of rejected CSSA applications from this group of people was kept. In this connection, Ms HO requested SWD to provide information on the number of CSSA applications it had rejected during the past 12 months due to failure to meet the residence requirements. Ms HO further said that it was highly unfair to impose a residence requirement as an eligibility criterion for CSSA, and a very strict one at that, instead of providing social benefits on a need basis. Ms HO then asked whether SWD would refuse CSSA for a new arrival if he/her could return to his/her place of origin, despite the fact that this would result in splitting up a family thereby leaving young child(ren) without parental care.

24. DSW responded that eligibility for CSSA based on a residence requirement was appropriate to ensure a rational basis for allocating social benefits heavily subsidised by public funds. Moreover, a stricter residence requirement for CSSA would encourage potential new arrivals to make better planning before deciding to come to Hong Kong. He stressed that the Government had an obligation to support those in need to provide a basic standard of living adequate for the health and well-being of himself/herself and of his/her family. SWD would continue to exercise discretion to waive the residence requirement in cases of genuine hardship. New arrivals failing to obtain CSSA in the past for reasons, such as failure to satisfy the residence rule, could always apply for CSSA again if there had been a substantial and unexpected change in their circumstances justifying compassionate treatment. It should also be noted that where a new arrival in a family was working to support himself/herself and his/her family members, discretion was normally exercised to treat him/her as an eligible member for the purpose of CSSA in recognition of the new arrival's efforts to become self-supporting.

25. On the number of CSSA cases that were not waived of the residence rule during the past 12 months, ADSW(Atg) said that prior to 1 January 2004, the only figure that was kept by SWD concerning cases not meeting the residence rule was the number of such cases waived of the residence rule. SWD had no separate figure on the number of rejected CSSA cases due to failure to meet the residence rule. To tie in with the implementation of the seven-year residence rule on 1 January 2004, modifications had been made to the computer system of SWD to enable it to compile statistics on the number of CSSA applications not meeting the residence rule and the number of such applications waived or otherwise of the residence rule. ADSW(Atg) however pointed out that it would still require SWD staff to look up each such rejected case to understand why waiver of the residence rule was not granted.

26. Regarding the operation of discretion to waive the residence rule, Chief Social Security Officer (Social Security) 2 said that SWD would not reject an application from a new arrival simply on the basis that the applicant was not debarred from returning to his/her place of origin, unless it was a better option. In the case cited by Ms Cyd HO in paragraph 23 above, it might not be a better option for the applicant to return to his/her place of origin. Chief Social Security Officer (Social Security) 2 however pointed out that not all those unable to meet the residence rule came to Hong Kong for family reunion, and that in some cases, it could be a better option for the new arrival to return to his/her place of origin, for instance, the family member whom the new arrival intended to join had died and he/she had no other family members, relatives or friends in Hong Kong.

27. Ms Cyd HO criticised that the exercising of such discretionary power lacked transparency and consistency. For instance, there were cases where the newly arrived women, who were abused by their spouses, and had no resources and friends or relatives who could help them out were only given places to stay in sheltered homes. This was incongruous with the case examples given in paragraph 4 of the Administration's paper. Ms HO further said that it was questionable whether imposing a residence requirement as an eligibility criterion for CSSA was consistent with the Basic Law, as raised by some deputations at the special meeting of the Panel on Welfare Services on 18 December 2003.

28. DSW responded that as each case had to be considered on its own merits for waiving of the residence rule, he could not comment specifically on the cases mentioned by Ms HO in paragraph 27 above in the absence of all the information available.

29. The Chairman asked when the Administration could provide the legal opinions on the compliance of the new residence requirements for CSSA and SSA with the Basic Law, as requested by members at the special meeting of the Panel on Welfare Services on 18 December 2003. In response, Principal Assistant Secretary for Health, Welfare and Food said that such information would be ready shortly after consultation with Department of Justice.

30. The Chairman asked whether the factors used for waiving the residence rule were the same as that used for vetting CSSA applications from persons who met the residence rule.

31. ADSW(Atg) responded that some of the factors used for waiving the residence rule were used for vetting CSSA applications from persons who met the residence rule, such as cause of the present hardship and resources available. The reason why factors such as means of the applicant's livelihood since arrival was only applicable to new arrivals unable to meet the residence rule was that SWD

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needed to better understand whether they were in genuine hardship.

32. Mr WONG Sing-chi asked whether discretion to waive the residence rule would continue to be granted to a person previously on CSSA.

33. DSW responded that each case had to be considered on its own merits. The fact that a person was previously on CSSA on a discretionary basis would not make him/her automatically eligible for CSSA irrespective of their length of residence in Hong Kong.

34. Dr LAW Chi-kwong said that at present, a new arrival not yet resided in Hong Kong for seven years would normally be treated as an eligible member for the purpose of CSSA in recognition of his/her's efforts to become self-supporting, if he/she was working to support himself/herself and his/her family members. Such treatment would normally also be extended if he/she became unemployed. This would however not be the case for a new arrival not yet resided in Hong Kong for seven years and whose family members were not on CSSA. Dr LAW urged that actions be made to address such unequal treatment of new arrivals. DSW agreed to give the matter further thoughts.

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35. The Chairman said that he did not understand why SWD could not estimate the number of cases requesting waiver of the residence rule arising from the implementation of the seven-year residence requirements for CSSA on 1 January 2004. The Chairman pointed out that such estimation could be derived from the breakdown of the past numbers of CSSA cases by length of the applicant's residence in Hong Kong.

36. Chief Social Security Officer (Social Security) 2 responded that it would not be very reliable to estimate the number of cases requesting waiver of the seven-year residence rule based on previous figures, given that residence requirements for CSSA had been changed from one year to seven years. He pointed out that in view of the stricter residence requirements for CSSA, it was envisaged that potential migrants would plan more carefully and ensure that they had sufficient means to support themselves in Hong Kong before deciding to come here. Dr LAW Chi-kwong also pointed out that another reason was that the profiles of new arrivals had changed. For instance, the age gap between a Hong Kong permanent resident and his wife from the Mainland had been narrowing.

#### *Dates of next meetings*

37. Members agreed to hold the next meeting on 2 February 2004 at 4:30 pm to discuss the issue of the compliance of the new residence requirements for CSSA and SSA with the Basic Law. Members further agreed to hold another meeting

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on 26 February 2004 at 8:30 am to listen to the views of deputations on the implementation of the seven-year residence requirements for CSSA and SSA.

38. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 2  
Legislative Council Secretariat  
30 January 2004