

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1059/05-06  
(These minutes have been seen  
by the Administration)

Ref: CB1/HS/1/05

**Subcommittee to Study the Transport Needs of and Provision of  
Concessionary Public Transport Fares for Persons with Disabilities**

**Minutes of third meeting on  
Thursday, 16 February 2006, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LEE Cheuk-yan (Chairman)  
Hon LEUNG Yiu-chung  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon WONG Kwok-hing, MH  
Hon LEUNG Kwok-hung  
Dr Hon Fernando CHEUNG Chiu-hung
- Member attending** : Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon LAU Kong-wah, JP  
Hon Andrew CHENG Kar-foo
- Public Officers  
Attending** : Ms Linda LAI  
Deputy Secretary for Health, Welfare & Food  
(Family & Women)
- Mrs Mary MA  
Commissioner for Rehabilitation,  
Health, Welfare and Food Bureau
- Miss Angela LEE  
Principal Assistant Secretary for the Environment,  
Transport and Works (Transport)

Mr Don HO  
Assistant Commissioner for Transport/  
Management & Paratransit

Mr Kenneth MOK  
Chief Transport Officer/Planning/  
Disabled Transport & Project  
Transport Department

**Attendance by invitation** : Equal Opportunities Commission

Mr Raymond TANG Yee-bong  
Chairperson

Mr Herman POON Lik-hang  
Chief Legal Counsel

Dr Ferrick CHU Chung-man  
Head, Policy & Research

**Clerk in attendance** : Mr Andy LAU  
Chief Council Secretary (1)2

**Staff in attendance** : Ms Connie FUNG  
Assistant Legal Adviser 3

Ms Sarah YUEN  
Senior Council Secretary (1)6

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**I Confirmation of minutes and matters arising**  
(LC Paper No. CB(1)787/05-06 - Minutes of the meeting held on  
9 January 2006)

The minutes of the meeting held on 9 January 2006 were confirmed.

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- II Meeting with the Equal Opportunities Commission and the Administration**
- (LC Paper No. CB(1)869/05-06(01) - Information paper provided by the Administration
- LC Paper No. CB(1)869/05-06(02) - Submission from Equal Opportunities Commission
- LC Paper No. LS32/05-06 - Paper on “Whether non-provision of concessionary public transport fares to persons with disabilities who need to be accompanied by a carer to use public transport facilities constitutes discrimination under the Disability Discrimination Ordinance (Cap. 487)” prepared by the Legal Service Division
- LC Paper No. CB(1)869/05-06(03) - List of follow-up actions arising from the meeting on 9 January 2006 prepared by the Secretariat)

2. The Subcommittee deliberated (index of proceedings attached at Annex A).

3. At the Chairman’s invitation, the Administration briefed members on various options for the offer of concessionary fares to people with disabilities (PwDs). Among the schemes explored, the Carer Scheme (i.e. fare concession for PwD requiring the company of a carer for travelling on public transport) was considered to be least likely to contravene the Disability Discrimination Ordinance (Cap. 487) (DDO), yet without becoming a general fare reduction for everyone.

4. Members considered that DDO was enacted to prevent unlawful discrimination against persons on the ground of their disability. It should not be an obstacle to the provision of concessionary fares to PwDs. The Administration should revamp DDO, if necessary, to put it beyond doubt that offering concessionary fares to selected groups of PwDs should not constitute a contravention of DDO.

5. On the Carer Scheme proposed by the Administration, members generally considered that the Scheme was undesirable as it could not fully address the needs of the disabled community and led to disunity among the disability community. Offering concessionary fares to PwDs requiring the company of a carer only but not others was unfair. It was also against the policy objective of promoting the integration of PwDs into society as PwDs who could live independently would be excluded from the Scheme.

6. In devising a concessionary fare scheme for PwDs, members took the view that the scheme should aim at covering all PwD groups as far as practicable. However, in order to speed up the process, consideration could be given to offering concessionary fares to recipients of Disability Allowance and Comprehensive Social Security Assistance with 100% loss of earning capacity in the first instance, followed by other groups of PwDs. Where necessary, the Administration should introduce legislative amendments to DDO to put it beyond doubt that selective provision of concessionary

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fares to PwDs in phases would not constitute a contravention of DDO.

7. Members asked the Administration to consult the disabled community and public transport operators, including the two railway corporations, the franchised bus companies and tram operator on the proposed approach set out in paragraph 6, and report back to the Subcommittee in two months' time. The Subcommittee also agreed to hold a meeting to receive views from the disabled community on the proposed approach. Pending the response of the public transport operators, the Subcommittee would convene another meeting to meet with them to work out a feasible scheme for providing concessionary fares to PwDs.

**III Any other business**

8. There being no other business, the meeting ended at 6:30 pm.

Council Business Division 1  
Legislative Council Secretariat  
10 March 2006

**Proceedings of the third meeting of  
the Subcommittee to Study the Transport Needs of and Provision of  
Concessionary Public Transport Fares for Persons with Disabilities  
on Thursday, 16 February 2006, at 4:30 pm  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes and matters arising</i>			
000000 – 000107	Chairman	Confirmation of minutes of the meeting held on 9 January 2006 (LC Paper No. CB(1)787/05-06)	
<i>Agenda Item II – Meeting with the Equal Opportunities Commission (EOC) and the Administration</i>			
000108 – 000959	Administration Chairman EOC	<p>Briefing by the Administration (LC Paper No. CB(1)869/05-06(01))</p> <ul style="list-style-type: none"> <li>- Noting the Administration's view that granting of concessionary fares to certain groups of people with disabilities (PwDs) only might contravene the Disability Discrimination Ordinance (Cap. 487) (DDO), the Chairman enquired whether there were any practical means to provide concessionary fares to PwDs, including legislative amendments to disapply certain provisions in DDO so as to make it beyond doubt that selective provision of concessionary fare to PwDs was not unlawful</li> <li>- Despite the fact that section 8(9) and (10) of the Family Status Discrimination Ordinance (Cap. 527) contained similar exception provisions to disapply certain provisions in that Ordinance under specified circumstances, EOC took the view that there was a need to examine further the justifications for introducing such an exception provision in DDO, taking into account the spirit of anti-discrimination legislation as a whole</li> <li>- EOC's emphasis that if eligibility for fare concession was by reference to types of disability, sufficient justification would be required</li> </ul>	
001000 – 001851	Mr TAM Yiu-chung Administration Chairman	- Mr TAM Yiu-chung considered it unfair to provide concessionary fares to PwDs requiring the company of a carer when travelling on public transport (PT) only but not others who strove to live independently without requiring carer assistance in transportation	

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		<p>- Administration's explanation that by establishing the special need for carer assistance in transportation, the Carer Scheme could effectively remove the disadvantage experienced by PwDs in using PT facilities where double payment was required. This could facilitate early provision of concessionary fares for PwDs without the need to go through lengthy legislative process so as to mitigate the risk of possible contravention of DDO. To take forward the Carer Scheme, an appropriate way to assess the need for carer assistance would be devised</p>	
001852 – 003317	<p>Dr Fernando CHEUNG EOC Chairman Ms Miriam LAU</p>	<p>- Dr Fernando CHEUNG's views that the Carer Scheme could not satisfy the needs of the disabled community and was also unfair to those PwDs who strove to live independently without requiring carer assistance in transportation. Indeed the proposal to offer concessionary fares to PwDs was intended to meet the needs of PwDs so as to facilitate their full participation and integration into the community. Dr CHEUNG was not convinced that selective provision of concessionary fares to certain groups of PwDs would contravene DDO as section 50 of DDO provided a defence to an act of discrimination if it were an act reasonably intended to meet their special needs. The granting of fare concessions to meet the special needs of PwDs was in line with the initiative to grant disability allowance to certain groups of recipients to relieve their difficulties</p> <p>- EOC's advice that if the Administration intended to rely on the special measure defence to resist complaints by relevant but excluded PwDs, it should be prepared to demonstrate that their exclusion was not arbitrary or unfair, but was supported by empirical data. On the proposal of granting fare concessions to PwDs who had greater mobility difficulties, EOC's view was that the special measure defence might be established if empirical evidence could be produced showing that the selected PwDs on the whole suffer more adversely than other people from mobility difficulties. Regarding the</p>	

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		<p>legality of granting Disability Allowance (DA) to selected groups of PwDs, EOC's view was that DA was introduced prior to the enactment of DDO. So far, there were no complaints from excluded PwDs but it could not draw any firm conclusion that the act could not be challenged by excluded PwDs on ground of discrimination</p> <ul style="list-style-type: none"> <li>- The Chairman's view that whether the granting of DA was in contravention of DDO fell outside the purview of the Subcommittee and should more appropriately be followed up by the Panel on Welfare Services</li> <li>- Ms Miriam LAU's view that if the granting of DA to selected PwDs did contravene DDO, the legislation should be amended to rectify the situation</li> </ul>	
003318 – 005533	Mr Ronny TONG Chairman EOC ALA3	<ul style="list-style-type: none"> <li>- Mr Ronny TONG remarked that:               <ul style="list-style-type: none"> <li>(a) Direct discrimination occurred when, on the ground of disability, a person with a disability was treated less favourably than another person without a disability in similar circumstances. As such, for the purpose of determining whether there was a discrimination, the comparison was made between a person with a disability and a person without a disability as stipulated in section 6 of DDO;</li> <li>(b) PwDs might suffer from low income problems caused by their disabilities. As such, there was a case to provide economic assistance to relieve their difficulties in the form of concessionary fares. Under the circumstances, the exception provision in section 50 of DDO should apply and selective provision of concessionary fares to those in need should not contravene DDO as the act was intended to meet the special needs of a particular group of PwDs, having regard to their economic status; and</li> <li>(c) DDO should not be used as an excuse for not providing concessionary fares</li> </ul> </li> </ul>	

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		<p>to PwDs.</p> <p>- EOC's expression of the following views:</p> <p>(a) For the purpose of determining whether there was a discrimination under section 6 of DDO, the consideration had always been a comparison of one case with another, the relevant circumstances in the one case should be the same, or not materially different, in the other. The comparison was not made between a PwD and a person without a disability but a person without that particular type of disability. This was in the line with the legislation in Australia in which DDO was modelled on; and</p> <p>(b) PwDs with different types of disabilities might have to face the same or similar difficulty. It was not appropriate to assume that certain difficulties were only confined to PwDs with certain types of disabilities. If the target difficulty of the scheme was low income caused by disabilities, clearly PwDs facing this difficulty were not confined only to those with certain types of disabilities but might include PwDs with many other types of disabilities. If a scheme covered one type of disabilities with low income but neglected or deliberately did not help PwDs with other types of disabilities, also having similar level of low income, it would not be consistent with the principles of equality.</p> <p>- EOC and ALA3's reference to section 8 of DDO, which provided that a comparison of the cases of persons with or without a disability under section 6 should be such that the relevant circumstances in the one case were the same, or not materially different, in the other. Reference was also made to relevant judicial authorities to illustrate how this section had been applied by courts</p>	



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005534 – 010419	Mr WONG Kwok-hing Administration Chairman	<p>- Concern expressed by Mr WONG Kwok-hing that possible contravention of DDO should not be used as an excuse for not providing concessionary fares to PwDs. Indeed, concessionary fares should first be granted to PwD groups with mobility difficulties with subsequent extension to cover all PwD groups. The Government, being the majority shareholder of MTR Corporation Limited and Kowloon-Canton Railway Corporation should take the lead in offering fare concessions to PwDs using railway services. The Administration should, in the context of the franchise renewal exercise, urge the franchised bus companies to offer concessionary fares to PwDs.</p> <p>- Administration's explanation that:</p> <p>(a) the Carer Scheme was a start from the easier end because it was the least vulnerable to a complaint under DDO, yet without becoming a general fare reduction for everyone. On the other hand, provision of concessionary fares to the physically handicapped without properly justifying their special needs might constitute contravention of DDO;</p> <p>(b) the Administration would discuss further with PT operators on the feasible concession schemes for PwDs that were compatible with DDO and agreed by the Subcommittee and the financial implications of providing concessionary fares to PwDs; and</p> <p>(c) The Government's key consideration in awarding a bus franchise was the provision of proper and efficient public bus service. Railway corporations were required to operate according to prudent commercial principles.</p>	
010420 – 011541	Mr LEUNG Yiu-chung Chairman Administration	<p>- Mr LEUNG Yiu-chung expressed concern that little work had been done in respect of urging PT operators to provide fare concessions to PwDs despite repeated calls from Legislative Council Members and requests from the disabled</p>	

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		<p>community since 2002. He was also concerned that the Carer Scheme would stir up divisions in the disabled community, and that after its implementation the Administration would stop pursuing fare concessions for other PwDs. He therefore opined that concessionary fares should be provided for all PwDs. If necessary, legislative amendments could be introduced. He further pointed out that with the provision of concessionary fares to PwDs, PwDs would be encouraged to travel more. This, in turn, would give PT operators new source of revenue</p>	
011542 – 012127	Mr LEUNG Kwok-hung	<p>- Concern expressed by Mr LEUNG Kwok-hung that in order to help solve the problems PwDs faced in integrating with the community, fare concessions should be granted to PwDs without further delay. The number of beneficiaries should, as far as practicable, cover all PwDs. If selective provision of concessionary fares to PwDs was challenged by excluded PwDs, a review could then be conducted to fine tune the scheme</p>	
012128 – 012819	Dr Fernando CHEUNG Chairman Administration	<p>- Dr Fernando CHEUNG's view that the special measure defence available in section 50 of DDO should be relied upon to provide concessionary fares for PwDs</p> <p>- Regarding the granting of concessionary fares to rehabilitation registrants under the Central Registry, the Administration advised that registration under the Central Registry for Rehabilitation was voluntary and the relevant criteria were less stringent than those for DA</p>	
012820 – 015312	Mr Ronny TONG Chairman Mr LEUNG Kwok-hung Dr Fernando CHEUNG Administration	<p>- Mr Ronny TONG's reiteration of the view that sections 8 and 50, especially section 50(c), of DDO should suffice to provide a sound basis for providing concessionary fares to PwDs without contravening DDO</p> <p>- Discussion on the first group of PwDs to benefit from concessionary fare provision. In consideration of the availability of assessment mechanism to minimize any extra administrative work involved, members agreed to start with recipients of DA and PwD recipients of</p>	

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		<p>Comprehensive Social Security Allowance with 100% loss of earning capacity. They also agreed that if all stakeholders found the approach agreeable, legislative amendments would be introduced where necessary to support the approach</p> <ul style="list-style-type: none"> <li>- Administration's comment that the above approach was expected to involve fewer implementation problems, in particular those in relation to the identification of PwDs and the size of the potential beneficiaries for the concession, which would have a bearing on the financial implications of providing concessionary fares to PwDs on PT operators</li> <li>- Discussion on the implementation schedule and agreement that the Administration should consult PwDs as well as PT operators on the preferred approach before they reported back to the Subcommittee. The Subcommittee would also invite the two groups to its meetings</li> </ul>	
<i>Agenda Item III – Any other business</i>			
015313 – 015423	Chairman	Meeting arrangements	