

立法會
Legislative Council

LC Paper No. CB(1)2146/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PS/1

Panel on Public Service

Minutes of meeting
held on Monday, 15 May 2006 at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon LI Fung-ying, BBS, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon Bernard CHAN, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon Howard YOUNG, SBS, JP
Hon WONG Kwok-hing, MH
Hon KWONG Chi-kin

Member attending : Hon Emily LAU Wai-hing, JP

Member absent : Hon James TO Kun-sun

Public officers : Agenda Items IV and V
attending

Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Andrew WONG Ho-yuen, JP
Permanent Secretary for the Civil Service

Agenda Item IV

Mrs Rebecca LAI, JP
Permanent Secretary for the Civil Service (Special Duties)

Mr K S SO
Deputy Secretary for the Civil Service (2)

Agenda Item V

Mr Christopher WONG
Deputy Secretary for the Civil Service (3)

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

Staff in attendance : Ms Rosalind MA
Senior Council Secretary (1)8

Mr Justin TAM
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)8

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1439/05-06 — Minutes of meeting on 20 April 2006)

The minutes of the meeting held on 20 April 2006 were confirmed.

II. Information papers issued since last meeting

2. Members noted the following papers issued since the last regular meeting:
- (a) Correspondence between the Clerk to Panel and the Director of Administration on remuneration packages for senior executives of statutory bodies (LC Paper Nos. CB(1)1401/05-06(01) and (02)); and

- (b) Information paper on deletion of obsolete ranks (LC Paper No. CB(1)1479/05-06(01)).

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1440/05-06(01) — List of outstanding items for discussion

LC Paper No. CB(1)1440/05-06(02) — List of follow-up actions

LC Paper No. CB(1)1458/05-06(01) — Letter dated 8 May 2006 from Hon WONG Kwok-hing to the Chairman of the Panel

LC Paper No. CB(1)1458/05-06(02) — Extract from the minutes of meeting of the Panel on Public Service on 26 April 2001

LC Paper No. CB(1)1248/00-01 — Follow-up paper to the meeting on 26 April 2001

LC Paper No. CB(1)1475/05-06(01) — Letter dated 11 May 2006 from Hon WONG Kwok-hing and Hon KWONG Chi-kin to the Chairman of the Panel

LC Paper No. CB(1)1475/05-06(02) — Extract from the minutes of meeting of the Panel on Planning, Lands and Works on 20 December 2005

LC Paper No. CB(1)1475/05-06(03) — Extract from the minutes of meeting of the Panel on Planning, Lands and Works on 13 July 2005)

Discussion items for the meeting on 19 June 2006

3. Members agreed that the following two items be scheduled for discussion at the next regular meeting on 19 June 2006:

- (a) Progress update on Pay Level Survey (PLS) and the development of an improved pay adjustment mechanism for the civil service; and

- (b) Civil servants' freedom and right to join trade unions and take part in trade union activities.

4. On paragraph 3(a) above, members noted that the Administration proposed to brief the Panel on the latest progress of the conduct of PLS and the development of an improved civil service pay adjustment mechanism. On paragraph 3(b), the Panel noted the information paper provided by the Administration (LC Paper No. CB(1)1288/05-06(02)) in response to the concerns raised by Mr LEE Cheuk-yan on "Civil servants' freedom and right to join trade unions and take part in trade union activities" and decided that the subject be scheduled for discussion at the meeting on 19 June 2006.

5. The Chairman drew members' attention to Mr WONG Kwok-hing's letter dated 8 May 2006 (LC Paper No. CB(1)1458/05-06(01)), expressing concern about the Administration's policy on earth burial at Gallant Garden and suggesting that the Administration be invited to discuss the subject again with the Panel. Members noted that the subject had been discussed at the Panel meeting held on 26 April 2001 and agreed that further discussion be held at the next meeting on 19 June 2006.

Other discussion item

6. The Chairman referred members to the joint letter dated 11 May 2006 from Mr WONG Kwok-hing and Mr KWONG Chi-kin (LC Paper No. CB(1)1475/05-06(01)), expressing their concern about a consultancy study being undertaken by the Task Force to Review the Construction Stage of the Development Process (Task Force) under the Provisional Construction Industry Co-ordination Board (PCICB) on private certification of building submissions (consultancy study). Members noted that the subject had been discussed at meetings of the Panel on Planning, Lands and Works (PLW Panel) on 13 July and 20 December 2005. Members also noted that the consultancy study was expected to be completed in mid 2006, and the Task Force would present the findings to PCICB for making recommendations to the Business Facilitation Advisory Committee. As such, a conclusion had yet to be reached on whether private certification of building submissions would be implemented.

7. Mr WONG Kwok-hing and Mr KWONG Chi-kin informed the Panel that a total of 14 civil service staff associations had approached them and expressed grave concern about the consultancy study and the impact of private certification of building submissions on civil servants. Members appreciated their concern and agreed that representatives of the Administration, the Task Force, and the civil service staff associations concerned be invited to a meeting for discussion of the consultancy report and the way forward. As the subject of the consultancy study fell within the purview of the PLW Panel, Mr LEE Cheuk-yan suggested that a joint meeting with the PLW Panel be arranged for discussion of the subject.

8. To facilitate the Panel to finalize the meeting arrangements, the Chairman directed the Clerk to approach the Task Force for relevant information about the consultancy study, including purpose and scope of the consultancy study; target date for completing the consultancy study and publication of the consultancy report; and whether staff consultation had been conducted. Given that the consultancy study was expected to be completed in mid June 2006, members agreed that the meeting might be scheduled to be held in July but the exact date should be fixed after the information provided by the Task Force had been received.

(Post-meeting note: The “Consultancy study on private certification of building submissions” was discussed at the joint meeting with the PLW Panel on 17 July 2006.)

IV. Implementation of five-day week in the Government

(LC Paper No. CB(1)1440/05-06(03) — Paper provided by the Administration)

Briefing by the Administration

9. At the Chairman’s invitation, the Secretary for the Civil Service (SCS) briefed members on the Administration’s plan to implement a five-day week in the Government in phases with effect from 1 July 2006. SCS advised that in taking forward the proposal, the Administration’s primary consideration was to maintain the overall level and efficiency of government services, and to adhere to the following basic principles –

- (a) no additional staffing resources;
- (b) no reduction in the conditioned hours of service of individual staff;
- (c) no reduction in emergency services; and
- (d) continued provision of some essential counter services on Saturdays.

10. SCS pointed out that the Administration would not attempt to legislate a five-day week for workers outside the civil service. She referred members to details of the phased implementation set out in the paper provided by the Administration (LC Paper No. CB(1)1440/05-06(03)).

Discussion

Arrangements for implementing a five-day week

11. Responding to Mr LEE Cheuk-yan, the Permanent Secretary for the Civil Service (Special Duties) (PSCS(SD)) explained that the phase one implementation

would involve about 59 000 officers and the subsequent phases might involve some 15 000 officers. Moreover, around 11 100 officers (mainly in the disciplined service departments) were already working to roster systems which involved five shifts or less per week and it was estimated that an additional 7 500 officers might be covered by 1 July 2007. Nevertheless, there might remain some 54 000 officers who would need to continue with their current work patterns, excluding those civil servants working in other public bodies who would follow the respective work patterns in the bodies concerned, e.g. Hospital Authority. PSCS(SD) also advised that about 50% and 40% of the Model Scale I staff and staff in disciplined services departments would shift to five-day week under the various phases of implementation.

12. Mrs Sophie LEUNG pointed out that in implementing a five-day week, the Administration had to make it clear to civil servants and the public that this new work pattern would depend on the nature of services provided by the civil service positions, and civil servants might have a five-day week when they were in these positions. The Administration should try to achieve fairness by posting arrangements so that more civil servants would have the chance of taking up positions with the five-day week arrangement. Mrs LEUNG was of the view that as in the case of the private sector, the five-day week arrangement should not apply to senior government officials. SCS advised that civil servants would have to follow the work patterns required for their incumbent positions. The Administration would allow more civil servants to have a five-day week through roster system and posting arrangements. She also pointed out that like the work pattern of LegCo Members, senior government officials were ready to work beyond their conditioned hours.

Monitoring implementation of the five-day week arrangement

13. Mr CHEUNG Man-kwong and Mr KWONG Chi-kin supported the implementation of a five-day week in the Government. Mr CHEUNG stressed that the Administration should strictly adhere to the basic principles set out in paragraph 9 above, and ensure that no additional government expenditure and no reduction in government services would be involved. Mr KWONG however doubted whether it was feasible for the Administration to implement a five-day week without involving additional manpower resources. Mr CHEUNG pointed out that the public might have grievances if additional resources were involved. In this connection, he urged the Administration to closely monitor the implementation of a five-day week and review the arrangement (e.g. three to six months after the implementation of phase one on 1 July 2006), in particular, to review its impact on service quality; its impact on the public; its impact on civil servants, including their ability to cope with longer working hours during weekdays and how far they had benefited from the arrangement; and the need for fine-tuning the new arrangement, or restoring the previous arrangement for five and a half day week.

14. In reply, PSCS(SD) advised that bureaux and departments (B/Ds) had examined in detail the feasibility of service delivery on the five-day week basis taking into account views of staff, major stakeholders and customers collected through

various channels, including questionnaires, customer liaison groups and relevant advisory bodies. In respect of those government functions which would continue to operate for more than five days a week, some departments were examining the possibility of introducing a five-day week roster arrangement for some or all of the staff involved while adhering to the basic principles in paragraph 9 above. She assured members that B/Ds would closely monitor the reaction of their customers and the public to the implementation of a five-day week, for example, through deploying duty officers to observe the demand for services covered by phase one on Saturdays in July 2006. B/Ds would submit their reports to CSB in mid-August 2006. The Administration would not rule out the possibility for making necessary adjustments to the new arrangements subject to service needs.

Impact on service provision

15. Whilst appreciating the benefits of a five-day week to Government employees, Mr WONG Kwok-hing was concerned whether any measures would be put in place to minimize the impact of non-provision of some public services on Saturdays on the public, such as the services provided by the Labour Department (LD) in handling labour disputes which happened on Saturdays.

16. Mr KWONG Chi-kin and the Chairman also expressed concern about the impact on service provision on Saturdays. Mr KWONG pointed out that as most employees in private sector needed to work from Mondays to Fridays, they were only available to approach government departments on Saturdays for services, such as seeking assistance in matters relating to labour relations and employees' rights and benefits (including compensation for work injuries and arrangement of conciliation meetings, etc.). To facilitate the public, Mr KWONG urged the Administration to consider maintaining the relevant counter services on Saturdays. The Chairman expressed similar concern and urged the Administration to pay particular attention to provision of services to the less privileged class, such as those provided by the Social Welfare Department (SWD), Housing Department and LD.

17. In reply, SCS reiterated that in taking forward the proposal of implementing a five-day week, the Administration's primary consideration was to maintain the overall level and efficiency of government services. The provision of public services on Saturdays had been worked out by relevant B/Ds after consultation with their customers and staff concerned. B/Ds would take suitable measures to minimize the impact of non-provision of services on Saturdays on the public, including measures facilitating the greater use of electronic means for business transactions, provision of drop-in boxes, and putting in place alternative payment channels, etc. As to the handling of labour disputes by LD on Saturdays, LD would make appropriate arrangements to attend to urgent cases upon implementation of a five-day week.

18. PSCS(SD) added that in formulating the plan for phase one implementation, B/Ds had taken into account the views of relevant advisory bodies and stakeholders in assessing the demand for various public services before deciding on the services

which would cease to be provided on Saturdays (Annex A to the paper provided by the Administration). PSCS(SD) undertook to convey Mr KWONG Chi-kin's view to LD for consideration. She also pointed out that the public might make enquiries or gain access to emergency and/or urgent services, including those relating to LD's services and labour laws, through the 1823 Citizen's Easy Link or LD's 24-hour hotline. The resourceful and well-trained hotline operators should be able to handle such public enquiries in most cases. Where necessary, arrangements would be made for making appointments with or referrals to the relevant officers for follow-up actions. Responding to Mr KWONG's concern about counter services provided by LD, PSCS(SD) undertook to provide information on the types of counter services of LD which would cease to be provided on Saturdays, and those which would continue to be provided on Saturdays, upon the implementation of a five-day week on 1 July 2006.

19. Mr Howard YOUNG was concerned about the impact on the processing of licence/permit applications by the Transport Department (TD) and the Trade and Industry Department (TID) on Saturdays. He opined that while the Administration should facilitate the collection of applications through drop-in boxes and payment of fees through electronic means, it should also consider arranging minimum manpower to man these government offices on Saturdays to provide necessary assistance to the public.

20. In response, PSCS(SD) said that in formulating the plan for phase one implementation of a five-day week, TD and TID had consulted their customers and relevant stakeholders and ensured that alternative means for service delivery were available to customers on Saturdays. She advised that in addition to payment of government fees through electronic means, members of the public might also pay government fees at post offices which would remain open on Saturdays. Mr Howard YOUNG suggested that upon the implementation of a five-day week, the deadline for the payment of fees and voter registration, etc. should preferably not fall on Fridays given that members of the public who failed to meet the deadlines for payment on Fridays would be unable to pay on Saturdays and Sundays. PSCS(SD) undertook to consider the suggestion.

21. Referring to the list of services that would cease to be provided on Saturdays (Annex A to the paper provided by the Administration), Mr Howard YOUNG enquired whether flexibility would be allowed for B/Ds in compensating the opening hours lost on Saturdays. Mr LEE Cheuk-yan considered that if it was finally decided that some of the counter services of LD would be closed on Saturdays, the opening hours lost on Saturdays (which was three hours in most cases) should preferably be compensated by extending the opening hours for three hours on a particular weekday instead of extending the opening hours daily for around half an hour from Monday to Friday.

22. PSCS(SD) advised that even at present, there were no standard opening hours for government offices. The public would be advised to check the opening hours

through the 1823 Citizen's Easy Link or the official website launched for the publicity of a five-day week before going to various government offices for services. On Mr LEE Cheuk-yan's suggestion about extension of working hours on a weekday, PSCS(SD) undertook to convey Mr LEE's suggestion to LD for consideration. Responding to Mr Howard YOUNG's suggestion about inter-departmental deployment of clerical grade staff for Saturday duties, PSCS(SD) said that Mr YOUNG's suggestion would involve administrative and staff management considerations. The feasibility of such deployment could be explored when the need arose.

23. Ms LI Fung-ying supported the phased implementation approach proposed by the Administration. However, she was concerned whether contingency plans would be formulated to cater for urgent demand for services on Saturdays. PSCS(SD) appreciated Ms LI's concern and undertook to consider suitable contingency measures in conjunction with relevant departments at the initial stage of implementation.

Admin

24. SCS noted members' concerns about the need to provide necessary government services on Saturdays upon the implementation of a five-day week. She said that the Administration would take members' views into consideration in reviewing the five-day week arrangement and considering the need for fine-tuning the arrangement after the phase one implementation.

Impact on civil servants

25. Mr WONG Kwok-hing pointed out that some frontline civil servants of the lower ranks were concerned that they might have difficulties in coping with the workload under a five-day week arrangement under the existing tight manpower position. Mr WONG was also concerned about the ability of frontline civil servants performing physically demanding duties to cope with longer working hours during every weekday. In this connection, he suggested B/Ds to consider allowing their staff to take short breaks (e.g. for 20 to 30 minutes) during a working day of 9.5 hours.

26. SCS said that in formulating the implementation plan, B/Ds had noted staff concern about the impact of longer working hours on physically demanding jobs. Given the staff concern, some of the services would continue to be provided under the current work patterns, e.g. the mail delivery service of the Hongkong Post. As to Mr WONG Kwok-hing's suggestion of providing a break for staff on each working day, PSCS(SD) said that appropriate arrangements to meet the operational needs of various jobs would be worked out by the departmental management having regard to staff views collected through the departmental consultative channels. PSCS(SD) also welcomed suggestions from members.

27. Mr KWONG Chi-kin expressed concern about the hardship of civil servants of lower ranks, in particular the Model Scale I staff, in coping with the extended working hours in a working day under the five-day week arrangement. He enquired

about the measures for enhancing occupational safety and health of these civil servants, especially those performing outdoor duties. PSCS(SD) advised that the Administration attached importance to enhancing occupational safety and health of its staff and would put in place appropriate measures in this regard.

28. Pointing out that some frontline civil servants and staff associations had expressed concern about the impact of a five-day week on the calculation of their leave entitlements and overtime allowances, Ms LI Fung-ying requested the Administration to provide information in this respect. PSCS(SD) explained that the Administration would issue guidelines to civil servants on details of the implementation of a five-day week, including the calculation of leave and overtime. She advised that the existing entitlements of civil servants would not be affected under the five-day week arrangement. Responding to Ms LI's further enquiry about implementation of a five-day week for civil servants working in public bodies, PSCS(SD) said that under the existing practice, these civil servants would adopt the work patterns of the bodies they were working in. This practice would remain unchanged after the implementation of a five-day week in the Government. Nevertheless, civil servants who were seconded to the posts in the public bodies might apply for transfer under the existing staff management mechanism.

Impact on private sector employees and the local economy

29. Mr Howard YOUNG supported the Administration's decision of not attempting to legislate a five-day week for workers outside the civil service. In his view, the decision on the work patterns should be left to individual companies in accordance with the principle of commercial operations.

30. Mr LEE Cheuk-yan said that the Hong Kong Confederation of Trade Unions welcomed the implementation of a five-day week in the Government. Noting the Administration's stance of not legislating for a five-day week in the private sector, Mr LEE urged the Administration to take into account the hardship of private sector employees and consider legislating for statutory requirements on maximum working hours per week and payment of overtime allowance.

31. While not objecting to the implementation of a five-day week in the Government, Ms Emily LAU wished to convey the concerns expressed by some members of the public about the possible impact of the arrangement on the economy of Hong Kong. Pointing out that more civil servants might spend their weekends across the border, Ms LAU was concerned whether the five-day week arrangement in the Government would have an adverse impact on the local economy, in particular the retail and services industries, and further widen the gap between the rich and the poor.

32. In response, PSCS(SD) said that the Administration planned to implement a five-day week to enhance the quality of life of its employees through achieving a better balance between work and leisure. The Administration hoped that the new arrangement would bring benefits to the economy with more civil servants enjoying

their weekends at leisure in Hong Kong. SCS said that civil servants who wished to spend their weekends across the border might have already been able to do so under their current work patterns with alternative Saturday off. Responding to Ms Emily LAU's call for comparing the numbers of cross-border passengers before and after the implementation of a five-day week in the Government, SCS considered that as civil servants and other Hong Kong residents might take into consideration many factors when deciding whether to travel across the border during weekends, it would not be easy to draw any meaningful comparison on the numbers of cross-border passengers before and after the implementation of a five-day week in the Government. As to Ms LAU's concern about the long working hours of employees in the private sector, SCS pointed out that this related to the fundamental questions of whether maximum working hours should be stipulated in law and/or whether statutory requirements for a five-day week should be imposed on all employers. For the first question, it would be followed up by the Panel on Manpower. As regards the second question, the Administration had clearly stated that it would not attempt to legislate for the implementation of a five-day week in the private sector.

Working hours of Foreman grade staff in the Food and Environmental Hygiene Department (FEHD)

33. Mr LEE Cheuk-yan was concerned about the proposed adjustment of working hours of the Foreman grade staff in the Pest Control Section of FEHD from 44 hours per week (including meal break) to 45 hours per week (excluding meal break) with effect from 1 July 2006. Pointing out that the staff concerned had all along been required to work 44 hours per week (including lunch hours) since the early 1990s, Mr LEE questioned why they would be subject to longer working hours upon the implementation of a five-day week.

34. PSCS(SD) explained that the conditioned hours of the Foreman grade in the civil service was 45 hours net a week (excluding meal break). The former Urban Services Department (USD) and Regional Services Department (RSD) had, however, decided in the early 1990s that the actual working hours of Foreman grade staff on pest control duties might be varied to 44 hours gross a week (including meal break) subject to operational considerations. In announcing that decision, the former USD and RSD had made it clear in writing that the variation in the actual working hours was a concessionary arrangement, that the conditioned hours of the staff concerned remained 45 hours net per week and that they might be required to revert back to working the normal conditioned hours (i.e. 45 hours net per week) subject to operational needs. Following a review in 2005, FEHD came to the conclusion that it was no longer justifiable to maintain the concessionary arrangement in view of the drastic increase in complaints and demand for pest control service in recent years. To meet the increased public demand for pest control service, FEHD considered it necessary to reinstate the working hours for the Foreman grade staff in the Pest Control Section to the conditioned hours of 45 hours net a week. Taking account of the planned implementation of five-day week, FEHD decided that the reinstatement of the working hours should also take effect from 1 July 2006 to facilitate

administrative arrangements. It was clear that the reinstatement of working hours was not a result of the implementation of a five-day week.

35. Mr LEE Cheuk-yan requested the Administration to provide background information on the arrangement for the Foreman grade staff in the Pest Control Section to work 44 hours per week since the 1990s, including the number of working hours stipulated in the terms and conditions of service of the staff concerned; any previous agreement between the Administration and the staff concerned on the actual number of working hours; and the reasons for the recent adjustment of working hours. Mr LEE pointed out that as the staff concerned had been required to work 44 hours per week (including meal break) for the past 14 years, they had a reasonable expectation that this requirement formed part of their terms and conditions of service. It was therefore unfair for the Administration to adjust their working hours unilaterally. He urged the Administration to defer the implementation of the proposed adjustment and explore further the issues involved in consultation with staff bodies. Mr LEE also queried the legality of the proposed adjustment and whether it would constitute a breach of the terms and conditions of service of the staff concerned. He asked whether the Administration had sought legal advice from the Department of Justice (DoJ) in this regard and if it had, whether the Administration could provide DoJ's advice to the Panel.

36. PSCS(SD) responded that the terms and conditions of service of different civil service grades varied according to the specific job requirements and responsibilities. Any changes to the prevailing terms and conditions of service should only be made after comprehensive grade review. As to the proposed reinstatement of the conditioned hours for the Foreman grade staff in the Pest Control Section, PSCS(SD) said that the departmental management of FEHD had conducted staff consultation in 2005, well before the Administration put forward the initiative of implementing a five-day week. The departmental management would ensure the lawfulness of its management measures before implementation. SCS also pointed out that while the Administration might provide written information on the legal advice it obtained from DoJ, it was not the normal practice to produce a copy of the legal advice in its original form to any third party, including LegCo.

(Post-meeting note: The information provided by the Administration in response to members' requests mentioned in paragraphs 18, 20, 21, 22, 23 and 35 above was issued to members vide LC Paper No. CB(1)1753/05-06(02) on 13 June 2006.)

V. Mechanism for handling staff complaints

(LC Paper No. CB(1)1318/05-06(01) — Letter dated 11 April 2006 from the Clerk to Panel to the Secretary for the Civil Service

LC Paper No. CB(1)1440/05-06(04) — General principles on conduct and discipline published on the website of the Civil Service Bureau

LC Paper No. CB(1)1318/05-06(02) — Letter dated 18 April 2006 from Hon WONG Kwok-hing

LC Paper No. CB(1)1440/05-06(05) — Paper provided by the Administration)

37. The Chairman pointed out that in the investigation report on the medical fee waiver system published by the Office of The Ombudsman on 6 April 2006, a case was quoted in which a Medical Social Worker (MSW) in SWD, who had spotted a mistake in the approval given by her colleague for full medical fee waiver and reported it to her supervisor, was subsequently warned by her supervisor not to disclose the case to outside parties “with threat of disciplinary action, against causing embarrassment to the Administration”. The case had given rise to concerns about the current mechanism for handling complaints or views raised by civil servants, and the effectiveness of the current mechanism. The Administration was therefore invited to discuss with the Panel on the subject. The Chairman also drew members’ attention to a submission dated 15 May 2006 from a social worker, which was tabled by Mr WONG Kwok-hing at the meeting.

(Post-meeting note: The submission tabled at the meeting was issued to members vide LC Paper No. CB(1)1509/05-06(01) on 16 May 2006.)

Briefing by the Administration

38. SCS advised that the Government attached great importance to the proper handling of staff complaints. B/Ds were required to observe the general guidelines promulgated by the Civil Service Bureau (CSB) in its Circular No. 20/91 on staff complaints procedure. In brief, the guidelines stipulated that all complaints would be dealt with in confidence and the identity of the complainant would not be revealed, without his consent, to anyone other than those involved in investigating the complaint. Moreover, an officer would not be penalized for a complaint made in good faith. In other words, there was no question of holding a civil servant making a report or complaint in good faith liable for disciplinary action. In the investigation of complaints, B/Ds were required to be fair to both the complainants and those against whom their complaints were directed.

Discussion

Effectiveness of the current mechanism for handling staff complaints

39. Mr LEE Cheuk-yan noted from paragraph 12 of the paper provided by the Administration that as an established practice, the Administration would not comment on individual disciplinary cases. He however considered that as the case mentioned in the investigation report published by the Office of The Ombudsman had given rise to concern about the effectiveness of the current mechanism for handling staff complaints within the civil service, the Administration should address and respond to the concern. In this connection, Mr LEE and Mr WONG Kwok-hing pointed out that according to the submission tabled at the meeting, while the MSW concerned had lodged a complaint to her immediate supervisor for six times, her immediate supervisor had not contacted her to follow up the complaint. The MSW was even accused by the department for having mental problems. Mr LEE and Mr WONG considered that the Administration should examine whether the complaint made by the MSW had been handled in line with the guidelines issued by CSB. Otherwise, civil servants would be discouraged from lodging complaints.

40. SCS responded that in order to be fair to both the complainants and those against whom their complaints were directed, it was an established practice of the Administration not to comment on individual complaint or disciplinary case in an open forum. As regards the case in question, CSB was examining the account provided by SWD of how the department had handled the complaint lodged by the MSW concerned, with a view to determining whether the complaint had been handled in accordance with the guidelines issued by CSB. SCS said that, as a well established practice, the Administration would not normally comment on the details of a complaint or disciplinary case in public.

41. The Chairman clarified that the Panel was not asking for the details of individual complaint or disciplinary cases. However, given that the case quoted in the investigation report published by the Office of The Ombudsman had revealed a number of problems regarding how SWD had handled the staff complaint, the Panel considered it necessary to examine the effectiveness of the current mechanism for handling staff complaints in the light of the case in question.

42. Mr WONG Kwok-hing supported the Chairman's view. He pointed out that according to paragraph 14 of the paper provided by the Administration, the Administration attached the utmost importance to due process and natural justice in the administration of disciplinary proceedings and punishments against civil servants for any acts of misconduct (including acts which were alleged to have brought the civil service into disrepute). He was concerned how the principles of "due process" and "natural justice" were upheld in practice. Mr WONG also pointed out that according to paragraph 15 of the paper, under the Public Service (Administration) Order, when a civil servant was alleged to have committed an act of misconduct (other

than unlawful conduct which fell within the jurisdiction of the court), the question of whether the accused officer was guilty or not was determined by inquiry officers appointed from outside the department the accused officer worked in. He enquired about the circumstances under which inquiry officers would be appointed.

43. In response, SCS said that the principles of “due process” and “natural justice” were enshrined in the general guidelines issued by CSB. The Deputy Secretary for the Civil Service (3) (DSCS(3)) supplemented that under the Public Service (Administration) Order, when a civil servant was alleged to have committed an act of misconduct, an inquiry would be held. Materials and documents to be presented to the inquiry officer in support of the disciplinary charges would be given to the accused officer to facilitate his preparation for defence. To ensure fairness, officers outside the department in which the accused officer worked would be appointed as inquiry officers. The question of whether the accused officer was guilty of the disciplinary charge(s) laid against him would be determined by the inquiry officers on the basis of factual evidence presented to them at a hearing during which the accused officer was given reasonable opportunities to contest any evidence adduced against him. Upon determination that the accused officer was guilty of the specified act of misconduct, the relevant authority might impose a disciplinary punishment against him depending on the gravity of the misconduct. DSCS(3) also pointed out that the Public Service Commission discharged an independent role in advising the Government on various matters relating to the civil service, including the discipline of civil servants. An officer who was aggrieved by the decision of the disciplinary authority might petition the Chief Executive and/or seek a legal remedy through judicial review proceedings.

44. Mr WONG Kwok-hing pointed out that according to the findings of the investigation report published by the Office of The Ombudsman, the complaint lodged by the MSW against her colleague was substantiated. Mr WONG was concerned that the complainant might have been unfairly treated by the departmental management by being warned against causing embarrassment to the Administration. In this connection, he enquired whether the Administration had contacted the MSW with a view to identifying the loopholes of the current mechanism. He also urged the Administration to introduce safeguards to ensure that the guidelines issued by CSB were observed by all departmental management.

45. SCS responded that upon receipt of the complaint from the MSW, the departmental management had investigated the case. Whilst reiterating that the Administration would not disclose further details of the case, SCS stressed that as stipulated in the guidelines issued by CSB, an officer would not be penalized for a complaint made in good faith.

46. Referring to the case in question, Mr LEE Cheuk-yan considered that the complaint was made in good faith and yet the complainant was warned against causing embarrassment to the Administration. Mr LEE, Mr WONG Kwok-hing and Mr CHEUNG Man-kwong were concerned whether measures were in place to

prevent the abuse of the current regulation that an officer who by his actions brought the civil service into disrepute was liable to dismissal or lesser punishments. Mr CHEUNG opined that if a complaint was made in good faith, the complainant should not be held liable to bringing the civil service into disrepute even though the complaint was subsequently found unsubstantiated. He also urged the Administration to remind all departmental management that in handling staff complaints, they should not only warn the complainant against bringing the civil service into disrepute but should also advise the complainant that he would not be penalized for a complaint made in good faith.

Admin

47. SCS undertook to remind departmental management about the principle that a civil servant would not be penalized for a complaint made in good faith. As regards the safeguards to prevent the abuse of the current regulation, DSCS(3) said that when lodging a complaint to the departmental management, a civil servant might, if he so wished, at the same time copy his complaint to SCS for information. For the complaints directly lodged to CSB, they would be handled by a dedicated team of staff. In 2004, CSB had handled about 300 complaints made by civil servants directly and about 6% of the complaints were found substantiated. In 2005, CSB had handled about 360 complaints and about 2% of them were found substantiated. Whilst civil servants who had committed acts of misconduct would be penalized, CSB would also take a proactive approach to draw the attention of the departmental management concerned to the problems which came to light in disciplinary cases. DSCS(3) also pointed out that, of the complaints about corruption or other crimes that were referred to the Independent Commission Against Corruption or Police for investigation, some came direct from departmental management. He assured members that the Administration would review the effectiveness of the current mechanism for handling staff complaints from time to time and issue clearer guidelines as and when necessary.

Admin

48. Noting that only 2% of the complaints directly lodged to CSB in 2005 were found substantiated, Mr LEE Cheuk-yan considered that the low percentage of substantiated complaints cast doubt on whether the current mechanism was operating effectively. He considered that civil servants should be informed that when lodging their complaints to the departmental management, they could at the same time copy their complaints to SCS for information. In response, DSCS(3) observed that the percentage of substantiated cases by itself could not conclusively tell whether the current mechanism was operating well or otherwise. In fact, experience suggested that a good number of the complaints received turned out to be complaints made out of misunderstanding. He reiterated that the current mechanism for handling staff complaints was operating effectively and various channels were provided for staff to lodge complaints or make comments.

49. Mrs Sophie LEUNG advised that CSB should stipulate in the guidelines that when dealing with staff complaints, departmental management should handle the complaints expeditiously so as to avoid the problem from getting worse. Mrs LEUNG also considered it important for the Administration to think out of the box in handling staff relations. In particular, the Administration should explore measures to enhance

the solidarity within the civil service. To this end, departmental management should be encouraged to adopt modern approach of human resources with a view to enhancing communication with the staff.

50. SCS pointed out that it was the Administration's policy that staff complaints should be handled expeditiously. As set out in Annex B to the paper provided by the Administration, the procedure to deal with staff complaints in each bureau/department should be simple, direct, speedy, effective and well-publicized. The investigation of a complaint should normally be completed and a reply issued within three months after receipt of the complaint. SCS added that some complicated cases might require longer processing time to complete the investigation. However, any investigation which could not be completed within the prescribed timeframe would be drawn to the personal attention of the Head of Bureau/Department. The Staff Complaints Officer would also send an interim reply to the complainant on the progress of the matter as appropriate. As regards the measures to enhance solidarity within the civil service, SCS said that an incentive award system was in place to encourage civil servants to make improvement suggestions on civil service efficiency. She assured members that the Administration would constantly review the effectiveness of the current mechanism and introduce improvement measures as and when necessary.

51. Noting that CSB was examining the account provided by SWD of how the department had handled the complaint lodged by the MSW concerned, the Chairman requested the Administration to update the Panel in due course on the outcome of its examination of the account provided by SWD, including whether any improvement measures would be introduced to enhance the effectiveness of the current mechanism for handling staff complaints.

(Post-meeting note: The information provided by the Administration in response to the Chairman's request mentioned in paragraph 51 above was issued to members vide LC Paper No. CB(1)2014/05-06(01) on 18 July 2006.)

VI. Any other business

52. There being no other business, the meeting ended at 12:55 pm.