



(29) in SPA 2

This paper addresses the latest set of proposals from the administration to unilaterally vary the conditions of service offered to police officers.

General Comments

2. As per Civil Service Regulations and the Memorandum on Recruitment and Conditions of Service we would like to reiterate that this so called 'Review of Fringe Benefit Type Civil Service Allowances' is erroneous. These allowances are in fact Conditions of Service offered on employment to police officers under differing grades and dates of appointment. In this regard the Secretary is asked to peruse CSR 1, which clearly states, "Government Regulations (CSR's) regulate matters related to the ... terms of appointment and conditions of service for Government servants".

3. Therefore as these are conditions of service offered on appointment these cannot be altered without specific recourse to all affected officers personally and directly. The offer of employment and such linked conditions of service are contractual matters between the individual and the administration as the employer. Officers will need to be individually addressed and definitive agreement or otherwise achieved from them. Force Management, Staff Associations and others cannot enter into negotiations on behalf of individual police officers as regards their employment contracts and conditions of service by virtue of the Police Force Ordinance (Cap 232, Section 8 – prohibition on the formation of trades unions and associated collective bargaining ability), the laws of contract and the Basic Law of Hong Kong. To do so would be illegal.

4. Whilst the revised proposals are less onerous than the original proposals the fact remains that these are suggested changes to conditions of service that affect many police officers both on local and overseas terms of service. All involve a reduction in condition of service type allowances. All involve seriously altered and reduced allowances for officers who through no fault of their own are presently not drawing these allowances. We fail to see what is 'lawful, reasonable nor fair' if conditions of service are altered unilaterally as regards sets of officers recruited under the same CSR and employment provisions. We fail to see any fairness in allowing serious disparity in conditions of service occurring between two individual officers recruited at the same time or indeed as regards, for example, one officer with children entering the same school either in HK or overseas at different times. The condition of service relates to the officer not to an arbitrary future date in time. We suggest that the 'proposals' are unjust, inequitable and illegal.

5. As stated these are contractual terms and conditions of service relating to police officers as at the 1st of July 1997 and they were stipulated and constructed under Civil Service Regulations to ensure a certain level of benefit was bestowed to individual officers to allow for a level of financial support relative to the actual fiscal cost of the benefit. Therefore, these benefits cannot equate to an arbitrary 'cash allowance' given for the 1st of July 1997 but rather are a viable subsidy for a specified benefit offered to employed police officers working in the service of Hong Kong. This viable subsidy component must remain in its original form or a like replacement offered. To allow these conditions of service to be replaced by a 'cash allowance' will not achieve this requirement and represents a diminution of the condition of service.

6. Under the Basic Law it is once again reiterated that these conditions of service need to be kept in the form of their original intent and design in order to ensure that entitled police officers continue to enjoy the benefit, as it existed on the 1st July 1997. These therefore cannot be equated to a cash cost. To do so would be in direct breach of the Basic Law and the decision of the Court of Appeal following the Judicial Reviews into the variation of civil service pay.

7. In the original judicial decision into the Judicial Review on civil service pay and as supported by the Court of Final Appeal, Justice Michael Hartmann referred to "moribund allowances" and suggested that, as the government must be able to adjust the individual allowances whilst maintaining the overall level of benefit or offering compensation for allowances that are deleted. If this legal course of action is ignored then the present 'trimming' exercise is fatally flawed. It is therefore contended that following this judicial decision that if the administration has decided certain allowances are out of date and need capping, refinement or deletion then the employee must be offered either compensation or alternative more viable allowances. This present exercise offers no such legal or fair alternatives.

8. The letter from the SCS makes many references to cessation of certain allowances for new recruits on key recruitment dates such as the new recruits taken into service in the year 2000. He then uses these examples of reduced terms and conditions of service to somehow 'justify' a reduction in terms of service for officers already serving and recruited on different terms. In actuality this issue bears no reference to terms of service offered to recruits prior to these dates. Recruits on their recruitment, either accept or do not, the terms of appointment offered by the administration as the employer. There can be no retrospective changes to these. The same argument relates to any suggested capping of allowances. If the officer was offered the allowance on appointment then he is entitled to that allowance remaining as a viable condition of service or being offered a revision to the allowance. Capping in effect kills the allowance at root level and allows the allowance to gradually wither and die. This is unacceptable and a serious breach of an employers contractual obligations to its employee and is probably in breach of recent judicial decisions.

9. The tone and content of the proposals also alludes to the decision of the Court of Final Appeal in June of this year in that pay can be reduced to the 'cash terms' as in operation in July 1997. It is felt that should allowances be removed, capped or varied invokes changes to the detriment of these allowances and as such reduces their value in both terms of fiscal benefit and staff benefits to the concerned officers and they are therefore in breach of the decisions made by the judiciary in the Court of Final Appeal. "Cash terms' therefore cannot be contemplated.

10. It is also noted that the proposal papers do not use the same criteria and structure in reviewing all the identified allowances in a like 'across the board' manner. Some are kept, others capped, and others pegged at a cash value whilst others are unilaterally removed. This piecemeal approach to the process lacks credibility and appears to highlight that the exercise is nothing other than a concession to assuage the wishes of a small number of badly informed legislators and commentators. It is not in any way, shape or form a rational, legal nor useful review of these allowances. Whilst the original proposals were under examination they at least offered alternative proposals to the allowances under review. This latest set of papers offers no alternatives.

11. Lastly, under previous administrations prior to the TUNG years' the Pay Survey and Research Unit working to the Standing Commission on Civil Service Salaries and Conditions of Service commissioned an annual review of 'allowances and fringe benefits' on offer to the private sector titled 'Fringe Benefit Survey'. This exercise was a dynamic one to gauge the ongoing packages offered to both local and expatriate staff in comparable private companies in Hong Kong. This then allowed the administration to oversee changes and fluctuations in these allowances. This exercise was unilaterally halted by the TUNG administration several years ago in 2002. It is suggested that without this type of review that no genuine exercise to review police officers allowances can be accomplished. It is also suggested that by diverging from this established protocol that the administration broke with established civil service procedures and therefore problems will emerge if such protocols are not re-established. To do otherwise would clearly highlight that the administration is not acting in a lawful, reasonable nor fair manner. In this regard we note that the results of this 'consultation' will be forwarded to the Standing Commission on Civil Service Salaries and Conditions of Service, which in itself is a clear indication that the TSANG administration intends to revert to proper protocols as regards, established civil service procedures and rules.

Specific Comments

12. The following comments and feedback is given regarding all the individual allowances targeted for review.

(I). Education Allowances

(A). Overseas Education Allowance (OEA)

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- This allowance is offered to both eligible overseas and local officers. This allowance should be retained for such eligible officers and it should also remain viable as per the judicial decision of Justice Michael Hartmann. If it is to be altered then a reasonable alternative proposal should be suggested.
- The present condition of service was constructed to allow variations in accordance to the average primary and secondary school fees for UK independent boarding schools in the London area. Officers so entitled should continue to be so unless they personally agreed to a change.
- The fact that this allowance was not offered to new recruits in 2000 is of no relevance to officers presently entitled. It is also argued that education and school passage allowances are fully justified. Employees working in Hong Kong on expatriate terms are routinely offered similar job related benefits. These are gauged to ensure the allowance serves the needs of the employee and his or her family.
- Previously the Standing Commission on Civil Service Pay and Conditions of Service commissioned an annual review of employment related benefits offered to the private sector - both to local and expatriate employees. Without recourse to any recent review into these benefits - the contention is that the administration cannot make any reasonable decision on this and similar allowances.

- This allowance was originally only offered to expatriate officers but in the 1980's extended, by the administration, to local term officers. Expatriate term officers had these terms on recruitment and are therefore, under the rules of natural justice, in possession of a strong expectation to maintain them. In Hong Kong police officers on overseas terms are severely limited as to where they can send their children to receive an international education linked to the English language. There are also strong justification arguments under the issue of retaining ties with their home countries as regards family, education and culture.

(B). Local Education Allowance (LEA)

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- Similar to the comments as regards OEA this type of allowance is also common in the private sector. Without recourse to recent reviews of private sector allowances in this regard no valid review can be made.
- It is contended that no freezing of this allowance can be made, as this is contrary to the decision of the CFA and to the Basic Law. It must remain a valid and flexible allowance with regard to the fee levels as dictated by the English Schools Foundation. As an official post handover language English remains an official SAR language and enhances the international aspect of the territory. To provide for English based education remains a paramount requirement for employees and this was actually the reasoning behind the original provision of this condition of service.
- The proposal offers no viable alternative. It is also divisive and ill thought through as siblings can attract different levels of allowance in the same family, as can brother officers recruited on the same day. This is divisive and contrary to the laws of natural justice as regards the legitimate expectations of serving police officers affected.

(II) Passages

(A). Sea Passage

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.

- This condition of service relates to overseas officers recruited before 1985. It is not outdated in that context. As a condition of service it should remain for entitled officers who actually relate to a very small number of police officers, around 158, of whom usually less than half actually take up the scheme. In terms of fiscal savings the savings are derisory. It is also noted that previous attempts to remove this provision were dropped on the grounds of legality and rationality. Again no alternative proposals are offered, it is suggested that if such were, certain individuals would negotiate on this allowance provided a reasonable counter proposal was put to them.
- As stated it is noted that the envisaged savings on this proposal equate to \$0.1 million per year and \$0.4 million over five years – some \$400,000 only. This is a pitiful amount and on a cost/benefit/outcome basis clearly not worth the unnecessary harm in both fiscal terms and on a morale basis caused to long serving expatriate police officers.
- Lastly the administration is reminded that this passage was offered as a 'reward' for long and loyal service in Hong Kong to expatriates returning to the UK and is not a general passage allowance.

(B). School Passage Allowance (SPA)

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- Similar to our arguments above and specifically as regards OEA this condition of service was offered to allow expatriate officers to send their children to home countries to be educated and maintain family ties. The fact that the administration later extended this provision to local term officers on a parity basis is hardly the fault of the employees and instead the responsibility of the administration. The administration is bound contractually and legally to continue this provision.

(C). Traveling Expenses in Country of Origin or Place of Study

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- As per our arguments above this allowance cannot be unilaterally stopped for SPA claimants.
- Likewise it cannot be capped, as this will denude the actual construction and intent of this allowance both for expatriate and local term officers. In effect this action will make the employment terms of officers so affected less favourable than the level they received in July 1997.

(III). Housing

(A). Non Accountable Cash Allowance Scheme

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- Officers affected by these proposals should be approached directly.

(B). Accommodation Allowance (AA) Scheme

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- Officers affected by these proposals should be approached directly.
- It is of note here that certain provisions appear to be improvements in the rationality and applicability of this allowance. It is a pity that this cannot be said for most of the other proposals.

(C). Private Tenancy Allowance (PTA)

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- Officers affected by these proposals should be approached directly.

(D). Provision of Furniture and Domestic Appliances

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- Again no alternative proposals are offered. It is our contention that if individual offers were approached and offered a reasonable and modern alternative to this allowance that many would happily take up on such an offer.

(E). Furniture and Domestic Appliances Allowances

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- As this is stated to be \$15.7 million per annum and about \$78.5 million over five years, a substantial sum, staff wonder as to who actually receives this allowance. Further information should be provided.

- In view of the amount involved arbitrary removal of this allowance is deemed to be unlawful.

(F). Removal Allowance

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- The rationale to reduce administrative costs and turn this into a non-accountable allowance is welcomed. What is not welcomed is the arbitrary reduction by 5%, a figure somehow picked from thin air with no rational neither suggested nor advanced.
- The saving is a paltry \$200,000 (not \$0.2 million this time) and over \$1 million over five years. In comparison with the latest communication from the SCS to create twelve new directorate posts this is derisory and opposed on the grounds it will affect many police officers already suffering under reduced pay and conditions of service.

(G). Air Conditioning Allowance

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- Arbitrary abolition without compensation is considered inappropriate and probably unlawful. Again as this allowance relates to a few officers only, common sense dictates that if they were approached and offered alternative compensation then changes could be made to future provision of this allowance.
- The amounts saved are \$300,000 per annum and a mere \$1.5 million over five years. It is unfortunate that no statistics are provided on officers claiming this allowance and we suggest that most probably do not. It is suggested that this allowance will fade away as those entitled move from public service. In the greater scheme of allowances this particular one, whilst great to parade in public to pander to uninformed legislative councillors or politicians, is not considered a serious drain on the public purse.

(H). Provision of Hotel Accommodation

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.

(I). Hotel Subsistence Allowance

- Please note that this is called an Allowance and governed by Civil Service Regulations - it is not a fringe benefit.
- The provision of seven days hotel accommodation given to expatriate staff prior to them retiring or leaving government service is not considered excessive. The arbitrary slashing of this to three nights is considered, impractical, mean, unlawful and on the basis of cost against benefit a measure guaranteed to engender poor morale. Senior police officers looking at the savings of \$100,000 over one year and of \$500,000 over five years as derisory.
- The linked removal of the one nights accommodation for expatriate staff must benefit from some sort of compensation. The legal judgment as handed down by Justice Michael Hartmann regarding 'moribund' allowances must be followed.

Conclusion

13. In short these proposals represent a major reduction on present conditions of service secured by serving police officers on their appointment. These are therefore considered unlawful, unfair and wholly inappropriate.

14. The overall content of the review is questioned on two main grounds. Firstly no comparison with the private sector has been sought. Second, the arbitrary reduction, removal or capping of conditions of service regarding serving police officers is opposed on the grounds of judicial decision and the Basic Law.

15. We would also like to point out that the Government's intention to make "substantive savings" would not be achieved through an overly aggressive and public attack on the minor civil service funding arrangements contained in this review.

Chairman and Executive Committee,
Superintendents Association,
Police Force Council