

立法會

Legislative Council

LC Paper No. CB(1)560/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PS/1

Panel on Public Service

**Minutes of meeting held on
Monday, 17 November 2008, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon LEE Cheuk-yan (Chairman)
Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon LEUNG Kwok-hung
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou

Member attending : Hon Ronny TONG Ka-wah, SC

Public officers attending : **Agenda item IV**

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

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Ms Mimi LEE
Deputy Secretary for the Civil Service 3

Agenda item V

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

Mr Andrew H Y WONG, JP
Permanent Secretary for the Civil Service

Ms Mimi LEE
Deputy Secretary for the Civil Service 3

Attendance by invitation : **Agenda item IV**

Government Disciplined Services General Union

Mr LAM Kwok-ho
Chairman

Mr POON Chi-ming
Member

Disciplined Services Consultative Council (Staff Side)

Mr YUEN Fong-him
Chairman

Mr CHAN Ba-tak
Member

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

Action

Action

I Confirmation of minutes of meeting

(LC Paper No. CB(1)155/08-09 - Minutes of meeting on 14 October 2008)

The minutes of the meeting held on 14 October 2008 were confirmed.

II Information papers issued since last meeting

(LC Paper No. CB(1)57/08-09(01) - Reply letter dated 8 October 2008 from the Administration to the Police Force Council Staff Associations concerning the medical and dental benefits for police officers (Restricted to members))

2. Members noted the information paper issued since last meeting.

III Items for discussion at the next meeting scheduled for 15 December 2008

(LC Paper No. CB(1)169/08-09(01) - List of outstanding items for discussion

LC Paper No. CB(1)169/08-09(02) - List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting on 15 December 2008 –

(a) Grade structure reviews: recommendations of the advisory committees; and

(b) Draft Civil Service Code.

4. Mr LEUNG Kwok-hung expressed concern about the impacts of the current economic downturn on Government's outsourcing policy and civil servants. The Chairman invited members to note that the "Policy on government outsourcing" was on the list of outstanding items for discussion and scheduled for discussion in the second quarter of 2009. He added that the Panel could arrange to discuss the item earlier if necessary.

Action

IV Disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals

- (LC Paper No. CB(1)36/08-09(02) - Administration's paper on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme (CSPF civil servants) and other related proposals (collectively referred to as "the Proposals" hereafter)
- LC Paper No. CB(1)169/08-09(03) - Extract of the draft minutes of the meeting on 20 October 2008
- LC Paper No. CB(1)169/08-09(04) - Submission from Hong Kong Civil Servants General Union Negotiation Committee
- LC Paper No. CB(1)208/08-09(01) - Administration's response to the submission from Hong Kong Civil Servants General Union Negotiation Committee (LC Paper No. CB(1)169/08-09(04))
- LC Paper No. CB(1)169/08-09(05) - Submission from Model Scale 1 Staff Consultative Council (Staff Side)
- LC Paper No. CB(1)169/08-09(06) - Submission from Government Employees Association
- LC Paper No. CB(1)203/08-09(01) - Submission from Senior Civil Service Council (Staff Side))

Presentation of views by deputations and the Administration's initial response

5. Members noted the following papers tabled at the meeting –
- (a) Comparison of the practices adopted in disciplinary proceedings conducted by the disciplined services and those by the general civil service (the Comparison) (LC Paper No. CB(1)226/08-09(02)); and

Action

- (b) Submission from Government Electrical & Mechanical Works Supervisors, Craftsmen & Workmen Association (LC Paper No. CB(1)226/08-09(01)) and the Administration's response (LC Paper No. CB(1)227/08-09(01)).

*Government Disciplined Services General Union
(LC Paper No. CB(1)81/08-09(01))*

6. Mr POON Chi-ming, member of Government Disciplined Services General Union (the General Union), briefed members on the salient points of the General Union's submission –

- (a) It was regretful that the Administration had briefed the Panel on the Proposals on 20 October 2008 without first formally responding to the General Union's submission made to the Civil Service Bureau (CSB) on 7 July 2008 or further consulting the General Union;
- (b) The General Union had not been consulted on the Level 1 removal punishment; and
- (c) There were great discrepancies in the disciplinary proceedings adopted by different disciplined services as detailed in the General Union's submission and the Comparison, particularly that some disciplined services were allowed to make video or audio recordings while some were not.

Disciplined Services Consultative Council (Staff Side)

7. Mr CHAN Ba-tak, member of Disciplined Services Consultative Council (Staff Side) (the Council (Staff Side)), echoed the General Union's concerns about the discrepancies in disciplinary proceedings. However, he was pleased to note that the Administration had undertaken to look at the discrepancies and explore standardizing the disciplinary proceedings in due course. He said that the Council (Staff Side) supported the Proposals but was of the view that the Administration should have held a formal briefing to explain to staff how far their comments had been incorporated in the Proposals prior to the Panel meeting on 20 October 2008.

Action

8. The Secretary for the Civil Service (SCS) made the following initial response to the deputations' views –

- (a) A consultation paper clearly setting out the Proposals including the Level 1 removal punishment had been issued on 5 May 2008 to collect views from all major civil service consultative councils and staff associations. At the request of the staff side, the Administration had extended the deadline for submission of views and conducted a series of briefings to explain the Proposals to the staff sides;
- (b) CSB had provided a written response on 21 October 2008 to the General Union's submission explaining that the operational details of disciplinary proceedings as provided under the respective disciplined services legislation had a degree of variation having regard to their specific operational needs. Despite these variations, such proceedings had to observe the principles of fairness and natural justice, and the accused civil servants had to be allowed to make representations and file appeals where necessary. It was also stated in the written response that CSB would review the issues concerning disciplinary procedures as highlighted by the staff sides in consultation with the disciplined services departments; and
- (c) CSB would in future formally report consultation outcomes to the staff side. CSB had verbally informed each staff union of the outcomes this time having regard to the pressure of time. There was an urgent need to enact an amendment bill to implement the Proposals. It was necessary to consult the Panel and go through the necessary legislative procedure in a timely manner to facilitate early enactment of the amendment bill.

Discussion

Sanctions under the control regime governing post-service outside work of directorate CSPF civil servants

9. Mr CHEUNG Man-kwong noted that under the proposed disciplinary framework for CSPF civil servants, a CSPF civil servant, if found guilty of a disciplinary or criminal offence and was given a punishment upon conclusion of disciplinary proceedings, could be punished by forfeiture of his accrued benefits attributable to the Government's Voluntary Contribution (GVC) in whole or in part. He was concerned how retired directorate CSPF civil servants (who were

Action

already paid their GVC benefits upon retirement) would be deterred from or punished for taking up post-service outside work, which might constitute real or potential conflict of interest with their previous government service, or without obtaining the required permission.

10. SCS responded that since the restrictions on post-service outside work were stipulated in the employment contracts, the Government as employer could initiate civil action against a retired CSPF civil servant who did not comply with relevant requirements on grounds of breach of contract. Where the case was serious, the Government could apply to the court for an injunction to restrain the staff concerned from continuing the outside work, or seek civil remedies. Before taking these drastic steps, the Government would first issue a letter to the staff concerned to alert him of his non-compliance and the need for him to suspend the outside work forthwith until the required permission was granted. The Government could also issue a warning letter to the officer concerned, or make a public statement of criticism. In response to the Chairman, SCS said that these remedial measures were also applicable to pensionable civil servants whose pension could be suspended where necessary.

11. Mr CHEUNG Man-kwong enquired whether the amount of damages claimed under contract law in the scenario above would be capped at an amount equivalent to the full GVC benefits of the staff concerned. SCS responded that as far as she understood, it would not be capped in such a way. She undertook to seek legal advice and provide further information in writing.

12. At the request of the Chairman, SCS further agreed to provide supplementary information on the control regime governing post-service outside work of retired directorate civil servants appointed on pensionable terms and that governing their counterparts on CSPF terms, including the remedial measures and sanctions which the Administration could invoke to deal with non-compliant civil servants.

(Post-meeting note: The requested information was issued to members vide LC Paper No. CB(1)362/08-09 dated 10 December 2008.)

Proposals on three levels of removal punishments for CSPF civil servants

13. Ms LI Fung-ying and Dr PAN Pey-chyou expressed concern that under the proposed Level 2 punishment, the level of forfeiture would be pitched at up to 25% of a CSPF civil servant's accrued GVC benefits at the time of compulsory retirement, and that any investment returns generated from the GVC benefits would also be included in determining the amount of the accrued GVC benefits. Ms LI pointed out that investment returns depended on the performance of the investment portfolios for which the staff concerned had opted. As a result, the proposed arrangement could give rise to a situation that

Action

the forfeiture amounts of two CSPF civil servants could differ a lot even though their grades, years of service and the offences committed were the same. Dr PAN Pey-chyou and the Deputy Chairman shared Ms LI's concerns. Dr PAN opined that since CSPF civil servants were already worse off than pensionable civil servants in terms of retirement benefits, the inclusion of investment returns in calculating the forfeiture of GVC benefits was too harsh to them.

14. In response, SCS explained that there was great difficulty for the Administration to come up with a proposal which could take into account the differences in investment returns arising from individual CSPF civil servants' personal choice of investment portfolios. The Administration considered that the current proposal was broadly comparable to the arrangements for pensionable civil servants.

15. The Chairman and Deputy Chairman asked whether consideration would be given to capping the forfeiture amount at 25% of the GVC benefits and any gains generated from investment returns be disregarded in calculating the amount. In response, SCS said that the Administration had explained the current proposal to the staff side during the consultation exercise and they generally agreed that the proposal was acceptable. She further said that in coming up with the current proposals on removal punishments, balanced consideration had been given to these proposals' impact on the CSPF civil servants, the need to achieve a sufficient deterrent effect and the principle that these punishments should be broadly comparable to those for pensionable civil servants. The Chairman suggested that members could make suggestions of alternative proposals on the calculation of level of forfeiture for consideration by the Administration.

Discrepancies in disciplinary proceedings

16. Ms LI Fung-ying urged the Administration to rectify the existing discrepancies in disciplinary proceedings as highlighted by the General Union in its submission. Ms LI said that since a decision on whether a civil servant should be subject to disciplinary punishments was made on the basis of the conclusion drawn up upon completion of the relevant disciplinary proceedings, the Administration had to first ensure that the disciplinary proceedings were fair and it should also address concerns raised by staff in this regard. She considered that the current proposals on removal punishments for CSPF civil servants should be discussed only after their concerns about the existing discrepancies in disciplinary proceedings had been addressed. Dr PAN Pey-chyou also opined that the Administration should give due regard to concerns raised by the disciplined service grades as they were more prone to disciplinary actions due to their job nature.

17. SCS responded that the Administration had already informed the disciplined services staff unions that it would review with the disciplined

Action

services departments the issues highlighted by staff unions with regard to disciplinary procedures, and would consult staff on proposed changes. She explained that the operation of different disciplined services departments was governed by their respective legislation and regulations made under the legislation, and it was against this background that there were some variations in the disciplinary proceedings of these departments. In response to the Chairman's question, SCS said that she was unable to provide a timetable for completing the review. She, however, undertook that the Administration would tackle the matter as early as possible as she noted the Panel's concern about this issue.

18. Mr IP Wai-ming questioned why the Administration could not provide a timetable as the issues involved were relatively simple operational arrangements. Mr LEUNG Kwok-hung also considered that the review process should not take a long time to complete. He said that the Administration's failure to provide a timetable would render it doubtful as to whether the Administration was determined to address the issue.

Admin. 19. SCS explained that under the relevant disciplined services legislation and regulations, there were designated officers responsible for the disciplinary proceedings applicable to different disciplined grades. In reviewing the disciplinary proceedings that affected different disciplined grades, CSB would need to first liaise with different disciplined services departments and obtain views from the management and staff sides concerned, discuss and agree with all the stakeholders concerned on what changes should be made, and then issue administrative guidelines where necessary. She invited members to note that the Administration had already undertaken to provide a discussion paper on "Disciplinary mechanism and related procedures for disciplined services and civilian grades" in the second quarter of 2009. The paper would include a report on the progress of review of the disciplinary procedures in disciplined services departments on which the staff sides had expressed concern.

Admin.

Appeal mechanisms

20. Referring to paragraph 11 of the Administration's paper, Ms LI Fung-ying and Dr PAN Pey-chyou expressed concern about the proposed establishment of an independent appeal panel on a non-statutory basis to advise the Chief Executive (CE) on appeals on the forfeiture of CSPF benefits. They requested more details about the mechanism.

21. Dr PAN Pey-chyou further sought the Administration's confirmation on whether there was substantial difference in the appeal mechanism on matters relating to disciplinary actions/punishments against civil servants before and after the Reunification. He said that to his understanding, civil servants, before 1997, could appeal to the Queen of the United Kingdom whereas, after the

Action

Reunification, civil servants aggrieved by decisions on relevant matters could make representations to the CE and not to any other higher authority.

22. In response, SCS acknowledged that under the lapsed Colonial Regulations, if a public servant in the pre-1997 days was aggrieved by a decision affecting his pension, he could appeal to the Secretary of State for Foreign and Commonwealth Affairs and the Queen of the United Kingdom, in addition to an appeal to the then Hong Kong Governor. The highest authority a civil servant could appeal to had been changed to the CE after the Reunification because, under the Basic Law, the administration of the public service was an internal affair of the Hong Kong Special Administrative Region. At Dr PAN's request, SCS agreed to elaborate the above changes in writing.

(Post-meeting note: The requested information was issued to members vide LC Paper No. CB(1)362/08-09 dated 10 December 2008.)

23. SCS further explained that the proposed appeal panel for CSPF civil servants set out in paragraph 11 of the Administration's paper, though non-statutory, would largely mirror the existing appeal mechanism provided under the Pensions Ordinance (Cap. 89) and the Pension Benefits Ordinance (Cap. 99) for handling appeals on pension forfeiture/suspension/reduction matters.

24. SCS clarified that to her understanding, the staff concerns were mainly on the appeal mechanism provided under section 20(2) of the Public Service (Administration) Order (PS(A)O), in particular, the lack of details on the "review board" referred to in the quoted section. SCS explained that this appeal mechanism was applicable to both pensionable and CSPF civil servants, and under which the CE might appoint a review board to advise him on representations addressed to him relating to appointment, dismissal and discipline of public servants as he thought fit. SCS informed members that the Administration would look into the details of the review board and would consult the staff sides when it was in a position to do so.

25. Mr LEUNG Kwok-hung opined that the operation of the proposed non-statutory appeal board should be made transparent by allowing the panel's advice made to the CE and the CE's decisions (and the reasons behind) to be made public. SCS responded that the proposed arrangements for this appeal panel would largely mirror the existing arrangements for pensionable civil servants. In response to Mr LEUNG's concern, SCS assured members that under the existing appeal mechanisms for civil servants, there were detailed file records on each case handled, and due to privacy considerations, the existing policy was not to disclose the details of individual cases to the public.

26. Mr Ronny TONG commented that appeal mechanisms were important

Action

and measures should be taken to ensure that there was a high degree of transparency. He considered that the views given by an appeal panel and the decisions made by the CE should be provided to the aggrieved staff. He also pointed out that there was a time limit for the aggrieved staff to apply for judicial review. Hence, the appeal procedure should not drag on for too long or else it would impose a constraint on the staff concerned in seeking judicial review. In response to Mr TONG's enquiry, SCS said that the existing appeal procedure in general took four to six weeks to complete.

27. The Deputy Chairman agreed that it was not appropriate to make public an appeal panel's advice made to the CE or the CE's decisions. However, she considered it important that any decisions affecting the aggrieved staff should be explained in detail to him/her. SCS said that in line with the principle of natural justice, the civil servant concerned would be invited for the "last word" before the outcome of his/her disciplinary proceedings was decided. In other words, the civil servant would be informed of the likely decision on punishment and the justifications thereof, so that he/she could make further representations in mitigation of the punishment if so desired. The Deputy Chairman said that the civil servant concerned should also be informed of the reasons why the appeal panel or the CE decided not to reverse their earlier decisions despite his further representations made to the panel or the CE.

28. The Chairman asked whether consideration would be given to revising the proposal on the non-statutory appeal panel to make it statutory. SCS explained that it would be inappropriate to make the proposed appeal panel statutory as the CSPF Scheme was provided by contract, not legislation.

Legislative timetable

29. In response to the Chairman's enquiry, SCS said that the Administration intended to introduce the amendment bill into the Legislative Council in early 2009. The Administration's target was to bring the legislative amendments into effect by the end of 2009, and to complete amending other instruments such as PS(A)O and relevant CSB circulars in the first quarter of 2010.

Consultation on the Proposals

30. Highlighting the far-reaching implications of the Proposals, Ms LI Fung-ying and Dr PAN Pey-chyou suggested that the Administration should conduct further consultation to fully address staff's concerns, particularly on the proposal of inclusion of investment returns in calculating forfeiture amounts and the existing discrepancies in disciplinary proceedings, and further refine the Proposals where necessary. Ms LI considered that the legislative timetable

Action

might not be so tight as the first batch of CSPF civil servants would not complete ten years of service until mid-2010.

31. SCS responded that the consultation conducted on the Proposals had been very thorough. She said that a detailed consultation paper had been issued and a series of briefings had been arranged to explain the Proposals to staff representatives. Its only difference from past consultation exercises was that CSB had informed the staff sides of how far their comments had been adopted verbally instead of in writing. In fact, the consultation period had been longer than the normal one-month period. The Administration had also addressed the concerns raised during the consultation. Ms LI Fung-ying, however, pointed out that the staff side did not find the previous consultation sufficiently thorough.

32. The Deputy Chairman questioned why the Administration had worked out the current Proposals only now as the new entry system had been implemented since 1 June 2000 and the civil servants appointed under the system were eligible to join the CSPF Scheme. SCS said that much work had to be done in working out the Proposals. Given the complexity of the issues involved, the Administration needed some time to work out the removal punishments for CSPF civil servants to ensure that these were comparable to those in use for their pensionable counterparts insofar as the key principles and where appropriate, legal framework underpinning the two systems allowed.

Concluding remarks

33. At the Chairman's invitation, Mr CHAN Ba-tak of the Council (Staff Side) said that the Council (Staff Side)'s major concern was that CSPF civil servants' accrued retirement benefits attributable to their mandatory contributions and the accrued benefits attributable to Government's Mandatory Contribution (GMC) would be protected and not to be tampered with under any circumstances.

34. Mr POON Chi-ming of the General Union made the following points –

- (a) The Administration's written response to their submission was issued on 21 October 2008, i.e. one day after the Panel meeting had been held on 20 October 2008;
- (b) The Administration's undertaking to appoint a review board under section 20(2) of PS(A)O had been made as long as eleven years ago. It was unacceptable that the Administration still had not worked out any details of the board's operation;

Action

- (c) In the scenario that a non-civil servant and a CSPF civil servant committing the same criminal offence and having been penalized under the law, the CSPF civil servant would, however, be further subject to the punishment of forfeiture of retirement benefits as set out in the Proposals. This would amount to double penalty and contradict the claim that the CSPF Scheme modeled on practices in the private sector; and
- (d) The staff sides of the disciplined services had since 1999 been calling for standardization of the existing disciplinary proceedings. The discrepancies could to a certain extent be addressed expeditiously by amending the relevant Standing Orders and Headquarters' Instructions. It was also unfair that, as shown in the Comparison, such discrepancies did not exist in disciplinary proceedings for senior disciplined services officers of different grades.

35. SCS clarified that under the Proposals, CSPF civil servants' accrued benefits attributable to their mandatory contributions and those attributable to GMC were by law not to be tampered with under any circumstances. As to the concern on the review board, SCS reiterated that CSB would consult the staff sides when it was in a position to do so. CSB would also work with the disciplined services departments on the issues concerning disciplinary procedures under the disciplined services legislation on which concerns had been expressed by the staff sides.

V Delegation of Chief Executive's power under section 20(1) of the Public Service (Administration) Order

(LC Paper No. CB(1)169/08-09(07) - Administration's paper on delegation of Chief Executive's power under section 20(1) of the Public Service (Administration) Order

LC Paper No. CB(1)186/08-09 - Paper on delegation of Chief Executive's power under section 20(1) of the Public Service (Administration) Order prepared by the Legislative Council Secretariat (background brief))

36. SCS briefed members on the Administration's paper for this item.

Action

Members noted that all along, the Administration had operated section 20(1) of PS(A)O on the basis that the CE had an implied power to delegate his authority to other public officers. In the judgment handed down in July 2008 in Mr Mike Rowse's application for judicial review, the Court of First Instance did not accept there was such an implied power. In view of the court's judgement and to ensure the continued effective and efficient handling of representations made under section 20(1) of PS(A)O, the Administration considered it necessary to amend PS(A)O to expressly state that CE might delegate his power under section 20(1) to other public officers to consider and act on representations. The purpose of this paper was to seek members' views on the above-proposed amendment.

37. Members raised no question on the proposed amendment. In response to the Chairman, SCS said that the proposal required approval by the CE-in-Council. Subject to the CE-in-Council's approval, the amendment would be gazetted before coming into effect.

VI Any other business

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

Council Business Division 1
Legislative Council Secretariat
12 January 2009