

立法會
Legislative Council

LC Paper No. CB(1)201/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ PS/1

Panel on Public Service

**Minutes of meeting held on
Monday, 21 June 2010, at 10:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon LEE Cheuk-yan (Chairman)
Dr Hon PAN Pey-chyou (Deputy Chairman)
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Dr Hon LEUNG Ka-lau
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon LEUNG Kwok-hung

Members attending : Hon James TO Kun-sun
Hon WONG Kwok-hing, MH

Members absent : Dr Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Public officers attending : **Agenda item III**

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

Mr Brian LO
Deputy Secretary for the Civil Service 2

Agenda item IV

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

Mr Brian LO
Deputy Secretary for the Civil Service 2

Agenda item V

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

Mrs Agnes ALLCOCK, JP
Deputy Secretary for the Civil Service 3

**Attendance by
invitation**

: Agenda item V

Government Disciplined Services General Union

Mr MOK Wai-sang
Deputy Secretary General

Mr POON Chi-ming
Consultant

Police Force Council Staff Side

Mr LIU Kit-ming
Representative

Mr CHAN Wai-ming
Representative

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

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Sarah YUEN
Senior Council Secretary (1)6

Action

I Confirmation of minutes of meeting and matters arising
(LC Paper No. CB(1)2234/09-10 – Minutes of meeting on
19 April 2010)

The minutes of the meeting held on 19 April 2010 were confirmed.

2. The Secretary for the Civil Service (SCS) briefed members on the Administration's paper (LC Paper No. CB(1)2304/09-10(01)) on the implementation date and the estimated financial implications for revising the entry system for recruits to the basic ranks in the civil service, namely, by removing the three-year agreement period currently required of a new recruit to a basic rank (i.e. the second limb of the '3+3' system) before he could be considered for appointment on permanent terms. The above revision had been discussed at the meeting on 19 April 2010.

3. Mr WONG Kwok-hing welcomed the advanced implementation date, and further proposed that a special meeting be held in July 2010 to discuss the paper on this item to facilitate the Administration's collection of members' views before seeking the Finance Committee's approval of the supplementary provision required, if any. The Chairman considered that the Administration might need more time to work out the supplementary provision required in the form of advanced payment for contract gratuity and Civil Service Provident Fund contributions to serving agreement officers who opted for permanent appointment with effect from 1 July 2010. SCS suggested that when the actual amount of any supplementary provision required was ascertained upon expiry of the period for serving agreement officers to opt for permanent appointment, she would discuss with the Panel Chairman on the need to call a special meeting of the Panel.

II Information papers issued since last meeting

4. Members noted that no information paper had been issued since the last meeting.

III Requests for the conduct of grade structure reviews for specific non-directorate civilian grades: assessment criteria

(LC Paper No. CB(1)1911/09-10(05) — Administration's paper on
assessment criteria for conduct of
grade structure reviews for
non-directorate civilian grades

- LC Paper No. CB(1)1912/09-10 — Background brief on grade structure reviews prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1911/09-10(06) — Letter dated 16 October 2009 from Hon Mrs Regina IP to the Panel Chairman
- LC Paper No. CB(1)2225/09-10(02) — Submission from the Hong Kong Government Lifeguards General Union)

5. SCS briefed members on the Administration's paper setting out the criteria adopted by the Administration in assessing requests for the conduct of grade structure reviews (GSRs) from non-directorate civilian grades.

Need to review the assessment criteria

6. Referring to the two criteria for assessing GSR requests from non-directorate civilian grades as elaborated in paragraphs 8 to 11 of the Administration's paper for this item, Ms LI Fung-ying considered that these criteria had long been adopted by the Administration and there might be a need to review and revise them as appropriate. SCS responded that the two criteria had been explained in detail in the Administration's paper under discussion. These criteria had been consistently applied in the consideration of requests for conduct of GSRs. The Administration had striven to ensure that the assessment of such requests was made objectively as far as practicable. For example, in considering a request put forward by a grade for the conduct of a GSR, information and data on the recruitment situation and the unnatural wastage rates of this grade would be collected to provide an objective basis for assessment of whether there were any recruitment and/or retention difficulties. With regard to the other criterion of whether there were fundamental changes in the job nature/complexity and level of responsibilities (the fundamental change criterion) of the grade being proposed for a GSR, SCS explained that to some extent the application of this criterion might involve subjective consideration. She pointed out that incremental changes to the job nature/complexity and level of responsibilities of individual grades over time were natural and inevitable, and did not necessarily constitute valid reasons for the conduct of GSRs for the concerned grades.

7. Ms LI Fung-ying opined that notwithstanding the above explanation, it remained unclear as to what changes to the job nature/complexity and level of responsibilities of individual grades would be regarded as fundamental, and what would be regarded as changes that were inevitable and did not constitute valid reasons for conduct of GSRs. SCS responded that using Clerical Officer (CO) grade as an example, changes such as the increasing use of information technology, though significantly affecting the CO grade, should not be considered as fundamental because such changes only affected the way COs performed their duties but not their job nature. Moreover, such generic changes did not warrant the

conduct of GSRs as the broad comparability between civil service and private sector pay could be maintained through the conduct of the pay level survey (PLS) once every six years and the starting salaries survey (SSS) at three-yearly intervals.

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8. Referring to paragraph 11 of the Administration's paper, Mr IP Wai-ming considered the explanation of the fundamental change criterion unclear, particularly with regard to what "incremental changes to the job nature, level of responsibilities and job complexity of individual grades over time" could be regarded as just "natural and inevitable" and therefore "do not necessarily constitute valid reasons for the conduct of GSRs for the concerned grades". He requested the Administration to provide a paper to explain how the fundamental change criterion had been applied in assessing requests for the conduct of GSRs in the past 10 years and provide precedents. SCS agreed to provide the requisite information.

9. SCS responded that there had been cases where fundamental changes in the job nature and responsibilities of certain grades necessitated a merger and resulted in the creation of a new grade which took over the duties of the former grades. SCS further advised that requests for conduct of GSRs from non-directorate civilian grades were assessed with regard to the civil service pay policy, which was to ensure broad comparability between civil service and private sector pay. She noted that since implementation of the Improved Civil Service Pay Adjustment Mechanism in 2007, three sets of market surveys were regularly conducted to assess how the prevailing civil service pay compared with the pay in the private sector; and whether the pay for the whole civil service or for particular salary bands of the civil service, and whether the starting pay for the entry ranks of specific grades should be adjusted.

10. In response to the Chairman's enquiry, SCS said that in recent years, a GSR on the Veterinary Officer grade and one on the Government Counsel grade and the related Legal Aid Counsel and Solicitor grades were conducted between 2007 and 2008 in view of the recruitment and retention difficulties encountered by these grades.

Communication with staff of concerned grades

11. Ms LI Fung-ying enquired whether the Administration would clearly explain to staff whose request for conduct of GSRs for their grade was not acceded to, so that the staff concerned would at least be assured that their requests had been examined in detail.

12. SCS agreed with Ms LI Fung-ying on the need for proper communication with staff in handling GSR requests, and explained that staff would usually raise their requests with their respective Heads of Department (HoDs) first, who would submit the requests to the Civil Service Bureau (CSB) for consideration. The assessment outcome would also be relayed to the staff of the grades concerned through their HoDs. Speaking from her own experience, SCS said that when a

request for conduct of GSR was not acceded to, the staff concerned often had the impression that their views and justifications had not been given due consideration. This impression was not supported by facts. SCS explained that every such request had indeed been carefully assessed, and those turned down were due to inadequate justifications. SCS added that it was important for the Administration to adhere to the established assessment criteria, which it considered were objective and easily comprehensible to staff.

13. The Deputy Chairman pointed out that as he understood from staff of the grades concerned, such as the Hong Kong Government Lifeguards General Union (the General Union), due recognition and professional dignity rather than salary increase were the reasons for their requests for GSRs. He urged CSB to communicate with staff of those grades whose requests had been turned down instead of through the HoDs concerned in order to prevent a decline in the morale of the affected staff.

14. SCS responded that the General Union had directly written to her many a time, and CSB's written replies to them had been seen by her before issuance. She clearly understood the reasons behind the General Union's request but she did not think the justifications they had provided were adequate. The Deputy Chairman proposed that when the Panel further discussed this item at a future meeting, consideration should be given to inviting representatives of those grades whose requests for conduct of GSRs had been turned down so that they could explain in detail their aspirations. Mr WONG Kwok-hing shared his views and considered that the Administration should be open-minded in handling such requests. Pointing out that only a few grades, such as the government lifeguards, the Liaison Officer (LO) grade of the Home Affairs Department, etc., had persistently requested the conduct of a GSR, Mr WONG considered that the Administration should re-consider their requests.

15. SCS stressed that there was a need to assess requests made by any grades according to a consistent set of guiding principles and criteria as highlighted in the Administration's paper for this item. As such, unless new justifications were put forward, she did not consider it necessary for the Administration to reconsider any requests for conduct of GSRs that had already been examined and turned down.

16. Ms LI Fung-ying and Mr TAM Yiu-chung pointed out that the LO grade had been calling for a GSR on grounds that there was a need for higher entry requirement in response to changes in the grade's job duties, which had become much more complicated than before. In reply to Mr TAM, SCS said that the present entry requirement of the LO grade was two passes at Advanced Level in the Hong Kong Advanced Level Examination plus three credits in the Hong Kong Certificate of Education Examination (i.e. Qualification Group (QG) 7), which, in the LO grade's view, should be upgraded to degree qualification (i.e. QG9). After examining their justifications however, she was of the view that the problem faced by the LO grade was more related to their workload and could not be resolved

through upgrading the entry requirement. SCS further pointed out that the GSR mechanism was not a panacea for all kinds of manpower-related issues. Problems related to workload should be addressed through better human resource management. As such, apart from conveying the above views to the relevant department, CSB would examine in the context of the annual resource allocation exercise whether the problem concerned could be addressed by providing additional manpower resources.

17. Mr TAM Yiu-chung opined that although the heavy workload of the LO grade should be addressed by additional manpower resources, a higher entry requirement of the grade might help enhance the service quality in areas of building management and relevant legal issues. He further considered that GSR requests should not be turned down straight away but the Administration should at least discuss the requests with the grades concerned. SCS considered that to enhance service quality, on-the-job training might be more important than upgrading the entry requirement. She further stressed that considering the substantial resources involved in conducting GSRs and resource constraints, only requests for conduct of GSRs which were fully justified and met the assessment criteria should be granted. Summing up, the Chairman said that the Panel should follow up the matter in the next session after the Administration had provided the supplementary information.

IV 2010-2011 Civil Service Pay Adjustment

- (File Ref. CSBCR/PG/4-085-001/67 — Administration's paper on 2010-11 civil service pay adjustment dated 8 June 2010 (Legislative Council Brief)
- File Ref. CSBCR/PG/4-085-001/67 — Administration's paper on 2010-11 civil service pay adjustment dated 15 June 2010 (Legislative Council Brief)
- LC Paper No. CB(1)2219/09-10(01) — Submission from HKSAR Government Employees General Union)

18. SCS briefed members on the decision of the Executive Council (ExCo) at its meeting on 15 June 2010 that civil service pay for 2010-2011 should be revised in accordance with the following pay offers made to the staff sides of the four central consultative councils, with effect from 1 April 2010 -

- (a) Civil service pay for the upper salary band and the directorate should be increased by 1.60% (equal to the net Pay Trend Indicator (PTI) for the upper salary band);
- (b) Civil service pay for the middle salary band should be increased by 0.56% (equal to the net PTI for the middle salary band); and

- (c) Civil service pay for the lower salary band should be increased by 0.56% (equal to the net PTI for the middle salary band), by invoking the 'bring-up' arrangement.

19. In reply to Mr IP Wai-ming on whether the pay for the non-civil service contract (NCSC) staff and agency workers working for the Government would also be adjusted as above, SCS explained that NCSC staff were not civil servants and their terms and conditions of employment were different from those of civil servants as explained in the relevant Legislative Council (LegCo) Brief. The Administration therefore did not consider that the pay adjustment decision should be applied to them. HoDs were however provided with the necessary flexibility to review and adjust, where appropriate, the pay of their NCSC staff to keep up with the market level. As to agency workers, reasonable pay for them had already been ensured by improvement measures recently introduced. For example, by advising all bidders that their bids would not be considered should the quoted wages be less than the average monthly salary of miscellaneous non-production workers in all selected industries published in the latest Census and Statistics Department's Quarterly Report on Wage and Payroll Statistics at the time when bids were invited. However, where agency contracts had already been signed, the agency workers concerned would be paid according to the levels specified in the contracts.

Factors considered in making the pay adjustment decision

20. Mr IP Wai-ming considered it inadequate to increase the civil service pay for the lower salary band by 0.56% only, having regard that the forecast headline and underlying consumer price inflation for 2010 as a whole were much higher at 2.3% and 1.5% respectively. In his view, to avoid affecting the livelihood of civil servants in the lower salary band, greater emphasis should be placed on changes in the cost of living when deciding on their annual pay adjustment. Ms LI Fung-ying shared his views, pointing out that the cost of living had already gone up significantly as shown in food prices and transport fares, and that as the largest employer in Hong Kong, the Government should set a good example.

21. SCS responded that in making the pay adjustment decision, regard had already been given to a basket of six factors, including the net PTIs, the state of the economy, changes in the cost of living, the Government's fiscal position, the pay claims of the staff sides, and the state of civil service morale. Hence, civil service pay adjustment did not mechanically follow the rate of inflation or deflation. This was why civil service pay would not necessarily be adjusted downwards whenever there was deflation but was often just frozen, or even adjusted upwards as appropriate in consideration of public interests, and the stability and morale of the civil service.

22. Ms LI Fung-ying highlighted the substantial fiscal surplus, the high inflation rate, the pay claims of the staff sides, and pointed out that if the six relevant factors had all been seriously taken into account, civil servants should enjoy higher rates of pay increase. In response to her on the respective weights carried by each of the

six factors, SCS said that there was no pre-determined weighting given to each factor but care would be exercised to strike a balance. She said that apart from considering changes in the cost of living, ExCo had also taken into account the year-on-year pay adjustment movements in the private sector in the past twelve months as revealed in the pay trend survey (PTS) concerned.

23. Ms LI Fung-ying still considered that a pre-determined weighting should be given to individual factors, and pointed out that it was unfair and demoralizing that while the pay of civil servants was reduced when the Government's fiscal position was affected by the Asian Financial Turmoil in 1997, their pay would not be suitably adjusted upwards regardless of the current substantial fiscal surplus. In response, SCS reiterated that ExCo had already considered all the six relevant factors, including the accumulated fiscal surplus and the forecast fiscal position of the Government in 2010-2011. It should also be noted that in 1999-2000, despite the forecast fiscal deficit of over \$30 billion and the negative net PTIs then worked out, ExCo still decided to impose a pay freeze on civil service pay for that year.

24. The Deputy Chairman declared interest as an employee of the Hospital Authority. He then pointed out that the pay of civil servants in the upper salary band and the directorate had been cut by 5.38% in January 2010 and that inflation in the first half of 2010 was so significant that it could hardly be compensated by the proposed pay adjustment rates. He also reminded the Administration that the entry pay for university graduates in the market had already increased significantly. The Deputy Chairman said that in recognition of the increasingly fluctuating economic condition, efforts should be made to improve the civil service pay adjustment mechanism to enable ExCo to make better pay adjustment decisions. SCS responded that although the net PTIs only reflected what had happened in the market, under the current mechanism ExCo would also take into account changes in the cost of living, state of the economy, the Government's fiscal position, etc.

25. The Chairman said he had the impression that ExCo's decision on the pay adjustment rate was mechanically linked to the net PTIs concerned rather than balancing the six relevant factors. If not, it should have made its pay adjustment decision in the light of the prevailing inflation rate. SCS responded that although ExCo had never deliberately brought up the pay adjustment rates as reflected by the net PTIs to match the then prevailing inflation rates, in six of the past 18 years during which PTSs were conducted, ExCo had decided on civil service pay adjustment rates different from the net PTIs then worked out. Moreover, while in a few years the adjustment rates were below the then prevailing inflation rates, there were some other years in which the adjustment rates were higher than the then prevailing inflation or deflation rates. This showed that ExCo had in fact taken the prevailing circumstances rather than only the net PTIs into consideration when making pay adjustment decisions. At the Chairman's request, SCS agreed to provide to the Panel a table showing the occasions over the past 18 years on which ExCo decided on civil service pay adjustment rates which were –

- (a) above the net PTI worked out under the PTS mechanism;
- (b) below the net PTI worked out under the PTS mechanism;
- (c) not in keeping with the inflationary environment at the time in question; and
- (d) not in keeping with the deflationary environment at the time in question.

Concern about impact on staff moral

26. Mr WONG Kwok-hing pointed out that civil servants were in general aggrieved and demoralized by the proposed civil service pay increase which in their view were too low. He requested to put on record his grave discontent. Ms LI Fung-ying pointed out that civil servants' pay claims were humble as the highest claim was only 2.5%, with most other claims ranging from 1.2% to 2.2 %. It should also be noted that in the first quarter of 2010, the year-on-year change in the headline consumer price inflation was already 1.9%, and the underlying consumer price inflation (i.e. after netting out the effect of the Government's one-off relief measures) was 0.8%, not to mention that not all could benefit from these measures. The headline and underlying consumer price inflation for 2010 as a whole were also forecast to be 2.3% and 1.5% respectively. As such, civil servants' pay claims could only enable them to keep up with inflation and would not bring any real increase in income.

27. SCS responded that while it was understandable that all employees would prefer a higher pay rise, there was also a need to give regard to the macro situation, and to ensure broad comparability between civil service and private sector pay in recognition that public money was involved. She assured members that ExCo had made efforts to strike the right balance among the six relevant factors before arriving at its pay adjustment decision.

V Disciplinary mechanism and progress on various disciplinary matters

(LC Paper No. CB(1)2225/09-10(01) — Administration's paper on disciplinary mechanism and progress on various disciplinary matters

LC Paper No. CB(1)2227/09-10 — Background brief on disciplinary mechanism and proposed amendments to disciplined services legislation prepared by the Legislative Council Secretariat)

Briefing by the Administration

28. SCS briefed members on the paper for this item, which provided an overview of the civil service disciplinary mechanism and reported on progress of various issues as requested by members.

Presentation of views by deputations

*Government Disciplined Services General Union
(LC Paper No. CB(1)2338/09-10(01))*

29. With reference to the General Union's submission, Mr POON Chi-ming highlighted the following two major views of the General Union –

- (a) The General Union welcomed the Administration's plan to introduce legislative amendments pursuant to the Court of Final Appeal (CFA)'s ruling handed down in the case of *Lam Siu Po v. Commissioner of Police* (FACV 9/2008) that regulations 9(11) and 9(12) of the Police (Discipline) Regulations (P(D)R) (Cap. 232A), which explicitly prohibited legal representation for defaulters at disciplinary proceedings, were inconsistent with Article 10 of the Hong Kong Bill of Rights. It however found the progress of work too slow. Further, the General Union was dissatisfied with the lack of progress in formulating the operational details of the "review board" provided under section 20(2) of the Public Service (Administration) Order (PS(A)O) to replace the appeal channel that had existed prior to the Reunification. To ensure fairness for the civil servants concerned, the General Union also called for the provision of a channel to appeal against the rejection of applications for legal or other forms of representation at disciplinary hearings; and
- (b) The General Union was concerned about the long processing time for disciplinary cases, which in some cases might span a few years. Not only would this exert undue pressure on the civil servants concerned but it was also unfair to them because during the period they would be debarred from promotion and commendation.

*Police Force Council Staff Side (PFC SS)
(LC Paper No. CB(1) 2236/09-10(01))*

30. Mr CHAN Wai-ming briefed members on the salient points of PFC SS's submission. PFC SS considered that there was a need to take the following measures -

- (a) Providing for a mechanism in P(D)R to differentiate, based on the seriousness of the charge(s), between proceedings which might result

in non-terminatory awards and those that might result in terminatory awards (including reduction in rank);

- (b) Introducing a statutory provision to permit "Hearing in Absentia";
- (c) Addressing Chinese language inconsistencies in the offence of "Conduct **calculated** to bring the public service into disrepute"; and
- (d) Harmonizing Parts II and III of P(D)R.

31. Mr CHAN Wai-ming further pointed out that the case of *Lam Siu Po v. Commissioner of Police* (FACV 9/2008) had exposed problems regarding the fairness and efficiency of disciplinary proceedings which should be rectified early, so as to speed up the release of manpower resources held up in the proceedings. Mr LIU Kit-ming supplemented that PFC SS had long been calling for improvements to the disciplinary mechanism in the above regard. Such improvements would benefit not only police officers but also the public through releasing more police officers to serve the public. He further opined that instead of just amending the subsidiary Regulations on discipline as presently proposed, P(D)R should be given an overhaul because it was outdated and could not effectively cater for the needs entailed in the management of the Police Force. The overhaul was also necessary because the disciplinary proceedings of the Police Force were more complicated and demanding than those instituted against civil servants in the civilian grades.

32. At Mr WONG Kwok-hing's request, SCS responded to the General Union's views as follows –

- (a) Regarding the review board, it should be noted that it was only advisory in nature. As its operation was complicated, the Administration would need more time to look into the relevant details. The Administration would continue to follow up on the matter. Meanwhile, a civil servant aggrieved by the decision of the disciplinary authority might petition the Chief Executive (CE) under Article 48 of the Basic Law, or lodge a statutory appeal under the relevant Disciplined Services Legislation (DSL), or make a representation to CE under section 20 of PS(A)O as appropriate. Hence, the issue of the review board would not affect civil servants' right in this regard;
- (b) As to the appeal channel against the rejection of applications for legal or other forms of representation, an appeal mechanism in this regard was already available, under which an appeal would be heard by an officer who was more senior than the one who had rejected the application concerned; and

- (c) On the long processing time for disciplinary cases, CSB would consider the suggestion of setting a reasonable and broad timeframe for investigation of alleged misconduct, having regard to the fact that the length of time taken in investigating an alleged misconduct case depended on various factors such as the complexity of the case. CSB would liaise with the management and staff sides concerned in the hope of achieving consensus on how this could be pursued through administrative measures.

Discussion

The review board

33. In response to Mr WONG Kwok-hing on the timetable for formulating the operational details of the review board, SCS said that the Administration's present plan was to take forward amendments to the subsidiary Regulations on discipline to DSL as soon as practicable. SCS envisaged that the Administration would consider matters relating to the review board in detail only in 2011. She however reiterated that a civil servant aggrieved by the decision of the disciplinary authority could still petition or make a representation to CE as appropriate before the review board was set up.

34. Ms LI Fung-ying questioned why the review board could not be examined in parallel with the current legislative amendment exercise. SCS responded that the review board was unrelated to DSL or the subsidiary Regulations on discipline but was to be appointed under PS(A)O. In recognition of this and CSB's resource constraints, CSB's foremost task should be to work with the parties concerned on improvements to the disciplinary proceedings through amending the subsidiary Regulations on discipline for the disciplined forces, with a view to defining the scope of amendments for the current legislative amendment exercise. The Administration would take stock of the position and report to the Panel in the fourth quarter of 2010. Thereafter, she would review the need to amend DSL with a view to refining the disciplinary mechanism, and in parallel would look into the issue of the review board in 2011.

Rejection of applications for legal or other forms of representation at disciplinary hearings

35. Referring to Annex C to the Administration's paper for this item (LC Paper No. CB(1)2225/09-10(01)), Ms LI Fung-ying expressed concern about the relatively large number of rejected applications for legal or other forms of representation at disciplinary hearings. In response to Ms LI, SCS explained that in considering an application for legal representation, the disciplinary authority might take into account, but not limited to, the seriousness of the misconduct charged and the potential penalty; whether any points of law were likely to arise; the capacity of the civil servant concerned to present his own case; and the need for fairness among the

parties involved in a disciplinary hearing, etc. In considering an application for other forms of representation, the disciplinary authority would consider the circumstances of the case, the requirements of natural justice and fairness, and other appropriate factors, such as the possibility of leakage of sensitive information.

36. Noting that 52 of the 105 applications received for legal or other forms of representation at disciplinary hearings had been rejected, Mr James TO asked whether a written explanation of the reasons for rejecting the 52 applications would be given to the applicants. He also made the following points –

- (a) There was a need to explain the reasons for rejecting as many as 52 applications, which meant that the rejection rate was about 50%. If the 15 applications presently under consideration were finally rejected, the rate would be even higher;
- (b) Some of the factors that the disciplinary authority might take into account in considering an application for legal representation were arbitrary and might be very subjective, such as the consideration that "the capacity of the civil servant concerned to present his own case"; and
- (c) It was worrying that the possibility of leakage of sensitive information was a factor considered when vetting applications for other forms of representation because this factor could be arbitrarily interpreted and easily abused.

Mr TO considered that applications for legal representation should be approved as a matter of course unless grave unfairness would arise as a result. It would be even more unfair to the civil servant concerned if the disciplinary authority could appoint legal representative to assist in the proceedings on its behalf.

37. In response, SCS made the following points –

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- (a) A breakdown of the reasons for rejecting the 52 applications by category would be provided after the meeting;
- (b) Except for the factor of "the possibility of leakage of sensitive information", all factors of consideration as set out in paragraph 17 of the Administration's paper had been drawn up by making reference to the factors set out by CFA in the case of *Stock Exchange of Hong Kong Ltd v. New World Development Co. Ltd and Others* (FACV 22/2005);
- (c) If the civil servant involved in a disciplinary case did not have legal representation, the disciplinary authority would not have legal representation in the relevant proceedings. Moreover, rejection of

applications for legal representation would not prevent the civil servants concerned from inviting colleagues or friends to assist them in the proceedings; and

- (d) The standing arrangement was that the adjudicating officer to be appointed to conduct a disciplinary hearing was always one who was more senior in rank to the accused civil servant.

38. The Deputy Chairman shared Mr James TO's concerns about the large number of rejected applications for legal representation. The Deputy Chairman pointed out that firstly, legal representation was a basic right and would not incur additional cost on the part of the disciplinary authority. Secondly, the CFA judgement on *Lam Siu Po v. Commissioner of Police* (FACV 9/2008) had already revealed that regulations 9(11) and 9(12) of P(D)R, which explicitly prohibited legal representation for defaulters at disciplinary hearings, were inconsistent with Article 10 of the Hong Kong Bill of Rights, and were thus unconstitutional, null and void.

39. SCS responded that the Administration considered it undesirable to make proceedings for disciplinary hearings unduly formal. Moreover, the above CFA judgement had also pointed out that regard should be given to, among other things, the potential penalty in deciding whether to allow legal representation. If the penalty could amount to dismissal or compulsory retirement, the applications for legal representation would be considered seriously. Moreover, a civil servant who was aggrieved by a disciplinary decision could always appeal and even seek judicial review.

40. The Deputy Chairman and Mr LEUNG Kwok-hung considered that a civil servant's fundamental right to appoint legal representative to assist him during disciplinary hearings should not be denied. Mr LEUNG further said that the above approach was undesirable as it might only result in more and more cases of judicial review. He queried if the Administration was denying civil servants legal representation to prevent them from successfully establishing a testing case on disciplinary proceedings considering the significant implications. SCS responded that Mr LEUNG's query above did not stand because, instead of rejecting all applications, 38 of the 105 applications received so far had been approved having regard to the factors highlighted in paragraph 17 of the Administration's paper. The Chairman and Mr James TO emphasized that applications for legal representation should all be approved as a matter of course, and should only be rejected under very special circumstances.

41. Mr James TO considered that the present arrangement was unfair, and that a civil servant's right to legal representation should be upheld even though this would make the proceedings for disciplinary hearings unduly formal. SCS reiterated the need to give due regard to the CFA judgements on *Lam Siu Po v. Commissioner of Police* (FACV 9/2008) and *Stock Exchange of Hong Kong Ltd v. New World Development Co. Ltd and Others* (FACV 22/2005). The Administration was of the

view that natural justice and fairness could be achieved under the present arrangement.

42. The Chairman said that to allow sufficient time for discussion, he would extend the meeting by 10 minutes.

Other views and concerns

43. Referring to Annex A to the Administration's paper for this item (LC Paper No. CB(1)2225/09-10(01)), Mr TAM Yiu-chung asked whether the general reduction of the number of cases involving punishment imposed on civil servants in 2009-2010 after completion of disciplinary proceedings as compared with previous years implied enhanced integrity of the civil service. SCS responded that there was a need to monitor the trend in this regard for a few years more before the above deduction could be made. At present she could not say for sure whether the decline was transient or would continue as a result of the Administration's integrity enhancement efforts.

44. Ms LI Fung-ying expressed concern about the long processing time for disciplinary cases, and agreed with SCS on the need to set a timeframe to minimize the impact of lengthy proceedings on the well-being of the civil servants concerned, who might be interdicted during the process. SCS responded that Ms LI's views above would be relayed to the management of the six disciplined services departments, and CSB would examine with them on whether administrative measures could be taken to specify a broad timeframe or performance targets for investigating into disciplinary cases in general.

45. In response to Ms LI Fung-ying on the progress of the harmonization of disciplinary practices, SCS said that the Administration intended to take the opportunity of the current legislative amendment exercise to stipulate that as a standing arrangement, audio recording on disciplinary hearings held under DSL would be arranged. She also explained that at present, the records of proceedings for disciplinary hearings conducted under DSL were already available in written form. If a civil servant wished to have his/her disciplinary hearings conducted under DSL video-recorded, he/she would need to inform the disciplined services department concerned in advance so that the necessary arrangements could be made.

Supplementary comments from deputations

46. At the Chairman' invitation, the following representatives of deputations supplemented the following views –

- (a) Mr LIU Kit-ming opined that the approach highlighted in paragraph 17 of the Administration's paper might instead prolong disciplinary proceedings and make them unduly formal. To genuinely improve

the disciplinary mechanism, there was a need to examine it from a macro perspective instead of only drawing reference from the case of *Lam Siu Po v. Commissioner of Police* (FACV 9/2008). As such, the Administration should firstly note that legal representation for disciplinary cases was allowed as early as 1984 in the United Kingdom, and that the right was also available in Australia, Canada and the United States. Secondly, the Administration should conduct a comprehensive review of DSL in recognition that, although CFA had only ruled that regulations 9(11) and 9(12) of P(D)R were inconsistent with Article 10 of the Hong Kong Bill of Rights, other practices of the current disciplinary mechanism might also have the same problem. He further questioned the delay in re-processing the disciplinary cases concerning the appellants in the case of *Lam Siu Po v. Commissioner of Police* (FACV No. 9 of 2008) and the case of *Chiu Hoi Po v. Commissioner of Police* (FACV No. 9 of 2009), which was another successful case of appeal to CFA; and

- (b) Mr POON Chi-ming shared Mr James TO's concerns about the factors adopted for considering applications for legal or other forms of representation, and about the high rejection rate. Moreover, the Administration had not properly explained how rejections could be appealed against. He also found the progress in working out the operational details of the review board unacceptable, pointing out that the Administration's undertaking to appoint the review board had been made as early as 1996.

47. In response, SCS made the following points –

- (a) The Administration would actively examine details of the review board in 2011; and
- (b) the Administration had accorded priority to introducing amendments to the subsidiary Regulations on discipline, within the shortest possible time, pursuant to the CFA judgement on *Lam Siu Po v. Commissioner of Police* (FACV 9/2008), as well as to identifying other areas of improvements to the subsidiary Regulations which could possibly be taken forward within the timeframe of the current legislative amendment exercise. It should be noted that disciplinary practices adopted respectively by the six disciplined services departments had been developed over the past 50 to 60 years. It would take quite some time to review them comprehensively. As such, it would not be desirable to overhaul DSL concurrently with the current legislative amendment exercise, lest it might considerably delay the exercise.

48. Summing up, the Chairman requested the Administration to continue its

Admin efforts to refine the disciplinary mechanism. At Mr James TO's request, the Administration agreed to provide a written explanation of the reasons for the delay in re-processing the disciplinary cases concerning the appellants in the case of *Lam Siu Po v. Commissioner of Police* (FACV No. 9 of 2008), and the case of *Chiu Hoi Po v. Commissioner of Police* (FACV No. 9 of 2009).

VI Any other business

49. The Chairman thanked the Administration and the Secretariat for their support in the past year. SCS also thanked the Chairman, and the Secretariat for its assistance.

50. There being no other business, the meeting ended at 1:05 pm.

Council Business Division 1
Legislative Council Secretariat
26 October 2010