

(D R A F T)

立法會
Legislative Council

LC Paper No. CB(1)1769/04-05(03)

Ref : CB1/PL/PS

**Report of the Panel on Public Service
for submission to the Legislative Council**

Purpose

This report gives an account of the work of the Panel on Public Service from October 2004 to June 2005. It will be tabled at the meeting of the Legislative Council (LegCo) on 6 July 2005 in accordance with Rule 77(14) of the Rules of Procedure of LegCo.

The Panel

2. The Panel was formed by a resolution passed by LegCo on 8 July 1998 and as amended on 20 December 2000 for the purpose of monitoring and examining government policies and issues of public concern relating to civil service and government-funded public bodies, and public service matters. The terms of reference of the Panel are in **Appendix I**.

3. For the 2004-05 session, the Panel comprises 10 members. Hon TAM Yiu-chung and Hon LI Fung-ying were elected Chairman and Deputy Chairman of the Panel respectively. The membership list of the Panel is in **Appendix II**.

Major Work

4. On the Administration's initiative to reduce its operating expenditure through various measures including reduction in the civil service establishment and adjustments to civil service pay, the Panel closely monitored the relevant issues. The Panel also examined other policy issues, including the policy governing post-retirement employment of civil servants, policy governing the employment of non-civil service contract (NCSC) staff, and measures for managing misconduct and under-performance in the civil service.

Containing the size of the civil service

5. The Panel noted that in order to achieve the target of reducing the civil service establishment to around 160 000 by 2006-07 as announced by the Chief Executive in his 2003 Policy Address, the Administration had introduced various measures including a general civil service recruitment freeze, internal redeployment and reorganization. The civil service establishment had been reduced from some 170 600 in March 2004 to about 166 000 in March 2005. This represented a reduction of some 16% from the peak of 198 000 in early 2000. The Administration anticipated that the establishment would be reduced by another 2 700 to around 163 300 by March 2006.

6. Given that the civil service establishment had been substantially reduced in the recent few years, the Panel expressed concern that further reduction might have adverse impact on the timely and effective delivery of public service. The Panel was assured by the Administration that in taking forward the initiative of reducing the civil service establishment, Directors of Bureaux (DoBs) and Heads of Department (HoDs) would adhere to the guiding principle that the delivery of public service should not be adversely affected. Despite the general civil service recruitment freeze, flexibility had been allowed for exemption provided that DoBs/HoDs saw genuine operational needs to recruit. Since 2003, the high-level panel co-chaired by the Chief Secretary for Administration and the Financial Secretary, and with the Secretary for the Civil Service (SCS) as member, had given approval for 16 bureaux/departments for open recruitment of over 2 000 posts, both in the disciplined services grades and the civilian grades.

7. The Panel was concerned that in order to achieve the target for reducing the civil service establishment, bureaux and departments had been meeting the additional operational needs through employing NCSC staff and implementing outsourcing programmes. In this connection, the Panel stressed the importance of maintaining a stable civil service devoted to the provision of the necessary public services on a long-term basis. The Panel was assured that in the course of streamlining the civil service, the Administration would continue to maintain a professional, stable and motivated civil service.

Civil service pay and allowances

Civil service pay adjustment

8. On the courts' two rulings made in November 2004 and February 2005 respectively that section 10 of the Public Officers Pay Adjustment Ordinance (Cap. 574) (POPA Ordinance)^{Note 1} and section 15 of the Public Officers Pay

Note 1

Adjustments (2004/2005) Ordinance (Cap. 580) (POPA (04/05) Ordinance)^{Note 2} were inconsistent with Article 100 of the Basic Law, the Panel noted that the Government had decided to appeal against the two rulings. SCS stated that in the event that the Court of Final Appeal (CFA) declared one or both pieces of pay reduction legislation to be unconstitutional insofar as any public officer or class of public officer was concerned, then, subject to necessary funding approval, any arrears of pay due at the date of the CFA's judgment would be paid to each officer concerned.

9. Noting that in the 2005-06 Budget, the Administration had made estimates amounting to \$9,600 million in 2006 as the Government's contingent liabilities in relation to its appeals arising from judicial review applications concerning the civil service pay adjustments legislation, the Panel was concerned whether the sum of \$9,600 million covered only the sum of the reduced pay to be returned to the affected civil servants in the event that the Government lost in the aforesaid appeals. Members recalled that during the scrutiny of the Public Officers Pay Adjustment Bill in 2002, the relevant bills committee was advised by the Administration that if civil service pay was reduced with effect from 1 October 2002, the Government subventions to subvented organizations would be reduced accordingly to reflect the revised factor of civil service pay adjustment. Given that the subvented organizations concerned had reduced the pay of their employees in accordance with civil service pay reductions, particularly those employees whose pay scales were directly linked to the civil service pay scales, members considered it fair and justified for the affected employees to have their reduced pay returned in the event that the Government lost in the appeals. In this connection, the Panel was advised by the Administration that the sum of \$9,600 million did not cover the subvented sector, and whether or not there would be a refund of subsidies to subvented organizations (those whose funding had been price adjusted with reference to civil service pay adjustment) was a separate policy matter that would not follow automatically from a ruling of CFA on the civil service pay reduction legislation which went against the Government. The Administration would consider the

The POPA Ordinance was enacted in July 2002 to implement the Administration's decision of civil service pay reduction of 4.42% for the directorate and the upper salary band, 1.64% for the middle salary band, and 1.58% for the lower salary band, with effect from 1 October 2002. Section 10 of the Ordinance provides that "[t]he contracts of employment of public officers are varied so as to expressly authorize the adjustments to pay and the amounts of the allowances made by this Ordinance".

Note 2

The POPA (04/05) Ordinance was enacted in December 2003 to implement the civil service pay adjustment decision, which was a consensus reached with the staff side, to restore the pay pertaining to each pay point on the civil service pay scales to the level it was at, in dollar terms, on 30 June 1997 by two adjustments of broadly equal amount from 1 January 2004 and 1 January 2005. Section 15 of the Ordinance provides that "[t]he contracts of employment of public officers are varied so as to expressly authorize the adjustments to pay and the amounts of the allowances made by sections 4 to 13".

appropriate way forward insofar as the price adjustments of those subventions were concerned, in the event that CFA declared that the civil service pay reduction legislation was inconsistent with the Basic Law.

Development of an improved civil service pay adjustment mechanism

10. In the context of the annual civil service pay adjustment 2003, the Administration had decided to embark on the development of an improved civil service pay adjustment mechanism, with the conduct of a pay level survey (PLS) as part of the exercise. The Panel continued to monitor the progress of the Administration's work in this respect, and discussed with the Administration on the proposals concerning the PLS methodology and the general approach on the application of the PLS results.

11. On the proposed methodology of the PLS, the Panel noted that the Administration had received comments on and criticisms of the proposed broadly-defined job family method set out in its Consultation Paper issued in November 2004, but had not received any suggestion for an alternative approach for job comparison between the civil service and private sector. In view of the inherent differences in the nature of operation and in the employment and remuneration practices between the civil service and the private sector, members and some civil service staff associations expressed concern whether the proposed survey methodology could make a precise pay comparison between the two sectors. The Panel was advised by the Administration that after assessing the relative merits and shortcomings of four common job comparison methods, the consultant considered that the broadly-defined job family method with the refinements made was better able than the other three job comparison methods to meet the objective of the PLS and to address the technical considerations arising from a PLS. The inherent differences between the civil service and the private sector would be recorded in the proposed job inspection process, and would be taken into account when the Administration considered at a later stage how the survey results should be applied to the civil service. On members' concern about the criteria for selecting the private sector organizations to be surveyed in the PLS, the Panel was advised by the Administration that the criteria would broadly follow those in the pay trend survey (PTS), such as being steady and good employer conducting wage and salary administration on a rational and systematic basis, and not using civil service pay scales or pay adjustments as the major factors in determining pay levels or pay adjustment of their staff.

12. As regards the general approach for applying the results of the PLS, the Panel noted that the general feedback from the consultation exercise was that it was reasonable and pragmatic not to apply the PLS result (should it reveal that civil service pay was higher than private sector pay) to serving staff immediately. The Administration would consider the application issue in due course upon the

conclusion of the proceedings of the judicial review applications concerning the civil service pay adjustments legislation.

13. Noting the concerns and worries expressed by some civil service staff associations on the survey methodology and the application of the survey results, the Panel stressed the importance for the Administration to maintain good communication with staff during the survey process so as to alleviate their worries. The Panel also urged the Administration to take forward the PLS in a prudent manner, taking into full consideration the concerns and worries of civil service staff associations. The Panel was assured that the Administration would continue to discuss with the staff side members of the Consultative Group on Civil Service Pay Adjustment Mechanism and consult them on the implementation details of the PLS with a view to completing the survey in a timely manner. The Administration would also consult staff before it took a final decision on the application of the PLS results.

14. On 24 March 2005, the Panel was informed of the Administration's decision to conduct a PLS in 2005 using the methodology as recommended by the consultant and further refined following the recent consultation. With the conduct of a PLS in 2005, there should be no annual PTS for 2004-05. The Administration would further consider the future of PTS under the improved civil service pay adjustment mechanism.

Review of civil service allowances

15. On the comprehensive review of civil service allowances conducted by the Administration, the Panel monitored the progress of the review of fringe benefit type of civil service allowances and the review of job-related allowances (JRAs). Regarding the review of fringe benefit type of allowances, the Panel noted that the Administration adopted a two-phase approach, with phase one focusing on the change proposals that affected relatively fewer civil servants or were less complicated (e.g. passage and related allowances), and phase two on those change proposals which would likely have a more extensive impact within the civil service (e.g. education allowances and housing allowances). However, in response to staff feedback received during the consultation conducted in June to August 2004 on the phase one review that they would like to know the full package of change proposals in offering comments, the Administration aimed to present the full set of change proposals for staff consultation before making a decision on the proposals for implementation. While the legal proceedings in respect of the civil service pay adjustment legislations and the review of fringe benefit type of civil service allowances were two separate issues, the Administration considered it prudent to take forward the review (including presenting the change proposals for staff consultation) when the CFA judgment was available.

16. As regards the review of JRAs, the Panel noted that in early February 2005, the Administration completed the phase three review of the JRAs payable to the civilian grades, namely, the Hardship Allowances payable to staff of the Department of Health (DH) and Food and Environmental Hygiene Department (FEHD), and civil servants working in the Hospital Authority. Given the staff concern about the outcome of the phase three review, the Panel discussed the subject with the Administration and relevant staff associations. Members considered the staff associations' objection to the cessation/reduction in the payment of Hardship Allowance justified, as the staff concerned had been subject to high risk work environment with the outbreak of different kinds of communicable diseases in recent years, in addition to the obnoxious nature of the duties. The Panel therefore urged the Administration to adopt a pragmatic approach in handling the outcome of the phase three review by deferring the implementation of its decision and conducting further consultation with the staff side. In this connection, a motion was passed by the Panel requesting the Government to defer the implementation of payment of Hardship Allowance at half rate to 1 321 posts and the cessation of payment of Hardship Allowance at full rate to 503 posts, and to consult afresh civil service organizations on the payment of Hardship Allowance thoroughly.

17. On the question of whether the cessation of or reduction in the payment of Hardship Allowance would contravene Article 100 of the Basic Law, the Panel was advised that according to the legal advice obtained by the Administration, unlike fringe benefits type of allowances which were offered to eligible officers as part of their conditions of service, JRAs were subject to change in the light of operational needs, even before the reunification in 1997. As such, changes in JRA payments would not be in contravention of Article 100. Some members however considered that JRAs payable to the staff concerned on a monthly basis should be part of their conditions of service, irrespective of whether changes had been made to the payment of the allowances before 1997. Referring to the legal proceedings in respect of the POPA Ordinance and the POPA 04/05 Ordinance, the members considered it more prudent for the Administration to defer the implementation of the decision of the phase three review until after the judgment of CFA was available, which might shed some light on the application of Article 100 of the Basic Law to the pay and allowances of the civil service.

18. Upon further consideration, the Administration maintained its view that the decisions arising from the phase three review should be implemented on 1 April 2005 as planned. The Panel was however assured that DH, FEHD and the Hospital Authority would continue to explain and communicate with their staff on the review recommendations before and after the implementation date. As regards the views of some civil service staff associations that Hardship Allowance should be incorporated into the basic salary of the civilian grades concerned, the Panel was advised by the Administration it would take this into

consideration at a later stage when grade reviews would be conducted after the completion of the PLS to ascertain whether there was any disparity in the pay levels of the civil service and the private sector.

Policy governing post-retirement employment of civil servants

19. In the last session, the Panel examined the policy governing post-retirement employment of civil servants and queried the effectiveness of the current mechanism in ensuring that former civil servants did not enter into any business or took up any employment which might constitute a conflict of interest with their previous service in the Government. Stressing that a due process for handling the applications for post-retirement employment was needed to maintain the impartiality of the mechanism and to safeguard public interests, the Panel urged the Administration to review the existing mechanism as early as possible to restore public confidence. The major areas covered by the review included whether the length of the six-month sanitization period was appropriate, whether the officers concerned should be allowed to take up any employment during the period of their final leave, and whether more restrictions should be imposed on the post-retirement of directorate officers, etc. The Administration undertook to review the mechanism.

20. In the current session, the Panel closely monitored the Administration's review and examined the policy issues involved in the approval given for Ms Elaine CHUNG Lai-kiwok, the former Deputy Director of Housing (DDH), to take up post-retirement employment with the Hong Kong Ferry (Holdings) Co. Ltd. (HKF). In view of the wide public concern over the possible involvement of Ms CHUNG in the bidding of the West Kowloon Cultural District (WKCD) development project by the Henderson Land Development Co. Ltd (HLD)^{Note 3} and the lobbying of Kwai Tsing District Council (K&TDC) members for their support for the proposed change of land use of the Tsing Yi shipyard to a batching plant, the Panel urged the Administration to conduct a full investigation into Ms CHUNG's case. The areas of concern included whether SCS, before approving Ms CHUNG's application for post-retirement employment, had exercised due diligence to examine the application so as to prevent any conflict of interests between Ms CHUNG's prospective employment in the private sector and her previous duties in the Government; whether it was appropriate to grant approval for Ms CHUNG to take up employment in a private firm about four and a half months after her cessation of duty with the Government, instead of the normal sanitization period of six months; and whether the Civil Service Bureau (CSB) had taken necessary actions to monitor Ms CHUNG's compliance with

Note 3

As set out in the former DDH's letter dated 25 November 2004 to the Secretary General of the LegCo Secretariat, to the best of her knowledge, HLD owns approximately 73.48% of Henderson Investment Ltd (HI) and HI in turn owns 31.33% of HKF.

the terms of approval of her post-retirement employment.

21. In March 2005, the Panel examined the investigation report provided by the Administration. Members were not convinced of CSB's assessment that Ms CHUNG's advisory service on the cultural aspect of HLD's WKCD proposal did not constitute any conflict of interest with her previous service in the Government. In members' view, the cultural and property elements of the WKCD development project were intertwined and in fact the two sides of the same coin. The cultural proposals were made for the purpose of property developments and ultimately for the bidding of the WKCD development project. Members however noted CSB's view that Ms CHUNG's participation in the promotion of HLD's WKCD proposal in October and November 2004, even though limited to the cultural aspects of the proposal, fell outside the scope of the approved work, and hence was inappropriate and unacceptable, and also fuelled public suspicion of conflict of interest, to the detriment of the image and public confidence in the integrity of the civil service. Given the severity of Ms CHUNG's misconduct, members queried why CSB had only issued a warning to her, but had not imposed any sanctions or penalty on her. Members also queried whether the Administration had conducted a thorough investigation in relation to the complaint about Ms CHUNG's involvement in lobbying support of K&TDC members.

22. As a whole, the Panel did not accept CSB's investigation report and passed a motion requesting the Government to conduct an independent investigation into the matter. In its written response, CSB pointed out that it had taken account of all relevant materials and information available, and had sought the independent views of the Advisory Committee on Post-retirement Employment and legal advice from the Department of Justice before reaching the conclusions detailed in its investigation report. It had tried its best to address the detailed concerns of the public and LegCo whilst at the same time being reasonable and fair in its approach to the investigation. In the absence of new evidence or information, CSB did not see a valid case for conducting another investigation. However, CSB would be prepared to re-examine any particular issue in this case in the light of new information or evidence.

23. As regards the review of the policy on post-retirement employment of former directorate civil servants, the Panel welcomed the preliminary review proposals put forward by the Administration and expressed views on the proposals. On the proposal that directorate officers on final leave would only be permitted to take up unremunerated or notionally remunerated work for charitable/other non-profit making bodies or public services, some members considered that the approving authority should not be given the discretionary power to grant exceptional approval for paid employment during final leave of any officers, even under very special circumstances, as it would give rise to a serious dual identity problem. As regards the proposal to lengthen the period of

minimum sanitization for directorate civil servants retiring/retired on pensionable and new permanent terms from six months to 12 months during which paid employment was prohibited, some members considered that the sanitization period should be lengthened to three years. In their view, a longer sanitization period could address the public concern about civil servants at senior ranks paving way for their post-retirement employment through favouritism towards consortia in their policy formulation or decisions during their service in the Government. Some members also pointed out that the sanitization period should not be applied to all applications across-the-board and that special arrangement should be allowed for retired directorate officers of some professional and/or technical grades, such as doctors, engineers and accountants. The Panel was assured that the Administration would take into account views of the staff sides, LegCo Members as well as the public before making a final decision on the proposed changes. The Administration's plan was to implement the revised system in the latter half of 2005, applying to officers who ceased active government service after the new system had been put in place.

Employment of non-civil service contract staff

24. Noting that there were 14 807 full-time NCSC staff employed by the Government as at 31 December 2004, the Panel expressed concern about the management and control of the NCSC staff scheme. As some NCSC staff had been employed to provide public service with long term demand, such as those employed under the Support for Self-reliance Scheme of the Social Welfare Department, members queried whether the NCSC staff scheme was really for meeting service needs which were short-term, part-time or under review as claimed by the Administration. Members considered that NCSC posts with long-term service needs should be incorporated into the civil service establishment, and that it was unfair for the Administration to employ NCSC staff to fill such posts by breaking up their contracts into a series of short-term contracts. Given that about 7% of the 14 807 NCSC staff (i.e. about 1 100 staff) had been employed for over five years, members urged that the problem should be addressed without further delay. In this connection, the Panel passed a motion urging the Government to immediately study the inclusion of the posts filled by NCSC staff over a period of time in the permanent establishment, and to present the outcome of the study to the Panel before July 2005.

25. Members also shared the concerns of some civil service staff associations about the unfavourable terms and conditions of employment of NCSC staff, and their lack of promotion prospects and career development opportunities. Given that NCSC staff were not provided with any fringe benefits and were offered pay levels lower than those of their civil service counterparts, members were concerned that such an unfair treatment would affect civil service unity and the effective delivery of public service. On some members' suggestion that NCSC staff be provided with annual increments and medical benefits, the Panel noted the Administration's view that as NCSC staff were employed on short fixed term contracts, it was reasonable for them to receive the remuneration package stipulated in their contracts.

Measures for managing misconduct and under-performance in the civil service

26. In examining various types of punishment imposed under the Public Service (Administration) Order (PS(A)O), the Panel stressed that the level of punishment should be commensurate with the gravity of the offences/misconduct. The Panel was advised by the Administration that in awarding punishment, the disciplinary authority would first consider the recommendation of the HoD concerned, taking into account comments from the Secretariat on Civil Service Discipline and relevant factors such as the customary level of punishment. The Public Service Commission would then be consulted on the level of punishment. Noting that "reduction in rank" had been awarded for only one case and "compulsory retirement" for 110 cases in 2002-03 to 2004-05, members were concerned that HoDs might be inclined to recommend compulsory retirement instead of reduction in rank to avoid any possible staff management problems in the event that the officers concerned were aggrieved of the decisions of the disciplinary authority. However, while officers subject to reduction in rank still had the opportunity to continue their work in the civil service, those subject to compulsory retirement would lose their job. At the request of the Panel, the Administration undertook to examine the current mechanism in determining the level of punishment and consider how members' concerns could be addressed.

27. On measures for managing under-performers, the Panel noted that since the implementation of the revised procedures^{Note 4} for handling persistent under-performers in 2003, the lead time for compulsorily retiring persistent under-performers had been shortened. The procedures were being reviewed in the light of operational experience gained in the past two years and the Administration was of the initial view that there was scope for further streamlining the procedures. The Panel was assured by the Administration that

Note 4

Under the revised procedures, an overall "unsatisfactory" performance for a 12-month period (where the officer concerned had been duly counselled and forewarned) would form the basis for invoking action to require the officer concerned to retire under Section 12 of the PS(A)O ("Section 12 action").

in drawing up proposals to further streamline the procedures, the principles underlying the existing procedures would remain unchanged, i.e. where an officer was not performing up to the required standard, he would be so advised, and helped to improve his performance through counselling, training or other administrative measures. Only when these measures failed to achieve the desired result would Section 12 action be resorted to. The Administration would also ensure that the procedures adopted were fair and just, and that reasonable protection was given to the legitimate rights of individual officers.

Other issues

28. In the current session, the Panel examined other issues including the progress made in civil service training and development in 2004-05 and the new initiatives for 2005-06, the work of CSB in the promotion of integrity in the civil service, and the 2005 Civil Service Customer Service Award Scheme. The Panel also examined the new special unpaid leave (SUL) scheme proposed by the Administration to address the problems of staff surplus and mismatch in the civil service.

29. On the proposed new SUL scheme, some members shared the concern of civil service staff associations on whether the scheme was really voluntary and whether it would turn out to be a redundancy scheme. The Panel was assured by the Administration that the SUL scheme was entirely voluntary in nature and that the officers concerned would be allowed to resume work in their departments upon expiry of the SUL period. SCS also reiterated the Government's pledge not to force any civil servant to leave the service through redundancy plan.

30. The Panel held a total of nine meetings from October 2004 to June 2005 to examine the above issues.

**Legislative Council
Panel on Public Service**

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to the civil service and Government-funded public bodies, and other public service matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

立法會
公務員及資助機構員工事務委員會
Legislative Council
Panel on Public Service

2004 至 2005 年度委員名單
Membership list for 2004 - 2005 session

主席 Chairman	譚耀宗議員, GBS, JP	Hon TAM Yiu-chung, GBS, JP
副主席 Deputy Chairman	李鳳英議員, BBS, JP	Hon LI Fung-ying, BBS, JP
委員 Members	李卓人議員 涂謹申議員 張文光議員 陳智思議員, JP 梁劉柔芬議員, SBS, JP 楊孝華議員, SBS, JP 王國興議員, MH 鄭志堅議員 (合共： 10 位委員) (Total： 10 members)	Hon LEE Cheuk-yan Hon James TO Kun-sun 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
秘書 Clerk	陳美卿小姐	Miss Salumi CHAN Mei-hing
法律顧問 Legal Adviser	鄭潔儀小姐	Miss Kitty CHENG
日期 Date	2004 年 10 月 12 日 12 October 2004	