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Panel on Public Service

Extract from minutes of meeting held on Monday, 20 October 2008

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III 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 and other related proposals)

At the Chairman's invitation, the Secretary for the Civil Service (SCS) briefed members on the Administration's proposals on the disciplinary framework for civil servants whose retirement benefits were provided under the Civil Service Provident Fund (CSPF) Scheme (CSPF civil servants) and other related proposals (the Proposals).

Views of staff on the Proposals

2. Ms LI Fung-ying was concerned that if the proposed disciplinary punishments had not been provided for in the employment contracts of the CSPF civil servants, the implementation of the Proposals might give rise to applications for judicial review from aggrieved CSPF civil servants on grounds of unilateral variation of contract terms. SCS responded that it was clearly stipulated in the terms and conditions of the CSPF Scheme, which formed part of the employment contracts of CSPF civil servants that, if a civil servant was

found guilty of a disciplinary or criminal offence and was given a punishment upon conclusion of disciplinary proceedings, his accrued benefits attributable to the Government's Voluntary Contribution (GVC), including any investment income generated there from, might be forfeited in whole or in part.

3. Ms LI Fung-ying further expressed concern about staff consultation on the Proposals, as well as the views and concerns put forward by CSPF civil servants during the consultation. She sought information on whether and in what ways staff comments had been taken forward and incorporated in the Proposals. In response, SCS advised that the Administration had consulted the staff sides, whose comments had been incorporated where appropriate into the Proposals. She highlighted some of the revisions made to the original proposals in response to staff concerns, as follows –

- (a) capping the fine under the Public Service (Administration) Order (PS(A)O) at an amount equivalent to one month's salary instead of two months' salary as originally proposed; and
- (b) pitching the level of forfeiture for Level 2 removal punishment at up to 25% of the GVC benefits at the time of the compulsory retirement of the civil servant concerned, instead of 25% of the sum of the GVC benefits and benefits attributable to Government's Mandatory Contribution.

4. SCS also mentioned that a staff union had expressed views on the review board to advise the Chief Executive (CE) on representations under section 20 of PS(A)O. She explained that the review board was different from the currently proposed non-statutory appeal mechanism for CSPF civil servants on forfeiture or reduction of GVC benefits.

The removal punishments

5. Referring to the removal punishments proposed for CSPF civil servants, Mr CHEUNG Man-kwong questioned the propriety and fairness of imposing disciplinary punishments on civil servants convicted of criminal offences. In his view, such a disciplinary mechanism would amount to double penalty on the convicted officer for the same offence. As regards the three levels of removal punishment proposed, Mr CHEUNG opined that flexibility should be allowed for imposing forfeiture of GVC benefits in the range between 25% and 100% to correspond with the gravity of the offence in question.

6. SCS advised that the question on double penalty under the civil service disciplinary mechanism had been examined by the court in a previous case of judicial review. The court's judgement confirmed the legality of the

disciplinary proceedings in accordance with PS(A)O on the civil servant concerned who had previously been convicted of a criminal offence. The introduction of removal punishments were considered necessary for staff management and discipline in the civil service. Moreover, the employment contracts of CSPF civil servants had already provided for the forfeiture of GVC benefits in whole or in part, if they were found guilty of a disciplinary or criminal offence. SCS further pointed out that the imposition of punishments for CSPF civil servants would be determined on a case-by-case basis having regard to the circumstances and gravity of the offences.

7. On the flexibility in deciding the percentage of forfeiture of GVC benefits, SCS highlighted that the Administration aimed to introduce for CSPF civil servants removal punishments broadly comparable to those for their pensionable counterparts. Forfeiture of full GVC benefits under Level 1 of removal punishment was broadly comparable with the forfeiture of entire pension benefits where dismissal was applied to a pensionable civil servant. As for Level 2 of the removal punishment, the level of forfeiture pitched at up to 25% of the GVC benefits was broadly comparable to the pension reduction of up to 25% permissible under the existing pensions legislation.

The appeal mechanism

8. Ms LI Fung-ying sought details on the composition and role of the appeal mechanism for pensionable civil servants, and those for CSPF civil servants. Noting that the proposed appeal panel for considering representations from CSPF civil servants would be non-statutory, Ms LI expressed doubt about its effectiveness as its decision might be ignored. SCS responded that under the appeal mechanism for pensionable civil servants, a panel comprising three members from the legal and other sectors would consider representation from a civil servant aggrieved by a decision concerning pension forfeiture. The panel played an advisory role and the decision of referring an appeal to the panel for advice was vested in CE. The proposed appeal panel under the appeal mechanism for CSPF civil servants would largely mirror the arrangements for pensionable civil servants. Furthermore, any civil servant aggrieved by CE's decision had the right to seek judicial review of the decision should he/she consider that the decision was not arrived at properly or the principle of natural justice had not been observed.

Disciplinary procedures for the disciplined service grades

9. Dr Margaret NG highlighted that certain disciplinary practices of the disciplined service grades were unfair and should be reviewed –

- (a) Police officers removed through compulsory retirement would receive pension only when they reached the normal retirement age. This arrangement would cause financial hardship to the

officers concerned as they might not be able to find a new job after compulsory retirement; and

- (b) While flexibility was normally allowed in interdiction of civilian grade officers during disciplinary/criminal proceedings, disciplined service grade officers, particularly those in the Police Force, were mostly interdicted during the proceedings. Given that interdicted officers would only receive partial payment of salary and allowance, the officers concerned would not have adequate means to make ends meet during the interdiction.

10. SCS responded that the practice at paragraph 8 (a) above would apply only to pensionable civil servants and not to CSPF civil servants. The arrangement for payment of pension upon a civil servant reaching the prescribed retirement age was clearly provided for in the Pensions Ordinance (Cap. 89) and the Pension Benefits Ordinance (Cap. 99).

Admin 11. Regarding the practice at paragraph 8 (b) above, SCS advised that partial payment of salary/allowance was made to balance the need for the interdicted officer to meet his/her financial needs and the fact that the interdicted officer concerned was not required to work. As a practice, while at most 50% of the salary of an interdicted officer could be withheld during disciplinary/criminal proceedings under PS(A)O, the officer concerned could apply for a higher percentage of payment in case of financial hardship. At the request of Dr Margaret NG and the Chairman, SCS agreed to provide further information on the disciplinary mechanism and procedures for the disciplined service grades, including the principles and considerations for determining the percentage of salary and/or allowance paid to interdicted officers and the application of such principles. Dr NG also suggested that relevant staff associations should be invited to the meeting of the Panel when the subject was discussed.

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