

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1111/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/ PS/1

**Panel on Public Service**

**Minutes of meeting held on  
Monday, 20 December 2010, at 10:45 am  
in Conference Room A of the Legislative Council Building**

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

Mr Patrick CHAN Nim-tak, JP  
Director of General Grades  
Civil Service Bureau

**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

Miss Mandy LAM  
Legislative Assistant (1)2

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**Action**

- I Confirmation of minutes of meeting**  
(LC Paper No. CB(1)532/10-11 - Minutes of meeting on  
18 October 2010)

The minutes of the meeting held on 18 October 2010 were confirmed.

**II Information papers issued since last meeting**

- (LC Paper No. CB(1)433/10-11 - Submission from the Union of Government School Teachers complaining about wage arrears for government teachers
- LC Paper No. CB(1)770/10-11 - Submission from the Education Employees General Union complaining about Education Bureau's failure to comply with the pay policy of the Government in the calculation of salaries of government school teachers)

2. Members noted the above papers issued since the last meeting.

**III Items for discussion at the next meeting scheduled for 17 January 2011**

- (LC Paper No. CB(1)783/10-11(01) - List of outstanding items for discussion
- LC Paper No. CB(1)783/10-11(02) - List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting on 17 January 2011 –

- (a) Updated overview of the civil service: establishment, strength, retirement and age profile;
- (b) Leadership and management training for the civil service; and
- (c) Replacement of the 1823 Call Centre Systems.

4. Members noted the letter dated 27 November 2010 from the Deputy Chairman and Dr PAN Pey-chyou, which was tabled at the meeting. Members agreed to add the item "pay policy of the Government in the calculation of salaries of government school teachers" proposed by the two members to the Panel's list of outstanding items for discussion. Members also agreed to discuss the item on "review of

post-service outside work for directorate civil servants", as requested by Ms LI Fung-ying, in the light of the recommendations of the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man as soon as practicable.

5. Mr WONG Kwok-hing proposed to request the Administration to provide for the Panel's consideration a paper on the Administration's plan to discontinue the legal assistance scheme presently available to the Hawker Control Task Force of the Food and Environmental Hygiene Department (FEHD) before abolishing the scheme. The Chairman requested the Clerk to obtain further information from the Administration on the relevant plan before adding the issue to the Panel's list of outstanding items for discussion.

*(Post-meeting note: a letter dated 14 January 2011 from the Civil Service Bureau on the Administration's decision to discontinue the Private Solicitors Scheme of FEHD was issued to members vide LC Paper No. CB(1)1073/10-11.)*

**IV Progress update on proposed amendments to subsidiary regulations on discipline to the disciplined services legislation**

- (LC Paper No. CB(1)783/10-11(03) - Administration's paper on proposed amendments to subsidiary regulations on discipline to disciplined services legislation
- LC Paper No. CB(1)691/10-11 - Paper on disciplinary mechanism and proposed amendments to disciplined services legislation (Updated background brief)
- LC Paper No. CB(1)783/10-11(04) - Submission on proposed amendments to subsidiary regulations / rules of disciplined services legislation and traffic wardens (discipline) regulations from Police Force Staff Associations
- LC Paper No. CB(1)831/10-11(01) - Submission on proposed amendments to subsidiary regulations on discipline to

the disciplined services  
legislation from Hong Kong  
Police Inspectors'  
Association)

6. The Secretary for the Civil Service (SCS) briefed members on the Administration's proposed amendments to the subsidiary regulations on discipline to the disciplined services legislation (DSL) and the Traffic Wardens (Discipline) Regulations (TW(D)R) (Cap. 374J) (hereafter collectively referred to as "Subsidiary Regulations"). Members noted that some of the proposed amendments had arisen from the need to address the judgement of the Court of Final Appeal (CFA) in *Lam Siu Po v. Commissioner of Police* (FACV 9/2008) (the CFA judgement); and others were to improve upon the disciplinary proceedings provided for in the Subsidiary Regulations.

Proposal I - To allow legal or other forms of representation at disciplinary hearing for a defaulter upon his/her application where fairness so requires

7. Mr IP Wai-ming noted that in considering an application from a civil servant subject to disciplinary hearing under the Subsidiary Regulations (hereafter referred to as a "defaulter") for legal representation at the disciplinary hearing, 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 applicant to present his/her own case; and the need for fairness among the parties involved in the disciplinary hearing, etc. He expressed concern that the factors might be too demanding, and sought details on how they would be interpreted when considering relevant applications.

8. SCS responded that according to the CFA judgement, there was no absolute right to legal representation at disciplinary hearings, and that legal representation was a matter for the disciplinary authority to deal with under its discretion in accordance with the principle of fairness. It was for the purpose of facilitating exercise of such discretion that the factors had been worked out. There was no need for all the factors to be met before approval of legal representation would be granted. For example, if the misconduct concerned was so serious that the potential penalty would be dismissal, this factor alone might suffice to justify legal representation. She added that such discretion would be exercised by designated personnel of the disciplined services departments (DSDs).

9. Noting the above response, Mr IP Wai-ming opined that to obviate disputes, more details on the factors should be provided in due course. He also opined that defaulters should be provided with a channel to appeal against decisions on legal representation. SCS responded that the factors were based on those referred to by CFA in the case of *Stock Exchange of Hong Kong Ltd v. New World Development Co Ltd and Others* (FACV 22/2005). Every application for legal representation would be examined on its own merits. As to the availability of appeal channels, she explained that the disciplinary authority would advise the defaulter of the reasons for rejecting the application. Arrangement had been put in place for a more senior officer to handle the objection raised by the defaulter against a decision to reject his/her application for legal representation.

10. Mr IP Wai-ming enquired whether the defaulter could seek representation by the paid staff of trade unions. SCS responded that the defaulter might apply for other forms of representation by non-civil servants, and the disciplinary authority would decide whether to approve such an application.

11. Dr Margaret NG opined that because of the inherent unfairness of requiring the defaulter to confront his/her supervisor(s) at the disciplinary hearing, the defaulter would be in a disadvantaged position if not legally represented. As such, the trade union/staff association concerned should be allowed to send representative(s) to assist him. Moreover, according to the CFA judgement, the defaulter could seek not only legal representation but also other forms of representation, and that representatives of staff associations might be in a better position to assist the defaulter considering their understanding of the arrangements of civil service disciplinary proceedings. She urged the staff associations of DSDs to make proposals in this regard when consulted on the amendment regulations.

12. Mr IP Wai-ming enquired about the arrangements that would be made if colleagues of the defaulter were allowed to represent him/her at disciplinary hearings. SCS responded that to ensure fairness, serving civil servants attending disciplinary hearings as defence representatives/witnesses for a defaulter would be granted authorised absence subject to the exigencies of the service.

*Fees incurred from seeking legal representation*

13. In response to Mr IP Wai-ming on how the legal fees incurred

from legal representation at disciplinary hearings would be settled, SCS advised that since the adjudicating officer/tribunal and the prosecutor of the relevant disciplinary hearing would also be assisted by their respective barrister(s) or solicitor(s) at the disciplinary hearing if the defaulter was legally represented, the Administration considered it fair that each party should pay its own legal fees regardless of the outcome of the disciplinary proceedings. While in principle supportive of the above arrangement, the Chairman opined that if the defaulter was subsequently acquitted of the misconduct concerned, the legal fees he/she incurred from seeking legal representation should be reimbursed to him/her as in the case of a trial at the court. SCS responded that this would not be arranged; and on fairness ground, the Administration would not require the defaulter to reimburse the legal fees incurred by the other parties to the hearing if he/she was found guilty of the misconduct.

14. Mr LEE Cheuk-yan urged the Administration to reconsider the above arrangement which in his view was unfair, pointing out that as a result the defaulter might be discouraged to seek legal representation because, even if he was acquitted of the misconduct concerned, he still had to suffer great financial loss, especially as the legal fees might be substantial considering the normally protracted disciplinary proceedings. Without being given any legal assistance, the defaulter was at a greatly disadvantaged position as compared with the disciplinary authority, which had more resources.

15. SCS responded that for the sake of fairness, the adjudicating officer/tribunal and the prosecutor would not be provided with legal representation unless the defaulter was legally represented. Moreover, there was a need to ensure not only the fairness but also the efficiency of the disciplinary proceedings. The Administration considered it most fair to require every party that sought legal representation at the disciplinary hearing to bear the respective costs incurred regardless of the outcome. She added that the length of the hearing would hinge on the circumstances of the case and should not be unnecessarily protracted.

16. Mr LEE Cheuk-yan and the Chairman pointed out that the fairness of the above arrangement was more apparent than real because the disciplinary authority had the backing of the Department of Justice (DoJ). They considered it necessary to re-examine the arrangement. The Chairman called upon the Administration to conduct a research into overseas practices and find out whether any overseas jurisdictions reimbursed the defaulter concerned with the legal fees incurred as a result of having legal representation in disciplinary proceedings if he/she was

subsequently acquitted of the misconduct.

17. The Chairman further enquired whether legal assistance would be provided to the defaulter through the departmental welfare funds of the disciplined services. SCS responded that such funds, which involved taxpayers' money, were used for promoting staff welfare in general, such as for organizing social or recreational activities, and not for covering expenses incurred by individual civil servants.

Proposal II - To stipulate that a record of the proceedings of disciplinary hearing shall be in written form as supplemented by audio-record (or video-record if arranged)

18. Mr WONG Kwok-hing enquired whether the record of the disciplinary proceedings instituted against a civil servant subsequently cleared of the misconduct concerned would remain in his personal file and affect promotion and/or granting of annual increment. SCS responded that in such a case, there would not be any record of the disciplinary proceedings in the personal file. Only when the civil servant concerned was found guilty would the relevant punishment be so recorded.

Admin

19. Mr WONG Kwok-hing enquired how long the audio-records and/or video-records of disciplinary proceedings would be kept, and whether and when they would be destroyed. He also expressed concerns about the privacy implications of such records. SCS responded that the above records were kept in a file for the disciplinary case, and how long they would be kept was governed by the relevant internal guidelines. She undertook to provide members with the relevant information.

Admin

20. In response to Mr WONG Kwok-hing's enquiry on the circumstances under which the records of disciplinary cases would be provided to other parties for reference, particularly on whether consent of the civil servant concerned would be obtained beforehand, SCS agreed to provide members with information on the current arrangement.

21. In response to Dr Margaret NG, SCS confirmed that in the event of discrepancy between the written record and the audio-record of the disciplinary proceedings, the audio-record should in general prevail.

Proposal III - To provide explicit provisions for an adjudicating officer/tribunal to commence or proceed with a disciplinary hearing in the



absence of a defaulter if the defaulter repeatedly fails to appear at scheduled sessions without reasonable justifications

22. Pointing out that many reasons could lead to the defaulter's failure to appear at the scheduled hearing and some reasons might be justified, Dr Margaret NG asked whether the defaulter would be allowed to appeal if the ruling made in his absence was to his disadvantage. She was concerned that if not, the defaulter would be forced to spend substantial resources, time and efforts to seek judicial review.

23. SCS responded that to ensure that the decision to commence or proceed with a disciplinary hearing in the absence of a defaulter would be made with great care and only when fully justified, DSDs would promulgate administrative guidelines on the factors to be considered and arrangements to be observed by the adjudicating officer/tribunal when making the decision. In fact, a preliminary set of such proposed factors and related arrangements had already been provided in the Annex to the Administration's paper (LC Paper No. CB(1)783/10-11(03)). In particular, before making the decision, the adjudicating authority had to be satisfied that the notice (including subsequent notices) requiring the defaulter's attendance at the disciplinary hearing on the specified date(s) and at the specified time(s) and place(s) had been duly served on the defaulter before the scheduled hearing.

24. Dr Margaret NG maintained that to obviate judicial review, provision of an appeal channel was necessary. SCS responded that the defaulter in fact had two opportunities to appeal. He could either lodge an appeal to the adjudicating officer/tribunal against the decision to commence or proceed with a disciplinary hearing in his absence once he became aware of such a decision, or he could appeal to the relevant authority against the ruling made in his absence.

Proposal IV - To amend the English and Chinese versions of the offence of "conduct calculated to bring the public service into disrepute" (其行爲刻意致使公共服務聲譽受損) in the Police (Discipline) Regulations and the Traffic Wardens (Discipline) Regulations

25. Dr PAN Pey-chyou expressed concern about Proposal IV, which sought to amend the English and Chinese versions of the offence of "conduct calculated to bring the public service into disrepute" (其行爲刻意致使公共服務聲譽受損) in the Police (Discipline) Regulations (P(D)R) and TW(D)R to read "conduct likely to bring the public service

into disrepute” in English and “其行爲可能致使公共服務聲譽受損” in Chinese. In his view, the proposed amendment might make it easier to substantiate the offence. Ms LI Fung-ying considered the uncertainties that might arise from the use of the expression "likely" and its Chinese version “可能” undesirable, and proposed to delete the term “可能” from the Chinese version of the proposed amendment.

26. SCS responded that the proposed amendment was made pursuant to the case of *Chiu Hoi Po v. Commissioner of Police* (CACV 200/2006), where the CFA dismissed, among other things, the appellant’s argument that the calculated offence as stipulated in P(D)R entailed a subjective intention to bring the public service into disrepute. According to the CFA judgement, the English word “calculated” meant “likely” in the context of P(D)R pursuant to previous court judgements; and that as a matter of purposive interpretation, the interpretation of the calculated offence could not have been intended to be confined to the limited situation of a subjective intention. The Administration therefore considered it necessary to put it beyond doubt for both the management and staff sides of the DSDs.

Admin

27. Noting the response above, Dr Margaret NG opined that “可能” might not be an accurate translation of "likely". She considered it necessary to review the translation. In response, SCS agreed to convey Dr NG's views to DoJ for consideration.

Proposal VI - To harmonize certain arrangements of disciplinary proceedings for junior police officers under Part II of the Police (Discipline) Regulations (P(D)R) with those for inspectors under Part III of P(D)R

28. Dr Margaret NG asked whether, as a result of Proposal VI, there would be one unified disciplinary code for all police officers. SCS responded that there was no consensus among the four staff associations of the Police Force Council on this subject. The Hong Kong Police Inspectors' Association was the only staff association that supported a unified disciplinary code. This notwithstanding, the Administration would continue to work with the management and the staff sides of the Police Force to identify further improvements to P(D)R after completion of this legislative amendment exercise.

Proposal VIII - To amend the Traffic Wardens (Discipline) Regulations to give a defaulter (instead of a prosecutor) the final address at a

disciplinary hearing and to include “deferment or stoppage of increment” as possible punishments

29. Dr PAN Pey-chyou asked whether the proposed "deferment or stoppage of increment" punishment would have a time limit. SCS responded that depending on the circumstances of the case, the punishment might carry a debarring effect. Upon expiry of the debarring effect, the civil servant concerned would be granted the next incremental point, if he/she had not committed misconduct again.

The timetable and scope of the current legislative amendment exercise

30. Noting the Administration's plan to introduce the relevant amendment regulations into the Legislative Council in mid-2011, Ms LI Fung-ying questioned the long lead time required, and urged the Administration to explore introducing the amendment regulations earlier. SCS responded that pending the passage of legislative amendments to address the CFA judgement, DSDs had already put in place administrative measures to allow a defaulter to apply for legal or other forms of representation at the disciplinary hearing and to approve such applications where fairness so required. Moreover, DoJ needed more time to prepare the amendment regulations because the amendments and technicalities involved were substantial, considering that six pieces of subsidiary legislation were involved, and that the opportunity had been taken to introduce other improvements to the Subsidiary Regulations.

31. Ms LI Fung-ying enquired whether the Administration would consider making corresponding amendments to the relevant regulations of the civilian grades to align them with those of the disciplined services grades. SCS responded that according to the Public Service (Administration) Order (PS(A)O) that governed how disciplinary proceedings should be instituted against civil servants in civilian grades, civil servants in civilian grades could already apply for legal representation in formal disciplinary proceedings. Audio-recording was already arranged for disciplinary hearings under PS(A)O. The proposed amendments in fact aimed to align practices of the disciplined services grades with those of the civilian grades.

32. Dr Margaret NG declared interests as the legal representative of the police officer concerned in the case of *Lam Siu Po v. Commissioner of Police* (FACV 9/2008). Pointing out that there were many problems and inconsistencies in the disciplinary mechanism for the disciplined services, she enquired whether the relevant internal guidelines of DSDs would also

be amended and if so, the details. SCS responded that the proposed improvements to be taken forward in the current legislative amendment exercise had been identified through consultation and agreement with the management and staff sides of DSDs. They should be further consulted for any additional amendments. She assured members again that upon completion of the current legislative amendment exercise, the Administration would move to the next stage of the review of DSL.

33. The Chairman asked the Administration to respond to the submission from Hong Kong Police Inspectors' Association (LC Paper No. CB(1)831/10-11(01)), which objected to the current amendment approach and advocated a comprehensive review of P(D)R.

34. In response, SCS reiterated that the management and the staff sides of DSDs had in general reached a consensus on the scope of the proposed amendments. Three of the staff associations of the Police Force Council wrote to her on 13 December 2010 (LC Paper No. CB(1)783/10-11(04)), confirming their general support for the first phase of legislative amendments and calling upon the Legislative Council to support the amendment regulations. According to her understanding, the four staff associations and the management side of the Police Force had not reached any consensus on the issues raised in the submission from the Hong Kong Police Inspectors' Association. Dr Margaret NG welcomed the proposed amendments which in her view had not come by easily.

#### The need to review past cases

35. To ensure fairness to the defaulters who had been unfairly denied legal representation in disciplinary proceedings in the past, Dr Margaret NG considered it necessary for the Administration to review these cases. She believed that the outcome might have been very different if the defaulters concerned had been legally represented. She pointed out that many of these defaulters were facing financial hardship after having been compulsorily retired with deferred pension.

36. Dr Margaret NG further referred to some past cases to illustrate her point. In one of the cases, the information on the defaulter's financial position submitted to the Force Welfare Officer in support of his application for financial assistance had been used to institute formal disciplinary actions against him. Since he was not legally represented, he failed to defend himself that his debt had not impaired his work efficiency. Although the court later ruled in another case that

indebtedness itself could not justify disciplinary action unless there was proof of impairment to work efficiency, the defaulter concerned had already been punished.

37. SCS responded that it might be very difficult to review the past cases because the relevant records might no longer be available to enable the cases to be properly reviewed. Some cases might have happened so long ago that there would be difficulty in locating the parties and witnesses concerned and, even if they could be located, they might have forgotten the relevant details.

38. Dr Margaret NG opined that her suggestion would not be infeasible if the Administration was prepared to correct its wrongs. The Administration should set some administrative guidelines to enable past cases to be reviewed, so that those on which records were still available and were sufficiently serious to justify a review would be looked into again for justice's sake. In cases where there had been apparent unfairness, administrative decisions should be made to address the unfairness even though the witnesses could no longer be located.

Admin

39. While agreeing to relay Dr Margaret NG's request to the Commissioner of Police, SCS stressed the need to examine whether in principle it was appropriate to overturn the cases, considering that they had been examined according to the then prevailing DSL. At Dr NG's request, SCS agreed to find out whether information was available on the respective numbers of cases involving DSDs, other than the Hong Kong Police Force, since 1991 or 1997, where the punishments imposed were dismissal or compulsory retirement, together with details on the misconducts that had led to the punishments, and whether legal representation had been applied for and denied.

**V Use of agency workers**

(LC Paper No. CB(1)783/10-11(05) — Administration's paper on use of agency workers

LC Paper No. CB(1)783/10-11(06) — Extract from the minutes of the meeting on 18 January 2010)

40. SCS briefed members on the salient points of the Administration's paper on the use of agency workers by bureaux/departments (B/Ds).

The proposal to centrally recruit and co-ordinate the supply of non-skilled workers

41. Mr WONG Kwok-hing opined that the Administration's paper for this item (LC Paper No. CB(1)783/10-11(05)) had failed to address members' concerns raised at the Panel meeting on 18 January 2010, at which the item was last discussed. Highlighting the grievances of agency workers, who in his view were the most helpless and least competitive among those working in the Government, he pointed out that these workers had in fact been working for the Government for many years through repeated renewal of the relevant contracts. He urged CSB to consider centrally recruiting and co-ordinating the supply of non-skilled workers, instead of through employment agencies so as to avoid problems such as middle-man exploitation, to meet the service needs of B/Ds which had been using the largest number of agency workers for a long time, such as the Department of Health (DH), the Education Bureau (EDB), the Leisure and Cultural Services Department (LCSD), the Buildings Department and the Water Supplies Department (WSD).

42. SCS responded that the Administration had in fact examined the above proposal before but since the types of duties required to be performed by agency workers in different B/Ds could vary a lot and hence require different skills, it was neither desirable nor viable to centrally maintain a pool of staff to meet service needs as they arose. For example, agency workers were used by DH for supporting the vaccination programme, by LCSD for organizing large-scale events, and by EDB for filling short-term manpower gaps mainly arising from the time required to recruit and fill vacant civil service posts and non-civil service contract (NCSC) positions.

43. Mr WONG Kwok-hing, however, remained of the view that the Administration should consider maintaining a central pool of clerical workers to meet service needs in order to minimize the need for hiring agency workers. Mr LEE Cheuk-yan shared his views.

44. SCS agreed with Mr WONG Kwok-hing on the need to prevent abusive use of agency workers. As such, after consultation with the Panel, CSB had already issued a set of guidelines to B/Ds on the proper use of agency workers. Through her regular meetings with Heads of Department, she had also kept abreast with the situation of use of NCSC staff and agency workers in different departments, and had reminded departments to comply with the relevant guidelines. She considered

such efforts useful, and would continue to prevent abusive use of NCSC staff and agency workers through the above approach.

Queries on the need for and number of agency workers

45. Mr LEE Cheuk-yan opined that the use of NCSC staff and subsequently agency workers was a result of the downsizing of the civil service establishment. He expressed regrets that labour exploitation in the Government was becoming more and more serious because, while the wages and fringe benefits of NCSC staff could hardly compare with those of civil servants, those of agency workers were even worse. For example, the wage of WSD's agency workers had once been decreased from some \$8,000 to \$6,000. He therefore proposed that the duties performed by agency workers should more appropriately be performed by NCSC staff or even civil servants instead, for example, agency workers presently performing clerical duties which were essentially generic in nature, and agency workers involved in the sorting and shelving of materials in public libraries. The service needs concerned were in fact long-term and hence should not fall under any of the circumstances allowed for the use of agency workers.

46. SCS responded that agency workers were used by public libraries because the review of the mode of delivery of public library services had only been completed recently. As to the concern about the use of agency workers to perform clerical duties, the Government had already resumed open recruitment of Assistant Clerical Officers (ACOs) and Clerical Assistants (CAs). The pace of filling civil service vacancies and the impact of the open recruitment exercises on the continued need for agency workers to tide over manpower gaps could, however, only be ascertained after completion of the exercises. Given the large number of applications, the recruitment process would take some time to complete. Nevertheless, to expedite supply of clerical manpower to B/Ds, offers to successful candidates were being made in batches without waiting for the completion of the whole recruitment exercise. Should there be a need to use agency workers to perform clerical duties in future, B/Ds should ensure the deployment met the relevant criteria stipulated in the guidelines.

47. Mr LEE Cheuk-yan, however, said that the agency workers in libraries highlighted above should not be affected by the outcome of the above review because they were not performing duties comparable to civil service clerical and cultural service assistant grades staff. At the request of Mr LEE, SCS agreed to provide the breakdown (as of 30

September 2010) on the distribution of the 2 260 agency workers by B/D (Annex to LC Paper No. CB(1)783/10-11(05)), such as information on the types of work and services involved in B/Ds using over 100 agency workers, particularly on the number of clerical jobs.

48. Mr IP Wai-ming recalled that members of the Panel had at its meeting on 18 January 2010 urged the Administration to discontinue the use of agency workers which in members' view was not only unnecessary but also conducive to middle-man exploitation. He opined that the Administration should immediately stop using agency workers to perform clerical duties, and ensure that the use of agency workers was not caused by operational problems within B/Ds. SCS responded that agency workers were sometimes required to fill short-term manpower gaps, for example, where there were a few months' lead time in recruiting candidates to fill posts left vacant by retired officers.

49. Mr IP Wai-ming pointed out that there should be sufficient lead time to fill the above vacancies unless the officers concerned suddenly decided to retire early. He also opined that with so many civil servants in the general grades, there should be no difficulty in finding some officers to fill the above manpower gaps. He therefore requested the Administration to discontinue the use of agency workers. SCS responded that there was genuine difficulty in acceding to the request because there were circumstances that necessitated the use of agency workers. She further explained that vacancies of clerical posts such as CAs and ACOs were normally filled through an in-service recruitment exercise first before open recruitment was conducted in order to offer an internal career advancement avenue for serving civil servants. Filling of clerical posts would therefore take time, and manpower gaps were inevitable. Moreover, while the Administration had information on officers who would reach the normal retirement age in the near future, the number of vacancies that had to be filled might exceed the number of retirees because individual B/Ds might be given additional clerical posts through the annual resource allocation exercise.

50. Ms LI Fung-ying expressed disappointment that while the employment of NCSC staff had been tightened to address Members' concerns, the Administration had resorted to the use of agency workers, whose employment terms were even worse. Pointing out that the criteria for using NCSC staff and agency workers were similar, she opined that as the largest employer in Hong Kong, the Government should seriously review the use of agency workers and their terms, so as not to help suppress wages in the private sector.



51. SCS responded that agency workers were only used to meet urgent or unforeseen service needs or unexpected surge in service demands for the short term. As a general guideline, the short-term service demands under the circumstances where agency workers could be used should last for no more than nine months while NCSC staff would usually be employed for at least one year. Ms LI Fung-ying queried whether there were really such restrictions, pointing out that the service contracts highlighted in paragraph 10(a) of LC Paper No. CB(1)783/10-11(05) all exceeded nine months. SCS responded that the contracts concerned had already been entered into or for which quotations/tenders had been invited before issue of the relevant guidelines in April 2010. Since then CSB had been ensuring strict compliance with the guidelines.

52. Pointing out that the number of NCSC staff and agency workers in LCSD together exceeded 3 000, Ms LI Fung-ying considered the situation undesirable, and said that serious consideration should be given to employing the staff concerned on a permanent basis. SCS responded that the figure for NCSC staff only represented the situation in late June 2010, when a large number of seasonal life guards were engaged, and the reviews on the modes of service delivery of public libraries and museums managed by LCSD had not yet been completed. With the recent completion of the reviews, conversion of the NCSC positions concerned would be taken forward progressively having regard to the end dates of the contracts of the NCSC staff concerned. It was expected that when these positions were converted into civil service posts, the number of NCSC staff and agency workers in LCSD would be reduced significantly although, due to the service nature of LCSD, a certain number of NCSC staff and agency workers would still be required. Noting the response, Ms LI urged CSB to make greater monitoring efforts to prevent abuse of the two modes of employment. The Chairman added that despite the promulgation of the relevant guidelines, there might still be a continued need for monitoring the use of NCSC staff and agency workers.

## **VI Any other business**

53. There being no other business, the meeting ended at 12:45 pm.