

立法會
Legislative Council

LC Paper No. CB(1)2123/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ PS/1

Panel on Public Service

**Minutes of meeting held on
Wednesday, 16 March 2011, at 8:30 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 TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon WONG Sing-chi
Dr Hon PAN Pey-chyou
Hon LEUNG Kwok-hung

Member attending : Hon WONG Kwok-hing, MH

Member absent : Dr Hon LEUNG Ka-lau

Public officers attending : Agenda item IV
Miss Denise YUE, GBS, JP
Secretary for the Civil Service

Mr Raymond H C WONG, JP
Permanent Secretary for the Civil Service

Ms Shirley LAM
Deputy Secretary for the Civil Service 3

Ms Ronda LO Yuet-ye
Assistant Director (Operations) 2
Food and Environmental Hygiene Department

Agenda item V

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

Mr Raymond H C WONG, JP
Permanent Secretary for the Civil Service

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

Ms Shirley LAM
Deputy Secretary for the Civil Service 3

Miss Charmaine LEE
Deputy Secretary for the Civil Service 2 (Acting)

Agenda item VI

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

Mr Raymond H C WONG, JP
Permanent Secretary for the Civil Service

Miss Charmaine LEE
Deputy Secretary for the Civil Service 2 (Acting)

Attendance by invitation : Agenda item IV

Staff Association of Hong Kong Food and Environmental Hygiene Department

Mr CHOI Chun-wah
Chairman

Hong Kong Environmental Hygiene Staff Union (Supervisor and Workman)

Mr LEUNG Tak-kwan
Chairman

Hong Kong Municipal Services Staff General Association

Mr NG Chung-kong
Welfare Officer

Hawker Control Officers Union

Mr WONG Ka-yau
President

Food and Environmental Hygiene Department Foremen Grade Staff General Union

Mr LIU Kin-wah
Senior Foreman

Food and Environmental Hygiene Department Law Enforcement Staff Union

Mr WONG Kit-sang

Hong Kong Food and Environmental Hygiene Supervisory Staffs Union

Mr LAI Kun-yiu
President

FEHD Foreman Branch HKCCSA

Mr SUEN Chung-leung
Chairman

Hong Kong Food and Environmental Hygiene
Department Employees Association

Mr WONG Chung-biu
Chairman

Hawker Control Officer Branch HKCCSA

Mr CHAN Kam-ming
Chairman

Government Municipal Staff General Union

Mr HO Wai-shuen

Government Overseers and Hawker Control
Officers' Union

Mr MOK Hing-see
Chairman

Overseers' Branch, HKCCSA

Mr CHAN Suk-keung
Chairman

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

Staff in attendance : Ms Sarah YUEN
Senior Council Secretary (1)2

Ms Emily LIU
Legislative Assistant (1)2

Action

I Confirmation of minutes of meeting

(LC Paper No. CB(1)1545/10-11 - Minutes of meeting on 17 January 2011)

The minutes of the meeting held on 17 January 2011 were confirmed.

II Information papers issued since last meeting

(LC Paper No. CB(1)1379/10-11 —Submission from a member of the public complaining about the rejection of his application for retirement on attaining the maximum pension

LC Paper No. CB(1)1464/10-11(01) —Submission on five-day week for Hawker Control Teams from a member of the public

LC Paper No. CB(1)1464/10-11(02) —Submission on the 2011-12 Budget from the Disciplined Services Consultative Council (Staff Side)

LC Paper No. CB(1)1543/10-11 —Letter from the Education Employees General Union to the Chief Executive complaining about Education Bureau's failure to comply with the pay policy of the Government in the calculation of salaries of government school teachers, and about the failure of the Secretary for the Civil Service to follow up the issue to the Union's satisfaction)

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

III Items for discussion at the next meeting scheduled for 18 April 2011

(LC Paper No. - List of outstanding items for

CB(1)1544/10-11(01)	discussion
LC Paper	No. - List of follow-up actions)
CB(1)1544/10-11(02)	

3. Members agreed to discuss the following items at the next regular meeting on 18 April 2011 –

- (a) Requests for the conduct of grade structure reviews for specific non-directorate civilian grades: assessment criteria; and
- (b) Overview of civil service disciplinary matters.

4. Members also agreed that specific non-directorate civilian grades which had requested the conduct of grade structure reviews but to no avail should be invited to take part in the discussion of the agenda item in paragraph 3(a) above.

IV Legal assistance for frontline enforcement staff of the Food and Environmental Hygiene Department and the related policy of Civil Service Bureau

(LC Paper	No. - Administration's paper on
CB(1)1544/10-11(03)	legal assistance for frontline
	enforcement staff of the Food
	and Environmental Hygiene
	Department

LC Papers Nos. CB(1)1073/10-11 - Correspondences between
(01) and (02) the Food and Environmental Hygiene Department and the Hong Kong Food and Environmental Hygiene Department Employees Association regarding the legal assistance for staff of Hawker Control Teams, as well as the Civil Service Bureau's response to the issues raised therein)

Meeting with deputations/ the Administration

*The Alliance of the Staff Unions of the Food and Environmental Hygiene Department
(LC Papers Nos. CB(1)1556/10-11(01) and (02))*

5. On behalf of the Alliance (the Alliance) of the Staff Unions of the Food and Environmental Hygiene Department (FEHD), namely, the Staff Association of Hong Kong Food and Environmental Hygiene Department, Hong Kong Environmental Hygiene Staff Union (Supervisor and Workman), Hong Kong Municipal Services Staff General Association, Hawker Control Officers Union, Food and Environmental Hygiene Department Foremen Grade Staff General Union, Food and Environmental Hygiene Department Law Enforcement Staff Union, Hawker Control Officer Branch HKCCSA, Government Municipal Staff General Union, Government Overseers and Hawker Control Officers' Union, and Overseers' Branch, HKCCSA, Mr WONG Ka-yau briefed members on the Alliance's submission (LC Paper No. CB(1)1556/10-11(01)). In gist, the Alliance opined that the legal assistance scheme previously run by FEHD, known as the Private Solicitors Scheme (PSS), should not be discontinued. The reasons they gave were as follows –

- (a) PSS had been in place since 1987 as an important service FEHD staff performing hawker control duties relied upon to discharge their duties without fear of being inadvertently involved in criminal offences arising from their discharge of enforcement duties. With the expansion of the scope of duties which FEHD frontline staff had to perform, PSS had been expanded to cover members of the Health Inspector Grade and Foreman Grade who since 2003 had to perform law enforcement duties against spitting, littering, dog fouling and unauthorized display of bills or posters. It was therefore a reasonable expectation that the provision of PSS should continue;
- (b) The frontline staff of FEHD belonged to civilian grades and could hardly compare with the disciplined services grades where training, support and equipment were concerned. As such, they were less able to defend themselves when faced with unreasonable allegations, and PSS was an important support service to enable them to perform efficiently and confidently;

- (c) The continued provision of PSS was an undertaking given by the Administration when the Foreman Grade was regraded to the Hawker Control Officer Grade in 1994 and when FEHD was established in 2000. Continuation of the service was reaffirmed in 2003 after conducting a review of FEHD's duties and manpower resources, including the employment conditions of the staff concerned, in response to the enactment of the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570);
- (d) According to the Basic Law, "Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before". Moreover, a good employer should also refrain from amending his employees' conditions of service;
- (e) PSS could not be replaced by the service-wide Legal Assistance Scheme (LAS) because, while legal assistance would be provided under PSS to eligible staff as soon as they got involved in Police investigation (including giving statements to the Police) relating to allegations made against them arising from their discharge of enforcement duties, under LAS eligible staff would be provided with legal representation in court only when they were subsequently charged with criminal offence; and
- (f) Considering the satisfactory operation of PSS for over 20 years, it was unacceptable that it should be discontinued simply because other civilian grades and disciplined services grades staff did not have such a scheme. Instead, PSS should be expanded to cover other staff as necessary.

6. Mr MOK Hing-see, another representative of the Alliance, gave an account of his own experience of witnessing the establishment of PSS, which was first introduced to provide legal assistance to him when he was inadvertently involved in an alleged criminal offence when performing hawker control duties. He also cited some other examples to highlight the importance of PSS to FEHD's frontline staff, especially as the challenges faced by them when discharging their law enforcement duties

had significantly increased, such that their work had been made much more difficult.

The Hong Kong Food and Environmental Hygiene Supervisory Staffs Union, FEHD Foreman Branch HKCCSA and Hong Kong Food and Environmental Hygiene Department Employees Association (LC Papers Nos. CB(1)1175/10-11(01), CB(1)1472/10-11(01) and CB(1)1556/10-11(03))

7. On behalf of the Hong Kong Food and Environmental Hygiene Supervisory Staffs Union, FEHD Foreman Branch HKCCSA and Hong Kong Food and Environmental Hygiene Department Employees Association, Mr SUEN Chung-leung urged the Civil Service Bureau (CSB) to seriously consider resuming PSS. Regarding the justifications for discontinuing PSS as detailed in the Administration's paper (LC Paper No. CB(1)1544/10-11(03)), Mr SUEN expressed the following views –

- (a) Contrary to the Administration's claim in paragraphs 4 and 5 of LC Paper No. CB(1)1544/10-11(03), LAS could not replace PSS because LAS's unit cost exceeded \$48,000, which was four times that of PSS at only \$10,600. Moreover, as against PSS's approval rate of 99%, only some 90% of applications for assistance were approved under LAS. FEHD's some 4 000 frontline staff needed 100% protection instead of only 90%;
- (b) PSS could in fact make up for what was lacking in LAS. Under LAS, eligible staff would be provided with legal representation in court only when they were charged with criminal offence and not as soon as they got involved in Police investigation. Legal assistance was, however, crucial during the investigation process because the statement given by the staff concerned during the period might determine whether he would be subsequently prosecuted;
- (c) While the Administration claimed that there were other civilian grades officers who were required to perform law enforcement duties without the protection of PSS, it was understood that these civilian grades officers had in fact also requested the provision of PSS to them. Such requests showed that frontline staff performing enforcement duties had a great need for PSS;

- (d) Although FEHD management had confirmed that it could find no record of any undertaking given to staff on the continued provision of PSS in the context of the 1994 regrading exercise or when FEHD was set up in 2000, there was also no record from 1994 to 2000 of any plans of FEHD to cease provision of PSS. In fact, the provision of PSS had continued until 2010; and
- (e) The fact that a total of 20 officers involved in 11 cases were provided with legal assistance under PSS during the period from 2005 to 2010 demonstrated a practical need for the continued provision of PSS.

8. Mr LAI Kun-yiu, another representative of the above three staff unions of FEHD, emphasized that FEHD frontline staff's request should be considered because they were not requesting pay rise or reduction of workload but continuation of the effective safeguards which they had long relied upon to perform their duties satisfactorily. Moreover, cessation of PSS was inappropriate for the following reasons -

- (a) It might have contravened the Basic Law. CSB should also explain why it had not contravened the Basic Law in discontinuing PSS; and
- (b) It was unreasonable to suddenly cease PSS, which had been in operation for 24 years.

Summing up, Mr LAI Kun-yiu called upon members to safeguard the interests of FEHD's frontline staff, and urged CSB to resume PSS.

The Administration's initial response to the concerns of deputations

9. At the Chairman's invitation, the Secretary for the Civil Service (SCS) made the following points in response to the deputations' views –

- (a) There were at present some 100 000 civilian civil servants and 50 000 disciplined services grades staff. Of these 150 000 civil servants, except for eligible FEHD staff, all other civil servants including those who also had to perform enforcement duties had all along only relied on LAS for legal assistance;

- (b) To ensure all staff responsible for carrying out enforcement duties could discharge their duties smoothly, CSB and the departments concerned had strengthened training, support and equipment for these staff to facilitate their discharge of duties;
- (c) LAS had been established to provide adequate and appropriate legal assistance to civil servants. Legal representation in court was provided to civil servants concerned where necessary when they were charged with criminal offences arising from the discharge of their duties. Applications for legal assistance were processed expeditiously, generally within the performance target of nine working days upon receipt of all the necessary documents and information. There was no need for legal assistance during the pre-charge stage as the civil servant concerned should co-operate with the Police or other law enforcement agencies and fully disclose all relevant facts and information during the investigation process;
- (d) FEHD management had confirmed that it could find no record of any undertaking given to staff on the continued provision of PSS in the context of the 1994 regrading exercise and when FEHD was set up in 2000;
- (e) After careful examination of Articles 100 and 103 of the Basic Law, the Administration did not consider that the cessation of PSS contravened the Basic Law;
- (f) FEHD staff of the affected grades had been informed of the cessation of PSS six months in advance. During the period, there had been numerous communication with them on the matter. FEHD had held a total of 67 training/briefing sessions to familiarize staff concerned with LAS and had arranged distribution of training/briefing materials on LAS and related matters; and
- (g) To ensure consistency in the treatment of frontline staff responsible for law enforcement duties, PSS was discontinued after the need for it had been reviewed in the light of the availability of LAS.

Discussion

10. Mr WONG Kwok-hing expressed regrets as follows about the Administration's response above –

- (a) The unilateral discontinuation of PSS had indeed contravened Articles 100 and 103 of the Basic Law because, as stated therein, civil servants' conditions of service should be no less favourable than before 1997, and that the previous conditions of service should be maintained;
- (b) The unilateral discontinuation of PSS had also contravened the Employment Ordinance (EO) (Cap. 57), according to which undertakings in both verbal and written form, explicit or implicit, including practices long established over the years, were part and parcel of the employment terms of the staff concerned and should not be unilaterally taken back. Moreover, as the largest employer in Hong Kong, the Government should set a good example in this regard. It was therefore unacceptable to discontinue PSS on grounds that there were no written records of relevant undertakings despite the operation of PSS for over 20 years;
- (c) It was disrespectful to the Legislative Council (LegCo) that the Administration had not consulted the Council first before unilaterally ceasing PSS; and
- (d) It was also undesirable that the Administration had ignored the views of the staff and staff unions of FEHD, who when consulted had objected to the plan to cease PSS. The move had caused damage to the staff relation in FEHD.

11. SCS responded that the cessation of PSS had not contravened the Basic Law, and that EO did not bind the Government. She reassured members that she would continue to consult LegCo on important policy initiatives of CSB and consider the Panel's views. She stressed that the decision on the cessation of PSS was made after she had carefully examined the views of the concerned staff unions of FEHD and their grounds for objecting to the cessation.

12. Mr TAM Yiu-chung highlighted that PSS had incurred only insignificant expenses. He shared the grave concern of FEHD frontline

staff and considered their request for resumption of the provision of PSS reasonable. He considered that not all practices had to be aligned to ensure consistency but due regard should be given to the relevant historical factors.

13. Dr PAN Pey-chyou emphasized that although EO did not bind the Government, it should still strive to meet and even exceed the standards set therein in order to set a good example of good employers. He further opined that instead of making policy decisions rigidly, flexibility should be exercised to address concerns as necessary to ensure acceptability by staff concerned.

14. SCS responded that as an overall package, the employment terms of civil servants would not be worse off than those required under EO. It was, however, inevitable that there would be differences in certain areas. For example, conditioned hours of work were used in the civil service as compared to working hours used in the private sector as stipulated in EO.

15. Pointing out that the employer should not unilaterally amend the employment contract, Ms LI Fung-ying criticized the Administration for discontinuing the provision of PSS. This was because firstly, PSS had been in place for so long that it would be against the contractual spirit to cease it, and such a historical factor should not be ignored. Secondly, employment terms should always be changed for the better, not worse. If not, employees would find it very difficult to accept, especially as this would affect frontline staff's confidence in performing enforcement duties. She therefore considered it necessary for the Administration to explain how staff's concerns about PSS's discontinuation could be alleviated.

16. SCS pointed out that PSS was not a term of appointment. After carefully reviewing the need for PSS and the availability of LAS, the Administration considered it proper to discontinue PSS. She further explained that in general when there were plans to change the terms of appointment of civil servants, the Administration would consult the affected staff, and would carefully consider the views gathered before deciding on the changes.

17. Mr LEE Cheuk-yan suggested that advice should be sought from the Department of Justice on whether CSB was empowered by the Public Service (Administration) Order, the Public Service (Disciplinary) Regulation and the Civil Service Regulations (CSR) to unilaterally revise the employment conditions of civil servants, as in the present case of ceasing the provision of PSS for FEHD staff. He said that as PSS had

been in operation for over 20 years, it should be regarded as part and parcel of the employment terms of the staff concerned under the common law system.

18. SCS responded that the employment contracts with civil servants had clearly spelled out that the management side could unilaterally amend the conditions of service. That notwithstanding, the Administration would not arbitrarily alter the conditions without consulting and communicating with staff representatives as appropriate. She noted that FEHD management had discussed with and informed the staff unions concerned of the forthcoming cessation of PSS.

19. Stressing the need to provide timely assistance to staff concerned to prevent them from being charged, Dr PAN Pey-chyou considered PSS essential despite the availability of LAS. In his view, instead of ceasing PSS to ensure consistency, the Administration should consider extending PSS to other streams of civil servants also performing law enforcement duties, especially as the performance of such duties had become increasingly difficult nowadays. Pointing out that under the above circumstances, it was demoralizing to undermine instead of enhancing the protection for law enforcement staff, he urged SCS to review the decision to discontinue PSS which did not cost much. In response, SCS reiterated the reasons given above for coming up with the decision to cease PSS. She clarified that cost-saving was not one of the considerations in the cessation of PSS.

20. Dr Margaret NG opined that legal assistance under LAS available for civil servants should be expanded in such a way that legal assistance would be made available to the officer concerned as soon as he was arrested, and not withheld until the officer was charged. She highlighted that the statement given by the officer concerned during the investigation process could be taken as evidence against the civil servant. The Deputy Chairman shared her views.

21. SCS responded that the Administration had examined whether the existing coverage of LAS was sufficient. The Administration was of the view that LAS's coverage was appropriate as it ensured the availability of legal representation in court when a criminal charge arising from the discharge of government duties was brought against a civil servant.

22. Dr Margaret NG requested the Administration to provide in writing the detailed justifications and considerations for discontinuing the provision of such an important legal assistance service as PSS. She also

urged the Administration to note that by ceasing PSS, the Administration had deprived FEHD frontline staff of an important legal right which they had used to enjoy, namely, legal assistance during the investigation process. It should also be noted that if a charge was brought against an officer involved in alleged criminal offence when discharging duties, he would also be subject to disciplinary actions and hence doubly jeopardized if he lost the case. She stressed that timely legal assistance to protect the officer from prosecution where appropriate was therefore very important.

23. The Chairman sought prosecution figures involving FEHD staff since cessation of PSS on 1 January 2011 and relevant details. SCS responded that from 2005 to 2010, a total of 13 officers, including three FEHD staff, charged with criminal offences (excluding those related to traffic offences) had been granted assistance under LAS. During the same period, a total of 20 officers (all Hawker Control Officer Grade members) involved in 11 cases were provided with legal assistance under PSS. Since the cessation of PSS on 1 January 2011, no application for assistance under LAS had been received from FEHD staff in relation to criminal charges arising from the discharge of duties.

24. Mr LEE Cheuk-yan pointed out that the performance of enforcement duties could easily lead to confrontations and hence allegations of criminal offence, and emphasized that legal assistance more timely than LAS was necessary to protect FEHD's frontline staff performing such duties. Moreover, without legal assistance available under PSS to help these staff give statements to the Police if investigated, the likelihood of them being charged was greater. He criticized the Administration for failing to appreciate the efforts made by the FEHD staff to dutifully perform their enforcement duties notwithstanding the risks to their personal safety and of being involved in alleged criminal offences.

25. Mr LEE Cheuk-yan further requested the deputations to provide evidence on undertakings that had been given to the staff concerned not to change their employment terms and fringe benefits, including the provision of PSS, when the two former municipal councils were dissolved. He also requested the Research Division of the LegCo Secretariat to help conduct a research study to look at whether during discussion on the Provision of Municipal Services (Reorganization) Bill, the Administration had given any undertaking of continued provision of PSS by FEHD upon its establishment or any undertaking that the conditions of service/welfare benefits of the two former municipal services departments' staff would remain unchanged.

(Post-meeting note: The relevant fact sheet prepared by the Research Division was issued to members vide LC Paper No. CB(1)1958/10-11 on 28 April 2011.)

26. In response, SCS reaffirmed that FEHD management could not find any record of the above undertakings. That notwithstanding, she would carefully examine any such record if made available by any party. She further explained that the two former municipal councils had also directly employed a small number of staff to perform hawker control duties. These staff were, however, not civil servants.

27. The Deputy Chairman pointed out that although no written records of the above undertakings could be found, it should be noted that verbal undertakings also had legal effect. He urged SCS to heed the many views expressed by members and deputations at this meeting.

28. Mr LEUNG Kwok-hung also stressed the need to provide timely legal assistance to a civil servant involved in criminal proceedings arising from the performance of his official duties to protect his interests at the pre-charge stage. The Chairman enquired about the reasons for suddenly ceasing PSS, and details of the consultation exercise conducted beforehand, particularly whether the Administration had directly explained the plan to the staff unions concerned.

29. SCS responded that the operation of PSS had been kept under regular review by CSB. The need to discontinue PSS was raised with the management of FEHD in 2008. It was understood that FEHD management had since 2010 been informally discussing the review with the representatives of concerned grades in the department, and formally notified the Departmental Consultative Committee of the relevant decision in July 2010. Thereafter, FEHD management also arranged briefing sessions for affected staff to prepare them for the cessation of PSS.

Motion

30. After discussion, Dr PAN Pey-chyou moved the following motion, which was seconded by the Deputy Chairman –

"本事務委員會要求政府立即恢復食物環境衛生署為前線執法人員提供的「私人律師計劃」。

(Translation)

"That this Panel urges the Government to immediately resume the Private Solicitors Scheme for frontline enforcement staff of the Food and Environmental Hygiene Department."

31. The Chairman put the motion to vote. Seven members voted for the motion and none voted against it. The Chairman declared that the motion was carried.

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32. After discussion, members agreed to ask the Legal Advisor to the Panel to help ascertain whether cessation of PSS had contravened the Basic Law, as requested by deputations above.

V Civil service-related issues featuring in the 2011-2012 Budget

(LC Paper No. — Administration's paper on
CB(1)1544/10-11(04) civil service-related issues
featuring in the 2011-2012
Budget)

33. SCS briefed members on the salient points of the Administration's paper on the civil service-related issues featuring in the 2011-2012 Budget.

Use of agency workers and non-civil service contract staff

34. The Deputy Chairman expressed concerns about Government outsourcing and use of agency workers, and asked how estimates in this regard in 2011-2012 compared with those in 2010-2011. SCS responded that the comparison was not available because only actual figures but not estimates in this regard would be gathered from B/Ds. It was noteworthy that of the projected 1 680 additional posts in the civil service establishment in the coming financial year, a small proportion was for the conversion of non-civil service contract (NCSC) positions to civil service posts. In response to the Deputy Chairman, SCS confirmed that individual B/Ds' expenditures on outsourcing and use of agency workers were included in their respective estimates.

35. Ms LI Fung-ying pointed out that the number of government staff might actually be the same as that before the down-sizing of the civil service although many of them were employed as NCSC staff and agency

workers, the use of whom had not only suppressed private sector pay but also given rise to many problems such as the problem of "different pay for the same job", thereby adversely affecting staff morale, team spirit, etc. She therefore considered it necessary for the Government to conduct a comprehensive and thorough review of the above modes of employment to prevent abuse, and to recruit sufficient civil servants to deliver public services instead of using the two types of staff.

36. SCS agreed on the need to prevent abuse of the use of NCSC staff and agency workers, and emphasized that CSB would seriously follow up abuse cases if identified. She, however, stressed the need to use these two types of staff instead of civil servants in specific circumstances such as to meet short-term surge in service demands. Otherwise, there would be difficulty in redeploying the civil servants concerned when the short-term service need ceased. She assured members that there were at present only some 13 000 to 14 000 NCSC staff and fewer than 2 000 agency workers working for the Government. The Administration had also been progressively converting NCSC positions to civil service posts where the tasks concerned should more appropriately be performed by civil servants upon expiry of the employment contracts of the NCSC staff concerned. The Administration would continue with such efforts.

37. Mr LEUNG Kwok-hung opined that while there might be a need to use agency workers, it should be noted that they were being exploited by the employment agencies concerned and were unfairly paid and treated. Moreover, the above highlighted problem of "different pay for the same job" should be addressed. He further cautioned that if B/Ds were forced to save costs by using agency workers to meet new and improved service demands because resources were rigidly capped under the "envelop approach" on operating expenditure, the public might at the end suffer from deterioration of service quality. SCS responded that there was an established mechanism to determine the appropriate level of pay offered to agency workers and NCSC staff. Mr LEUNG however, pointed out that although the wages of these staff would be set on the basis of market wage, the market wage level had in fact been suppressed with the Government as the largest employer in Hong Kong taking the lead to use agency workers and NCSC staff.

The need to increase the civil service establishment

38. Mr LEE Cheuk-yan stated opposition to Government outsourcing under the principle of "Big market, small government". He then pointed out that the establishment of the civil service had only been increased by

around 1% every year from 161 000 to 168 000 over the past six years, while the accumulative increase in government expenditure over the same period was some 20% to 30%. Similarly, in the 2011-2012 Estimates, only a 1 % increase in the civil service establishment was projected, while the Government's recurrent expenditure would increase by about 8%, not to mention the some 22% increase in the non-recurrent expenditure. He queried whether such a modest increase in the civil service establishment would be able to meet rising public expectations and demands for new or improved public services as reflected by the increase in government expenditure, and expressed concern that serving civil servants might be overloaded.

39. SCS responded that increase in the civil service establishment and that in Government expenditure should not be linked because increase in the latter might not necessarily increase civil servants' workload. Such examples included additional allocation to subsidized bodies to increase the supply of subsidized day/residential care places and home care places for the elderly as proposed in the 2011-2012 Budget. Moreover, the Government would not increase civil service establishment for the implementation of one-off relief measures. Increase in the recurrent funding for certain service areas might also not lead to increase in workload for civil servants. For example, increase in the payment rates/level of allowances under the Comprehensive Social Security Assistance Scheme would not increase civil servants' workload if the number of applicants remained unchanged. SCS added that there was an objective resource allocation mechanism for considering B/Ds' requests for additional civil service posts. Mr LEE Cheuk-yan, however, pointed out that it was in general difficult for B/Ds to apply for additional manpower provisions, which were often turned down by the Government in keeping with the principle of "Big market, small Government".

VI Medical and dental benefits for serving civil servants, pensioners and eligible dependants

(LC Paper No. CB(1)1544/10-11(05) - Administration's paper on medical and dental benefits for serving civil servants, pensioners and eligible dependants

LC Paper No. CB(1)1579/10-11 - Updated Background brief on medical and dental benefits for serving civil servants, pensioners and

eligible dependants prepared by the Legislative Council Secretariat)

40. SCS briefed members on the salient points of the Administration's paper on the updated position of the Administration's provision of medical and dental benefits to civil service eligible persons (hereafter referred to as "civil service medical benefits").

Calls to include Chinese medicine in the scope of civil service medical benefits

41. Mr LEE Cheuk-yan questioned why Chinese medicine was not included in the scope of civil service medical benefits, considering that it had already become a part of Hong Kong's public healthcare system, and that the certification given by registered Chinese medicine practitioners was recognized for taking sick leave. In response, SCS referred members to paragraphs 15 and 16 of the Administration's paper for this item (LC Paper No. CB(1)1544/10-11(05)) for the reasons. She, however, assured members that the Government was bound by the Employees' Compensation Ordinance (Cap. 282), under which civil servants who had sustained injury on duty/occupational disease were eligible to claim reimbursement for medical expenses incurred for treatment given by registered Chinese medicine practitioners up to the statutory limit.

42. Highlighting the importance of Chinese medicine in maintaining health and minimizing medical expenses at the end, Mr LEE Cheuk-yan maintained that Chinese medicine should be included in the scope of civil service medical benefits although Chinese medicine clinics (CMCs) were operated on a self-financing basis and were not a standard general outpatient service of the Department of Health (DH) and the Hospital Authority (HA). The Chairman and the Deputy Chairman shared his views, and requested the Administration to seriously examine the views and review its stance regarding the inclusion proposal as soon as practicable. Declaring interests that his wife was a civil servant, the Deputy Chairman further recapitulated members' strong request in this regard when the issue was last discussed at the Panel meeting on 19 April 2010, and said that the refusal to accede to the request might defeat efforts to promote the development of Chinese medicine in Hong Kong. Moreover, more and more members of the public were using the service of CMCs.

43. SCS responded that considering the large number of civil service eligible persons, which had already exceeded 500 000, the Administration had to exercise great care in examining the above request in the light of the Government's contractual responsibility in the provision of civil service medical benefits. CSB would closely monitor relevant developments, and review its stance regarding the inclusion of Chinese medicine in the scope of civil service medical benefits should there be significant changes to the nature and mode of service delivery of the CMCs in future.

44. The Deputy Chairman expressed regrets that although the Administration had discontinued PSS against contractual spirit, it was quoting the Government's contractual responsibility as an employer as the excuse to refuse to include Chinese medicine in the scope of civil service medical benefits. In his view, the inclusion proposal would not incur additional cost because civil servants would use the service of only one medicine practitioner at any one time. He suspected that there were reasons other than those provided in paragraphs 15 and 16 of LC Paper No. CB(1)1544/10-11(05) for not considering the inclusion proposal, and asked for the relevant details.

45. Ms LI Fung-ying shared the Chairman's and the Deputy Chairman's view on the need to review the decision not to include Chinese medicine in the scope of civil service medical benefits as the Government should fulfil its contractual obligation of providing the best available medical attendance and treatment for civil servants. SCS responded that the relevant CSR 902 in fact provided that the treatment provided to an eligible person and his family would be dictated by the medical necessity of the case. Although every endeavour would be made to give officers and their families the best available medical attendance and treatment, the medical officer in charge of the case at the relevant HA or DH facility had sole discretion as to the amount and the nature of treatment provided.

46. Highlighting the high standard of the CMCs presently operated by HA in collaboration with non-governmental organizations and local universities, Dr PAN Pey-chyou urged the Administration to positively review the appropriateness of formalizing CMCs' service as a standard general outpatient service of HA, and hence include Chinese medicine in the scope of civil service medical benefits. SCS responded that as advised by HA, there would unlikely be any significant change to the nature and mode of service delivery of CMCs in the near future. However, CSB would continue to closely monitor developments in the nature and mode of service delivery of the CMCs and review the

implications on the Government's contractual obligations on civil service medical benefits should there be significant changes.

Other views and concerns

47. Mr LEE Cheuk-yan sought details on the reasons for the significant increase of 31% in the provisions for reimbursement of medical expenses to meet the anticipated increase in relevant applications from civil service eligible persons, and enquired whether this had been caused by the high price of drugs classified as self-financed items in HA's Drug Formulary.

48. SCS responded that the percentages of increase in 2009-2010 and 2010-2011 were some 40% and even 50% respectively, as reflected in the original estimates of the respective financial years. She explained that the provision for the reimbursement of medical expenses incurred by civil servants had always been significant because complying applications would be approved regardless of the costs involved, as long as the HA/DH doctors in charge of the cases certified that the drugs/equipment/services concerned were prescribed in accordance with the medical necessity of the patients and were chargeable by HA or not available in HA/DH. Civil servants therefore had access to the necessary drugs for treatment even though such drugs were classified as self-financed items in HA's Drug Formulary. She reported that to alleviate the cashflow burden on civil service eligible persons, CSB had already implemented the direct payment arrangement for certain medical items and treatment provided by HA. At present, over 50% of the total reimbursement expenditure was already covered by the direct payment arrangement. CSB would continue to liaise with HA to extend the direct payment arrangement. Mr LEE Cheuk-yan expressed concerns about the limited number of drugs included in HA's Drug Formulary, which in his view might mean that the general public might not have access to the necessary drugs.

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49. Noting the Administration's response above, Ms LI Fung-ying requested the Administration to provide a breakdown by reimbursement item of the amount of reimbursement of medical expenses incurred by civil service eligible persons at \$195.9 million for the period from 1 April 2010 to 31 December 2010, including the respective numbers of applications received, those approved and rejected, and the reasons for rejection.

50. Dr PAN Pey-chyou indicated appreciation for the various improvements made to civil service medical benefits as reported in LC Paper No. CB(1)1544/10-11(05), in particular the enhancement of

specialist out-patient services through adding one clinic session each per week in the areas of medicine, surgery, and family medicine at a HA hospital. He, however, indicated hope for the sessions to increase further, pointing out that the enhancement might still not suffice to meet the needs of civil service eligible persons. SCS responded that CSB would continue to liaise with HA on the feasibility of further enhancing specialist out-patient services for civil service eligible persons through various measures.

VII Any other business

51. There being no other business, the meeting ended at 10:50 am.

Council Business Division 1
Legislative Council Secretariat
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