

CHAPTER 3

CENTRAL CONSULTATIVE MACHINERY

Background

3.1 At present, consultative machinery at the central level comprises the Senior Civil Service Council, the Model Scale 1 Staff Consultative Council and the Police Force Council. Each of these three central councils is made up of an Official Side and a Staff Side. Service-wide matters such as pay reviews, allowances, leave-earning rates, housing, passages, etc. are discussed at these councils.

Consultative Machinery for the Disciplined Services

3.2 One of the major issues raised by respondents to the Consultative Document is the need for the establishment of a council at the central level to reflect the views of the disciplined services, other than, and in addition to, those of the Royal Hong Kong Police Force.

3.3 In March 1988 we were asked to commission an independent review of the pay and conditions of service of all the disciplined services. Because of this, we considered it appropriate that our recommendations regarding consultative machinery for the disciplined services be made early and that this issue should be dealt with separately as our first task in order to synchronize it with the separate review on the pay and conditions of service of the disciplined services.

3.4 There are a total of ten staff associations representing various divisions within the non-Police disciplined services. Unlike the Police, whose four staff associations constitute the Police Force Council for the purpose of consultation with the Administration at the central level, there is no equivalent mechanism for these associations to engage in formal consultation.

3.5 In the absence of a dedicated body at the central level for the non-Police disciplined services, individual staff members can only join, on a personal basis, those bodies which currently constitute the Senior Civil Service Council. (We are informed that, as at 31 December 1987, approximately 22% of the members of the disciplined services

had taken up this option.) Because membership is purely individual, staff associations of the non-Police disciplined services are not able to represent the specific concerns and interests, as may arise from time to time, of their services as a unified group.

3.6 This inadequacy in the present system is one of the major themes which emerge in the responses to the consultative document, both from departmental management as employers, and from staff associations and individuals. All respondents who have commented on the subject express the view that the existing system of consultative machinery fails to reflect adequately the views of the non-Police disciplined services.

3.7 Two distinct views emerge as to how this situation might be rectified. The majority of respondents suggest the establishment of a Disciplined Services Council which would represent all the disciplined services including the Police. In effect this would amount to the expansion of the current Police Force Council to include the other disciplined services. A second view suggests the establishment of a new Disciplined Services Council which would exclude the Police and operate as a separate entity from the Police Force Council.

3.8 This latter view accords with the strongly expressed opinion of the Police that a joint council for all the disciplined services is unacceptable, on the grounds that these other services are not subject to the same legal constraints regarding unionization as the Police.

3.9 We have considered this matter carefully and, having regard to responses to the consultative document, we are of the view that there are good grounds for establishing some form of consultative body to reflect the views of the non-Police disciplined services. We also note that support for this view has come, not only from the disciplined services themselves, but also from organisations not connected with the disciplined services. In addition to their response to the consultative document, the non-Police disciplined services have made known their views on the matter through other channels and these representations, too, make clear the strength of feeling which exists.

3.10 We have noted the high degree of support from both the disciplined services and others, and we endorse the extension of the consultative system in order that all the disciplined services are fully represented. In reaching this decision, we have also had regard to the following : -

- (a) The conditions of service of the (non-Police) disciplined services are sufficiently different from those of the rest of the civil service to render the existing structures inadequate in representing their specific views.
- (b) The independent review of the pay and conditions of service of the disciplined services might create a need for the non-Police disciplined services to be able to express directly to the Administration their views on the findings of the review.

3.11 In formulating our advice, we have borne in mind the possibility that any increase in the number of consultative bodies which is brought about on behalf of the disciplined services may well lead to pressure from other sections of the civil service for yet more bodies to accommodate further sectional interests. Whilst ideally therefore the establishment of a Disciplined Services Council incorporating all the disciplined services (including the Police) is to be preferred, the most important factor that has persuaded us to recommend the creation of a body that would be in addition to, and separate from, the Police Force Council is the special position of the Police with regard to participation in union activities.

3.12 Section 8 of the Police Force Ordinance (Cap 232) precludes any police officer from being a member of a trade union as defined in the Trade Unions Ordinance (Cap 332). We consider that it would be inadvisable therefore for the Police to participate in any council in which they were joined by associations which, unlike the Police, were free to engage in all forms of trade union activity.

3.13 Furthermore, if the four police staff associations which currently sit on the Police Force Council were to be made members of a joint disciplined services council, we are advised by the Attorney General that there would be some doubt as to their legal status. At the Attorney General's suggestion we also sought the advice of the Registrar of Trade Unions. Whilst the Registrar of Trade Unions was of the view that a joint disciplined services council would be legally possible, the Attorney General,

having considered the opinion of the Registrar of Trade Unions, remains doubtful that a joint disciplined services council would be within both the letter and the spirit of the law.

3.14 Having regard to the special constraints placed upon the Police regarding unionisation, the uncertain legal position of their participation in a joint council and the objections of the Police themselves to such a council, we recommend therefore the establishment of a new consultative council to be composed of representatives of all the disciplined services, other than the Police. We further recommend that for reasons of clarity, the new council be known as the Non-Police Disciplined Services Council.

3.15 As mentioned in paragraph 3.3 above, we dealt with consultative machinery for the disciplined services separately as a first task in the overall review project in consideration of the need to synchronize it with the independent review of the pay and conditions of service of the disciplined services which we commissioned in March 1988. Our recommendations on the subject, including the setting up of a Non-Police Disciplined Services Council, were conveyed in our letter of 16 June 1988 to the Governor. A copy of this letter is at Appendix VI.

Senior Civil Service Council

Background

3.16 The Senior Civil Service Council was established in 1968 following an agreement between the Government and the three main staff associations, i.e. the Association of Expatriate Civil Servants, the Hong Kong Chinese Civil Servants' Association and the Senior Non-Expatriate Officers Association.

3.17 The Council was created for the purposes of : -

- (a) discussing, in a spirit of goodwill, any matters which fall within the scope of the 1968 Agreement or which may be more specifically set out in the constitution of the Senior Civil Service Council; and
- (b) reaching agreement, if possible, between the Official and Staff Sides of the Council on any such matter generally, and in particular on any changes in conditions of service.

3.18 The composition of the Council has remained basically unchanged since its inception. Between 1968 and 1982 it was the only channel of communication between the Government and its employees at the central level. On our recommendations, the Model Scale 1 Staff Consultative Council (hereafter referred to as the "MOD 1 Council") and the Police Force Council were created in 1982, thereby extending representation at the central level to some of the staff not represented by the Senior Civil Service Council.

3.19 As at 31 December 1987, the number of civil servants covered by the Senior Civil Service Council amounted to approximately 112,100 (out of a total of 181,600 civil servants). This figure did not include members of the Police Force, Model Scale 1 employees and directorate officers who are excluded from the provisions of the 1968 Agreement. Model Scale 1 employees and directorate grade officers are however eligible to join the appropriate associations within the Council on an individual basis. The three constituent associations of the Senior Civil Service Council had a total membership, as at 31 December 1987, of approximately 25,100. If members belonging to the Model Scale 1 were excluded, the membership figure would be reduced to about 22,600.

3.20 Other than the three constituent members of the Council, there were additionally 157 staff associations registered under the Trade Unions Ordinance as at 31 December 1987. Of the 157, only six associations, being constituent members of the MOD 1 Council, are directly represented at the central level. There are another 13 staff associations registered under the Societies Ordinance. They include the four police staff associations, which also have central level representation by being constituent members of the Police Force Council.

Admission Criteria for Entry to the Senior Civil Service Council

3.21 Authority to admit staff associations to the Senior Civil Service Council rests with the Chief Secretary in consultation with the Council, and is contingent upon their satisfying certain entry criteria drawn up by the Senior Civil Service Council in May 1985. The full text of the admission criteria is at Appendix VII.

Major Areas of Concern

3.22 The need for a separate consultative body for the disciplined services, other than the Police, has been dealt with in the preceding section. Apart from this, other areas of concern have been expressed by respondents to the Consultative Document regarding the Senior Civil Service Council. The major issue is connected with the representativeness of the Council and how it could be enhanced. There are divergent views suggesting various ways to improve the structure and the admission system of the Council.

Structure of the Council

3.23 Responses to the Consultative Document are split on whether the existing structure of the Senior Civil Service Council should be maintained. Those respondents who favour change argue that the Council is not sufficiently representative in its present form. They have suggested a variety of ways on how it can be made more so. These include : admitting representatives of individual grades; creating a body to represent middle level officers; admitting any association which meets the existing requirements; replacing the existing members by elected representatives according to salary bands; and admitting one additional member to be elected by other unions. Many of the suggested changes are with a view to increasing representativeness for lower and middle ranking civil servants.

3.24 Those respondents who argue that the Senior Civil Service Council should remain unchanged point out that the Council has functioned very effectively in its present form and that a radical change to the present system will not lead to improvement in the consultative process. Moreover, they want to ensure that the system would not become too unwieldy as to be unmanageable. Although some respondents among this group hold the view that the Council is already sufficiently representative, others acknowledge that the number of staff currently represented at the Council is not ideal. But they all make the point that since all civil servants (except members of the Police Force) are able to acquire representation through the present members of the Council, they should be encouraged to do so.

3.25 A further view is that the Senior Civil Service Council and the MOD 1 Council should be merged into one single council. Some respondents however opine that the merger should only take place after the Model Scale 1 and the Master Pay Scale have been combined. On the other hand, a

few respondents suggest that officers of the lower end of the Master Pay Scale, say point 1 - 13, should be put within the scope of the MOD 1 Council which would be reorganized as the "Junior Civil Service Council".

Admission System

3.26 Another contentious issue which has emerged is whether the present system of appointment to the Senior Civil Service Council by the Chief Secretary should continue. Some respondents, notably the Staff Side of the Council, argue strongly in favour of retaining the existing system. They justify this stance on the ground that replacing the Chief Secretary's authority to appoint new members by some form of electoral system may well lead to politicisation of the civil service which may not be in the long-term interests of the service. They further argue that a system of election is likely to disrupt the continuity of the present system, leading to frequent changes in council membership. Moreover, an electoral process through which representatives to the Council are elected by unions of all sizes could be less representative than a well balanced system with properly constituted and service-wide unions. They also doubt the practicality of devising an equitable electoral franchise system, given the diversity of the unions' interests and the different forms of staff associations.

3.27 A number of respondents favour the replacement of the present appointment system by some form of election, arguing that the Council would thus be fully representative, and members would be more accountable to their constituents. However, among those who advocate introducing an elective element to the Council, no distinct view has emerged on how such a process should be operated. One proposal is that the electoral process should be modelled on the present "one union, one vote" system used by the Labour Advisory Board and the labour constituency of the Legislative Council. Some respondents favour a system based on "one civil servant, one vote", and a few consider that the voting strength of a particular union should be determined according to the number of members it has.

3.28 Many respondents however admit that while they are prepared to support election as a long-term goal, they realize that it may not be appropriate to introduce election to the Council immediately. Instead they suggest enhancing the representativeness of the Council on the basis of the existing set-up of the Council.

Representativeness of the Senior Civil Service Council

3.29 We note that apart from the 22,600 civil servants (excluding Model Scale 1) who are members of the three constituent members of the Senior Civil Service Council, approximately 7,300 civil servants can be considered as having indirect representation on the Council by being members of the 18 associations which are affiliated to the Hong Kong Chinese Civil Servants' Association. About 130 civil service trade unions, with approximately 46,000 members, have no representation at the Senior Civil Service Council. (Of the 130, 7 are disciplined services unions. If the proposed Non-Police Disciplined Services Council is established, these unions, with a total membership of about 8,000, should be deducted.) However, all members of these 130 associations are eligible to join at least one of the three constituent members of the Council on an individual basis. As some of the members of these associations could also be members of the associations in the Senior Civil Service Council, conclusions regarding the involvement or non-involvement of the members of these associations in the Council can only be made with reference to each association as a body rather than its individual membership.

3.30 Although some respondents, notably the Staff Side of the Senior Civil Service Council, hold that the Council is sufficiently representative, there does appear to be some support for the further enhancement of the representativeness of the Council. Whilst supporting in principle this general idea, we recognize the need to maintain a stable and well functioning system that does not, for its successful operation, depend on undue politicisation of the civil service, and is able to maintain the continuity which has been instrumental in the success of the existing system.

3.31 We also note that whilst a large number of ideas has emerged on how the representativeness of the Senior Civil Service Council might be improved, the majority of those respondents who favour change tend to do so within the context of the existing arrangements, at least for the immediate to medium term. In other words they support the admission into the Council of any association which is able to meet the entry criteria.

Alternative Structure for the Senior Civil Service Council

3.32 Despite the general level of satisfaction with the existing structure expressed by those currently involved in the consultative process, from both the Official and Staff Sides, and bearing in mind the provision in our Terms of

Reference V that in considering our recommendations and advice, we shall not prejudice the 1968 Agreement between the Government and the constituent associations, we have given thought to whether a new system would achieve improvements either in the level of representativeness or in stability and efficiency.

3.33 The existing structure of the Senior Civil Service Council involves both representation based on seniority of rank and representation based on sectional interests. Whilst this system has worked effectively in the past, we have considered the possibility of a neater system which is based on easily identifiable criteria to replace the existing set-up.

3.34 Possible systems considered by us include representation based on pay band divisions, with each segment of the Master Pay Scale having a number of representatives at the central level, and union representation organized on the basis of occupational groups.

3.35 We have noted however that there would be enormous difficulties in devising a practical structure that would also be agreeable and equitable to all the existing staff associations. Staff associations are not normally organized on the basis of pay band divisions. A system of representation based on pay bands would require almost all associations to reorganize and to move away from their present functional distinctions if they are to become member-associations of the Council. On the other hand, a system of representation based on occupational groups would either result in a large and unwieldy council or else would involve making subjective decisions on which functional groups are to be combined together for the purpose of electing representatives to the Council. A system based on either pay band divisions or occupational groupings would also require withdrawal from the Council or reorganization on the part of the three staff associations which are parties to the 1968 Agreement.

3.36 We are conscious of the fact that there is no guarantee that such a radical change would improve the existing degree of representativeness, since much would depend on precisely how the new system is organized and, crucially, on whether individual staff members could be persuaded to participate in the new scheme in greater number than they do in the existing system.

3.37 We have also borne in mind the absence of very strong support for such a radical change, a change which would inevitably lead to enormous upheaval within the civil service and totally undermine the existing stability of the system.

Election to the Senior Civil Service Council

3.38 We have also considered the question of whether membership of the Senior Civil Service Council should be selected by the Chief Secretary in consultation with the Council, as at present, or elected, under a new electoral system.

3.39 A few of those responding to the Consultative Document suggest that the present system should be replaced by an electoral process. However, the formulation of an acceptable franchise system would, in our opinion, present even more problems than would the devising of an appropriate new structure of representation. The question would arise whether votes are to be cast for an association, with an elected association selecting its own representatives to the Council, or votes are to be cast for individuals. It would also be contentious whether the electoral system should be based on a "one union, one vote" or "one man, one vote" system. In the latter case, further deliberation must be conducted on whether every civil servant is entitled to vote or only members of staff associations are allowed to do so. A system in which each union is entitled to one vote would be manifestly unfair in that it would grant the same degree of voting power to the smallest union, which may have only seven members, as it would to the very largest, with a membership exceeding 10,000. A 'one man, one vote' system, on the other hand, might result in the candidates of the largest association capturing all the elected seats on the Council. The Association of Expatriate Civil Servants, although representing a very vital sector of the civil service, would likely be excluded from the Senior Civil Service Council under such a system. In this particular respect, the existing system, which has provided for a balanced representation, would not be improved upon by adopting an electoral system.

3.40 Further implications of an electoral system would be the politicization of the civil service as each association canvasses for votes, and the inevitable breakdown in continuity resulting from possibly frequent changes in the membership of the central council. Both of these factors could be regarded as major de-stabilizing factors which might undermine the smooth functioning of the consultative process.

Retention of the Existing System

3.41 We agree with the view that the present system has provided a suitable forum for dialogue between management and staff which has operated successfully, and with a high degree of stability, since its inception in 1968.

3.42 We also note the 1 in 5 membership rate of the Senior Civil Service Council compares favourably with the 1 in 7 unionization rate for Hong Kong as a whole, and that the present membership of the associations within the Council includes members from most, if not all, grades and is therefore representative of a broad cross-section of the civil service.

3.43 In addition, we note that membership of the Senior Civil Service Council is not closed and that arrangements exist for the admission of new members. We do not agree with the suggestion made by some respondents that the present system fails to cater for lower and middle ranking civil servants. Whilst agreeing that there is always room for improvement, we consider that the Hong Kong Chinese Civil Servants' Association, with 85% of its members being remunerated below MPS Point 38, provides a satisfactory channel of representation for the lower and middle ranks. Although these ranks are not proportionally represented, they do have considerable influence in an association which represents one third of the Staff Side of the Senior Civil Service Council.

3.44 The establishment of a separate MOD 1 Council in 1982 was a deliberate decision in recognition of the disparity in conditions of service between staff of the Master Pay Scale and the Model Scale 1 and the need for the latter to express their views separately. Since its inception, the MOD 1 Council has provided an improved channel of communication between Model Scale I staff and the Government in discussing matters of mutual interest. We take the view that a merger of the two Councils should be considered only when the two pay scales have been amalgamated so that the differences in the conditions of service between officers of the two pay scales should have by then been eliminated. It is also until then that the proposal of setting up a "Junior Civil Service Council" to deal with matters in respect of junior civil servants should be considered.