

3.45 Having regard to all the points made in paragraphs 3.29 - 3.44 above, we conclude that no major changes should be made to the existing structure and admission system of the Senior Civil Service Council.

Improvements to the Present System

3.46 Whilst favouring the retention of the existing system, we have given thought to how the constituent members of the Senior Civil Service Council themselves might be able to increase their membership, and how other associations presently outside the Council might be assisted in their efforts to gain admittance to it, thereby enhancing the degree of representativeness of the central consultative system.

Admission Criteria

3.47 We understand that the criteria for admission to the Senior Civil Service Council were drawn up in May 1985 in an attempt to clarify the position of an applicant seeking membership of the Council. We are of the opinion that these criteria, worded in the way they are, allow for considerable latitude in their interpretation. We feel that this vagueness impedes the process by which staff associations are able to seek entry to the Council, and recommend that the Administration should, in consultation with the Staff Side of the Council, refine the relevant criteria with a view to making them more exact. By specifying in more concrete terms such criteria as membership composition, membership size, financial status, and the length of time a union must have been in existence, a tangible target would be established for any union to aim at in order to gain admission. Specifically, we suggest that Criteria 2(a), 2(c), 3(a), 3(b), 4(a), 4(b), 5(b) and 5(c) should be made more precise.

3.48 We also feel that the relevant criteria should equally apply to existing members for remaining as a member of the Council, and recommend that appropriate standards and procedures be set up to monitor the continued compliance with these criteria by all members.

3.49 During the meetings with the major staff associations in September, it was brought to our attention that some of them were not aware of the existence of the entry criteria established in 1985. We therefore recommend that the admission criteria should be made known to all staff associations for reference. We feel that in this way, the Council could be seen to confirm its willingness to accept

any association which can meet the admission criteria, and an increase in representativeness would follow if more associations succeed in meeting the specified entry criteria and are subsequently admitted to the Council.

3.50 We consider that this option would maintain the existing stability of the system since the improvements would be undertaken by, and with agreement of, the members of the existing structure. It would also ensure the openness of the present system to any serious and creditable candidate which meets the entry criteria.

3.51 It is our view that the option for maintaining the existing system, with a set of more specific admission criteria for new members, provides the best balance between the need to encourage the expansion of representation, and the need to maintain an effective, stable and well functioning system.

Other Areas for Improvement

3.52 We consider that the three constituent members on the Senior Civil Service Council should be encouraged to step up their membership recruitment efforts so that the representativeness of the Senior Civil Service Council could be improved through these staff associations themselves.

3.53 We recommended in our 1980 review of the subject that the Senior Civil Service Council should do more to keep the civil service as a whole informed of its proceedings. We feel that still more should be done in this regard and that an improvement in communication between the Staff Side of the Senior Civil Service Council and the members they represent would do much to encourage staff participation in the consultative process.

3.54 We note that there is a misconception among some junior civil servants and members of the public that the Senior Civil Service Council is primarily for senior officers. We suggest that an alternative name which omits the word "Senior", such as the "Civil Service Central Council", or "Master Pay Scale Staff Consultative Council" if the proposed Non-Police Disciplined Services Council is established, should be considered.

Model Scale 1 Staff Consultative Council

Background

3.55 The MOD 1 Council was established in 1982 as a result of our recommendation in the 1980 review of civil service consultative machinery. The functions of the Council are to foster better understanding and co-operation between the Government and the Model Scale 1 staff, and to enable staff to play a greater part in the formulation of policies concerning their conditions of service.

3.56 Currently, the only requirements for admission to the Council are that any association applying for membership must : -

- (a) be a civil service staff association registered under the Trade Unions Ordinance; and
- (b) have a paid up Model Scale 1 membership of 1,000 or more.

3.57 As at 31 December 1987, there were 26 staff associations with Model Scale 1 members. At present, seven of these associations are represented on the MOD 1 Council. Of the seven, two are service-wide organizations, and the other five have membership limited to particular departments or occupational group.

3.58 The seven associations on the Council had a total membership of 12,500 as at 31 December 1987. This compared with the total membership of about 9,000 for the 19 associations not represented on the Council, and 20,800 Model Scale 1 staff who were not members of any association. This latter figure was arrived at by deducting the total membership of all associations (21,500) from the total number of Model Scale I staff (42,300). It might actually be higher due to the possibility of staff being members of more than one union.

3.59 From the responses to the Consultative Document, we note that there is general satisfaction with the functioning of the Council. Opinions are however divided over whether the 1,000 minimum membership rule should be changed, either to enhance the representativeness of the Council, or to maintain a council of manageable size. In addition, some respondents have pointed out that the present composition of the Council is unbalanced. While the Model Scale 1 staff of some departments are being represented by more than one

association at the Council, those in other large departments are under-represented. Furthermore, since the Model Scale 1 establishment in many departments does not exceed 1,000, their staff associations would have no opportunity to become qualified for admission to the Council under the present membership rule.

3.60 We have considered the following options with a view to enhancing the representativeness of the Council whilst retaining an acceptable degree of manageability.

(a) Lowering the Membership Requirement

3.61 Of all the Model Scale 1 staff associations not currently on the Council, three have a declared membership exceeding 1,000. The next three associations with membership closest to the 1,000 benchmark have between 500 to 700 members. Most of the rest are rather small unions having less than 200 members.

3.62 If the present admission criteria remain unchanged, and should the three associations having more than 1,000 members apply for Council membership, they would in due course be admitted. In such circumstances, the Council will have a total of ten member unions. A further lowering of the membership limit would enable the next three associations to join the Council either immediately or more quickly depending on the new requirement. This would eventually bring the total number of unions on the Council to thirteen.

3.63 However, a council with such a significantly extended membership is less likely to be able to come to a unified Staff Side position on any issue. Some respondents have stressed that the Council is in danger of becoming rather unwieldy even now, and the admission of these additional associations would exacerbate the situation. Furthermore, it is considered reasonable to recognize only those associations with a sufficiently large membership that could justifiably claim to represent a significant proportion of Model Scale 1 staff.

(b) Raising the Membership Requirement

3.64 The efficiency of the Council can only be maintained by keeping it to a manageable size. One way to achieve this is by raising the membership requirement to, say, between 1,200 and 1,500. This is supported by the Administration and would ensure that the membership of the

Council remains at an acceptable level for the foreseeable future. The key difficulty with this option is that it would either entail discrimination between existing Council members (four of which have a membership at or below 1,200) and aspiring members, or it would mean that some existing Council members would have to withdraw from the Council.

3.65 We recognize that the Model Scale 1 establishment has been dwindling in recent years due to the Government's policy of privatization. Raising the membership requirement would further reduce the number of staff unions eligible to join the MOD 1 Council and would therefore seem to be contrary to the objective of improving the representativeness of civil service consultative machinery. Furthermore, such a move would inevitably be seen as an unfair and arbitrary arrangement which is made simply for the sake of barring other associations from joining the Council.

(c) Different Requirements for Service-Wide and Departmental Associations

3.66 Of the 26 associations having Model Scale 1 membership, all but four are departmental. That is, they represent the specific interests of a particular department or occupational group. We have considered whether the presence of too many unions of this type would contribute to the emergence of conflicting viewpoints on the MOD 1 Council and therefore whether more stringent requirements, such as a higher membership requirement, should be asked of them, than of service-wide associations. We have concluded, however, that such a distinction would be difficult to justify to Model Scale 1 staff, the majority of whose unions are organized departmentally. Furthermore, the problems noted in paragraph 3.64 above would still apply since some existing Council members have just over 1,000 members.

(d) Only Accepting Service-Wide Associations

3.67 The MOD 1 Council differs from the Senior Civil Service Council in that, inter alia, membership of the latter is restricted to service-wide mixed grade associations, whilst membership of the former is open to departmental and occupational associations. An extension of the scenario outlined in (c) above would be to apply to the MOD 1 Council the same rule of the Senior Civil Service Council regarding service-wide associations.

3.68 Although this would bring the MOD 1 Council more in line with the Senior Civil Service Council, and although such a measure would be effective in preventing the Council from becoming too large and unwieldy, the problem of dual standards outlined in options (b) and (c) would again apply if the existing departmental unions were allowed to stay in the Council. If not, 5 of the 7 existing members would have to either withdraw or re-organize themselves into service-wide associations in order to qualify. It is equally unlikely that such a measure would be acceptable to the other unions since almost all of them would be required to re-organize if they wish to seek membership on the MOD 1 Council.

(e) Allowing Unions to Merge

3.69 A number of respondents suggest that smaller unions should be permitted to have a joint seat on the MOD 1 Council. This arrangement would be acceptable provided the unions concerned are merged on a formal and permanent basis. The resulting body should then be re-constituted and registered with the Registrar of Trade Unions as a new civil service trade union. Otherwise these associations, joining together, would be operating as a federation and its admission to the Council would be in conflict with the established policy currently in force for all the central consultative bodies.

(f) Departmental Consultative Council Members to Serve on the MOD 1 Council

3.70 In the responses to the Consultative Document, the possibility of enabling members of the Departmental Consultative Committee (DCC) to serve as representatives to the MOD 1 Council is raised. This option, it is suggested, would improve the links between these two levels of the consultative process. There are however both practical and conceptual difficulties with such an option. First, there are 70 DCCs. It would be impracticable for each one to send a representative to the MOD 1 Council. Second, the DCC is primarily concerned with problems in a departmental context, whereas the central council deals with service-wide matters. Considering the different functions of the two consultative bodies, there appears to be no strong justification to establish a representational link between them.

(g) Specifying Further Admission Requirements

3.71 As noted in paragraph 3.56 above, the only admission requirements for entry to the MOD 1 Council are the need to be a registered trade union and the need to have at least 1,000 members. Unlike the admission criteria for the Senior Civil Service Council, there are no requirements pertaining to an association's financial position, membership composition, or length of time since its establishment.

3.72 Should such criteria be drawn up, applicants could be assessed on a more meaningful basis than a simple numerical threshold. Other important aspects of the applicant such as its stability and financial well-being would be examined. This would also be conducive to containing the size of the Council. However, the problem of dual standards would still have to be addressed, and it would be for consideration whether the standards required of new members should also be applicable to existing Council members.

Maintaining the Existing Structure

3.73 We note the absence, in the responses to the Consultative Document, of any strong advocacy of major reform of the MOD 1 Council, and that the general consensus indicates that the existing MOD 1 Council is functioning effectively.

3.74 We also note that of those Model Scale 1 staff who are members of Model Scale 1 staff associations, nearly 60% are represented on the MOD 1 Council. This figure compares very favourably with the equivalent for the Senior Civil Service Council which is less than 25%. In our opinion, there thus appears to be little reason for concern regarding the MOD 1 Council's degree of representativeness.

3.75 But we are conscious of the need to encourage as wide a degree of representation as possible, albeit due care should be taken not to allow an excessive number of disparate viewpoints to impair the effective functioning of the Council.

3.76 With regard to the question of how best to prevent the Council from becoming too large, we see the potential threat as being the large number of departmental unions, a number of which do have at least the potential for considerable expansion in their membership.

3.77 Introducing different requirements for service-wide associations and departmental associations would involve discrimination against departmental unions. It is considered impracticable because of the likely adverse reaction from the staff and because such discrimination would be difficult to justify.

3.78 Whilst bringing the MOD 1 Council in line with the Senior Civil Service Council by prohibiting the admission of departmental unions has its merits, it is also not, in our view, a practicable course of action since the majority of the constituent members of the Council are departmentally organized.

3.79 The only major area of contention appears to be whether the membership criterion should be changed from its present level of 1,000 and whether other criteria should be established.

3.80 A lowering of the membership limit, as proposed by some respondents, is surely not a solution. We share the view that the Council is already facing the possibility of becoming too large and unwieldy under the present membership limit. We also consider it reasonable for a union to be required to have a sufficiently large membership before it could be given central recognition.

3.81 Raising the membership requirement alone is also not recommended because it lacks strong justification as noted in paragraph 3.64 above. Besides, a figure above 1,000 would either mean that some of the existing Council members would have to withdraw, or else existing Council members would have to be subject to different requirements. Furthermore, whilst recognizing the importance of maintaining a council of manageable size, we do not feel that a union with a sufficiently large membership and which makes genuine attempts to become a mature, stable and efficient channel of representation for its members should be permanently excluded simply on the ground of administrative convenience.

3.82 It is our opinion that the best means of preventing too rapid a growth of the MOD 1 Council is for the Administration, in consultation with the Staff Side, to devise a set of comprehensive criteria for admission to the Council. These criteria, applicable to both existing and potential new members, should be similar to those recommended for the Senior Civil Service Council. They should specify not only the minimum membership size, but also the minimum

period for which the membership size must have been maintained, and financial status etc. This would ensure that new members not only have a sufficiently large membership, but also are financially and structurally sound and have been in existence for an acceptable period of time. This should generally reduce the number of eligible associations which may otherwise qualify for admission on the basis of membership alone. On the other hand, it would enable aspiring associations to establish clear targets to aim for in order to gain admission.

3.83 We have noted the suggestion made by a number of respondents that any member union of the Council should be asked to withdraw if its membership drops to 50 per cent below the stipulated requirement. Although we consider that a member union should withdraw if it loses members to a point significantly below the threshold, 50 per cent appears to be too low a figure. We recommend that appropriate standards and procedures should be established to monitor the continued compliance with all relevant criteria by members of the Council.

3.84 If, as part and parcel of a set of comprehensive admission criteria, the Administration, consulting the Staff Side, finds it absolutely necessary to revise the membership requirement upwards, we would have no strong objection. But we wish to emphasize that an increase in membership requirement should only be made as part of an overall package and only if such a change would not result in reducing the representativeness of the Council.

3.85 We are aware of the apparent imbalance in the representation on the Council. But we are also conscious of the fact that the present mixed-representation system, comprising service-wide associations and departmental associations, is sufficiently representative. It is impracticable and indeed impossible to grant Council membership to each departmental association having Model Scale 1 members. Nonetheless, every Model Scale 1 officer could always join any of the service-wide associations on the Council to enable his or her interests to be reflected.

3.86 We would be very pleased to see the departmental staff associations of large departments become members of the Council and we encourage them to apply for membership. However, the principle that an association should be able to represent a sufficiently large group of Model Scale 1 staff before being given representation at the central level is equally important. We therefore recommend that these

associations be encouraged, and given help if necessary, to step up their recruitment efforts in order to qualify for central recognition.

3.87 We have considered whether small unions should be accommodated in the Council by allowing them to merge. Having regard to the ease with which a loose federation of small unions can be effected and the implication of such a change on the Senior Civil Service Council, we recommend that the present policy of not allowing federal bodies to join the Council should be maintained. In other words, unions merged informally for the purpose of gaining Council membership should not be accepted.

3.88 We also note that whilst there is some demand for introducing an elective element to the Council, the great majority of respondents consider that the present system is functioning well and too drastic a change will not be conducive to maintaining the efficiency and stability of the consultative process.

3.89 Having regard to all the points made in paragraphs 3.72 to 3.88, we conclude that no major changes should be made to the existing structure of the MOD 1 Council, and that the establishment of a set of comprehensive admission criteria should strike the best balance between the need to enhance the representativeness of the Council and the need to contain its size.

Multiple Membership

3.90 In the Consultative Document, we raised the problem of some individuals holding membership of more than one union or staff association and solicited views on whether such duplication should be eliminated before determining the degree of representativeness of each staff group. Respondents are again split on this issue. Some suggest that multiple membership should be discounted in considering a union's eligibility for entry to the Council, while others, including a great majority of the staff associations which we met in September, argue that it is not a big problem.

3.91 We have been informed of the opinion of the Registrar of Trade Unions that there is no legal provision for preventing employees from joining more than one union and that Article 2 of Convention No. 87 of the International

Labour Convention, which is applicable to Hong Kong, actually specifies an individual's right to join whichever union or unions he chooses.

3.92 Though it is desirable to rectify the defect created by the existence of multiple membership in considering whether a union meets the membership criterion, we recognize the practical difficulties in devising an equitable method to discount multiple membership for the vetting of applications, and the lack of legal provision to prohibit any person from joining more than one union. We therefore recommend that no immediate action should be taken in this regard but the Administration should keep the subject under regular review.

Committee of Inquiry

3.93 During our meetings with the major Model Scale 1 staff associations, many of them raised the issue of whether recourse to a Committee of Inquiry similar to that of the Senior Civil Service Council should be provided for the MOD 1 Council.

3.94 As noted in paragraph 3.55 above, the MOD 1 Council was established in 1982 as a result of our recommendation to provide for a wider representation of staff at the central level. Other than serving different groups of staff, the MOD 1 Council and the Senior Civil Service Council have basically similar functions. We note that the Senior Civil Service Council, by virtue of the 1968 Agreement, could request the appointment of a Committee of Inquiry to arbitrate disputes. The request of the staff associations that a similar provision be made for the MOD 1 Council therefore appears quite reasonable. The fact that the MOD 1 Council has been working smoothly does not provide sufficient ground for denying the Council recourse to a Committee of Inquiry should it fail to come to an agreement on an important issue.

3.95 It has been argued occasionally that the Standing Commission is already playing an arbitrator's role between the Administration and the Staff Side. This is a misconception. It has been expressly made clear by both the Standing Commission and the Government that the Standing Commission is an advisory body to the Government and its role should be distinct from that of a Committee of Inquiry, as provided for in the 1968 Agreement.

3.96 Considering the points in paragraphs 3.94 and 3.95, we conclude that there are prima facie good reasons in support of the staff association's proposal. We therefore recommend that the Administration should consider extending to the MOD 1 Council similar provision for recourse to a Committee of Inquiry in case of serious dispute between the Administration and the Staff Side over an important issue.

Processing of Application for Council Membership

3.97 The point has also been made by a number of respondents that the time for processing applications for entry to the Council has been too long. One staff association claims that the Administration has taken three years to approve its application. Some respondents propose that a time limit should be set to expedite the process.

3.98 We appreciate the Administration's practical difficulties in the time-consuming process of examining the eligibility of an applicant, but consider that a target period within which the Administration should under normal circumstances complete the vetting process should nonetheless be set. This arrangement would ensure that an association could know the outcome of its application within a definite time frame and if special circumstances exist to prevent a decision to be made by the Administration, would be informed of the reason why there has been a delay.

3.99 Another criticism made by some respondents is that the Council does not keep all staff adequately informed of its proceedings, and that consultation between Staff Side representatives and staff associations outside the Council is insufficient. As a result, there is a communication gap between the Council and many of the staff it represents. In our 1980 review of the subject, we recommended that the proceedings of the central councils should be publicized. We wish to reiterate the importance of adequate communication between the Staff Side of the Council and the staff that it represents. We recommend that continued efforts should be made by the Council to further improve the situation. Where possible, minutes of Council meetings should be circulated to all relevant staff associations for information and Council newsletters should be published periodically.