

CHAPTER EIGHT

MACHINERY FOR PAY DETERMINATION AND CONSULTATION ON PAY AND CONDITIONS OF SERVICE

General

8.1 The present machinery for determining the pay and conditions of service of the disciplined services (apart from the annual pay awards which are determined under other arrangements) consists primarily of the Standing Commission on Civil Service Salaries and Conditions of Service, which regularly makes recommendations to the Government covering the whole civil service and may from time to time make particular recommendations about particular sections of the service. Their recommendations are considered by the Branches and Departments concerned, and Civil Service Branch consults bodies representative of the staff, including the Senior Civil Service Council and the Police Force Council, about proposals for implementation (which may either follow or modify the recommendations) and takes account of their views before proposals are put to the Executive Council for approval. For the Directorate grades, the initial recommendations are made by the Standing Committee on Directorate Salaries and Conditions of Service (the Ross Committee).

8.2 Under this system, two Disciplined Services Pay Scales have been created, one for rank and file (DPS(R)) and the other for officers (DPS(O)). Officers in the Directorate grades have been paid on the Directorate pay scale.

8.3 Since the creation of the Standing Commission and the introduction of the two DPS scales in 1979 the general relativities between the DPS and MPS scales have changed very little, as the graphs in Annex 4 of the Preliminary Report show; and very few particular changes have been made.

8.4 Our remit charged us to review the work of the disciplined services bearing in mind recent and future developments in their responsibilities and workload. Our review has satisfied us that developments since 1979 in responsibilities and workload have not been adequately reflected in the recommendations of the Standing Commission, and we believe this stems in large measure from the width of the Standing Commission's remit. The pressure on the Commission and its staff must always be to take the broad view of the needs of the civil service as a whole. This approach has great merits; but we believe that much of the pent up dissatisfaction over pay and conditions of service that was expressed to us in the course of our review stemmed from the need to fit the disciplined services into pay arrangements and conditions of service that were not designed for staff who do the kind of work the disciplined services have to do in the

way that they have to do it. This is not to say that some disciplined services work is not similar to some general civil service work : it is to say that over the bulk of the work the differences are so great as to require a different approach if justice is to be done.

8.5 It is arguable that the same body, perhaps acting through sub-committees, could achieve the different approaches that we believe are required. We think it would be much easier for a separate body to look objectively at the needs of the disciplined services and advise the Government how they can best be met; and this was the view of most of those from whom we took evidence, though a significant minority favoured the continuation of the present arrangements, in some cases with the formation of a Disciplined Services Sub-Committee within the Standing Commission framework.

8.6 A difficult issue arises in respect of the Directorate grades. Hitherto the view has been taken that the jobs of these higher grades in the disciplined services are so like the higher posts elsewhere in the civil service that they can suitably be broadbanded with other Directorate grades on the established principles followed by the Ross Committee. These depend essentially on a ranking of Branches and Departments to establish the appropriate directorate grade for the top post, from which the grades of the subordinate posts can be determined on hierarchical principles. This system has preserved an orderly pattern of remuneration at higher levels throughout Government.

8.7 Our own view is that, omitting the very highest posts, the operational command functions which characterise the majority of the present Directorate posts in the disciplined services are not essentially similar to the functions of the majority of the Directorate posts in the rest of the Government service; and these command functions result in command relationships which extend from the top to the bottom of each service. After careful examination of pay levels and scales, this has led us, in respect of the police, to recommend as one of our key proposals a single pay scale which runs from the bottom to the top, embracing rank and file, junior officers, and Directorate grades. The same relationships apply in the other services, and we would have wished to propose a single scale or scales for them also; but for the reasons explained in paragraph 5.7 this did not prove possible.

8.8 We have also observed that the structure of ranks and the levels of responsibility carried in senior posts across the services is not consistent, largely as the result of specific decisions concerning particular services over the years, and this has caused us serious problems in our review. We believe there is a need for careful examination of rank structures and levels of responsibility of senior posts in each of the five services, not limited by the structures required for general civil service work but directed to the needs of the very different command structures in the

disciplined services. We think it likely that such a review would produce recommendations which would not fit well with the general structures which are suitable for the rest of the civil service.

Scope of new machinery

8.9 Opinions were sharply divided about the scope appropriate to new machinery. Police management and staff consider that a separate body dealing exclusively with the police is required (together with separate pay scales for the police) to ensure that the police staff associations, which by law cannot be trade unions, do not require to be linked with staff associations which are trade unions in consultations about pay. They also take the view that because the police force is responsible for the impartial enforcement of the law in all situations, including industrial disputes, the police should not be linked with any other staff in situations from which industrial disputes might arise.

8.10 The last argument is rejected by the other four departments and their staff bodies. They point to provisions in their ordinances and to history to show that to a considerable extent in law and to the fullest possible extent in reality they operate under rules and practices which effectively forbid industrial action. Our discussions with the staff associations and unions brought out that most if not all of them consider that as members of the disciplined services they are not free to take industrial action, even though the trade unions ordinance under which those that are unions are registered contains provision to protect members against legal action if they engage in peaceful picketing in furtherance of an industrial dispute.

8.11 We have not taken legal advice about how this provision in the trade unions ordinance is to be reconciled with apparently conflicting provisions in for example the Immigration Service Ordinance which includes the same provision as that in the Police Force Ordinance prohibiting incitement to disaffection, because we do not think, in respect of industrial disputes, that it is the precise interpretation of the law that matters. In reality, we believe that the combined weight of the law and the ethos of the disciplined services in Hong Kong is such that the risk of an industrial dispute is negligible for the purposes of the present argument.

8.12 We have considered (under that part of our terms of reference which deals with conditions of service) whether it would be right for us to recommend that the situation should be formalised by bringing the ordinances of the other four disciplined services into line with that of the police by including in them prohibitions on trade union membership and inciting to disaffection. Our considered view is that we should not propose changes in the ordinances, partly because of the obvious difficulties in the process as well as possible fundamental objections, and partly because, even in respect of

a group with the special characteristics of the disciplined services, any move of this kind might despite its limited purpose be widely understood as a material political change at a time when any such change is likely to raise sensitive issues and cause undesirable controversy.

8.13 We therefore require to frame our recommendations in this matter on the basis of the existing legal situation, in which there remains the clear distinction between the police and the other four services that police staff are forbidden to join trade unions while the others are free to do so and many of them have exercised this right.

8.14 A further important consideration in the argument whether a separate body or bodies is needed is the modus operandi appropriate to such bodies. As with the Standing Commission, the kind of body we have in mind would receive representations from staff bodies as well as departments, and would meet them as appropriate to clarify issues and test the strength of argument in discussion. We would expect a separate body or bodies to be able to give rather more time to hearing representations than the Standing Commission with its very wide remit may have been able to do.

8.15 We have come to the firm conclusion that separate machinery is needed. We also conclude that the police concern to be able to represent their own case separately must be given considerable weight, particularly in view of the material issue of trade union membership; but we do not think that this would justify the setting up of a completely separate advisory committee to deal solely with the police. We believe the necessary separate consideration can be achieved within a common Standing Committee whose remit would embrace all five services, with the detailed work being done by two sub-committees, one for the police and one for the other four disciplined services. In particular, all representations would be considered in the first instance by the sub-committees, and all meetings with staff bodies and departments would be held by the sub-committees, which would be responsible for formulating their recommendations separately. The Standing Committee's function would be to oversee the work of the two sub-committees and to approve their recommendations (amended if the Committee saw fit) and submit them to the Government.

8.16 In the light of considerations discussed in paragraphs 8.6-8.8, we think it would be appropriate for the body we propose to consider all matters relating to the pay scales we propose except for the pay of the heads of disciplined services. **We recommend** that separate arrangements, which might include provision for consultations both with the proposed Standing Committee and the existing Standing Committee on Directorate Salaries and Conditions of Service, should be made for the Government to obtain advice on the salaries of the heads of the five services.

Functions of the new body

8.17 Accordingly, **we recommend** the establishment of a new non-statutory advisory body to be called the Standing Committee on Disciplined Services Salaries and Conditions of Service (SCDS), and that its terms of reference should enable it to consider in respect of the disciplined services virtually all the matters in respect of these services that are at present dealt with by the Standing Commission and the Standing Committee on Directorate Salaries and Conditions of Service.

8.18 Accordingly, **we recommend** that its terms of reference should provide for it to carry out the following functions :-

To advise and make recommendations to the Governor in respect of the disciplined services on :-

- (a) the principles and practices governing grade, rank and salary structures including the creation and abolition of grades and ranks at all levels;
- (b) salary levels and structure of individual grades;
- (c) the evaluation of jobs for the purpose of determining salaries and conditions of service;
- (d) conditions of service and benefits other than salary that are relevant to the determination of remuneration;
- (e) assessment of levels of, and eligibility for, allowances payable specifically to disciplined services staff;
- (f) any matters affecting the disciplined services that require to be specially considered in relation to the machinery for the regular overall review of public service pay;
- (g) annual pay awards for ranks and grades remunerated at levels equivalent to or above the bottom point of the directorate in the general civil service except for the heads of the services;
- (h) creation of permanent posts in ranks and grades remunerated at levels equivalent to or above the bottom point of the directorate in the general civil service;
- (i) consultative machinery and procedures to enable management and staff to discuss matters within the Standing Committee's terms of reference;

- (j) the need for special or regular reviews to be commissioned or undertaken by the Standing Committee itself, on matters within its purview;
- (k) matters referred to the Standing Committee by the Governor or matters which the Standing Committee considers appropriate to its terms of reference.

8.19 The Standing Committee should not consider cases of individual officers nor be involved in appointments, promotions and discipline matters.

8.20 Particular difficulty in determining the proposed Committee's functions arises in relation to the machinery for setting the annual pay award. One function of the Standing Commission which we do not think the new Committee can have is to advise the Governor whether the overall reviews of the non-Directorate Pay Scales should continue to be based on the Pay Trend Survey and the consultative arrangements associated with it, or whether some other mechanism should be substituted. This function, modified perhaps in the light of the findings of the current Committee of Inquiry, we are assuming will remain with the Standing Commission. We have, however, included at 8.18(f) above a provision to enable the new Committee to contribute to advice on this subject if special problems should arise.

8.21 It is important to record here that we do not consider that the annual pay award to non-directorate staff, which is intended to reflect trends in the community outside the public service and currently based on the Pay Trend Survey, should be different for the disciplined services from that for the rest of the public service. However, since the new Committee would be responsible for advice on salary matters in respect of the second largest group of non-directorate staff, we think it should have a part to play in the Survey. We propose therefore that the Pay Trend Survey Committee should be increased in size to permit it to include a member appointed by the new Committee, together with representation from the proposed Disciplined Services Consultative Council on which we comment below.

8.22 We have also considered how the new Standing Committee should be brought into advice on conditions of service that apply throughout the civil service, to ensure that the Committee's views of their effect on the disciplined services may be considered. **We recommend** that the administration, having received advice on such issues from the Standing Commission, should seek the views of the Standing Committee on how such conditions of service might apply to the disciplined services.

Sub-committee structure and membership

8.23 The sub-committees will in many respects be the key bodies in the operation of the new Committee. **We recommend** the following structure :-

| <u>Standing Committee</u> | | <u>General Disciplined Services Sub-Committee</u> | |
|-----------------------------|------------|---|------------|
| | 1 Chairman | | 1 Chairman |
| | 10 Members | | 4 Members |
| <u>Police Sub-Committee</u> | | | |
| | 1 Chairman | | |
| | 4 Members | | |

All sub-committee chairmen and members would be drawn from the main committee. We would regard this as the optimum size although experience may prove otherwise and a degree of flexibility should be retained. **We recommend** however, that the two sub-committees should be of the same size.

8.24 **We recommend** that the sub-committee chairmen and members should serve on only one sub-committee, and that though the chairman of the Standing Committee should not be a member of either sub-committee he should be free to attend any sub-committee meeting as a participating observer. Each sub-committee chairman should be free to attend the other sub-committee on the same basis.

8.25 We have found in our own work that consideration of issues affecting the police has given us important insights into matters concerning the other services and vice versa. The arrangements we propose for the new Committee are designed to preserve these valuable opportunities while facilitating a high degree of separate consideration and consultation.

Appointments and composition

8.26 **We recommend** that the Standing Committee Chairman and members should be appointed by the Governor for renewable two-year terms. The Governor should also appoint the two Sub-Committee Chairmen.

8.27 Membership of the new Committee will require careful consideration. In view of the special functions of the group of staff with which it will be concerned, and the way in which the pay scales and grade and rank structures of the five services differ from those of the generality of the civil service, we think that it would be appropriate to cast the net fairly widely. It is not possible nor is it desirable, to lay down hard and fast rules, because so much depends on the availability and willingness of suitable people to serve on such a body. The selection of members should primarily have regard to appropriate personal qualities and experience. Membership should not include retired or ex-members of the

disciplined services.

8.28 With these considerations in mind, **we recommend** the following suggested guidelines as to possible sources of members :-

Chairman

Senior public figure

Members

Two Legislative Councillors

Two academics with appropriate interests

Two members from the private business sector

One member from the Judiciary

Three open seats (personnel management experience, grass-roots member, retired senior civil servant, etc.)

8.29 The Committee should be serviced by an independent secretariat to be staffed by the general civil service.

Consultative arrangements

8.30 We received a number of representations about deficiencies in the present consultative arrangements. The principal complaints came from the staff associations and unions representing the four services other than the police. They considered that under the present arrangements, in which they had no formally-constituted consultative arrangements comparable to the Senior Civil Service Council or the Police Force Council, they did not have an effective voice in Government consultations on matters concerning salary and conditions of service. Though numbers of individuals in the services were members of general civil service associations represented on the Senior Civil Service Council, they did not feel that their views were adequately represented in the Council, because of the preponderance of general civil service interests there and the special character of many of the problems that concerned the disciplined services. We have also had comments on these representations from the Senior Civil Service Council. After careful consideration we conclude that there is a need for better arrangements.

8.31 Several representations suggested that there should be a single Disciplined Services Consultative Council representing the staff of all five services, but there was also considerable support for a Council covering only the four non-police services. For the same reasons as those underlying our recommendations about a separate police pay scale and the sub-committee structure we propose for the new Standing Committee, **we recommend** that a General Disciplined Services Consultative Council should be set up to represent all the services other than the police who would continue to be represented through the Police Force Council. We understand that while our review has been in progress the Standing

Commission has been discussing consultative arrangements for the four services with all those concerned, and we hope the matter can be resolved in this way. We would expect the Consultative Council to represent members of the disciplined services up to but excluding those staff regarded as management (directorates or equivalent).