



CP Position Paper on Review of
"Post-Service Outside Work for Directorate Civil Servants"

Flawed Consultation Document and Process

1. CP is of the view that both the Consultation Document and the "consultation" process employed is designed in such a way that the voice of civil servants will be heard and dominate whereas the issues of public interest involved may not be properly addressed. Civil servants know what they do; most members of the public do not. This imbalance of information, essential for an informed discussion and consideration, disables most members of the public from giving their informed views as to whether any and if so what changes need to be made to the current system. It gives the appearance of a process where the outcome is a foregone conclusion and the views of the public excluding civil servants do not count. Further, the presence of the Secretary for the Civil Service on the Committee does not lend credibility to any recommendations the Committee may make. The Secretary should have been excluded from membership but asked to give whatever information to the Committee which the Committee required. The Committee should have been wholly independent of the Civil Service and any administrative support staff should have been drawn from elsewhere.

Recommendation

The Consultation Document should be amplified and the public consultation period should be extended to give the public an



opportunity of considering the additional information and responding in the light of it. It would also be desirable to wait until after the Legislative Council has issued its report on the Leung Chin-man case so that additional views on matters arising from the report pertinent to this Review can also be given.

2. Necessary information includes:

(1) Regimes governing comparators and others in the HKSAR

There are many quasi governmental organizations whose employees can be described as public officers or public servants although the bodies are nominally independent eg Monetary Authority, Housing Authority, Hospital Authority, SFC, Ministers, Political Assistants. The remit of this Committee is confined to civil servants only whereas the public interest concerns cover a much wider range of persons. At least the public ought to be informed by way of comparison what if any restrictions are imposed on the broad class of persons who are not civil servants but who work in the upper echelons of the public sector and who directly or indirectly are paid out of the public purse.

(2) The nature of the work undertaken by civil servants which could give rise to public interest concerns and the processes by which decisions on such issues are made



At the very least, a list of the kind of work which could give rise to such concerns should have been given to the public. For example, policy making including exemptions from proposed policies; awarding of contracts, consultancies and licenses and their termination, supervision of such contracts; all decisions in relation to land use and premiums etc. Such list of work should give examples and raise concrete questions so that members of the public could articulate clearly their concerns.

(3) The specific possible issues of concern

The authors (civil servants?) who prepared the Consultation Document appear to believe that the only issue of concern is conflict of interest or perceived conflict of interest. No definition of conflict of interest is given so it is difficult to know whether the term is intended to cover all specific issues of concern. In any event, specific types of conduct ought to have been spelled out in the Consultation Document so that the public could articulate whether the issue was one of real public concern and if so, whether the current system adequately addresses these concerns.

It can be seen from the Report of the Consultants (Hay Group) that in several of the other jurisdictions studied possible use of confidential information not available to the general public is also a concern and is specifically addressed in different ways.



As also emerges from some of the views expressed by members of the public put on the web-site of this Committee, a legitimate question is whether former civil servants' connections with and access to their ex-colleagues and subordinates who are still in the civil service should be up for grabs to and for the benefit of their private sector employers along with any confidential information not otherwise available to the general public.

- (4) An informed analysis of the content of the legal rights listed in Annex A.

The blanket 'mantra' of the right to work has been invoked without any explanation whatsoever of the legal content of the right to work. It is plainly not as a matter of law so simple as it sounds. And yet, this has been repeated in the Document. Without a proper explanation, this is blatantly misleading. The same applies to all the other rights listed in Annex A.

- (5) Unique features of the HKSAR which might make greater restriction necessary

Several spring to mind. All of the other jurisdictions studied have elected governments so that policy-making by civil servants is not a party of the institutional frame-work and in most of the other jurisdictions studied, a mature system of checks and balances exists and is properly institutionalized whereas none of this is true in Hong Kong. All land is owned



by Government and land policy and use is entirely determined by Government. Many spheres of Government are entirely devoid of any checks and balances and have great potential to benefit specific private sector interests to the detriment of the public interest as they may merit greater restrictions on employment of former civil servants than exist in other jurisdictions.

(6) 'Jobs for the Boys'

The ready availability of jobs for former civil servants in the substantial number of quasi-governmental organizations which exist in Hong Kong. Detailed information and figures should be made available of the various quangos and the percentage of top positions in those quangos taken up by former civil servants.

These considerations should have been mentioned in the Consultation Document.

CP's Views

3. CP believes that it is an essential ingredient of good governance for the public to have the fullest confidence in the integrity as well as the competence of the Civil Service. This is all the more so because of the substantial discretionary powers which are placed in the hands of Government which can be exercised for the benefit of specific private sector interests to the detriment of the public interest and the absence



of credible checks and balance and democratic accountability in our governmental system. That confidence cannot be secured merely by assuming that if a civil servant is caught in a criminal act, he/she will suffer the consequences. Thus CP disagrees with those civil servants who believe that public perception of impropriety should not be a relevant consideration in deciding what system should regulate post-civil service employment.

4. Skills and experience gained in public service can be legitimately used by former civil servants in post-civil service employment. However, CP would not agree that knowledge of any confidential information acquired while a civil servant which is not available to the general public should be made use of for the private commercial gain either of the former civil servant or his employer. Nor should it be possible for any employer to make a private commercial gain from the special connections or access which a former civil servant has to his former colleagues or subordinates. Any risk of this occurring should be eliminated by appropriate restrictions which should be equally viewed as restrictions imposed on potential employers as on former civil servants. No employer can have a legitimate expectation of receiving such benefits through employing a former civil servant. Fairness in society and a level playing-field in business and employment markets are values which we expect and espouse.
5. CP is in favour of a clearer definition of key elements of conduct which the system should be designed to prevent and more detailed



guidelines on the considerations which those tasked with vetting applications for permission. The Advisory Committee should become the Advisory and Vetting Committee with full power to decide upon applications for permission falling within its terms of reference and to offer advice on the system generally. It should also offer advice on appropriate contractual restrictions on post-service employment for all the employees of the many quasi-governmental organizations who are equivalent to the directorate grade-level. It should be completely independent of the Civil Service, its membership broadened and it should not be chaired by a member of the Judiciary although retired judges should be eligible for chairmanship and retired civil servants could be included in its membership. No board members of developers, banks or conglomerates should be included either.

Recommendation

Establish an independent Advisory and Vetting Committee with full power to decide upon applications within its terms of reference. It should not be headed by a serving member of the Judiciary.

6. Issue 1

Protecting the public interest should be the primary basis of the underlying control regime. Insofar as any control regime has to comply with the law and insofar as any aspect of the regime may actually infringe any individual's right, no doubt this will be



considered in formulating the details of the system and legal advice can be sought in individual cases. Procedures are available to civil servants, former civil servants as to all residents of Hong Kong to seek to assert the right of any individual. Neither serving nor former civil servants require any special protection in this regard.

Issue 2

CP is of the view that avoidance of reasonable concerns of 'deferred reward' in return for past favours is essential for the maintenance of the Government's credibility and therefore it must be made a specific objective of the control regime. The current policy objective is also inappropriate in that it does not appear to refer at all to use of confidential information or use of personal connections. (See para. 2(3) above). More detailed policy objectives and guidelines should be given. In addition to the above, such policy objectives/guidelines could include the following:

- (i) Ensure probity/integrity in government expenditure/decisions
- (ii) Ensure fair and equitable government procurement processes
- (iii) Ensure that confidential government information is not compromised
- (iv) Minimise possibilities of obtaining preferential treatment or privileged access to government after leaving public office
- (v) Minimise possibilities of using public office to unfair advantage in obtaining opportunities for outside employment



- (vi) Avoid the risk that a particular business, company, firm or individual might gain an improper advantage over its competitors by employing someone who in the course of his official duties has had access to technical or other information which those competitors might legitimately regard as their trade secrets or to information relating to proposed developments in Government policy which may affect that firm or its competitors.
- (vii) Preventing civil servants from developing inappropriate relationships with prospective employers or using information acquired during their civil service career to the advantage of their new employers

(See on the above Hay Group Report _ paras. 2.3.5, 2.3.6, 2.4.2.2)

Issue 3

Periods of being subject to a control regime should depend on the nature of the work undertaken during say the last 10 years of the civil servant's career in the civil service not upon the level of seniority or if less than 10 years during his/her employment within the civil service. Where none of the detailed policy objectives/guidelines could be a consideration in the case of an individual, there should be no application of the control regime. Where periods of restriction apply, final leave should be excluded from calculation of commencement of period of restriction but no outside work should be permitted during final leave. A civil servant on leave, albeit final leave, is still an



employee of Government. Where any of the objectives/guidelines are a consideration, the period of being subject to control should be up to a given age applying across the board, the age to be fixed by the Advisory and Vetting Committee. Every individual subject to control should be subject to the internal assessment process followed by approval being given by the Advisory and Vetting Committee. A blanket exemption for unpaid voluntary work should continue. The nature of restrictions imposed will depend upon the job or self-employment sought by the former civil servant and the nature of the work upon which the civil servant was engaged during the last 10 years of his civil service employment.

Issue 4

Yes, since this will be a necessary element in deciding what restriction, if any, should be imposed.

Issue 5

Yes, in relation to the 1st question but as can be seen from the above, the imposition of work restrictions on the permitted employment alone do not address the other areas of public concern. Refusal of permission for that employment altogether may be necessary but this will be determined by the Advisory and Vetting Committee.

Issue 6

See above under para. 5.



Issue 7

A counter argument to consideration (a) which seems to be a coded message of 'jobs for the boys' is whether it is healthy for the development of the NGO sector to have the pervasive influence of Government in the form of former civil servants in the highest positions in those organisations when Government already exercises control through the subvention system. The issue of double pay would not arise if non-former civil servants were to be employed. Perhaps, it is high time to break up these cosy arrangements.

Issue 8

No views

Issue 9

With the above proposed regime, CP does not consider it necessary to maintain the current system of public disclosure. Instead, the Advisory and Vetting Committee should make an annual report with the freedom to make reference to any case it considers merits public attention.