

## **Legislative Council Panel on Public Service**

### **Measures for managing cases of misconduct and under-performance in the civil service**

#### **Purpose**

This paper presents for Members' information an overview of the measures taken by the Government in managing cases of misconduct and under-performance in the civil service.

#### **Core values guiding civil service management**

2. Maintaining a clean, professional and efficient civil service is conducive to the good governance as well as the social stability and prosperity of Hong Kong. We expect civil servants to deliver quality and professional services to the public with impartiality, integrity, dedication and diligence.

3. Apart from giving due recognition to civil servants with meritorious performance, our civil service management system also screens out sub-standard performers and places them under supervision and counselling to help them attain the required standard of performance. Appropriate actions, including compulsory retirement, will be taken to handle staff with persistent sub-standard performance. Insofar as the administration of staff discipline is concerned, we have in place a well-defined disciplinary mechanism. Acts of misconduct committed by civil servants will be handled by the Government in strict accordance with the established disciplinary procedures.

#### **Managing misconduct of civil servants**

##### ***The civil service disciplinary mechanism***

4. All civil servants are expected to observe the rule of law and act with impartiality and honesty. They must abide by the code of conduct embodied in various civil service rules and regulations and uphold the highest standards of probity in discharging their duties as well as in their daily lives. For example, a civil servant who commits a criminal offence, whether or not it is related to his duty, renders himself liable to disciplinary action, on top of the sentence handed down by the Court.

5. For cases involving minor misconduct, heads of department may issue warnings to the officers concerned without recourse to formal disciplinary proceedings. Formal disciplinary action would be instituted in the event of repeated minor misconduct, an act of a serious misconduct or a criminal conviction.

6. Formal disciplinary action is taken in accordance with the provisions and the procedures laid down in the Public Service (Administration) Order (“PS(A)O”) and the Public Service (Disciplinary) Regulation. For certain members of the disciplined services departments (mainly the rank-and-file and middle-ranking officers) who are subject to provisions in the respective disciplined services legislation, their cases are dealt with under the relevant legislation. Such provisions, which are stipulated to suit the circumstances and operational requirements of the disciplined services, enable the heads of the disciplined services to take resolute and swift action in cases of misconduct where appropriate.

7. To expedite the handling of cases of misconduct and to process them in a more systematic manner, the Secretariat on Civil Service Discipline (“SCSD”) was established in 2000 to centrally process formal disciplinary actions under the PS(A)O. Upon implementation of the measures to streamline the disciplinary procedures (including delegating to heads of department the power to take disciplinary actions, thus enabling bureaux and departments to assume greater ownership and accountability in human resources management; issuance of a practical guide to departments; and the development of an electronic database on precedent cases to facilitate deliberation on the level of punishment, etc.), the processing time for disciplinary cases has been progressively reduced over the years. Before the setting up of SCSD in 2000, disciplinary cases requiring a hearing<sup>1</sup> could generally be completed within the timeframe of 7 to 18 months, whereas cases that did not require a hearing<sup>2</sup> were dealt with within 1 to 9 months. In 2004/05, these lead times have been reduced to 3-9 months and 1-3 months respectively.

### ***Disciplinary punishments***

8. The range of punishment that may be imposed under formal disciplinary action includes reprimand, severe reprimand, financial penalty, reduction in rank, compulsory retirement, and dismissal. In the three years ending March 2005, punishments were awarded in 859 cases under the PS(A)O. Details are given in **Annex A**.

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<sup>1</sup> These denote cases processed under Sections 9 and 10 of the PS(A)O.

<sup>2</sup> These denote cases processed under Section 11 of the PS(A)O (i.e. cases of criminal conviction) and Section 10(3) of the PS(A)O (i.e. abscondment cases).

9. The gravity of the misconduct will be the primary consideration of the disciplinary authority in determining the level of punishment. Other relevant factors that are taken into account include the customary level of punishment, mitigating circumstances, the service and disciplinary record of the officer, and the position he holds in the service. It is our policy that for the same type of offence, a more senior officer will normally receive a heavier disciplinary punishment than a junior ranking officer, as senior officers are expected to lead their subordinates by personal example. **Annex B** shows the number of officers that have been removed from the service on discipline grounds in the three years ending March 2005, broken down by rank.

10. Having regard to the expectations of the community on the standard of probity of the civil service, we are committed to keeping the disciplinary mechanism under regular review, thereby ensuring that the prevailing level of punishment remains appropriate in present-day circumstances. In this connection, we have, following an earlier review of the punishments meted out to officers who have committed criminal offences, including cases where the criminal offence committed is minor in nature but repeated, issued guidelines to remind heads of department to award removal punishments where the circumstances of the cases so warrant in order to achieve the desired punitive and deterrent effects.

### **Maintaining vigilance and cooperation with the Independent Commission Against Corruption (“ICAC”)**

11. Staff from the SCSD pays regular visits to departments. Apart from assisting departments in taking disciplinary actions against staff who have misconducted themselves, SCSD staff shares with departmental managers information on trends that are emerging on the discipline front, thereby helping them to better align management focuses and priorities in staff management. Since October 2002, 68 such visits have been made.

12. To uphold a high standard of conduct and integrity in the civil service, we are working closely with the ICAC in monitoring the overall situation in the civil service and combating corruption and malpractices. Under the existing mechanism, ICAC may, on the advice of the Operations Review Committee (“ORC”), refer cases involving misconduct or malpractices of civil servants to the relevant departments for consideration of disciplinary or administrative action.

13. Upon receipt of the ORC referrals, heads of department will conduct investigation into the cases to see if there is any misconduct or malpractice on the part of the officers concerned. If the evidence collected

substantiates the allegations, disciplinary action will be taken against the officer concerned, and punishment imposed, in accordance with the PS(A)O (or the relevant disciplined services legislation to which the officer is subject). SCSD works closely with departments in ensuring that disciplinary or administrative actions are taken in an impartial and timely manner. Where necessary, ICAC investigation teams will at the departments' request hold case conferences with them to facilitate their conducting investigations into the ORC referrals and taking follow-up actions promptly.

### **Due process**

14. While recognizing that disciplinary cases must be processed expeditiously, the Administration is equally mindful of the importance of due process. A number of safeguards are in place to ensure that officers alleged of misconduct are given a fair hearing and sufficient opportunities to defend themselves. Materials forming part of the disciplinary proceedings are fully disclosed to an accused officer to facilitate his defence and the making of representations. Other safeguards include seeking the advice of the Department of Justice on the sufficiency of evidence to substantiate the alleged misconduct, the appointment of inquiry officers who do not have supervisory responsibilities over the accused officer to determine his culpability, and seeking independent advice from the Public Service Commission on the level of punishment. An officer who is aggrieved by a decision of the disciplinary authority may appeal to the Chief Executive or his delegates. Any such appeals are reviewed by parties not involved in the original disciplinary proceedings. The officer may also seek redress through the Court by means of an application for judicial review.

### **Managing under-performers**

15. To ensure that efficient and quality services are delivered to the community, the Government attaches great importance to civil service performance management. On the one hand, the Administration is committed to providing its staff with various job or skill-related training, and allocating resources to providing a wide range of learning opportunities and sponsorship schemes for officers at different levels. All civil servants, be they frontline staff or middle and senior managers, are encouraged to pursue continuous learning in their own time to further enhance their personal effectiveness and capacity for quality service delivery. On the other hand, we are taking appropriate actions to manage under-performers, including requiring an officer to retire under Section 12 of the PS(A)O ("Section 12")<sup>3</sup> in the event of

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<sup>3</sup> Under Section 12 of the PS(A)O, the Administration may retire an officer with persistent sub-standard performance in the public interest.

persistent sub-standard performance.

16. In March 2003, we promulgated a set of revised procedures for handling persistent sub-standard performers. Under the revised procedures, an overall “unsatisfactory” performance for a 12-month period (where the officer concerned has been duly counselled and forewarned) will form the basis of invoking Section 12 action.

17. With the implementation of the revised procedures for handling under-performers, the lead time for compulsorily retiring such officers has been shortened. In the two years ending March 2005, 18 civil servants were compulsorily retired from the service because of persistent sub-standard performance, relative to 16 cases in the four preceding years. During this period, another 79 civil servants were brought under supervision under the Section 12 mechanism. Of these, 34 showed substantive improvement that rendered further actions under Section 12 not necessary. For the remaining 45 civil servants, 29 are still under supervision while 16 have left the service for other reasons.

18. We will keep the mechanism under regular review to ensure that it remains effective in meeting present-day requirements. In this connection, we are reviewing the procedures in the light of operational experience gained in the past two years since their implementation. We are of the initial view that there is scope for further streamlining the procedures so that management action on persistent sub-standard performers can be taken in a more effective manner, thereby further improving the civil service performance management system.

19. In drawing up proposals to further streamline the current Section 12 procedures, the principles underlying the existing procedures will remain unchanged, i.e. where an officer is not performing up to the required standard, he will be so advised, and helped to improve his performance through counselling, training or other administrative measures as appropriate. Recourse to retirement in the public interest will only be considered when these measures do not achieve the desired results. We would be guided by these principles in considering whether the procedures could be further streamlined and the lead time further reduced. We will also ensure that the procedures adopted are fair and just, and that reasonable protection is given to the legitimate rights of individual officers.

20. We will shortly seek the views of the Public Service Commission and the staff sides on the relevant proposals.

## **Concluding remarks**

21. In the five years between 2000/01 and 2004/05, on average some 120 civil servants were removed from the service each year as a result of disciplinary punishment or compulsory retirement under Section 12 on account of sub-standard performance (details at [Annex C](#)). In future, we will continue to handle cases of misconduct or under-performance impartially and efficiently according to the relevant rules and regulations.

22. To ensure that Hong Kong will continue to have a meritorious, efficient and honest civil service, it is incumbent upon the Government to keep the relevant mechanisms under regular review, and seek improvements where appropriate, so that the disciplinary system would continue to be effective and the yardsticks for managing under-performers would remain appropriate in meeting the requirements of our time.

23. The Hong Kong civil service is acclaimed internationally for its integrity and efficiency. According to a World Bank report released recently, the quality of governance of Hong Kong has improved. Hong Kong scored 1.49 for Government effectiveness, up from 1.44 in 2002. The score for corruption control has also risen from 1.43 in 2002 to 1.57 in 2004. In addition, according to the World Competitiveness Yearbook 2005 published by the International Institute for Management Development, Hong Kong is one of the most competitive regions in the world, being ranked second behind the United States of America. Specifically, Hong Kong tops the chart on Government efficiency and business efficiency, both being key factors underlining world competitiveness.