

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Overview of civil service disciplinary matters

Purpose

This paper sets out for Members' information an overview of the civil service disciplinary mechanism and the updated figures on punishments imposed.

Civil Service Disciplinary Mechanism

2. The civil service is the backbone of the Government. It serves the community and contributes to the effective governance, stability and prosperity of Hong Kong. The Administration maintains a system in the civil service whereby those with exemplary service are duly recognised and rewarded, and those found culpable of misconduct or criminal offences are properly disciplined and punished.

Summary disciplinary action

3. For minor misconduct (e.g. occasional unpunctuality or breach of government regulations of a minor nature, etc.) committed by civil servants in the civilian and disciplined services, the relevant bureaux or departments ("B/Ds") may, after completing departmental investigation, take summary disciplinary action (e.g. the issue of verbal or written warnings) against the civil servants concerned without the need to conduct formal disciplinary hearings. Such summary disciplinary action allows the management to deal with isolated acts of minor misconduct expeditiously.

Formal disciplinary action

4. For repeated minor misconduct or more serious misconduct (e.g. repeated absence from duty, abuse of official position, or wilful neglect of official instructions, etc.) allegedly committed by civil servants, or for civil servants who are convicted of criminal offences, the relevant B/Ds may institute formal disciplinary proceedings against the civil servants concerned.

5. Formal disciplinary action in respect of *civilian grades and senior ranking civil servants in the disciplined services grades*¹ is taken in accordance with the provisions under the Public Service (Administration) Order (“PS(A)O”) and the Public Service (Disciplinary) Regulation². Upon receiving a report of suspected misconduct or criminal conviction against a civil servant, the B/D concerned will conduct a preliminary investigation or consider the records of court proceedings as appropriate. If the B/D considers that there are sufficient grounds to initiate formal disciplinary action, it will refer the case to the Secretariat on Civil Service Discipline (“SCSD”) under the Civil Service Bureau. SCSD is responsible for processing all disciplinary cases under the PS(A)O and advising B/Ds on disciplinary procedures and punishment benchmarks.

6. Formal disciplinary action in respect of *middle and junior ranking civil servants in the disciplined services grades*³ is generally taken in accordance with the provisions under the respective Disciplined Services Legislation (“DSL”)⁴ and the related subsidiary regulations on discipline. Heads of the disciplined services departments (“DSDs”) are empowered by the DSL to institute disciplinary proceedings against civil servants suspected of misconduct or convicted of criminal conviction. This arrangement is essential to the proper discharge of the law enforcement functions of the disciplined services. It also has regard to the unique operations of each disciplined service.

¹ These refer generally to civil servants at a rank equivalent to superintendent/assistant superintendent and above of Correctional Services Department, Customs and Excise Department, Fire Services Department, Government Flying Service, Hong Kong Police Force and Immigration Department.

² The PS(A)O is an executive order made by the Chief Executive (“CE”) under Article 48(4) of the Basic Law. It sets out the CE’s authority in regard to the management of the civil service, including discipline matters. The Public Service (Disciplinary) Regulation is a regulation made under the PS(A)O.

³ The Traffic Warden grade, which is a civilian grade in the Hong Kong Police Force, is subject to the Traffic Wardens (Discipline) Regulations (Cap. 374J) in respect of misconduct committed.

⁴ The DSL refers to the Customs and Excise Service Ordinance (Cap. 342), the Fire Services Ordinance (Cap. 95), the Government Flying Service Ordinance (Cap. 322), the Immigration Service Ordinance (Cap. 331), the Police Force Ordinance (Cap. 232) and the Prisons Ordinance (Cap. 234). For the purposes of this paper, the DSL also includes the Traffic Wardens (Discipline) Regulations (Cap. 374J).

Due process

7. It is important that disciplinary cases are processed with regard to the principles of natural justice and observance of procedural propriety. Safeguards are in place to ensure that a civil servant suspected of misconduct is given a fair hearing and sufficient opportunities to defend himself/herself. For instance, where disciplinary hearing is to be conducted, an accused civil servant will be informed of his/her rights and provided with a full set of the evidence to be adduced and a list of the witnesses to be called by the prosecution well before a disciplinary hearing; he/she will be given the right to be heard and to cross-examine witnesses during the hearing; and he/she can make representations at various stages of the disciplinary proceedings.

8. An accused civil servant may also apply for legal or other forms of representations at disciplinary hearings. The Court of Final Appeal (“CFA”) ruled in *Lam Siu Po v. Commissioner of Police* (FACV 9/2008), amongst other points, that an adjudicating tribunal should consider allowing an accused to be legally represented where fairness requires. Nonetheless, there is no absolute right to legal representation. Whether an accused civil servant should be permitted to be legally represented by the adjudicating tribunal depends on whether fairness so requires in the circumstances.

9. In the light of the CFA judgment, SCSD and DSDs have put in place administrative arrangements under which applications for legal or other forms of representation at disciplinary hearings will be processed and approved as appropriate. Guidelines have been issued to B/Ds requiring the disciplinary authority to consider each application in the light of the facts of the case, and all other relevant factors including the seriousness of the charge and the potential punishment to be imposed on the accused officer. Since the introduction of the administrative arrangement, all applications for legal representation involving serious disciplinary cases (being those which may lead to dismissal, compulsory retirement or reduction in rank) have been approved.

10. To formalise the administrative arrangements for the approval of legal or other forms of representation at disciplinary hearings, and to introduce other improvements to the disciplinary proceedings under the DSL, we have refined our proposals to amend the subsidiary regulations under the respective DSL and are engaging DSD management and staff sides to further improve the refinement proposals. The relevant amendment regulations incorporating the proposals will be tabled in the Legislative Council for scrutiny once they are finalised.

Updated Punishment Figures

11. The range of punishment that may be imposed on a civil servant found guilty of misconduct or convicted of criminal offence after formal disciplinary proceedings under the PS(A)O or the DSL mainly includes reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. The disciplinary authority may also impose a financial penalty in the form of reduction in salary, stoppage or deferment of salary increments or a fine concurrently with some of the stated punishments should the gravity of the misconduct or criminal offence so warrant. Certain punishments unique to the disciplined services are also provided under the DSL (e.g. caution, performance of extra duties, etc.).

12. When deciding on the level of punishment, the disciplinary authority will take the nature and gravity of the misconduct or criminal offence as the key consideration. Other pertinent considerations include the customary level of punishment for similar misconduct or criminal offences, existence of any mitigating factors, the rank and service and disciplinary record of the civil servant concerned, etc. Since senior civil servants are expected to lead by example, a higher-ranking civil servant would normally receive a heavier punishment than a junior civil servant found guilty of the same misconduct or criminal offence. The disciplinary authority will also, pursuant to the Public Service Commission Ordinance (Cap. 93), seek the independent advice from the Public Service Commission on the level of punishment.

13. A civil servant who is aggrieved by a disciplinary decision may lodge a statutory appeal under the relevant DSL, make representations to the Chief Executive under section 20 of the PS(A)O, or petition the Chief Executive under Article 48(13) of the Basic Law, as appropriate. A civil servant may also seek redress through the court by applying for a judicial review against the decision.

14. In the 5-year period from 1 April 2008 to 31 March 2013, disciplinary punishments were handed out in 1 471 cases under the PS(A)O or the DSL as shown at **Annex A**. Of the 82 civil servants dismissed from the service, a breakdown by their general ranking and the nature of their misconduct or criminal offences is set out at **Annex B**.

Conclusion

15. The Administration is determined to uphold the highest standard of probity and integrity in the civil service. We have put in place a system under which disciplinary cases are handled in a timely and fair manner. To meet the increasing demand and expectation of the public on the civil service, we will keep the disciplinary system under review and will introduce improvements as and when necessary.

16. Members are invited to note the content of this paper.

Civil Service Bureau
November 2013

**Punishments imposed on civil servants
after completion of disciplinary proceedings under the
Public Service (Administration) Order or
the Disciplined Services Legislation (“DSL”)
(2008/09 – 2012/13)**

| Financial year Type of punishment | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | Total |
|--|------------|------------|------------|------------|------------|--------------|
| Dismissal | 23 | 21 | 18 | 10 | 10 | 82 |
| Compulsory retirement | 28 | 18 | 19 | 12 | 13 | 90 |
| Reduction in rank | 2 | 1 | 0 | 1 | 1 | 5 |
| Severe reprimand plus financial penalty | 58 | 34 | 30 | 25 | 36 | 183 |
| Severe reprimand | 63 | 45 | 43 | 48 | 44 | 243 |
| Reprimand plus financial penalty | 24 | 20 | 14 | 11 | 10 | 79 |
| Reprimand | 73 | 49 | 63 | 66 | 45 | 296 |
| Warning/caution /admonition ^{Note} | 92 | 93 | 94 | 89 | 56 | 424 |
| Others (e.g. extra duties under DSL) | 12 | 13 | 15 | 12 | 17 | 69 |
| Total | 375 | 294 | 296 | 274 | 232 | 1 471 |

Note: These only include punishments imposed after completion of disciplinary proceedings under the Public Service (Administration) Order or the DSL.

**Dismissal cases processed under the Public Service (Administration) Order (“PS(A)O”)
or the Disciplined Services Legislation (“DSL”)
(2008/09 – 2012/13)**

I. Breakdown of dismissal cases by general ranking of concerned civil servants

| | | Number of dismissal cases (financial year) | | | | | |
|---|---|--|-----------|-----------|-----------|-----------|-----------|
| | | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | Total |
| Cases processed under the PS(A)O | Directorate or equivalent^(a) | 0 | 0 | 0 | 0 | 0 | 0 |
| | MPS Pt. 14 to 49 or equivalent^(b) | 4 | 2 | 2 | 1 | 2 | 11 |
| | Below MPS Pt. 14 or equivalent | 4 | 2 | 4 | 0 | 2 | 12 |
| | <i>Sub-total</i> | 8 | 4 | 6 | 1 | 4 | 23 |
| Cases processed under the DSL | Middle-ranking civil servants^(c) | 1 | 0 | 1 | 1 | 0 | 3 |
| | Junior-ranking civil servants^(d) | 14 | 17 | 11 | 8 | 6 | 56 |
| | <i>Sub-total</i> | 15 | 17 | 12 | 9 | 6 | 59 |
| Total | | 23 | 21 | 18 | 10 | 10 | 82 |

Note

- (a) Including more senior ranking civil servants in the disciplined services grades (e.g. Assistant Commissioner of Police, Chief Ambulance Officer, Chief Pilot, etc.)
- (b) Including senior ranking civil servants in the disciplined services grades (e.g. Superintendent of Police, Assistant Superintendent of Customs and Excise, Divisional Officer, etc.)
- (c) Civil servants at inspectorate ranks (e.g. Inspector of Police, Inspector of Customs and Excise, Assistant Divisional Officer, etc.)
- (d) Rank and file civil servants (e.g. Police Constable, Customs Officer, Fireman, etc.)

II. Breakdown of dismissal cases by nature of misconduct/criminal offence

| Nature of misconduct/criminal offence | | Number of dismissal cases (financial year) | | | | | |
|---------------------------------------|--|--|-----------|-----------|-----------|-----------|-----------|
| | | 2008/09 | 2009/10 | 2010/11 | 2011/12 | 2012/13 | Total |
| Misconduct | Unauthorised absence | 3 | 2 | 4 | 0 | 3 | 12 |
| | Negligence / Failure to perform duties / Breach of instruction | 1 | 1 | 0 | 0 | 0 | 2 |
| | Others (e.g. abuse of official position, failure in supervisory accountability, etc.) | 1 | 0 | 0 | 0 | 1 | 2 |
| | <i>Sub-total</i> | 5 | 3 | 4 | 0 | 4 | 16 |
| Criminal offence | Prevention of Bribery Ordinance offences | 3 | 2 | 0 | 0 | 0 | 5 |
| | Conspiracy to defraud / Deception | 3 | 2 | 1 | 0 | 0 | 6 |
| | Theft | 3 | 2 | 2 | 4 | 0 | 11 |
| | Sexual offences | 1 | 5 | 2 | 0 | 2 | 10 |
| | Forgery | 0 | 0 | 1 | 0 | 0 | 1 |
| | Misconduct in Public Office | 1 | 0 | 1 | 1 | 2 | 5 |
| | Murder / Assault / Wounding / Fighting | 2 | 3 | 1 | 0 | 0 | 6 |
| | Road traffic offences | 0 | 0 | 0 | 0 | 1 | 1 |
| | Others (e.g. possession of drugs, criminal damage, false claim, obstructing a public officer, resisting arrest, etc.) | 5 | 4 | 6 | 5 | 1 | 21 |
| | <i>Sub-total</i> | 18 | 18 | 14 | 10 | 6 | 66 |
| Total | 23 | 21 | 18 | 10 | 10 | 82 | |