

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Civil Service Disciplinary Mechanism and Procedures

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

Core values guiding the conduct of civil servants

2. A major pillar contributing to the stability and prosperity of Hong Kong is the presence of a clean, efficient and professional civil service. Civil servants are expected to serve the public with dedication, professionalism, diligence, integrity, honesty and impartiality. These core values have endured the test of good governance and shaped the culture of the civil service.

3. We have a well established civil service management system whereby good performance and exemplary service are rewarded and given due recognition, whilst under-performers are managed, counselled and offered assistance to bring their performance up to requirement. For persistent sub-standard performers who fail to improve, we will take necessary actions to retire them in the public interest.

4. Apart from having to deliver results and to meet performance targets, civil servants have to abide by principles of conduct laid down in civil service rules. Civil servants are expected to uphold the highest standards of honesty and 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.

The civil service disciplinary mechanism

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

6. Formal disciplinary action is taken in accordance with provisions and 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 have been 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.

Due process

7. While recognizing that disciplinary cases must be processed expeditiously in order to achieve the desired punitive effect, the Administration is equally mindful of the importance of due process. A number of safeguards exist 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 the accused officer to facilitate his defence and the making of representations. Other safeguards include consultation with 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 officers to determine their culpability, and seeking independent advice from the Public Service Commission on the level of punishment.

8. 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 proceedings. The officer may also seek redress through the Court by means of an application for judicial review (“JR”).

Streamlining of procedures

9. The Secretariat on Civil Service Discipline (“SCSD”), established in 2000 to centrally process formal disciplinary action under the PS(A)O, has introduced in the past few years various measures to streamline the disciplinary process. These include -

- (a) delegation to heads of department of the authority to impose punishment;

- (b) fast-track hearings for officers who intend to plead guilty to the disciplinary charges;
- (c) regular meetings/case conferences with departments to shorten the time required for investigation and to minimize written exchanges;
- (d) training for case officers and more comprehensive briefings for inquiry officers;
- (e) the issue of a practical guide to departments, facilitating efficient and effective disciplinary investigation; and
- (f) the development of an electronic database on precedent cases to facilitate deliberations on the level of punishment.

10. With the implementation of the above initiatives, the processing time for disciplinary cases has been progressively reduced over the years.

11. In 2003/2004, over 80% of the disciplinary cases which require a hearing under the PS(A)O can be completed within the timeframe of 3 to 9 months. Cases which do not require a hearing could generally be dealt with in not more than 3 months. As for the small number of cases requiring longer processing time, they are mostly complicated cases which call for more in-depth investigation and intensive gathering of evidence, including some cases for which disciplinary actions had to be held in abeyance pending the outcome of criminal investigation and/or court action.

12. The overall changes to the processing time for cases handled under the PS(A)O are summarized below -

	Processing time	
	Cases requiring a disciplinary hearing¹	Cases not requiring a disciplinary hearing²
Prior to 2000	7 to 18 months	1 to 9 months
2001/02	5 to 12 months	1 to 6 months
2002/03	4 to 9 months	1 to 4 months
2003/04	3 to 9 months	1 to 3 months

¹ These denote cases processed under sections 9 and 10 of the PS(A)O.

² 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).

Punishments handed down

13. In the three years ending March 2004, punishment was awarded in 899 cases under the PS(A)O. Details are given in **Annex A**. The high percentage of severe punishment handed down in recent years (i.e. punishment at or above “severe reprimand with a financial penalty”) bears testimony to the tough stance that the Administration has taken against civil servants who have misconducted themselves.

14. In awarding punishment, we take the gravity of the misconduct as the key factor. 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 would 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 who have been removed from the service on discipline grounds in the three years ending March 2004, broken down by rank.

Maintaining vigilance

15. Apart from ensuring that disciplinary cases are acted upon in a prompt and broadly consistent manner, the SCSD has made sustained efforts to remind bureaux/departments of the rising public expectations about the conduct and probity of civil servants nowadays and the need to uphold a standard of conduct commensurate with those expectations. Since October 2002, staff from the SCSD made 46 visits to departments. Apart from discussing disciplinary cases, SCSD staff share with departmental managers information on trends that are emerging, thereby helping them to better align management focuses and priorities in staff management. The SCSD has also made it a point to remind departmental managers of the need to look into the question of supervisory accountability³ when dealing with misconduct cases involving absenteeism and malpractice.

Judicial reviews

16. Court judgments on JR cases provide useful reference for further improving the administration of the disciplinary mechanism. In the three years ending March 2004, punishment was awarded in 899 cases under the PS(A)O. In six of these cases, the officers sought a judicial review of the disciplinary

³ A supervisor is expected to account for his subordinates' acts or omissions which are so serious, repetitive or widespread that, by reasonable diligence, these should have been detected by the supervisor and acted upon earlier than is otherwise the case.

decisions. Of the four JR cases that had been concluded, one was allowed. For details, please see **Annex C**.

17. In the three years ending March 2004, punishment was awarded in 1151 cases under the disciplined services legislation⁴ (“DSL”). Applications for judicial review of decisions awarded under the various DSL are launched on 31 occasions. Of the 16 JR cases that had been concluded, four were allowed or partially allowed and one was conceded before hearing commenced. For details, please see **Annex D**.

18. We have carefully examined the cases in which the Court ruled in favour of the officers. The Administration notes the Court’s commentary in the case cited in Annex C about the clarity of the guidelines on standard of proof provided to inquiry officers responsible for conducting disciplinary hearings. The SCSD has in this regard refined the guidelines in consultation with the Department of Justice. Separately, the Police Force Management has, following a critical review of the cases cited in Annex D and the relevant court judgments, taken steps to -

- (a) remind their adjudicating officers of the importance of applying an appropriate burden and standard of proof, and of full disclosure of all relevant information to an accused officer to facilitate him in preparing his defence or making representations; and
- (b) remind the Force Discipline Officers to keep an open mind when inviting representations.

Interdiction

19. Interdiction is a precautionary measure taken by management when it is considered necessary that an officer should cease exercising the powers and functions of his public office before he is cleared of the criminal or disciplinary charge laid against him, and where re-deployment of the officer to alternative duties is not feasible.

⁴ The legislation includes -

- (a) the Prisons Ordinance, Cap. 234 and Prison Rules, Cap. 234A;
- (b) the Customs & Excise Service Ordinance, Cap. 342 and Customs & Excise Service (Discipline) Rules, Cap. 342B;
- (c) the Fire Services Ordinance, Cap. 95;
- (d) the Government Flying Service Ordinance, Cap. 322 and Government Flying Service (Discipline) Regulation, Cap. 322A;
- (e) the Police Force Ordinance, Cap. 232 and Police (Discipline) Regulations, Cap. 232A; and
- (f) the Immigration Service Ordinance, Cap. 331.

20. As in the case of other disciplinary matters, the authority to interdict rank-and-file and middle-ranking officers in the disciplined services departments rests with the heads of the relevant disciplined service, by virtue of provisions in the respective disciplined services legislation.

21. Following a review in 2001, we have called for regular returns from departments on the number of interdiction cases. We demand vigilance on the part of departmental management to ensure that interdiction is resorted to only when it is strictly necessary; and to keep the period of interdiction with pay the shortest possible. There has been a steady drop, over the years, in the number of active interdiction cases (from about 150 cases in mid-2001 to 100 in March 2004). Cases of interdiction which last for less than a year account for 79% of the interdiction cases which were concluded in the 12 months ending March 2004. The same figure for cases concluded in the 12 months ending March 2002 was 59%.

Promotion of integrity in the civil service

22. Statistics released by the Independent Commission Against Corruption (“ICAC”) provide a useful backdrop for taking an overview of the service-wide “ethical climate”. Judging from the number and nature of cases resulting in prosecution, it is the assessment of ICAC that the corruption situation in the Government is under control and that there is no indication of a resurgence of syndicated corruption.

23. The assessment made by ICAC is broadly consistent with the main indicator that we in CSB have used to capture/monitor the overall situation, namely, the number of civil servants subject to disciplinary actions for convictions or misconduct related to the abuse of official position (please see **Annex E**). The figures in 2003/04, when read together with those in the preceding three years, suggest a steady overall trend.

24. The above notwithstanding, the Administration is fully conscious of the importance of sustained efforts and vigilance in upholding the highest standard of integrity in the civil service. We in CSB, jointly with ICAC, have been working closely with departments to promote a clean civil service. As part of our on-going efforts in this respect, we draw the attention of departments to problems and management weaknesses which come to light in disciplinary cases, thereby ensuring that adequate preventive measures are put in place.

25. In the past few years, we have updated most of the central guidelines on conduct and discipline matters in the civil service. In conjunction with ICAC, we have helped departments draw up supplementary guidelines on avoidance of conflict of interest and acceptance of advantage, and

arranged training and experience-sharing sessions for departmental managers to help them promote integrity and good conduct.

26. An out-reach team comprising directorate officers from CSB and ICAC have recently embarked on the “Civil Service Integrity Entrenchment Programme”. Under the programme, we visit departments and encourage them to take proactive measures to prevent corruption and to promote integrity in the workplace.

Management of persistent sub-standard performers

27. The Administration also attaches great importance to maintaining a high standard of staff performance. To streamline the procedures for handling persistent sub-standard performers, we promulgated in March 2003 a set of revised procedure under which an overall “unsatisfactory” performance rating for a 12-month period would be a sufficient basis for compulsorily retiring an officer in the public interest under section 12 of the PS(A)O.

28. In coming up with the revised procedure, we are mindful of the need to put in place checks and balances to protect the legitimate rights of individual officers. It remains our policy that action to retire an officer in the public interest would only be taken when repeated efforts to help the officer improve do not achieve the desired results.

29. In the four years ending March 2003, a total of 16 officers were retired from the civil service on grounds of persistent sub-standard performance. Following the promulgation of the streamlined procedures, departmental management has in general shown greater readiness to apply the “section 12 mechanism” as a means to restore less-than-satisfactory performance, and, in the case of persistent sub-standard performers, to make way for their early retirement from the service.

30. In the 12 months ending March 2004, some 60 officers were put under the supervision of the “section 12 mechanism”. A number of the officers had since made substantive improvements to their performance and were taken off the watch list. Eleven officers failed to do so and were retired in the public interest in 2003/04. At present, about 40 officers remain on the watch list.

31. Looking ahead, we will seek to maintain the momentum of our drive to identify under-performers and to take appropriate management actions early.

Concluding remarks

32. A clean, dedicated and efficient civil service is vital for maintaining public trust in and support for the Government. We will remain vigilant in seeking to uphold a high standard of conduct and performance through the administration of appropriate disciplinary or administrative measures. We will also keep under constant review the process through which disciplinary or administrative actions are taken, thereby ensuring that cases of misconduct and sub-standard performance are properly and promptly dealt with.

Civil Service Bureau
May 2004

**Punishment imposed under the PS(A)O
(2001/02 – 2003/04)**

	2001/02	2002/03	2003/04
Severe punishment			
Dismissal	36	38	23
Compulsory retirement	29	42	29
Reduction in rank	1	1	0
Severe reprimand plus financial penalty	46	84	87
Sub-total	112 (39%)	165 (49%)	139 (49%)
Other punishment			
Severe reprimand	32	24	15
Reprimand plus financial penalty	5	17	6
Reprimand	36	34	29
Warning	102	91	92
Sub-total	175 (61%)	166 (51%)	142 (51%)
Total	287	331	281

Figures in () denotes % as against total number of cases

**Breakdown of disciplinary cases in the Civil Service by punishment and rank
(2001/02-2003/04)**

		Removal			Non-removal ¹ (d)	Total (c)+(d)	% share of removal cases $\frac{(c)}{(c)+(d)} \times 100\%$	% share of dismissal cases $\frac{(a)}{(c)+(d)} \times 100\%$
		Dismissal (a)	Compulsory Retirement (b)	Sub-total (c)				
PS(A)O cases²	Directorate	<i>1</i>	<i>2</i>	<i>3</i>	<i>1</i>	<i>4</i>	<i>75%</i>	<i>25%</i>
	MPS Pt. 14-49³	<i>35</i>	<i>37</i>	<i>72</i>	<i>159</i>	<i>231</i>	<i>31%</i>	<i>15%</i>
	Below MPS Pt. 14	<i>61</i>	<i>61</i>	<i>122</i>	<i>542</i>	<i>664</i>	<i>18%</i>	<i>9%</i>
	Sub-total	<i>97</i>	<i>100</i>	<i>197</i>	<i>702</i>	<i>899</i>	<i>22%</i>	<i>11%</i>
DSL cases⁴	Middle- ranking officer⁵	<i>7</i>	<i>7</i>	<i>14</i>	<i>77</i>	<i>91</i>	<i>15.4%</i>	<i>7.7%</i>
	Junior- ranking officer⁶	<i>74</i>	<i>71</i>	<i>145</i>	<i>915</i>	<i>1060</i>	<i>13.7%</i>	<i>7%</i>
	Sub-total	<i>81</i>	<i>78</i>	<i>159</i>	<i>992</i>	<i>1151</i>	<i>13.8%</i>	<i>7%</i>
Total		<i>178</i>	<i>178</i>	<i>356</i>	<i>1694</i>	<i>2050</i>	<i>17.4%</i>	<i>8.7%</i>

¹ Including reduction in rank, severe reprimand, reprimand, financial penalty, and warning issued following formal disciplinary proceedings.

² Cases processed under the PS(A)O.

³ Also including officers in disciplined services departments with equivalent pay scale.

⁴ Cases processed under disciplined services legislation. Cases involving senior officers in the disciplined services departments (e.g. Superintendent of Police or above) are processed under the PS(A)O.

⁵ Officers at inspectorate ranks (e.g. Inspector of Police, Inspector of Customs and Excise, Assistant Divisional Officer, etc.)

⁶ Rank and file officers (e.g. Police Constable, Customs Officer, Fireman, etc).

**Judicial reviews against disciplinary decisions
launched during the period from 1 April 2001 to 31 March 2004**

Cases processed under the Public Service (Administration) Order

Position	No. of case
JR/application for leave to JR dismissed	3
JR allowed	1 ⁽¹⁾
Judgment awaited	1
JR to be heard	1
Total no of applications for leave for JR	6⁽²⁾

Note

- (1) Case summary is attached
- (2) 2 cases from Department of Health (a Registered Nurse and an ex-Medical Officer)
2 cases from Housing Department (an ex-Artisan and an ex-Workman I)
1 case from Food, Environment and Hygiene Department (a Hawker Control Officer)
1 case from Water Supplies Department (an ex-Works Supervisor II)

Officer/Dept	Judgment date	Case summary	Grounds of JR/Appeal	Outcome of JR/Appeal
A Nurse, Department of Health	2002	Officer was awarded a severe reprimand with a fine for having failed to conduct a fire drill as instructed and fabricated the fire drill report and the training record.	<p>The decision of the inquiry committee (“IC”) was illegal as it had wrongly shifted the burden of proof to the officer and/or wrongly adopted a low standard of proof.</p> <p>The guilty verdict was unreasonable. There was insufficient evidence for the IC to prove the alleged misconduct.</p> <p>The guilty verdict was procedurally improper. The IC failed to meet its duty to act fairly and provide adequate disclosure to the officer.</p>	<p>JR allowed.</p> <p>The judge considered that though there was no fault of the IC, a material unfairness had been done to the officer as the content of certain material of relevance (viz. a questionnaire used during the investigation) had not been disclosed to her by the department.</p> <p>The judge also remarked that the standard of proof had to be commensurate with the gravity of the charge.</p>

Remarks

The punishment was withdrawn after the JR decision. A fresh disciplinary inquiry was held subsequently after consultation with Department of Justice. The officer was found guilty and awarded a severe reprimand and a fine.

The Administration notes the court’s comment that the guidelines on standard of proof provided to Inquiry Officers (IO) responsible for conducting disciplinary inquiries were not sufficiently clear. Accordingly, the SCSD has refined the guidelines in consultation with the Department of Justice. IOs are now advised clearly that they should apply a standard of proof commensurate with the gravity of the disciplinary charge. Where the alleged misconduct is serious and could result in serious consequences for the officer, such as dismissal, the IOs should satisfy themselves that there are supporting testimony or other corroborating evidences before reaching a guilty finding. IOs’ special attention will be drawn to the procedures and the standard of proof to be applied prior to the commencement of disciplinary inquiry.

**Judicial reviews against disciplinary decisions
launched during the period from 1 April 2001 to 31 March 2004**

Cases processed under the Disciplined Services Legislation

Position	No. of case
JR/application for leave to JR dismissed	11
JR allowed/partially allowed/conceded before hearing commenced	5 ⁽¹⁾
Judgment awaited	2
JR to be heard	10
Cases pending action (officer has taken no action since submission of application for leave)	3
Total no of applications for leave for JR	31⁽²⁾

Note

(1) Case summaries are attached.

(2) 29 cases from Hong Kong Police Force (4 inspectorate and 25 rank and file officers)

1 case from Customs and Excise Department (rank and file)

1 case from Correctional Services Department (rank and file)

Officer/Dept.	Judgment date	Case summary	Grounds of JR/Appeal	Outcome of JR/Appeal
An ex-Police Constable	2003	<p>The officer was found guilty of 25 counts of ‘Contravention of Police Orders’ (unauthorized access to the Force’s computer system).</p> <p>The Force Discipline Officer (“FDO”) increased the punishment from ‘Severe Reprimand’ to ‘Compulsory Retirement’.</p> <p>The officer applied for JR on the FDO’s decision to increase the punishment.</p>	<p>(a) Inordinate delay in the communication of the FDO’s decision to increase the punishment.</p> <p>(b) Breach of Police (Discipline) Regulations (“P(D)R”) provisions – 14-day rule (i.e. failure of FDO to make his determination within 14 days as specified in regulation 14 of the P(D)R).</p> <p>(c) The FDO had a pre-determined mind on the award when inviting representation.</p>	<p>Grounds (a) and (b) dismissed.</p> <p>Ground (c) allowed.</p> <p>The Commissioner of Police (“CP”) appealed to the Court of Appeal against the above judgment and the officer applied for a prohibition order to prohibit any FDO from re-determining the award. CP’s appeal and the officer’s application were dismissed.</p> <p>The case was re-determined and the officer was compulsorily retired by another FDO in 2003.</p> <p>Police accepts that an open mind is required of the FDO when calling for an officer to “show cause” under Regulation 14(3)(a) of the P(D)R.</p>

Officer/Dept.	Judgment date	Case summary	Grounds of JR/Appeal	Outcome of JR/Appeal
An ex-Sergeant	2002	The officer was awarded 'Reduction in Rank' following his conviction of one count of 'Making a False Statement'.	<p>(a) Irrational conclusion as to fact.</p> <p>(b) Failure to apply correct burden and standard of proof.</p>	<p>Ground (a) dismissed.</p> <p>Ground (b) allowed.</p> <p>Police accepts that the Adjudicating Officer had not observed certain legal principles at the disciplinary hearing, but considers that the court judgment has no implications on its discipline policies and practices in general.</p> <p>In 2003, on the recommendation of the CP, the officer was retired in the public interest under section 12 of the PS(A)O on the ground of loss of confidence.</p>

Officer/Dept.	Judgment date	Case summary	Grounds of JR/Appeal	Outcome of JR/Appeal
An ex-Police Constable	2002	<p>The officer was convicted of two counts of ‘Conduct Calculated to bring the Public Service into Disrepute’.</p> <p>He was awarded ‘Order to Resign’. The officer was dismissed upon his refusal to submit his resignation.</p>	<p>(a) Absence of evidence.</p> <p>(b) Award unduly oppressive.</p> <p>(c) Failure to provide adequate disclosure of materials to the officer when making decision on the officer’s appeal.</p>	<p>Grounds (a) and (b) dismissed.</p> <p>Ground (c) allowed.</p> <p>Police accepts that there were procedural irregularities in the conduct of the proceedings by the tribunal concerned, but considers that the court judgment had no implications on its discipline policies and practices in general.</p> <p>The officer’s appeal against the punishment of ‘Order to Resign’ was processed afresh and was dismissed. The officer resigned in 2002.</p>

Officer/Dept.	Judgment date	Case summary	Grounds of JR/Appeal	Outcome of JR/Appeal
A Police Constable	2003	<p>The officer was compulsorily retired following conviction of 3 counts of 'Contravention of Police Orders'.</p> <p>His appeal was dismissed by the CP.</p>	<p>(a) The award of 'Compulsory Retirement' was ultra vires.</p> <p>(b) CP's decision to dismiss his appeal was based on misdirected consideration.</p>	<p>JR allowed. The court ruled that the Force Discipline Officer ("FDO") could not impose an additional award on top of individual punishments imposed. Since individual awards were accepted by the FDO, no reconsideration of awards was necessary. The Court refused to grant an order for the case to be remitted to the FDO for reconsideration of award.</p> <p>The Department of Justice has taken the matter to the Court of Appeal. Appeal heard on 9.3.2004. Judgment reserved.</p>

Officer/Dept.	Judgment date	Case summary	Grounds of JR/Appeal	Outcome of JR/Appeal
A Senior Inspector of Police	2004	The officer was awarded a “Reprimand” for one count of “Contravention of Police Orders” for failing to restore her hair to its original colour as ordered by her senior officer.	<ul style="list-style-type: none"> (a) Legal representation at hearing. (b) Right to have public hearing. (c) No independent and impartial tribunal. (d) Wrong test applied. (e) Insufficient evidence. (f) Retrospective effect of the Police Order. 	<p>JR conceded before hearing commenced on Court’s indication and legal advice. The disciplinary conviction was quashed.</p> <p>Upon receipt of the court order, the Police will study it carefully and take appropriate follow up action.</p>

**Civil servants subject to disciplinary action
for offences/misconduct related to “abuse of official position”**

Breakdown by offence/misconduct

Offence/Misconduct (Note 1)	2000/01	2001/02	2002/03	2003/04	Total
Conviction under the Prevention of Bribery Ordinance (Cap. 201)	13	12	15	6	46
Unauthorized acceptance of advantages/entertainment from persons with official dealings	3	1	8	4	16
Unauthorized outside work for persons with official dealings	0	0	4	0	4
Unauthorized disclosure of government information	3	4	0	3	10
Abuse of Government properties	10	9	8	9	36
Use of official information/authority for personal gains	18	26	9	4	57
Total	47	52	44	26	169 (Note 2)

Note 1: Cases involving abuse of official position are covered in this table, be they the result of criminal or disciplinary investigations.

Note 2: Of these 169 officers, 86 were warned verbally or in writing; 35 were punished with a reprimand, severe reprimand, demotion and/or a financial penalty; and the remaining 48 officers were compulsorily retired or dismissed from the service.

Source : CSB