

**LegCo Panel on Public Service**

**Disciplinary Mechanism in the Civil Service**

**Purpose**

This paper presents for Members' information an overview of the civil service disciplinary mechanism and how its operation has been streamlined and improved since 2000.

**The civil service disciplinary mechanism**

2. The Administration is committed to upholding a high standard of probity in the civil service. Prompt disciplinary action will be taken against civil servants who have misconducted themselves. For cases involving minor misconduct, heads of departments 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.

3. 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 ["PS(D)R"]. For certain members of the disciplined services departments who are subject to the respective disciplined services legislation, the departments process their disciplinary cases under the relevant legislation.

4. Following a review of the disciplinary mechanism in the context of the Civil Service Reform, the Civil Service Bureau (CSB) introduced a new mechanism in April 2000. With a view to putting in place a more efficient and effective system to punish misconduct while maintaining fairness to staff, CSB streamlined the procedures and set up a Secretariat on Civil Service Discipline ("SCSD") to centrally process all formal disciplinary cases under the PS(A)O.

## **Processing time**

5. The number of disciplinary cases which the SCSD have acted upon since 2000/01 is shown in Annex A. As the SCSD became fully functional in 2001/02, the number of cases completed in that year is significantly higher than that in 2000/01.

6. The time required to process a disciplinary case under formal proceedings varies from case to case, depending on factors including the complexity and circumstances of each case. Prior to 2000, disciplinary cases requiring a hearing under the PS(A)O were completed in 7 to 18 months. With the implementation of the new mechanism, the processing time has generally been shortened. In 2000/2001, a majority of the disciplinary cases handled by the SCSD could be completed in 5 to 15 months. Further improvements have been made in 2001/2002 : a majority of the cases were completed in 5 to 12 months, with about 70 % of them completed within 9 months. Disciplinary cases which do not require a hearing<sup>1</sup> could be more expeditiously dealt with. A majority of them are now completed within 3 to 4 months.

7. The shorter processing time has been achieved whilst preserving the principles of natural justice.

## **Due process**

8. 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.

9. A number of safeguards have been built into the disciplinary mechanism under the PS(A)O to ensure that officers accused of misconduct are given a fair hearing and reasonable opportunities to defend themselves. These include the following -

- (a) officers outside the department in which the accused officer works will be appointed as inquiry officers to determine independently if the alleged misconduct is established, based on evidence adduced at the hearings;

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<sup>1</sup> Cases without a hearing refer to either cases where the officers have absconded from duty for a specified period of time without leave (in which case they could be summarily dismissed), or cases of criminal conviction (which would have been the subject of a court hearing). In other circumstances, a disciplinary hearing will be conducted to determine whether the alleged misconduct laid against the officer is established.

- (b) officers involved in processing the case including the inquiry officers are required to declare any conflict of interest including acquaintance with the accused officer;
- (c) materials and documents to be presented to the inquiry officer in support of the disciplinary charges will be given to the accused officer before the hearing to facilitate the preparation of his defence;
- (d) the accused officer will be given sufficient opportunities to explain his case;
- (e) where the misconduct is established following a disciplinary inquiry or in case of criminal conviction, the accused officer will be given a chance to submit representations in mitigation of punishment;
- (f) the Department of Justice will be consulted at different stages of the proceedings where appropriate to ensure that the inquiries are conducted properly and that the findings are supported by evidence;
- (g) the Public Service Commission, a statutory body which gives impartial advice to the Government on civil service appointment and discipline matters, is consulted on the level of punishment; and
- (h) an officer who feels aggrieved may make representations to the Chief Executive.

### **Factors accounting for shorter processing time**

10. The improvement in processing time referred to in paragraph 6 above is attributable mainly to the central processing of cases by a dedicated team of staff experienced in handling disciplinary matters; and measures introduced in the light of experience by the SCSD to streamline the process.

11. The latter measures include -

- (a) streamlining of procedures to avoid double-handling;
- (b) arranging for early plea for those who intend to plead guilty to the disciplinary charges;

- (c) holding regular meetings or case conferences with departments to speed up the investigation process and to minimize exchanges by written correspondence;
- (d) providing suitable training to case officers and independent inquiry officers;
- (e) devising, for departmental reference, operational guidelines to facilitate investigation and case processing; and
- (f) setting up an electronic database on precedent cases to facilitate consideration of punishment.

### **Further devolution of authority**

12. To enable bureaux/departments to assume greater ownership and accountability in the management of their staff, the Chief Executive's approval has been sought to further delegate to Permanent Secretaries ("PSs")/Heads of Department ("HoDs") the authority to impose disciplinary punishment under the PS(A)O and PS(D)R.

13. With effect from 1 November 2002, PSs/HoDs have been empowered to impose punishment (other than dismissal) on Category A officers<sup>2</sup> below Point 34 of the Master Pay Scale ("MPS") or equivalent. Hitherto, their authority covers Category A officers below Point 14 of the MPS. Under the new arrangements, HoDs are empowered to handle about 85% of PS(A)O cases direct on the advice of the Public Service Commission. The corresponding figure before 1 November 2002 is about 55%. By reducing the number of layers that the decision-making process has to go through, the devolution is expected to help further shorten the time taken to process disciplinary cases whilst preserving natural justice. The same safeguards as those described in paragraph 9 above will continue to apply.

### **Consideration of punishment**

14. 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 determining the level of punishment, the disciplinary authority will consider carefully the gravity of the misconduct taking into account the nature and circumstances of the case, and where appropriate, facts revealed in the relevant court proceedings in the case of criminal convictions.

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<sup>2</sup> A Category A officer is one who is appointed to and confirmed in an established office.

15. A heavier penalty will be awarded where the misconduct committed by a civil servant is directly related to his core duties and where the delivery of public service is adversely affected. Reference will also be made to other relevant factors including the customary level of punishment in precedent cases of a similar nature, the service record of the officer, and any mitigating circumstances revealed in the case.

16. As has been explained in paragraph 9 above, the officer will be given a chance to submit representations in mitigation and the advice of the Public Service Commission is sought before a final decision on punishment is made.

17. **Annex B** gives a breakdown of the punishment awarded in the 2½ years ending September 2002, following the completion of formal disciplinary action.

### **Staff management**

18. The civil service disciplinary mechanism not only serves to punish wrongdoers; it also helps the Administration to improve staff management and the operation of departments. Questions of systemic problems and supervisory responsibility thrown up by disciplinary cases are promptly acted upon. In this regard, CSB is taking a proactive approach in drawing the attention of departments to problems and management weaknesses which come to light in disciplinary cases, so that corrective actions or adequate preventive measures could be put in place at the earliest opportunity.

19. Common problems revealed by disciplinary cases include laxity in supervising outdoor staff; the need for greater vigilance against malpractices in maintaining accounting records including claims for allowance; departmental instructions that are wanting in terms of clarity; and unclear division of responsibility.

20. Over the years, CSB has been working closely with ICAC and departments to promote a clean civil service and to instil a culture of integrity amongst staff. Efforts made by CSB and ICAC in this respect in the past few years include reviewing and updating the central guidelines on the conduct and integrity of civil servants; assisting departments in drawing up supplementary guidelines on avoidance of conflict of interest and acceptance of advantages; and providing support to departmental managers in promoting integrity and good conduct through training and experience sharing.

21. Central guidelines which have been updated and issued in the past two years include revised circulars on declaration of investments and staff indebtedness, as well as more comprehensive guidelines on the supervision of outdoor staff. Handbooks on promoting good standards of conduct and integrity management have been published. We have also put on the intranet for departmental managers an electronic resource centre on integrity management.

### **Overview**

22. The civil service disciplinary mechanism has been functioning more efficiently since the launching of the Civil Service Reform in 2000. In general, action on disciplinary cases is taking less time to complete whilst preserving fairness and broad consistency.

23. Effective operation of the disciplinary mechanism is one of the keys to upholding a high standard of conduct and discipline in the civil service. We attach great importance to it. The Administration will make sustained efforts to ensure that disciplinary actions are taken and punishment imposed in a timely fashion whilst preserving the principles of natural justice.

**Number of cases completed by SCSD**  
**(2000/01 – 2002/03)**

<b>Year</b>	<b>No. of cases</b>
<b>2000/2001</b>	<b>181</b>
<b>2001/2002</b>	<b>319</b>
<b>2002/2003 (up to 30.9.2002)</b>	<b>201</b>

**Punishment awarded in the Civil Service  
following completion of formal disciplinary proceedings<sup>1</sup>**  
**(2000/01 - 2002/03)**

<b>Punishment</b>	<b>2000/2001</b>	<b>2001/2002</b>	<b>2002/2003 (up to 30.9.2002)</b>
Dismissal <sup>2</sup>	64	63	35
Compulsory Retirement	33	48	29
Others <sup>3</sup>	592	573	304
<b>Total</b>	<b>689</b>	<b>684</b>	<b>368</b>

1. Including formal disciplinary cases processed under either the Public Service (Administration) Order or the relevant disciplined services legislation.
2. Including summary dismissal.
3. Including reduction in rank, severe reprimand, reprimand, financial penalty, and warning issued following formal disciplinary proceedings.