

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. There is a well-established 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, breach of government regulations of a minor nature, etc.) committed by civil servants in the civilian and disciplined services grades, the relevant bureaux or departments ("B/Ds") may, after completing departmental investigation, issue verbal or written warnings to the civil servants concerned without the need to conduct formal disciplinary hearings. Such summary disciplinary action allows management to tackle and deter 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, 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 generally senior ranking civil servants in the disciplined services grades¹ is taken according to 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 such a civil servant, the B/D concerned will conduct a preliminary investigation or study 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 generally middle and junior ranking civil servants in the disciplined services grades³ is taken according to the provisions under the respective Disciplined Services Legislation⁴ (“DSL”) and the related Subsidiary Regulations on discipline. The heads of the disciplined services departments (“DSDs”) are empowered by the DSL to institute disciplinary proceedings against such civil servants suspected of misconduct or convicted of criminal offences. 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. On the workings of the DSL, as reported at the Panel meeting of 20 December 2010, we are working in consultation with Department of Justice and DSDs on the drafting of the proposed amendments to the Subsidiary Regulations on discipline to address the issue of legal

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).

representation at disciplinary hearings raised by the Court of Final Appeal in *Lam Siu Po v. Commissioner of Police* (FACV 9/2008) and to make other improvements to the disciplinary proceedings. The proposed amendments have been agreed with the staff and the management of DSDs. Depending on the progress of law drafting, we aim to introduce the amendment regulations into the Legislative Council later this year.

Punishment

7. The range of punishment that may be imposed by the disciplinary authority 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 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.).

8. 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.

9. In the period from 1 April 2006 to 31 December 2010, disciplinary punishments were handed out in 1 782 cases under the PS(A)O or the DSL as shown at **Annex A**. Of the 103 civil servants dismissed from the service, a breakdown by their general ranking and the nature of their misconduct or criminal offences are set out at **Annex B**.

Due process

10. While recognising the need to process disciplinary cases expeditiously, the Administration is committed to complying with the principles of natural justice and procedural propriety in handling disciplinary cases. A number of safeguards are in place to ensure that a civil servant suspected of misconduct (“the accused civil servant”) is given a fair hearing

and sufficient opportunities to defend himself/herself. These include but are not limited to –

- (a) briefing the accused civil servant on his/her rights and on the disciplinary procedures, and giving him/her a full set of the evidence to be adduced and a list of the witnesses to be called by the prosecution at the disciplinary hearing for preparing his/her defence prior to the hearing;
- (b) appointing inquiry or adjudicating officers who are senior in rank to the accused civil servant and who do not have supervisory responsibilities over him/her to conduct the disciplinary hearing;
- (c) permitting, where fairness so requires, legal or other forms of representation for the accused civil servant at the disciplinary hearing;
- (d) recording the disciplinary hearing in audio or video form and providing a copy of the audio or video record to the accused civil servant upon request;
- (e) allowing the accused civil servant or his/her defence representative to cross-examine prosecution witnesses and to present defence witnesses during the disciplinary hearing;
- (f) inviting representations and last word from the accused civil servant at various stages of the disciplinary proceedings;
- (g) seeking, where necessary, the advice of the Department of Justice to ensure the propriety of disciplinary proceedings and findings; and
- (h) consulting, where appropriate, the Public Service Commission for independent advice on the level of punishment to be imposed on the accused civil servant.

11. A civil servant who is aggrieved by the decision of the disciplinary authority 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 of the disciplinary authority.

Conclusion

12. The Administration is determined to uphold a high standard of integrity and probity in the civil service. We will keep under review the related procedures to make sure that all disciplinary cases are dealt with fairly and promptly.

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

Civil Service Bureau
April 2011

**Punishment imposed on civil servants
after completion of disciplinary proceedings under the
Public Service (Administration) Order or
the Disciplined Services Legislation
(2006/07 – 2010/11)**

Financial year Type of punishment	2006/07	2007/08	2008/09	2009/10	2010/11 (up to 31.12.2010)	Total
Dismissal	27	20	23	21	12	103
Compulsory retirement	26	33	28	18	14	119
Reduction in rank	2	1	2	1	0	6
Severe reprimand plus financial penalty	59	71	58	34	24	246
Severe reprimand	81	83	63	45	30	302
Reprimand plus financial penalty	17	12	24	20	13	86
Reprimand	72	78	73	49	47	319
Warning	103	102	127	126	93	551
Others	6	4	12	13	15	50
Total	393	404	410	327	248	1 782

**Dismissal cases processed under the Public Service (Administration) Order (“PS(A)O”)
or the Disciplined Services Legislation (“DSL”)
(2006/07 – 2010/11)**

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

		Number of dismissal cases (financial year)					
		2006/07	2007/08	2008/09	2009/10	2010/11 (up to 31.12.2010)	Total
Cases processed under the PS(A)O	Directorate or equivalent^(a)	0	0	0	0	0	0
	MPS Pt. 14-49 or equivalent^(b)	9	2	4	2	1	18
	Below MPS Pt. 14 or equivalent	5	6	4	2	3	20
	Sub-total	14	8	8	4	4	38
Cases processed under the DSL	Middle-ranking civil servants^(c)	1	2	1	0	0	4
	Junior-ranking civil servants^(d)	12	10	14	17	8	61
	Sub-total	13	12	15	17	8	65
Total		27	20	23	21	12	103

Note

- (a) Including 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)					
		2006/07	2007/08	2008/09	2009/10	2010/11 (up to 31.12.2010)	Total
Misconduct	Unauthorised absence	10	4	3	2	3	22
	Negligence / Failure to perform duties / Breach of instruction	1	0	1	1	0	3
	Unauthorised acceptance of loan and other advantages	0	0	0	0	0	0
	Others (e.g. abuse of official position, falsification of documents, failure in supervisory accountability, etc.)	0	0	1	0	0	1
	Sub-total	11	4	5	3	3	26
Criminal offence	Prevention of Bribery Ordinance offence	4	5	3	2	0	14
	Conspiracy to defraud / steal / deception	0	1	3	2	0	6
	Theft	5	3	3	2	2	15
	Sexual offences	1	0	1	5	1	8
	Forgery	0	0	0	0	1	1
	Misconduct in Public Office	0	0	1	0	0	1
	Murder / Assault / Wounding / Fighting	1	2	2	3	1	9
	Road traffic offences	0	1	0	0	0	1
	Others (e.g. possession of drugs, criminal damage, false claim, obstructing a public officer, resisting arrest, etc.)	5	4	5	4	4	22
	Sub-total	16	16	18	18	9	77
Total		27	20	23	21	12	103