

## **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 updated figures on punishments imposed.

#### **Civil Service Disciplinary Mechanism**

2. The Civil Service is the backbone of the Government. It supports the Government in formulating and implementing policies, delivering public services and undertaking law enforcement and regulation functions, etc. It serves the community in an honest, professional and impartial manner. 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*, 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 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, 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*<sup>1</sup> is taken in accordance with the provisions under the Public Service (Administration) Order (“PS(A)O”) and the Public Service (Disciplinary) Regulation<sup>2</sup>. Upon receiving a report of suspected misconduct or criminal conviction against 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 *middle and junior ranking civil servants in the disciplined services grades*<sup>3</sup> is generally taken in accordance with the provisions under the respective Disciplined Services Legislation (“DSL”)<sup>4</sup> and the related Subsidiary Regulations on discipline. Heads of the disciplined services departments are empowered by the DSL to institute disciplinary proceedings against 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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).

7. To address the issue of legal or other forms of representation at disciplinary hearings raised by the Court of Final Appeal in *Lam Siu Po v. Commissioner of Police* (FACV 9/2008) and to introduce other improvements to the disciplinary proceedings under the DSL, we tabled the amendment regulations/rules of the respective DSL in the Legislative Council for negative vetting on 2 May 2012. The proposed amendments have generally been agreed with the staff side and the management of the disciplined services departments.

### ***Punishment***

8. 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 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.).

9. 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.

10. In the 5-year period from 1 April 2007 to 31 March 2012, disciplinary punishments were handed out in 1 773 cases under the PS(A)O or the DSL as shown at **Annex A**. Of the 92 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**.

### ***Due process***

11. 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, an accused civil servant is 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 is given the right to be heard and to cross-examine witnesses during the hearing; where fairness so requires, he/she is permitted to have legal or other forms of representation at the hearing; and he/she can make representations at various stages of the disciplinary proceedings. Moreover, the disciplinary authority will, pursuant to the Public Service Commission Ordinance (Cap 93), seek the independent advice from the Public Service Commission on the level of punishment.

12. 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.

## **Conclusion**

13. A clean, dedicated and efficient Civil Service is vital for maintaining public trust in and support for the Administration. The Administration is committed to upholding a high standard of integrity and probity among civil servants. We will keep under review the disciplinary and related procedures to make sure that all disciplinary cases are dealt with in a just and timely manner.

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

Civil Service Bureau  
May 2012

**Punishment imposed on civil servants  
after completion of disciplinary proceedings under the  
Public Service (Administration) Order or  
the Disciplined Services Legislation  
(2007/08 – 2011/12)**

| Financial<br>year<br><br>Type of<br>punishment | 2007/08    | 2008/09    | 2009/10    | 2010/11    | 2011/12    | Total        |
|--|------------|------------|------------|------------|------------|--------------|
| Dismissal                                      | 20         | 23         | 21         | 18         | 10         | <b>92</b>    |
| Compulsory<br>retirement                       | 33         | 28         | 18         | 19         | 12         | <b>110</b>   |
| Reduction in rank                              | 1          | 2          | 1          | 0          | 1          | <b>5</b>     |
| Severe reprimand<br>plus financial<br>penalty  | 71         | 58         | 34         | 30         | 25         | <b>218</b>   |
| Severe reprimand                               | 83         | 63         | 45         | 43         | 48         | <b>282</b>   |
| Reprimand plus<br>financial penalty            | 12         | 24         | 20         | 14         | 11         | <b>81</b>    |
| Reprimand                                      | 78         | 73         | 49         | 63         | 66         | <b>329</b>   |
| Warning  | 102        | 127        | 126        | 122        | 123        | <b>600</b>   |
| Others   | 4          | 12         | 13         | 15         | 12         | <b>56</b>    |
| <b>Total</b>                                   | <b>404</b> | <b>410</b> | <b>327</b> | <b>324</b> | <b>308</b> | <b>1 773</b> |

**Dismissal cases processed under the Public Service (Administration) Order (“PS(A)O”)  
or the Disciplined Services Legislation (“DSL”)  
(2007/08 – 2011/12)**

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

|   |  | Number of dismissal cases (financial year) |           |           |           |           |           |
|---|--|--|-----------|-----------|-----------|-----------|-----------|
|   |  | 2007/08                                    | 2008/09   | 2009/10   | 2010/11   | 2011/12   | Total     |
| <b>Cases processed under the PS(A)O</b> | <b>Directorate or equivalent<sup>(a)</sup></b>     | 0  | 0         | 0         | 0         | 0         | <b>0</b>  |
|   | <b>MPS Pt. 14-49 or equivalent<sup>(b)</sup></b>   | 2  | 4         | 2         | 2         | 1         | <b>11</b> |
|   | <b>Below MPS Pt. 14 or equivalent</b>              | 6  | 4         | 2         | 4         | 0         | <b>16</b> |
|   | <b>Sub-total</b>                                   | <b>8</b>                                   | <b>8</b>  | <b>4</b>  | <b>6</b>  | <b>1</b>  | <b>27</b> |
| <b>Cases processed under the DSL</b>    | <b>Middle-ranking civil servants<sup>(c)</sup></b> | 2  | 1         | 0         | 1         | 1         | <b>5</b>  |
|   | <b>Junior-ranking civil servants<sup>(d)</sup></b> | 10   | 14        | 17        | 11        | 8         | <b>60</b> |
|   | <b>Sub-total</b>                                   | <b>12</b>                                  | <b>15</b> | <b>17</b> | <b>12</b> | <b>9</b>  | <b>65</b> |
| <b>Total</b>                            |  | <b>20</b>                                  | <b>23</b> | <b>21</b> | <b>18</b> | <b>10</b> | <b>92</b> |

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) |           |           |           |           |           |
|---------------------------------------|--|--|-----------|-----------|-----------|-----------|-----------|
|                                       |  | 2007/08                                    | 2008/09   | 2009/10   | 2010/11   | 2011/12   | Total     |
| <b>Misconduct</b>                     | <b>Unauthorised absence</b>  | 4  | 3         | 2         | 4         | 0         | <b>13</b> |
|                                       | <b>Negligence / Failure to perform duties / Breach of instruction</b>  | 0  | 1         | 1         | 0         | 0         | <b>2</b>  |
|                                       | <b>Unauthorised acceptance of loan and other advantages</b>  | 0  | 0         | 0         | 0         | 0         | <b>0</b>  |
|                                       | <b>Others (e.g. abuse of official position, falsification of documents, failure in supervisory accountability, etc.)</b>     | 0  | 1         | 0         | 0         | 0         | <b>1</b>  |
|                                       | <b>Sub-total</b>   | <b>4</b>                                   | <b>5</b>  | <b>3</b>  | <b>4</b>  | <b>0</b>  | <b>16</b> |
| <b>Criminal offence</b>               | <b>Prevention of Bribery Ordinance offences</b>  | 5  | 3         | 2         | 0         | 0         | <b>10</b> |
|                                       | <b>Conspiracy to defraud / Deception</b>   | 1  | 3         | 2         | 1         | 0         | <b>7</b>  |
|                                       | <b>Theft</b>   | 3  | 3         | 2         | 2         | 4         | <b>14</b> |
|                                       | <b>Sexual offences</b>   | 0  | 1         | 5         | 2         | 0         | <b>8</b>  |
|                                       | <b>Forgery</b>   | 0  | 0         | 0         | 1         | 0         | <b>1</b>  |
|                                       | <b>Misconduct in Public Office</b>   | 0  | 1         | 0         | 1         | 1         | <b>3</b>  |
|                                       | <b>Murder / Assault / Wounding / Fighting</b>  | 2  | 2         | 3         | 1         | 0         | <b>8</b>  |
|                                       | <b>Road traffic offences</b>   | 1  | 0         | 0         | 0         | 0         | <b>1</b>  |
|                                       | <b>Others (e.g. possession of drugs, criminal damage, false claim, obstructing a public officer, resisting arrest, etc.)</b> | 4  | 5         | 4         | 6         | 5         | <b>24</b> |
|                                       | <b>Sub-total</b>   | <b>16</b>                                  | <b>18</b> | <b>18</b> | <b>14</b> | <b>10</b> | <b>76</b> |
| <b>Total</b>                          |  | <b>20</b>                                  | <b>23</b> | <b>21</b> | <b>18</b> | <b>10</b> | <b>92</b> |