

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Updated Overview of Civil Service Conduct and Discipline

Purpose

This paper presents for Members' information an overview of our management 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 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 system to manage the civil service whereby good performance and exemplary service are given due recognition and rewarded, whilst sub-standard performers are counseled, monitored and offered assistance with a view to bringing their performance up to the required standard. For persistent sub-standard performers who fail to improve, necessary actions are taken to retire them from the service 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. They are expected to uphold a high standard of honesty and probity both in discharging their public duties and in their private lives. A civil servant who commits a criminal offence (whether related to his public duty or not) could render himself liable to disciplinary action, in addition to the penalty imposed by the Court.

The civil service disciplinary mechanism

5. For minor misconduct, heads of department may issue verbal or written warnings (which carry a debarring effect on promotion or appointment for a specified period of time) to the concerned civil servants without recourse to formal proceedings. Formal disciplinary action is considered in the event of repeated minor misconduct, or an act of serious misconduct, or a criminal conviction.

6. Formal disciplinary action in respect of most civil servants is taken in accordance with the provisions and procedures laid down in the Public Service (Administration) Order (“PS(A)O”) and the Public Service (Disciplinary) Regulation¹. Disciplinary action in respect of certain groups of civil servants in the disciplined grades in the disciplined services departments² (mainly the rank-and-file and middle-ranking officers) is taken in accordance with the specific provisions in the relevant disciplined services legislation.

7. To expedite the processing of alleged misconduct cases and to ensure that such cases are handled in a systematic and consistent manner, the Secretariat on Civil Service Discipline (“SCSD”) was established in 2000 to centrally process formal disciplinary cases under the PS(A)O. In addition, measures to streamline the disciplinary procedures have been implemented. These include delegation to heads of department the power to take disciplinary action which has enabled bureaux and departments to assume greater ownership and accountability in staff integrity management; issue of a practical guide on discipline procedures to bureaux and departments; and provision of an electronic database on precedent cases to facilitate deliberation on the level of punishment; etc. These measures have brought about a reduction in the processing time for disciplinary cases. Prior to 2000, it took some 7 to 18 months to complete cases that required an inquiry hearing³ and 1 to 9 months to complete cases that did not⁴. These lead times were reduced to 3 to 9 months and 1 to 3 months respectively in 2005/06.

¹ The PS(A)O is an executive order made by the Chief Executive (“CE”) whereas the Public Service (Disciplinary) Regulation is a regulation made under the PS(A)O.

² Disciplined services departments comprise the Correctional Services Department, the Customs and Excise Department, the Fire Services Department, the Government Flying Service, the Immigration Department and the Police Force.

³ These denote cases processed under sections 9 and 10 of the PS(A)O.

⁴ 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. cases of abscondment).

Disciplinary punishments

8. The range of punishment that may be imposed under formal disciplinary action includes reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. Under existing policy, financial penalty may also be imposed concurrently with any of the above punishments, except in the case of reduction in rank and dismissal. In determining the level of punishment, the nature and gravity of the misconduct is always the primary consideration. Other pertinent factors include the customary level of punishment for the misconduct in question, mitigating circumstances if any, the service and disciplinary records of the civil servant concerned, the position he holds in the service, etc. Our policy is a more senior civil servant would normally receive a heavier punishment than a junior ranking civil servant for the same type of misconduct since senior civil servants are expected to lead by personal example.

9. For the period 2000/01 to 2006/07, punishments were awarded in 1,640 cases under the PS(A)O. Details are given in **Annex A**. For the same period, a total of 346 civil servants were dismissed from the service. A breakdown of the dismissal cases by the rank of the concerned civil servants and the nature of misconduct/criminal offence is at **Annex B**.

Maintaining vigilance and cooperation with the Independent Commission Against Corruption (“ICAC”)

10. The SCSD maintains a close and regular liaison with bureaux and departments on discipline matters. Apart from advising them on disciplinary procedures and punishment benchmarks, SCSD also shares with departmental management information on trends on the discipline front to help the latter to better align focuses and priorities in staff integrity management.

11. The Administration works closely with the ICAC in monitoring the overall situation of corruption in the civil service. On the advice of its Operations Review Committee (“ORC”), ICAC refers cases involving misconduct or malpractices of civil servants to the relevant bureaux and departments for consideration of disciplinary or administrative action. Upon receipt of ORC referrals, heads of department will conduct investigation into the cases to see if there is any misconduct or malpractice on the part of the civil servants concerned. If the evidence collected substantiates the allegations, disciplinary action will be taken against the relevant civil servants and

punishment will be imposed as appropriate, in accordance with the PS(A)O (or the relevant disciplined services legislation to which the concerned civil servants are subject). Where necessary, ICAC investigation teams will hold case conferences with the departmental management concerned to facilitate investigations into ORC referrals and follow-up actions.

Due process

12. While recognizing that disciplinary cases must be processed expeditiously, we are mindful of the importance of due process and principle of natural justice. A number of safeguards are in place to ensure that civil servants alleged of misconduct are given a fair hearing and ample opportunities to defend themselves. For formal disciplinary action taken under section 9 or 10 of the PS(A)O, the concerned civil servant will be fully briefed on the procedures of the proceedings and his rights before an inquiry. He will be given the relevant materials forming part of the disciplinary proceedings so that he can prepare his defence and make representations. During the course of the inquiry, he can cross examine witnesses and ask a friend to assist him in the cross-examination.

13. To ensure that disciplinary action is taken only in respect of those cases with clear prima facie evidence, the Administration will seek advice of the Department of Justice (“D of J”) before an inquiry hearing is ordered. At the conclusion of the hearing, the advice of D of J will be sought again on whether the proceedings are in order and the inquiry findings are supported by evidence presented at the hearing. To ensure impartiality of the proceedings, the Administration will appoint inquiry officers who are senior to the accused civil servant, and who are not from the same department and do not have supervisory responsibilities over the accused civil servant. It will also seek independent advice from the Public Service Commission on the level of punishment before coming to a decision.

14. An accused civil servant can submit representations at the pre-inquiry stage (on the reasons why he considers such inquiry should not be held), after the acceptance of the inquiry findings by the disciplinary authority (on mitigation of punishment) and before the disciplinary authority decides on the punishment. A civil servant who is aggrieved by a decision of his disciplinary authority may appeal to the Chief Executive under section 20 of the PS(A)O or Article 48 of the Basic Law. He may also seek redress through the Court by seeking a judicial review against the disciplinary authority’s decision.

Managing sub-standard performers

15. We attach great importance to maintaining a high performance civil service. We have in place an effective procedure to compulsorily retire civil servants with persistent sub-standard performance in the public interest under section 12 of the PS(A)O. Before section 12 action is taken against a civil servant, the concerned bureau/department management must advise, counsel and assist the civil servant with a view of bringing his performance up to the required standard. Where such efforts have failed to produce the desired results, section 12 action will follow.

16. In 2005, we reviewed the procedures for retiring sub-standard performers in the light of operational experience, and promulgated improved and streamlined procedures in October of that year to enable more effective management action to be taken against sub-standard performance in the civil service. As an illustration, prior to October 2005, a civil servant whose performance was rated “unsatisfactory” for 12 months would render himself liable to section 12 action. Since October 2005, 6 months of “unsatisfactory” performance will trigger section 12 action. Since October 2005, we have retired a total of 16 civil servants under section 12. As at 31 March 2007, some 20 civil servants were being monitored and supervised under the section 12 mechanism.

Concluding remarks

17. A clean, dedicated and efficient civil service is vital for maintaining public trust in and support for the Administration. 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 processes governing disciplinary or administrative actions, thereby ensuring that cases of misconduct and sub-standard performance are properly and promptly dealt with.

Civil Service Bureau
June 2007

**Punishment imposed under the PS(A)O
(2000/01– 2006/07)**

	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	Total
Dismissal	37	36	38	23	26	16	14	190
Compulsory retirement	20	29	42	29	39	21	15	195
Reduction in rank	0	1	1	0	0	0	0	2
Severe reprimand plus financial penalty	22	46	84	87	43	42	45	369
Severe reprimand	24	32	24	15	26	9	6	136
Reprimand plus financial penalty	1	5	17	6	8	7	16	60
Reprimand	20	36	34	29	20	14	18	171
Warning	15	102	91	92	85	65	67	517
Total	139	287	331	281	247	174	181	1640

**Breakdown of dismissal cases by rank of concerned civil servants
(2000/01 – 2006/07)**

		No. of dismissal cases							TOTAL
		2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	
PS(A)O cases ¹	Directorate	0	0	1	0	0	0	0	1
	MPS Pt. 14-49 or equivalent ²	7	12	12	11	11	13	9	75
	Below MPS Pt. 14 or equivalent	30	24	25	12	15	3	5	114
	Sub-total	37	36	38	23	26	16	14	190
DSL cases ³	Middle-ranking officer ⁴	3	2	1	4	1	4	1	16
	Junior-ranking officer ⁵	24	25	27	24	23	5	12	140
	Sub-total	27	27	28	28	24	9	13	156
TOTAL		64	63	66	51	50	25	27	346

1 Cases processed under the Public Service (Administration) Order.

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

3 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.

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

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

**Breakdown of dismissal cases in the civil service by nature of misconduct/criminal offence
(2000/01 – 2006/07)**

Nature of misconduct/criminal offence		No. of dismissal cases							
		2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	TOTAL
Misconduct	Unauthorized absence	26	19	18	13	6	6	10	98
	Negligence/failure to perform duties/breach of instruction	3	3	2	3	2	1	1	15
	Unauthorized acceptance of loan and other advantages	0	4	2	0	2	0	0	8
	Improper acts/misbehaviour in office	1	1	0	0	0	0	0	2
	Others (e.g. abuse of official position, falsification of documents, failure in supervisory accountability, etc.)	0	5	8	4	5	1	0	23
	Sub-total	30	32	30	20	15	8	11	146
Criminal offence	Prevention of Bribery Ordinance offence	15	8	6	3	7	2	4	45
	Conspiracy to defraud/steal/deception	0	4	7	3	7	2	0	23
	Theft	2	4	4	3	2	5	5	25
	Sexual offences	2	4	4	4	1	3	1	19
	Forgery	6	1	5	1	4	0	0	17
	Misconduct in public office	0	1	1	4	1	3	0	10
	Murder/assault/wounding/fighting	0	3	0	1	0	0	1	5
	Road traffic offences	1	0	0	0	1	0	0	2
	Others (e.g. possession of drugs, criminal damage, false claim, obstructing a public officer, resisting arrest, etc.)	8	6	9	12	12	2	5	54
	Sub-total	34	31	36	31	35	17	16	200
TOTAL		64	63	66	51	50	25	27	346