

## LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

### **Disciplinary mechanism and related procedures for disciplined services and civilian grades**

#### **Purpose**

This paper sets out for Members' information an overview of the disciplinary mechanism and related procedures for civilian and disciplined services grades in the civil service.

#### **Civil service disciplinary mechanism**

2. A clean, efficient and professional civil service has long been a cornerstone underlying Hong Kong's stability and success. Civil servants are expected to uphold a high standard of probity and integrity, and be honest and impartial in all dealings with members of the public and with other civil servants. There is a well-established system in the civil service whereby civil servants with exemplary service are duly recognised and rewarded, and those who have committed misconduct or offence are properly disciplined and punished.

#### *Summary disciplinary action*

3. For cases involving minor misconduct (e.g. occasional lateness for duty, breach of a government rule or regulation of a minor nature, etc) by civil servants in the civilian and disciplined services grades, the relevant heads of bureau or department may issue verbal or written warnings to the concerned civil servants without recourse to formal proceedings. Hence it is referred to as summary disciplinary action. Its purpose is to enable management to correct and deter minor and isolated acts of misconduct in a prompt and timely manner. The verbal or written warnings issued in summary disciplinary action carry a debarring effect of one year on promotion or appointment to another grade in the civil service for the civil servants concerned.

### *Formal disciplinary action*

4. In the event of repeated minor misconduct, or more serious misconduct (e.g. repeated lateness for duty, abuse of official position, wilful neglect of official instructions, etc) or criminal conviction<sup>1</sup> by civil servants, management will consider instituting formal disciplinary action against the civil servants concerned.

5. Formal disciplinary action in respect of civil servants in the civilian grades and senior ranking officers<sup>2</sup> in the disciplined services grades is taken in accordance with the provisions laid down in the Public Service (Administration) Order (“PS(A)O”) and the related Public Service (Disciplinary) Regulation<sup>3</sup>. Upon receipt of allegation of misconduct or being notified of a criminal conviction against a civil servant, the bureau/department concerned will examine the information available and conduct a preliminary investigation. If, upon investigation and appropriate procedures, there appears to be sufficient grounds to take formal disciplinary action, the bureau/department will refer the case to the Secretariat on Civil Service Discipline (“SCSD”) under the Civil Service Bureau for consideration of formal disciplinary action. All formal disciplinary cases under the PS(A)O are henceforth processed centrally by SCSD. As the expert on disciplinary matters, SCSD also maintains a close liaison with bureaux and departments on discipline matters. Apart from advising them on disciplinary procedures and punishment benchmarks, SCSD shares with them the trends on the disciplinary front and helps them to better align their focuses in handling discipline cases.

6. Formal disciplinary action in respect of middle and junior ranking officers in the disciplined services grades is taken in accordance with the provisions laid down in the relevant disciplined services legislation<sup>4</sup> (“DSL”). The DSL empowers the heads of the six disciplined services to institute

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<sup>1</sup> A civil servant who is criminally convicted, whether related to his public duty or not, could be punished in addition to the sentence imposed by the court.

<sup>2</sup> These refer generally to officers at a rank equivalent to Superintendent/Assistant Superintendent and above.

<sup>3</sup> The PS(A)O is an executive order made by the Chief Executive (“CE”) under Article 48(4) of the Basic Law, which 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>4</sup> This refers to the main ordinances and subsidiary legislation that are applicable to specific disciplined service grades/ranks of the Hong Kong Police Force, Fire Services Department, Correctional Services Department, Customs and Excise Department, Immigration Department and Government Flying Service. For Immigration Department, only those junior ranking disciplined service officers belonging to the Immigration Assistant grade are subject to the disciplined services legislation for cases involving the disciplinary offences specified therein, whilst the other disciplinary cases in the department are subject to the PS(A)O.

disciplinary proceedings against alleged misconduct and offences committed by these groups of officers. This arrangement is essential to the proper discharge of the law enforcement functions of the disciplined services. It also has regard to the operations peculiar to each disciplined service and the need to respond swiftly in emergency circumstances.

### *Punishment*

7. The range of punishment that may be imposed by the relevant authority after formal disciplinary proceedings under the PS(A)O and the DSL includes reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. Certain punishments unique to the disciplined services (e.g. caution, extra duties, etc) are also provided under the DSL. In addition, a financial penalty may be imposed concurrently with some of the punishments should the gravity of the misconduct so warrant.

8. When the relevant authority decides on the level of punishment, the nature and gravity of the misconduct is always the key determinant. Other pertinent considerations include the customary level of punishment for similar misconduct, existence of any mitigating factors, the position and service and disciplinary record of the civil servant concerned, etc. Since senior civil servants are expected to lead by example, a more senior civil servant found guilty of misconduct would normally receive a heavier punishment than a junior civil servant guilty of the same misconduct.

9. In the period between 1 April 2003 and 31 December 2008, punishments were handed out in 2 680 cases under the PS(A)O and the DSL. Some details are provided at **Annex A**. During the same period, a total of 192 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/offence is at **Annex B**.

### *Due process*

10. Disciplinary cases are processed expeditiously subject to the requirements for due process and procedural propriety and adherence to principles of natural justice. A number of safeguards are in place to ensure that a civil servant alleged of misconduct is given a fair hearing and ample opportunities to defend himself. These include -

- (a) briefing the civil servant accused of misconduct on his rights and on the disciplinary procedures, and giving him a full set of the evidence to be adduced and a list of the witnesses to be called by the management at the disciplinary hearing for preparing his defence prior to the hearing;
- (b) appointing inquiry/adjudicating officers who are senior in rank to the accused civil servant and who do not have supervisory responsibilities over him to conduct the disciplinary hearing;
- (c) allowing the accused civil servant to cross-examine witnesses during the disciplinary hearing and to invite a friend or defence representative to assist him in the process;
- (d) inviting representations from the accused civil servant at various stages of the disciplinary proceeding;
- (e) seeking, where warranted, the advice of the Department of Justice (“DoJ”) to ensure the propriety of the disciplinary proceedings and the findings; and
- (f) consulting, where applicable, the Public Service Commission (“PSC”) for independent advice on the level of punishment to be imposed on the accused civil servant found guilty of misconduct by the disciplinary authority<sup>5</sup>.

11. For cases not requiring a disciplinary hearing, the normal processing time ranges from one to three months; for cases requiring a disciplinary hearing and without legal representation, the normal processing time ranges from three to nine months.

12. A civil servant who is aggrieved by the disciplinary authority’s decision may petition the Chief Executive (“CE”) under article 48 of the Basic Law, or lodge an appeal under the applicable DSL, or make a representation to the CE under section 20(1) of the PS(A)O. A civil servant may also seek

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<sup>5</sup> All formal disciplinary cases involving Category A civil servants (with the exception of the disciplined ranks of the Hong Kong Police Force which are outside the ambit of the PSC in accordance with section 6(2) of the PSC Ordinance, Cap. 93; and of the disciplined ranks of the other disciplined services whose punishment authority is not the Chief Executive or his delegate) will be referred to PSC for advice on punishment. According to the PS(A)O, officers appointed to and confirmed in established offices are classified as Category A officers.

redress through the court by applying for a judicial review against the disciplinary authority's decision.

### **Ongoing reviews**

13. Over the years, we have implemented measures to streamline and improve the disciplinary process and enhance the role of bureaux and departments in staff integrity management. These include delegation of power to heads of bureaux and departments to engender greater ownership and accountability on disciplinary matters; sharing of experiences and guidelines on handling of disciplinary cases; establishment of a database on precedent cases to facilitate deliberations on the level of punishment, etc. In addition, we have kept the civil service disciplinary system under regular review in the light of actual operational experience and court judgments so as to ensure that the system continues to meet the needs under present day circumstances.

#### *Review of disciplinary practices arising from the Harbour Fest event*

14. Following the judgment of the Court of First Instance ("CFI") on a judicial review by a civilian grade civil servant subject to disciplinary proceeding under the PS(A)O over the Harbour Fest event, we have reviewed the various issues highlighted in the court's judgment with DoJ. As a result of the review, we have revised the guidelines to inquiry/adjudicating officers in disciplinary proceedings on the standard of proof. Actions are in hand to promulgate the revised guidelines on the standard of proof for disciplinary proceedings and the application of such standard at disciplinary hearings. Actions are also in hand to enhance training for officers responsible for handling disciplinary cases to familiarise them with the standard of proof and its application. We have elaborated the guidelines for the disciplinary authority to consider applications for legal representation from civil servants subject to disciplinary proceedings under the PS(A)O<sup>6</sup>. After consulting this Panel in November 2008, the CE-in-Council has amended section 19 of the PS(A)O to enable CE to delegate his power under section 20(1) to another public officer<sup>7</sup>.

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<sup>6</sup> Under section 8(3) of the Public Service (Disciplinary) Regulation, civil servants subject to the PS(A)O may be assisted in their defence by a person other than a public servant (including lawyers) as the CE may authorise. In the CFI judgment on the judicial review related to the Harbour Fest event, the main point of contention is not on whether the relevant disciplinary provision permits legal representation or not, but rather on whether the decision of the disciplinary authority in refusing legal representation to the civil servant concerned in that particular case was fair.

<sup>7</sup> Details can be found in LC Paper No. CB(1)169/08-09(07).

DoJ has also put in place arrangements to avoid the possibility of bias arising from its different roles undertaken in the different stages of a disciplinary proceeding.

*Review of disciplinary practices of the disciplined services*

15. The staff sides of the disciplined services have expressed concerns over certain practices in the disciplinary proceedings of civil servants subject to the DSL and over the different practices in the handling of disciplinary cases of civil servants under the DSL and those under the PS(A)O. In response, we have set up a task group with the management of the various disciplined services to examine the issues raised. The task group is currently examining the recording (in written and tape form) of disciplinary hearings undertaken under the DSL, the leave arrangements for serving civil servants attending disciplinary hearings as defence representatives/witnesses for the accused officers, and the processing time for investigation of alleged misconduct of staff. It is also examining whether – and if so, which of – the different disciplinary practices currently adopted by the different disciplined services under their respective DSL should be standardized. On a similar front, the task force is also considering whether – and if so which of – the disciplinary practices currently adopted by the disciplined services under the DSL should be aligned to those under the PS(A)O.

16. Arising from a judgment handed down by the Court of Final Appeal in March 2009 concerning the denial of legal representation for a civil servant during a disciplinary proceeding conducted under the DSL<sup>8</sup>, we are following up with the relevant bureaux and departments on the necessary remedial actions required, including legislative amendments to repeal those provisions in the relevant DSL which have been ruled unconstitutional, and how requests for legal representation at disciplinary hearings conducted under the DSL should be handled.

17. Separately, the staff sides of the disciplined services have requested the Administration to formulate the operational details of the review board provided under section 20(2) of the PS(A)O<sup>9</sup>, which is a replacement of the appeal channel that existed prior to the reunification where petitions by civil servants might be directed to the Secretary of State for Foreign and Commonwealth Affairs or the Queen of the United Kingdom. We are now

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<sup>8</sup> *Lam Siu Po v. Commissioner of Police* (FACV No. 9 of 2008).

<sup>9</sup> Under section 20(2) of the PS(A)O, the CE may appoint a review board to advise him on such representations addressed to him relating to appointment, dismissal and discipline of public servants as he thinks fit.

giving consideration to how the matter should be taken forward. In this and in the other review work described in the above paragraphs, we will continue to keep the staff sides closely informed of the progress made and consult them on the review findings.

## **Related matters**

### *Interdiction*

18. Interdiction is a precautionary measure taken by the management when it considers necessary for a civil servant, under investigation for serious misconduct or criminal offence or after disciplinary or judicial proceedings have been or are to be taken, to cease exercising the powers and functions of his public office in the public interest. Interdiction is not a disciplinary punishment and there is no presumption of guilt in interdiction<sup>10</sup>. Where appropriate, interdiction is applied to civil servants subject to the PS(A)O and the DSL.

19. When considering whether a civil servant should be interdicted, the concerned bureau/department is required to look at all relevant factors, including the nature and gravity of the alleged misconduct or criminal charge, possible conflict between the civil servant's misconduct and his official duties, possibility of recurrence of the same misconduct or offence if he is allowed to remain in his office, availability of suitable alternative posting, manpower and morale consideration, likely harm or risk posed to the general public, public reaction and perception, etc.

20. A civil servant who is interdicted will receive his full salary when the case is under investigation. He will normally have 50% of his salary withheld upon being charged with a disciplinary misconduct or criminal offence. The proportion of salary withheld may be reduced under exceptional circumstances, e.g. where the civil servant concerned can establish a claim of financial hardship. The civil servant concerned will have his salary withheld in full when he is convicted of a criminal charge serious enough to warrant his dismissal from the service. When a civil servant subject to interdiction is cleared of his alleged misconduct or criminal offence after disciplinary or judicial proceedings and no punishment is imposed, any withheld salary will be repaid in full to him. Where

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<sup>10</sup> As confirmed in *Yeung Chung Ming v. Commissioner of Police* (FACV No. 22 of 2007).

a punishment other than dismissal is imposed, the withheld salary will be repaid in such proportion deemed appropriate by the disciplinary authority.

*Cooperation with the Independent Commission Against Corruption (“ICAC”)*

21. The Administration works closely with 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 alleged misconduct or malpractices by civil servants to the relevant bureaux/departments for consideration of disciplinary or administrative action. Upon receipt of an ORC referral, the head of the relevant bureau/department will conduct investigation into the case to see if the alleged misconduct or malpractice by the civil servant concerned is substantiated on a prima facie basis. ICAC will, where necessary, hold a case conference with the bureau/department concerned to facilitate the latter’s investigation. If the evidence collected substantiates the allegation of any misconduct or malpractice on a prima facie basis, disciplinary proceedings under the PS(A)O or the DSL, as appropriate, will be taken against the civil servant concerned. Should the disciplinary authority, after the conclusion of disciplinary proceedings, find the accused civil servant guilty, the appropriate punishment will be imposed on the said civil servant. Judging from the continual decline in the number of ORC referral cases (from 234 in 2003 to 105 in 2008), the overall misconduct or malpractice situation in the civil service remains largely stable and under control.

**Concluding remarks**

22. We are keenly aware that a clean, dedicated and efficient civil service is vital for maintaining public trust in and support for the Administration. As always, we are committed to upholding a high standard of integrity and probity among all civil servants. We will keep under constant review the disciplinary and related procedures to ensure that cases of misconduct are dealt with in a just and timely manner.

Civil Service Bureau  
April 2009



**Punishment imposed on civil servants  
(2003/04 – 2008/09)**

	<b>2003/04</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b> (1.4.2008 to 31.12.2008)	<b>Total</b>
Dismissal	51	50	25	27	20	19	<b>192</b>
Compulsory retirement	62	73	40	26	33	24	<b>258</b>
Reduction in rank	6	6	3	2	1	1	<b>19</b>
Severe reprimand plus financial penalty	97	60	53	59	71	43	<b>383</b>
Severe reprimand	144	121	85	81	83	52	<b>566</b>
Reprimand plus financial penalty	9	11	15	17	12	18	<b>82</b>
Reprimand	109	68	57	72	78	57	<b>441</b>
Warning	136	125	91	103	102	87	<b>644</b>
Others	30	20	26	6	4	9	<b>95</b>
<b>Total</b>	<b>644</b>	<b>534</b>	<b>395</b>	<b>393</b>	<b>404</b>	<b>310</b>	<b>2 680</b>

**Breakdown of dismissal cases by rank of concerned civil servants  
(2003/04 – 2008/09)**

		No. of dismissal cases						
		2003/04	2004/05	2005/06	2006/07	2007/08	2008/09 (1.4.2008 to 31.12. 2008)	Total
<b>PS(A)O cases</b> <sup>1</sup>	<b>Directorate</b>	-	-	-	-	-	-	-
	<b>MPS Pt. 14-49 or equivalent</b> <sup>2</sup>	11	11	13	9	2	3	<b>49</b>
	<b>Below MPS Pt. 14 or equivalent</b>	12	15	3	5	6	3	<b>44</b>
	<b>Sub-total</b>	<b>23</b>	<b>26</b>	<b>16</b>	<b>14</b>	<b>8</b>	<b>6</b>	<b>93</b>
<b>DSL cases</b> <sup>3</sup>	<b>Middle-ranking officer</b> <sup>4</sup>	4	1	4	1	2	-	<b>12</b>
	<b>Junior-ranking officer</b> <sup>5</sup>	24	23	5	12	10	13	<b>87</b>
	<b>Sub-total</b>	<b>28</b>	<b>24</b>	<b>9</b>	<b>13</b>	<b>12</b>	<b>13</b>	<b>99</b>
<b>TOTAL</b>		<b>51</b>	<b>50</b>	<b>25</b>	<b>27</b>	<b>20</b>	<b>19</b>	<b>192</b>

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

2 Including senior ranking officers in disciplined services grades (e.g. Superintendent of Police, Assistant Superintendent of Customs and Excise, Divisional Officer, etc.).

3 Cases processed under Disciplined Services Legislation.

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  
(2003/04 – 2008/09)**

Nature of misconduct/criminal offence		No. of dismissal cases						
		2003/04	2004/05	2005/06	2006/07	2007/08	2008/09 (1.4.2008 to 31.12.2008)	Total
<b>Misconduct</b>	Unauthorized absence	13	6	6	10	4	3	<b>42</b>
	Negligence/failure to perform duties/breach of instruction	3	2	1	1	-	1	<b>8</b>
	Unauthorized acceptance of loan and other advantages	-	2	-	-	-	-	<b>2</b>
	Others (e.g. abuse of official position, falsification of documents, failure in supervisory accountability, etc.)	4	5	1	-	-	1	<b>11</b>
	<b>Sub-total</b>	<b>20</b>	<b>15</b>	<b>8</b>	<b>11</b>	<b>4</b>	<b>5</b>	<b>63</b>
<b>Criminal offence</b>	Prevention of Bribery Ordinance offence	3	7	2	4	5	2	<b>23</b>
	Conspiracy to defraud/steal/deception	3	7	2	-	1	3	<b>16</b>
	Theft	3	2	5	5	3	2	<b>20</b>
	Sexual offences	4	1	3	1	-	1	<b>10</b>
	Forgery	1	4	-	-	-	-	<b>5</b>
	Misconduct in Public Office	4	1	3	-	-	1	<b>9</b>
	Murder/assault/wounding/fighting	1	-	-	1	2	1	<b>5</b>
	Road traffic offences	-	1	-	-	1	-	<b>2</b>
	Others (e.g. possession of drugs, criminal damage, false claim, obstructing a public officer, resisting arrest, etc.)	12	12	2	5	4	4	<b>39</b>
<b>Sub-total</b>	<b>31</b>	<b>35</b>	<b>17</b>	<b>16</b>	<b>16</b>	<b>14</b>	<b>129</b>	
<b>TOTAL</b>	<b>51</b>	<b>50</b>	<b>25</b>	<b>27</b>	<b>20</b>	<b>19</b>	<b>192</b>	