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**Panel on Public Service
Meeting on 20 April 2009**

**Background brief on
civil service disciplinary mechanism**

Purpose

This paper provides background information on the civil service disciplinary mechanism and summarizes the major concerns expressed by the Panel on Public Service (the Panel) on the subject at recent meetings.

Background

2. According to the Administration, 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

3. 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.

4. 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.

5. The Secretariat on Civil Service Discipline was established in 2000 to centrally process formal disciplinary cases under the PS(A)O. Certain measures to streamline the disciplinary procedures have been implemented, including -

- (a) 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;
- (b) issue of a practical guide on disciplinary procedures to bureaux and departments; and
- (c) provision of an electronic database on precedent cases to facilitate deliberation on the level of punishment.

These measures have brought about a reduction in the processing time for disciplinary cases. According to the Administration, prior to 2000, it took about seven to 18 months to complete cases that required an inquiry hearing³ and one to nine months to complete cases that did not⁴. These lead times were reduced to three to nine months and one to three months respectively in 2005-2006.

Disciplinary punishments

6. The range of punishment that may be imposed under formal disciplinary action includes reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. Under the 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. According to the Administration, its policy is that a

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

⁴ These denote cases processed under section 11 of PS(A)O (i.e. cases of criminal conviction) and section 10(3) of PS(A)O (i.e. cases of abscondment).

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.

Concerns raised by the Panel

Need for review of the disciplinary procedure for disciplined services

7. At the meetings on 20 October and 17 November 2008, when the Panel discussed the Administration's legislative proposal to introduce a disciplinary framework for civil servants whose retirement benefits were provided under the Civil Service Provident Fund Scheme, Dr Hon Margaret NG expressed concern that certain disciplinary procedures of the disciplined services should be reviewed and cited the following situations as examples -

- (a) Police officers removed through compulsory retirement would receive pension only when they reached the normal retirement age. This arrangement might cause financial hardship to the officers concerned as they might not be able to find a new job after compulsory retirement; and
- (b) While flexibility was normally allowed in interdiction of civilian grade officers during disciplinary/criminal proceedings, disciplined service officers, particularly police officers, were mostly interdicted during the proceedings. Given that interdicted officers would only receive partial payment of salary and allowance, the officers concerned might suffer from financial hardship during the interdiction.

8. The Administration pointed out that the arrangement for pension payments upon a civil servant reaching the prescribed retirement age was provided for in the Pensions Ordinance (Cap. 89) and the Pension Benefits Ordinance (Cap. 99). The Administration also pointed out that, while at most 50% of the salary of an interdicted officer could be withheld during disciplinary/criminal proceedings under PS(A)O, the officer concerned could apply for a higher percentage of payment in case of financial hardship. At the request of the Panel, the Administration agreed to provide further information on the disciplinary mechanism for the disciplined services, including the principles and considerations for determining the percentage of salary and/or allowance paid to interdicted officers.

Discrepancies in disciplinary proceedings

9. At the Panel meeting on 17 November 2008, some members also expressed concern about the existing discrepancies in disciplinary proceedings

adopted by different disciplined services as raised by the Government Disciplined Services General Union (the General Union) in its submission [LC Paper No. CB(1)81/08-09(01)] made to the Panel. The General Union pointed out that while some disciplined services were allowed to make video or audio recordings during disciplinary proceedings, other disciplined services could not do so during such proceedings. These members considered it important for the Administration to address concern raised by staff in this regard and ensure that the disciplinary proceedings were fair.

10. The Administration undertook that it would review with the disciplined services departments the disciplinary procedures, and would consult staff on proposed changes. The Administration also advised that the operation of different disciplined services departments was governed by their respective legislation and regulations, and it was against this background that there were some variations in the disciplinary proceedings of these departments.

11. As regards the timetable for conducting the review, the Administration explained that in reviewing the disciplinary proceedings that affected different disciplined grades, the Civil Service Bureau would need to first liaise with different disciplined services departments to obtain views from the management and staff sides concerned, and then discuss with all the stakeholders concerned on what changes should be made. Administrative guidelines would be issued where necessary to reflect any agreed changes. The Administration undertook to report to the Panel the progress of review of the disciplinary procedures in disciplined services departments in due course.

Latest developments

12. In view of the various concerns raised by members regarding the disciplinary mechanism and related procedures for disciplined services, the Administration has proposed discussion of the "Disciplinary mechanism and related procedures for disciplined services and civilian grades". The Panel has scheduled to discuss the item at its meeting on 20 April 2009.

Relevant papers

13. A list of relevant papers is in the **Appendix**.

Appendix

Civil service disciplinary mechanism

List of relevant papers

Date of meeting	Committee	Minutes/ Paper	LC Paper No.
20.10.2008	Panel on Public Service (PS Panel)	Administration's paper on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals	CB(1)36/08-09(02) http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1020cb1-36-2-e.pdf
		Minutes of meeting	CB(1)354/08-09 http://www.legco.gov.hk/yr08-09/english/panels/ps/minutes/ps20081020.pdf
17.11.2008	PS Panel	Supplementary paper on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals	CB(1)590/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1117cb1-590-1-e.pdf

Date of meeting	Committee	Minutes/ Paper	LC Paper No.
		Submission on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals from Government Disciplined Services General Union	CB(1)81/08-09(01) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1020cb1-81-1-c.pdf
		Administration's response to the submission from Government Disciplined Services General Union as set out in LC Paper No. CB(1)81/08-09(01)	CB(1)247/08-09(01) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-247-1-c.pdf
		Further submission on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals from Government Disciplined Services General Union	CB(1)226/08-09(02) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-226-2-c.pdf

Date of meeting	Committee	Minutes/ Paper	LC Paper No.
		Submission on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals from Government Electrical & Mechanical Works Supervisors, Craftsmen & Workmen Association	CB(1)226/08-09(01) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-226-1-c.pdf
		Administration's response to the submission from Government Electrical & Mechanical Works Supervisors, Craftsmen & Workmen Association as set out in LC Paper No. CB(1)226/08-09(01)	CB(1)227/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1117cb1-227-1-e.pdf
		Submission on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals from Government Employees Association	CB(1)169/08-09(06) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-169-6-c.pdf

Date of meeting	Committee	Minutes/ Paper	LC Paper No.
		Submission on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals from Hong Kong Civil Servants General Union Negotiation Committee	CB(1)169/08-09(04) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-169-4-c.pdf
		Administration's response to the submission from Hong Kong Civil Servants General Union Negotiation Committee as set out in LC Paper No. CB(1)169/08-09(04)	CB(1)208/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1117cb1-208-1-e.pdf
		Submission on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals from Model Scale 1 Staff Consultative Council (Staff Side)	CB(1)169/08-09(05) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1117cb1-169-5-c.pdf

Date of meeting	Committee	Minutes/ Paper	LC Paper No.
		Submission on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals from Senior Civil Service Council (Staff Side)	CB(1)203/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1117cb1-203-1-e.pdf
		Minutes of meeting	CB(1)560/08-09 http://www.legco.gov.hk/yr08-09/english/panels/ps/minutes/ps20081117.pdf