

For discussion on

21 June 2010

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Disciplinary Mechanism and Progress on Various Disciplinary Matters

PURPOSE

This paper provides an overview of the civil service disciplinary mechanism. It also reports on progress on various issues as requested by Members.

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 bureau or department (“B/D”) may, after completing departmental investigation, issue verbal or written warnings to them 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. absence from duty, abuse of official position, wilful neglect of official instructions, etc.) committed by civil servants, or for civil servants convicted of criminal offence, the relevant B/D may institute formal disciplinary action against them.

5. Formal disciplinary action in respect of civil servants in the civilian grades and generally senior ranking civil servants in the disciplined services grades¹ is taken in accordance with the provisions laid down in the Public Service (Administration) Order (“PS(A)O”) and the Public Service (Disciplinary) Regulation². Upon awareness of suspected misconduct or notification of criminal conviction against a civil servant, the B/D concerned will consider the case, including conducting a preliminary investigation or studying the records of court proceedings as appropriate. If it concludes 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, which is responsible for the processing of all disciplinary cases under the PS(A)O.

6. Formal disciplinary action in respect of generally middle and junior ranking civil servants in the disciplined services grades³, depending on which disciplined service they belong to, is taken in accordance with the provisions laid down in the respective Disciplined Services Legislation⁴ (“DSL”) and the related subsidiary Regulations on discipline. The DSL empowers the heads of the disciplined services departments to institute disciplinary proceedings against these 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 operations unique to each disciplined service.

7. It is important that disciplinary cases are processed with due regard to the principle of natural justice and with reasonable speed. Safeguards are in place to ensure that a civil servant suspected of misconduct

¹ These refer generally to officers at a rank equivalent to superintendent/assistant superintendent and above of the 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) and include, where appropriate, the regulations/orders made under such Ordinances. For the purposes of this paper, the DSL also includes the Traffic Wardens (Discipline) Regulations (Cap. 374J).

is given a fair hearing and is protected by the rule against bias. For instance, such a civil servant is provided with a full set of the evidence and a list of the witnesses well before a disciplinary hearing; he/she is given the right to be heard and to cross-examine witnesses during the hearing; and he/she can make representations at various stages of the disciplinary proceedings, including presenting his/her last word to the disciplinary authority before the authority decides on his/her case; etc.

8. A civil servant who is aggrieved by the decision of the disciplinary authority may petition the Chief Executive (“CE”) under Article 48 of the Basic Law, or lodge a statutory appeal under the relevant DSL, or make a representation to the CE under section 20 of the PS(A)O 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.

9. The range of punishment that may be imposed by the disciplinary authority on a civil servant found guilty of misconduct or convicted of criminal offences after formal disciplinary proceedings either 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 concurrently with some of the stated punishments should the gravity of the misconduct/criminal offences so warrant. Separately, certain punishments unique to the disciplined services are provided under the DSL (e.g. caution, performance of extra duties, etc.).

10. In the 5-year period ended 31 March 2010, disciplinary punishments were handed out in 1 929 cases under the PS(A)O or the DSL as shown in **Annex A**. Of the 116 civil servants dismissed from the service, a breakdown by the nature of their misconduct or criminal offence and their general ranking are set out in **Annex B**.

PROGRESS ON VARIOUS DISCIPLINARY MATTERS

11. At the meeting held on 22 February 2010, Members requested to be kept informed on progress on the following issues –

- (a) amendments to the subsidiary Regulations on discipline to the DSL, pursuant to the judgement of the Court of Final Appeal (“CFA”) on *Lam Siu Po v. Commissioner of Police (FACV 9/2008)*;
- (b) the latest status of disciplinary cases suspended as a result of the above CFA judgement; and

- (c) harmonisation of the disciplinary practices among different disciplined services and between civil servants of disciplined services grades and those of civilian grades.

12. The current position on the above issues is set out in paragraphs 13 to 21 below.

Legislative amendments

13. In March 2009, the CFA, in the case of *Lam Siu Po v. Commissioner of Police (FACV 9/2008)*, ruled that regulations 9(11) and 9(12) of the Police (Discipline) Regulations (“P(D)R”) (Cap. 232A), which explicitly prohibit legal representation for defaulters at disciplinary hearings, are inconsistent with Article 10 of the Hong Kong Bill of Rights, and are thus unconstitutional, null and void. The CFA judgement also held that the disciplinary authority ought to be able to exercise discretion to permit other forms of representation by fellow officers or other persons at disciplinary hearings. The judgement has read-across implications for the other subsidiary Regulations on discipline to the DSL, which contain similar provisions to those in the P(D)R. The Administration has identified the provisions in the subsidiary Regulations⁵ concerned that need to be amended, and is in the process of drawing up the necessary legislative amendments.

14. Concurrently with the above, we have been working with the management and staff sides of individual disciplined services to identify other areas of improvement to the subsidiary Regulations on discipline to the DSL, which may be taken forward in the current legislative amendment exercise. So far, consensus has been reached on the inclusion of provisions to stipulate that written, audio or video records are formal records of proceedings for disciplinary hearings⁶. Please see paragraph 20 below for further elaboration. The parties concerned are now actively considering a number of other proposals, for example, a suggestion to include an explicit provision in the subsidiary Regulations to allow an adjudicating officer to proceed with a disciplinary hearing in the absence of the civil servant suspected of misconduct if the latter repeatedly fails to attend the hearing

⁵ Including amendments to a schedule to the Fire Services Ordinance (Cap. 95) by way of regulation.

⁶ At present, the records of proceedings for disciplinary hearings conducted under the DSL are prepared in written form. While disciplined services departments have already arranged audio recording of disciplinary hearings, the DSL does not contain explicit provisions providing for records of proceedings in audio- or video-recorded form.

without reasonable justifications. Another suggestion is to set a reasonable timeframe for the investigation of alleged misconduct, etc.

15. We will continue to work with the parties concerned on the proposed improvements to the disciplinary proceedings under the DSL, with a view to defining the scope of amendments for the current legislative amendment exercise. We will take stock of the position and report to this Panel in the fourth quarter of the year.

Latest status of disciplinary cases under the DSL

16. The disciplinary hearings under the DSL were suspended in the wake of the CFA judgement. Since then, the disciplined services departments have put in place interim administrative measures and promulgated relevant guidelines to allow civil servants subject to formal disciplinary proceedings to apply for legal or other forms of representation at disciplinary hearings conducted under the DSL. As at the end of last month (31 May 2010), disciplinary proceedings of 202 cases were resumed or instituted as the civil servants concerned had indicated that they did not wish to apply for legal or other forms of representation. As at this date, 105 applications were received for legal or other forms of representation at disciplinary hearings, of which 38 were approved, 52 were rejected, and the remaining 15 are still being processed. A breakdown of these cases by disciplined services departments is set out at **Annex C**.

17. In considering an application for legal representation, the disciplinary authority may take into account, but not limited to, the seriousness of the misconduct charge and the potential penalty; whether any points of law are likely to arise; the capacity of the civil servant concerned to present his own case; and the need for fairness among the parties involved in a disciplinary hearing, etc. These are some of the factors mentioned by the CFA in the case of *Stock Exchange of Hong Kong Ltd v. New World Development Co. Ltd and Others (FACV 22/2005)*. In considering an application for other forms of representation, the disciplinary authority will consider the circumstances of the case, the requirements of natural justice and fairness, and other appropriate factors, such as the possibility of leakage of sensitive information.

Harmonisation of certain disciplinary practices

18. Some of the staff sides of the disciplined services have expressed concern over the differences in some disciplinary practices adopted by different disciplined services departments under their respective DSL. They have also expressed concern over the differences in some disciplinary

practices applied to civil servants subject to the DSL and those applied to civil servants subject to the PS(A)O.

19. We see the need to ensure that the same key principles of natural justice and fairness underline the various disciplinary systems of the civil service. Within this framework, we see merits in sharing and, where appropriate, applying best practices across the different disciplinary systems. We also see merits in allowing for variations, where justified, to cater for the special needs of the disciplined services, which are our principal law enforcement agencies and which have to act and react swiftly in emergency situations. We also accept the need to have regard to the unique operations of each of the disciplined services, which may render a complete harmonisation of the disciplinary systems of the various disciplined services impractical and ineffective.

20. To illustrate the point regarding sharing of best practices, disciplinary hearings under the PS(A)O conducted centrally by SCSD are audio and video recorded and the civil servants subject to the hearings are given a copy of the recording upon request. In response to the requests by some Members of this Panel and the staff sides, the disciplined services departments have agreed to adopt similar arrangements for civil servants subject to the DSL. Specifically, as a standing arrangement, audio recording on disciplinary hearings held under the DSL will be arranged. A civil servant who wishes to have his/her disciplinary hearings conducted under the DSL video-recorded, he/she will inform the disciplined services department concerned in advance so that the necessary arrangement can be made. Prior notification is necessary due to resource and venue constraints for some disciplined services departments. A civil servant subject to the DSL will be given a copy of audio records (or video records if arranged) of his/her disciplinary hearing conducted upon request.

21. Another illustration is the release of a civil servant in a disciplined service department to attend a disciplinary hearing under the DSL as a defence representative or defence witness. Currently, a defence representative or defence witness is released to attend a disciplinary hearing conducted by his/her *own* department under the DSL during duty hours. This arrangement is not applicable when a civil servant attends as a defence representative or defence witness in a disciplinary hearing conducted by *another* disciplined services department under the DSL. This arrangement is also not applicable to hearings conducted under the PS(A)O by SCSD, irrespective of whether a defence representative or witness is attending hearings of cases involving civil servants in his/her department or another department. We have reviewed the current position upon the staff sides' request. We are satisfied that subject to the exigencies of the service, a civil

servant should normally be granted authorised absence to attend as a defence representative or defence witness at disciplinary hearings conducted under the DSL or the PS(A)O, whether or not the hearing is conducted by his/her own department. We will shortly promulgate the new arrangement. In the meantime, B/Ds have started processing such applications for authorised absence subject to the exigencies of the service.

CONCLUSION

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

Civil Service Bureau
June 2010

**Punishment imposed on civil servants
after completion of disciplinary proceedings under the
Public Service (Administration) Order or
the Disciplined Services Legislation
(2005/06 – 2009/10)**

	2005/06	2006/07	2007/08	2008/09	2009/10	Total
Dismissal	25	27	20	23	21	116
Compulsory retirement	40	26	33	28	18	145
Reduction in rank	3	2	1	2	1	9
Severe reprimand plus financial penalty	53	59	71	58	34	275
Severe reprimand	85	81	83	63	45	357
Reprimand plus financial penalty	15	17	12	24	20	88
Reprimand	57	72	78	73	49	329
Warning	91	103	102	127	126	549
Others	26	6	4	12	13	61
Total	395	393	404	410	327	1 929

**Dismissal cases processed under the Public Service (Administration) Order (“PS(A)O”)
or the Disciplined Services Legislation (“DSL”)
(2005/06 – 2009/10)**

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

		No. of dismissal cases					Total
		2005/06	2006/07	2007/08	2008/09	2009/10	
Cases processed under PS(A)O	Directorate or equivalent^(a)	0	0	0	0	0	0
	MPS Pt. 14-49 or equivalent^(b)	13	9	2	4	2	30
	Below MPS Pt. 14 or equivalent	3	5	6	4	2	20
	Sub-total	16	14	8	8	4	50
Cases processed under DSL	Middle-ranking civil servants^(c)	4	1	2	1	0	8
	Junior-ranking civil servants^(d)	5	12	10	14	17	58
	Sub-total	9	13	12	15	17	66
Total		25	27	20	23	21	116

Note

- (a) Including senior ranking civil servants in the disciplined services grades (e.g. Assistant Commissioner of Police, Chief Pilot, Chief Ambulance Officer, 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		No. of dismissal cases					
		2005/06	2006/07	2007/08	2008/09	2009/10	Total
Misconduct	Unauthorised absence	6	10	4	3	2	25
	Negligence/failure to perform duties/breach of instruction	1	1	0	1	1	4
	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.)	1	0	0	1	0	2
	Sub-total	8	11	4	5	3	31
Criminal offence	Prevention of Bribery Ordinance offence	2	4	5	3	2	16
	Conspiracy to defraud/steal/deception	2	0	1	3	2	8
	Theft	5	5	3	3	2	18
	Sexual offences	3	1	0	1	5	10
	Forgery	0	0	0	0	0	0
	Misconduct in Public Office	3	0	0	1	0	4
	Murder/assault/wounding/fighting	0	1	2	2	3	8
	Road traffic offences	0	0	1	0	0	1
	Others (e.g. possession of drugs, criminal damage, false claim, obstructing a public officer, resisting arrest, etc.)	2	5	4	5	4	20
Sub-total	17	16	16	18	18	85	
Total	25	27	20	23	21	116	

**Status of applications for legal or other forms of representation
for disciplinary cases under the Disciplined Services Legislation
(Position as at 31 May 2010)**

Department	No. of applications received	No. of applications approved	No. of applications rejected	No. of applications under consideration
Correctional Services Department	7	3	2	2
Customs and Excise Department	1	0	0	1
Fire Services Department	2	0	2	0
Government Flying Service	0	0	0	0
Hong Kong Police Force	95 ^(a)	35 ^(b)	48	12 ^(b)
Immigration Department	0	0	0	0
Total	105	38	52	15

Note

- (a) Excluding 9 cases in which the civil servants concerned have withdrawn their applications for legal or other forms of representation.
- (b) Including one case involving a Traffic Warden grade civil servant.