

立法會
Legislative Council

LC Paper No. CB(1)2227/09-10

Ref: CB1/PL/PS

**Panel on Public Service
Meeting on 21 June 2010**

**Background brief on disciplinary mechanism and proposed amendments to
disciplined services legislation**

Purpose

This paper provides background information on the civil service disciplinary mechanism and the Administration's plan to introduce amendments to disciplined services legislation (DSL) pursuant to a judgment handed down by the Court of Final Appeal (CFA) in March 2009 concerning the denial of legal representation for a civil servant during a disciplinary proceeding conducted under DSL. It also summarizes the major concerns expressed by the Panel on Public Service (the Panel) on the subject at previous 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 Departments (HoDs) 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 Public Service (Administration) Order (PS(A)O) made by the

Chief Executive (CE), and DSL governing how disciplinary proceedings should be instituted against civil servants alleged of misconduct or offences. While PS(A)O is applicable to civil servants in civilian grades and senior ranking officers¹ in disciplined service grades², DSL is applicable to middle ranking officers or below in disciplined service grades.

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

- (a) Delegation to HoDs the power to take disciplinary action, which has enabled bureaux and departments (B/Ds) to assume greater ownership and accountability in staff integrity management;
- (b) Issue of a practical guide on disciplinary procedures to B/Ds; and
- (c) Provision of an electronic database on precedent cases to facilitate deliberation on the level of punishment.

These measures have shortened 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 punishment

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. It is the Administration's policy that 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.

¹ These refer generally to officers at a rank equivalent to Superintendent/Assistant Superintendent and above.

² Except for Immigration Department in which only the junior ranking officers (i.e. those of the Immigration Assistant grade) are subject to DSL for the disciplinary offences specified therein, whilst the others are subject to PS(A)O.

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).

Due process

7. According to the Administration, disciplinary cases should be 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 proceedings;
- (e) Seeking, where warranted, the advice of the Department of Justice 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 authority⁵.

8. A civil servant who is aggrieved by the disciplinary authority's decision may petition CE under article 48 of the Basic Law, or lodge an appeal under the applicable DSL, or make a representation to CE under section 20(1) of PS(A)O. A civil servant may also seek redress through the court by applying for a judicial review against the disciplinary authority's decision.

⁵ 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 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 CE or his delegate) will be referred to PSC for advice on punishment. According to PS(A)O, officers appointed to and confirmed in established offices are classified as Category A officers.

9. In the light of the Court of First Instance's judgment handed down in July 2008 on Mr Mike Rowse's application for judicial review and with a view to ensuring the continued effective and efficient handling of representations made under section 20(1) of PS(A)O, an amendment was subsequently made to PS(A)O to expressly provide that CE might delegate his power under section 20(1) to other public officers to consider and act on representations.

Concerns raised by the Panel about the civil service disciplinary mechanism

Financial hardship after compulsory retirement/during interdiction

10. When the Panel discussed the legislative proposal to introduce a disciplinary framework for civil servants whose retirement benefits were provided under the Civil Service Provident Fund Scheme at its meeting on 20 October 2008, Dr Hon Margaret NG expressed the view 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 interdiction.

11. 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 provided 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. The information was circulated to members vide LC Paper No. CB(1)1260/08-09(04).

Discrepancies in the disciplinary proceedings adopted by different disciplined services

12. 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 concerns raised by staff in this regard and ensure that the disciplinary proceedings were fair.

13. The Administration undertook that it would review with the disciplined services departments⁶ 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.

14. As regards the timetable for conducting the review, the Administration explained that the Civil Service Bureau (CSB) 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.

15. At the Panel meeting on 20 April 2009, the Administration reported that a task group was examining the arrangements of recording (in written and tape form) of disciplinary hearings undertaken under the relevant DSL, the leave arrangements for serving civil servants attending disciplinary hearings as defence representatives/witnesses for the accused officers, the processing time for investigation of alleged misconduct of staff, and whether the different disciplinary practices adopted by different disciplined services under their respective DSL should be standardized.

Appeal mechanism

16. At the Panel meeting on 17 November 2008, the staff sides of the

⁶ 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 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 CE or his delegate) will be referred to PSC for advice on punishment. According to PS(A)O, officers appointed to and confirmed in established offices are classified as Category A officers.

disciplined services expressed concerns about the lack of progress in formulating the operational details of the "review board" provided under section 20(2) of PS(A)O) to replace the appeal channel that existed prior to the Reunification. In response to members' call to follow up the matter, the Administration advised that the matter was under consideration, and it would continue to keep the staff sides closely informed of the progress made and consult them on the relevant review findings.

Denial of legal representation

17. In March 2009, a judgment was handed down by CFA (the CFA judgment) concerning the denial of legal representation for a civil servant during a disciplinary proceeding conducted under DSL⁷. At the Panel meeting on 20 April 2009, the Panel discussed with the Administration and representatives of the staff sides of the disciplined services about the necessary remedial actions required, such as whether legislative amendments should be made to repeal those provisions in the relevant DSL which had been ruled unconstitutional, and how requests for legal representation at disciplinary hearings conducted under the relevant DSL should be handled.

18. The Administration advised that the processing of disciplinary cases had been suspended insofar as cases involving disciplinary hearings conducted under the relevant provisions of four DSL (including those under the Police (Discipline) Regulations which had been ruled unconstitutional by CFA) were concerned. The Administration was drawing up guidelines for the disciplinary authority to facilitate consideration of applications for legal representation from civil servants and the conduct of disciplinary hearings with legal representation. The civil servants in the suspended cases would be invited to consider whether they wished to apply for legal representation.

19. Members also expressed concern about the need for a comprehensive review to examine whether any more provisions under the existing DSL might also be unconstitutional. The Administration advised that its plan was to give priority to urgent matters such as the legal representation issue. Moreover, the Administration would keep the civil service disciplinary system under regular review to identify areas for improvements.

20. Some members suggested that the Administration should consider providing financial assistance to ensure that an officer would not be denied the right to legal representation and a fair hearing merely due to a lack of means. The Administration considered it inappropriate to use public funds to provide legal assistance to the officers involved. Moreover, there were already sufficient safeguards for ensuring a fair hearing, e.g., an officer taking his case to the court

⁷ *Lam Siu Po v. Commissioner of Police* (FACV No. 9 of 2008).

might get financial assistance under the legal aid system.

Latest developments

21. At the Panel meeting on 22 February 2010, members enquired about the progress in introducing amendments to relevant disciplined services regulations pursuant to the CFA judgment. The Administration responded that the Administration planned to consult the Panel on the amendments before the end of the current session. The Administration also advised that legal representation in disciplinary cases processed under PS(A)O was already allowed where fairness so required. As regards disciplinary cases processed under DSL, pending the legislative amendments, two disciplined services departments had issued guidelines to facilitate consideration of requests for legal representations from defaulters. The other disciplined services departments would also issue similar guidelines in the near future. At the Chairman's request, the Administration agreed to provide an interim report on the following –

- (a) Progress made in introducing amendments to disciplined services regulations and related instructions pursuant to the CFA judgment;
- (b) The current position of disciplinary cases earlier suspended pending introduction of the above amendments; and
- (c) The progress in standardizing certain practices in the disciplinary proceedings of civil servants subject to DSL.

22. The Administration has proposed to brief the Panel at the meeting on 21 June 2010 on the progress on various issues as requested by the Panel.

Relevant papers

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

Appendix

Disciplinary mechanism and proposed amendments to Disciplined Services Legislation

List of relevant papers

Date of meeting	Committee	Minutes/Paper	LC Paper No.
20.10.2008	Panel on Public Service (PS Panel)	<p>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</p> <p>Minutes of meeting</p>	<p>CB(1)36/08-09(02)</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps1020cb1-36-2-e.pdf</p> <p>CB(1)354/08-09</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/minutes/ps20081020.pdf</p>
17.11.2008	PS Panel	<p>Supplementary paper on disciplinary framework for civil servants whose retirement benefits are provided under the Civil Service Provident Fund Scheme and other related proposals</p> <p>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</p> <p>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)</p>	<p>CB(1)590/08-09(01)</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps117cb1-590-1-e.pdf</p> <p>CB(1)81/08-09(01)</p> <p>http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps1020cb1-81-1-c.pdf</p> <p>CB(1)247/08-09(01)</p> <p>http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps117cb1-247-1-c.pdf</p>

Date of meeting	Committee	Minutes/Paper	LC Paper No.
		<p>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</p> <p>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</p> <p>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)</p> <p>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</p>	<p>CB(1)226/08-09(02) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps117cb1-226-2-c.pdf</p> <p>CB(1)226/08-09(01) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps117cb1-226-1-c.pdf</p> <p>CB(1)227/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps117cb1-227-1-e.pdf</p> <p>CB(1)169/08-09(06) http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps117cb1-169-6-c.pdf</p>

Date of meeting	Committee	Minutes/Paper	LC Paper No.
		<p>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</p> <p>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)</p> <p>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)</p> <p>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)</p> <p>Minutes of meeting</p>	<p>CB(1)169/08-09(04)</p> <p>http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps117cb1-169-4-c.pdf</p> <p>CB(1)208/08-09(01)</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps117cb1-208-1-e.pdf</p> <p>CB(1)169/08-09(05)</p> <p>http://www.legco.gov.hk/yr08-09/chinese/panels/ps/papers/ps117cb1-169-5-c.pdf</p> <p>CB(1)203/08-09(01)</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps117cb1-203-1-e.pdf</p> <p>CB(1)560/08-09</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/minutes/ps20081117.pdf</p>

Date of meeting	Committee	Minutes/Paper	LC Paper No.
20.4.2009	PS Panel	<p>Administration's paper on Disciplinary mechanism and related procedures for disciplined services and civilian grades</p> <p>Paper on civil service disciplinary mechanism prepared by the Legislative Council Secretariat (Background brief)</p> <p>Administration's response on Disciplinary mechanism and related procedures for disciplined services and civilian grades</p> <p>Minutes of meeting</p>	<p>CB(1)1260/08-09(04)</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps0420cb1-1260-4-e.pdf</p> <p>CB(1)1297/08-09</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps0420cb1-1297-e.pdf</p> <p>CB(1)1718/08-09(01)</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/papers/ps0420cb1-1718-1-e.pdf</p> <p>CB(1)1690/08-09</p> <p>http://www.legco.gov.hk/yr08-09/english/panels/ps/minutes/ps20090420.pdf</p>

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Legislative Council Secretariat
 17 June 2010