

**Subcommittee on Amendments to Subsidiary Legislation on Discipline
Made under Disciplined Services Ordinances**

**List of follow-up actions arising from the discussion
at the meeting on 16 May 2012**

1. The Administration is requested to provide:
 - (a) the Court of Final Appeal's judgment in the case of *Lam Siu Po v Commissioner of Police* (C of P) in March 2009 (CFA judgment);
 - (b) the set(s) of administrative guidelines/procedures currently used by relevant disciplined services departments (DSDs) on allowing a civil servant subject to disciplinary proceedings to apply for legal representation at disciplinary hearings and on the factors taken into consideration in approving such applications; and
 - (c) an explanation on how the set(s) of guidelines are common in spirit but with some variations to meet their respective needs of the DSDs.

[Administration's response in paragraphs 1.1 to 2.5 of LC Paper No. CB(1)1989/11-12(04)]

2. To facilitate the Subcommittee's consideration, the Administration is asked to set out in a readable format the major changes brought about by the amendment regulations/rules vis-à-vis the existing provisions.

[Administration's response in LC Paper No. CB(1)1989/11-12(05)]

3. The Administration and ALA8 are requested to give their views on whether the current administrative guidelines/procedures used by relevant DSDs and the amendment regulations/rules are in compliance with the ruling/decisions in CFA judgment.

[Administration's response in paragraphs 1.1 to 2.5 of LC Paper No. CB(1)1989/11-12(04)]

4. It is noted that the disciplinary authority may take into account, but is not limited to, a host of factors when considering an application for legal representation (paragraph 6 of LegCo Brief). The Administration is asked to

- (a) inform the Subcommittee of the quantifiable criteria, if any, currently adopted by the DSDs in considering factors such as "the capacity of the applicant to present his/her own case" and the other factors which are couched in abstract terms; and
- (b) consider specifying all, or some, of these factors in the relevant legislation.

[Administration's response in paragraphs 3.1 to 3.3 of LC Paper No. CB(1)1989/11-12(04)]

5. In respect of those disciplinary cases decided before the handing down of the CFA judgment, the Police is requested to:

- (a) provide information on its current administrative measures (including the factors taken into account) on handling and considering the request of a police officer (former or existing) to review his/her case where the police officer had not been legally represented at the disciplinary hearing; and
- (b) advise on the number of requests in (a) above received after the CFA judgment, and the decisions on such requests.

[Reply awaited]

6. As the Subcommittee has been informed that the C of P does not have the statutory power to overturn or change the findings and awards made in past disciplinary cases, notably those decided before the CFA judgement, the Administration is asked to explain how it would seek to redress past cases in which the defaulters had been unfairly denied legal representation, given that the outcomes of these cases might be very different if the defaulters concerned had been legally represented, and that many of these officers had been compulsorily retired and suffered financial hardship.

[Reply awaited]

7. It is noted that the adjudicating officer/tribunal can make recommendation on whether the defaulters appearing before it should be legally represented. The Police is asked to:

- (a) advise on the total number of cases in which the adjudicating officer/tribunal had made such recommendation, and the number of these cases in which legal representation was subsequently approved; and
- (b) consider the suggestion to also empower the adjudicating officer/tribunal to approve such requests.

[Administration's response in paragraphs 4.1 to 4.3 of LC Paper No. CB(1)1989/11-12(04)]

8. On the relevant review authority/body appointed by DSDs to handle defaulters' appeals against the decision to reject their requests for legal representation, the Administration is asked to provide its view on some members' suggestion of including an independent third party (e.g. an external party outside the Administration or an officer from Civil Service Bureau (CSB)) as a member of such authority/body.

[Administration's response in paragraphs 5.1 to 5.4 of LC Paper No. CB(1)1989/11-12(04)]

9. On the amendments to stipulate that an adjudicating officer/tribunal may proceed with the disciplinary proceedings in the absence of an accused if the latter fails to appear repeatedly without reasonable justifications, the Police is asked to:

- (a) provide the documented guidelines on the factors to be considered and arrangements to be observed by the adjudicating officer/tribunal when deciding whether or not to proceed with the aforesaid disciplinary proceedings; and
- (b) explain how to implement the arrangements in (a) above (e.g. the procedures/measures required to ensure the timely delivery of the notices requiring the accused's attendance at the disciplinary hearing).

[Administration's response in paragraphs 6.1 to 6.4 of LC Paper No. CB(1)1989/11-12(04)]

10. The Administration is requested to:
- (a) provide further information on its consultations with the staff sides regarding the proposed amendment to include "deferment or stoppage of increment" as one of the possible punishments for disciplinary cases involving junior police officers (JPOs) and the Traffic Warden grade, including the views of the staff and the outcomes of such consultations; and
 - (b) explain the basis (legal or otherwise) for the Administration's view that the proposed amendment does not amount to a unilateral change resulting in less favourable terms/conditions of service for JPOs and the Traffic Warden grade, and that this change is in conformity with Article 100 of the Basic Law.

[Administration's response in paragraphs 7.1 to 7.5 of LC Paper No. CB(1)1989/11-12(04)]

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