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Panel on Public Service Meeting on 18 November 2013

Updated background brief on civil service disciplinary matters

Purpose

This paper provides background information on civil service disciplinary matters, and summarizes major views and concerns expressed by members of the Panel on Public Service ("the Panel") when the subject was discussed by the Panel in the past three years.

Background

2. According to the Administration, rules and guidelines governing the conduct of civil servants are promulgated by way of civil service regulations and circulars for compliance by individual officers. Disciplinary action will be taken against civil servants found to have committed misconduct, in accordance with the established civil service disciplinary mechanism. A civil servant who commits a criminal offence (whether related to his public duty or not) can render himself liable to disciplinary action, in addition to the penalty imposed by the Court.

The civil service disciplinary mechanism

Types of disciplinary action

3. As advised by the Administration¹, the two types of disciplinary action taken against civil servants who have committed misconduct are as

¹ Details of the civil service disciplinary mechanism and figures on punishments imposed were provided in the Administration's paper LC Paper No. [CB\(1\)1819-11-12\(03\)](#).

follows -

- (a) Summary disciplinary action – For minor misconduct (e.g. occasional unpunctuality, breach of government regulations of a minor nature, etc.) committed by civil servants, the relevant bureaux or departments ("B/Ds") may, after completing departmental investigation, issue verbal or written warnings to the civil servants concerned without the need to conduct formal disciplinary hearings.
- (b) Formal disciplinary action - For repeated minor misconduct, or more serious misconduct (e.g. abuse of official position, wilful neglect of official instructions, etc.) allegedly committed by civil servants, or for civil servants convicted of criminal offences, the relevant B/Ds may institute formal disciplinary proceedings against the civil servants concerned. The range of punishment that may be imposed under formal disciplinary action includes reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. Financial penalty may also be imposed concurrently with any of the above punishments, except in the case of reduction in rank and dismissal.

Executive order and legislation relating to formal disciplinary action

4. Formal disciplinary action in respect of civil servants in the civilian grades and senior ranking civil servants in the disciplined services grades² is taken in accordance with the provisions and procedures laid down in the Public Service (Administration) Order ("PS(A)O")³. In respect of middle and junior ranking civil servants in the disciplined services grades, formal disciplinary actions is taken in accordance with the relevant Disciplined Services Legislation ("DSL")⁴ and the related Subsidiary Regulations on discipline.

² These refer generally to civil servants at a rank equivalent to superintendent/assistant superintendent and above of Correctional Services Department, Customs and Excise Department, Fire Services Department, Government Flying Service, Hong Kong Police Force and Immigration Department.

³ The PS(A)O is an executive order made by the Chief Executive under Article 48(4) of the Basic Law.

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).

Legal or other forms of representation at disciplinary hearings

5. In March 2009, the Court of Final Appeal ("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 legal representation is a matter for the disciplinary authority to consider under its discretion in accordance with the principle of fairness in common law, and 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.

6. To address the above legal issue and to introduce other improvements to the disciplinary proceedings under the DSL, the Administration tabled the amendment regulations/rules of the respective DSL in the Legislative Council ("LegCo") for negative vetting on 2 May 2012. One of the proposed amendments was to allow an accused officer to apply for, subject to the approval of the concerned disciplinary authority, representation at the relevant disciplinary hearings by a barrister or solicitor or by another person.

7. As there was insufficient time for the relevant subcommittee⁵ to complete scrutiny of the subsidiary legislation before the prorogation of the Fourth LegCo the Administration undertook not to bring the amendments regulations/rules into commencement and to refine them in consultation with the management and staff sides and taking into account the views of the subcommittee⁶. Pending introduction of the legislative amendments in the Fifth LegCo, the disciplined services departments has 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.

Lodging of appeal

8. A civil servant aggrieved by the disciplinary authority's decision may petition the Chief Executive ("CE") under Article 48 of the Basic Law, or

⁵ Subcommittee on Amendments to Subsidiary Legislation on Discipline Made under Disciplined Services Ordinance

⁶ This subject has been included in the "List of outstanding items for discussion" of the Panel.

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.

Disciplinary punishments imposed on civil servants

9. As advised by the Administration, disciplinary punishments imposed on civil servants after completion of disciplinary proceedings under PS(A)O or the DSL from the financial years of 2007-2008 to 2011-2012 are as follows⁷-

Type of punishment	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	Total
Dismissal due to						
a. misconduct	4	5	3	4	0	16
b. criminal offence	16	18	18	14	10	76
Compulsory retirement	33	28	18	19	12	110
Reprimand or severe reprimand (with or without financial penalty)	244	218	148	150	150	910
Warnings	102	127	126	122	123	600
Others	5	14	14	15	13	61
Total	404	410	327	324	308	1773

Discussions at the Panel on Public Service

10. The Panel discussed civil service disciplinary matters on 21 June 2010, 18 April 2011 and 21 May 2012 in the past three years. The major views and concerns expressed by Panel members and the Administration's responses are summarized in the ensuing paragraphs.

Legal or other forms of representation at disciplinary hearings

11. At the meeting on 21 June 2010, some members noted with concern that since the CFA judgment, 52 of the 105 applications for legal or other forms of representation at disciplinary hearings had been rejected by the Administration. They considered that legal representation was a basic right and applications for legal representation should only be rejected under very special circumstances.

⁷ LC Paper No. [CB\(1\)1819-11-12\(3\) \(Annexes A & B\)](#)

12. The Administration advised that according to the CFA judgment on *Lam Siu Po v. Commissioner of Police* (FACV 9/2008), the defaulter did not enjoy absolute right to legal representation in the course of disciplinary hearings. Legal representation was a matter for the disciplinary authority to deal with under its discretion in accordance with the principle of fairness. Every application for legal representation would be examined on its own merits. A civil servant whose application for legal or another form of representation at disciplinary hearings was rejected could lodge an appeal, and the appeal would be heard by an officer who was more senior than the one who had rejected the application.

13. At the meeting on 21 May 2012, the Administration advised that as at 30 April 2012, there had been four applications for legal representation from civilian staff who were subject to disciplinary proceedings under the PS(A)O, and all had been approved. Furthermore, among the 228 applications for legal representation from civil servants who were subject to disciplinary proceedings under the relevant DSL, 101 of them had been approved and about 10 cases were being processed. As regards the statistics on appeal cases, the Administration advised after the meeting that as at 31 March 2012, 22 officers had lodged appeals against the relevant authority's decisions not to approve legal representation at their disciplinary hearings proceeded under the DSL. Each of the appeals was considered in accordance with the principle of fairness by a more senior officer not lower than the level of Assistant Commissioner/Director or equivalent. Since the grounds advanced in the appeals could not justify varying the decisions in rejecting applications for legal representation, the Administration decided to uphold the decisions in all these cases.

Disciplinary punishments imposed on civil servants

14. Noting that there were 13 dismissal cases during the period from 2007-2008 to 2011-2012 for offences under the Prevention of Bribery Ordinance ("POBO") and the common law offence of Misconduct in Public Office, members enquired whether other forms of punishments would be imposed on civil servants convicted of these two offences.

15. The Administration advised that for the 12 conviction cases under section 3 of POBO during the above period, three officers were dismissed, three were compulsorily retired and six were punished by reprimand or severe

reprimand with or without financial penalty. As for the nine conviction cases under the common law offence of Misconduct in Public Office during the above period, three officers were dismissed, five were compulsorily retired with or without financial penalty and one was punished by reduction in rank.

16. Some members noted with concern that the number of dismissal cases involving civil servants subject to the DSL⁸ (i.e. 65 cases) nearly doubled that involving civil servants subject to the PS(A)O⁹ (i.e. 38 cases) for the period from 2006-2007 to 2010-2011¹⁰.

17. In its follow-up paper submitted to the Panel, the Administration explained that due to the unique operational requirements for middle and junior ranking officers in the disciplined services, these officers were subject to specific disciplinary offences stipulated under the DSL. Examples of these specific disciplinary offences included cowardice in the performance of duty, deliberately acting in a manner calculated to provoke a prisoner, conduct to the prejudice of good order and discipline, etc. Moreover, disciplined services officers were expected to uphold a high standard of integrity and probity given the positions of trust and powers reposed in them. The Administration hence took a serious view of disciplinary and criminal offences committed by law enforcement officers, in particular over convictions of criminal offences associated with corruption, misuse of authority or those reflecting poorly on their integrity. Officers so convicted were often dealt with by heavy punishment, including dismissal which was the most severe form of punishment. As such, the number of dismissal cases meted out under the DSL was more than that under PS(A)O.

18. Noting that none of the 103 dismissal cases from 2006-2007 to 2010-2011¹¹ involved directorate civil servants, a member expressed concern whether equally stringent standards of conduct were applied to directorate civil servants.

19. The Administration advised that all civil servants were treated equally under the civil service disciplinary mechanism regardless of their grades and ranks. Since senior civil servants were expected to lead by example, it was the Administration's policy that a higher ranking civil servant would

⁸ These refer to middle and junior ranking civil servants in the disciplined services grades.

⁹ These refer to civil servants in the civilian grades and senior ranking civil servants in the disciplined services grades.

¹⁰ Up to 31 December 2010.

¹¹ Up to 31 December 2010.

normally receive a heavier punishment than a junior civil servant found guilty of the same misconduct or criminal offence. During the aforesaid period, three directorate civil servants had been punished with compulsory retirement, severe reprimand plus financial penalty and reprimand respectively upon completion of formal disciplinary proceedings.

Long processing time for disciplinary cases

20. At the meeting on 21 June 2010, some members expressed concern on the long processing time for disciplinary cases, which in some cases might span a few years, and emphasized the need to set a timeframe to minimize the impact of lengthy proceedings on the well-being of the civil servants concerned. The Administration undertook to examine whether administrative measures could be taken to specify a broad timeframe or performance targets for investigating into disciplinary cases in general.

Indebtedness of civilian civil servants

21. On members' concern as to whether any civilian civil servants had been subject to formal disciplinary action solely because they had become insolvent or bankrupt, the Administration advised that a civil servant would not be punished merely because he had become insolvent or bankrupt. However, the civil servant would be punished if his financial problems had led to misconduct or criminal conviction.

Latest developments

22. The Administration will update the Panel on civil service disciplinary matters at the meeting on 18 November 2013.

Relevant papers

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

Civil service disciplinary matters

List of relevant papers

Date	Meeting/Event	References
21 June 2010	Panel on Public Service	<p>Administration's paper on Disciplinary mechanism and progress on various disciplinary matters LC Paper No. CB(1)2225/09-10(01)</p> <p>Paper on disciplinary mechanism and proposed amendments to disciplined services legislation prepared by the Legislative Council Secretariat (Background brief) LC Paper No. CB(1)2227/09-10</p> <p>Minutes of meeting LC Paper No. CB(1)201/10-11</p>
18 April 2011	Panel on Public Service	<p>Administration's paper on Overview of civil service disciplinary matters LC Paper No. CB(1)1858/10-11(05)</p> <p>Paper on disciplinary mechanism and proposed amendments to disciplined services legislation prepared by the Legislative Council Secretariat (Updated background brief) LC Paper No. CB(1)691/10-11</p> <p>Minutes of meeting LC Paper No. CB(1)2445/10-11</p> <p>Administration's follow-up paper LC Paper No. CB(1)2866/10-11(01)</p>

Date	Meeting/Event	References
21 May 2012	Panel on Public Service	<p>Administration's paper on Overview of civil service disciplinary matters LC Paper No. CB(1)1819/11-12(03)</p> <p>Paper on disciplinary mechanism and proposed amendments to Disciplined Service Legislation prepared by the Legislative Council Secretariat (Updated background brief) LC Paper No. CB(1)1819/11-12(04)</p> <p>Minutes of meeting LC Paper No. CB(1)2576/11-12</p> <p>Administration's follow-up paper LC Paper No. CB(1)2279/11-12(01)</p>
15 June 2012	House Committee	<p>Report of the Subcommittee on Amendments to Subsidiary Legislation on Discipline Made under Disciplined Services Ordinances LC Paper No. CB(1)2152/11-12</p>