立法會 Legislative Council

LC Paper No. CB(1)691/10-11

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Panel on Public Service Meeting on 20 December 2010

Updated background brief on disciplinary mechanism and proposed amendments to disciplined services legislation

Purpose

This paper provides background information on the civil service disciplinary mechanism. 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. According to the Administration's paper for the Panel, for minor misconduct of civil servants, 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 civil servants concerned without recourse to formal proceedings. Formal disciplinary action may be considered in cases 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 Disciplined Services Legislation (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) issuance 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.
- 6. 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

7. The range of punishment that may be imposed under formal

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).

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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.

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.

Due process

- 8. 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.
- 9. 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.
- 10. 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

Financial hardship after compulsory retirement/during interdiction

- 11. On 20 October 2008, 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, Dr Hon Margaret NG expressed the view that certain disciplinary procedures of the disciplined services should be reviewed, citing the following examples -
 - (a) Police officers removed through compulsory retirement would receive pension only when they reached the normal retirement age. This arrangement might cause financial

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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.

- 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.
- 12. 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).

<u>Discrepancies in the disciplinary proceedings adopted by different disciplined</u> services

- 13. At the Panel meeting on 17 November 2008, some members 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.
- 14. 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.

- 15. 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.
- 16. 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

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

18. 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 the disciplinary authority ought to be able to exercise discretion to permit other forms of representation by fellow officers or other persons at disciplinary

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hearings. 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.

- 19. 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 P(D)R 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.
- 20. When the Panel discussed the progress of the necessary remedial actions arising from the CFA judgement at its meeting on 21 June 2010, the Administration advised that the CFA judgement had read-across implications for the other subsidiary Regulations on discipline to DSL, which contained similar provisions to those in P(D)R. The Administration had identified the provisions in the subsidiary Regulations⁶ concerned that would need to be amended, and was in the process of drawing up the necessary legislative Pending introduction of the legislative amendments, the amendments. disciplined services departments had 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 DSL. Administration further reported the position of applications for legal or other forms of representation for disciplinary cases under DSL (as at 31 May 2010) as follows -
 - (a) 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; and
 - (b) 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 were still

⁶ Including amendments to a schedule to the Fire Services Ordinance (Cap. 95) by way of regulation.

being processed.

A breakdown of these cases by disciplined services departments is set out at **Appendix I**.

21. Some Panel members expressed concern about the high incidence of rejection (50%) as 52 of the 105 applications received had been rejected,. These members considered that it was a civil servant's fundamental right to appoint legal representative to assist him/her during disciplinary hearings and such a right should not be denied. They requested the Administration to provide the reasons for rejection. The Administration subsequently provided the requisite information [LC Paper No. CB(1)2757/09-10(01)] which is attached at **Appendix II** for members' easy reference.

Legislative amendments

22. At the Panel meeting on 21 June 2010, the Administration informed the Panel that in drawing up the necessary legislative amendments, the Administration was concurrently working with the management and staff sides of individual disciplined services to identify other areas of improvement to the subsidiary Regulations on discipline to DSL, which might be taken forward in the current legislative amendment exercise. The Administration advised that so far, consensus had been reached on the inclusion of provisions to stipulate that written, audio or video records were formal records of proceedings for disciplinary hearings⁷.

Latest developments

23. The Administration has proposed to give a progress update on proposed amendments to the subsidiary Regulations on discipline under DSL and other improvements to the disciplinary proceedings under DSL at the next meeting on 20 December 2010.

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⁷ At present, the records of proceedings for disciplinary hearings conducted under DSL are prepared in written form. While disciplined services departments have already arranged audio recording of disciplinary hearings, DSL does not contain explicit provisions providing for records of proceedings in audio- or video-recorded form.

Relevant papers

24. A list of relevant papers is at **Appendix III**.

Council Business Division 1
<u>Legislative Council Secretariat</u>
14 December 2010

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.

LC Paper No. CB(1)2757/09-10(01)

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18 August 2010

Ms Sarah YUEN Clerk to Panel on Public Service Legislative Council Building 8 Jackson Road, Central Hong Kong

CSBCR/DP/1-010-005/6 Pt. 2

Dear Ms YUEN,

Panel on Public Service Follow-up to meeting on 21 June 2010

At the meeting of the Panel on Public Service on 21 June 2010, Members requested the Administration to provide information on the following -

- (a) reasons (in the form of breakdown by category) for rejecting the 52 applications for legal or other forms of representation at disciplinary hearings conducted under the respective Disciplined Services Legislation as at 31 May 2010; and
- (b) reasons for the delay in re-processing the disciplinary cases concerning Mr LAM Siu-po and Mr CHIU Hoi-po, appellants in two successful cases of appeal to the Court of Final Appeal.

Applications for legal or other forms of representation

In general, approving authorities will consider the circumstances of the case and take into account, but not limited to, the following factors¹ in

These factors were mentioned by the Court of Final Appeal ("CFA") in the case of *Stock Exchange of Hong Kong Ltd v. New World Development Co. Ltd and Others (FACV 22/2005)*. They were also mentioned in the CFA judgement on *Lam Siu Po* case.

considering applications for legal representation -

- (a) seriousness of the charge and potential penalty;
- (b) whether any points of laws are likely to arise;
- (c) the officer's capacity to present his case;
- (d) procedural difficulties;
- (e) the need for reasonable speed to make the adjudication; and
- (f) the need for fairness amongst the individuals concerned.

The approving authority will consider the circumstances of the case and other appropriate factors, such as the possibility of leakage of sensitive information in considering applications for other forms of representation.

The decision to approve or reject an application for legal or other forms of representation is made having regard to one or more factors as mentioned above. The main factors considered by the relevant Disciplined Services Departments in rejecting the 52 applications are tabulated below –

Main factors	No. o			
considered in rejecting an application	Hong Kong Police Force	Fire Services Department	Correctional Services Department	Total
Factor (a)	2			2
Factors $(a) + (b)$			1	1
Factors $(a) + (c)$	45			45
Factors (a) to (d)	1			1
Factors (a) to (e)		1		1
Factors (a) to (f)		1		1
Other Factor			12	1
Total	48	2	2	52

Re-processing of disciplinary cases of two police officers

As regards the re-processing of disciplinary cases concerning the two police officers (namely Mr LAM Siu-po and Mr CHIU Hoi-po), the

The application was rejected on the ground that the defence representative (not legal representative) under application was involved in the preliminary investigation of the disciplinary case. Hence, it would not be fair to have him acting as the defence representative given that he had previous knowledge of the case.

Police management has advised that since the alleged offences of the two officers took place in 2000, it has taken some time to retrieve, re-examine and re-confirm the information and circumstances of the cases. The Police management has undertaken to follow up on the two cases as expeditiously as practicable, taking into consideration the specific circumstances of each case.

Yours sincerely,

(Ms Ivy LAW) for Secretary for the Civil Service

cc: relevant Disciplined Services Departments

Disciplinary mechanism and proposed amendments to Disciplined Services Legislation

List of relevant papers

Date of	Committee	Minutes/Paper	LC Paper No.
meeting			
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/ps1020 cb1-36-2-e.pdf
		Minutes of meeting	CB(1)354/08-09 http://www.legco.gov.hk/yr08- 09/english/panels/ps/minutes/ps 20081020.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/ps1 117cb1-590-1-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 Disciplined Services General Union	CB(1)81/08-09(01) http://www.legco.gov.hk/yr08- 09/chinese/panels/ps/papers/ps1 020cb1-81-1-c.pdf

Date of meeting	Committee	Minutes/Paper	LC Paper No.
		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/ps1 117cb1-247-1-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/ps1 117cb1-226-2-c.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 Electrical & Mechanical Works Supervisors, Craftsmen & Workmen Association	CB(1)226/08-09(01) http://www.legco.gov.hk/yr08- 09/chinese/panels/ps/papers/ps1 117cb1-226-1-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/ps1 117cb1-227-1-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/ps1 117cb1-169-6-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/ps1 117cb1-169-4-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/ps1 117cb1-208-1-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/ps1 117cb1-169-5-c.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 Senior Civil Service Council (Staff Side)	CB(1)203/08-09(01) http://www.legco.gov.hk/yr08- 09/english/panels/ps/papers/ps1 117cb1-203-1-e.pdf
		Minutes of meeting	CB(1)560/08-09 http://www.legco.gov.hk/yr08- 09/english/panels/ps/minutes/ps 20081117.pdf

Date of meeting	Committee	Minutes/Paper	LC Paper No.
20.4.2009	PS Panel	Administration's paper on Disciplinary mechanism and related procedures for disciplined services and civilian grades	CB(1)1260/08-09(04) http://www.legco.gov.hk/yr08- 09/english/panels/ps/papers/ps0 420cb1-1260-4-e.pdf
		Paper on civil service disciplinary mechanism prepared by the Legislative Council Secretariat (Background brief)	CB(1)1297/08-09 http://www.legco.gov.hk/yr08- 09/english/panels/ps/papers/ps0 420cb1-1297-e.pdf
		Administration's response on Disciplinary mechanism and related procedures for disciplined services and civilian grades	CB(1)1718/08-09(01) http://www.legco.gov.hk/yr08- 09/english/panels/ps/papers/ps0 420cb1-1718-1-e.pdf
		Minutes of meeting	CB(1)1690/08-09 http://www.legco.gov.hk/yr08- 09/english/panels/ps/minutes/ps 20090420.pdf
21.6.2010	PS Panel	Administration's paper on Disciplinary mechanism and progress on various disciplinary matters	CB(1)2225/09-10(01) http://www.legco.gov.hk/yr09- 10/english/panels/ps/papers/ps0 621cb1-2225-1-e.pdf
		Paper on disciplinary mechanism and proposed amendments to disciplined services legislation prepared by the Legislative Council Secretariat (Background brief)	CB(1)2227/09-10 http://www.legco.gov.hk/yr09- 10/english/panels/ps/papers/ps0 621cb1-2227-e.pdf
		Submission on disciplinary mechanism and progress on various disciplinary matters from Police Force Council Staff Side	CB(1)2236/09-10(01) http://www.legco.gov.hk/yr09- 10/english/panels/ps/papers/ps0 621cb1-2236-1-e.pdf

Date of meeting	Committee	Minutes/Paper	LC Paper No.
		Submission on disciplinary mechanism and progress on various disciplinary matters from Government Disciplined Services General Union (Chinese version only)	CB(1)2338/09-10(01) http://www.legco.gov.hk/yr09- 10/chinese/panels/ps/papers/ps0 621cb1-2338-1-c.pdf
		Administration's response on disciplinary mechanism and progress on various disciplinary matters (follow-up paper)	CB(1)2757/09-10(01) http://www.legco.gov.hk/yr09- 10/english/panels/ps/papers/ps0 621cb1-2757-1-e.pdf
		Minutes of meeting	CB(1)201/10-11 http://www.legco.gov.hk/yr09- 10/english/panels/ps/minutes/ps 20100621.pdf

Council Business Division 1 Legislative Council Secretariat 15 December 2010