

For discussion on
26 February 2024

LEGISLATIVE COUNCIL PANEL ON PUBLIC SERVICE

Civil Service Disciplinary Mechanism and Enhanced Measures

Purpose

This paper briefs Members on the civil service disciplinary mechanism¹, as well as the enhanced measures introduced in recent years and their implementation progress.

Civil Service Disciplinary Mechanism

2. The Government attaches great importance to the conduct and integrity of the civil service and takes a zero-tolerance approach towards officers who have breached the law or misconducted themselves. A civil service disciplinary mechanism has been put in place to ensure that appropriate punishments are meted out to officers who have misconducted themselves under the principles of fairness and impartiality and in accordance with stringent procedures.

Summary disciplinary action

3. If the departmental managers find or suspect an officer under their purview to have committed an act of misconduct, and if the misconduct, after investigation, is considered to be of a minor nature, they may take summary disciplinary action (including the issue of a verbal or written warning) against the officer without the need for a formal disciplinary hearing. Summary disciplinary action enables the management of bureaux/departments (“B/Ds”) to deal with individual cases involving minor misconduct expeditiously through administrative measures or pursuant to the respective Disciplined Services Legislation (“DSL”), departmental internal instructions or directives.

¹ Disciplinary matters in respect of government employees on non-civil service terms will be handled in accordance with the terms of their contracts and the departmental disciplinary mechanism applicable to this category of employees.

Formal disciplinary action

4. For an officer who has repeatedly committed minor misconducts or is in serious breach of regulations, or who has been convicted of criminal offences by the court, the relevant B/D will conduct a preliminary investigation or consider the records of court proceedings as appropriate. If the B/D considers 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 (“CSB”) for follow-up. SCSD is responsible for handling all formal disciplinary action in accordance with the Public Service (Administration) Order (“PS(A)O”) and the Public Service (Disciplinary) Regulation (“PS(D)R”)² at the central level in respect of civilian grades and senior ranking civil servants in the disciplined services grades³, and advising B/Ds on disciplinary procedures and punishment benchmarks. Formal disciplinary action in respect of middle and junior ranking civil servants in the disciplined services grades is generally taken by heads of the disciplined services departments in accordance with the respective DSL⁴ and the related subsidiary regulations on discipline.

5. The existing mechanism ensures that a civil servant suspected of misconduct which warrants formal disciplinary action (“the accused officer”) is given a fair hearing and sufficient opportunities to defend himself/herself. The relevant safeguards generally include:

- (a) where disciplinary hearing is to be conducted, the accused officer will be informed of the procedures and his/her rights before the hearing;

² PS(A)O is an executive order made by the Chief Executive under Article 48(4) of the Basic Law. It sets out the Chief Executive’s authority in regard to the management of the civil service, including disciplinary matters. PS(D)R is made in accordance with the rules and procedures for conducting disciplinary proceedings under section 9 or 10 of PS(A)O.

³ These refer generally to civil servants 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.

⁴ 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). For the purposes of this paper, DSL also includes the Traffic Wardens (Discipline) Regulations (Cap. 374J) (the Traffic Warden grade, which is a civilian grade in the Hong Kong Police Force, is subject to the Regulations in respect of misconduct committed).

- (b) the accused officer will be given the right to defend himself/herself, cross-examine witnesses and invite his/her witnesses to give evidence during the disciplinary hearing;
- (c) the accused officer will be allowed to make representations at various stages of the disciplinary proceedings; and
- (d) the accused officer will be allowed to apply for legal representation or other person to assist in his/her defence during the hearing.

6. If the civil servant concerned is found guilty of misconduct or convicted of criminal offence, the disciplinary authority may impose punishment on the defaulter having regard to the gravity of his/her misconduct or criminal offence, his/her disciplinary and service records, etc.⁵

7. A civil servant who is aggrieved by the decision of formal disciplinary punishment may make a representation to the Chief Executive under section 20 of PS(A)O as appropriate or lodge an appeal under the relevant DSL (if applicable). A civil servant may also seek redress through the court by applying for a judicial review against the decision of disciplinary punishment.

8. In the five financial years from 2018-19 to 2022-23, a total of 1 995 civil servants were punished with summary disciplinary action for misconduct of less serious nature, and 1 124 with formal disciplinary action for serious misconduct or criminal conviction, among which 195 were removed from the service. From 2017-18 to 2021-22, a yearly average of 31 civil servants were removed from the service (**Annex**). In 2022-23, the removal figure was up to 60. As regards 2023-24 (as at 31 December 2023), 38 officers have been removed from the service.

Measures to Enhance the Civil Service Disciplinary Mechanism

9. In recent years, the Government endeavours to improve the efficiency and effectiveness of the civil service disciplinary mechanism, so that punishment can be promptly imposed in a fair and just manner on officers found to have breached the law or misconducted themselves. The Chief

⁵ Before imposing any punishment on the civil servant concerned, the disciplinary authority will seek the independent advice from the Public Service Commission on the level of punishment pursuant to the Public Service Commission Ordinance (Cap. 93) and section 18 of PS(A)O as appropriate. The range of punishment includes reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. The disciplinary authority may also impose a financial penalty in the form of reduction in salary, stoppage or deferment of salary increments or a fine concurrently with some of the stated punishments. Certain punishments unique to the disciplined services are also provided under DSL.

Executive's 2023 Policy Address sets out that the Government will continue to strengthen the civil service management. In this regard, we will continue to initiate measures to enhance the civil service disciplinary mechanism, as well as supervise and assist B/Ds to make good use of the civil service disciplinary mechanism. CSB has been implementing the following enhancement measures since 2023.

(a) Pilot Scheme on Strengthening Departments' Monitoring of Summary Disciplinary Action Against Officers on Probationary or Trial Terms⁶ ("Pilot Scheme")

10. There was room for improving the efficiency in taking summary disciplinary actions by departments against officers on probationary or trial terms previously. In this connection, the Pilot Scheme was launched in four departments⁷ on 1 April 2023. Whenever a departmental manager or frontline supervisor intends to take summary disciplinary action against an officer on probationary or on trial terms, the manager/supervisor should inform the Departmental Secretary in advance and provide the case information. In the event that the probationary or trial service of the officer has to be extended as a result of the summary disciplinary action, the Departmental Secretary needs to monitor the timely submission to the Public Service Commission of the recommendation on extension of probationary or trial service⁸. If the proposed punishment is incommensurate with the severity of the misconduct, the Departmental Secretary should advise the manager/supervisor concerned for consideration of alteration. The Pilot Scheme aims to ensure that for officers on probationary or trial terms, their minor misconduct can be appropriately handled in time by the corresponding summary disciplinary action before they are confirmed to the permanent establishment. The scheme has been working smoothly so far. We will review the effectiveness of the Pilot Scheme after its one-year implementation.

⁶ Trial terms are applicable to officers who are confirmed to the permanent establishment and are appointed on transfer without a break in service to another established office; probationary terms are applicable to officers who are not confirmed to the permanent establishment but are appointed to an established office.

⁷ Food and Environmental Hygiene Department, Leisure and Cultural Services Department, Department of Health and Fire Services Department.

⁸ CSR 186(4) and 200(4) respectively provide that for recommendation of termination of service/trial appointment, or refusal of passage of probation/trial bar, or deferment with financial loss of passage of the probation/trial bar, the advice of the Public Service Commission should be sought.

(b) Requirement for all officers to report to their Heads of Departments (“HoDs”) if they are arrested

11. With effect from 28 July 2023, all officers⁹ should report to their HoDs if they are arrested by any law enforcement agency no later than seven calendar days, while the prevailing requirement of reporting criminal proceedings being instituted against them¹⁰ remains applicable. The new requirement allows Heads of B/Ds to be informed as soon as possible when officers under their purview have been arrested for alleged criminal offences. It will also allow them to closely monitor such cases and take timely follow-up actions when necessary (including transfer or interdiction). To assist B/Ds to adopt a stringent standard and take prompt follow-up actions (including administrative action or disciplinary punishment) on the non-compliance cases, CSB issued a set of detailed guidelines to B/Ds for general reference in early November 2023 and advised B/Ds to conduct briefing/refresher sessions on the reporting requirements for their officers.

(c) Strengthened effort on capacity building in investigation work on disciplinary cases

12. In 2023, in collaboration with the Independent Commission Against Corruption, SCSD conducted three workshops for about 140 departmental managers on investigation and interview skills in conducting departmental investigation of misconduct cases. SCSD also shared with the participants its observations on B/Ds’ handling of investigation at specific stages of disciplinary proceedings, and suggested possible means to address some common difficulties encountered in conducting investigations. For departmental managers with a relatively larger number of disciplinary cases under their purview, SCSD organised a dedicated train-the-trainer session in end-2023 to facilitate their intra-department sharing of knowledge, experience and best practices with their colleagues responsible for staff management. Both the workshops and session received positive feedback from the participants. In 2024, we will continue to organise workshops and dedicated sessions for departmental managers who are required to deal with disciplinary matters.

⁹ The new reporting requirement is also applicable to Non-civil Service Contract staff, Post-retirement Service Contract staff and other government staff employed on Non-civil Service terms.

¹⁰ As set out under section 13(1) of the PS(D)R or departmental internal circulars or orders.

(d) New arrangement to strengthen monitoring of summary disciplinary action and internal investigation

13. We introduced a new monitoring scheme in January 2024 that requires B/Ds to provide the senior departmental management (at Deputy Head of Department level) and SCSD with half-yearly returns on progress updates of their disciplinary cases. The scheme aims at stepping up the monitoring by senior departmental management of the processing time of the disciplinary cases under their purview and the appropriateness of the level of punishment imposed in terms of strictness and leniency. The information required in the returns includes the progress of (1) cases warranting summary disciplinary actions and (2) investigation on formal disciplinary cases. For each completed and on-going case with prolonged processing time, B/Ds are required to furnish further information such as reasons for the long processing time, actions taken/proposed to expedite the process, and measures to ensure timely processing for future cases.

14. We aim to, through the implementation of this scheme, raise the awareness of the senior management of B/Ds on the need to closely monitor the progress of disciplinary cases under processing, make timely intervention and give steer whenever necessary. SCSD will conduct sample reviews of the returns from B/Ds. The information reported by B/Ds will allow SCSD to have a better grasp of the case processing time of each B/D and the appropriateness of the level of punishment in terms of strictness and leniency imposed on completed and on-going cases involving summary disciplinary actions, so that timely feedback and assistance can be offered to B/Ds as appropriate.

15. We will review the scheme one year after implementation based on the returns from B/Ds, with a view to identifying practicable measures to help B/Ds enhance the effectiveness and efficiency in instituting summary disciplinary action and conducting departmental investigation for formal disciplinary cases.

Advice Sought

16. Members are invited to note the content of this paper.

Number of Removal Punishment from 2017-18 to 2022-23

| | | 2017- 18 | 2018- 19 | 2019- 20 | 2020- 21 | 2021- 22 | 2022- 23 |
|--------------|---------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| PS(A)O | Dismissal | 5 | 4 | 6 | 5 | 19 | 28 |
| | Compulsory Retirement | 4 | 9 | 8 | 7 | 5 | 8 |
| | <i>Sub-total</i> | 9 | 13 | 14 | 12 | 24 | 36 |
| DSL | Dismissal | 9 | 10 | 9 | 8 | 16 | 19 |
| | Compulsory Retirement | 3 | 9 | 6 | 2 | 12 | 5 |
| | <i>Sub-total</i> | 12 | 19 | 15 | 10 | 28 | 24 |
| Total | Dismissal | 14 | 14 | 15 | 13 | 35 | 47 |
| | Compulsory Retirement | 7 | 18 | 14 | 9 | 17 | 13 |
| | <i>Total Removal Cases</i> | 21 | 32 | 29 | 22 | 52 | 60 |

Note : PS(A)O : Public Service (Administration) Order
DSL : Disciplined Services Legislation