

立法會
Legislative Council

LC Paper No. CB(2) 1199/03-04
(These minutes have been seen
by the Administration)

Ref : CB2/SS/3/03

**Subcommittee on
Summary Disposal of Complaints (Solicitors) Rules**

**Minutes of second meeting
held on Monday, 5 January 2004 at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon Chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC , JP

Public Officers attending : The Administration

Mr Michael SCOTT
Senior Assistant Solicitor General

Miss Peggy AU YEUNG
Government Counsel

Attendance by invitation : The Law Society of Hong Kong

Mr Anson K C KAN
Vice-President

Mr Patrick MOSS
Secretary General

Ms Heidi CHU
Director of Standards and Development

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Paul WOO
Senior Council Secretary (2)3

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)824/03-04)

The minutes of the meeting on 8 December 2003 were confirmed.

II. Meeting with the Administration and The Law Society of Hong Kong
(LC Paper Nos. CB(2)838/03-04(01); 848/03-04)(01) - (03); 885/03-04(01))

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Letter dated 22 December 2003 from The Law Society of Hong Kong responding to issues raised at the meeting on 8 December 2003
(LC Paper No. CB(2)838/03-04(01))

Proposed amendments to sections 4 and 5 of the Summary Disposal of Complaints (Solicitors) Rules

3. Members considered the following proposals of the Law Society to -

- (a) add a new section 4(2)(c) to the Rules to specify, for the sake of clarity, that if the relevant person did not notify the representative of the Council of the Law Society in writing as required by subsection (2)(b), the matter should be disposed of by the Solicitors Disciplinary Tribunal (SDT), subject to the Council's power of revocation under section 5(1) (item 4 of the Law Society's letter refers); and

- (b) amend section 5(1) of the Rules to make it clear that the power of the Council of the Law Society to revoke its decision was restricted to the period prior to the receipt of notification by the relevant person under section 4(2)(b) (item 7 of the Law Society's letter refers).

(*Post-meeting note* : Mr Patrick MOSS advised that the Chief Justice had approved the proposed amendments.)

Letter from legal adviser to the Subcommittee to the Law Society
(LC Paper No. CB(2)885/03-04(01))

4. Assistant Legal Adviser said that he had written to the Law Society on 5 January 2004 to seek its advice on the following issues -

- (a) determination of the point in time the relevant person received the complaint sheet so as to trigger the 21-day period in section 4(2)(b) of the Rules; and
- (b) when would a revocation of decision by the Council of the Law Society take effect in a situation where the notice of revocation crossed with the notification from the relevant person indicating his wish to discuss the matter with the Council representative.

5. On paragraph 4(a) above, Mr Patrick MOSS said that a complaint sheet would normally be delivered to the relevant person either in person or by registered post. Hence, the date of receipt of the complaint sheet by the relevant person would be ascertainable.

6. On paragraph 4(b) above, Mr Patrick MOSS said that the Council's decision to revoke would take effect when the decision was made, provided that prior to that time the Council had not received the relevant person's notification of his wish to discuss the matter with the Council representative.

Offences suitable for disposal under the summary disposal procedure

7. Ms Miriam LAU expressed concern about the example given by the Law Society in its letter to illustrate that breaches committed due to a genuine oversight would be suitable for disposal under the Summary Disposal of Complaints (Solicitors) Rules. She opined that cases of genuine oversight should not be subject to the fixed penalty under the summary disposal procedure.

8. The Chairman and Ms Miriam LAU were of the view that the appropriate threshold for disposal of cases by way of the summary procedure should be, first and foremost, that the breach in question was of sufficient gravity and would have been the subject of a full hearing of SDT had the summary disposal procedure not been put in place. The Chairman pointed out that the statement made by the Law Society in its letter that the introduction of the summary disposal procedure was to fill the gap between the issue of letters of regret or disapproval and the referral of matters to SDT implied that the matters suitable for disposal by the summary procedure were not of sufficient gravity for referral to SDT. This had created confusion in understanding the intention of the Rules.

9. Mr Anson KAN and Mr Patrick MOSS said that the Law Society's policy in determining whether a complaint was appropriate for disposal by way of the summary procedure would be that the complaint was of sufficient gravity in all the circumstances to warrant a referral to SDT.

10. The Subcommittee requested the Law Society to confirm the following in writing -

- (a) the policy intention of introducing the Summary Disposal of Complaints (Solicitors) Rules and the threshold for determining cases suitable for disposal by way of the summary procedure; and
- (b) the present practice to dispose of trivial breaches by way of issue of letters of regret or disapproval would continue, and that the summary disposal procedure would not be invoked for such matters.

(Post-meeting note - The Law Society's written response dated 6 January 2004 was issued to the Subcommittee under LC Paper No. CB(2)907/03-04(02) on 7 January 2004).

Level of fixed penalty and fixed investigation costs

11. Mr Patrick MOSS advised members that the proposal to set the fixed penalty at \$10,000 had taken into account past decisions of the SDT that \$10,000 was an appropriate average penalty for offences of a minor nature. The fixed investigation costs at \$15,000, on the other hand, reflected the expected costs of investigating and prosecuting breaches of the scheduled items. The amount of costs would not vary significantly with different kinds of breach since the processes of investigation and prosecution were essentially similar and the breaches would be of a minor nature.

Scrutiny of the Rules

12. The Subcommittee completed scrutiny of the provisions of the Rules.

Recommendation

13. The Subcommittee supported the amendments to the Rules proposed by the Law Society in paragraphs 3(a) and (b) above. The Subcommittee agreed that the Secretary for Justice should move a motion to amend the Rules at the Council meeting on 14 January 2004.

14. The Clerk advised the Subcommittee that the deadline for giving notice of motion to amend the Rules was 7 January 2004.

15. The Subcommittee requested the Department of Justice to provide the wording of the motion on 6 January 2004, which would be circulated for the Subcommittee's consideration.

(Post-meeting note - The wording of the motion was circulated to the Subcommittee under LC Paper No. CB(2)907/03-04(01) on 7 January 2004).

16. The Subcommittee would make a report to the House Committee at its meeting on 9 January 2004.

17. The meeting ended at 5:55 pm

Council Business Division 2
Legislative Council Secretariat
4 February 2004

**Proceedings of the second meeting of the Subcommittee on
Summary Disposal of Complaints (Solicitors) Rules
on Monday, 5 January 2004 at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000243 - 000500	Chairman	Confirmation of minutes of meeting on 8 December 2003 (LC Paper No. CB(2)824/03-04). Letter dated 22 December 2003 from the Law Society in response to issues raised at the meeting on 8 December 2003.	
000501- 000605	Law Society Chairman	Introduction on the Law Society's letter dated 22 December 2003 to the Subcommittee (LC Paper No. CB(2)838/03-04(01)).	
000606 - 002559	Ms Miriam LAU Chairman Law Society Mr Albert HO	Criteria for determining whether a matter was suitable for disposal under the Summary Disposal of Complaints (Solicitors) Rules (item 2 of the Law Society's letter). Breaches committed by solicitors due to genuine oversight not to be disposed of by way of the summary procedure (item 3 of the Law Society's letter). Practice of disposing trivial breaches by issuing letters of regret or disapproval.	The Law Society to confirm in writing the following - (a) the policy intention of the Rules and the threshold for determining matters suitable for disposal by way of the summary procedure; and (b) trivial breaches would continue to be dealt with by letters of regret or disapproval.
002600 - 002726	Chairman Law Society	Amendment to section 4 of the Rules proposed by the Law Society (item 4 in the Law Society's letter).	
002727 - 003332	Ms Audrey EU Chairman Law Society	Determination of the point in time the relevant person received the complaint sheet from the Council of the Law Society (ALA's letter dated 5 January 2004 to the Law Society - LC Paper No. CB(2)885/03-04(01)).	

Time Marker	Speaker(s)	Subject(s)	Action required
003333 - 004345	ALA Law Society Chairman Ms Audrey EU Ms Miriam LAU	When would a revocation of decision by the Council of the Law Society take effect in a situation where the notice of revocation issued by the Council crossed with the notification from the relevant person indicating wish to discuss the matter with the Council representative (ALA's letter dated 5 January 2004 to the Law Society - LC Paper No. CB(2)885/03-04(01)).	
004346 - 004839	Chairman Law Society Admin ALA	Motion to amend the Rules to be moved by the Secretary for Justice at the Council meeting on 14 January 2004.	
004840 - 005802	Ms Audrey EU Chairman Law Society Mr Albert HO	Level of fixed penalty and fixed investigation cost under the summary disposal procedure.	
005803 - 010322	Ms Audrey EU Law Society Chairman Mr Albert HO Ms Miriam LAU	Items of offences listed in the Schedule to the Rules.	
010323 - 012026	Chairman Law Society Ms Miriam LAU ALA	Scrutiny of the Rules.	
012027 - 012103	Clerk Chairman	Deadline for giving notice of motion to amend the Rules. Report of the Subcommittee to the House Committee.	
012104 - 012209	ALA Chairman Admin	Motion to amend the Rules to be moved by the Secretary for Justice.	Admin to provide the wording of the motion by 6 January 2004 for the consideration of the Subcommittee.