

立法會
Legislative Council

LC Paper No. CMI/55/05-06

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Paper for the House Committee meeting on 16 June 2006

**Committee on Members' Interests
Mechanism for handling complaints concerning
Members' operating expenses reimbursement claims
and applications for advance of operating expenses**

Purpose

This paper informs Members of the deliberations of the Committee on Members' Interests ("CMI") on the establishment of a mechanism for handling complaints concerning Members' operating expenses reimbursement ("OER") claims and applications for advance of operating expenses.

Background

2. At the meeting held on 17 June 2005, the House Committee voted in favour of the following recommendations of the Subcommittee to Consider Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims:

- (a) a mechanism for handling complaints concerning Members' OER claims should be established; and
- (b) the scope of the mechanism should be confined to complaints relating to Legislative Council Members' OER claims.

The House Committee also decided to forward to CMI for consideration the Subcommittee's other recommendation that the existing terms of reference of the CMI provided in Rule 73 of the Rules of Procedure ("RoP") should be expanded so that it may also handle complaints concerning Members' OER claims.

3. At its meeting on 8 July 2005, the House Committee was informed that the CMI had met on 27 June 2005 and agreed in principle to take up the additional responsibility to handle complaints relating to Members' OER claims.

Deliberations of the CMI

4. During the period from 29 September 2005 and 29 May 2006, CMI held a total of eight meetings to deliberate the issues involved. In the course of its deliberations, CMI notes that, as Members are also allowed to apply for advance of operating funds, complaints relating to such applications should be brought into the ambit of the mechanism for handling complaints about OER claims. Details of the deliberations of CMI are set out in the following paragraphs.

Proposed amendments to the Rules of Procedure

5. A new Rule 83AA is proposed to be made, to clearly set out the specific conducts expected of a Member in making claims for reimbursement of operating expenses or applications for advance of operating funds. Members are required to ensure that any information he provided or any declaration or certification he made is true, accurate and complete, and to act according to any undertaking he has given. The information to be provided as well as undertaking and certification to be made by Members are specified in A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council (the Guide for OER claims) issued by the Secretariat.

6. To empower CMI to consider and investigate any complaint made in relation to Members' conduct in making OER claims or applications for advance of operating funds, CMI proposes that a new subrule (1)(ca) should be added to Rule 73 (Committee on Members' Interests), and which should make a direct reference to the proposed new Rule 83AA.

7. Furthermore, a new subrule (1A) is proposed be added to Rule 73 to require that, in handling such complaints, CMI shall have regard to the provisions of the Guide for OER claims, in addition to any other matter that it may consider relevant.

8. Rule 85 (Sanctions relating to Interests) is expanded to provide that a Member who fails to comply with new Rule 83AA may be admonished, reprimanded or suspended by the Council on a motion to that effect.

9. The relevant rules of RoP marked up with proposed amendments as well as the amended rules are at **Appendices 1A** and **1B** respectively.

Proposed amendments to the Procedure for Handling Complaints

10. CMI proposes to revise its Procedure for Handling Complaints Received in Relation to the Registration and Declaration of Members' Interests (the Procedure), to include the handling of complaints concerning Members' OER claims and applications for advance of operating funds.

11. The new features in the revised Procedure seek to ensure fairness to the Member under complaint as well as tighten up the confidentiality requirement. These new features:

- (a) specify that CMI will not handle any complaint which is made against a former Member, or is about a Member's act(s) or omissions(s) which allegedly took place seven years or more prior to the date of the complaint. CMI accepts that it is difficult to impose sanction on a former Member, and unreasonable to expect a serving Member to keep his accounts, records and papers for more than seven years;
- (b) specify that the Chairman of CMI may decide whether or not to hold a meeting to consider a complaint if it involves substantially repeated allegations which have already been dealt with, except where fresh evidence has been produced;

- (c) specify that CMI should inform the Member under complaint, when inviting him to its meeting(s), that CMI may invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order him to attend before it, and to give evidence or to produce documents, and may cause him to be examined on oath. This will remove any misunderstanding on the part of the Member under complaint about his right of silence when appearing before CMI;
- (d) specify that CMI may suspend its investigation if, during the course of doing so, it learns that the complaint or related matters are being investigated by a law enforcement agency, or relates to a case pending in a court of law;
- (e) permit the Member under complaint to be accompanied by a maximum of three persons, including his legal advisor(s), for the purpose of giving him assistance or advice, but the Member must answer questions, give explanations or provide information himself; and
- (f) require all members and other persons attending meeting of CMI held in camera to sign a confidentiality undertaking that they will not publish evidence taken before CMI, documents produced to it, or its deliberations and decisions before it has presented its report to the Council; and before CMI informs the Member under complaint of its decision on whether or not the complaint is substantiated, require the Member under complaint to sign a confidentiality undertaking that he will not publish any document marked as confidential by CMI before it has presented its report to the Council.

Consultation with Members of the Council

12. On 30 May 2006, CMI set out its deliberations and recommendations in LC Paper No. CMI/52/05-06, issued it to all Members, and invited their comments as well as attendance at its meeting held on 2 June 2006. Four Members attended the meeting.

13. A Member attending the meeting pointed out that as the number of OER claims are large and numerous, it is always possible for a Member to commit honest mistakes in doing so. She suggested that CMI consider whether it should be spelt out that, in considering whether or not to recommend a sanction, or what sanction to recommend, CMI shall take into account whether the failure of the Member under complaint to comply with the relevant rule(s) of the RoP was due to an honest mistake on his part. CMI accepts the suggestion and has thus added a provision in paragraph 19 of the Procedure.

14. The Procedure for Handling Complaints marked up with proposed amendments as well as the amended Procedure are at **Appendices 2A and 2B** respectively.

Implementation Time-table

15. CMI hopes that the mechanism can be put in place before the end of this session of the Council. Subject to any views that the House Committee may have on its proposals, it has agreed that Hon Mrs Sophie LEUNG, the Chairman, should move a motion at the Council to be held on 5 July 2006 to amend the relevant rules of RoP and, if the motion is passed, to issue the revised Procedure for Handling Complaints to all Members on 6 July 2006.

Advice sought

16. Members are invited to note CMI's proposals set out above and offer their comments.

Council Business Division 3
Legislative Council Secretariat
14 June 2006

Appendix 1A

Proposed amendments to the Rules of Procedure

73. Committee on Members' Interests

- (1) There shall be a standing committee to be called the Committee on Members' Interests -
 - (a) to examine the arrangements made for the compilation, maintenance and accessibility of the Register of Members' Interests;
 - (b) to consider any proposals made by Members or others as to the form and contents of the Register;
 - (c) to consider and investigate any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so and, if it thinks fit after consideration, investigate such complaint;
 - (ca) to consider any complaint made in relation to the conduct of Members referred to in Rule 83AA (Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds) and, if it thinks fit after consideration, investigate such complaint;
 - (d) to consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters;
 - (e) to report to the Council and make recommendations, including a recommendation as to a sanction under Rule 85 (Sanctions relating to Interests, Operating Expenses or Operating Funds).
- (1A) In considering or investigating a complaint referred to in subrule (1)(ca), the committee shall, in addition to any other matter that the committee may consider relevant, have regard to the provisions of A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council.
- (2).....(7)

83AA. Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds

When making a claim for reimbursement of operating expenses or applying for advance of operating funds in accordance with A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council, or acting for purposes related thereto, a Member shall -

- (a) ensure that any information provided or any declaration or certification made is true, accurate and complete; and
- (b) act according to any undertaking that he has given.

85. Sanctions relating to Interests, Operating Expenses or Operating Funds

Any Member who fails to comply with Rule 83 (Registration of Interests), 83A (Personal Pecuniary Interest to be Disclosed), 83AA (Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest) may be admonished, reprimanded or suspended by the Council on a motion to that effect.

Appendix 1B

Rules of Procedure

73. Committee on Members' Interests

- (1) There shall be a standing committee to be called the Committee on Members' Interests -
 - (a) to examine the arrangements made for the compilation, maintenance and accessibility of the Register of Members' Interests;
 - (b) to consider any proposals made by Members or others as to the form and contents of the Register;
 - (c) to consider any complaint made in relation to the registration and declaration of Members' interests or any complaint of a failure to do so and, if it thinks fit after consideration, investigate such complaint;
 - (ca) to consider any complaint made in relation to the conduct of Members referred to in Rule 83AA (Claims for Reimbursement of Operating Expenses or Applications for Advance of Operating Funds) and, if it thinks fit after consideration, investigate such complaint;
 - (d) to consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters;
 - (e) to report to the Council and make recommendations, including a recommendation as to a sanction under Rule 85 (Sanctions relating to Interests, Operating Expenses or Operating Funds).
- (1A) In considering or investigating a complaint referred to in subrule (1)(ca), the committee shall, in addition to any other matter that the committee may consider relevant, have regard to the provisions of A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council.
- (2).....(7)

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When making a claim for reimbursement of operating expenses or applying for advance of operating funds in accordance with A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council, or acting for purposes related thereto, a Member shall -

- (a) ensure that any information provided or any declaration or certification made is true, accurate and complete; and
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Appendix 2A

**THE PROCEDURE OF
THE COMMITTEE ON MEMBERS' INTERESTS
FOR HANDLING COMPLAINTS RECEIVED
IN RELATION TO THE REGISTRATION AND OR DECLARATION
OF MEMBERS' INTERESTS OR
MEMBERS' CLAIMS FOR REIMBURSEMENT OF OPERATING
EXPENSES**

July 1999-June 2006

(Proposed amendments are underlined with bold line)

**The procedure of the Committee on Members' Interests
for handling complaints received**
in relation to the registration and or declaration of Members' interests or
Members' claims for reimbursement of operating expenses

Convening the first meeting

- (1) Upon receipt of a written complaint by the Committee on Members' Interests (the Committee) from a Member or a member of the public (~~hereafter hereinafter~~ referred to as "the complainant) about the registration or declaration of interests of a Member or a Member's claims for reimbursement of operating expenses (~~hereafter hereinafter~~ referred to as "the Member under complaint"), the Clerk to the Committee (the Clerk) shall forthwith contact and verify the identity of the complainant. The Clerk shall then distribute the complaint in the form of a confidential document to members of the Committee (~~the~~ members) and he shall ask the Chairman of the Committee (the Chairman) to decide within two working days whether a meeting on the matter should be held (in the event of the absence of the Chairman from Hong Kong or the Member under complaint being the Chairman, the Clerk shall seek instruction from the Deputy Chairman; the same principle shall apply in subsequent paragraphs). If ~~the Chairman or the Clerk receives~~ a complaint is made by an anonymous or unidentifiable person or by a person who cannot be contacted, or is made against a former Member, or is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of the complaint, the Chairman shall instruct the Clerk to circulate the complaint to other members in the form of a confidential document for information. However, the Committee will not consider the complaint.
- (2) In deciding whether a meeting should be held to consider the complaint received, the Chairman may decide consider not to hold such a meeting for the following reasons:
 - (a) the complaint is not related to the registration and or declaration of a Member's interests, or a Member's claims for reimbursement of operating expenses;
 - (b) the complaint is merely based on speculations, inferences or unfounded judgements;
 - (c) ~~the complaint is made by an anonymous or unidentifiable person or by a person who cannot be contacted; or~~
(c) the complaint involves substantially repeated allegations which have already been dealt with by the Committee, except where fresh evidence has been produced; or
 - (d) other reasons he deems appropriate.
- (3) If the Chairman decides that the Committee should meet, he shall instruct the Clerk to arrange for the first meeting to be held within the next seven working days to consider the complaint.

- (4) If the Chairman decides not to hold such a meeting and conveys to the Clerk his decision as well his reasons for making such a decision, the Clerk shall inform other members of the Chairman's decision and his reasons. If any member indicates disagreement with the decision in writing, the Clerk shall, by way of a circular, ask the members to forward replies to him within three working days on whether a meeting should be held to consider the complaint. In the event that the Clerk receives replies in which the majority of members indicate their support for holding a meeting, he shall ask the Chairman to fix the date, the time and the venue for the meeting. The first meeting shall be held within the next seven working days.
- (5) If the Chairman makes a decision of not holding a meeting and the Clerk does not receive replies from a majority of members indicating disagreement with this decision after the expiry of the three-day deadline since the issue of the circular, the Committee will not take any further action on the complaint.

Preliminary consideration

- (6) The Committee may hold a meeting or a series of meetings to consider the complaint.
- (7) The purposes of such meetings are:
- (i) To ascertain the subject of the complaint and the provisions of the Rules of Procedure relevant to the allegations in question; and
 - (ii) To gather information relevant to the complaint and the allegations in question, such as the dates, amounts of money (if any), persons involved, etc. Such information should not include media reports, information provided by anonymous persons and speculations, inferences or judgements made by individuals.
- (8) *In considering a complaint relating to a Member's claims for reimbursement of operating expenses, the Committee shall, in addition to any other matter that the Committee may consider relevant, have regard to the provisions of the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council.*
- (89) The Committee may invite the complainant to attend a meeting(s) to provide information. The Committee may also invite the Member under complaint to attend the-a meeting(s) to give explanations, and to provide information. *At the time of making the invitation, the Committee shall inform the Member under complaint that if he refuses to attend such meeting(s) or refuses to answer questions of the Committee at such meetings, the Committee may invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order him to attend before the Committee, and to give evidence or to produce documents, and may cause him to be examined on oath.*

- (10) *In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.*
- (11) If the Member under complaint admits all the allegations at this stage, and the Committee is of the opinion that it is able to determine whether the complaint is substantiated and decides that an enquiry is not necessary, the Committee shall report to the Council and make a recommendation as to a sanction to be imposed on the Member under complaint.
- (912) The Committee may decide not to proceed with an investigation if it is of the opinion that the complaint is not substantiated.

Investigation

- (1013) If the Committee decides to conduct an investigation into the complaint, the Committee shall instruct the Clerk to convey the decision to the complainant and the Member under complaint and to provide the Member under complaint with information received in relation to the complaint.
- (1114) In the course of conducting an enquiry, the Committee may, in accordance with section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), order any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person. *At such a hearing, t*~~e~~ The Committee may cause witnesses to be examined ~~at a meeting~~ upon oath. The Committee may ask the complainant, the Member under complaint and other persons to confirm upon oath the information and statements they have provided at previous meetings.
- (1215) The Member under complaint shall have the right to give explanations, make clarification and provide information on the subject of the complaints and the related matters. *In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.*

Suspension of work on the complaint

- (16) *If, during the preliminary consideration or the investigation stages, the Committee has come to the knowledge that the complaint or related matters is/are being investigated by a law enforcement agency, or is/are relating to a case pending in a court of law, the Committee may suspend its investigation until the conclusion of the investigation by the law enforcement agency or the legal proceedings.*

The Committee's decision as to whether a complaint is substantiated

- (17) If the Committee decides that there is sufficient evidence to ~~show and~~ substantiate ~~that the Member under a~~ complaint ~~has provided false information in registering and declaring interests, or has failed to register or declare registrable or declarable interests~~, it shall inform the complainant and the Member under complaint of its decision ~~that the complaint is substantiated~~.
- (18) Upon receipt of the Committee's notification of its decision that the complaint is substantiated, the Member under complaint may make a request in writing to the Committee for a review of the decision within the next seven working days, and he may submit written statements and provide any other information which is unavailable at hearings held earlier. Upon receipt of the written request for a review of the Committee's decision from the Member under complaint, the Chairman shall instruct the Clerk to arrange for a meeting to be held for such purpose within the next seven working days to hear the explanation made by the Member under complaint and to review its earlier decision.
- (19) If the Committee is of the opinion that the complaint is substantiated, or it is still of the opinion after the review that the complaint is substantiated, the Committee shall present a report to the Council on the complaint, in which the evidence and its opinion should be set out. The Committee may also make a recommendation to the Council as to a sanction to be imposed on the Member concerned under complaint under Rule 85 of the Rules of Procedure. *In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee shall take into account whether the failure of the Member under complaint to comply with the relevant rule(s) of the Rules of Procedure was due to an honest mistake on his part.*
- (20) If the Committee is of the opinion that the complaint is not substantiated, it shall convey the decision to the complainant and the Member under complaint. The Committee may decide whether it should submit a report on this to the Council. If the Committee decides not to submit a report on this to the Council, members or any other person must not disclose any information regarding the complaint, except the evidence taken before the Committee and documents presented to it during meetings of the Committee held in public.

Confidentiality Requirement

- (~~1721~~) All members and other persons attending meetings of the Committee held in camera (except the Member under complaint) shall be required to sign a confidentiality undertaking that they will not publish ~~The~~ evidence taken before the Committee ~~and~~, documents ~~presented produced~~ to it, or its deliberations and decisions, ~~shall not, except in the case of meetings of the Committee held in public, be disclosed by a member or by any other person~~ before the Committee has presented its investigation report to the Council. ~~Any member who fails to comply with this requirement may be admonished or reprimanded by the Council on a motion to that effect~~. Where the Committee finds that a member or other person has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the member or that other person, and may take actions including moving a motion in the Council for the admonishment or reprimand of the member under Rule 81 (Premature Publication of Evidence) of the Rules of Procedure, or passing a motion of the Committee expressing its disapproval of the member or that other person for breaching the undertaking.
- (22) Before the Committee informs the Member under complaint of its decision in accordance with paragraph 17 or 20, the latter shall be required to sign a confidential undertaking not to publish any document marked as confidential by the Committee before it has presented its report to the Council. Where the Committee finds that the Member under complaint has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the Member, and may take actions including passing a motion of the Committee expressing its disapproval of the Member for breaching the undertaking.
- (~~1823~~) Meetings of the Committee, including those at which hearings are conducted, shall be held in camera. However, hearings shall be conducted at meetings held in public if the Member under complaint makes such a request.
- (~~1924~~) The transcript of evidence taken at such hearings shall be published in full as far as possible and form part of the report of the Committee.

Participation of members in the deliberations of the Committee

- (~~2025~~) No member of the Committee shall participate as a member of the Committee in the handling of a complaint or in the meetings of the Committee to deliberate on or inquire into a complaint where the complaint was made by or against him.

Appendix 2B

**THE PROCEDURE OF
THE COMMITTEE ON MEMBERS' INTERESTS
FOR HANDLING COMPLAINTS RECEIVED
IN RELATION TO THE REGISTRATION ~~OR~~ DECLARATION
OF MEMBERS' INTERESTS OR
MEMBERS' CLAIMS FOR REIMBURSEMENT OF OPERATING
EXPENSES**

June 2006

**The procedure of the Committee on Members' Interests
for handling complaints received
in relation to the registration or declaration of Members' interests or
Members' claims for reimbursement of operating expenses**

Convening the first meeting

- (1) Upon receipt of a written complaint by the Committee on Members' Interests (the Committee) from a Member or a member of the public (hereinafter referred to as "the complainant) about the registration or declaration of interests of a Member or a Member's claims for reimbursement of operating expenses (hereinafter referred to as "the Member under complaint"), the Clerk to the Committee (the Clerk) shall forthwith contact and verify the identity of the complainant. The Clerk shall then distribute the complaint in the form of a confidential document to members of the Committee (members) and he shall ask the Chairman of the Committee (the Chairman) to decide within two working days whether a meeting on the matter should be held (in the event of the absence of the Chairman from Hong Kong or the Member under complaint being the Chairman, the Clerk shall seek instruction from the Deputy Chairman; the same principle shall apply in subsequent paragraphs). If a complaint is made by an anonymous or unidentifiable person or by a person who cannot be contacted, or is made against a former Member, or is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of the complaint, the Chairman shall instruct the Clerk to circulate the complaint to other members in the form of a confidential document for information. However, the Committee will not consider the complaint.
- (2) In deciding whether a meeting should be held to consider the complaint received, the Chairman may consider not to hold such a meeting for the following reasons:
 - (a) the complaint is not related to the registration or declaration of a Member's interests, or a Member's claims for reimbursement of operating expenses;
 - (b) the complaint is merely based on speculations, inferences or unfounded judgements;
 - (c) the complaint involves substantially repeated allegations which have already been dealt with by the Committee, except where fresh evidence has been produced; or
 - (d) other reasons he deems appropriate.
- (3) If the Chairman decides that the Committee should meet, he shall instruct the Clerk to arrange for the first meeting to be held within the next seven working days to consider the complaint.
- (4) If the Chairman decides not to hold such a meeting and conveys to the Clerk his

decision as well his reasons for making such a decision, the Clerk shall inform other members of the Chairman's decision and his reasons. If any member indicates disagreement with the decision in writing, the Clerk shall, by way of a circular, ask the members to forward replies to him within three working days on whether a meeting should be held to consider the complaint. In the event that the Clerk receives replies in which the majority of members indicate their support for holding a meeting, he shall ask the Chairman to fix the date, the time and the venue for the meeting. The first meeting shall be held within the next seven working days.

- (5) If the Chairman makes a decision of not holding a meeting and the Clerk does not receive replies from a majority of members indicating disagreement with this decision after the expiry of the three-day deadline since the issue of the circular, the Committee will not take any further action on the complaint.

Preliminary consideration

- (6) The Committee may hold a meeting or a series of meetings to consider the complaint.
- (7) The purposes of such meetings are:
- (i) To ascertain the subject of the complaint and the provisions of the Rules of Procedure relevant to the allegations in question; and
 - (ii) To gather information relevant to the complaint and the allegations in question, such as the dates, amounts of money (if any), persons involved, etc. Such information should not include media reports, information provided by anonymous persons and speculations, inferences or judgements made by individuals.
- (8) In considering a complaint relating to a Member's claims for reimbursement of operating expenses, the Committee shall, in addition to any other matter that the Committee may consider relevant, have regard to the provisions of the Guide for Reimbursement of Operating Expenses for Members of the Legislative Council.
- (9) The Committee may invite the complainant to attend a meeting(s) to provide information. The Committee may also invite the Member under complaint to attend a meeting(s) to give explanations, and provide information. At the time of making the invitation, the Committee shall inform the Member under complaint that if he refuses to attend such meeting(s) or refuses to answer questions of the Committee at such meetings, the Committee may invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order him to attend before the Committee, and to give evidence or to produce documents, and may cause him to be examined on oath.
- (10) In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice.

These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.

- (11) If the Member under complaint admits all the allegations at this stage, and the Committee is of the opinion that it is able to determine whether the complaint is substantiated and decides that an enquiry is not necessary, the Committee shall report to the Council and make a recommendation as to a sanction to be imposed on the Member under complaint.
- (12) The Committee may decide not to proceed with an investigation if it is of the opinion that the complaint is not substantiated.

Investigation

- (13) If the Committee decides to conduct an investigation into the complaint, the Committee shall instruct the Clerk to convey the decision to the complainant and the Member under complaint and to provide the Member under complaint with information received in relation to the complaint.
- (14) In the course of conducting an enquiry, the Committee may, in accordance with section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), order any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person. At such a hearing, the Committee may cause witnesses to be examined upon oath. The Committee may ask the complainant, the Member under complaint and other persons to confirm upon oath the information and statements they have provided at previous meetings.
- (15) The Member under complaint shall have the right to give explanations, make clarification and provide information on the subject of the complaints and the related matters. In attending before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving him assistance or advice. These persons may include legal adviser(s) and they may be different persons for different meetings of the Committee. Yet, the Member under complaint must answer questions, give explanations or provide information himself. The accompanying person(s) is(are) not allowed to address the Committee.

Suspension of work on the complaint

- (16) If, during the preliminary consideration or the investigation stages, the Committee has come to the knowledge that the complaint or related matters is/are being investigated by a law enforcement agency, or is/are relating to a case pending in a court of law, the Committee may suspend its investigation until the conclusion of the investigation by the law enforcement agency or the legal proceedings.

The Committee's decision as to whether a complaint is substantiated

- (17) If the Committee decides that there is sufficient evidence to substantiate a complaint, it shall inform the complainant and the Member under complaint of its decision.
- (18) Upon receipt of the Committee's notification of its decision that the complaint is substantiated, the Member under complaint may make a request in writing to the Committee for a review of the decision within the next seven working days, and he may submit written statements and provide any other information which is unavailable at hearings held earlier. Upon receipt of the written request for a review of the Committee's decision from the Member under complaint, the Chairman shall instruct the Clerk to arrange for a meeting to be held for such purpose within the next seven working days to hear the explanation made by the Member under complaint and to review its earlier decision.
- (19) If the Committee is of the opinion that the complaint is substantiated, or it is still of the opinion after the review that the complaint is substantiated, the Committee shall present a report to the Council on the complaint, in which the evidence and its opinion should be set out. The Committee may also make a recommendation to the Council as to a sanction to be imposed on the Member under complaint under Rule 85 of the Rules of Procedure. In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee shall take into account whether the failure of the Member under complaint to comply with the relevant rule(s) of the Rules of Procedure was due to an honest mistake on his part.
- (20) If the Committee is of the opinion that the complaint is not substantiated, it shall convey the decision to the complainant and the Member under complaint. The Committee may decide whether it should submit a report on this to the Council. If the Committee decides not to submit a report on this to the Council, members or any other person must not disclose any information regarding the complaint, except the evidence taken before the Committee and documents presented to it during meetings of the Committee held in public.

Confidentiality Requirement

- (21) All members and other persons attending meetings of the Committee held in camera

(except the Member under complaint) shall be required to sign a confidentiality undertaking that they will not publish evidence taken before the Committee, documents produced to it, or its deliberations and decisions before the Committee has presented its report to the Council. Where the Committee finds that a member or other person has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the member or that other person, and may take actions including moving a motion in the Council for the admonishment or reprimand of the member under Rule 81 (Premature Publication of Evidence) of the Rules of Procedure, or passing a motion of the Committee expressing its disapproval of the member or that other person for breaching the undertaking.

- (22) Before the Committee informs the Member under complaint of its decision in accordance with paragraph 17 or 20, the latter shall be required to sign a confidential undertaking not to publish any document marked as confidential by the Committee before it has presented its report to the Council. Where the Committee finds that the Member under complaint has breached the undertaking he gave to the Committee, the Committee will consider whether and how to deal with the Member, and may take actions including passing a motion of the Committee expressing its disapproval of the Member for breaching the undertaking.
- (23) Meetings of the Committee, including those at which hearings are conducted, shall be held in camera. However, hearings shall be conducted at meetings held in public if the Member under complaint makes such a request.
- (24) The transcript of evidence taken at such hearings shall be published in full as far as possible and form part of the report of the Committee.

Participation of members in the deliberations of the Committee

- (25) No member of the Committee shall participate as a member of the Committee in the handling of a complaint or in the meetings of the Committee to deliberate on or inquire into a complaint where the complaint was made by or against him.