

立法會
Legislative Council

LC Paper No. CMI/27/08-09

Ref: CB(3)/C/2(08-12)

Committee on Members' Interests

**Minutes of the third meeting
held on Tuesday, 21 April 2009 at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon Abraham SHEK Lai-him, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon Paul CHAN Mo-po, MH, JP
Hon WONG Sing-chi
- Member absent** : Hon WONG Yung-kan, SBS, JP
- Other Members present on invitation** : Hon WONG Ting-kwong, BBS
Hon Paul TSE Wai-chun
- Clerk in attendance** : Mr Arthur LEUNG
Chief Council Secretary (3)1
- Staff in attendance** : Ms Pauline NG
Secretary General
- Mrs Justina LAM
Assistant Secretary General 3
- Mr LEE Yu-sung
Senior Assistant Legal Adviser 1
- Miss Lolita SHEK
Senior Council Secretary (3)1

I. Procedure for 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 or applications for advance of operating funds
(LC Paper Nos. CMI/23/08-09 and CMI/24/08-09)

The Chairman welcomed Members to the meeting. She said that at the last meeting on 2 January 2009, the Committee on Members' Interests ("CMI") had discussed the "Procedure for 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" ("the Procedure") adopted by CMI of the Third Legislative Council ("LegCo"). After deliberation, members agreed that the Procedure should be adopted after incorporating minor editorial amendments and issued to all Members for the time being, and that CMI should examine certain issues further. In this regard, the Secretariat had prepared a paper (LC Paper No. CMI/23/08-09) setting out the past deliberations of CMI and related information on the issues concerning the Procedure raised at the last meeting to facilitate Members' deliberation.

2. At the invitation of the Chairman, the Clerk briefed Members that, as set out in the paper, the following issues were raised at the last meeting and would be considered further:

- (a) whether CMI should consider anonymous complaints;
- (b) whether CMI should consider allegations widely reported by the media but no relevant complaint had been received by CMI;
- (c) whether a Member under complaint should be informed of the complaint when CMI decided not to consider the complaint; and
- (d) whether the time limit, as set out in the Procedure, for deciding if any meeting should be held to consider a complaint was too rigid.

Whether CMI should consider anonymous complaints

3. The Clerk said that at the last meeting, most members agreed that it was not entirely satisfactory for CMI not to take further action on a complaint solely on grounds that it was made anonymously. In this connection, Mr Alan LEONG had proposed that paragraph 1 of the Procedure be amended to the effect that while CMI would normally not consider anonymous complaints, it might decide otherwise when the circumstances so warranted. Under his proposal, CMI could request the Secretariat to make initial enquiries in respect of an anonymous complaint if a certain number of CMI members (e.g. four or more)

considered that the complaint was of a serious nature and should be pursued. Preliminary findings will be forwarded to CMI members for them to decide whether a detailed investigation should be conducted or to discontinue further enquiries.

4. Ms Emily LAU said that there should be a mechanism for CMI to follow up an anonymous complaint, if members considered it worth pursuing. She expressed support for Mr Alan LEONG's proposal and considered the threshold of the consent of at least four CMI members being required for the Secretariat to take further action on an anonymous complaint ("four-member threshold") reasonable.

5. Mr Alan LEONG said that if four or more members considered that an anonymous complaint should be pursued, the Secretariat should make initial enquiries, including gathering more information relating to the complaint and trying to contact the complainant. He believed that in the process of making initial enquiries, the complainant might agree to come forward, or another person might be willing to take up the case and lodge the complaint with CMI. Mr LEONG, however, considered that if no complainant could be found at the end, CMI should not consider the complaint further, as this would deviate from CMI's existing practice of acting on complaints only. Mr LEONG also considered that even if a CMI member took up the case and lodged the complaint in his own name, there was still the problem that his complaint was not based on first-hand information, but rather on hearsay or second-hand information provided by the Secretariat.

6. Ms Emily LAU said that it was within CMI's terms of reference to investigate complaints against Members. If the Secretariat had collected sufficient evidence to substantiate the complaint after making initial enquiries, CMI should not stop pursuing the complaint solely because there was no complainant. Ms Emily LAU recalled that Members had criticized the Complaint Against Police Office ("CAPO") for not handling anonymous complaints, and had suggested CAPO to make improvement to the arrangement.

7. Mr Alan LEONG said that Members had suggested to the Police that if CAPO received an anonymous complaint and if the complainant's relative or a person authorized by him was willing to lodge the complaint in his own name, CAPO should follow up the complaint. Mr LEONG further said that according to his understanding, the Police generally would not investigate alleged criminal offences reported anonymously. Referring to Ms Emily LAU's point about the collection of evidence during initial enquiries, Mr LEONG considered that the Secretariat should not bother the Member under complaint when making initial enquiries; hence he had doubts if evidence to substantiate the complaint would be available at that stage.

8. Ms Emily LAU enquired with Assistant Secretary General 3 ("ASG3"), who had previously worked in the Independent Commission Against Corruption ("ICAC"), if ICAC would handle anonymous complaints. ASG3 said that while she could not speak for ICAC and she had left ICAC many years ago, she understood that ICAC would handle anonymous complaints. Yet, there was a mechanism to guard against malicious complaints and complainants were always encouraged to lodge complaints non-anonymously.

9. Senior Assistant Legal Adviser 1 ("SALA1") advised that ICAC was empowered to carry out investigations on its own initiative, as section 12 of the Independent Commission Against Corruption Ordinance (Cap. 204) stipulated that, among other things, it was the duty of the Commissioner of ICAC to receive, consider and investigate corruption-related complaints, as well as to investigate alleged or suspected corruption-related offences.

10. Mr Paul TSE said that his understanding was that ICAC always welcomed the public to lodge complaints against corruption, anonymous or otherwise. While ICAC's powers were stipulated in the law, it was for the Council to determine how it should regulate its own affairs. Mr TSE further said that in cases such as indecent assault cases where the testimony of the victim would be crucial, complaints to be considered by CMI were of a different nature. The investigation of such complaints usually involved examining documentary evidence and relied much less on the testimony of witnesses. As the role of the complainant was to trigger off an investigation and it was not his duty to prove the case, there was no need for CMI to be too concerned whether the information provided by the complainant was hearsay information only.

11. Mr TSE considered that CMI should retain the discretion to consider anonymous complaints. As long as there was sufficient safeguard against abuse, the threshold for CMI to consider anonymous complaints should not be set too high in order for the Council to maintain its credibility. Mr TSE added that while he did not object to the four-member threshold proposed by Mr Alan LEONG, CMI should draw reference to the generally accepted practice that only two persons were required for moving a motion (one proposing and the other seconding the motion) in setting the threshold.

12. Mr Paul CHAN said that it was not appropriate for CMI not to consider a complaint solely on grounds that it was made anonymously, given that some anonymous complaints might contain substantiated information. However, to guard against malicious complaints which might be lodged for political motive, Mr CHAN considered that a high threshold should be set, and that the four-member threshold proposed by Mr Alan LEONG was acceptable. He also enquired if the Secretariat or CMI as a whole could act as a complainant.

13. The Chairman said that the Secretariat could not act as a complainant. As to whether CMI could do so, members had not discussed the issue at previous meetings. Mr Alan LEONG pointed out that under Rule 73(1)(c) and (ca) of the Rules of Procedure ("RoP"), CMI as a whole could not act as a complainant of an anonymous complaint.

14. Mr Abraham SHEK enquired if CMI was empowered to handle anonymous complaints. The Clerk responded that under RoP 73(1)(c) and (ca), CMI's terms of reference included the consideration and investigation of complaints made in relation to the registration or declaration of Members' interests, or complaints concerning a Member's OER claims or AOF applications. The rule did not require complaints to be lodged non-anonymously.

15. Ms Emily LAU considered that RoP did not prohibit CMI from handling anonymous complaints. The issue before CMI was whether the restriction on the consideration of anonymous complaints, imposed by CMI of the previous LegCo and set out in paragraph 1 of the Procedure, should be lifted.

16. Mr Abraham SHEK said that he did not oppose the consideration of anonymous complaints by CMI, but CMI should only act within its terms of reference.

17. Mr Alan LEONG said that as CMI in the past would not consider anonymous complaints, it was already a step forward if CMI would ask, subject to the four-member threshold, the Secretariat to make initial enquiries on an anonymous complaint. He however maintained that CMI should not consider the complaint further if no complainant could be found at the end.

18. Ms Emily LAU pointed out that RoP 73 did not stipulate that CMI must not investigate anonymous complaints, nor that a complaint would not be pursued if there was no complainant. She was concerned that Members would be criticized by the public if CMI did not follow up an anonymous complaint which was worth pursuing solely because of the self-imposed restriction.

19. Mr Paul TSE concurred with Ms Emily LAU. He said that CMI should not stop considering an anonymous complaint when no complainant was found. It could be envisaged that complaints against Members would likely involve hard evidence provided by insiders, and such persons might wish to remain anonymous. In order to guard against accusations that LegCo acted in favour of its Members at the expense of public justice, CMI should continue to consider an anonymous complaint if there was solid and sufficient evidence, even if no complainant could be found.

20. Mr WONG Ting-kwong said that given the four-member threshold, he did not consider that the consideration of anonymous complaints by CMI

would be subject to abuse. He added that in considering whether a complaint should be pursued, the substance of a complaint was more important than whether a complainant could be found.

21. The Chairman invited Members to consider whether CMI might be used as a platform by some Members to persecute other Members by lodging anonymous complaints. She pointed out that it might not be too difficult for a person to fabricate a case and lodge an anonymous complaint. As CMI members might not have reason from the outset to decide that the complaint was not worth pursuing, they would likely ask the Secretariat to make initial enquiries on the complaint. There was also the possibility that information about the complaint was leaked to the press during the initial enquiries stage in an attempt to damage the reputation of the Member under complaint.

22. Mr WONG Ting-kwong said that in making OER claims, Members were required to make declarations and provide supporting documents, such as surveyor's assessments of the market rental of the premises used as Members' offices. In addition, the Secretariat would carefully scrutinize Members' OER claims and clarify with Members' offices in case of doubt. He therefore considered that CMI members would be able to judge if there was prima facie case in an anonymous complaint.

(Secretary General ("SG") joined the meeting at this juncture.)

23. SALA1 pointed out that as the Secretariat did not have the same powers as CMI to order attendance of witnesses or production of papers and documents, the outcome of initial enquiries would depend on the cooperation of the Member under complaint and other related persons. In response to Mr WONG Ting-kwong's enquiries, SALA1 explained that CMI, as a standing committee, might exercise the powers under section 9 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order attendance of witnesses and production of papers and documents.

24. Ms Emily LAU said that if the Member under complaint did not cooperate with the Secretariat during the initial enquiries stage, CMI could summon him to attend before the meeting to give evidence and produce relevant documents.

25. SG said that members might make reference to how the Secretariat assisted select committees or committees empowered by the Council to conduct enquiries in gathering information relevant to the scope of the inquiries. The clerk to the committee concerned would prepare a list of questions to be put to and documents to be sought from the witnesses. After the list was endorsed by the committee, or the chairman if he was so authorized, the clerk would proceed

to obtain the information and documents from the witnesses on behalf of the committee.

26. Mr Paul TSE said that it was in order for the Secretariat to collate information by studying its own records and documents. However, members should be careful in asking the Secretariat to seek information or documents from the Member under complaint or other persons, as such action might be regarded as an exercise of the powers conferred on CMI by Cap. 382.

27. Mr Paul TSE said that before making changes to the Procedure to allow CMI to consider anonymous complaints, Members should consider if there was a genuine need to do so. He enquired if there had been any anonymous complaint considered worth pursuing but had not been pursued by CMI due to the self-imposed restriction. The Chairman replied in the negative.

28. Mr WONG Ting-kwong raised concern about the confidentiality of investigation of anonymous complaints by CMI. The Chairman responded that the confidentiality requirements as set out in the Procedure should be extended to the stage of initial enquiries conducted by the Secretariat.

29. Ms Emily LAU suggested that as most members agreed that CMI should handle anonymous complaints, members should consult the Members of their political parties or groupings on the amendments proposed to the Procedure by Members at the meeting and revert to CMI at the next meeting.

30. The Chairman said that Members should be consulted on whether CMI should ask the Secretariat to make initial enquiries in relation to an anonymous complaint for CMI's possible consideration of the case, if no less than a certain number of members agreed to do so and, if so:

- (a) how many members were required for triggering the initial enquiries;
- (b) whether the Secretariat should approach the Member under complaint and other persons for information at the initial enquiries stage; and
- (c) whether CMI should continue to consider the anonymous complaint further if it considered there was prima facie case after the initial enquiries stage but no complainant could be found.

Whether CMI should consider allegations widely reported by the media but no relevant complaint had been received by CMI

31. The Chairman said that at the last meeting, some members noted that the Procedure did not contain provisions on how cases of alleged misconduct of Members, which had been reported widely as the headlines of newspapers or by other media but no complaint was received by CMI, should be handled. She added that she personally considered that media reports should not be regarded as complaints.

32. Ms Emily LAU considered that a mechanism similar to that proposed for handling anonymous complaints should be adopted for handling allegations against Members which were widely reported by the media but no relevant complaint had been received by CMI.

33. Mr WONG Sing-chi said that allegations widely reported by the media were similar to anonymous complaints in that there was no complainant. As the public would be monitoring how CMI handled such allegations, he considered that such allegations should at least be considered to the extent that anonymous complaints were considered.

34. The Clerk added that if CMI decided that it would consider allegations widely reported in the media but no complaint had been received, RoP 73 had to be amended as it empowered CMI to consider complaints only.

35. Mr Paul TSE pointed out that in recent years, there seemed to be a change in the media culture and there were cases that allegations were published without verification. CMI should take this into account in deciding whether it would follow up such allegations, and should be more cautious in dealing with allegations in media reports than anonymous complaints.

36. At the invitation of the Chairman, the Clerk briefed Members on the existing arrangements adopted by the Secretariat for handling complaints and allegations against Members, as set out in LC Paper No. CMI/24/08-09. The Clerk said that when the Secretariat received a complaint made in relation to a Member's OER claims or AOF applications or one made in relation to a Member's registration or declaration of his interests, the complaint would be forwarded to the Clerk to CMI for further action. If it was determined that a complaint was not of such types, it would be forwarded to the Complaints Division, which would circulate the complaint to Duty Roster Members as views.

37. SG added that in addition to handling complaints received by the Secretariat concerning a Member's OER claims or AOF applications, the Secretariat would also take the initiative to take follow-up actions on allegations of such nature made in media reports. In the past, on receipt of such a

complaint or when such an allegation came to SG's notice, SG would instruct the Accounts Office to seek clarification from the Member concerned in execution of her duty as the controlling officer for the financial provisions allocated to The Legislative Council Commission. In future, while SG would continue to seek clarification as necessary, such complaint would be forwarded to CMI for consideration at the same time, together with a report of the clarifications being sought from the Member concerned in respect of the complaint or allegation. CMI could then decide if it would launch its investigation immediately or wait for the outcome of SG's clarification.

38. Mr Alan LEONG enquired how SG handled anonymous complaints. SG said that an anonymous complaint concerning OER claims or AOF applications would be handled in the same manner described in the preceding paragraph. SG added that when the Accounts Office approached the Member concerned to seek clarification in respect of a complaint or allegation concerning his OER claims or AOF applications, the Member would check with his office and then reply. If it was considered that the Member had made an honest mistake, he would be allowed to make correction. If the Member had made wrongful claims, he would be asked to refund the Secretariat. Such cases would also be forwarded to CMI for consideration. So far, no such referral had been made.

39. Mr Alan LEONG said that he had all along had the mistaken belief that anonymous complaints were not handled at all. He now realized that the Secretariat would handle such complaints, and would refer such cases to CMI where necessary. What was needed was that the referral mechanism should be formalized. He suggested that in the consultation paper on the handling of anonymous complaints, the way in which the Secretariat currently handled complaints about OER claims should be included for Members' information.

40. Mr Paul TSE asked whether SG had encountered any difficulties in handling such complaints or allegations. SG replied that no difficulty had been encountered so far.

41. The Chairman suggested and members agreed that the Clerk should prepare a paper to consult all Members on the proposal for CMI to consider anonymous complaints and allegations widely reported by the media.

the Clerk

Whether a Member under complaint should be informed of the complaint when CMI decided not to consider the complaint

42. The Chairman said that at the last meeting, members considered that the Member under complaint should be informed of the complaint against him even though CMI had decided not to follow up such complaint. As some

members had indicated that they did not wish to be informed, members considered that, as a possible arrangement, Members might give advance instructions to the Secretariat on whether they wished to be informed.

43. Mr WONG Sing-chi suggested that Members should be invited to give advance instructions to the Secretariat at the beginning of each session on whether they wished to be informed of the complaints made against them which CMI had decided not to consider.

44. ASG3 suggested that if the Members under complaint were to be so informed, only the contents of the complaints but not the identity of the complainants would be disclosed to them. Mr WONG Sing-chi agreed to the suggestion. He added that if the identity of complainants would be disclosed to the Members under complaint, the public might not be willing to lodge complaints.

45. The Chairman suggested and members agreed that the information on the complaints to be disclosed to the Members under complaint should be decided by CMI on a case by case basis. She added that such amendments to the Procedure should be reported to the Council.

Whether the time limit, as set out in the Procedure, for deciding if any meeting should be held to consider a complaint was too rigid

46. The Chairman said that at the last meeting, some members pointed out that paragraph 1 of the Procedure provided that the Clerk should, upon receipt of a complaint, ask the Chairman to decide within two working days whether a meeting on the matter should be held. Since each complaint might have its unique circumstances and verification of the allegations of a complaint might take some time, CMI should review if there was a need to set such a rigid time limit for deciding whether or not to hold a meeting to consider a complaint.

47. The Clerk suggested that as the time limit for CMI to decide if any meeting should be held to consider a complaint was a technical issue, members might wish to consider it later after the issues relating to the handling of anonymous complaints and allegations reported by the media were finalized. Members agreed.

II. Confirmation of minutes (LC Paper No. CMI/22/08-09)

48. The minutes of the meeting held on 2 January 2009 were confirmed.

III. Any other business

49. There being no other business, the meeting ended at 10:20 am.

Council Business Division 3
Legislative Council Secretariat
22 June 2009