

立法會
Legislative Council

LC Paper No. CMI/24/08-09

Ref: CB(3)/C/2

**Paper for the third meeting of
the Committee on Members' Interests on 21 April 2009**

**Arrangements adopted by the Legislative Council Secretariat
for handling complaints and allegations against Members**

Purpose

This paper sets out the details of the existing arrangements of the Legislative Council Secretariat ("the Secretariat") for handling complaints or allegations against Legislative Council ("LegCo") Members, which are received by it or have come to its notice. It also provides a suggestion (see paragraphs 13 and 14 below) to establish a mechanism to formalize the link between the Secretariat and the Committee on Members' Interests ("CMI") in relation to complaints or allegations which fall within the purview of CMI.

Background

2. At the last meeting of CMI on 2 January 2009, members 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 LegCo. After deliberation, members agreed that the Procedure should, after minor editorial amendments being made to it, be adopted for the time being, and that CMI should examine certain issues further at the next meeting. These issues are discussed in another paper (LC Paper No. CMI/23/08-09).

3. At the meeting, Hon Emily LAU enquired:
- (a) how the Secretariat handled complaints made in relation to the registration and declaration of Members' interests and claims for reimbursement of operating expenses ("OER") or applications for advance of operating funds ("AOF") made to the Secretariat;
 - (b) whether the Secretariat would follow up allegations of similar nature made against Members in media reports; and
 - (c) whether a mechanism was in place for such complaints or allegations to be referred to CMI or other relevant committees for follow up action.

The Chairman requested the Secretariat to prepare a paper detailing how the Secretariat handled such complaints and allegations.

Existing arrangements adopted by the Secretariat for handling complaints and allegations against Members

4. When the Secretariat receives a complaint letter addressed specifically to a committee of the Council, it will forward the letter to the Clerk who services that committee for further action.

5. The Secretary General ("SG"), the Administration Division, Public Information Division and Complaints Division of the Secretariat from time to time receive letters or telephone calls from members of the public lodging complaints against Members or expressing views on the conduct of Members. Where such letters or phone calls are not requested to be referred to any committee of the Council, they are handled according to the the existing arrangements which are set out in the following paragraphs.

Complaints or allegations made in relation to a Member's OER claims or AOF applications

6. SG, being the controlling officer for the financial provisions allocated to The Legislative Council Commission, has the duty to ensure that public funds are properly spent. In this connection, when SG or the Administration Division receives a complaint made in relation to a Member's OER claims or AOF applications, or becomes aware of such an allegation (e.g. from media reports), SG may instruct the Accounts Office of the

Administration Division to seek clarification from the Member concerned. In so doing, the Secretariat will inform the Member that there is a complaint or allegation about him. Yet, the identity of the complainant will not be disclosed to the Member and the complaint letter will not be copied to him. The Member concerned will be invited to give a written response to the complaint or allegation about him.

7. Members would normally take their own initiative to rectify an oversight identified during the clarification process, and make a refund, either in full or in part as the case may be, to the Secretariat of the reimbursed expense concerned. In the remote case where SG, after noting the Member's clarification, still considers that an expense or part of the expense should not have been reimbursed and the Member has taken no rectification action, the Member concerned will be requested to make an appropriate refund to the Secretariat. So far, no such case has been recorded. In judging whether an expense or part of the expense is reimbursable, the Secretariat makes reference to the principles and provisions stated in "A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council" ("the Guide"), which has been issued to all Members. When an expense item is not mentioned in the Guide or is not specifically prohibited, the principle for deciding whether the expense is reimbursable is whether the expense has arisen out of a Member's duties in relation to the exercise of the powers and functions of the Council as stipulated in Article 73¹ of the Basic Law.

¹ **Article 73:**

The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;
- (2) To examine and approve budgets introduced by the government;
- (3) To approve taxation and public expenditure;
- (4) To receive and debate the policy addresses of the Chief Executive;
- (5) To raise questions on the work of the government;
- (6) To debate any issue concerning public interests;
- (7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
- (8) To receive and handle complaints from Hong Kong residents;
- (9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and
- (10) To summon, as required when exercising the above-mentioned powers and functions, persons concerned to testify or give evidence.

8. Under the current arrangement, there is no mechanism that SG should refer any complaint in relation to a Member's OER claims or AOF applications to CMI. However, if SG considers that the Member might have breached the rule on OER claims and AOF applications, i.e. Rule 83AA² of the Rules of Procedure ("RoP"), she may refer the matter to CMI for consideration. So far, no such referral has been made³.

Complaints made in relation to the registration or declaration of Members' interests

9. When a complaint against a Member which is not related to a Member's OER claims or AOF applications is received, the recipient division will first determine if the subject matter of the complaint is related to the registration or declaration of Members' interests. If necessary, the Clerk to CMI will be consulted. If it is determined that this is the case, the complaint will be forwarded to CMI for consideration; if it is determined otherwise, the complaint will be forwarded to the Complaints Division for handling in the manner described below.

Other types of complaints or allegations against Members

10. While CMI is authorized under RoP to consider a complaint about a Member's OER claims or AOF applications, or about the registration or declaration of Members' interests, no committee of the Council has been authorized under RoP to consider other types of complaints against Members. Such complaints received by the Secretariat are mainly of the following two types:

- (a) complaints about Members' performance and conduct (e.g. the low attendance rate at meetings of certain Members); and

² Rule 83AA of the Rules of Procedure provides that
"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."

³ With effect from 5 July 2006, CMI is authorized 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.

- (b) complaints about Members' handling of complaints (e.g. Members' decision not to meet with complainants and not to offer assistance in cases outside the scope of the Council's Redress System).

11. When the Complaints Division receives the types of complaints referred to in paragraph 10 above, either directly or forwarded by other divisions, it will circulate them to Duty Roster Members ("DRMs") as views only, as such complaints are outside the scope of the Council's Redress System.

12. If the Member under complaint is one of the DRMs, he will receive a copy of the complaint in his capacity as a DRM; if he is not, he will not be informed of the complaint unless the complainant has so requested. If any Member enquires with the Complaints Division on whether the Secretariat has received any complaint against him, the Complaints Division will inform the Member accordingly. In all cases, the personal particulars of the complainants will be obliterated before their complaints or submissions are forwarded to Members.

Review of the existing arrangements

13. The Secretariat has recently conducted a review on the existing arrangements for handling complaints and allegations against Members. In considering how far complaint cases within the terms of reference of CMI are channelled to the same handling mechanism, the Secretariat considers that if the subject matter of a complaint falls within the terms of reference of CMI, the complaint should be forwarded to CMI for consideration, irrespective of whether or not it is addressed directly to CMI. The rationale of this is that members of the public might not know the committee of the Council to which a complaint should be addressed, and might therefore simply address the complaint to the Secretariat or its staff.

14. Where a complaint concerning a Member's OER claims or AOF applications is received, SG may instruct the Accounts Office to seek clarification from the Member concerned in execution of her duty as the controlling officer and, after seeking clarification from the Member, may refer the complaint to CMI for consideration if she considers Rule 83AA might have been breached. In line with the principle set out in paragraph 13 above, in future, while the Accounts Office will continue to seek clarification from the Member concerned as necessary, the Administration Division or SG will at the same time determine whether the subject matter of the complaint falls within the terms of reference of CMI. If it is so determined, SG will forward the complaint to CMI for consideration without waiting for the outcome of the

clarification. In this way, the handling of complaints made in relation to a Member's OER claims or AOF applications received by the Secretariat or its staff will be the same as that for such complaints which are addressed directly to CMI.

15. When the Council Business Division 3, being the division servicing CMI, receives a complaint the subject matter of which falls within the terms of reference of CMI, it will forward the complaint to CMI for consideration immediately after receipt.

16. Except for those complaints mentioned in paragraphs 14 and 15 above which will be forwarded by the Administration Division and the Council Business Division 3 directly to CMI for consideration, complaints against Members received by other divisions will all be forwarded to the Complaints Division for central processing. This is to ensure that complaints received by various divisions of the Secretariat are handled in a consistent manner. The Complaints Division will first determine whether the subject matter of the complaint falls within the terms of reference of CMI. After making such determination, the Complaints Division will take follow up actions as appropriate and keep statistics on all complaints received.

Advice sought

17. Members are invited to note the above for information.

Council Business Division 3
Legislative Council Secretariat
9 April 2009