

立法會

Legislative Council

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Paper for the House Committee Meeting on 9 October 2009

Duty Roster Members' proposal on following up views and requests received from the public in relation to the dismissal of an assistant by Legislative Council Member Hon KAM Nai-wai

Purpose

1. This paper reports to the House Committee the public views and requests recently received by the Complaints Division (CD) on the dismissal of an assistant by Legislative Council (LegCo) Member Hon KAM Nai-wai and proposal of Duty Roster Members (DRMs) to the House Committee on the appropriate mechanism for handling this matter.

Background

2. LegCo operates a DRM System under its Redress System. In groups of six, Members take turns to be on duty each week to oversee the system, meet with deputations and members of the public who wish to lodge complaints and peruse the public views raised with CD. As a general practice, complaints and views of the public against individual Members will be forwarded to DRMs for them to consider whether and how follow-up actions should be taken.

3. Members on the duty roster from 5 October to 9 October 2009 were Mr Fred LI Wah-ming, Mrs Sophie LEUNG LAU Yau-fun, Mr LAU Kong-wah, Mr Joseph LEE Kok-long, Mr CHEUNG Kwok-che and Mrs Regina IP LAU Suk-ye.

4. Since 5 October, CD has received letters, e-mails and telephone calls from members of the public expressing views and requests on the dismissal of an assistant by LegCo Member Hon KAM Nai-wai. In view of this, DRMs for this week decided to hold a meeting to discuss the matter.

5. Between 5 October 2009 to 12:00 noon on 7 October, CD received a total of six submissions and telephone calls from seven members of the public expressing views on the dismissal of an assistant by LegCo Member Hon KAM Nai-wai, which include an inquiry by LegCo on the incident, an account of the

incident, the negative impact of the incident on the public's impression towards the integrity of Mr KAM Nai-wai, an account by Mr KAM Nai-wai of his former assistant's allegations of sexual harassment and unreasonable dismissal against him, and the need for setting up an independent committee to handle this incident which involves public money, etc.

6. A DRM meeting was held at 8:30 am on 8 October. Except Mrs Sophie LEUNG LAU Yau-fun who was out of town, all other five DRMs attended the meeting. Members elected from among themselves Mrs Regina IP LAU Suk-ye to be the Convenor of the meeting.

Discussion by DRMs

7. Having examined the views and requests from members of the public, DRMs note that the public are widely concerned about the incident. They expect LegCo to conduct an inquiry to follow up the incident so as to address their doubts. Concerns of the public can be summarized into three main points:

- (a) the public hope that an inquiry will be conducted to ascertain whether the allegation of sexual harassment is true;
- (b) given that the assistant in the case was employed with public money, the public are concerned about whether there was improper use of public money in the course of the dismissal, including whether the dismissal was reasonable; and
- (c) the public are also concerned that the incident may involve the question of the Member's integrity.

8. As the incident is pertinent to Members' conduct and use of public money, and the public also expect LegCo to inquire into the incident thoroughly, DRMs consider it necessary to take follow-up actions. To decide which mechanism should be adopted to follow up the incident, DRMs have studied the Rules of Procedure of LegCo. DRMs note that complaints lodged by members of the public against individual Members are outside the scope of the LegCo Redress System, and meetings held under the Redress System are not covered by the protection of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382). Therefore, it is not appropriate for DRMs to handle the incident.

9. DRMs have considered other possible mechanisms for following up the incident, including the LegCo Committee on Members' Interests (CMI), Committee on Rules of Procedure, House Committee, the formation of a select committee, etc. When perusing the existing mechanisms of the Council, DRMs have found that the current terms of reference of CMI (see **Appendix I**) include considering matters in relation to the conduct of Members. The relevant rule is quoted below:

"73(1)(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"

10. DRMs also note that CMI issues from time to time, on a need basis, guidelines on matters of ethics in relation to the conduct of LegCo Members in their capacity as such. It has discussed certain complaints against the conduct of Members and updated the guidelines. Moreover, CMI is a standing committee which may inquire into matters under its terms of reference. However, its inquiry powers are applicable only to matters involving Members' interests and their declaration as well as claims for reimbursement of operating expenses.

Proposals of DRMs

11. After detailed discussion, DRMs come up with the following proposals:

- (a) DRMs consider that given the serious nature of the issues raised in the relevant views, which has direct impact on the reputation of LegCo, the case warrants follow-up actions;
- (b) as the terms of reference of CMI include issuing guidelines on matters in relation to the conduct of Members, the Committee has considerable experience in this respect; hence it should be more appropriate to refer the case to the Committee for follow-up; and
- (c) as the inquiry powers of CMI are not applicable to complaint cases against the conduct of Members, DRMs propose a resolution authorizing CMI to inquire into the incident be passed by LegCo, and the Committee should also submit its report to LegCo.

Advice sought

12. The House Committee is invited to consider and endorse DRMs' proposals as set out in paragraph 11 above.

**Legislative Council Committee on Members' Interests
Terms of Reference**

- (1) to examine the arrangements made for the compilation, maintenance and accessibility of the Register of Members' Interests;
- (2) to consider any proposals made by Members or others as to the form and contents of the Register;
- (3) 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;
- (4) 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;
- (5) 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; and
- (6) 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).