

## **Chapter 4        Whether the facts as established constitute grounds for the censure of Hon KAM Nai-wai**

4.1            This Chapter sets out the views given, pursuant to Rule 73A(2) of the Rules of Procedure (“RoP”), by the Investigation Committee on whether the facts as established (set out in Chapter 3) constitute grounds for the censure of Hon KAM Nai-wai.

### **Issues related to the Investigation Committee giving views on the two allegations set out in the Schedule to the censure motion**

4.2            As pointed out in Chapter 3 of this Report, details of Mr KAM’s misbehaviour, as alleged by the Members initiating the censure motion in the Schedule to the censure motion, comprise two parts: the headings in bold print and the main text in normal print. The headings are reproduced as follows:

- (a)    **Hon KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity**
  
- (b)    **Hon KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her**

4.3            The Investigation Committee considers that the above two headings are allegations of misbehaviour against Mr KAM made by the

Members initiating the censure motion on the basis of the details set out in the main text under the headings. As such, the relevant circumstances described in the main text of the Schedule to the censure motion are “facts to be established”. Chapter 3 of this Report presents an analysis and findings of the Investigation Committee on the “facts to be established”. Since the allegations in the two headings contain elements of subjective judgement, the Investigation Committee considers that they are not “facts to be established”. Nevertheless, pursuant to Rule 73A(2) of the RoP (i.e. giving its views on whether or not the facts as established constitute grounds for the censure), the Investigation Committee gives its views on the allegations in this Chapter.

#### **Views of the Investigation Committee on the first allegation**

4.4 The first allegation as set out in the Schedule to the censure motion is reproduced below:

**“Hon KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity”.**

4.5 The Members initiating the censure motion alleged that **“Hon KAM Nai-wai made inconsistent remarks to the media”** and **“withheld key information”**, thus **“causing the public to have doubts about his integrity”**. The Investigation Committee considers that the **“remarks”** made by Mr KAM to the media to which the allegation refers are those remarks made by Mr KAM at a press conference called by him on 4 October 2009 and those made on a radio programme Tipping the Points

on 6 October 2009 (Appendices 2.5 and 2.9). With respect to the remarks made to the media by Mr KAM, the **“inconsistency”** to which the allegation refers lies in the fact that Mr KAM denied having made advances to his female assistant (i.e. Ms Kimmie WONG Lai-chu<sup>1</sup>) at the press conference but he admitted two days later on the radio programme that he did express good feelings towards her in mid-June 2009; while the **“key information”** that Mr KAM is alleged to have **“withheld”** is the fact that he had expressed good feelings towards his female assistant, which he did not disclose at the press conference.

4.6 In Chapter 3 of this Report, the Investigation Committee has established the following facts which are pertinent to the first allegation (i.e. the first to third items in paragraph 3.4 of Chapter 3):

- (a) Mr KAM expressed good feelings towards Ms WONG when he was alone with her on one occasion in mid-June 2009 (please refer to paragraph 3.5);
- (b) Mr KAM denied at a press conference called by him on 4 October 2009 that he had made advances to a female assistant who was subsequently dismissed by him, and he did not disclose that he had expressed good feelings towards the female assistant (please refer to paragraphs 3.6 to 3.16); and

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<sup>1</sup> Mr KAM did not disclose the name of the female assistant at the press conference or on the radio programme. Ms WONG issued a statement on 9 October 2009 to newspapers, confirming that she was the female assistant dismissed by Mr KAM. The statement was published in Ming Pao Daily News on the following day (i.e. 10 October 2009).

- (c) Mr KAM admitted on 6 October 2009 on a radio programme that he had expressed good feelings towards a female assistant, who was subsequently dismissed by him, when he was alone with her on one occasion in mid-June 2009 (please refer to paragraphs 3.17 to 3.18).

#### Whether Mr KAM made “inconsistent” remarks to the media

4.7 With regard to the meaning of the word “inconsistent”, the Investigation Committee considers that “inconsistent” remarks refer to the incompatible remarks made on two occasions. Yet, if the focuses of the talks on the two occasions are different, remarks made on the second occasion which were not made on the first occasion does not necessarily mean that the remarks are “inconsistent” as remarks may be made on the second occasion for supplementing what was said on the first occasion. On the basis of this understanding, the issue considered by the Investigation Committee is whether Mr KAM’s expression of good feelings towards Ms WONG could reasonably be understood as making advances to her, and whether Ms WONG and an ordinary person perceived it as such. If both answers are in the affirmative, then Mr KAM’s admission of having expressed good feelings towards the female assistant (i.e. Ms WONG) in the second talk (i.e. the radio programme) might be inconsistent with his denial of having made advances to his female assistant in the first talk (i.e. the press conference), thus constituting the making of “inconsistent” remarks.

4.8 Mr KAM said in his written statement submitted to the Investigation Committee on 15 March 2010 (Appendix 2.11) and

subsequently in giving evidence at hearings that his expressing good feelings towards Ms WONG was under the special circumstances at that time. Based on the “friendliness in a working relationship”, he was approving of Ms WONG’s abilities and affirming her work performance, and he was using social workers’ empathy skill in the hope that he could ease her emotional distress, thus boosting her self-confidence. Mr KAM stressed that his expression of good feelings towards Ms WONG was not meant to make advances to her or to seek her love, and that he had never taken any action to court Ms WONG. He therefore remarked openly at the press conference on 4 October 2009 and on the radio programme on 6 October 2009 that he had not made advances to her or sought her love. Mr KAM considers that his denial, in reply to reporters’ questions at the press conference, of having made advances to or sought the love of the female assistant (i.e. Ms WONG) was not contradictory to his admission on the radio programme that he had expressed good feelings towards the female assistant. Mr KAM therefore considers that his remarks made on these two occasions were not “inconsistent”.

4.9 Although Mr KAM repeatedly stressed in giving evidence to the Investigation Committee that his “expression of good feelings towards Ms WONG was to affirm her work performance”, none of the evidence given by the Legislative Council (“LegCo”) Members who attended the caucus meeting of the Democratic Party on 2 October 2009 shows that Mr KAM had put forward the above saying when he gave an account of the dismissal to them at the meeting. Also, the reaction of Ms WONG there and then at the afternoon tea meeting and her subsequent attitude of rejecting Mr KAM, Mr KAM’s reactions to the incident (for example, his apologizing to Ms WONG and admitting to his wife that he had done

wrong), as well as the circumstances surrounding the worsened working relationship between him and Ms WONG, all make the Investigation Committee unable to accept Mr KAM's explanation that his telling Ms WONG that he had good feelings towards her did not involve the expression of affection between a man and a woman. While Mr KAM insisted that the Investigation Committee should only take into account what he meant and not other people's views, the Investigation Committee considered that it must make a judgement based on its findings. As Mr KAM denied at the press conference on 4 October 2009 that he had ever made advances to the female assistant, but he subsequently admitted on the radio programme on 6 October 2009 that he had expressed good feelings towards her, the Investigation Committee considers that there were indeed "inconsistencies" between the remarks he made.

#### Whether Mr KAM "withheld key information" in the remarks he made to the media

4.10 The Investigation Committee considers that the expression "withheld key information" means a conscious act of not disclosing non-trivial information which the other party of the dialogue is interested to know or considers to be crucial. As such, "withheld key information" is not the same as "forgot to disclose key information", and key information is often withheld for the purpose of avoiding adverse consequences of the disclosure.

4.11 As to the key information which is alleged to have been withheld by Mr KAM, the Investigation Committee considers that according to the main text immediately following the first allegation in the

Schedule to the motion, the key information is the fact that Mr KAM “had expressed good feelings towards the female assistant”, which he allegedly withheld at the press conference on 4 October 2009. According to the understanding about “withheld key information” referred to in the preceding paragraph, the Investigation Committee has considered the following questions:

- (a) Was the fact that Mr KAM “had expressed good feelings towards the female assistant” a piece of trivial information?
- (b) Did Mr KAM consciously choose not to disclose the fact that he “had expressed good feelings towards the female assistant”?
- (c) Should Mr KAM still be regarded as having “withheld key information” given that he disclosed the relevant fact two days later?

4.12 The Investigation Committee notes that before the dismissal came to light on 4 October 2009, Mr KAM had explained to Hon Albert HO (Chairman), Hon Emily LAU (Deputy Chairman), as well as other caucus members of the Democratic Party in respect of the complaint lodged by Ms WONG about her unreasonable dismissal by Mr KAM on 24 September 2009. On each of those occasions, Mr KAM did mention that he had expressed good feelings towards Ms WONG. Even though Mr KAM had only 10 to 15 minutes to give an account of the entire incident to Mr HO and Ms LAU on 24 September 2009, he specifically mentioned that he had expressed good feelings towards Ms WONG. Then on 4 October 2009, Mr KAM took the initiative to call a press conference,

with the purpose of responding to a newspaper report on that day, which alleged that he had dismissed a female assistant (i.e. Ms WONG) due to his unsuccessful advances to her and that the female assistant had made a complaint to the Democratic Party. At that moment, Mr KAM clearly knew that the fact that he “had expressed good feelings towards the female assistant” was indeed information crucial to the public understanding of “the female assistant’s complaint about being unreasonably dismissed”.

4.13 The Investigation Committee considers that before attending the press conference, Mr KAM should have known that he would face the question of “whether he had made advances” or related questions, and he should have contemplated how to respond to such questions, as it was reported in a newspaper on that day that Mr KAM had dismissed a female assistant due to his unsuccessful advances to her. Yet, when asked repeatedly at the press conference whether he had made advances to the female assistant (i.e. Ms WONG) and what he had done to trigger her misunderstanding that subsequently led to the complaint (see paragraph 2.82 of Chapter 2), he did not mention at all the fact that he “had expressed good feelings towards the female assistant”. The Investigation Committee considers that Mr KAM’s failure to disclose that fact was not due to forgetfulness or an oversight but was attributable to a conscious decision not to make the disclosure. The Investigation Committee also rejects the defence of Mr KAM that he did not disclose that fact in order to protect the privacy of Ms WONG because, when he admitted on the radio programme on 6 October 2009 that he had expressed good feelings towards the female assistant, he did not need to further disclose her privacy (i.e. details of her relationship problems).



4.14 The Investigation Committee has also considered whether Mr KAM should still be regarded as having “withheld key information” on the basis that although Mr KAM did not disclose the fact that he “had expressed good feelings towards the female assistant” at the press conference on 4 October 2009, he did disclose it two days later on the radio programme. The Investigation Committee considers that if a person makes disclosure of key information expeditiously after realizing that he has forgotten to do so, he may be regarded as not having withheld key information deliberately. However, as pointed out in the preceding paragraph, Mr KAM’s failure to make the disclosure at the press conference was not due to forgetfulness or an oversight, but was attributable to a conscious decision not to disclose the fact that he had expressed good feelings towards the female assistant. Besides, Mr KAM admitted that it was because of the media reports and the reminder from Mr HO that he attended the radio programme to make clarifications on the incident.

4.15 On the basis of the analysis in paragraphs 4.12 to 4.14 above, the Investigation Committee considers that when denying that he had made advances to his female assistant (i.e. Ms WONG) at the press conference, Mr KAM should have supplemented his denial with the crucial fact that he “had expressed good feelings towards the female assistant”. As Mr KAM should have done so and yet he had consciously evaded doing that, the Investigation Committee considers that he had indeed “withheld key information” at the press conference on 4 October 2009.

4.16 As the findings of the analysis set out in paragraphs 4.7 to 4.15 above indicate that Mr KAM had indeed made “inconsistent” remarks to

the media and “withheld key information” from them, the Investigation Committee considers that it was likely for **“the public to have doubts about his integrity”**.

### **Views of the Investigation Committee on the second allegation**

4.17 The second allegation set out in the Schedule to the censure motion is reproduced below:

**“Hon KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him as good, after his expression of affection was rejected by her”**

4.18 The Investigation Committee considers that the allegation accuses Mr KAM of being **“unfair”** in the dismissal of the female assistant (i.e. Ms WONG). The facts set out in the main text of the Schedule to the motion include the following:

- (a) In mid-June 2009, Mr KAM expressed good feelings towards his female assistant;
- (b) Subsequently, Mr KAM noticed some signs of his female assistant rejecting him;
- (c) Between early September and mid-September, Mr KAM invited his female assistant to dine out and was also refused by her; and

- (d) Subsequently, on 24 September 2009, he terminated the employment contract with that female assistant with immediate effect without reason assigned, although her overall work performance was judged by him to be good.

4.19 The Investigation Committee notes that the Members initiating the censure motion used the word “subsequently” twice, signifying that there seems to be some connection between items (a) and (b), and items (c) and (d), and possibly among items (a), (b), (c) and (d) in the preceding paragraph such that Mr KAM was alleged of having dismissed a female assistant, whose overall work performance had been judged by him to be good, after his unsuccessful advances to her. As such, the Members initiating the censure motion were of the view that Mr KAM “was unfair”.

4.20 The Investigation Committee has established the following facts in Chapter 3 in connection with the second allegation (i.e. the fourth and fifth items as well as the first half of the sixth item in paragraph 3.4 of Chapter 3):

- (a) Mr KAM judged that the overall work performance of Ms WONG during the employment period to be good (see paragraphs 3.19 to 3.45);
- (b) Subsequent to his expression of good feelings towards a female assistant (i.e. Ms WONG) in mid-June 2009, Mr KAM noticed some signs of Ms WONG rejecting him, and between early September and mid-September (the exact date was 22 September), Mr KAM invited the female assistant to dine out and was refused by her (see paragraphs 3.46 to 3.51); and

- (c) Mr KAM dismissed a female assistant (i.e. Ms WONG) on 24 September 2009 (see paragraphs 3.52 to 3.54).

4.21 The Investigation Committee considers that in order to determine whether Mr KAM has been unfair in handling this incident, it is necessary to first find out whether Mr KAM's dismissal of Ms WONG was due to the latter's work attitude and their ability to work together as well as whether there is any connection between the details of the censure motion respectively mentioned at items (a), (b), (c) and (d) in paragraph 4.18.

#### Reasons for Mr KAM's dismissal of Ms WONG

4.22 The Investigation Committee notes that Ms WONG told Mr HO and Ms LAU at the meeting with them on 30 September 2009 that she thought her dismissal could be related to her rejecting Mr KAM's advances to her. The Investigation Committee considers that it was 15 June 2009 when Mr KAM expressed good feelings towards Ms WONG and 24 September 2009 when Ms WONG was dismissed; while Mr KAM did make occasional criticisms on Ms WONG's work during that period, there is no evidence that Mr KAM's dismissal of Ms WONG was pre-meditated. While noting that Mr KAM was refused by Ms WONG when he called her on 22 September to invite her to go out for lunch with him, the Investigation Committee is not in possession of sufficient evidence showing that Mr KAM was deeply upset by her refusal and thus decided to dismiss her.

4.23 The Investigation Committee considers that the working relationship between Mr KAM and Ms WONG had become uneasy after

the afternoon tea meeting on 15 June 2009, and it was because of this that a serious confrontation occurred between them at the meeting on 23 September owing to some trivial matters in work arrangements. Ms WONG's attitude of rejecting Mr KAM after 15 June 2009 was probably related to Mr KAM's expression of good feelings towards her on that day, which was also the reason why she subsequently refused to be alone with him or to go out for lunch with him. Ms WONG's attitude could have deeply upset Mr KAM which might lead to a worsening of his attitude towards her, resulting in the deterioration of their relationship. The worsened relationship led to the loss of mutual trust which should exist between employer and employee, and made it difficult for them to communicate with each other<sup>2</sup>. The communication problems between them made it easy for any conflict (such as the one which took place on 23 September) to happen and develop into a major confrontation. The work conflicts between them also led to the further deterioration of their relationship.

4.24 Mr KAM said on the radio programme as well as at the hearings that he decided to dismiss Ms WONG after his confrontation with Ms WONG on 23 September, which arose from Ms WONG not actively participating at the work meeting as she was busy writing the press release. Mr KAM also admitted to the Investigation Committee that this confrontation was the triggering point of Ms WONG's dismissal, i.e. Ms WONG did not take heed of his instruction to stop writing the press release so as to participate in the discussion on redistribution of work, and Ms WONG had work attitude problems. Mr KAM also said that after he

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<sup>2</sup> For example, Mr KAM thought that Ms WONG refused to write the press release on shoeshiners because she considered that it was beyond the scope of her duties (see paragraph 3.32 of Chapter 3).

scolded Ms WONG at the work meeting, he considered that it was not possible for them to work together any longer, and the idea of dismissing her thus came to his mind. Mr KAM also agreed that the atmosphere at that moment was “rather unpleasant”.

4.25 The Investigation Committee therefore believes that the immediate cause for Mr KAM’s dismissal of Ms WONG was their deteriorating relationship as of September 2009 which had made it impossible for them to work together, and that the conflict on 23 September was the triggering point which caused a direct confrontation. As for the remote cause, it included Ms WONG’s attitude of rejecting Mr KAM following his expression of good feelings towards her in the afternoon tea meeting on 15 June.

4.26 The Investigation Committee believes that although there is no information suggesting that Mr KAM formed the idea of dismissing Ms WONG since the afternoon tea meeting, it was likely that Ms WONG’s rejection of Mr KAM’s advances to her had made it impossible for them to work together subsequently. As to Ms WONG’s claim that she was dismissed by Mr KAM because she had rejected Mr KAM’s expression of good feelings towards her, which she considered to be an act of making advances, the Investigation Committee has not obtained any relevant evidence. In other words, the Investigation Committee cannot substantiate the premise for saying Mr KAM “**was unfair**” in the second allegation, which is “**dismissing his female assistant after his expression of ‘good feelings’ was rejected by her**”. Nevertheless, this does not mean that Mr KAM acted fairly in dismissing Ms WONG. After conducting a careful analysis of the process of the dismissal, as detailed

below, the Investigation Committee considers that there was impropriety in Mr KAM's dismissal of Ms WONG.

**Whether there was impropriety in the manner in which Mr KAM dismissed Ms WONG**

4.27           Regardless of whether Mr KAM's remarks about the problems with Ms WONG's work performance and attitude in the Stage II were true, the Investigation Committee considers that there are issues which deserve examination regarding the manner in which Mr KAM dismissed Ms WONG. The relevant issues studied by the Investigation Committee include:

- (a) Did Mr KAM take appropriate disciplinary actions for Ms WONG to make improvement prior to the dismissal?
  - (b) Under the circumstances at that time, was it appropriate to dismiss Ms WONG with immediate effect?
  - (c) Did other relevant persons find it acceptable for Mr KAM to dismiss Ms WONG with immediate effect?
- (a) Did Mr KAM take appropriate disciplinary actions for Ms WONG to make improvement prior to the dismissal?

4.28           The Investigation Committee notes that, since one of the functions of LegCo Members is to monitor the performance of the Government, and Members are also society's role models, the public may expect that when Members make use of public funds to employ their staff

members, apart from complying with the basic requirements laid down in legislation and contracts, they will also make reference to those personnel management practices widely adopted by public and private organizations, including giving staff members whose work performance or attitude was not so good adequate opportunities to improve their performance or attitude. Under the common practice, unless the staff member concerned has committed extremely serious mistakes, they will not be immediately dismissed just because their performance or attitude was not so good; instead, they will be invited to discuss the causes for their work performance or attitude not meeting the requirements, and they will be given an opportunity to explain. Further, the employer and the staff member concerned will work together to formulate an improvement plan and the staff member will be given adequate time for making improvement. The employer should also re-assess the performance or attitude of the staff member concerned at an appropriate time to find out if there is still room for improvement. Dismissing the staff member concerned is normally the last resort.

4.29 The Investigation Committee considers that in the process of assessing the staff member's performance, the employer may, if necessary, issue verbal and written warnings to the staff member concerned so as to let him know clearly the improvement he has to make as well as the consequences of failure to make the required improvement within a specified period of time. Both verbal and written warnings are solemn disciplinary actions, which should generally be given in an interview. Further, apart from an officer from the personnel department who may be present as a witness, only the persons issuing and receiving the warning should be present; and be it a verbal or a written warning, a written record of it should be kept in the personnel file of the staff member concerned.



4.30 The Investigation Committee understands that the staff size of a Member's Office is usually small, with a relatively simple personnel structure. As such, it is unrealistic to expect a Member to adopt a formal appraisal system. Nevertheless, the Investigation Committee considers that in handling staff members whose work performance or attitude was not so good, a Member should at least let the staff members concerned know what their problems are and give them adequate opportunities to improve their performance or attitude.

4.31 In this regard, Mr KAM told the Investigation Committee that he had not adopted a formal appraisal system. Mr KAM said in his written statement that as Ms WONG was unable to handle and accomplish the jobs assigned by him, he had on numerous occasions sent emails to express his dissatisfaction and issued verbal warnings to her. However, Mr KAM provided only one instance of his giving verbal warnings to Ms WONG: according to the evidence given by Mr KAM, he had issued a verbal warning to Ms WONG in early July 2009 when he was alone with her at a meeting. At that meeting, he told Ms WONG, "We need to work together. The way you behave does not work." Mr KAM thought retrospectively that in making such a remark at that meeting, he had in fact given her a verbal warning, although the word "warning" had not been used then. The Investigation Committee considers that it was only when Mr KAM was giving evidence to the Investigation Committee and thinking retrospectively about past events that he considered he had issued a verbal warning to Ms WONG. However, there is no information to show that Ms WONG also perceived the situation as Mr KAM giving her a warning and knew clearly how she should make improvement, as well as the consequences if she did not do so.

4.32 Besides, according to Mr KAM, he apologized to Ms WONG at the meeting in early July 2009 for having expressed good feelings towards her at the afternoon tea meeting on 15 June 2009, and he also gave her a verbal warning on the same occasion. The Investigation Committee is perplexed that Mr KAM would have taken two contradictory actions at the same meeting, and it therefore does not believe that Mr KAM gave any verbal warning at that meeting at all. According to the evidence given by Mr KAM, his discussion with Ms WONG at the meeting covered issues such as work, their cooperation and Ms WONG's attitude, etc., while Ms WONG also admitted that she needed to improve her work attitude. The Investigation Committee considers however that the conversation could be only regarded as a discussion on issues about their cooperation at work, and was by no means a verbal warning with disciplinary implications.

4.33 In the Investigation Committee's view, if Mr KAM thought that Ms WONG needed to improve her work performance or attitude, he should have discussed it with her and he might have even given her verbal or written warnings.

4.34 On the issue of whether the emails provided by Mr KAM to the Investigation Committee should be considered as written warnings, the Investigation Committee is of the view that written warnings with disciplinary implications should not be mixed up with the day-to-day written messages sent by an employer to staff members for the purpose of giving instructions or advice on work progress or approach. Since the

emails touched upon specific work issues, and some of them were not sent to Ms WONG alone, the Investigation Committee considers that such emails should not be regarded as written warnings issued by Mr KAM to Ms WONG.

4.35 The Investigation Committee considers that, in claiming during the hearings that he had issued warnings to Ms WONG, Mr KAM was just putting forward his defence to the Investigation Committee in an attempt to justify his dismissal retrospectively. As a matter of fact, he had not taken any disciplinary action for Ms WONG to make improvement.

(b) Under the circumstances at that time, was it appropriate to dismiss Ms WONG with immediate effect?

4.36 The Investigation Committee notes that an employer may dismiss an employee for various reasons or considerations and according to the current Employment Ordinance (Cap. 57), for a staff member who has been employed under a continuous contract for a period of less than 24 months, the employment relationship may be terminated by the employer or the employee by giving notice or payment in lieu to the other party, and an employer dismissing an employee is not required to provide the other party with an explanation or justify to anyone else why the dismissal is reasonable. Since Ms WONG had been employed under a continuous contract for a period of less than 10 months (from 15 December 2008 to 24 September 2009), Mr KAM has the legal right to dismiss her without giving any explanation.

4.37 On the appropriateness of dismissing Ms WONG with immediate effect by making payment in lieu of notice, the Investigation Committee notes that the employment contract signed between Mr KAM and Ms WONG has provided for this termination arrangement.<sup>3</sup> The Investigation Committee also understands that some employers may choose to provide the staff member with payment in lieu of notice so as to dismiss the staff member immediately without notice, in order to prevent the dismissed staff member from doing things detrimental to the interests of the employer. Therefore, dismissing a staff member immediately by giving him or her payment in lieu of notice may not necessarily be inappropriate.

4.38 The Investigation Committee considers that there was indeed room for improvement in the manner in which Mr KAM dismissed Ms WONG. This point was also acknowledged by Mr KAM in his written statement in which he stated that, “I had not been able to manage my temper, thus making Ms WONG feel disturbed and unhappy in the dismissal process.” After Ms WONG had lodged a complaint against him, Mr KAM acceded to her requests and provided her with a personal letter of apology, a reference letter (letter of recommendation), and a cheque for \$150,000 as compensation. In the letter of apology and the letter of recommendation, Mr KAM affirmed Ms WONG’s work performance. Mr KAM also said in the letter of apology that he was willing to pay her an amount of \$150,000 as compensation to make up for his fault.

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<sup>3</sup> See paragraph 14 of the appointment letter signed between Mr KAM and Ms WONG (Appendix 2.1).

(c) Did other relevant persons find it acceptable for Mr KAM to dismiss Ms WONG with immediate effect?

4.39 On the issue of whether other relevant persons found it acceptable for Mr KAM to dismiss Ms WONG with immediate effect, the Investigation Committee notes that Mr HO and Ms LAU first listened to an account by Mr KAM for dismissing Ms WONG on 24 September 2009. They then listened to Ms WONG's view about what she thought to be the reasons for her dismissal. Later, both Mr HO and Ms LAU attended the caucus meeting of the Democratic Party on 2 October, at which Mr KAM gave an account of the dismissal, and the unofficial meeting on 3 October. At the relevant time, they also talked to Ms WONG on the telephone. Therefore, these two Members may be considered to be relatively well-informed third parties. Mr HO considered it wrong for Mr KAM to have dismissed Ms WONG with immediate effect because such dismissal would cause great harm to the staff member concerned. In Mr HO's view, a staff member should not be dismissed in that way unless he had committed an extremely serious mistake. Ms LAU also did not approve of Mr KAM's dismissal of Ms WONG with immediate effect. In her opinion, an employer should follow the proper procedure by first issuing verbal warnings to the staff member whose performance was not so good, then written warnings, followed finally by dismissal.

4.40 The Investigation Committee notes that, other than Mr KAM, Mr HO and Ms LAU, other caucus members of the Democratic Party did not have the opportunity to make direct contact with Ms WONG, and they could only listen to Mr KAM's unilateral account of the incident and the information relayed by Mr HO and Ms LAU about their communication

with Ms WONG. Yet, they chided Mr KAM at the meeting on 2 October 2009 for having acted inappropriately, and hoped that Mr KAM could try all means to remedy the situation (Please refer to paragraph 2.76 of Chapter 2).

4.41 To sum up, the Investigation Committee considers that Mr KAM did not adopt good personnel management practices in that he did not issue any warning with disciplinary implications to Ms WONG to give the employee the opportunity to make improvement. As such, it was indeed improper for Mr KAM to have dismissed Ms WONG with immediate effect.

## **Conclusion**

4.42 After analyzing the two allegations as set out in the censure motion, the Investigation Committee considers the “good feelings” expressed by Mr KAM towards Ms WONG at the afternoon tea meeting on 15 June 2009 was an expression of affection between a man and a woman. Regardless of what his wish might have been, such an expression made Ms WONG and even other people feel that he was “making advances” to her. Mr KAM also realized there and then that Ms WONG did have such a feeling. The argument that he expressed good feelings towards Ms WONG in order to approve of her personal capabilities and affirm her work performance was put forward by him only after the Investigation Committee had started its investigation. Such an argument is not credible. Mr KAM made use of such a far-fetched argument to contend that he was not making advances to Ms WONG, in the hope of proving that he had not made “inconsistent” remarks on the two occasions to the media and that he

had not “withheld key information” from them. Under such circumstances, the Investigation Committee is not satisfied that the evidence given by Mr KAM is the whole truth.

4.43 The Investigation Committee has confirmed that Mr KAM had indeed made inconsistent remarks and withheld key information (see paragraphs 4.9 and 4.15). When the incident came to light, the public were concerned whether the case involved Mr KAM dismissing a staff member employed with public money after his unsuccessful advances to her. Since Mr KAM consciously withheld key information, the public would indeed have doubts about his integrity. To a certain extent, this has adversely impacted on the overall image of LegCo Members as well as that of LegCo.

4.44 The Investigation Committee believes that Ms WONG had a deep trust in Mr KAM in early June 2009, so much so that she confided to him her own relationship problems and sought his assistance. As such, when Mr KAM suddenly made advances to her, her immediate reactions were completely understandable: she felt astonished and then expressed the wish to resign. The Investigation Committee considers that it was really inappropriate and unacceptable for Mr KAM, being a LegCo Member and a social worker<sup>4</sup>, to have acted in such a way.

4.45 With regard to whether there had been “unfairness” in the process of Mr KAM’s dismissal of Ms WONG, as set out in the second allegation in the censure motion, the Investigation Committee cannot prove

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<sup>4</sup> Source of information: personal data provided by Mr KAM and published on the Legislative Council web site.

that Ms WONG's dismissal with immediate effect was caused by her rejection of Mr KAM's expression of good feelings towards her. As Ms WONG is unwilling to give evidence as a witness, it is not possible for the Investigation Committee to find out whether Mr KAM had already, as he claimed, explained why he dismissed her on the day of her dismissal. The Investigation Committee therefore cannot confirm whether Mr KAM had been "unfair" in this incident.

4.46            Nevertheless, since Mr KAM expressed good feelings towards Ms WONG under inappropriate circumstances, he had caused pain to his subordinate and made their employer-employee relationship complicated and tense. Moreover, Mr KAM's failure to take appropriate remedial actions had led to the continuous deterioration of their relationship and loss of the mutual trust and cooperation which should have existed between them. Subsequently, Mr KAM dismissed her with immediate effect even though she had not made any serious mistakes. The Investigation Committee expresses regrets at the behaviour of Mr KAM as a supervisor. This incident has dealt an enormous blow to the reputation of Mr KAM, and for this, he has no one but himself to blame.

4.47            The Investigation Committee notes that the disqualification of a Member from the office is currently the most severe sanction that may be imposed on an individual LegCo Member, and has the effect of overturning the decision made by voters in an election. Therefore, such a sanction should be applicable only when a Member is found to have committed extremely serious misconduct. Having carefully considered the facts as established, the Investigation Committee considers that Mr KAM's conduct was improper in that it has failed to live up to the public's expectations on



the integrity and ethical standards of a LegCo Member, but that his misconduct was not so grave as to warrant disqualification from the office as a LegCo Member. In other words, the facts as established do not, in the Investigation Committee's view, constitute sufficient grounds for the censure of Mr KAM under Article 79(7) of the Basic Law.

