

立法會
Legislative Council

LC Paper No. CMI/54/11-12

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Committee on Members' Interests

**Minutes of the ninth meeting
held on Monday, 23 April 2012 at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Dr Hon Margaret NG
Hon WONG Yung-kan, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon WONG Sing-chi
- Clerk in attendance** : Miss Mary SO
Chief Council Secretary (3)3
- Staff in attendance** : Ms Pauline NG
Secretary General
- Mr Jimmy MA, JP
Legal Adviser
- Mrs Justina LAM
Assistant Secretary General 3
- Ms Connie FUNG
Senior Assistant Legal Adviser 1
- Miss Kitty CHENG
Assistant Legal Adviser 5
- Miss Wylie HO
Senior Council Secretary (3)2
- Mr Ambrose LEUNG
Research Officer (3)
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Action

I. Review of the procedure for handling complaints in relation to the registration or declaration of Members' interests or Members' claims for reimbursement of operating expenses (LC Paper No. CMI/33/11-12)

The Chairman said that at the meeting of the Committee on Members' Interests ("CMI") held on 9 January 2012, members agreed that "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" ("the Procedure") should be reviewed in the light of CMI's experience of handling a number of complaint cases in the current Term of the Legislative Council ("LegCo"). Accordingly, the Secretariat had prepared the paper entitled "Review of the procedure for handling complaints in relation to the registration or declaration of Members' interests or Members' claims for reimbursement of operating expenses" (LC Paper No. CMI 33/11-12).

Arrangements under the Procedure

2. At the invitation of the Chairman, the Clerk said that the paper set out those arrangements under the existing Procedure which members considered that a review should be conducted having regard to the experience gained in handling the complaint cases in the current Term.

Time limits

3. The Clerk explained that Paragraph (1) of the Procedure stipulated 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, and Paragraphs (3) and (4) of the Procedure provided that the first meeting should be held within seven working days from the day on which the Chairman decided that a meeting should be held or from the date on which the Chairman's decision of not holding a meeting was overturned by a majority of members. Also, Paragraph (4) set out that members disagreeing with the Chairman's decision of not holding a meeting should reply to the Clerk within three working days, while Paragraph (18) stipulated that CMI should hold a meeting to hear the explanation by the Member under complaint within seven working days upon receipt of a written request for a review of CMI's decision on a complaint case.

4. The Clerk further explained that these time limits were first adopted by CMI of the First LegCo and had not been changed since. The main consideration for setting out in detail a time limit for deciding whether

action should be taken on a complaint was to guard against abuse by a dominant party in the Council and to cater for the most antagonistic situation.

5. The Clerk said that based on experience, it was found that two working days (Paragraph (1) of the Procedure) might not be adequate to reach and obtain a response from the Chairman especially if he/she was not in Hong Kong. As regards the time limit of seven days for convening the first meeting (Paragraph (3)), it was noted that it was not always easy to find a time convenient to most members of CMI for the first meeting, particularly if the complaint was received during a break or recess period of LegCo, and there might be a need for the Clerk to clarify some basic facts with the complainant about his/her complaint before the first meeting. Accordingly, there was a need to relax the current time limit of seven working days to a longer period.

Purpose of the first meeting

6. The Clerk said that according to the Procedure, the purpose of the first meeting was to decide whether the complaint was pursuable. In making this decision, members would review the content of the complaint and, if the information was insufficient for CMI to decide whether to pursue the complaint, CMI might decide to gather additional information relevant to the complaint and the allegations in question. This task was usually done by the Clerk who acted upon the instruction of CMI. It was therefore necessary to clearly stipulate in the Procedure the purpose of the first meeting.

Whether Member under complaint ought to be informed

7. The Clerk said that according to the Procedure, if CMI decided at the first meeting that the complaint was pursuable, CMI might proceed to preliminary consideration of the complaint. If CMI decided that the complaint was not pursuable, no further action was to be taken and the complainant would be informed accordingly. However, the Procedure did not state whether the Member under complaint would be informed if CMI decided not to consider the complaint. The Clerk further said that some members had expressed the view that this matter should be decided by CMI on a case-by-case basis as not every Member wished to be informed of some frivolous and vexatious complaints made against him. The Procedure might need to set out this point clearly.

Procedural steps in the Preliminary Consideration Stage and Investigation Stage

8. The Clerk said that in the light of CMI's experience of handling a recent complaint case, some members found that the Procedure was unclear as to whether CMI ought to proceed to the Investigation Stage if CMI was able to form the opinion that the complaint was substantiated at the Preliminary Consideration Stage, but the Member under complaint did not admit the allegations or agree to CMI's opinion.

Proposed changes to the Procedure

9. The Clerk said that to address the aforesaid issues on the Procedure, the Secretariat had proposed certain changes to the Procedure (paragraph 16 of the paper) and prepared a draft revised Procedure (Appendix II of the paper) for members' consideration. The Clerk added that the marked-up version of the English copy was tabled for members' reference.

Changes to the Procedure agreed to by members

Time limits

10. Members agreed that the time limit stipulated in Paragraph (1) of the Procedure that the Chairman must decide whether a meeting (the first meeting) should be convened to consider a complaint should be changed from two working days to three working days; and the time limit stipulated in Paragraph (3) of the Procedure for convening the first meeting should be changed from "within the next seven working days" to "within 10 working days after the Chairman has decided such a meeting should be convened".

Purpose of the first meeting

11. Members agreed that it was necessary to stipulate in the Procedure that the purpose of the first meeting or the first series of meetings was for CMI to decide whether the complaint was to be pursued by proceeding to the preliminary consideration stage after taking into account the following:

- (a) information, including alleged facts, contained in the complaint;
- (b) the provisions of the Rules of Procedure ("RoP") relevant to the allegations in question; and

- (c) any other matters (including any additional information beyond that contained in the complaint) which CMI considers relevant for making the decision.

Issues to be further examined

Whether information beyond that contained in the complaint should be considered at the first meeting

12. Ms Emily LAU said that if CMI was to consider other additional information beyond that contained in the complaint at the first meeting, there might be concern about the risk of embarking on a fishing expedition. Ms LAU suggested and members agreed that this issue should be further examined and, in this respect, CMI should seek advice from Sir Malcolm JACK, a retired Clerk of the House of Commons of the Parliament of the United Kingdom ("UK"). Members noted that Sir Malcolm would give an informal briefing on 24 April 2012 for CMI on the registration and declaration of Members' interests system and mechanism for handling complaints against Members in the UK House of Commons.

The
Clerk

Whether the Member under complaint would be informed if CMI decided not to consider the complaint after the first meeting

13. Referring to the proposal that if CMI decided at its first meeting that a complaint was not pursuable and no further action was to be taken, CMI should decide on a case-by-case basis whether information on that complaint would be disclosed to the Member under complaint, Ms Emily LAU suggested that the principles for CMI to make such decision be set out in the Procedure. Dr Margaret NG disagreed with Ms LAU. Dr NG considered that the Procedure should not set out detailed principles to dictate CMI's decision, but instead should allow CMI to have the discretion to make the decision according to the circumstances of each case. Members agreed that this issue should be further discussed after obtaining Sir Malcolm's advice.

The
Clerk

Procedural steps for Preliminary Consideration Stage and Investigation Stage

14. Secretary General ("SG") said that the Procedure had only set out two scenarios in which CMI need not proceed from the Preliminary Consideration Stage to the Investigation Stage, i.e.: "the Member under complaint admits all the allegations at this stage [Preliminary Consideration 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" (Paragraph (11) of the Procedure) and "The Committee may

decide not to proceed with an investigation if it is of the opinion that the complaint is not substantiated" (Paragraph (12) of the Procedure). However, it was not clear whether CMI ought to proceed to the Investigation Stage if CMI was able to form the opinion that the complaint was substantiated at the Preliminary Consideration Stage, but the Member under complaint did not admit the allegations or agree to CMI's opinion. SG said that in Paragraphs (16) and (19) of the draft revised Procedure, it was proposed that if the Member under complaint disagreed with CMI's opinion that the complaint was substantiated, or if there was any disagreement between CMI and the Member under complaint over the facts relating to the complaint, CMI should proceed to the Investigation Stage.

15. Dr Margaret NG disagreed with the proposal in Paragraph (16) of the draft revised Procedure, i.e. "If the Member under complaint does not agree with the Committee's opinion that the complaint is substantiated, the Committee shall proceed to investigation stage". Dr NG considered that CMI's decision of whether it should proceed to the Investigation Stage and its judgement on whether a complaint was substantiated should not be subject to the opinion of the Member under complaint, as the Member might never agree with CMI's opinion. Dr NG said that the Procedure should not dictate CMI's decision on a complaint case, but instead should allow CMI to have the discretion to make its judgement on each case while being held accountable for its decision. The Chairman agreed.

16. Dr Margaret NG considered that the existing Paragraph (11) of the Procedure, i.e. "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", should be retained. However, the drafting of this paragraph could be improved by changing the word "admit (承認)" to "agree to (同意)"; and setting out clearly whether the term "allegations (指稱事項)" in "admits all the allegations at this stage" referred to the facts in the allegations (指稱的事實基楚) or the allegations in the complaint (投訴的指控內容).

17. Legal Adviser ("LA") said that CMI might need to proceed to the Investigation Stage when either the Member under complaint did not agree to the facts in the allegations, or did not agree to the allegations in the complaint. In the latter case, the Member under complaint might not agree that he had an obligation to declare the interest which the complainant alleged that the Member should but had failed to declare. Dr Margaret NG considered that CMI should proceed to the Investigation Stage only if there was dispute over the facts in the allegations, since the main purpose of

investigation was fact-finding. As to whether a Member had an obligation to declare a specific interest, since this question involved interpretation of the relevant Rules of RoP, it was for CMI to decide whether it should proceed to the Investigation Stage according to the circumstances of each case. Ms Emily LAU agreed.

The
Clerk

18. Members agreed that the following issues should be further examined, and advice from Sir Malcolm on these issues should also be sought:

- (a) whether the steps to be taken in the Preliminary Consideration Stage should be more clearly set out; and
- (b) whether CMI ought to proceed to the Investigation Stage if CMI is able to form the opinion that the complaint is substantiated at the Preliminary Consideration Stage, but the Member under complaint does not admit the allegations or agree to CMI's opinion.

19. Ms Emily LAU asked whether a new procedure for handling complaints should be drawn up if LegCo was to appoint a commissioner to handle complaints against Members. SG said that the Procedure of CMI could be used as a basis for devising a new procedure for handling complaints by the commissioner. Members agreed that since there might be a need to explore the possibility of appointing a commissioner to take over the investigation role of CMI, as in the case of the UK and Canada, the issues under consideration should be followed up by the CMI of the Fifth LegCo before proposing changes to the Procedure.

II. Report on the study of the feasibility of appointing a commissioner to handle complaints against Members (LC Paper No. CMI/34/11-12)

20. The Chairman said that at the meeting of 9 January 2012, members generally agreed that the proposal of appointing an independent person as commissioner to handle complaints against Members was worth pursuing. As requested by CMI, the Secretariat had conducted a study of the feasibility of appointing a commissioner to handle complaints against Members in their capacity as such, as set out in LC Paper No. CMI 34/11-12, to facilitate members' further consideration of the matter.

21. At the invitation of the Chairman, the Clerk said that since the First LegCo, CMI had received a total of 23 complaints, among which six had been considered by CMI while 17 not pursued on the ground that these

complaints were outside CMI's remit and/or frivolous or anonymous. Also, during the first three years of the current LegCo term, the Complaints Division under LegCo's Redress System received an average of 24 views per month from members of the public in relation to individual Members' performance.

Suggested arrangements and financial implications for appointing a commissioner

22. The Clerk said that in considering the feasibility of appointing a commissioner, the Secretariat had studied the work of the commissioners in the Parliaments of the UK and Canada; and come up with some suggested arrangements for appointing a commissioner (paragraphs 8 to 14 of the paper) for members' consideration. The Secretariat proposed that a commissioner be appointed to receive and conduct investigation into complaints against Members which were under CMI's remit, i.e. complaints relating to registration and declaration of Members' interests, claims for reimbursement of operating expenses ("OER claims") and applications for advance of operating funds. The commissioner should also be responsible for advising CMI and individual Members on the interpretation of the relevant Rules of RoP and the requirements contained in the Registration Form on Members' Interests; and compiling and maintaining the Register of Members' Interests, etc. The Clerk further said that as the number of complaint cases requiring investigation in a year should not be high, the commissioner could work on a part-time basis for a fixed number of hours per week initially, and the commissioner's work could be supported by existing Secretariat staff initially. The Clerk added that the overall financial implications for engaging a commissioner were estimated to be in the region of \$800,000 per annum (paragraphs 15 to 16 of the paper).

Discussion

Need for appointing a commissioner to handle complaints against Members

23. Dr Margaret NG said that it was necessary for LegCo to appoint a commissioner to handle complaints against Members in view of the experience of a recent case handled by an Investigation Committee ("IC"), which took 27 months to complete its investigation of the case. As LegCo Members had no expertise in conducting investigations, it could take them a long time to complete an investigation. Dr NG further said that a long investigation process would put an undue pressure on the Member under complaint, not to mention the possible financial costs for the Member if that Member had engaged a legal adviser. Further, LegCo Members had no expertise in interrogation and it would be difficult for them to examine the

Member under complaint or the witnesses, especially if the allegations in the complaint involved complicated issues. Dr NG pointed out that members had generally agreed that LegCo should appoint a commissioner to handle complaints against Members, but the detailed arrangements should be further examined and Sir Malcolm's advice should be sought.

Proposed role and responsibilities of the commissioner

24. Regarding the proposed role and responsibilities of the commissioner, Dr Margaret NG expressed reservation on the proposal in paragraphs 9 and 15(a) of the paper that the commissioner should also review the views about Members received by the Complaints Division, as these views might contain allegations relating to a Member's private life and the commissioner might then involve himself in scrutinizing a Member's conduct in the Member's private life. Dr NG said that the scope of responsibilities of the commissioner should be set out clearly such that he should only scrutinize a Member's conduct in the Member's capacity as a LegCo Member.

25. SG explained that some views received by the Complaints Division could be regarded as complaints against individual Members, but as these complaints were outside CMI's remit, they were usually circulated to the Duty Roster Members ("DRM") for advice on how such complaints should be dealt with. The Secretariat proposed that the commissioner should also review these views or complaints for the purpose of giving advice to CMI on whether the current advisory guidelines on matters of ethics ought to be enhanced. SG added that as set out in paragraph 9 of the paper, the commissioner would not take further action in respect of these views or complaints.

26. Dr Margaret NG said that should LegCo appoint a commissioner, all complaints against Members would be directed to the commissioner who would advise if these complaints should be followed up. Based on these complaints, the commissioner could also advise Members on the public's general concerns about Members' conduct.

27. Ms Emily LAU noted from paragraph 8 of the paper that it was proposed that the commissioner would receive and investigate complaints which were under CMI's remit. Ms LAU asked whether the commissioner would investigate complaints under the remit of an IC as set out in paragraph 2(b) of the paper, i.e. complaints made against Members' misbehaviours which were serious enough as to have brought the Council into disrepute or breach of oath where disqualification from office was warranted. Ms LAU also asked whether the commissioner would take

over DRM's duty of deciding how to deal with the complaints against individual Members received by the Complaints Division; and whether a code of conduct for Members would be put in place to facilitate the commissioner's work.

28. SG explained that the commissioner could not take over the responsibilities of an IC as an IC was established under Rule 49B (2A) of RoP, i.e. by way of a censure motion moved pursuant to Article 79(7) of the Basic Law for disqualification of the Member's LegCo membership. Also, the commissioner could not take over DRM's duty of deciding how to deal with the complaints received by the Complaints Division as under the current Redress System of LegCo, DRM were required to handle complaints received by the Complaints Division and to report to the House Committee on any matters of concern. SG further said that the Secretariat proposed that the commissioner, after reviewing the views or complaints against individual Members received by the Complaints Division, should advise CMI on whether the advisory guidelines should be enhanced. SG added that it was for CMI to decide whether it would pursue implementing a code of conduct for Members.

The
Clerk

29. Ms Emily LAU said that Sir Malcolm's advice should be sought on whether the commissioner should investigate complaints against Members under the remit of an IC, and whether LegCo should implement a code of conduct for Members together with the appointment of a commissioner. Ms LAU considered it necessary for LegCo to appoint a commissioner to conduct professional and independent investigations into complaints against Members, and to address the public's concern about LegCo Members conducting investigation into complaints against their fellow legislators.

30. Dr Maragret NG said that if a commissioner was appointed, the public would probably send all their complaints against individual Members to the commissioner. The commissioner could serve as the first stop for screening these complaints. Dr NG further said that for a complaint which was not under CMI's remit but was serious enough to warrant disqualification of the Member under complaint, the commissioner could conduct initial investigation into the complaint. When an IC on that complaint was established under Rule 49B (2A) of RoP, IC could invite the commissioner to be the first witness to provide it with the findings from his initial investigation into the complaint.

31. Mr Paul CHAN supported the proposal of appointing a commissioner and agreed with Dr Margaret NG and Ms Emily LAU that details of the proposal should be further discussed after obtaining Sir Malcolm's advice.

32. Mr Paul CHAN noted from paragraph 6 of the paper that in 1995 and 1996, the former LegCo twice debated a motion to authorize CMI to monitor the conduct of Members, but both motions were negatived. Mr CHAN asked why Members of the former LegCo rejected CMI's proposal. The Clerk said that the reasons advanced by Members opposing the proposal (including the Democratic Party) were that it was difficult to define "proper conduct"; the mechanism might be abused; Members' conduct was already under public scrutiny; and if needed, a select committee might be appointed by the Council to consider such complaints about Members' misconduct.

Proposed appointment arrangements for the commissioner

33. Dr Margaret NG referred to paragraph 12 of the paper on the potential candidates for the commissioner, and suggested that apart from retired judges, retired ombudsmen or retired officials of the Equal Opportunities Commission could also be considered.

34. Mr Paul CHAN referred to the proposed attributes of the commissioner (paragraph 12 of the paper) and suggested that the attribute of being "held in high regard by the general public as well as Members (深受市民及議員尊敬)" should be re-drafted as it was difficult to find someone who was respected by all people. Mr WONG Yung-kan agreed. Mr WONG also considered that the proposed attribute of being "politically neutral" was difficult to prove. Ms Emily LAU agreed and suggested that this attribute could be replaced by more objective requirements, e.g. the commissioner should not be affiliated to or hold any office in any political group or politically sensitive organization in Hong Kong or in the Mainland, etc.

35. Mr Paul CHAN further suggested that the Chinese translation "實報實銷" for "paid on an accountable basis" in paragraph 15(b) of the paper should be improved.

Consultation with all Members

36. Mr WONG Yung-kan supported the proposal of appointing a commissioner, but considered that CMI should consult all Members on the proposal and ensure that the proposal would be supported by a majority of Members before putting it to the Council for voting. Members agreed, and considered that the consultation should be conducted after the proposal had been refined.

37. The Chairman concluded that members agreed in principle to the proposal of appointing a commissioner as set out in the paper (CMI/34/11-12). The Secretariat should refine the proposal after taking

into account members' views expressed at the meeting, and Sir Malcolm's advice on the role and responsibilities of the commissioner as well as on whether a code of conduct should be put in place together with the appointment of a commissioner. The refined proposal should be submitted at the next meeting to facilitate members' further deliberation on the detailed arrangements for appointing a commissioner.

III. Date of next meeting

38. Members agreed to hold the next meeting on 18 May 2012. [Post-meeting note: the meeting was postponed to 29 May 2012.]

IV. Any other business

39. There being no other business, the meeting ended at 12:20 pm.

Council Business Division 3
Legislative Council Secretariat
29 August 2012