

Bills Committee on the Medical Registration (Amendment) Bill 2016

Government's response to the follow-up actions arising from the discussion at the meeting on 3 May 2016

Complaint investigation and disciplinary inquiry mechanism of the Medical Council of Hong Kong and its mechanism on handling conflict of interest

This note provides the Government's response to the follow-up actions arising from the discussion at the meeting on 3 May 2016, concerning (a) the complaint investigation and disciplinary inquiry mechanism of the Medical Council of Hong Kong ("MCHK") and (b) its mechanism on handling conflict of interest.

Complaint investigation and disciplinary inquiry mechanism of MCHK

2. MCHK receives about 500 new complaint cases every year. Every new case needs to go through a "Pre-Preliminary Investigation Committee ("PIC")" process i.e. the PIC chairman and deputy chairman will, in consultation with the lay member of PIC, decide whether the complaint is groundless or frivolous, and should not proceed further or that it should be referred to PIC for full consideration.

3. The PIC chairman or deputy chairman has the general powers to carry out investigations, obtain materials and seek expert assistance from outside sources, which are reasonably necessary to enable him to decide whether the case is frivolous or groundless, or the case should be referred to the PIC for consideration. For every directive from the PIC chairman or deputy chairman to obtain materials and seek expert assistance from outside sources, the Medical Council Secretariat needs to seek the PIC chairman or deputy chairman's further directives upon receipt of the materials.

4. Under the existing legislation, MCHK can only set up one PIC to process complaint cases. The number of complaint cases received each year has far exceeded the current capacity of MCHK. The total existing backlog of cases are about 930, with 700, 150 and 80 cases at Pre-PIC, PIC and inquiry stages respectively. Due to the mounting backlog, even if a case is referred by PIC for disciplinary inquiry, it still has to wait for 20

months to be heard. Without the passage of the Medical Registration (Amendment) Bill 2016 (“the Bill”), MCHK can only set up one PIC and one inquiry at any one time to process the complaint cases, and thus it would not be possible to substantially shorten the time required to conclude the complaint cases.

5. To clear the existing backlog of complaint cases and deal with the new complaint cases received, upon the passage of the Bill, we expect MCHK to form at least two and preferably more PICs. The Government will make available necessary resources to the Medical Council Secretariat to provide adequate support to the PICs and investigation of complaints. Upon the passage of the Bill, with the implementation of administrative measures and after clearing the backlog of cases, it is estimated that the handling time for cases requiring expert opinion would be shortened from 58 months to 36 months. For cases which do not require expert opinion, it is estimated that the handling time would be shortened to 24 months.

6. Back in 2014, the average time required for handling complaint case at Pre-PIC, PIC and inquiry stages were 11 months, nine months and 24 months respectively and the total average time required was 44 months. In 2016, the average time required for handling complaint case at Pre-PIC, PIC and inquiry stages are 17 months, 13 months and 28 months respectively and the total average time has increased to 58 months. The flowcharts showing the latest processing time for each of the steps in the Pre-PIC, PIC and inquiry stages are reproduced in **Annex**. If the Bill is not passed, we envisage that the processing time would further increase beyond the current average of 58 months.

Mechanism and guidelines on handling conflict of interest

7. MCHK has an established mechanism and guidelines on handling conflict of interest. Sections 7(1) and 7(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation require PIC members to declare their interest upon receipt of a case. A member with conflict of interest will not participate in any deliberation or decision regarding the case.

8. In addition, administrative measures have also been put in place to better ensure that each and every complaint is handled in a fair and impartial manner, including -

- (a) When inviting panel members to sit for a disciplinary inquiry,

the Secretariat will provide panel members with the information relating to the disciplinary inquiries, including the identity of the defendant doctor and the case nature in advance and remind panel members to consider if there might have actual or perceived conflict of interest; and

- (b) The Chairman of the disciplinary inquiry will formally invite panel members to make declaration of interest before the commencement of each inquiry and to ask whether the defendant will have any objection to the panel composition in accordance with the procedural guide of the Medical Council Disciplinary Inquiry.

9. Apart from measures mentioned above on handling conflict of interest when dealing with complaint investigation and disciplinary inquiry, new Council Members will be provided with reference materials on the scope of work of the Council and their particular attention will be drawn to the guidelines on declaration of interests as set out in Standing Order No. 6(1) “Interest of members”¹ such that Members will be conversant with the rule in carrying out business of MCHK.

10. MCHK at its meeting on 4 May 2016 decided to provide further guidelines on declaration of interest to members by refining Standing Order No.6 to spell out clearly the circumstances under which declaration of interest and/or recusal from discussion would be required. The revised Standing Order No. 6 is extracted as follows-

“6. Conflict of interests of members

- (1) *A member of the Council or a committee or a sub-committee who has personal or pecuniary interest, direct or indirect, in the outcome of any matter under consideration by the Council or committee or sub-committee, is required to make a declaration of his interest to the Council or committee or sub-committee as appropriate prior to the discussion of the matter; and he shall not participate in any deliberation or decision regarding the matter.*

¹ According to previous Standing Order No. 6(1), if any member has any pecuniary interest direct or indirect in any matter under consideration by the Council, a committee or sub-committee, he shall declare it to the Council, committee or sub-committee as appropriate prior to the discussion of that item, and shall withdraw from discussion, unless being invited to speak by the Chairman, of that item at the meeting.

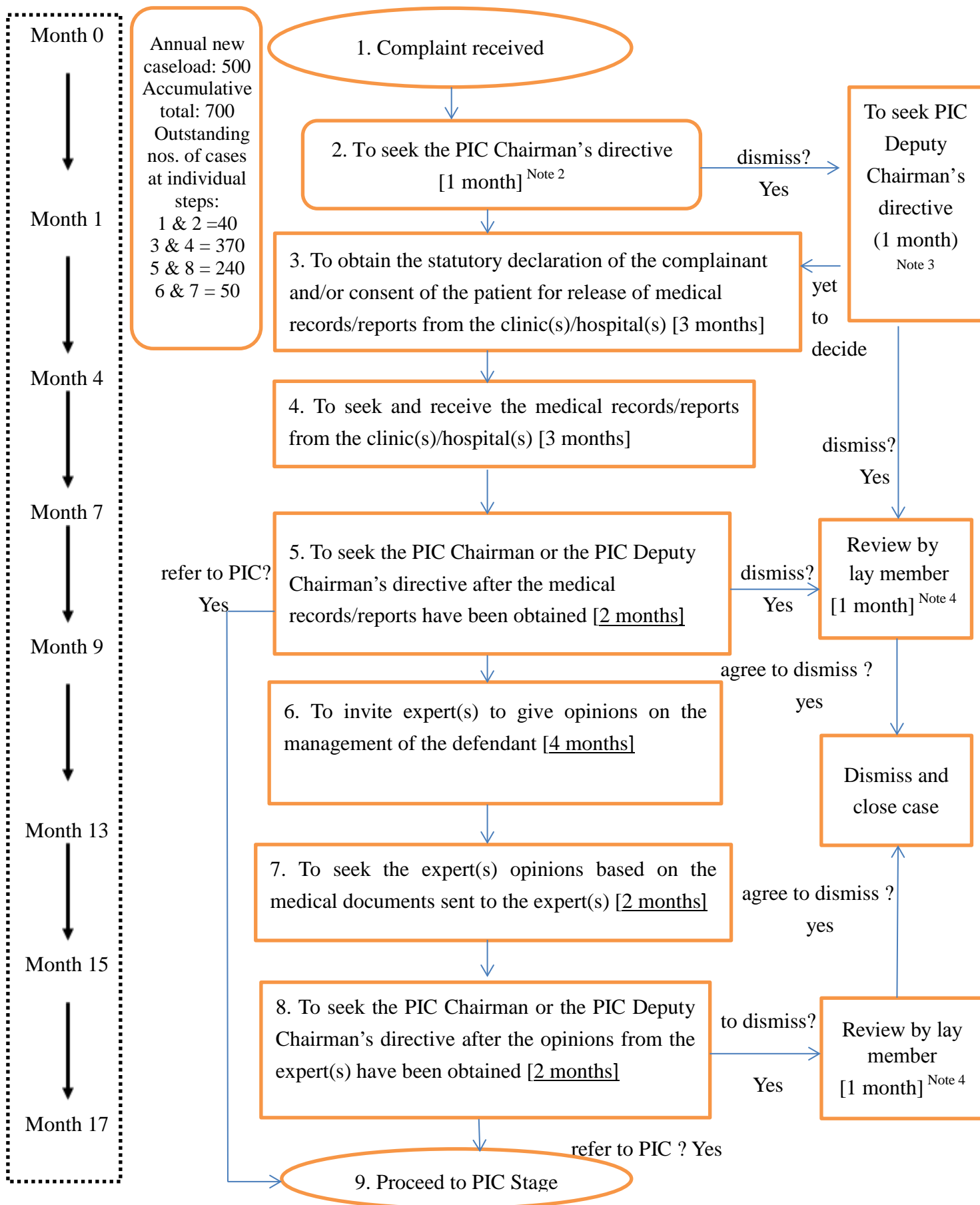
- (2) *A member of the Council or a committee or a sub-committee is also required to make a declaration of his interest to the Council or committee or sub-committee as appropriate prior to the discussion of the matter if a reasonable, objective and informed person would reasonably apprehend that he has not brought or will not bring an impartial mind to bear on the deliberation and/or decision of the matter; and he shall not participate in any deliberation or decision regarding the matter.*
- (3) *In situation(s) other than those mentioned in sub-paragraphs (1) and (2) above, a member of the Council or committee or sub-committee may make a declaration of his interest out of prudence; and he shall further declare that he can nevertheless bring an impartial mind to bear on the deliberation and/or decision of the matter.*
- (4) *No member shall appear before the Council or committee or sub-committee as a legal practitioner or act as an expert witness for any party appearing before the Council or committee or sub-committee, regardless of whether he is going to be paid or not.”*

**Food and Health Bureau
May 2016**

**Flowchart showing the procedures
at the initial consideration by the chairman and deputy chairman
of the Preliminary Investigation Committee (PIC) stage** ^{Note 1}

Annex

Timeline



Note 1 This flowchart is a simplified version to present the normal workflow at the pre-PIC stage.

Note 2 The Chairman can dismiss the case at the stage 2, or at steps 5 to 8, and the case will have to pass to the Deputy Chairman for decision.

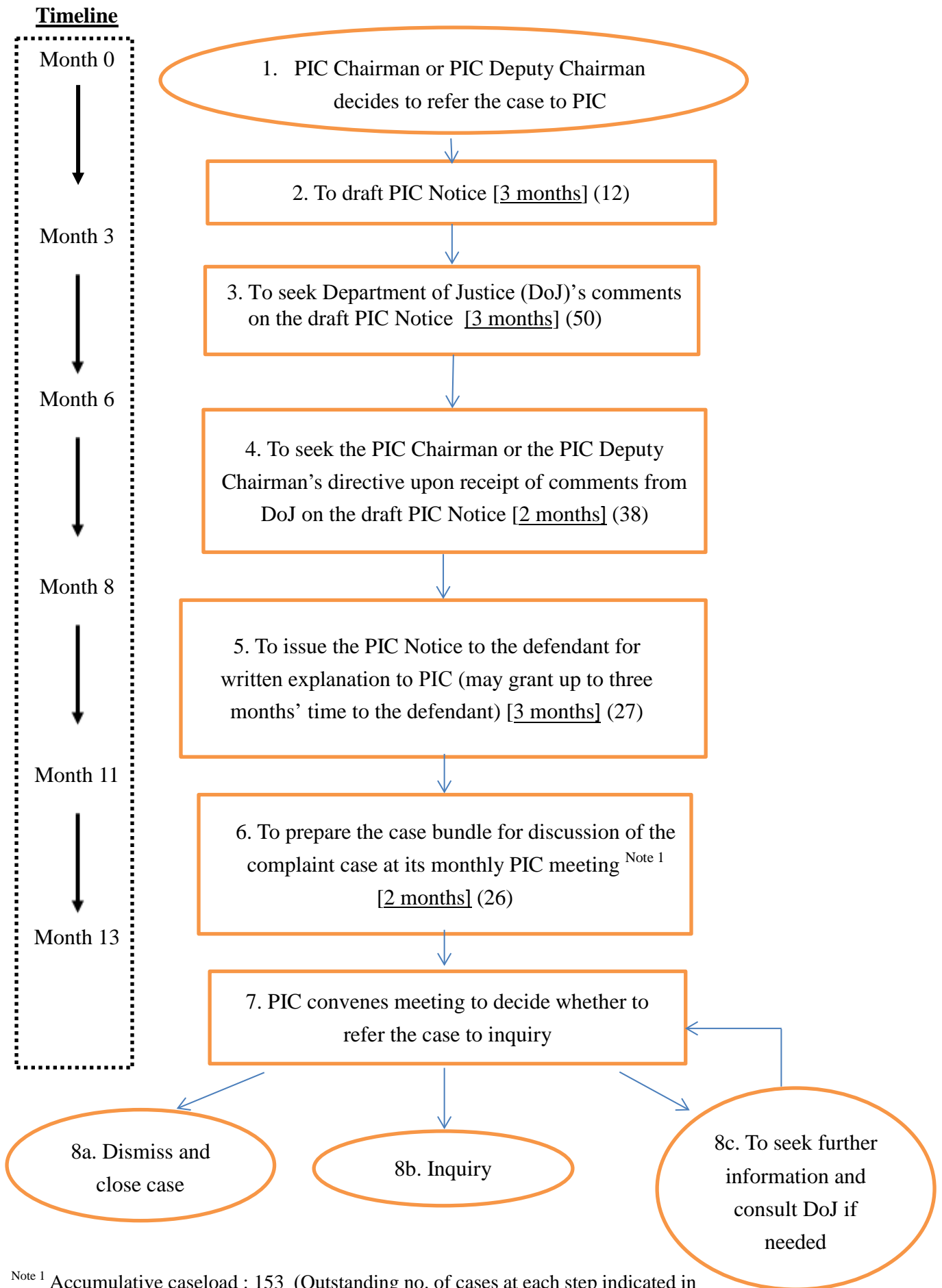
Note 3 The Deputy Chairman can dismiss the case at this stage or at steps 5 to 8, and the case will be passed to the lay member for decision. If the Deputy Chairman decides not to dismiss the case, the case will have to go through from step 3 afresh.

Note 4 If the lay member decides not to dismiss the case, the case will be referred for Chairman's directives again.

Note 5 For those cases that no expert opinion will be required, the processing time can be further adjusted downward by around 6 months.

Total time required : 17 months

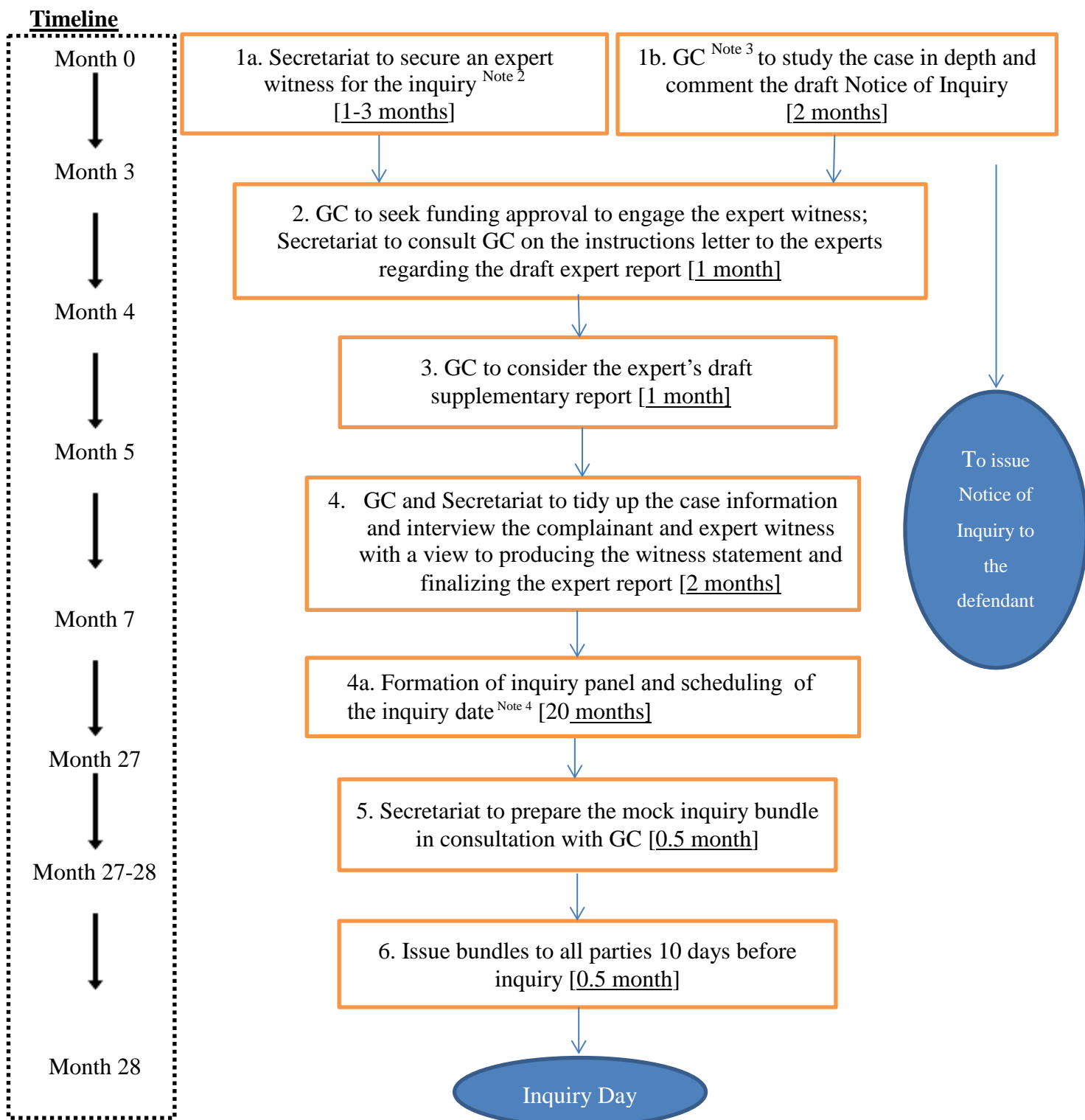
**Flowchart showing the procedures
at the Preliminary Investigation Committee (PIC) stage** ^{Note 1}



^{Note 1} Accumulative caseload : 153 (Outstanding no. of cases at each step indicated in respective bracket)

Total time required : 13 months

Flowchart showing the procedures at the inquiry stage^{Note 1}



^{Note 1} Accumulative caseload: 78

^{Note 2} New invitation is required if the expert at the pre-PIC stage has declined to continue to provide expert assistance. For those inquiries that no expert opinion will be required, the processing time can be further adjusted downward by around 6 months.

^{Note 3} GC = Government Counsel appointed by the Department of Justice

^{Note 4} Under the current arrangement, all 4 lay members are required to serve the PIC on a rotational basis and any lay member who has taken part in the PIC will be debarred from attending the subsequent disciplinary inquiry. Owing to the shortage of manpower, particularly lay members of the Council, the formation of a panel for the inquiry will further be affected when coupled with the possibility of having conflict of interest between the lay member and the defendant. It may take the Secretariat extra time and effort to appoint afresh panel for the inquiry.

Total time required: 28 months