

立法會
Legislative Council

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**Paper for the House Committee meeting
on 19 March 1999**

**Second report of the Subcommittee on
Review of the Operation of the LegCo Redress System**

Purpose

This paper reports further on the deliberations of the Subcommittee on Review of the Operation of the LegCo Redress System, subsequent to its first report to the House Committee on 27 November 1998 (LP No. CP 608/98-99).

Further deliberations of the Subcommittee

Extension of the Legislative Council (Powers & Privileges) Ordinance to cover meetings conducted under the Redress System

2. In the light of the reservations expressed by some Members at the House Committee meeting held on 27 November 1998 on the Subcommittee's proposal to extend the privileges and immunities (P&I) conferred under sections 3 and 4 of the Legislative Council (Powers & Privileges) Ordinance (Cap. 382) (the Ordinance) to cover meetings conducted under the LegCo Redress System (the Redress System), the Subcommittee held three more meetings, one of which with the Administration, to further consider the proposal. Five non-Subcommittee Members attended these meetings.

Members' views

3. Members have diversified views and are unable to reach a consensus on the proposal.

4. Those Members who do not support the proposal consider it unnecessary to change the existing Redress System, which is well-established and has been operating smoothly. The beauty of the present system is its broad scope and flexibility in handling complaints in an informal manner. Where necessary, complaints can be handled in a formal manner either by way of a petition or motion under Rule 20 and Rule 29 of the Rules of Procedure respectively. The present arrangement of holding case conferences behind closed doors has been working effectively to resolve complaints. In any case, the outcome of case conferences together with the explanations given by the Administration therein are subsequently conveyed to the complainants. Members are concerned about possible abuse of P&I if these are extended to cover meetings conducted under the Redress System, which are not governed by rules and procedures of the Council. P&I are available to Members at meetings of the Council and its committees to protect them from legal liabilities in making controversial remarks during discussions or debates on issues of wide public concern or in conducting formal investigations. They are not intended for protection of Members when receiving and handling complaints of a particular person or a group of persons. To avoid legal liabilities for defamation, Members should exercise self-discipline when speaking in public. Indeed, no Legislative Council Member has ever been sued for defamation in handling complaints under the Redress System. Furthermore, as other redress systems are not covered by similar P&I, the LegCo Redress System might be seen as posing an unfair competition with them.

5. Those Members who support the proposal maintain the view that since one of the functions of the Legislative Council is “to receive and handle complaints from Hong Kong residents”, as stipulated under Article 73(8) of the Basic Law, the operation of the Redress System is within the scope of Council business; hence the Ordinance should be extended to cover meetings conducted under the System. Moreover, P&I sought are no more than those conferred on Members at meetings of panels and other committees of the Council; i.e. P&I will apply to Members and public officers designated by the Chief Executive attending these meetings, but not to members of the public. The proposal is necessary for protection of freedom of speech and possible liability for defamatory statements, because there are occasions when Members are asked by deputations about their personal views on the complaints in the presence of the mass media. Under the law, a person is liable for defamation if he republishes, i.e. repeats, a defamatory statement made by someone else. While the System has been working smoothly and no Member has been taken to court for making defamatory remarks in handling complaints under the System in the past, there is no guarantee that it will continue to be so in the future.

6. After reconsideration of the two options to extend the Ordinance proposed in the first report of the Subcommittee, Members who support the proposal recommend the Ordinance be amended by means of a bill instead of amending the Rules of Procedure so that meetings conducted under the Redress System are made meetings of a committee of the Council. This is because the latter option will inevitably result in more formalities and correspondingly less flexibility. (For details of the two options, please refer to para 9-15 of LP No. CP 608/98-99).

The Administration's position

7. While the Administration appreciates that Article 73(8) of the Basic Law provides for the continuation of the arrangement for the Legislative Council to receive and handle complaints from Hong Kong residents, it does not see the need to change a system which has served Hong Kong well and is well known to the clients it serves. The nature of the function of receiving and handling complaints is very different from the nature of other functions of the Legislative Council. Furthermore, there is no evidence locally or overseas to indicate the need for P&I to operate a successful redress system. Over the years since the introduction of the System in 1963, there has been no report from any person, Member or public officer that they feel inhibited from fulfilling their duties because of the lack of P&I. The provision of P&I for Members and public officers, but not complainants, would cause members of the public to perceive that they are placed in an unfair situation. On the other hand, the provision of P&I for complainants as well would result in frivolous complaints or other abuses which will affect the effectiveness of the Redress System. It is envisaged that the number of tripartite meetings among Members, complainants and complainees (mostly government officials) will increase and the emphasis of these meetings will shift from resolution of complaints to making of accusations and defence. The Administration is not prepared to introduce any legislative amendment to the Ordinance. Copy of a letter dated 15 February 1999 from the Director of Administration is at **Appendix I**.

8. The Subcommittee invites Members' consideration on:

- (a) whether the Redress System should remain status quo without the coverage of the Ordinance; OR
- (b) (i) the Ordinance should be extended to cover meetings conducted under the Redress System;
- (ii) if so, an amendment bill should be introduced by a Member (for example, the Chairman of the Subcommittee on behalf of Members); and

- (iii) if so, a note (copy at **Appendix II**) should be given to the complainants with the notice of meeting reminding them of the matters they should pay attention to in presenting their cases at open meetings. (For details of the note, please refer to para 8 of LP No. CP 608/98-99).

Other aspects of the Redress System

9. Members are invited to refer to paragraphs 17-41 of the first report of the Subcommittee for its deliberations on the other seven aspects of the Redress System listed below:

- (a) Scope of the System
- (b) The Duty Roster Members system
- (c) Procedures for follow-up actions on complaint cases
- (d) Requests to meet different Members on rules cases
- (e) Requests to exclude Members from a Duty Roster Members interview
- (f) Possible duplication of work of the Redress System with the work of The Office of the Ombudsman
- (g) Operation of other redress systems as compared with the LegCo Redress System

Views of The Legislative Council Commission on the Redress System

10. In considering the measures to be taken by the Legislative Council Secretariat in support of the Enhanced Productivity Programme, The Legislative Council Commission made the following suggestions at its meeting held on 10 December 1998 for the Subcommittee's consideration on how the existing operation of the Complaints Division, whilst fulfilling the function required under the Basic Law, can be streamlined with a view to enhancing efficiency and optimising resources:

- (a) Members should be encouraged to receive and handle complaints from members of the public directly without referring such cases to the Complaints Division;
- (b) The Redress System is being abused by some complainants, e.g. lodging the same complaint with different Members and/or different complaint channels. Duplication of efforts should be discouraged;

- (c) There is a growing tendency of Members holding case conferences, some with the Administration and the deputation(s) together, incurring substantial workload for the Complaints Division; and
- (d) The feasibility of a queuing system to receive complaints should be explored.

11. Members generally share the views of The Commission on para. 10(a)-(c). They agree that only more complicated cases or cases involving a fairly large number of complainants received by their offices should be referred to the Complaints Division. Requests from persistent complainants should be handled flexibly, depending on the merits of each case. Case conferences should be held if necessary when there are no other more appropriate channels, e.g. panels, to follow up the cases.

12. Members do not favour the idea of a queuing system to receive complaints as in the case of Bills Committees. It is noted that normally an interview with Duty Roster Members can be arranged within a week or so. Depending on the urgency of the case and availability of Members, an interview can be arranged on the same day of the request. In less urgent cases where complainants wish to meet certain invited Members who may not be available shortly, a longer time may be required to arrange the interviews.

Advice Sought

13. Members are invited to note the deliberations of the Subcommittee and to consider its proposals stated in this paper and the earlier paper LP No. CP 608/98-99, summarised as follows :

- (a) (i) The Redress System should remain status quo without the coverage of the Ordinance; OR
- (ii) The Ordinance should be extended to cover meetings conducted under the Redress System by the introduction of a Member's bill ; if so, a note to complainants should be sent with the notice of meeting reminding them of the matters they should pay attention to for their own protection in presenting their cases at open meetings (para 8 of this paper);
- (b) The scope of the Redress System should be extended beyond decisions and actions of government bureaux and departments (para 21-22 of LP No. CP 608/98-99);
- (c) All Members should be notified of meetings with deputations, and arrangement should be made for the same group of Members to handle complaints on substantially the same issue lodged by the same or other deputations (para 28 of LP No. CP 608/98-99);
- (d) The existing procedures for follow-up actions on complaint cases should continue (para 32 of LP No. CP 608/98-99);

- (e) Request from a complainant to meet a particular Member should be referred to him/her even though the case has been dealt with by another Member and there are no new evidence or facts (para 35 of LP No. CP 608/98-99);
- (f) Request from a complainant to exclude a particular Member from a Duty Roster Members interview should be rejected (para 37 of LP No. CP 608/98-99); and
- (g) Cases examined or being examined by The Ombudsman and prima facie maladministration cases should not be totally excluded. Cases which appear to be more appropriately handled by other redress systems should be referred to those systems with the consent of the complainants (para 40 of LP No. CP 608/98-99).

Legislative Council Secretariat
15 March 1999

General Reminder to Complainants

1. The complaint should be based on facts which can be substantiated. In view of possible legal liabilities, it is advisable to avoid making statements which tend to harm the reputation of another person in a way as to lower him in the estimation of the community or to deter third parties from associating or dealing with him.
2. All documents and correspondence relating to the complaint should be made available for Members' reference. However, where such documents or correspondence were supplied to you in confidence it is advisable to obtain the express consent of the supplier of these documents or correspondence before you release them to Members.
3. The personal data you have given to the Secretariat will be kept confidential, subject to the need that the Secretariat may have to disclose such personal data to the relevant departments, authorities or organizations in the course of dealing with your complaint. In such a case you will be requested to give your consent to such disclosure in a separate form.
4. Members are performing their duties under the Basic Law to handle complaints. Complainants should consult their own lawyer or other professionals if they wish to obtain legal or other services.

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15 February 1999

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To All Members of the Legislative Council

Proposal to extend privileges and immunities to the Redress System

You may be aware that the LegCo Subcommittee on Review of the Operation of the LegCo Redress System has recently discussed a proposal to extend privileges and immunities (Ps&Is) accorded under the Legislative Council (Powers and Privileges) Ordinance to the LegCo redress system. In fact, I also attended a meeting of the Subcommittee on 11 February to explain the Administration's views on the proposal.

As explained at the meeting, the Administration appreciate that Article 73(8) of the Basic Law provides for the continuation of the arrangement for LegCo to receive and handle complaints from Hong Kong residents. Over the years, the existing arrangement has indeed operated well with no reports of any person, Member or public officer, feeling inhibited from fulfilling their duties because of the lack of Ps&Is. Members of the public have not been found inhibited from taking their complaints to the LegCo redress system. We therefore do not see the need for changes to a system which has served Hong Kong well and is well known to the clients it serve. While Members at the Subcommittee meeting were unable to reach a

consensus as to whether Ps&Is should be extended to the redress system, some Members nevertheless appreciated that extending Ps&Is to the redress system would lead to a change in the modus operandi of such a well-established system.

Given that Members of the Subcommittee themselves in fact have diverse views on the need for the proposed change, I believe further discussion should be conducted on the matter and the current LegCo system should not be changed in haste at this point in time. As Members of the Subcommittee have not been able to reach a consensus, it is likely the matter would have to be brought to the LegCo House Committee for discussion and a decision. In deliberating the matter at the House Committee, I hope you would give very careful consideration to the various issues relevant to the proposal such as implications on the operation of the LegCo redress system as well as other redress systems in Hong Kong before coming to a conclusion on this matter.

Yours sincerely,

(Mrs Carrie Yau)
Director of Administration