

Legislative Council

LC Paper No. CP 367/98-99

Ref : CP/G01/12

Subcommittee on Review of the Operation of the LegCo Redress System

Minutes of meeting held on Friday, 11 September 1998 at 8:30 am in Conference Room B of the Legislative Council Building

Members Present : Dr Hon LEONG Che-hung, JP (Chairman)
Hon Cyd HO Sau-lan
Hon Martin LEE Chu-ming, SC, JP
Hon LEE Kai-ming, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon Jasper TSANG Yok-sing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo

Clerk in Attendance : Mrs Anna LO
Chief Assistant Secretary (Complaints)

Staff in Attendance : Mr Ricky C C FUNG, JP
Secretary General

Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr Charles FOO
Senior Assistant Secretary (Complaints)⁵

I. Confirmation of minutes of last meeting (LC Paper No. CP 233/98-99)

The minutes of last meeting were confirmed without amendment.

II. Matters Arising

(a) Legislative Council (Powers & Privileges) Ordinance and Handling of Complaint Cases

(LC Paper No. CP 289/98-99(01))

2. SG briefly introduced the paper. He said that the paper outlined two options to cover the following proposals raised by Members at the last meeting, i.e. :

- (i) extension of the powers and privileges conferred under the Legislative Council (Powers & Privileges) Ordinance (Cap 382) (the Ordinance) to cover meetings conducted under the LegCo Redress System (the Redress System);
- (ii) enhancement of continuity and consistency in handling cases of similar nature; and
- (iii) facilitation of participation by Members returned by the relevant geographical constituencies and functional constituencies in cases handled by Duty Roster Members.

3. SG said that Option 1 was to amend the Ordinance so that the privileges and immunities under Sections 3 & 4 of the Ordinance were extended to cover Members' meetings with complainants and meetings with the Administration conducted under the Redress System. If this option were to be adopted, further consideration should be given as to how the amendment bill should be drafted and introduced. Proposals (ii) & (iii) could be achieved by :

- (a) notification of meetings with deputations to all 60 Members so that interested Members could participate in any of these meetings; and
- (b) the same group of Members would handle complaints on substantially the same issue lodged by the same or other deputations.

4. SG continued that Option 2 was to amend the Rules of Procedure so that meetings conducted under the Redress System were made meetings of a committee of the Legislative Council. A Committee on Redress (CR) composed of all Members might be set up under the Council responsible for the policy on the Redress System. Each complaint lodged by a deputation would

be handled by a subcommittee of the CR composed of the Duty Roster Members and other interested Members. The same subcommittee would handle complaints on substantially the same issue lodged by the same or other deputations.

5. Members then went on to discuss the two options and noted the following advice given by SALA :

- (i) if Option 1 were to be pursued by means of a Member's Bill, Members had to bear in mind the provisions of Article 74 of the Basic Law that the bill should not relate to public expenditure, political structure or the operation of the government. The Chief Executive's written consent would be required before bills relating to government policies were introduced; and
- (ii) the privileges and immunities under sections 3 and 4 of the Ordinance would extend to Members only. In a committee meeting, public officers designated by the Chief Executive would have similar privileges and immunities under section 8A of the Ordinance. However, members of the public, including those who were invited to give expert views, would not have similar privileges and immunities. If a member of the public was summonsed to these meetings as a witness, the privileges and immunities enjoyed by him would be those enjoyed by a witness giving evidence in court under section 14 of the Ordinance.

6. Mrs Sophie LEUNG reiterated her reservations on the extension of the privileges and immunities to cover meetings conducted under the Redress System and suggested that a decision should not be made pending consideration of the research study on the operation of other redress systems. She maintained the view that if other redress systems worked well without coverage of similar privileges and immunities, the LegCo Redress System should not have this special advantage, as it might be seen as posing an unfair competition with other systems. She considered that Members' interviews with deputations could be conducted behind closed doors like other systems. Other Members did not agree with Mrs LEUNG. They maintained that since receiving complaints from the public by LegCo was provided for in the Basic Law, the Redress System should be within the scope of Council business; hence its meetings should be covered by the Ordinance. Furthermore, since some of the meetings had already been conducted in the presence of mass media invited by the deputation, it would be inadvisable to revert to closed meetings. Mr Martin LEE related the history of making these meetings open in the UMELCO era. Mr LEE Kai-ming also cited his experience as a member of a deputation attending interviews with ExCo/LegCo Members in the early days of UMELCO. He said that those interviews were at first closed meetings. After the meeting,

he would relay to the press what the government officials had said at the interview. Sometimes the officials denied having made such statements. There would be no such problems if the interview was conducted in an open manner. He opined that the trend of a more transparent society could not be reversed. The meeting concluded that the proposed extension of the privileges and immunities to cover meetings conducted under the Redress System should be proceeded with as agreed at the last meeting.

7. The Chairman then sought the meeting's views on whether the Administration should be asked to introduce the amendment bill under Option 1.

8. Miss Cyd HO commented that since it was the responsibility of the LegCo to improve its own operation, the Government should not be asked to introduce the amendment bill. It should be by means of a Member's Bill.

9. Mr Martin LEE remarked that he personally favored Option 2. However, he had no objection to present both options for the consideration of Members. He felt that the decision might ultimately be a political decision.

10. Mr Jasper TSANG commented that if Option 1 involved Government operation, introduction of a Member's Bill might be out of the question. He asked whether the Legislative Council was empowered to set up a new committee simply for the purpose of extending the Ordinance to cover the Redress System. He was also concerned whether the operation of the Redress System would be hindered with the formation of the CR. SG replied that the proposed CR could be formed by a resolution in the Council to amend the Rules of Procedure. The new committee would then be automatically covered by the Ordinance. Option 1 and Option 2 would entail amendments to the Ordinance or to the Rules of Procedure respectively. As compared with Option 1, the proposed committee system in Option 2 would inevitably result in more formalities and correspondingly less flexibility, such as requirement for election of a chairman/deputy chairman, a quorum of not less than three Members in each subcommittee meeting etc. SALA added that according to Article 75 of the Basic Law, the Council had power to make its own rules of procedure. If a new committee was formed, the Rules of Procedure would have to be amended to include the terms of reference, operational procedures such as requirement of a quorum etc. These would subsequently be written in the Rules of Procedure.

11. The Chairman commented that while Option 2 might be a convenient way to extend the coverage of the Ordinance to meetings conducted under the Redress System, it might give the impression to the public that Members were making their own rules for their own benefit. Mr Martin LEE was of the opinion that it would not be difficult to explain to the public, as the privileges and immunities sought would facilitate discussion of complaints and would ultimately benefit the complainants. Furthermore, the privileges and

immunities sought were no more than those conferred on Members at meetings of Panels, which also received deputations.

12. Miss Cyd HO asked whether legal advisers would be deployed to attend meetings with deputations. SG advised that there might be staffing difficulties. SALA said that presently legal advisers attended all meetings of bills committees and subcommittees. They also attended Panel meetings on a need basis. Members then suggested that some guidelines should be drawn up by the Legal Service Division for remarks made by the deputations for their protection in presenting their cases at open meetings.

13. Mr Andrew CHENG was concerned of the additional workload on the LegCo Secretariat and Members if Option 2 were to be adopted, because it could be envisaged that hundreds of subcommittees would be formed to handle complaints from deputations. SG explained that the proposed change was simply to formalise meetings of the Duty Roster Members handling complaints so that these meetings would be covered by the Ordinance.

14. The question of conflict of interests was also discussed. SALA advised that there were existing provisions in Rule 84 of the Rules of Procedure that a Member should not vote in the Council or in any committee or subcommittee in questions which he had a direct pecuniary interest.

15. The Chairman concluded that the two options would be presented to the House Committee for consideration. The Administration should be approached to see if it would introduce a bill to extend the Ordinance to cover meetings conducted under the Redress System. Failing that, consideration would be given to introducing a Member's Bill.

(b) Jurisdiction of the LegCo Redress System

(LC Paper No. CP 289/98-99(02))

16. SG briefly introduced the paper. He suggested Members to review the list of matters outside the jurisdiction of the Redress System in para 2 of the paper, in the light of the principles listed in para 3 and the functions of the Council as stipulated in Article 73 of the Basic Law in para 4.

17. In reply to Members' enquiry on the history of the jurisdiction and the rationale for the list of matters outside the jurisdiction, SG replied that according to records in the LegCo Secretariat, the scope of the Redress System had remained largely unchanged since 1970. SG added that presently complaints involving quasi-government bodies such as the Hospital Authority, the Housing Society, the Land Development Corporation etc were handled. When the complaints were outside the jurisdiction, the complainants were usually advised of the proper complaint channels.

18. Mr Martin LEE considered that whatever matters dealt with by the Council should be handled by the Redress System. Members should hear complaints on all such matters although some of them might be referred to other channels. He further considered that the scope of Panels might be adopted as the jurisdiction of the LegCo Redress System, as there was no reason why matters which might ultimately be referred to the Panels for review of the relevant polices should be excluded from the Redress System. Mrs Sophie LEUNG said that the Redress System should not go beyond the scope of work of the Council.

19. The Chairman agreed that requests for interviews from the public should as far as possible be entertained, but the question was which types of complaints should be followed up by the Redress System and which types should be referred to other more appropriate channels for handling. He pointed out that by receiving a complaint against a professional person for misconduct or negligence before the relevant professional body had made a judgment on the case, it was possible that the public might have the impression that the complaint was valid. This was because Members had no control on how complainants would present their cases, and had no authority to prevent the mass media from disclosing the names of the persons being complained against. Mrs Sophie LEUNG agreed that complaints against professionals or private bodies/individuals should be very carefully handled, for fairness to these individuals and bodies.

20. Ms CHOY So-yuk considered the Redress System should not involve itself in complaints against professionals, but should refer such cases to the relevant professional bodies for investigation. For complaints against these bodies for suspected delay, Members might assist in chasing up the relevant professional bodies for an early reply. She stressed that the Redress System should not be taken as an appeal mechanism for cases already dealt with by professional bodies.

21. Mr Andrew CHENG considered that items (a), (c), (e), (f) & (h) on the list in para 2 of the paper might be excluded from the jurisdiction, but items (b), (d) & (g) should be reviewed. He was of the opinion that the latter items might be included in the jurisdiction with modification.

22. Mr Martin LEE considered that the jurisdiction of the System should be as wide as possible. He reiterated that matters which could be followed up by Panels should definitely not be excluded. He agreed that exclusion of items (a), (c) & (h) in para 2 of the paper from the jurisdiction of the System was beyond doubt. He had reservations on the inclusion of item (b), as it might be abused by political parties for attacking each other. For that reason he considered it more appropriate for other channels to handle this type of complaints. While appreciating that most private disputes should not be handled, he had reservations that these should be totally outside the jurisdiction of the Redress System, because some private disputes might arise from existing policies which required review.

23. Ms CHOY So-yuk, however, held a different view and considered that private disputes should be totally excluded. She opined that the LegCo Redress System should handle complaints relating to the work of the Council.

24. In conclusion, the Chairman requested that the LegCo Secretariat should prepare a further paper for discussion at the next meeting, taking into account Members' views and giving some actual examples on complaints which were not handled according to the existing jurisdiction and what alternative assistance was rendered to the complainants.

III. Date of next meeting

25. The meeting noted that the research study on the operation of other redress systems would be ready in about four weeks. The next meeting would be held on **16 October 1998 at 8:30 am.**

26. There being no further business, the meeting was closed at 10:30 am.

(Post-meeting note: The next meeting was subsequently re-scheduled to be held on **29 October 1998 at 10:45 am.**)