

Legislative Council

LC Paper No. CP 572/98-99

Ref : CP/G01/12

Subcommittee on Review of the Operation of the LegCo Redress System

Minutes of meeting held on Thursday, 29 October 1998 at 10:45 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 Jasper TSANG Yok-sing, JP

Members Absent : Hon Mrs Sophie LEUNG LAU Yau-fun, 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 LAW Kam-sang, JP
Deputy Secretary General

Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms YUE Sin-yui
Research Officer 2

Mr Charles FOO
Senior Assistant Secretary (Complaints)5

I. Confirmation of minutes of last meeting
(LC Paper No. CP 367/98-99)

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 467/98-99(01)&(02); LC Paper No. LS 53/98-99)

2. Members noted the Administration's response to the LegCo Secretariat's enquiry about whether Government would be prepared to introduce the bill to amend the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) so that the privileges and immunities conferred under sections 3 & 4 of the Ordinance would be extended to cover Members' meetings with complainants and meetings with the Administration conducted under the LegCo Redress System (the System). The Administration's response was that the existing arrangement for receiving and handling complaints from the public was well-established and had been operating smoothly, and that neither Members nor the Administration had been inhibited from dealing with complaints because of the absence of privileges and immunities. The Administration had however not rejected completely the idea of Government introducing the bill, but requested more information about Members' plans with regard to any possible changes to the existing System and Members' thinking in this regard. The Administration had also advised that a proposal to extend the coverage of the privileges and immunities conferred under the Ordinance went beyond the scope of the adaptation exercise for the Ordinance. As regards the alternative option of extending the Ordinance by introducing a Member's Bill, SG advised that he had not sought the Administration's views on this, as it was for the President of the LegCo to consider whether the bill related to public expenditure or political structure or the operation of the Government.

3. In response to the Administration's query about the objective of Members' proposal to extend the coverage of the Ordinance, Members agreed that SG should explained to the Director of Administration further on the background of the proposal and give her a copy of the minutes of the meeting of the Subcommittee held on 11.9.98 for reference.

4. The meeting then proceeded to discuss LC Paper No. LS 53/98-99 prepared by SALA on potential legal liabilities faced by Members arising from interviews and case conferences under the existing operation of the System. SALA advised that if the Ordinance were extended as proposed to cover meetings conducted under the System, then Members would have the same privileges and immunities as in other committee meetings. This meant that

Secretariat
SG

they would be protected from these legal liabilities. SALA further advised that the four major areas of liabilities i.e. defamation, breach of confidentiality, disclosure of personal data and giving of advice, mentioned in the paper were not exhaustive. He then explained each area as detailed in the paper. As regards reminding the complainants of the legal liabilities when making remarks during meeting conducted under the System, SALA stated that due to the complexity of the law on defamation, it would not be advisable for Members or the LegCo Secretariat to advise the complainants in detail because the effect would be giving legal advice. SALA advised that an alternative way was to prepare a short note for the attention of the complainants, stating the matters which a complainant should observe when making remarks. Such matters might include no personal attack, no irresponsible speech, no unsubstantiated statement in his complaint etc. The short note should also include a caveat that when a complainant was in doubt he should seek his own professional advice.

5. Members had the following comments on the paper :

(a) Defamation

Certain exemption clauses could be used to protect Members so as to facilitate their expression of views on complaint cases, especially on some controversial cases where the complainants behaved emotionally when giving an account of their cases. SALA explained that extreme care had to be exercised in exemption clauses and they must be reasonable. If there is any doubt the court would construe against the maker of the clauses. Furthermore, if such clauses only exempt the members of an institution from liabilities when performing the duties of the institution, they might still be liable if the court held that they were not acting with such duties. Also, if the exemption only related to members of the institution, the institution itself would not be protected.

(b) Breach of confidentiality

Members faced practical difficulties in avoiding this liability. The Administration always tended to over-classify the information released to Members. From time to time, when a piece of information was released to Members by a government official, it was given "off the record". It might not always be possible to obtain the written consent of the supplier of the information to disclose the information. This made it difficult for Members to reply to a complainant, and sometimes even impossible to verify the information with another party. Although Members might rely on the ground of public interest to disclose the information, it was always difficult to define "public interest".

(c) Disclosure of personal data

Members noted that the identity and other personal particulars of the complainant should not be disclosed, unless it was for the purpose of handling the complaint. Disclosure other than for this purpose required the express consent of the complainant. Presently, complainants were reminded of the presence of the press, if there was any. In any case, the press was usually invited by them.

(d) Giving of advice

Members had all along been conscious of the need to refrain from giving legal or professional advice during interviews. They had been asking complainants to seek advice from relevant professionals in respect of legal or technical issues.

6. Members repeated the suggestion of having the presence of legal advisers at interviews with complainants with a view to advise Members of the possible legal liabilities. SALA stated that there could be manpower difficulties to deploy legal advisers to attend every meeting and to look at each case before an interview took place. Also there were practical difficulties to anticipate what the complainants would say. The meeting agreed to prepare a short note for the attention of complainants as described by SALA in para 4, reminding them of the matters which they should pay attention to in presenting their cases in open meetings.

7. In conclusion, the Chairman was of the opinion that the paper was good reference for all Members.

(b) **Jurisdiction of the LegCo Redress System**
(LC Paper No. CP 430/98-99)

8. SG briefed Members on the paper.

9. The Subcommittee examined again the items currently outside the jurisdiction of the Redress System in conjunction with the examples of complaints given in the paper and agreed on the following :

(a) *Court decisions, matters which are subjudice or could involve criminal charges, and matters relating to judicial and quasi-judicial proceedings*

10. This should be outside the jurisdiction of the Redress System.

(b) Matters outside the jurisdiction of the Hong Kong Special Administrative Region

11. The Subcommittee considered that persons lodging complaints on matters outside the jurisdiction of the Hong Kong Special Administrative Region should not be turned away immediately. Consideration should be given to whether there were any policy issues arising from the complaint which might be within the terms of reference of an appropriate LegCo Panel to consider. If so, the complaint should be taken up and the policy issue be referred to the appropriate panel. Moreover, in some cases indirect assistance might be given to such complainants. The meeting therefore concluded that although matters outside the jurisdiction of the Hong Kong Special Administrative Region were normally not handled by the Redress System, a flexible approach should be adopted when dealing with this type of complaints.

(c) Request for legal advice or legal services

12. This should be excluded from the jurisdiction of the Redress System.

(d) Complaints against individual members of the three-tier system of representative government (i.e. Legislative Council, Municipal Councils and District Boards), or other government boards and committees

13. The Subcommittee agreed that the proviso to take up such complaints was that they must be in connection with the duties carried out by the person being complained against in his capacity as a member of the three-tier system of representative government or other government boards and committees. The present practice of referring such complaints to the appropriate authority governing the respective Councils, boards and committees, if there was any, should continue. If the persons sitting on these boards and committees were ex-officio members holding government positions, the complaints should be taken up with the Administration.

(e) Matters relating to a non-government body

14. Members agreed that the present practice of handling this type of complaints as illustrated in the paper was satisfactory; i.e. matters relating to non-government bodies but of wide public concern should be handled by the Redress System. Matters relating to non-government bodies or individuals of a totally private nature and not subject to any public control or regulation, should be categorised as private disputes.

(f) Private disputes

15. Members agreed that private disputes not involving any government department should not be handled. Advice on alternative complaint channels, if any, should be given to the complainants.

(g) Labour disputes between employers and employees, including disputes between individual civil servants and Government as an employer

16. Hon LEE Kai-ming found the present arrangements satisfactory. Members agreed that labour disputes of wide public concern, or concerning discrimination of union leaders should be handled by the Redress System. Complainants on individual labour disputes should be advised to approach the Labour Department in the first instance. If they were dissatisfied with the handling of their cases by the Labour Department, the cases would then be taken up by the Redress System as in cases against government departments.

(h) Complaints against Police or ICAC officers

17. Members noted that this was an example where an independent and statutory channel existed for the handling of a particular type of complaints. While there might be legitimate reasons for the complainant to seek Members' assistance, e.g. they did not have confidence in the complaint channels (i.e. the Independent Police Complaints Council or ICAC Complaints Committee), the LegCo Secretariat had neither the power nor resources to investigate Police or ICAC cases. Also, there was not much point for the Secretariat to refer this type of complaints to these statutory channels, as they might require the complainants to reappear at their offices to give an official statement. In view of these difficulties, Members agreed to continue the existing practice of advising the complainants to approach the appropriate complaint channels to lodge this kind of complaints.

18. In conclusion, the meeting generally considered that with the expanded scope of the Legislative Council, the jurisdiction of its Redress System should not be strictly confined to decisions and actions of government bureaux and departments. Flexibility should be exercised to receive and handle complaints from Hong Kong residents on issues concerning public interest not directly related to the work of the Government. Therefore, whilst matters relating to the judicial and quasi-judicial systems, requests for legal advice, complaints dealt with by independent or statutory channels, private disputes and labour disputes between individual employees and employers should continue to be outside the jurisdiction of the Redress System, complaint cases should be flexibly handled.

III. Research Report : The Channels for Redressing Grievances in Hong Kong and in Overseas Countries

(RP03/98-99)

19. Members commented that the paper was very comprehensive and well presented.

20. At the conclusion of the meeting, Members agreed that the LegCo Secretariat should prepare a draft report to the House Committee, summing up the views of the Subcommittee on the operation of the Redress System for discussion at the next meeting.

Date of next meeting

21. The Clerk would fix up a date in consultation with the Chairman and Members of the Subcommittee.

22. There being no further business, the meeting was closed at 12:45 pm.

(Post-meeting note : The next meeting of the Subcommittee was subsequently scheduled for 19 November 1998 at 8:30 am.)

Legislative Council Secretariat

19 November 1998