

**Procedure of the
Committee on Members' Interests
for Handling Complaints**

9 December 2014

Procedure of the Committee on Members' Interests for Handling Complaints

Part I: Initial handling of a complaint

1. All complaints lodged with the Committee on Members' Interests ("the Committee"), whether by a Member or a member of the public ("the complainant"), must be in writing. The complainant's identity will be disclosed to the Member under complaint and in any report on the complaint made by the Committee to the Council.
2. Where a complaint:
 - (a) is made by an anonymous person, or by a person (i) who cannot be contacted, (ii) whose identity cannot be verified, or (iii) who has refused to allow his or her identity to be disclosed; or
 - (b) is made against a former Member; or
 - (c) is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of receipt of the complaint; or
 - (d) is outside the purview of the Committee, as set out in Rule 73(1)(c) and (ca) of the Rules of Procedure ("the RoP"),

the Clerk should send a written reply to the complainant, if the complainant can be contacted, that the Committee will not consider the complaint, and circulate the complaint and the written reply to members of the Committee ("members"). Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not consider, the Clerk should forward the complaint and the written reply to the Member. If item (a)(iii) of this paragraph is applicable, the Clerk should block out the information in relation to the identity of the complainant before forwarding the complaint to the Member under complaint.

3. Unless the complaint has been disposed of under paragraph 2, the Clerk should invite the Chairman to decide whether the Committee should hold a meeting to consider the complaint. The Chairman should inform the Clerk of such a decision within three working days from the date of being notified of the complaint.

4. The Chairman may decide not to hold a meeting to consider the complaint for the following reasons:
 - (a) the complaint is based merely on speculations, inferences or unfounded judgements; or
 - (b) the complaint involves substantially repeated allegations which have already been dealt with by the Committee and no fresh information has been produced; or
 - (c) other reasons the Chairman deems appropriate.
5. If the Chairman decides not to hold a meeting to consider the complaint, the Chairman should inform the Clerk of the reason(s) for the decision. The Clerk should then forward the Chairman's decision and the reason(s) therefor to members by a circular. Any member disagreeing with the Chairman's decision should reply to the Clerk within three working days from the date of the circular.
 - (a) If the Clerk has received replies from a majority of members indicating disagreement with the Chairman's decision upon the expiry of the aforesaid three working days, the Chairman should forthwith direct the Clerk to arrange a meeting to be held within 10 working days to consider the complaint.
 - (b) If the Clerk has received replies from less than a majority of members indicating disagreement with the Chairman's decision upon the expiry of the aforesaid three working days, the Chairman's decision and reason(s) therefor will be deemed to be those of the Committee and the Committee will not take further action on the complaint. The Clerk should forward the Committee's decision and the reason(s) therefor to the complainant in writing. Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not consider, the Clerk should forward the complaint and the written reply to the Member.
6. If the Chairman decides to hold a meeting to consider the complaint, the Clerk should arrange for the meeting to be held within 10 working days from receipt of notification of such a decision.

Part II: Consideration of a complaint

7. The Committee may hold one or more closed meetings for consideration of a complaint. The purpose of such meeting(s) is to decide whether the Committee will conduct an investigation into the complaint after taking into account the following:
 - (a) the information contained in the complaint;
 - (b) the relevant rules(s) that the Member under complaint is alleged to have breached; and
 - (c) any other relevant information readily available, such as records of interests registered by the Member under complaint, A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council ("Reimbursement Guide"), media reports, etc.
8. If the Committee decides not to conduct an investigation into the complaint, it will not take further action on the complaint. The Clerk should forward the decision and the reason(s) therefor to the complainant in writing. Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not investigate, the Clerk should forward the complaint and the written reply to the Member.
9. If the Committee decides to conduct an investigation into the complaint, the Clerk should inform the Member under complaint of the complaint and the Committee's decision.

Part III: Investigation of a complaint

10. The Committee may hold one or more meetings for investigation of a complaint. During the investigation of a complaint, the Committee may:
 - (a) invite the Member under complaint to provide information in writing and/or to attend the Committee's meeting(s) to give explanations and provide information;
 - (b) invite the complainant or any other persons to provide information in writing and/or to attend the Committee's meeting(s) to provide information; and
 - (c) gather or cause to be gathered information relevant to the complaint from any other sources as the Committee deems appropriate.

11. If the complaint relates to a Member's claims for reimbursement of operating expenses or applications for advance of operating funds, the Committee should have regard to the provisions of the Reimbursement Guide, as provided in Rule 73(1A) of the RoP.
12. The Committee may invoke the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order by summons any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.
13. The Committee may cause any person summoned to attend before it to be examined upon oath, and ask the person to verify upon oath any information and statements that the person has provided previously or at any previous meetings.
14. Meetings of the Committee for investigating the complaint should be closed meetings unless the Committee has acceded to the request of the Member under complaint, or of any person invited or ordered to attend the relevant meeting(s), that they be held in public.
15. In attending meeting(s) before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving the Member assistance or advice ("accompanying persons"). The accompanying persons may be different persons for different sessions of meetings of the Committee and may include legal adviser(s). The accompanying persons are not allowed to address the Committee. The Member under complaint must answer questions, give explanations or provide information personally.

Part IV: Report to the Council

16. Upon completion of investigation of the complaint, the Committee should submit a report on the complaint to the Council under Rule 73(1)(e). The relevant parts of the draft of the report should be forwarded to the Member under complaint, subject to the Member signing of a confidentiality undertaking referred to in paragraph 23. The Member under complaint may, within seven working days from the date of receipt of the relevant parts of the draft report, make a written response to the Committee.

17. After considering the written response of the Member under complaint under paragraph 16, if any, the Committee may finalize its report. The transcripts of evidence taken at meeting(s) should be published in full as far as possible in, and form part of, the Committee's report to the Council.
18. Where the Committee is of the opinion that the Member under complaint has breached any of the relevant rule(s) of the RoP, the Committee may make a recommendation on sanction of the Member under Rule 85 of the RoP. In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee may take into account, among other things, whether there is evidence that the breach of the relevant rule(s) of the RoP by the Member under complaint:
 - (a) was a deliberate act; and
 - (b) involved any conflict of interests with the Member's role as a Legislative Council Member.
19. Upon reporting to the Council, the Committee should make available a copy of the report to the complainant.

Part V: Suspension of work on a complaint

20. If, in the course of considering or investigating a complaint, the Committee has come to the knowledge that the complaint is or matters related to it are being investigated by a law enforcement agency or related to a case pending in a court of law, the Committee may suspend its consideration or investigation of the complaint until the conclusion of the investigation by the law enforcement agency or the legal proceedings.

Part VI: Confidentiality requirements

21. All members, and other persons attending closed meetings of the Committee (except the Member under complaint), must each sign a confidentiality undertaking that the member or person will not publish, without the prior written authorization of the Committee, any matter relating to the proceedings of closed meetings of the Committee, including evidence taken before the Committee, documents produced to it, its deliberations and decisions, except such matter that has already been published or contained in any report presented by the Committee to the Council.

22. Where the Committee finds that a member or any person has breached the undertaking given to the Committee, the Committee will consider whether and how to deal with the member or that person, and may take actions including moving a motion in the Council for the admonishment or reprimand of the member under Rule 81 (Premature Publication of Evidence) of the RoP, or passing a motion of the Committee expressing its disapproval of the member or that person for breaching the undertaking.
23. Before the Committee forwards the relevant parts of its draft report to the Member under complaint under paragraph 16, the latter must sign a confidentiality undertaking that the Member will not publish, without the prior written authorization of the Committee, any matter relating to the draft report, except such matter that has already been published or contained in any report presented by the Committee to the Council. Where the Committee finds that the Member under complaint has breached the undertaking given to the Committee, the Committee may consider whether and how to deal with the Member, and may take actions including passing a motion of the Committee expressing its disapproval of the Member for breaching the undertaking.

Part VII: Participation of members in the handling of complaints

24. No member is allowed to participate as a member of the Committee in the handling of a complaint or to attend any of the meetings of the Committee to deliberate on or inquire into a complaint where the complaint is made by or against that member.