

**立法會**  
***Legislative Council***

LC Paper No. CB(2)593/03-04

Ref : CB2/HS/1/03

**Subcommittee to prepare for the appointment  
of the Select Committee to inquire into matters relating to the handling  
of the Severe Acute Respiratory Syndrome outbreak  
by the Government and the Hospital Authority**

**Minutes of meeting  
held on Wednesday, 15 October 2003 at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Dr Hon LAW Chi-kwong, JP (Chairman)  
Hon Cyd HO Sau-lan  
Hon LEE Cheuk-yan  
Hon CHAN Yuen-han, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Miriam LAU Kin-yee, JP  
Hon Andrew CHENG Kar-foo  
Dr Hon TANG Siu-tong, JP  
Hon Michael MAK Kwok-fung  
Dr Hon LO Wing-lok, JP

**Member absent** : Hon CHAN Kwok-keung, JP

**Clerk in attendance** : Ms Doris CHAN  
Chief Assistant Secretary (2) 4

**Staff in attendance** : Mr Jimmy Y T MA, JP  
Legal Adviser

Mr LAW Kam-sang, JP  
Deputy Secretary General

Mrs Justina LAM  
Assistant Secretary General 2

Miss Monna LAI  
Assistant Legal Adviser 7

Mrs Eleanor CHOW  
Senior Assistant Secretary (2) 4

Miss Mary SO  
Senior Assistant Secretary (2) 8

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## **I. Election of Chairman**

Dr LAW Chi-kwong was elected Chairman of the Subcommittee.

## **II. Terms of reference of the Select Committee** (LC Paper No. CB(2)74/03-04(01))

### Proposed terms of reference

2. The Chairman said that at the House Committee meeting on 10 October 2003, some Members had expressed concern about the limited time available for the select committee, if appointed, to inquire into matters relating to the handling of the Severe Acute Respiratory Syndrome (SARS) outbreak by the Government and the Hospital Authority (HA). Some Members had suggested that the scope of the inquiry should be narrowed down to ensure that the select committee could complete its work within the current term. Some Members had also suggested that the inquiry should be conducted by phases based on the major events or stages of development in the SARS outbreak.

3. The Chairman pointed out that whether the terms of reference should be couched in broad or narrow terms was a question of flexibility to be given to the select committee in conducting its inquiry. The Chairman further pointed out that the terms of reference of the Select Committee on Building Problems of Public Housing Units were more specific than those of the Select Committee

appointed to study the opening of the Chek Lap Kok Airport. The Chairman invited members to give views on the following proposed terms of reference which had been drafted on the basis of the motion passed at the meeting of the Panel on Health Services on 6 October 2003 -

"To inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority in order to examine the performance and accountability of the Government and the Hospital Authority and their senior officers in that regard."

4. Ms Miriam LAU, Chairman of the Select Committee on Building Problems of Public Housing Units, said that although the terms of reference of the Select Committee had specified that it should inquire into four incidents, they were broad enough to ensure that information and evidence relevant to the incidents could be obtained, and that an objective analysis of the causes of the incidents could be made. The major principle upheld by the Select Committee was that the inquiry must be conducted in a fair manner, and that any conclusions reached by the Select Committee would be based on evidence. Ms LAU drew members' attention to paragraph 1.11 of Annex II to the Members' Brief which set out the principles adopted by the Select Committee.

5. Mr LEE Cheuk-yan said that the handling of the SARS outbreak should be investigated in its entirety. He considered it inappropriate to narrow down the scope of the inquiry or to conduct the inquiry by phases based on events in the outbreak.

6. Mr Michael MAK said that the proposed terms of reference might be too wide, and that the inquiry should be conducted by phases based on areas of concern. Mr MAK proposed that areas of concern such as whether Prince of Wales Hospital should have been closed, whether the quarantine measures in Amoy Gardens were implemented too late, and whether the treatment protocol for SARS patients was inappropriate, etc, should be studied in order to address the questions of the performance and accountability of senior officers of the Government and HA in the handling of the SARS outbreak.

7. Dr TANG Siu-tong said that it might take a few years to conduct a comprehensive inquiry of this nature. Dr TANG further said that while the SARS Expert Committee had done a good job, its report did not address the concern of the public about the question of accountability. Dr TANG considered that the scope of the inquiry should be narrowed down. The select committee should aim to find out why so many people had been infected with SARS, why SARS had spread in the community, and why the closure of Prince of Wales Hospital had not been considered.

8. Ms Cyd HO said that there could be three options for conducting the inquiry, i.e. according to the stages of development in the SARS outbreak, or the areas of concerns, or the organisations/departments responsible for handling the SARS outbreak. Ms HO further said that she preferred the second option and suggested that the areas of concern should be prioritised so that the more important ones would be studied first.

9. Miss CHAN Yuen-han expressed concern that if the inquiry was conducted based on events, some issues would be left out. She considered that the select committee should have very clear focus in its work. As the SARS Expert Committee had identified a number of problem areas, Miss CHAN suggested that the select committee should inquire further into these areas.

10. Mr Andrew CHENG said that as the select committee would be faced with the difficulty of investigating a complicated matter within a tight timeframe, the scope of the inquiry should be narrowed down. Mr CHENG considered it more appropriate for the select committee to conduct its inquiry based on areas of concern and not events. Mr CHENG suggested that the role and accountability of the Chief Executive, the Secretary for Health, Welfare and Food, and the Director of Health in the management and control of the outbreak should be examined by phases. This approach would enable the select committee to report its findings in phases and meet public expectations for early answers to what actually happened in the SARS outbreak. Mr CHENG expressed concern about the time available for writing the select committee report and enquired whether the report could be drafted while the inquiry was still in progress.

11. Deputy Secretary General (DSG) responded that it was not uncommon for a Bills Committee to have the factual part of its report drafted while the scrutiny work was still in progress. A similar approach could be adopted in the case of the select committee whereby a factual account of the SARS outbreak could be drafted as information and evidence were being obtained. However, the conclusions and the recommendations of the select committee could not be decided on until its fact finding work had been completed.

12. The Chairman pointed out that if the select committee was to carry out its inquiry by phases and could only complete part of its work within this current term, there was no obligation on Members of the next term to complete the outstanding work. The Chairman added that it would be for Members of the next term to decide whether to appoint another select committee to continue with the inquiry.

13. The Legal Adviser (LA) said that under Rule 78(4) of the Rules of Procedure, if a select committee was of the opinion that it could not complete

consideration of the matter which was referred to it by the Council before the end of a term, it should so report to the Council.

14. Ms Miriam LAU said that the focus of the proposed terms of reference was on examining the performance and accountability of the Government and HA and their officers in the handling of the SARS outbreak. To achieve this objective, any events in the SARS outbreak could be areas to be investigated. Ms LAU supported the proposition that the terms of reference of the select committee should be couched in broad terms to give it maximum flexibility in deciding on the scope of work and areas to be investigated. Ms LAU further said that the proposed terms of reference were appropriate, and she did not see the need to conduct the inquiry by phases. Ms LAU added that any conclusions of an inquiry should only be made when all the evidence had been obtained and stressed that for the select committee to enjoy credibility, it must carry out its work in a fair and impartial manner.

15. Dr TANG Siu-tong said that the treatment protocol for SARS patients should be excluded from the scope of inquiry, given that SARS was a new disease and that there was no agreed treatment for SARS internationally. Members concurred. LA advised that the function of the select committee should also exclude the adjudication of the legal liabilities of any individual or party summonsed to attend as witnesses. Members agreed.

16. Ms Cyd HO said that as tertiary institutions were also involved in the handling of the SARS outbreak, it might be necessary to include them in the scope of inquiry. Ms HO further said that while their academic autonomy should not be infringed upon, the tertiary institutions concerned might be in possession of certain relevant information, in particular information relating to the initial outbreak of SARS.

17. Dr LO Wing-lok and Mr Michael MAK said that the tertiary institutions concerned only assisted in the handling of the SARS outbreak, and the responsibility for handling the SARS outbreak rested mainly with the Government and HA. Dr LO further said that in anticipation of the heavy workload of the select committee, it would be inappropriate to further expand the scope of inquiry. Mr MAK added that while tertiary institutions could provide information/evidence for the select committee, it was not necessary to include them in the scope of inquiry.

18. The Chairman declared that he was a staff member of the University of Hong Kong. The Chairman said that to his understanding, tertiary institutions and hospitals had all along been working closely. He further said that irrespective of whether tertiary institutions were included in the scope of inquiry,

the select committee could summons them to give evidence, if considered necessary. Ms Miriam LAU concurred.

19. Ms Cyd HO said that she had no problem with the proposed terms of reference provided that the tertiary institutions could be summonsed to give evidence, if considered necessary.

20. Dr LO Wing-lok considered that the words "and their" in the proposed terms of reference were not necessary. He proposed to replace them with an apostrophe "s" after the words "Government and Hospital Authority" where it second appeared in the proposed terms of reference. DSG explained that according to the Hospital Authority Ordinance (Cap. 113), HA was defined as the HA Board only. Dr LO's proposal would have the effect of excluding certain persons such as members of the HA Board and the Chief Executive of the Hong Kong Special Administrative Region from the scope of inquiry.

21. Dr TANG Siu-tong and Ms Miriam LAU did not support Dr LO's proposal. Ms LAU said that the proposed wording might give the impression that the select committee had a pre-conceived view that senior officers of the Government and HA were culpable for the SARS outbreak. This went against the principle of fairness. Ms LAU pointed out that previous select committees did not specify in their terms of reference the level of officers whose performance needed to be examined. Mr Andrew CHENG supported Ms LAU's views. He added that the word "senior" was difficult to define. He preferred using the expression "officers at managerial level" to "senior officers", if the level of staff involved in the handling of the SARS outbreak was to be specified in the terms of reference.

22. Mr Michael MAK and Ms Cyd HO expressed concern that Dr LO's proposal might mean that the select committee could take evidence from senior officers of the Government and HA only.

23. LA advised that the terms of reference and the taking of evidence were two different matters. The proposed terms of reference did not preclude the select committee from taking evidence from staff at other levels. Although previous select committees did not specify in their terms of reference the level of staff whose performance and accountability needed to be examined, the select committees could make clear the culpability of the parties and individuals concerned if they had reached such a conclusion in their findings.

24. Miss CHAN Yuen-han supported Ms Miriam LAU's views and proposed that the word "senior" should be deleted from the terms of reference. Dr TANG Siu-tong supported Miss CHAN's proposal.

25. Dr LO Wing-lok said that to delete the word "senior" would expand the scope of inquiry to include all employees of the Government and HA. He pointed out that as mechanisms were already in place to monitor the performance of junior employees, the focus of the inquiry should be on the performance of the senior officers of the Government and HA. Mr LEE Cheuk-yan said that in order to respond to the public call for finding out if senior officers of the Government and HA should be held accountable for negligence, lack of diligence or maladministration, if any, in the handling the SARS outbreak, the word "senior" should be retained.

26. Mr Michael MAK said that on the one hand, if the word "senior" was retained, some witnesses might refuse to attend hearings as they did not consider themselves to be senior officers. On the other hand, if the word "senior" was deleted, it would create anxieties among the junior employees of the Government and HA.

27. The Chairman reiterated that the proposed terms of reference would not preclude any person from appearing before the select committee to give evidence. As members' views were divided, the Chairman put the matter to vote. Mr Andrew CHENG, Mr Michael MAK, Mr LEE Cheuk-yan and Dr LO Wing-lok voted for retaining the word "senior". Ms Miriam LAU, Mrs Sophie LEUNG, Miss CHAN Yuen-han and Dr TANG Siu-tong voted against it.

28. As there was a tie vote, Ms Cyd HO said that she was inclined to support deleting the word "senior", given that having the word in the terms of reference was simply a gesture to address the concern of the public. At members' request, the Chairman allowed members to have a second round of discussion before putting the matter to a final vote.

29. Mr LEE Cheuk-yan said that deleting the word would expand the scope of inquiry. Dr LO Wing-lok said that the word "senior" would send a clear message to the public that the focus of the inquiry was on the senior officers of the Government and HA, and help to alleviate anxieties among junior staff. Mr Michael MAK said that as decisions relating to the handling of the SARS outbreak were invariably made by the senior officers of the Government and HA, it was appropriate to retain the word "senior".

30. Mr Andrew CHENG said that as it was unlikely that junior staff would be held accountable, it was not necessary to have the word "senior" in the terms of reference. Mr CHENG reiterated that he preferred the expression "officers at managerial level" to "senior officers". Mrs Sophie LEUNG said that the select committee should not have a pre-conceived view on the level of staff who should

be held accountable for negligence, lack of diligence or maladministration, if any, in the handling of the SARS outbreak. Ms Miriam LAU said that deleting the word "senior" would give the select committee greater flexibility in carrying out its inquiry.

31. The Chairman put the matter to vote again. Mr Andrew CHENG, Mr Michael MAK, Mr LEE Cheuk-yan and Dr LO Wing-lok voted in favour of retaining the word "senior". Ms Cyd HO, Ms Miriam LAU, Mrs Sophie LEUNG, Miss CHAN Yuen-hand and Dr TANG Siu-tong were in favour of deleting the word. The Chairman declared that the word "senior" would be deleted from the proposed terms of reference.

32. Members also discussed whether the word "officers" should be replaced by the word "staff". Members agreed that "officers" was more appropriate as, for instance, the Chief Executive was not a staff member of the Government.

33. Dr LO Wing-lok proposed to add the words "and their officers" after "the Government and Hospital Authority" where it first appeared in the proposed terms of reference. After discussion, members agreed not to adopt Dr LO's proposal as it was obvious that the functions and duties of an organisation, such as the Government and HA, had to be carried out by its officers.

34. Dr LO further proposed to make it clear in the terms of reference that HA was the one as defined in Cap. 131. Ms Miriam LAU did not support the proposal. She said that the definitions of terms used could be set out in the introduction section of the select committee report and it was inappropriate to set out any definition in the terms of reference. The Chairman put the matter to vote. One member voted for Dr LO's proposal and six members voted against. The Chairman declared that Dr LO's proposal was not agreed to.

35. The Chairman concluded that the Subcommittee would recommend to the House Committee the following terms of reference which represented the majority view of members -

"To inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority in order to examine the performance and accountability of the Government and the Hospital Authority and their officers in that regard."

Time available for the select committee to conduct its inquiry

36. Members expressed concern about the limited time available for the select committee to conduct its inquiry before the end of the current term.



Mr Andrew CHENG said that in order for the select committee to table its report in June 2004 or early July 2004, the select committee had to conclude its fact finding work by April 2004. Mr CHENG asked whether there were other means to expedite the work of the select committee, apart from conducting the inquiry and drafting the report concurrently.

37. LA said that previous select committees had adopted certain practices and procedures to facilitate the smooth conduct of the inquiry. There were also certain principles adhered to by the select committees, such as fairness and transparency in its proceedings, and efficiency in conducting proceedings to ensure prudent use of public money. LA further said that an inquiry could be broadly divided into two stages, namely the fact finding and deliberative stages. The time required for the fact finding stage depended on the scope of the investigation, while that required for the deliberative stage depended on the complexity of the issues under examination. Notwithstanding the time constraint, it was important that those persons or parties whose interests or reputation might be adversely affected by the findings of the select committee should be given the opportunity and reasonable time to respond to the relevant findings before the select committee finalised its report.

38. Mr LEE Cheuk-yan said that the time required for the fact finding stage depended on the amount of evidence to be obtained and the number of witnesses to be summonsed. In order to save time, the select committee might consider making use of the information obtained by the SARS Expert Committee. Mrs Sophie LEUNG added that the report prepared by the Hospital Authority Review Panel on the SARS Outbreak would also provide useful information for the consideration of the select committee.

39. Mr LEE Cheuk-yan and Mrs Sophie LEUNG asked whether information contained in these reports could be used by the select committee as evidence. LA said that the select committee was not a court so it did not have to follow strictly the rules of evidence applicable to court proceedings. However, the method adopted for taking evidence was the key to a credible inquiry. The select committee could decide on the use of first-hand, second-hand or even third-hand information as its evidence. The question was whether the information available was regarded by the select committee as reliable. LA added that at the outset, the select committee could consider requesting the Government and HA to provide information pertinent to the handling of the SARS outbreak. Based on the information collected, the select committee could decide on the way forward.

### **III. Practice and procedure of the Select Committee**

40. The Chairman said that at the House Committee meeting on 10 October 2003, a Member had suggested that the select committee should be empowered to engage counsel to assist in the examination of witnesses. He invited members to give views on the proposal.

41. Mrs Sophie LEUNG said that she did not see the need to engage counsel to assist the select committee in the examination of witnesses as effective assistance to select committees in that regard had been rendered by the LegCo Secretariat in the past and the arrangement should continue. Ms Miriam LAU concurred. Ms LAU expressed concern that there would be duplication of work between the person appointed as counsel to the select committee and members of the select committee, in particular with regard to the questioning of witnesses. There would also be duplication of work between the counsel and LegCo Secretariat in respect of making preparatory work to examine witnesses. Members agreed that engagement of counsel was not necessary.

42. Members noted the practice and procedure of the Select Committee on Building Problems of Public Housing Units in Annex II to the Members' Brief. Members agreed that the practice and procedure should be determined by the select committee itself, with reference to those adopted by previous select committees.

43. On members' question concerning the conduct of meetings, LA advised that Rule 79(2) of the Rules of Procedure stipulated that meetings of a select committee should be held in public unless the chairman otherwise ordered in accordance with any decision of the committee. Ms Miriam LAU informed members that the Select Committee on Building Problems of Public Housing Units had considered requests for holding hearings in camera on a case-by-case basis. Where there was possible prejudice to a person's interest in pending criminal proceedings, the Select Committee would consider acceding to such a request by a witness.

44. In response to Dr LO Wing-lok, LA advised that all internal deliberations of a select committee were held in camera. Such practice was common in other jurisdictions.

**IV. Size of the Select Committee and procedure for the nomination of Members for appointment to the Select Committee**  
(LC Paper No. CB(2)74/03-04(02))

Size of the select committee

45. The Chairman invited members to give views on the membership size of the select committee.

46. Ms Miriam LAU said that on the one hand, if a select committee had too many members, getting a quorum could be a problem. On the other hand, if a select committee had too few members, it would render division of work amongst members difficult. In her view, a membership size of 15 was appropriate.

47. Members were generally of the view that the membership size should be more than 11 members but not more than 15. Members agreed that the Subcommittee should recommend to the House Committee that the number of members to be appointed to the select committee should be an odd number not exceeding 15.

Nomination procedure

48. Members endorsed the procedure for the nomination of Members for appointment to the select committee as set out in the paper (LC Paper No. CB(2)74/03-03(02)).

**V. Any other business**

Date for moving the motion for the appointment of the select committee and mover of the motion

49. The Chairman requested the LegCo Secretariat to draft the motion for the appointment of the select committee based on the proposed terms of reference agreed to by the Subcommittee. The motion should also seek the Council's authorisation for the select committee to exercise the powers conferred under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) for the performance of its duties.

50. The Chairman said that if members considered that the motion to appoint the select committee should be moved before 5 November 2003, the President's permission to waive the requisite notice period for moving the motion at the Council meeting on 22 or 29 October 2003 would have to be sought. The

Chairman further said that as members had divergent views on the wording of the proposed terms of reference, 29 October 2003 would be a more appropriate date. He pointed out that Members, especially those who were not members of the Subcommittee, would need time to study the wording of the motion and to consider whether to move amendments.

51. The Chairman asked whether the motion should be moved by him or the Chairman of the House Committee. Ms Miriam LAU said that according to past practice, the motion should be moved by him as the Chairman of the Subcommittee. Members agreed.

Date of reporting to the House Committee

52. The Chairman said that a report on the deliberations and recommendations of the Subcommittee would be submitted to the House Committee for consideration at its meeting on 17 October 2003.

53. There being no other business, the meeting ended at 11:15 am.