

立法會
Legislative Council

LC Paper No. AS168/03-04

Ref : AM 12/01/22

**Subcommittee to consider a mechanism for handling complaints and allegations
concerning Members' Operating Expenses Reimbursement Claims**

**Minutes of meeting
held on Tuesday, 13 January 2004
at 2:30 pm in Conference Room B of the Legislative Council Building**

Members Present	: Hon Emily Lau Wai-hing, JP (Chairman) Hon Cyd Ho Sau-lan Hon Albert Ho Chun-yan Hon Howard Young, SBS, JP Hon Michael Mak Kwok-fung
Member Absent	: Hon Yeung Yiu-chung, BBS
Clerk in Attendance	: Mrs Anna Lo Principal Council Secretary (Administration) (PCS(A))
Staff in Attendance	: Mr Ricky C C Fung, JP Secretary General (SG) Mr Y S Lee Senior Assistant Legal Adviser 1 (SALA1) Mr Joseph Kwong Accountant (ACCT)

I. Election of Chairman

Ms Cyd Ho invited nominations for the chairmanship. Ms Emily Lau was nominated by Mr Albert Ho, which was seconded by Mr Micheal Mak. Ms Lau accepted the nomination.

2. There being no other nominations, Ms Lau was declared Chairman of the Subcommittee.

II. Way forward

(LC Paper No. AS126/03-04)

3. The Chairman took members through the suggested points for discussion prepared by the Secretariat at Appendix V of the paper.

Need for a mechanism to handle complaints or allegations concerning Members' operating expenses reimbursement (OER) claims

4. Members considered it necessary to establish a mechanism to handle complaints and allegations concerning Members' OER claims.

The proposed mechanism

5. The Chairman said that if such a mechanism was in place, it would be activated presumably by complaints lodged by Members, the public or the Administration. The bodies responsible for overseeing the mechanism and conducting investigations could be a new committee, the House Committee or The Legislative Council Commission (LCC). Members might wish to propose other bodies, such as the Administration, to be the overseeing and/or investigative body. She then went through the pros and cons for conducting investigations by Members and independent parties. If outside parties or professionals were to be employed to conduct the investigation, selection methods had to be devised for their appointment.

6. The Chairman declared that Mr Howard Young and herself were members of LCC.

7. SG reminded the meeting that the monitoring body could be different from the investigative body.

8. Mr Albert Ho expressed the following views:

(a) *Scope to be covered by the monitoring body*

As illegal acts would be investigated by law enforcement agencies, such as the ICAC, Police etc, the monitoring body should only confine its scope of work to complaints or allegations of misbehaviour that were not serious enough to warrant a censure motion under Article 79(7) of the Basic Law^(Note). Besides, complaints and allegations concerning the private life of a Member should not be dealt with by the monitoring body as those were unrelated to a Member's public office.

(b) *Monitoring body*

While it might be appropriate for a new committee or the House Committee to handle complaints against Members, it might not be appropriate for LCC, which oversaw administrative matters, to handle Members' misbehaviour. Upon receipt of a complaint and before pursuing an investigation, the monitoring body should satisfy itself that a prima facie case had been established.

(c) *Investigation*

An independent body was preferred, because Secretariat staff might have practical difficulties in investigating into complaints and allegations against Members, and Members might not be seen to be impartial in the eyes of the public owing to friendship and party politics involved.

The independent body could be a panel made up of reputable personalities, professionals and academics. A number of persons, say three, from the panel could be drawn at random each time to conduct an investigation. These panel members should preferably be invited to participate on an honorary basis. Professional bodies should be invited to nominate their members to serve on the investigative panel. Such a task would be attractive to those who regarded it an honour to serve the Legislative Council and the public at large.

^(Note) The President of the Legislative Council shall declare a Member of the Legislative Council no longer qualified for the office, "when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present." (Article 79(7), Basic Law)

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(d) *Power of investigation*

No special investigative power would be required for the investigation, because Members and their assistants were likely to honour their duty to assist in an investigation. Lack of cooperation from Members or their assistants concerned would be reflected in the investigation report.

(e) *Above party politics*

It was hoped that the monitoring system would establish a non-partisan tradition for upholding the reputation of the Legislative Council.

9. With reference to paragraph 8(d) above, the Chairman added that, as Members' staff might have to assist in a complaint or allegation concerning Members' OER claims, their employment contracts might have to incorporate in future a provision requiring their co-operation in giving evidence for such cases.

10. SALA1 explained to the meeting the provisions in Article 79(7) of the Basic Law relating to the censure and removal of Members for misbehaviour. The procedures for the implementation of the provisions were in Rule 49B of the Rules of Procedure. The Rule also stipulated the establishment of an investigation committee. The procedures of the investigation committee were provided in Rule 73A. There was no definition of misbehaviour in Article 79 or Rule 49B and it would be for Members to decide.

11. SALA1 also pointed out that the Committee on Members' Interests (CMI) had the function to consider and investigate complaints in relation to the registration and declaration of Members' interests. It had a set of procedures for handling such complaints.

12. SG pointed out that the original intention for setting up the present Subcommittee was to deal with complaints and allegations concerning Members' OER claims. Members agreed to confine the Subcommittee to the original scope.

13. For handling complaints or allegations concerning Members' OER claims, Members agreed that a motion for censuring a Member should be preceded by an investigation and justified by the facts unveiled. Depending on the seriousness of the complaint or allegation, disqualification might or might not be the ultimate outcome when a vote of censure was carried.

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14. Mr Howard Young considered that, with a membership of representatives from various political groupings, LCC was an appropriate body to handle complaints or allegations concerning Members' OER claims. The investigation method as well as the membership of the investigative body could be determined each time according to the complaints and allegations in question. Outsiders, such as professional accountants, could be employed if any particular experience and expertise were required. He also opined that the monitoring body should only handle complaints of a less serious nature. Serious violations of law should be referred to law enforcement agencies.

15. On the question of whether it was appropriate for LCC to handle complaints or allegations concerning Members' OER claims. SG opined that, subject to legal advice, since LCC was responsible for the administration of funds for such claims, it should also ensure that the funds claimed were not misappropriated as alleged. To elaborate SG's view, SALA1 quoted section 9(a) of The Legislative Council Commission Ordinance, which stipulated that one of the functions of LCC was "to provide through the Secretariat administrative support and services to the Council".

16. The Chairman expected that the public would prefer transparency during the course of an inquiry. SG would consult LCC as to whether it considered itself the most appropriate body to handle such complaints or allegations; and, if so, whether it would consider conducting inquiries in public.

17. Mr Ho further stressed that the purpose of the mechanism was that it should exonerate a Member who was found innocent, and on the other hand, hold him or her accountable for his or her misbehaviour. If intentional misdeeds were established, mere refunding of an over-claimed amount would be inadequate - some kind of censure would be necessary. The Chairman concurred with his view. She suggested that the Secretariat should explore the types of punishment in the Civil Service in dealing with staff discipline matters.

Secretariat

18. On the question of which body should have the authority to impose a sanction on a Member found to be at fault, SALA1 referred members to the sanctions relating to interests in Rule 85 of the Rules of Procedure, which stipulated that "Any Member who fails to comply with Rules 83 (Registration of Interests), 83A (Personal Pecuniary Interest to be Disclosed) or 84(1) or (1A) (Voting or Withdrawal in case of Direct Pecuniary Interest) may be admonished, reprimanded or suspended by the Council on a motion to that effect."

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Consultation

19. In order to seek Members' views on the subject, the Chairman requested the Secretariat to prepare a draft consultation paper, basing on the discussion at the meeting, for the Subcommittee's consideration. Secretariat

(Post meeting note : A draft consultation paper, LC Paper No. AS162/03-04(01), was issued to Subcommittee members on 13 February 2004.)

III. Date of next meeting

20. The next meeting would be held on 19 February 2004, at 2:30 pm.

Adjournment

21. The meeting ended at 3:22 pm.

Legislative Council Secretariat
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