

立法會
Legislative Council

LC Paper No. CB(2)824/03-04

Ref : CB2/SS/3/03

**Subcommittee on
Summary Disposal of Complaints (Solicitors) Rules**

**Minutes of first meeting
held on Monday, 8 December 2003 at 10:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon Chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC , JP

Member absent : Hon Albert HO Chun-yan

Public Officers attending : Mr Michael SCOTT
Senior Assistant Solicitor General

Miss Peggy AU YEUNG
Government Counsel

Attendance by invitation : The Law Society of Hong Kong

Mr Anson K C KAN
Vice-President

Mr Patrick MOSS
Secretary General

Ms Heidi CHU
Director of Standards and Development

Clerk in attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Paul WOO
Senior Assistant Secretary (2)3

Action

I. Election of Chairman

Miss Margaret NG was elected Chairman of the Subcommittee.

II. Meeting with the Administration and The Law Society of Hong Kong
(Summary Disposal of Complaints (Solicitors) Rules (L.N. 251 of 2003); LC Paper No. LS17/03-04; CB(2)548/03-04(02) and (03); 570/03-04(01))

2. The Subcommittee deliberated (index of proceedings attached at **Annex**). The issues raised by members which required written responses from the Law Society were summarized below.

Offences suitable for disposal under the summary disposal procedure

3. Ms Miriam LAU expressed the view that the Council of the Law Society (the Council) should not be "over-vigilant" in considering whether certain complaints against solicitors should be disposed of by the Tribunal Convenor under the summary disposal procedure. It should refrain from resorting to the summary disposal procedure to deal with minor offences which were matters more appropriate to be disposed of by a letter of regret or disapproval issued by the Council. Ms LAU opined that the Council must fully satisfy itself, based on well-defined criteria, that the matters submitted for disposal by the Tribunal Convenor were matters which, but for the summary disposal procedure, would have been the subject of a full hearing of the Solicitors Disciplinary Tribunal.

4. Mr Patrick MOSS said that the Law Society, being a self-regulatory body, was fully aware of its duty to balance the interests of solicitors and members of the public. Mr Anson KAN added that the alternative to deal with trivial complaints by way of letters of regret or disapproval would still be available after the Summary Disposal of Complaints (Solicitors) Rules (the Rules) came into effect.

5. Referring to the scheduled items listed in the Schedule to the Rules, and the list provided by the Law Society to explain the nature of the offences covered by the

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Rules, the Chairman said that breaches of Rules 4B(2), 4B(4), 5D(c), 5D(d), 5D(e) and 5D(f) of the Solicitors' Practice Rules, and Practice Direction B1 of the Practice Directions 1990 issued by the Law Society, did not appear to be minor offences. The Chairman expressed concern that offences of considerable seriousness could be brought within the ambit of the summary disposal procedure.

6. In view of the concerns expressed by members, the Law Society was requested to -

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- (a) state clearly its objectives of introducing the summary disposal procedure and the criteria for determining whether a matter was suitable for disposal by the Tribunal Convenor; and
- (b) give assurance that the Council would give careful consideration to all relevant factors in deciding whether a matter should be submitted to the Tribunal Convenor.

Law
Society

7. The Chairman further pointed out that Rules 5D(e) and 5D(f) of the Solicitors' Practice Rules on delivery of backsheet to counsel and payment of fees to counsel respectively involved the supervision and monitoring of instruction of counsel by solicitors. She suggested the Law Society to seek the views of the Bar Association on inclusion of breaches of Rules 5D(e) and 5D(f) under the Rules.

Procedures before submission of matter to Tribunal Convenor

8. Mr Patrick MOSS said that the relevant person had a maximum of 56 days to admit liability for the alleged breach and agree to the matter being disposed of by the Tribunal Convenor.

Law
Society

9. Referring to the "Procedural Chart on Summary Disposal" tabled by the Law Society at the meeting (subsequently issued to the Subcommittee under LC Paper No. CB(2)620/03-04(01)), members considered that the different routes under the summary disposal procedure were not clearly reflected in the Rules. Ms Audrey EU said that under section 4(2)(a)(ii) of the Rules, if the relevant person did not admit liability, the matter would be disposed of by the Solicitors Disciplinary Tribunal. Ms EU pointed out that the reference to the relevant person not agreeing to discuss with the Council representative was absent in section 4(2)(a)(ii). She suggested that the Law Society should incorporate such a reference in the section.

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10. Ms Miriam LAU opined that the notice which accompanied the complaint sheet issued to the relevant person under section 4 should also state the timeframe for the different steps under the summary disposal procedure. She said that this might assist the relevant person in deciding whether to submit the matter concerned for disposal by the Tribunal Convenor. She invited the Law Society to consider the proposal.

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11. Ms Audrey EU opined that the Law Society should consider whether the time limits specified in sections 4(2)(b), 6 and 8 respectively could be extended when circumstances warranted.

Revocation of decision to submit matter for disposal by the Tribunal Convenor under section 5 of the Rules

12. In response to members' questions on revocation of decision by the Council to submit a matter for disposal by the Tribunal Convenor, Mr Anson KAN explained that section 5 of the Rules provided that the Council could only revoke its decision within 21 days after a complaint sheet together with a notice had been sent to a relevant person under section 4. He said that a revocation of the Council's decision could result either in the matter being disposed of by a full Solicitors Disciplinary Tribunal hearing or disposed of by measures more lenient than a fixed penalty imposed under the summary disposal procedure. A revocation, therefore, might not necessarily work to the disadvantage of the relevant person.

13. The Chairman and Ms Miriam LAU said that a relevant person was required to notify the Council representative in writing within 21 days after receiving the complaint sheet whether or not he wished to discuss the matter with the Council representative under section 4(2)(b). The situation could arise, however, that the relevant person might give written consent for the matter to be disposed of by the summary disposal procedure before the expiration of the 21-day period, but did not wish to go through the discussion process. They opined that it would be unfair to the relevant person for the Council to revoke its decision to submit the matter for disposal by the Tribunal Convenor after the relevant person had already made a decision. In light of the situation quoted, members requested the Law Society to consider -

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- (a) whether provisions should be introduced to the Rules to limit the power of the Council to revoke its decision; and
- (b) whether a matter could be submitted for disposal by the Tribunal Convenor without going through the process of discussion with the Council representative, bearing in mind that an objective of the new procedure was to expedite the disciplinary procedure.

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14. Members also noted that the Rules did not provide for circumstances under which a relevant person could revoke his decision. The Law Society was requested to explain the rationale for not including such provisions in the Rules.

Fixed penalty and fixed investigation cost

15. In response to Ms Miriam LAU, Mr Patrick MOSS advised members that the fixed penalty should be paid into the general revenue (new section 9AB(3) of the

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Legal Practitioners Ordinance refers). However, the fixed investigation cost would be payable to the Law Society. He added that the Law Society had discussed with the Chief Justice and agreed to review the amounts of the fixed penalty and the fixed investigation cost two years after operation of the Rules.

Scrutiny period of the Rules

16. Members agreed that the Chairman should move a motion at the Legislative Council meeting on 17 December 2003 to extend the scrutiny period of the Rules to 14 January 2004, in order to allow sufficient time for the Law Society to respond to the issues raised at the next meeting and further deliberations of the Subcommittee.

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17. The Chairman requested the Law Society to consider, in the light of the concerns raised by members, whether amendments should be made to the Rules (the deadline for giving notice of motion to amend the Rules at the Legislative Council meeting on 14 January 2004 is 7 January 2004).

III. Date of next meeting

18. The next meeting was scheduled for 5 January 2004 at 4:30 pm.

19. The meeting ended at 12:30 pm

Council Business Division 2
Legislative Council Secretariat
24 December 2003

**Proceedings of the first meeting of the Subcommittee on
Summary Disposal of Complaints (Solicitors) Rules
on Monday, 8 December 2003 at 10:45 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action Required
000033 - 000142	Chairman Ms Miriam LAU Ms Audrey EU	Election of Chairman of the Subcommittee	
000143 - 000411	ALA Chairman Clerk	Scrutiny period of the Summary Disposal of Complaints (Solicitors) Rules (the Rules) and commencement of the Rules.	
000412 - 000645	Law Society Chairman	Letter dated 17 November 2003 from the Law Society (Appendix IV in LC Paper No. CB(2)548/03-04(02)).	
000646 - 001157	Admin Chairman	Letter dated 5 December 2003 from Admin (LC Paper No. CB(2)548/03-04(03)).	
001158 - 001807	ALA Chairman Law Society	Letter dated 4 December 2003 from ALA to the Law Society (LC Paper No. CB(2)570/03-04(01)) and the Law Society's response (LC Paper No. CB(2)570/03-04(02)).	
001808 - 001927	Ms Audrey EU Law Society	Level of fixed penalty and fixed investigation cost. Procedures before submission of matter for disposal by Tribunal Convenor.	
001928 - 002111	Ms Audrey EU	Time limits specified in sections 4(2)(b), 6 and 8 respectively of the Rules.	The Law Society to consider whether the time limits could be extended when circumstances warranted.
002112 - 002407	Chairman Ms Audrey EU Law Society	Revocation of decision by Council of the Law Society under section 5 of the Rules.	

002408 - 003910	Chairman Law Society Ms Audrey EU Ms Miriam LAU	Absence of provisions in the Rules on revocation of decision by the relevant person.	The Law Society to explain the rationale for not including such provisions in the Rules.
003911 - 004651	Ms Miriam LAU Law Society Chairman	Timeframe for disposal of matters under the summary disposal procedure - "Procedural Chart on Summary Disposal" tabled by the Law Society (LC Paper No. CB(2)620/03-04(01)).	
004652 - 011157	Ms Miriam LAU Law Society Chairman Admin Ms Audrey EU ALA	Purpose of section 4(2) and requirements under section 4(2)(b) of the Rules. How cases should be disposed of where the relevant person notified the Council representative before the expiration of the 21-day period under section 4(2)(b) that he agreed to have the matter disposed of by the summary disposal procedure, but did not wish to go through the process of discussion with the Council representative.	The Law Society to consider - (a) whether provisions should be introduced to limit the power of the Council to revoke its decision; (b) whether a matter could be submitted for disposal by the Tribunal Convenor without going through the discussion process; and (c) whether the notice accompanying the complaint sheet should state the timeframe for the different steps under the summary disposal procedure.
011158 - 011721	Ms Miriam LAU Law Society ALA Chairman Ms Audrey EU	Fixed penalty and fixed investigation cost under the summary disposal procedure.	
011722 - 011926	Ms Audrey EU	Drafting of section 4(2)(a)(ii) of the Rules - proposed addition of the reference to the relevant person not agreeing to discuss with the Council representative in the section.	The Law Society to consider the proposal.
011927 - 012019	Chairman	Extension of scrutiny period of the Rules to 14 January 2004.	

012020 - 012208	Ms Miriam LAU Chairman	Minor offences which could be dealt with by a letter of regret or disapproval should not be disposed of by the summary disposal procedure.	
012209 - 012615	Chairman Law Society Ms Miriam LAU	Legislative timetable. Second meeting of the Subcommittee on 5 January 2004 to further deliberate the Rules.	
012616 - 013851	Ms Miriam LAU Law Society Chairman	Objectives of the Rules and criteria for determining offences suitable for disposal under the summary disposal procedure. Offences listed in the Schedule to the Rules - breaches of Rules 4B(2), 4B(4), 5D(c), 5D(d), 5D(e) and 5D(f) of the Solicitors' Practice Rules, and Practice Direction B1 of the Practice Directions 1990 issued by the Law Society	The Law Society to state in writing the objectives of the summary disposal procedure and give assurance that it would give careful consideration to all relevant factors in deciding whether a matter should be submitted to the Tribunal Convenor for disposal.
013852 - 014022	Chairman Ms Miriam LAU	Rules 5D(e) and 5D(f) of the Solicitors' Practice Rules on delivery of backsheet to counsel and payment of fees to counsel.	The Law Society to seek the view of the Bar Association on inclusion of breaches of these two Rules as scheduled offences for disposal under the summary disposal procedure.