

立法會
Legislative Council

LC Paper No. AS 234/04-05

Ref : AM 12/01/22 (Pt 4)

**Subcommittee to Consider
a Mechanism for Handling Complaints and Allegations
Concerning Members' Operating Expenses Reimbursement Claims**

**Minutes of meeting
held on Tuesday, 11 January 2005
at 2:30 pm in Conference Room B of the Legislative Council Building**

- Members Present** : Hon Emily Lau Wai-hing, JP (Chairman)
Dr Hon Lui Ming-wah, JP
Hon Mrs Selina Chow Liang Shuk-ye, GBS, JP
Hon Lee Wing-tat
Hon Li Kwok-ying, MH
Hon Alan Leong Kah-kit, SC
Hon Kwong Chi-kin
- Members Absent** : Hon Howard Young, SBS, JP
Hon Abraham Shek Lai-him, JP
Hon Tam Heung-man
- 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 Ray Chan
Assistant Secretary General 3 (ASG3)
- Mr Y S Lee
Senior Assistant Legal Adviser 1 (SALA1)
- Mr Watson Chan
Head (Research and Library Services Division) (H(RL))
- Mr Joseph Kwong
Accountant (ACCT)
- Mr Thomas Wong
Research Officer 4 (RO4)

I. Confirmation of minutes of last meeting held on 16 November 2004

(LC Paper No. AS 149/04-05)

The minutes of last meeting held on 16 November 2004 were confirmed.

II. Matters arising

Information note on “Mechanisms for Handling Complaints Concerning Members’ Operating Expenses Reimbursement Claims in Selected Legislatures”

(IN13/04-05)

– Paper prepared by the Legislative Council Secretariat

2. H(RL) explained the major features of the mechanisms for handling complaints against Members of the legislatures in the United Kingdom (UK), Canada, the United States (US) and Australia in Table 1 in the paper. He highlighted that in UK and Canada, a standing Commissioner (namely Parliamentary Commissioner for Standards in UK and Ethics Commissioner in Canada) was appointed. In US and Australia, a standing committee was formed to receive complaints, consider the action to be taken and conduct inquiries. RO4 also advised that no professional qualifications were specifically required of the Commissioners in UK and Canada. In general, the Commissioners were required to be honest, impartial, acceptable to major parties in the parliament, well respected in society, familiar with the operation of the parliament and, preferably, knowledgeable about the law.

3. In reply to Dr Lui Ming-wah, RO4 said that the Commissioners in UK and Canada could not be sitting Members of their parliaments. Their work was overseen by a committee. RO4 elaborated on the appointment process in UK, as detailed in paragraph 2.2 of the paper.

4. SG observed that, in the countries selected for study, the systems for handling complaints dealt with complaints against Members’ behaviour, including allegations concerning the use of public funds. There were codes of conduct which provided yardsticks against which Members’ behaviour could be measured. These codes of conduct would be useful reference for LegCo. RO4 confirmed that, except for Australia, which was still working on a draft code, the other three countries already had a code of conduct or conflict of interest code.

5. In response to Mrs Selina Chow and Dr Lui Ming-wah on the power of the Commissioner and the role of the Committee on Standards and Privileges in UK, RO4 stated that the Commissioner could only act in response to the complaints received, which might come from Members as well as the public. Since the Commissioner had no power to demand the production of documents or to summon witnesses, assistance of the Committee on Standards and Privileges was required. Although the Committee oversaw the work of the Commissioner and could disagree with him, in practice, the Committee usually provided support rather than interfered with the Commissioner's inquiries. The Chairman remarked that as the Commissioner was "appointed by the House", he should have the support of the major parties.

6. RO4 pointed out the major difference between the systems in UK and Canada was that the Ethics Commissioner in Canada had the power to summon witnesses and demand the production of documents or material for inquiry purposes. With such powers and a "Conflict of Interest Code for Members", the Ethics Commissioner required no assistance from the House of Commons. The Chairman noted that the current Ethics Commissioner was nominated by the Prime Minister, who was a Member of the Parliament; and the nomination was approved by a resolution of the House of Commons.

7. As regards the system in US, RO4 highlighted that complaints from the general public had to route through a Member of the House of Representatives before they could be dealt with by the Committee on Standards of Official Conduct. If investigation was considered necessary, an Investigative Subcommittee would be formed with equal representation from the majority and minority parties. If a complaint was found unsubstantiated, the findings might or might not be reported to the Committee on Standards of Official Conduct. If a complaint was substantiated, the Committee would consider a motion recommending to the House what disciplinary actions should be taken.

8. RO4 said that the Committee on Members' Interests in Australia (for handling, inter alia, complaints against misuse of allowances by Members of the House of Representatives) had only handled one case in the past 20 years. Regarding the composition of the Committee, four members had to be selected from the ruling party and three from other parties. Only complaints receiving the support of the Committee would be further processed.

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9. The Chairman pointed out that in 1995/1996 a draft code of conduct proposed by the then Committee on Members' Interests (CMI) did not gain the majority support of LegCo Members. Also, the term "misbehaviour" under Rule 79(7) of the Basic Law had not been defined. Determination of whether a Member had misbehaved was through a vote of censure by two-thirds of LegCo Members present.

10. Upon Mr Lee Wing-tat's request, the Secretariat would provide further information on the following:

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- (a) the codes of conduct for Members of the selected legislatures;
- (b) the investigation procedures of committees handling complaints and allegations against Members' misbehaviour; and
- (c) details of cases handled/rejected (in the past three to five years).

11. Mrs Selina Chow reminded the meeting that expanding the terms of reference of the present Subcommittee to cover complaints unrelated to the use of Members' operating expenses reimbursements would require the endorsement of the House Committee. Mr Lee Kwok-ying agreed. The Chairman responded that other legislatures might not have a set of procedures for handling complaints concerning abuse of operating expenses reimbursements only. If overseas experience revealed that the scope of responsibilities of such commissioners or committees had to be broad in order to be effective, the Subcommittee could report such findings to the House Committee. Under those circumstances, a code of conduct should firstly be drawn up to facilitate the operation of such a mechanism.

12. Mrs Selina Chow was of the opinion that irrespective of whether a committee or a commissioner would be tasked to handle complaints, a professional had to be appointed to carry out the preliminary fact-finding work. She expressed the view that such a professional should not have a close relationship with any political figure(s) and LegCo should have a code of conduct for Members so that this professional could have a set of guidelines to work on.

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13. Mr Lee Wing-tat echoed the observation that the Commissioners or Committees in selected legislatures did not only deal with allegations against legislators' misuse of public funds but also complaints against legislators' misbehaviour. In noting that the Commissioners in selected legislatures were usually professionals experienced in the operation of the parliament, but not an active member of a political party, Mr Lee expressed his concern that not many people might be qualified for such a job in Hong Kong.

14. Mrs Selina Chow and Dr Lui Ming-wah enquired about the ranking of the Commissioners and the number of cases they handled in a year. The Chairman remarked that their rates of remuneration might be an useful indicator. RO4 responded that the Commissioner in UK worked three or four days a week; the post had not been described as a full-time or part-time job. As requested, further information would be obtained.

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15. Referring to the "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the HKSAR in their Capacity as such" (Guidelines) tabled at the meeting, ASG3 said that the existing Guidelines were drafted and issued by CMI in 2002 in accordance with its terms of reference stipulated in Rule 73 (1)(d) of the Rules of Procedure (RoP). The Guidelines had been re-issued to all Members of the third LegCo. He pointed out that violations of the Guidelines relating to registration and declaration of interests would lead to an investigation by CMI and, where substantiated, could result in sanction by LegCo under Rule 85. He reminded the meeting that the Guidelines were advisory in nature and that there were no specific provisions in the RoP for sanctioning Members who violated those guidelines which were not related to the registration and declaration of interests. If, however, a Member was considered to have violated the Basic Law, local laws, RoP or the Guidelines to such a serious extent that severe sanction of disqualification was warranted, Article 79 of the Basic Law might apply and Rules 49B (Disqualification of Member from Office) and 73A (Investigation Committee) of RoP set out the relevant procedure.

16. The Chairman and SG recalled that in 1995 and 1996, motion debates to empower CMI to investigate into complaints about misconduct of LegCo Members were negated.

17. In response to the Chairman's question on whether complaints against Members should be handled by LegCo or its subcommittees, Mrs Selina Chow was of the view that the public demanded accountability and expected to know the truth. If an inquiry revealed that an allegation was unsubstantiated, it was only fair to the Member concerned that he/she be exonerated from such allegations. However, a balance had to be struck, as some Members might not be willing to be subject to an investigation conducted by other Members; and there might be accusations that such investigations were politically motivated.

III. Handling of complaints and allegations concerning Members' Operating Expenses Reimbursement claims

(LC Paper No. AS 150/04-05)

– Paper prepared by the Legislative Council Secretariat

18. In briefing members on the paper, which was prepared on the instruction of the Chairman, SG explained the general principles in relation to the processing of Members' Operating Expenses Reimbursement claims. He highlighted that the reimbursement system was operated on an honour system. The Secretariat had no investigatory power. It could only seek Members' clarification, which was very different from interrogation. In vetting the reimbursement claims, the overriding principle adopted by the Accounts Office was that only expenses arose from Members' LegCo duties should be reimbursed.

19. In reply to the Chairman, SG confirmed that the "Guide for Reimbursement of Operating Expenses for Members of the Legislative Council" had been drawn up by the Secretariat, based on the recommendations of the Independent Commission on Remuneration for the Members of the Executive Council and the Legislature of the HKSAR.

20. SG also mentioned that there were cases where refunds were made to the Secretariat after clarification had been sought from the Members concerned. But, as in Case (1) of the paper, the Secretariat had no evidence against the Member's declaration and re-confirmation.

21. The Chairman commented that presently only limited action could be taken by the Secretariat.

IV. Retrospective application of the proposed mechanism

(LC Paper No. LS 25/04-05)

– Paper prepared by the Legislative Council Secretariat

22. SALA1 explained the paper and highlighted paragraph 5 that as a rule of statutory interpretation, there was a presumption against retrospective application. Unless the contrary intention appeared, a rule was presumed not to be intended to have retrospective operation. The rationale was that, as a matter of fairness, a rule by which conduct was to be regulated should deal with future acts, and it should not change the character of transactions carried out before its introduction upon the faith of the then existing rule. The proposed mechanism introduced both a new procedure, and a new penalty which did not exist when the act was done or the omission was made. If the proposed mechanism was applied to cases which had occurred before its introduction, such application might be regarded as not consistent with the principle which underpinned the presumption against retrospective application as a penalty which was not provided for at the time when the case occurred and, for that reason, as not fair to the person concerned. SALA1 concluded that while the rule of statutory interpretation could serve as a reference in the present deliberation, whether the proposed mechanism should be applied retrospectively would be a matter for the Subcommittee to consider from a policy point of view.

V. Any other business

Way Forward

23. The Chairman invited views on whether a mechanism should be established to handle complaints against Members; and if so, whether the mechanism should be extended to cover complaints other than those related to operating expenses reimbursements. Mr Lee Kwok-ying and Mrs Selina Chow held the view that the House Committee's mandate for the Subcommittee was restricted to complaints and allegations concerning Members' operating expenses reimbursement claims.

24. Mr Alan Leong suggested that the procedures for investigation in other legislatures be studied more thoroughly before determining the way forward. It was important that these mechanisms were so structured that they were not self-contradictory. An incomprehensive mechanism could be easily challenged in a court of law. Members agreed.

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25. With reference to Rule 78 of RoP, Mr Alan Leong enquired whether a select committee could be set up to investigate complaints against Members. The Chairman replied that a select committee was not a standing committee. In the absence of a standing committee to screen complaints received, the House Committee might have to discuss every complaint to determine whether any action should be taken.

26. In response to Mr Lee Wing-tat, SG said that the Subcommittee to Consider a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims in the second LegCo term recommended that the scope of CMI be expanded to cover allegations concerning the reimbursement of operating expenses. ASG3 added that according to 73(1) of RoP, CMI, being a standing committee, was empowered "to consider matters of ethics in relation to the conduct of Members in their capacity as such". CMI had an established procedure for handling complaints related to the registration and declaration of Members' interests only. He noted from paragraph 2.3(a) of IN13/04-05 that only the Code of Conduct for Members of the Parliament in UK had a specific provision for the Parliamentary Commissioner for Standards to handle complaints about Members' improper use of payments and allowances made to them. He suggested that further information be gathered on whether other legislatures had similar provisions for their Commissioners or committees to carry out such duties. The Chairman agreed that such information would be useful.

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(Post-meeting note: Although there was no specific provision on improper use of payments and allowances in the Codes of Conducts in the other selected legislatures, the responsibilities of the Commissioners/Committees also cover such misbehaviour.)

27. Dr Lui Ming-wah enquired whether the Secretariat could be empowered to investigate complaints and allegations against Members' abuse of operating expenses reimbursement. SG responded that at present the Secretariat could only make enquiries. Other legislature's experience would be useful in determining whether Secretariat staff could be given investigative power.

28. The Chairman concluded that further information on other legislatures' codes of conduct, investigation procedures and cases processed (whether investigated, substantiated or rejected) should be obtained for Members' reference. She urged members to discuss the issues with their colleagues of respective political groupings.

Members

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VI. Date of next meeting

29. Members agreed that the next meeting should be held when further information was ready.

Adjournment

30. The meeting ended at 4:03 pm.

Legislative Council Secretariat
March 2005