

立法會
Legislative Council

LC Paper No. AS280/04-05

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

**Minutes of meeting
held on Monday, 18 April 2005
at 10:45 am 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 Howard Young, SBS, JP
Hon Abraham Shek Lai-him, JP
Hon Lee Wing-tat
Hon Li Kwok-ying, MH
Hon Alan Leong Kah-kit, SC
- Members Absent** : Hon Kwong Chi-kin
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)
- Ms Betty Fong
Senior Council Secretary (Administration) 1

I. Confirmation of minutes of last meeting held on 11 January 2005
(LC Paper No. AS234/04-05)

The minutes of last meeting held on 11 January 2005 were confirmed.

II. Information note on “Supplementary Information on Mechanisms for Handling Complaints Concerning Members’ Operating Expenses Reimbursement Claims in Selected Legislatures”
(IN24/04-05) – Paper prepared by the Legislative Council Secretariat

2. At the request of the Chairman, H(RL) presented the additional information in Appendix I of the paper on the major features of the mechanisms for handling complaints concerning Members’ Operating Expenses Reimbursement (OER) claims in the United Kingdom (UK), Canada, the United States (US) and Australia. He highlighted that the Commissioner in UK was appointed in 2002 on a part-time basis while the one in Canada was appointed in 2004 on a full-time basis. The remuneration for both Commissioners was over HK\$1.5M per annum. The Commissioner in UK had received 148 specific complaints against named Members during 2002-03 and 2003-04, of which 21 required full investigation. H(RL) further elaborated the breakdown of the 148 complaints as contained in Table 1 under paragraph 3.4 of the paper. The Commissioner in Canada had received only one complaint so far.

3. Upon the Chairman’s request, the Secretariat would provide further information on the result of investigation on the published cases in UK.

Secretariat

4. Mrs Selina Chow said that the Liberal Party (LP) was inclined to support the appointment of a commissioner for handling complaints, subject to more information on its cost implications and appointment procedures. She enquired about the cost of staffing and administrative support provided to the Commissioners in UK and Canada and the procedures for nomination and appointment of these Commissioners.

Secretariat

(Post-meeting note: The staffing and running costs of the Office of the Parliamentary Commissioner for Standards in UK in 2003-04 was HK\$3,400,000.)

5. H(RL) responded that nomination of the Parliamentary Commissioner for Standard in UK was made by the House of Commons Commission and approved by a resolution of the House, whereas nomination of the Ethics Commissioner in Canada was made by the Prime Minister after consultation with parties in the House and approved by a resolution of the House.

6. With reference to the practice in UK, the Chairman remarked that if a commissioner were appointed by the Legislative Council (LegCo), he/she should be nominated either by The Legislative Council Commission or the House Committee and his/her appointment should be approved by a resolution of the Council.

7. Mr Lee Wing-tat said that the complaint cases handled by the House of Common in UK would be useful reference in the consideration of a mechanism for the HKSAR LegCo. He requested the Secretariat to provide further information on the definition of “improper use of allowances” and how such complaints were handled. The Chairman agreed that examples in overseas legislatures could be useful references for the Subcommittee.

Secretariat

8. In response to Mr Lee Wing-tat, SG pointed out that there was no requirement in the “Guide for Reimbursement of Operating Expenses for Members of the Legislative Council” that the level of salary offered to a Member’s Assistant should be commensurate with his/her academic qualifications.

III. Possible scenarios of a mechanism for handling complaints and allegations concerning Members’ Operating Expenses Reimbursement claims

(LC Paper No. AS235/04-05) – Paper prepared by the Legislative Council Secretariat

9. SG highlighted the main points in the paper for members’ consideration:

- (a) whether the mechanism should cover complaints and allegations concerning Members’ Operating Expenses Reimbursement (OER) claims only; or
- (b) whether the mechanism should cover complaints and allegations on Members’ misconduct as a whole, including Members’ abuse of OER claims.

10. Mrs Selina Chow reiterated that, subject to cost implications, LP was inclined to support the appointment of an independent commissioner. Unlike the selected legislatures under study, where there was a much greater number of non-partisan Members, the HKSAR legislature had a small membership and would therefore have difficulty in forming a committee with the same degree of credibility. The commissioner should be a politically impartial person with public trust and good understanding of the legislature (e.g. retired judges or civil servants).

11. Dr Lui Ming-wah did not consider it cost-effective to appoint a commissioner, taking into account the small size of the HKSAR legislature and the fact that the number of complaints should not be frequent and many. Instead, he supported the formation of an investigation committee with the participation of both LegCo Members and independent persons, such as Members of the Executive Council (ExCo), legal professionals, retired judges etc.

12. Mr Lee Wing-tat stated that under its “Sunshine Policy”, the Democratic Party (DP) supported the tightening of the existing guidelines on Members’ OER claims with a view to enhancing the transparency of these claims, particularly on declaration of party assets and rentals of Members’ offices. While he had no strong view on the appointment of an independent commissioner, he had reservations on the effectiveness of a standing committee in investigating complaints on Members. He quoted the recent investigation of Hon James To’s failure to register interests by the Committee on Members’ Interest (CMI), which comprised members representing various political groupings. Despite the unanimous decision of CMI on the case, Hon Lau Kong-wah proposed an amendment to CMI’s recommended sanction. He was concerned that party politics had undermined the effectiveness and credibility of the committee system.

13. Mr Abraham Shek opined that a committee comprising members of various political groupings and representatives of the Bar Association or Law Society would promote the impartiality of the committee. The committee’s scope of investigation should be confined to complaints relating to Members’ OER claims only. He did not think Hon Lau Kong-wah’s amendment had damaged LegCo’s long-established committee system or its credibility. As long as a committee had made a sound decision, it should withstand any criticism, as manifested in the voting results of CMI’s recommendation and Mr Lau’s amendment. He was confident that the existing system was transparent, impartial and fair, albeit not perfect.

14. Mr Li Kwok-ying took exception to Mr Lee Wing-tat's comment in paragraph 12 regarding Hon Lau Kong-wah's amendment to CMI's recommended sanction. He considered that the views of a CMI member might not necessarily represent those of his respective political grouping. Moreover, a CMI member had to observe the rule of confidentiality and should not discuss the case under investigation with other members of his political grouping. The stance of the Democratic Alliance for Betterment of Hong Kong (DAB) on the mechanism for handling complaints and allegations concerning Members' OER claims had yet to be formed. He personally supported measures to tighten the existing guidelines on Members' OER claims and the introduction of a mechanism for handling such complaints.

15. Mr Alan Leong did not consider CMI's investigation into Hon James To's cases had damaged the credibility of the Committee. However, he was rather concerned about the inadequacy of the existing mechanism in monitoring Members' OER claims. Measures to safeguard the credibility of the system on Members' OER claims (including strengthening of the existing guidelines, particularly those relating to declaration of party assets and rentals of Members' offices etc) and expanding the terms of reference of CMI to cover investigation of complaints concerning Members' OER claims, should be introduced as soon as possible. Noting that the existing committee system in LegCo had been working perfectly well on a self-regulatory basis, Mr Leong did not consider it necessary to involve an independent party, such as Bar Association or Law Society, in the complaint handling mechanism at this stage. He also considered it inappropriate to involve an ExCo Member in the investigation of a LegCo Member.

16. Referring to Mr Alan Leong's suggestion, the Chairman reminded the meeting that the Subcommittee to Consider a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims in the second LegCo term had recommended CMI to take on an additional role in handling complaints concerning Members' OER claims.

17. Dr Lui Ming-wah supported tightening of the existing guidelines on Members' OER claims and echoed the views of Mr Abraham Shek and Mr Alan Leong on the credibility of CMI's investigation. Dr Lui added that the decision on whether an independent party was required should rest with the standing committee, based on its assessment on the acceptability of its recommendations to Members and the community at large.

18. The Chairman remarked that rather than assessing public view on any particular issue according to Members' own perception, it would be useful for the Secretariat to conduct public opinion polls. She asked SG whether the Secretariat had resources to conduct public opinion polls. In reply, SG said that the Secretariat lacked the resources for such purpose.

19. Mr Lee Wing-tat had no objection to empowering CMI to investigate such complaints. He agreed that, at this stage, the scope of investigation should be focused on complaints concerning Members' misuse of allowances. In view of public concern on the issue, he proposed, and the Chairman agreed, that the Subcommittee should finalize its recommendations by the end of the current LegCo session.

20. Mr Li Kwok-ying held the view that the scope of CMI's investigative power should be clearly defined if it were to take on the additional role of handling complaints and allegations concerning Members' OER claims as well.

21. Mrs Selina Chow remarked that notwithstanding LP's preference for an independent commissioner, it had no doubt about the credibility of the committee system. As a matter of fact, the whole purpose of appointing a commissioner was to provide the necessary support (such as preliminary fact-finding) to a committee, which was vested with the ultimate power in an investigation. She reiterated that the viability of a commissioner should be subject to resource implications. Regarding the scope of the proposed mechanism, Mrs Chow recalled the bitter experience in 1995 and 1996 in presenting a proposal to empower CMI to carry out investigation on misconduct of LegCo Members. She therefore proposed, at this stage, that it should be confined to complaints and allegations concerning Members' OER, as rules on these claims had been in force and could be clearly defined. With regard to Mr Lee Wing-tat's concern in paragraph 12 above, Mrs Chow remarked that irrespective of whether a committee or commissioner was tasked for the investigation, any Member had the right to hold a different view from the recommendations of the committee or the commissioner. She believed that Hon James To's case had reinforced the need to improve the existing guidelines on Members' OER claims and to expand the scope of CMI's investigative power. LP did not oppose to these measures if it was the majority view of Members.

Action

22. SG pointed out that measures to tighten the existing rules on Members' OER claims were currently being considered by the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement, chaired by Hon Patrick Lau. The revised guidelines, if endorsed, would be implemented by the Accounts Office.

23. Mr Abramam Shek added that the Subcommittee chaired by Hon Patrick Lau was considering the Independent Commissioner Against Corruption's (ICAC's) recommendations on Members' OER system. He raised no objection to empowering CMI to investigate complaints on Members' misuse of allowances.

24. The Chairman urged Members to attend the next meeting of the Subcommittee chaired by Hon Patrick Lau on 25 April 2005 to express their views on ICAC's recommendations.

Recommendations

25. The Chairman concluded the discussion by summarizing Members' views as follows:

- (a) a mechanism should be put in place for handling complaints;
- (b) the scope of investigation should be confined to Members' OER claims at this stage;
- (c) the terms of reference of CMI should be expanded to cover handling of complaints and allegations concerning Members' OER claims; and
- (d) the procedures for handling complaints and allegations concerning Members' OER claims would be formulated by CMI.

Way Forward

26. The Chairman further instructed that the following follow-up actions be taken:

- (a) a draft report on the recommendations of the Subcommittee should be prepared by the Secretariat;

- (b) the draft report should be circulated to:
 - (i) Members of the Subcommittee for consultation with their respective political groupings. Three to four weeks should be allowed for members to consult their colleagues;
 - (ii) CMI for comments/consideration; and
 - (iii) the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement for information; and
- (c) the report should be finalized for submission to the House Committee before the end of the current LegCo session.

IV. Date of next meeting

27. Members agreed that another meeting would be held, if necessary, subject to further views on the draft report.

V. Adjournment

28. The meeting ended at 12:00 noon.

Legislative Council Secretariat
May 2005