

立法會
Legislative Council

LC Paper No. CMI/49/05-06

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Committee on Members' Interests

**Minutes of the ninth meeting
held on Tuesday, 23 May 2006 at 8:45 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP (Chairman)
Hon SIN Chung-kai, JP (Deputy Chairman)
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon Albert Jinghan CHENG

Clerk in attendance : Mrs Betty LEUNG
Chief Council Secretary (3)1

Staff in attendance : Mr Ricky FUNG, JP
Secretary General

Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Arthur LEUNG
Senior Council Secretary (3)1

I. Confirmation of the minutes of the last meeting held on 4 April 2006
(LC Paper No. CMI/44/05-06)

The minutes of the last meeting of the Committee on Members' Interests (the Committee) held on 2 May 2006 were confirmed.

II. Setting up of a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims

(LC Papers No. CMI/45/05-06 and LS/53/05-06)

2. The Chairman invited members to consider the amendments to paragraphs 9, 10, 15 and 21 of the Procedure of the Committee on Members' Interests for Handling Complaints received in relation to the Registration or Declaration of Members' Interests or Members' Claims for Reimbursement of Operating Expenses (the Procedure), proposed by the Legislative Council (LegCo) Secretariat pursuant to the decisions of the Committee at the last meeting.

Proposed amendment to paragraph 9 of the Procedure

3. The Chairman invited members to note that a sentence had been added to paragraph 9 to deal with the situation in which a Member under complaint remained silent when appearing before the Committee. The sentence provided that a Member under complaint would be informed, at the time when he was invited to attend a meeting of the Committee, that the Committee might invoke the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)(the P&P Ordinance) to order him to attend before the Committee, and to give evidence or to produce documents, and cause him to be examined on oath. Members agreed to the proposed addition.

Preventing the complaint handling mechanism from being abused

4. Mr Alan LEONG said that as the revision of the Procedure was near completion, he had reviewed it critically. He noted that with the Committee taking up the additional responsibility of handling complaints relating to Members' claims under the operating expenses reimbursement (OER) system, the scope of complaints to be handled by the Committee would be significantly expanded. As the complaints relating to OER claims would involve complicated and detailed OER claims, they would be less straightforward than those relating to the declaration or disclosure of interests. He was worried that the complaint handling mechanism might be used as a tool for political persecution if no sufficient safeguards were put in place to protect the right of a Member under complaint. He proposed that the Committee should review the Procedure from this perspective with a view to providing adequate political or procedural safeguards, and that the legal adviser to the Committee might assist the Committee in this respect.

5. Ms Emily LAU said that one major safeguard was that the composition of the Committee was broadly representative of the political

groupings to which Members belonged. Senior Assistant Legal Adviser 1 (SALA1) said that since the beginning of the work to draft and revise the Procedure, the Committee had borne in mind that it should guard the complaints handling mechanism from being abused for attacking the integrity of Members, and the Secretariat was also aware of the need to protect the right of a Member under complaint.

6. In reply to Ms Emily LAU's question about the practices of selected overseas legislature in handling complaints, the clerk drew members' attention to the information set out in LC Paper No. AS335/04-05, issued to members for the Committee meeting held on 27 June 2005. In the United Kingdom (UK), complaints relating to the misuse of allowances for personal interest by Members of the House of Commons of the Parliament were considered by the Parliamentary Commissioner for Standards, who was appointed by the House by resolution. In Canada, such complaints were considered by the Ethics Commissioner, who was appointed by the Governor in Council after such an appointment had been approved by resolution of the House. In the United States, such complaints were considered by the Committee on Standards of Official Conduct, which comprised 10 members divided evenly by party affiliation, with five from the majority party and five from the minority party. In Australia, such complaints were considered by the Committee on Members' Interests, which comprised seven members, with four of them from the Government Party and three from non-government parties or independents. In reply to Ms Emily LAU's further question, the clerk said that in the UK, the Parliamentary Commissioner for Standards was accountable to the Committee on Standards and Privileges, and no one party was allowed to hold an overall majority in the membership of that Committee.

Proposed amendments to paragraph 21 of the Procedure

7. Mr Alan LEONG said that paragraph 21 of the Procedure, as currently drafted, required a Member under complaint to sign a confidentiality undertaking that he would not disclose the proceedings of hearings held in camera. As a result, the Member might be disadvantaged, as he was deprived of the opportunity to discuss his case with confidants within his political party or with legal advisers. This might also be regarded as depriving the Member of the privileges to confidential legal advice under the common law.

8. In reply, SALA1 said that a Member under complaint could always discuss with his legal adviser, as he had the constitutional right to confidential legal advice. As a standing committee of the Council, the Committee had the powers under the P&P Ordinance, which were also explicitly stated in paragraph 9 of the Procedure. Where a Member under complaint was ordered to attend before the Committee, he would be entitled, under section 14 of the

P&P Ordinance, to the same rights and privileges as those before a court of law. Such rights included the right to confidential legal advice, the right to refuse to produce documents or answer questions on grounds of public interest and the right to refuse to answer questions which would tend to expose him to criminal proceedings. The privilege of confidential legal advice was well-established by case laws.

9. Ms Emily LAU said that while she agreed with Mr Alan LEONG that a lot of details were involved in making OER claims, she did not consider that there were many traps. She pointed out that the more stringent the OER system, the less likely that it would be abused. Also, the Accounts Office of the Secretariat had been very strict in vetting Members' OER claims. Secretary General (SG) said that he had received comments from Members and their assistants that the vetting of OER claims by the Accounts Office of the LegCo Secretariat was sometimes too strict, which was understandable from their perspective. He added that his decision would be sought in case of doubtful claims, and complaints relating to OER claims in the past were mainly concerned with the genuineness of the bills attached to the claim forms or whether the expenses were actually incurred solely for LegCo business.

10. The Deputy Chairman said that from the beginning, he had not been keen with the proposal to expand the jurisdiction of the Committee to handle complaints relating to OER claims. He considered that OER claims were always closely scrutinized by the Accounts Office, and any Member forging documents relating to OER claims could be prosecuted. Political persecution would be less likely when all Members of LegCo were elected by universal suffrage, as in developed western countries. As the primary reason for the Committee to impose the confidentiality requirement on hearings held in camera was to protect the interest of the Member under complaint, he was not too worried that the Member would disclose confidential information to outsiders, and he should be allowed to discuss his case with his advisers.

11. Ms Emily LAU added that disclosure of confidential information would undermine the credibility of the Committee and the legislature as a whole. She considered such an act constituted misbehaviour and should be censured under Article 79(7) of the Basic Law. Nevertheless, she agreed that a Member under complaint should be allowed to seek advice from his advisers. However, these persons should be asked to pledge not to divulge any confidential information, and the Member under complaint should be held responsible for any disclosure by such persons.

12. Mr Albert CHENG said that the primary aim of imposing the confidentiality requirement was to prohibit the leakage of the proceedings of Committee meetings held in camera resulting in its being reported by the media. However, the confidentiality requirement in paragraph 21 of the Procedure, as

currently drafted, would have the inadvertent effect of prohibiting a Member under complaint to discuss his case with his advisers as well. Also, it would be unfair to the Member if he was punished for the disclosure made without his consent by his advisers.

13. Mr Abraham SHEK pointed out that Rule 81 of the Rules of Procedure (RoP) was only concerned with the premature publication of evidence. It did not prohibit any private discussion between the Member under complaint and his advisers.

14. Ms Emily LAU asked if the Member under complaint would breach Rule 81 of RoP, which prohibited the premature publication of evidence, by having private discussions with his advisers which did not lead to premature publication of evidence. Mr LI Kwok-ying said that it might not always be easy to distinguish between “disclose” and “publish”, both of which were used in paragraph 21. SALA1 replied that Rule 81 of RoP might be construed by the mischief that it was trying to cure. One possible consequence of premature publication of the Committee’s deliberations would be that the matter might be pre-judged, and the comments made by the media and the public might influence the Committee’s decisions. In this light, the aim of the rule seemed not to prohibit the Member from discussing with his advisers, but to prohibit disclosure in the sense of to the public.

15. The Deputy Chairman considered that it was not necessary to ask the Member under complaint to sign a confidentiality undertaking when he attended the hearings of the Committee held in camera. However, it was necessary to do so before the Member was given a copy of the relevant parts of the Committee’s draft report for his comments.

16. Mr Albert CHENG asked if a Member under complaint was subject to Rule 81 of RoP. SG advised that the sanctions set out in Rule 81(2) of the RoP were applicable only to members of the committee concerned. Mr Albert CHENG then said that he considered it necessary to ask the Member under complaint to sign a confidentiality undertaking.

17. Ms Emily LAU pointed out that since Rule 81 of RoP was applicable to various committees, it would not be appropriate for the Committee to move amendments to it.

18. The Deputy Chairman said that when there were media reports that a Member had made inappropriate OER claims, he would be subject to huge pressure to respond to such reports. If he had signed a confidentiality undertaking, he might be handicapped in responding to media queries. Ms Emily LAU said that a Member under complaint would have the freedom and

time to explain his case to the media before he was asked to attend hearings of the Committee held in camera.

19. The Chairman pointed out that paragraph 21 of the Procedure listed “deliberations and decisions of the Committee” as confidential information, whereas Rule 81 of RoP did not. She invited members to consider if the phrase should be taken out from the paragraph so that the scope of information it classified as confidential would tally with that listed in Rule 81 of RoP. Ms Emily LAU responded that it was important that such information should be kept confidential so as not to affect the Committee’s work.

20. Mr LI Kwok-ying said that as the purpose of the Committee’s investigation was to find out the facts of a complaint, the Member under complaint should be allowed to seek advice from his advisers so that his rights were sufficiently protected.

21. The Deputy Chairman said that while he considered that a Member under complaint should not be required to sign a confidentiality undertaking, he agreed that it might be morally wrong for the Member to disclose the proceedings of meetings held in camera by claiming that he had been unfairly treated. Mr Alan LEONG said that if a Member under complaint considered that he had been unfairly treated, he could always request that a hearing be conducted in public. The Chairman said that according to paragraph 22 (previously numbered as 18) of the Procedure, the Member might request that the hearings be held in public, whereas the Committee itself could not. The Committee could do nothing if the Member made such claims but did not request the hearings be conducted in public. Mr Albert CHENG added that the Member might selectively release information which would be to his advantage.

22. Ms Emily LAU enquired why it had not been provided in paragraph 22 that the Committee might decide on its initiative to hold meetings dealing with complaints in public. She considered that it should be so provided in the Procedure. SALA1 replied that the hearings should in general be conducted in camera, as sensitive or private information might be involved. However, for fairness to the Member under complaint, he should be given the choice whether or not to request a hearing be held in public. Mr Albert CHENG said that he considered the present arrangement appropriate, as it offered protection for the Member under complaint.

23. Mr Albert CHENG proposed that the term “disclose” in paragraph 21 be replaced by “publish”. The Deputy Chairman proposed that “the Member under complaint” be deleted from the first sentence in paragraph 21 so that the Member would not be required to sign a confidentiality undertaking when he attended before the Committee. He also proposed that an additional paragraph be added to provide that the Member under complaint was required to

sign a confidentiality undertaking before he was given a copy of the relevant parts of the Committee's draft report for his comments. Members agreed to the three proposals.

the clerk 24. The Chairman instructed that the clerk to forward the revised section on Confidentiality Requirement to members as soon as possible. She undertook to seek individual members' views after the coming House Committee meeting on 26 May 2006.

Paragraph 2 of the Procedure

25. Mr Abraham SHEK said that while one of the reasons for which the Chairman to decide not to hold a meeting, as listed in paragraph 2 of the Procedure, was that "the complaint was made about a Member's act(s) or omission(s) which had allegedly taken place seven years or more prior to the date of the complaint", the Chairman could still decide otherwise. Hence, if the Committee was dominated by a party in future, it might be used as a platform for political persecution as a Member might be accused of having abused the OER system many years ago. He enquired about the rationale for setting the cut-off period at seven years, and whether it could be stated that no meeting should be held if the complaint was concerned only with a Member's act allegedly taken place seven years or more.

26. The clerk replied that the proposed period of seven years was modelled on the practice in the UK Parliament. Under the Procedure, the Chairman's decision of not holding a meeting could be overturned by a majority of the members of the Committee. SALA1 said that documents of more than seven years ago might have been destroyed, as they were not required to be kept for tax audit purpose. The Chairman proposed, and members agreed, that the issue might be reviewed in future.

Proposed amendments to paragraphs 10, and 15 and other textual amendments proposed to various paragraphs of the Procedure

27. Members did not raise objection to the proposed amendments.

III. Date of next meeting

28. Ms Emily LAU said that it was of paramount importance that the mechanism for the Committee to handle complaints relating to OER claims be put in place as soon as possible, in any case before the current LegCo session

drew to a close, so that the Committee could deal with the such complaints as they were received.

29. Ms Emily LAU proposed that all Members be invited to attend the next meeting of the Committee to express their views.

30. Members agreed that the next meeting originally scheduled for 29 May 2006 be re-scheduled to 2 June 2006 immediately after the House Committee meeting.

31. The meeting ended at 10:40 a.m..

Council Business Division 3
Legislative Council Secretariat
25 May 2006