

立法會

Legislative Council

LC Paper No. CMI/14/14-15

Ref : CB3/C/2(12-16)

Committee on Members' Interests Paper for the meeting 9 December 2014

Outcome of consultation with Members on the proposed revisions to the procedure for handling complaints

Purpose

This paper reports on the outcome of consultation with Members on the proposed revised procedure of the Committee on Members' Interests ("CMI") for handling complaints ("the Procedure").

Background

2. Taking into account the views of CMI of the Fourth Legislative Council and in the light of the experience of CMI of previous terms in handling complaints, CMI of the current term reviewed the existing Procedure and identified certain areas for improvement. Before implementing the improvement, CMI decided at its meeting on 29 April 2014 to consult all Members on the adoption of the proposed revised Procedure in **Appendix I**. The major differences between the existing and the proposed revised Procedures are summarised in **Appendix II**.

3. Pursuant to CMI's decision, Members were consulted on the adoption of the proposed revised Procedure by way of a questionnaire (LC Paper No. CMI/31/13-14).

Outcome of consultation with Members

4. All Members except the President responded to the questionnaire. The consultation outcome is set out in **Appendix III**. A summary of the consultation outcome is as follows:

- (a) 50 Members (72%) agree to the adoption of the proposed revised Procedure;

- (b) three Members (4%) disagree with the adoption ;
- (c) three Members (4%) have no view on the adoption; and
- (d) the remaining 13 Members (19%) disagree with certain parts of the proposed revised Procedure as follows:
 - (i) eight Members disagree with the proposed amendment that the complainant's identity will be disclosed to the Member under complaint and in any report on the complaint made by CMI to the Council (*paragraph 1 of the proposed revised Procedure*);
 - (ii) four Members disagree with the proposed amendment that CMI will not consider any complaint lodged by a person who has refused to allow his or her identity to be disclosed (*paragraph 2(a)(iii) of the proposed revised Procedure*);
 - (iii) 10 Members disagree with the proposed amendment that the Clerk to CMI be authorized to dispose of complaints which CMI will not consider or that do not fall within the CMI's purview (*paragraph 2 of the proposed revised Procedure*). They propose instead that a 3-person panel comprising the CMI Chairman and two other members from different political parties be set up under CMI to examine such complaints; and
 - (iv) one Member disagrees with the proposed amendments that the purpose of the Preliminary Consideration Stage is to decide whether CMI will conduct an investigation into a complaint and CMI will take into account readily available information such as media reports in making its decision (*paragraph 7 of the proposed revised Procedure*).

Advice sought

5. Members are invited to note the outcome of consultation with Members and advise on the way forward.

Council Business Division 3
Legislative Council Secretariat
13 November 2014

Draft
(June 2014)

**Procedure of the
Committee on Members' Interests
for Handling Complaints**

Procedure of the Committee on Members' Interests for Handling Complaints

Part I: Initial handling of a complaint

1. All complaints lodged with the Committee on Members' Interests ("the Committee"), whether by a Member or a member of the public ("the complainant"), must be in writing. The complainant's identity will be disclosed to the Member under complaint and in any report on the complaint made by the Committee to the Council.
2. Where a complaint:
 - (a) is made by an anonymous person, or by a person (i) who cannot be contacted, (ii) whose identity cannot be verified, or (iii) who has refused to allow his or her identity to be disclosed; or
 - (b) is made against a former Member; or
 - (c) is about a Member's act(s) or omission(s) which allegedly took place seven years or more prior to the date of receipt of the complaint; or
 - (d) is outside the purview of the Committee, as set out in Rule 73(1)(c) and (ca) of the Rules of Procedure ("the RoP"),the Clerk should send a written reply to the complainant, if the complainant can be contacted, that the Committee will not consider the complaint, and circulate the complaint and the written reply to members of the Committee ("members"). Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not consider, the Clerk should forward the complaint and the written reply to the Member. If item (a)(iii) of this paragraph is applicable, the Clerk should block out the information in relation to the identity of the complainant before forwarding the complaint to the Member under complaint.
3. Unless the complaint has been disposed of under paragraph 2, the Clerk should invite the Chairman to decide whether the Committee should hold a meeting to consider the complaint. The Chairman should inform the Clerk of such a decision within three working days from the date of being notified of the complaint.

4. The Chairman may decide not to hold a meeting to consider the complaint for the following reasons:
 - (a) the complaint is based merely on speculations, inferences or unfounded judgements; or
 - (b) the complaint involves substantially repeated allegations which have already been dealt with by the Committee and no fresh information has been produced; or
 - (c) other reasons the Chairman deems appropriate.
5. If the Chairman decides not to hold a meeting to consider the complaint, the Chairman should inform the Clerk of the reason(s) for the decision. The Clerk should then forward the Chairman's decision and the reason(s) therefor to members by a circular. Any member disagreeing with the Chairman's decision should reply to the Clerk within three working days from the date of the circular.
 - (a) If the Clerk has received replies from a majority of members indicating disagreement with the Chairman's decision upon the expiry of the aforesaid three working days, the Chairman should forthwith direct the Clerk to arrange a meeting to be held within 10 working days to consider the complaint.
 - (b) If the Clerk has received replies from less than a majority of members indicating disagreement with the Chairman's decision upon the expiry of the aforesaid three working days, the Chairman's decision and reason(s) therefor will be deemed to be those of the Committee and the Committee will not take further action on the complaint. The Clerk should forward the Committee's decision and the reason(s) therefor to the complainant in writing. Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not consider, the Clerk should forward the complaint and the written reply to the Member.
6. If the Chairman decides to hold a meeting to consider the complaint, the Clerk should arrange for the meeting to be held within 10 working days from receipt of notification of such a decision.

Part II: Consideration of a complaint

7. The Committee may hold one or more closed meetings for consideration of a complaint. The purpose of such meeting(s) is to decide whether the Committee will conduct an investigation into the complaint after taking into

account the following:

- (a) the information contained in the complaint;
 - (b) the relevant rules(s) that the Member under complaint is alleged to have breached; and
 - (c) any other relevant information readily available, such as records of interests registered by the Member under complaint, A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council ("Reimbursement Guide"), media reports, etc.
8. If the Committee decides not to conduct an investigation into the complaint, it will not take further action on the complaint. The Clerk should forward the decision and the reason(s) therefor to the complainant in writing. Where the Member under complaint has given the advance instruction that the Member should be informed of any complaint against the Member which the Committee does not investigate, the Clerk should forward the complaint and the written reply to the Member.
9. If the Committee decides to conduct an investigation into the complaint, the Clerk should inform the Member under complaint of the complaint and the Committee's decision.

Part III: Investigation of a complaint

10. The Committee may hold one or more meetings for investigation of a complaint. During the investigation of a complaint, the Committee may:
- (a) invite the Member under complaint to provide information in writing and/or to attend the Committee's meeting(s) to give explanations and provide information;
 - (b) invite the complainant or any other persons to provide information in writing and/or to attend the Committee's meeting(s) to provide information; and
 - (c) gather or cause to be gathered information relevant to the complaint from any other sources as the Committee deems appropriate.
11. If the complaint relates to a Member's claims for reimbursement of operating expenses or applications for advance of operating funds, the Committee should have regard to the provisions of the Reimbursement Guide, as provided in Rule 73(1A) of the RoP.
12. The Committee may invoke the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order by summons

any person to attend before the Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

13. The Committee may cause any person summoned to attend before it to be examined upon oath, and ask the person to verify upon oath any information and statements that the person has provided previously or at any previous meetings.
14. Meetings of the Committee for investigating the complaint should be closed meetings unless the Committee has acceded to the request of the Member under complaint, or of any person invited or ordered to attend the relevant meeting(s), that they be held in public.
15. In attending meeting(s) before the Committee, the Member under complaint may be accompanied by a maximum of three persons for the purpose of giving the Member assistance or advice ("accompanying persons"). The accompanying persons may be different persons for different sessions of meetings of the Committee and may include legal adviser(s). The accompanying persons are not allowed to address the Committee. The Member under complaint must answer questions, give explanations or provide information personally.

Part IV: Report to the Council

16. Upon completion of investigation of the complaint, the Committee should submit a report on the complaint to the Council under Rule 73(1)(e). The relevant parts of the draft of the report should be forwarded to the Member under complaint, subject to the Member signing of a confidentiality undertaking referred to in paragraph 23. The Member under complaint may, within seven working days from the date of receipt of the relevant parts of the draft report, make a written response to the Committee.
17. After considering the written response of the Member under complaint under paragraph 16, if any, the Committee may finalize its report. The transcripts of evidence taken at meeting(s) should be published in full as far as possible in, and form part of, the Committee's report to the Council.
18. Where the Committee is of the opinion that the Member under complaint has breached any of the relevant rule(s) of the RoP, the Committee may make a recommendation on sanction of the Member under Rule 85 of the RoP. In considering whether or not to recommend a sanction, or what sanction to recommend, the Committee may take into account, among other things,

whether there is evidence that the breach of the relevant rule(s) of the RoP by the Member under complaint:

- (a) was a deliberate act; and
- (b) involved any conflict of interests with the Member's role as a Legislative Council Member.

19. Upon reporting to the Council, the Committee should make available a copy of the report to the complainant.

Part V: Suspension of work on a complaint

20. If, in the course of considering or investigating a complaint, the Committee has come to the knowledge that the complaint is or matters related to it are being investigated by a law enforcement agency or related to a case pending in a court of law, the Committee may suspend its consideration or investigation of the complaint until the conclusion of the investigation by the law enforcement agency or the legal proceedings.

Part VI: Confidentiality requirements

21. All members, and other persons attending closed meetings of the Committee (except the Member under complaint), must each sign a confidentiality undertaking that the member or person will not publish, without the prior written authorization of the Committee, any matter relating to the proceedings of closed meetings of the Committee, including evidence taken before the Committee, documents produced to it, its deliberations and decisions, except such matter that has already been published or contained in any report presented by the Committee to the Council.

22. Where the Committee finds that a member or any person has breached the undertaking given to the Committee, the Committee will consider whether and how to deal with the member or that person, and may take actions including moving a motion in the Council for the admonishment or reprimand of the member under Rule 81 (Premature Publication of Evidence) of the RoP, or passing a motion of the Committee expressing its disapproval of the member or that person for breaching the undertaking.

23. Before the Committee forwards the relevant parts of its draft report to the Member under complaint under paragraph 16, the latter must sign a confidentiality undertaking that the Member will not publish, without the prior written authorization of the Committee, any matter relating to the draft report, except such matter that has already been published or contained in any report

presented by the Committee to the Council. Where the Committee finds that the Member under complaint has breached the undertaking given to the Committee, the Committee may consider whether and how to deal with the Member, and may take actions including passing a motion of the Committee expressing its disapproval of the Member for breaching the undertaking.

Part VII: Participation of members in the handling of complaints

24. No member is allowed to participate as a member of the Committee in the handling of a complaint or to attend any of the meetings of the Committee to deliberate on or inquire into a complaint where the complaint is made by or against that member.

Major differences between the existing and revised Procedures

Issues	Existing Procedure	Revised Procedure
(a) <i>Disposal of complaints which CMI will not consider or which fall outside its purview</i>	Clerk to seek instruction of Chairman (paragraph (1))	Clerk is authorized to handle (paragraph 2)
(b) <i>Disclosure and making public of the complainant's identity</i>	Nil	To disclose, except where a complaint is not followed up because of the complainant's refusal to have his/her identity disclosed (paragraphs 1 and 2)
(c) <i>Time limit for Chairman to decide whether to hold a meeting to consider a complaint</i>	2 working days (paragraph (1))	3 working days (paragraph 3)
(d) <i>Time limit for scheduling a meeting to consider a complaint after Chairman has decided to hold a meeting</i>	7 working days (paragraphs (3) and (4))	10 working days (paragraphs 5(a) and 6)
(e) <i>Members under complaint to indicate wish to be informed of complaint which CMI has decided not to consider or investigate</i>	Nil	Members may give advance instructions (paragraphs 2, 5(b) and 8)
(f) <i>Purpose of and course of actions in the Preliminary Consideration Stage</i>	To ascertain the subject of the complaint and gather information on the complaint. During that stage, CMI may (a) invite or order the Member under complaint and the complainant to	To decide whether CMI will conduct an investigation into the complaint (paragraph 7)

Issues	Existing Procedure	Revised Procedure
	<p>provide information and/or attend its meetings/hearings;</p> <p>(b) determine whether a complaint is substantiated;</p> <p>(c) make a report on substantiated complaint, which may include a recommendation on sanction of the Member under complaint (<i>paragraphs (6) to (12)</i>)</p>	
(g) <i>Information to consider at first meeting of the Preliminary Consideration Stage</i>	Information contained in the complaint (<i>paragraph (7)(a)</i>)	Information contained in the complaint and readily available information such as media reports (<i>paragraphs 7(a) and (c)</i>)
(h) <i>Factor(s) which CMI may consider in deciding whether to recommend sanction of the Member under complaint</i>	Whether the breach of relevant rule(s) is due to an honest mistake of the Member under complaint (<i>paragraph (19)</i>)	Whether the breach of relevant rule(s) (a) is a deliberate act; and (b) involved any conflict of interests (<i>paragraph 18</i>)
(i) <i>Report to the Council</i>	CMI may decide whether to report to the Council if the complaint is not substantiated (<i>paragraph (20)</i>)	CMI should report to the Council after completion of investigation of a complaint (<i>paragraph 16</i>)

Consultation with Members on the proposed revised procedure for handling complaints

Appendix III

Detailed outcome of Members' responses

Agree : 50	Partly agree : 13	Disagree : 3	No comment : 3
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Agree			
CHAN Kam-lam	WONG Kwok-hing	Regina IP	MA Fung-kwok
TAM Yiu-chung	WONG Kwok-kin	Michael TIEN	(NCF) (1 member)
WONG Ting-kwong	CHAN Yuen-han	(NPP) (2 members)	
Starry LEE	Alice MAK		POON Siu-ping
CHAN Hak-kan	KWOK Wai-keung	Charles Peter MOK	(FLU) (1 member)
IP Kwok-him	TANG Ka-piu	Kenneth LEUNG	
Steven HO	(FTU) (6 members)	(PC) (2 members)	
CHAN Han-pan			LAM Tai-fai
LEUNG Che-cheung	Alan LEONG	LEUNG Kwok-hung	CHAN Kin-por
Elizabeth QUAT	Claudia MO	(LSD) (1 member)	LEUNG Ka-lau
CHIANG Lai-wan	Kenneth CHAN		Paul TSE
Christopher CHUNG	KWOK Ka-ki	Gary FAN	NG Leung-sing
(DAB) (12 members)	Dennis KWOK	(ND) (1 member)	YIU Si-wing
LAU Wong-fat	(CP) (5 members)		Tony TSE
Abraham SHEK			(U/I) (7 members)
Jeffrey LAM	Tommy CHEUNG		
Andrew LEUNG	Vincent FANG		
Priscilla LEUNG	James TIEN		
Christopher CHEUNG	Frankie YICK		
LO Wai-kwok	CHUNG Kwok-pan		
(BPA) (7 members)	(LP) (5 members)		

Partly agree		Disagree		No comment	
Albert HO	LEE Cheuk-yan	Albert CHAN	LEUNG Yiu-chung		
James TO	Cyd HO	CHAN Chi-chuen	(NWSC) (1 member)		
Emily LAU	CHEUNG Kwok-che	(PP) (2 members)			
WU Chi-wai	Fernando CHEUNG		Frederick FUNG		
SIN Chung-kai	(LaP) ² (4 members)	Ronny TONG	(ADPL) (1 member)		
Helena WONG	Joseph LEE ¹	(CP) (1 member)			
(DP) ¹ (6 members)	IP Kin-yuen ¹		WONG Yuk-man		
	Martin LIAO ³		(U/I) (1 member)		
	(U/I) (3 members)				

1. (a) Propose that a 3-person panel (including the Chairman) be set up under the Committee on Members' Interests ("CMI") to examine whether or not a complaint is within CMI's purview.
 (b) Disagree with the proposed amendment on disclosing and publishing the identity of the complainant.
 (c) Agree to other proposed amendments.
2. (a) Propose that a 3-person panel comprising the Chairman and two other members from different political groups be set up to examine those complaints that CMI will not consider or do not fall within its purview.
 (b) Object to the requirement that the complainant must give consent for disclosure of his/her identity if CMI is to handle his/her complaint.
 (c) Agree to other proposed amendments.
3. Agree to the adoption of the proposed revised Procedure, but disagree with the proposed amendments that the purpose of the Preliminary Consideration Stage is to decide whether CMI will conduct an investigation into a complaint and CMI will take into account readily available information such as media reports in making its decision.

Abbreviation

ADPL	Hong Kong Association for Democracy and People's Livelihood	FTU	The Hong Kong Federation of Trade Unions	NPP	New People's Party
BPA	Business and Professionals Alliance for Hong Kong	LaP	Labour Party	NWSC	Neighbourhood and Worker's Service Centre
CP	Civic Party	LP	League of Social Democrats	PC	The Professional Commons
DAB	Democratic Alliance for the Betterment and Progress of Hong Kong	LSD	Liberal Party	PP	People Power
DP	Democratic Party	NCF	New Century Forum	U/I	Political affiliation undeclared/Independents
FLU	The Federation of Hong Kong and Kowloon Labour Unions	ND	Neo Democrats		