

Bills Committee on the Medical Registration (Amendment) Bill 2016

Government's response to the follow-up actions arising from the discussion at the meeting on 19 April 2016

Complaint investigation and disciplinary inquiry mechanism of the Medical Council of Hong Kong

This note provides the Government's response to the follow-up actions, in particular on the complaint investigation and disciplinary inquiry mechanism of the Medical Council of Hong Kong ("MCHK"), arising from the discussion at the meeting on 19 April 2016.

Complaint investigation and disciplinary inquiry mechanism of MCHK

2. MCHK handles complaints against registered medical practitioners in accordance with the procedures laid down in the Medical Registration Ordinance ("MRO") (Cap. 161) and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E).

3. In accordance with the established procedures, MCHK processes complaints through part or all of the following three stages –

- (a) Initial consideration by the Preliminary Investigation Committee ("PIC") chairman and deputy chairman in consultation with a lay member of PIC to decide whether the complaint is groundless or frivolous, and should not proceed further or that it should be referred to PIC for full consideration;
- (b) Examination at PIC meetings of the complaint as well as explanation of the medical practitioner(s) concerned, and then forming of a decision on whether or not there is a prima facie case to refer the complaint to MCHK for holding of an inquiry; and

- (c) Inquiry by MCHK comprising a panel of at least five council members, or not less than three council members and two assessors, at least one of whom shall be a lay member but subject to the majority being registered medical practitioners, to hear the evidence from both the Secretary of the Council and the defending medical practitioner(s).

4. Members raised concerns on the “nine bottlenecks” of complaints handling and conduct of inquiries as alleged by the Hong Kong Public Doctors’ Association at the Bills Committee meeting held on 11 April 2016. The current complaint handling procedures and the expected improvements upon the passage of the Medical Registration (Amendment) Bill 2016 (“the Bill”) and implementation of related administrative measures are detailed in paragraphs 5 to 23 below.

(1) Information and Statutory Declaration from the Complainant

5. Under section 8(1) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E), the chairman or, in his absence, the deputy chairman of the PIC may (a) require the complainant to set out the specific allegations in writing and the grounds thereof; (b) require the complainant to make clarifications about the complaint or information; and (c) require that any matter alleged in the complaint or information to be supported by one or more statutory declarations. The chairman or the deputy chairman has the power to seek additional information and/or statutory declaration(s) from the complainant as he considers necessary.

6. Upon the passage of the Bill, MCHK may set up more than one PIC to handle complaint cases. Additional resources will be provided to the Medical Council Secretariat (“MC Secretariat”) to ensure that adequate executive support, including regular follow up with the complainants, will be provided to MCHK to help expedite the processing of complaint cases.

(2) Medical Reports / Records

7. The chairman or the deputy chairman of the PIC has the general powers to carry out investigations, obtain materials and seek expert assistance from outside sources, which are reasonably necessary to enable him to decide whether the case is frivolous or groundless, or the case should be referred to the PIC for consideration¹. Upon receiving directives from the chairman or the deputy chairman of the PIC to seek relevant medical reports or records from the hospitals/clinics concerned, MC Secretariat will request consent from the complainants, if necessary, and approach the hospitals/clinics concerned for the required medical reports/records for consideration by the chairman or the deputy chairman of the PIC or, if the complaint is referred to PIC, at the PIC meetings.

8. Upon the passage of the Bill, MCHK may set up more than one PIC to handle complaint cases. Additional resources will be provided to MC Secretariat to ensure adequate executive support, including regular follow up with the hospitals/clinics concerned, will be provided to MCHK to help expedite the processing of complaint cases.

(3) Independent Expert Opinion

9. The chairman or the deputy chairman of the PIC has the general powers to carry out investigations, obtain materials and seek expert assistance from outside sources, which are reasonably necessary to enable him to decide whether the case is frivolous or groundless, or the case should be referred to the PIC for consideration. Upon receiving directives from the chairman or the deputy chairman of the PIC to seek expert assistance from outside sources, the MC Secretariat will invite expert for providing independent opinion, in particular for treatment-related cases. The expert reports will be considered at the PIC meetings.

10. At present, the MC Secretariat has compiled a list of volunteer doctors through various colleges of HKAM, the University of Hong Kong and The Chinese University of Hong Kong, and invites them to provide

¹ Dr Li Wang Pong Franklin v Medical Council of Hong Kong & Anor [2009] 1 HKC 352

independent expert opinion when necessary. If no suitable experts can be secured from the list, the MC Secretariat will invite experts from overseas for providing independent opinion.

11. The Government has in-principle agreed to the provision of honorarium as a token of gratitude to experts who provide assistance to the investigation work at the PIC stage. We are discussing with MCHK on the detailed arrangement.

(4) Legal Advice from Department of Justice (“DoJ”)

12. At present, DoJ provides legal support to MCHK at PIC and inquiry stages, including formulation of charges against the defendant doctors and representing the Secretary of MCHK at the inquiry.

13. Upon the passage of the Bill, MCHK may set up more than one PIC. Additional resources will be provided to DoJ correspondingly to ensure adequate support is given to MCHK to handle complaints and conduct disciplinary inquiries. The Bill also allows the Secretary for Justice to appoint counsel or solicitor in private practice to carry out the statutory duties of the Secretary of MCHK in inquiries, thus enhancing DoJ’s flexibility and capacity in providing legal support to MCHK.

(5) Criminal Proceedings

14. From a legal point of view, a criminal investigation should take primacy over other non-criminal disciplinary proceedings. Hence, it is a normal practice for MCHK to process a complaint after the determination of its related prior criminal investigation and/or subsequent criminal proceedings.

15. At present, only two cases out of 931 are pending for the completion of criminal proceedings.

(6) Written Explanation to the PIC from the Defendant Doctors

16. Under section 9(2)(f) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E), the defendant

doctor has a right to present his/her written explanation to the PIC if the case is decided to be referred to the PIC for consideration.

17. According to the Practice Directions on Preliminary Investigation of Complaints, the defendant doctor should submit a written explanation within one month upon receiving the Notice of PIC meeting. Extension of time will be granted at the discretion of the chairman of the PIC if there are cogent reasons and no extensions will be granted beyond three months, except in very exceptional situation.

(7) PIC Meeting

18. Under section 20BA(2)(d) of MRO, there is only one PIC. The number of complaint cases received has already exceeded its current capacity. The complaint investigation and disciplinary mechanism is prescribed by law with bottlenecks that are clogging up the system.

19. Upon the passage of the Bill, more than one PIC and more PIC meetings can be arranged to expedite the processing of the complaint cases.

(8) Disciplinary Inquiry

20. Under section 3B of MRO, MCHK can only appoint one Legal Adviser to assist in the inquiry.

21. Under section 21B of MRO, the quorum of an inquiry meeting is five, either (a) at least five Council members (under the existing MRO, 24 registered medical practitioners and four lay Council members); or (b) not less than three Council members and two assessors (under the existing MRO, there are 10 registered medical practitioners and four lay assessors), and at least one of whom shall be a lay Council member but subject to the majority being registered medical practitioners.

22. Upon the passage of the Bill, the quorum will be adjusted to provide more flexibility and the number of lay Council members and non-Council members will be increased from 42 (28 Council Members and 14 assessors) to 66 (32 Council Members and 34 assessors). In

addition, MCHK may appoint more than one legal adviser. Therefore, it will enable MCHK to conduct more than one inquiry at the same time and more frequently.

(9) Venue

23. There is no precedent case that a disciplinary inquiry cannot be arranged due to the clash of venue with other boards and councils. At present, the venue is not fully occupied.

Secretariat support to MCHK

24. In addition to the Secretary of MCHK, six staff (including one Chief Executive Officer, one Senior Executive Officer, one Executive Officer I, one Executive Officer II, one Clerical Officer and one Assistant Clerical Officer in MC Secretariat) are primarily or exclusively deployed to perform duties related to the handling of complaints and conduct of inquiries for MCHK. The existing staff have already been stretched to their limit to meet the increasing workload of PIC and inquiry meetings. The Government has been discussing with MCHK Secretariat on the additional manpower resources required. The Government has already decided to earmark \$4 million in 2016/17 financial year to strengthen the manpower of MC Secretariat in order to help MCHK expedite complaints handling and conduct of inquiries, whether the Bill is passed or not. More resources will be provided upon passage of the Bill, depending among other things, the additional number of PICs to be established and also the increased frequency of disciplinary inquiry hearings.

Time required for handling complaint case at different stages

25. The number of caseloads at and time required for different stages are in the flowcharts at **Annex**. Under the current mechanism with existing caseloads, the average time required for handling complaint case at initial consideration by the PIC chairman and deputy chairman, PIC meeting and disciplinary inquiries meeting stages are 17 months, 13 months and 28 months respectively and the total average time required is

58 months. After clearing the backlog of cases, it is estimated that the handling time for cases requiring expert opinion would be shortened from 58 months to 36 months. For cases which do not require expert opinion, it is estimated that the handling time would be shortened to 24 months. Details are summarised in the table below –

	Initial consideration by PIC chairman and deputy chairman	PIC meeting	Disciplinary inquiry meeting	Total
Time required for existing complaint handling process	17 months	13 months	28 months	58 months
Accumulative caseloads	about 700 cases	about 150 cases	about 80 cases	about 930 cases
Expected time required after clearing backlog	9 months	13 months	14 months	36 months
	(16 months)*		(8 months)*	24 months

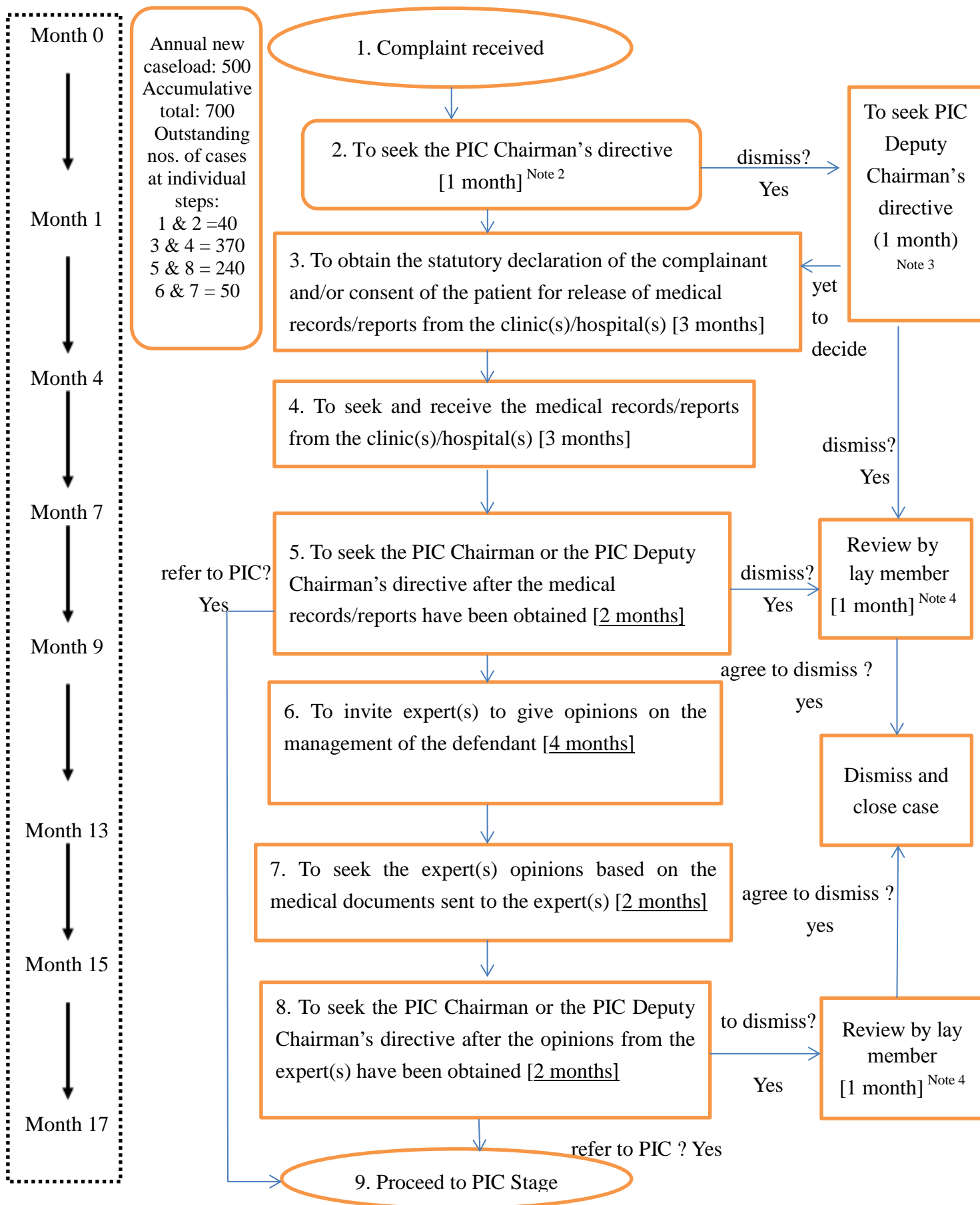
*for cases not requiring expert opinion

**Food and Health Bureau
April 2016**

**Flowchart showing the procedures
at the initial consideration by the chairman and deputy chairman
of the Preliminary Investigation Committee (PIC) stage** ^{Note 1}

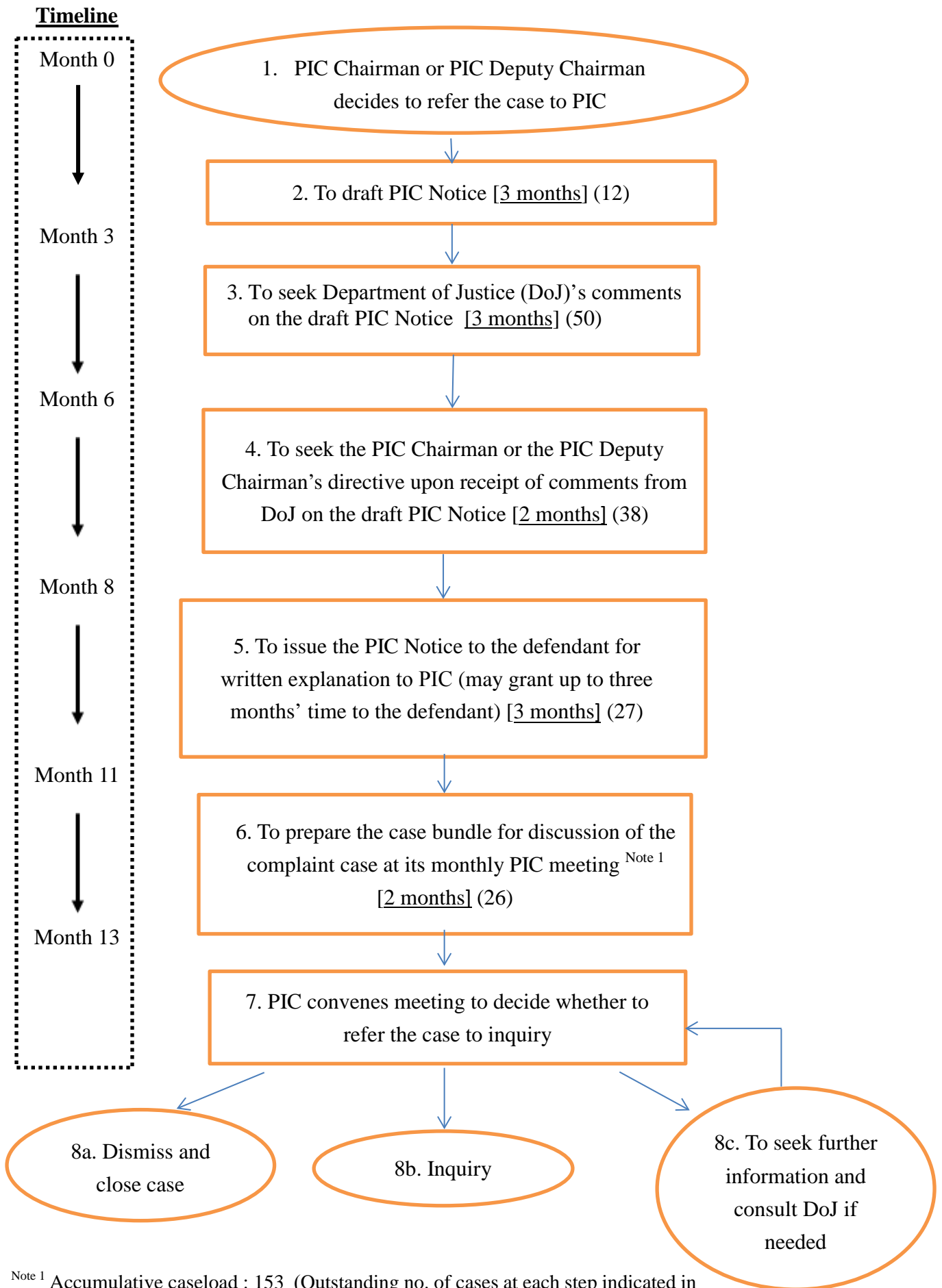
Annex

Timeline



^{Note 1} This flowchart is a simplified version to present the normal workflow at the pre-PIC stage.
^{Note 2} The Chairman can dismiss the case at the stage 2, or at steps 5 to 8, and the case will have to pass to the Deputy Chairman for decision.
^{Note 3} The Deputy Chairman can dismiss the case at this stage or at steps 5 to 8, and the case will be passed to the lay member for decision. If the Deputy Chairman decides not to dismiss the case, the case will have to go through from step 3 afresh.
^{Note 4} If the lay member decides not to dismiss the case, the case will be referred for Chairman's directives again.
^{Note 5} For those cases that no expert opinion will be required, the processing time can be further adjusted downward by around 6 months.
Total time required : 17 months

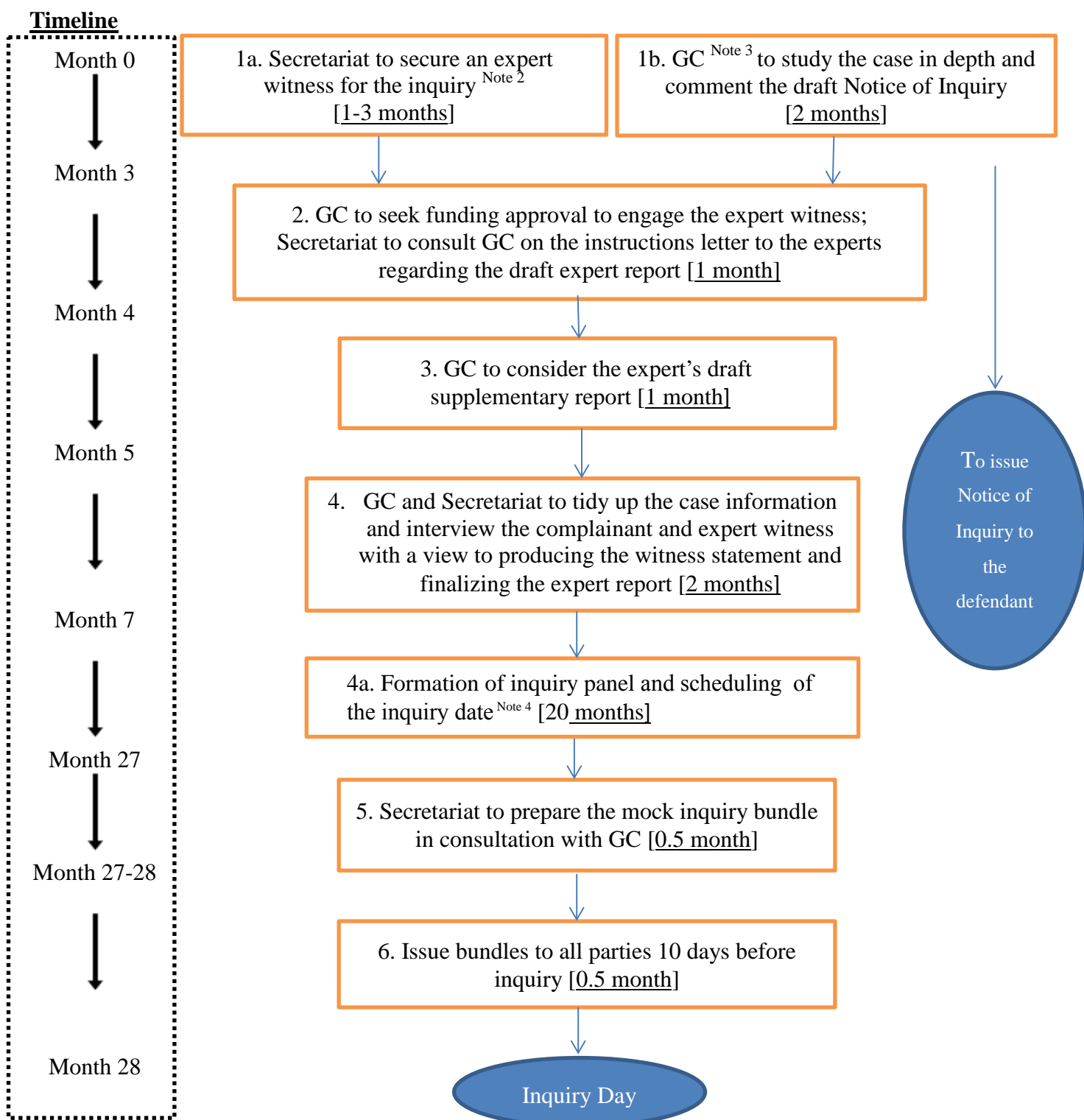
**Flowchart showing the procedures
at the Preliminary Investigation Committee (PIC) stage** ^{Note 1}



^{Note 1} Accumulative caseload : 153 (Outstanding no. of cases at each step indicated in respective bracket)

Total time required : 13 months

Flowchart showing the procedures at the inquiry stage^{Note 1}



^{Note 1} Accumulative caseload: 78

^{Note 2} New invitation is required if the expert at the pre-PIC stage has declined to continue to provide expert assistance. For those inquiries that no expert opinion will be required, the processing time can be further adjusted downward by around 6 months.

^{Note 3} GC = Government Counsel appointed by the Department of Justice

^{Note 4} Under the current arrangement, all 4 lay members are required to serve the PIC on a rotational basis and any lay member who has taken part in the PIC will be debarred from attending the subsequent disciplinary inquiry. Owing to the shortage of manpower, particularly lay members of the Council, the formation of a panel for the inquiry will further be affected when coupled with the possibility of having conflict of interest between the lay member and the defendant. It may take the Secretariat extra time and effort to appoint afresh panel for the inquiry.

Total time required: 28 months