

SOCIAL WORKERS REGISTRATION BOARD
Notes of the 68th Meeting of the Committee on Professional Conduct

Date: 13 March 2018
Time: 7:30 p.m.
Venue: Conference Room, 26/F Eastern Commercial Centre, 83 Nam On Street, Shau Kei Wan, Hong Kong.
Present: Mr. WONG Ka-ming (Acting Convenor)
Mr. HUI Chung-shing, Herman
Dr. LEUNG Chuen-suen
Ms. LUK Ka-mei
Ms. LIT Ming-wai (co-opted member)
Mr. LUN Chi-wai
Mr. SHIU Ka-chun
Mr. TSANG Kin-chiu
Apology: Mr. MA Kam-wah, Timothy
Secretary: Mr. LEE Wing-po, Eric, Registrar and
Ms. FAN Lai-yee, Veronica, Assistant Registrar

Mr. WONG, Convenor of the Committee, presided the meeting.

Welcome New Co-opted Member

1. The Convenor welcomed and thanked Ms. LIT Ming-wai to join the Committee being the co-opted member.

Confirmation of the notes of the 67th meeting

1. The notes of the last meeting were confirmed without amendment.

Matters arising from the 67th meeting

(Mr. Shiu arrived at this juncture.)

Co-opted Members

2. (Anonymous) updated that a letter was sent to (anonymous) inviting her to be the co-opted member of the Committee as well but no response was received so far. The Committee agreed not to further nominate another co-opted member as the term of service would be nine months and only one to two meetings would be required.

Acting Convenor

3. The Committee considered whether Mr. Tsang Kin-chiu would be resuming the duty of Convenor of the Committee at this juncture when the 3-month appeal period of his complaint case has expired. Mr. Tsang proposed Mr. Wong to continue in the capacity of

Acting Convenor till the end of this term as the remaining term of service was short. Mr. Wong had no objection to his proposal. (Anonymous) held the view that when the Committee had previously agreed the invitation to Co-opted Member, the short duration would not be a sufficient justification. Mr. Wong pointed out that he has been working in the Taskforce of Reviewing the Code of Practice since early 2017 in the capacity of Acting Convenor, and it would not be easy for Mr. Tsang to take up the work as he was not involved in the review exercise. Mr. Tsang agreed.

(Mr. Hui arrived at this juncture.)

4. (Anonymous) pointed out that it was initially Mr. Tsang who applied to the Board for leave from the post of Convenor and the Board approved his application at that point of time, against this backdrop, it would be up to Mr. Tsang's own will as to whether he would inform the Board of the expiration of the leave and resuming his duty or not. Mr. Tsang indicated that he would continue to apply for leave and the Committee took note that Mr. Wong would continue the role of Acting Convenor.

Issues in relation to disciplinary inquiry being held in public

5. The Secretary walked through the paper invited the Committee to discuss the proposals of on-site arrangement, the general etiquette for attending disciplinary hearing, the typhoon and rainstorm arrangement and to give directives on what and how the information to be accessed by the public.

On-site arrangement

6. The Secretary reported that if it was necessary to accommodate the public by deploying the theatre room, we had to install extra audio hardware. Two proposals and the estimated cost were presented. The cost of installation of the required equipment was ranged (business information deleted) with an optional item from (business information deleted) for video conference.
7. In response to a member's enquiry, the Secretary recapped that the discussion was arising from the legal advice in relation to a complaint case, where disciplinary inquiries should also observe the principle of open justice, as noted in the decision by the Hong Kong Courts in a matter concerning the Medical Council in 2015.
8. The Secretary advised that our Rules in respect of Disciplinary Proceedings stated that "at the discretion of the Disciplinary Committee, a hearing may be open to the public or partly open to the public and partly held in camera with due regard to (a) the interest of the complainant; (b) the interests of the respondent and (c) the interest of the witness". Under the current protocol, both complainant and respondent would be notified of this rule and they could make application to the DC which would be at its discretion to decide whether the hearing should be open to the public or partly open to the public or partly held in camera.

9. Members expressed views as follows:
- (a) The logistics arrangement should be considered in details such as separate routes for DC, complainant, respondent and the public and retreat room for deliberation by the DC during the interim of hearing.
 - (b) The funding of the Board is from the registration fee of RSWs but not the Government and the premises were owned by the Board which are private property.
 - (c) Subject to the space constraints, there is always limited number of seats available and would be provided on first come, first served basis.
 - (d) It was important that the DC had duly deliberated the matter before making the decision of whether the hearing should be open to public or held in camera.
 - (e) The cost efficiency to invest in the audio equipment was in doubt as the usage was expected to be very low.
 - (f) The case quoted by the legal adviser was not legal binding.
 - (g) Our disciplinary proceedings are different from that of the Medical Council of Hong Kong in which the prosecutor is the Medical Council whilst it is the complainants in our case.
10. The Committee decided not to invest in the hardware but to use the existing room and facilities to conduct the hearing.

General etiquette for attending disciplinary hearing

11. The Committee was invited to comment on the general etiquette for attending disciplinary hearing. It was noted that the DC could only report to the Police if someone disturbed the conduct of hearing. After discussion, the Committee agreed to delete point c, e, f, and i. The following points would be added or revised:
- (a) The DC reserves the right to refuse any person to stay in the hearing room (newly added)
 - (b) Visitors should respect all parties at the disciplinary hearing (point k revised).
 - (c) The interpretation by the DC of this etiquette is final.

Typhoon and rainstorm arrangement

12. The Committee had no comment on the typhoon and rainstorm arrangement.

Information accessible by the public

13. The Secretary updated that the Board office was seeking further legal advice on the matter and pending for reply. The Committee was invited to discuss the question raised in paragraph 17(1) in the paper. The rest would be discussed at subsequent meeting until legal advice was received.
14. The Secretary updated that the Medical Council of Hong Kong (“MCHK”) and the Nursing Council of Hong Kong (“NCHK”) had published their information such as hearing details, decision and order on their websites but with different level of disclosures. A member commented that our disciplinary proceedings were different and it was not necessary to adopt the same practice as MCHK or NCHK. The Committee agreed that if the complaint was held in public, hearing details such as date, time, venue and names of complainant and respondent should be published in the Board’s website three working days before hearing.

(Mr. Lun arrived at this juncture.)

15. In conclusion, the Committee agreed that the whole operational arrangement should be reviewed towards the end of this term. The Committee noted that from now to end of this year, the case number might not be enough for a comprehensive analysis. The Secretary would prepare the revised general etiquette and the notes of meeting for clearance by email circulation to the Committee before putting up to the Board for endorsement so that the Board office and the DC could take action accordingly.

Review of the disciplinary proceedings in case of absence of the complainant from hearing

16. The Board at its 147th meeting directed the Committee to review the relevant rules of disciplinary proceedings in view of the unsatisfactory situation where the complainant failed to attend the hearing after lodging the complaint. The relevant Rules in respect of Disciplinary Proceedings stated that “If a party has failed to appear at the hearing, the presiding member or the Disciplinary Committee may take such steps as they consider appropriate including dismissing the complaint or hearing and determining the complaint without hearing from the complainant or the respondent.”
17. Members exchanged their views as follows:
 - (a) In the absence of either complainant or respondent, the DC might dismiss the case or continue to hear and determine the case without hearing from either party. The outcomes would be different. If the DC decided to dismiss the case, the complainant could lodge the same complaint again because the case had never been heard by the DC. Alternatively, if the DC decided to hear the case before making the decision, the complainant could not lodge the same complaint again.
 - (b) A member expressed that the current rules were sufficient and it was not necessary to make changes to the current rules. Despite the fact that the complaint mechanism might be abused, the current rules provided a channel for the disadvantaged to lodge complaint and chosen not to attend the hearing for other considerations.

- (c) In other profession like Physiotherapy, the complainant had to provide a statutory declaration to support his/her complaint.
 - (d) It was suggested to request the complainant to indicate in the complaint form that he/she would attend the hearing. Other members expressed that the complainant could still be absent from the hearing afterwards.
 - (e) It was proposed to include an explanatory note to the complaint form to clearly state that if the complainant was absent from the hearing, the DC might decide to dismiss or to hear the case. The complainant's responsibilities, such as providing proof to support the complaint, attending the hearing, should also be highlighted in the note.
18. After discussion, the Committee agreed not to make changes to the rules and an explanatory note in the complaint form would be revised as proposed in point (e) above.

Progress report on the complaint cases

19. (Business information deleted)

Any other business

20. (Business information deleted)

Date of next meeting

21. Members agreed that the next meeting would be scheduled on 28 May 2018 at 7:15 pm.
22. There being no other business, the meeting was adjourned at 9:20 pm.

15 March 2018