

**Response from the Administration to the Issues Raised by Members of the Bills Committee on The Ombudsman (Amendment) Bill 2001 on 7 September 2001**

**Appointment and tenure of office (Clause 3)**

Item 5 : The Administration to re-consider whether the Ombudsman should be re-appointed for not more than one further period of 5 years.

Reply : The primary consideration in making appointments to the office of the Ombudsman is to ensure that a most suitable candidate who is fit to perform the important statutory duties is appointed to be the Ombudsman. We have reservations about making the term of re-appointment of the Ombudsman as the overriding consideration.

**Dealing with complaints by mediation (Clause 10)**

Item 12 : The Administration to consider specifying in the new section 11B –

- (a) mediation is incidental or ancillary to the investigation function of the Ombudsman; and/or
- (b) the underlying principle for determining which complaint could be dealt with by mediation.

Reply : According to legal advice, the inclusion of wording such as “mediation is incidental or ancillary to investigation” in the new section 11B will render mediation as part of the process of investigation, thereby precluding mediation from being conducted as a separate function or serving the purpose as an alternative to investigation, especially for the relatively minor or straightforward cases. Rather, we will set out in the new section 11B(1) that cases involving serious irregularity or injustice will not be resolved by way of mediation.

Section 11B(1) is proposed to be amended to read -

“ (1) The Ombudsman may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint does not involve serious irregularity or injustice.”

Other safeguards including the necessary consent and voluntary participation in mediation by the parties concerned, the need for the Ombudsman to conduct an investigation should mediation be terminated for whatever reason, etc. will remain as in section 11B.

Item 19 : The Administration to provide more detailed information on the criteria for classifying complaints as revived cases and the nature of the nine complaints against the staff of the Ombudsman received in 2000.

Item 20 : The Ombudsman to consider deploying designated staff to handle complaints against the result of investigation or staff of the Office.

Reply : Broadly speaking, complaints against the Office of the Ombudsman (the Office) are classified into two categories:

- (a) complaints against the findings and conclusions made by the Office in respect of individual complaints lodged against government departments and scheduled organizations, these are called the “revived cases”;
- (b) complaints against a named member of staff for whatever reasons, e.g. manners, attitude or the handling of a specific complaint case. The nine complaints against staff received in 2000/2001 are concerned with the following issues -

	Number	Result of Investigation
Staff manner/working procedure	4	Unsubstantiated
Improper handling of complaints	5	
Total	9	

Although the Ombudsman does not have the resources to establish a separate office to handle the revived cases and complaints against staff, the following arrangements will be made to ensure fair and proper handling of these cases:

- (a) the Deputy Ombudsman will be designated to take on the overall responsibility for reviewing all revived cases and complaints against the staff of the Office;
- (b) for any revived case, the Deputy Ombudsman will assign the investigation work to a different Assistant Ombudsman who has not participated in the processing of the case in the first instance. This is to ensure impartiality in handling the revived case;
- (c) for a complaint against staff who would normally be an investigation officer of the operational divisions, the Deputy Ombudsman will assign the investigation work to the Principal Executive Officer, being head of the Administration and Development Division; and

- (d) both the Assistant Ombudsman and the Principal Executive Officer will have to report their findings to the Deputy Ombudsman, who will decide on the need for further investigation or the outcome to be conveyed to the complainant.

**Publication of reports (Clause 13 and section 16 of The Ombudsman Ordinance)**

Item 24 : The Administration to provide a paper on the criteria/considerations/circumstances for determining which investigation report should be published or should be submitted to the Chief Executive.

Reply : Sections 16 and 16A of The Ombudsman Ordinance provides respectively for the submission of the Ombudsman's report to the Chief Executive or for general publication, as explained below.

**I. Issue of Investigation Reports**

***(a) To the head of the organization affected***

Section 16(1) of the Ordinance stipulates that after each investigation where the following circumstances have been revealed, the Ombudsman may issue an investigation report on his findings, the reasons therefore and any recommendation or suggestion for remedy:

- (i) where evidence of maladministration has been revealed;
- (ii) where the Ombudsman thinks that the matter should be referred to the head of the organization for further consideration;
- (iii) where the Ombudsman thinks that certain official omission should be rectified; or action/practice should be cancelled or varied; or any other steps should be taken;
- (iv) where any view of the law on which the action was based should be reconsidered.

In practice, the Ombudsman will also issue the report on investigation to the complainant, in addition to the head of the organization affected.

***(b) Submission of investigation report to the Chief Executive***

Section 16 provides that the Ombudsman may submit his investigation report to the Chief Executive in the following circumstances:

- (i) where the Ombudsman thinks it appropriate in the particular

circumstances of the case not to report to the head of the organization but to the Chief Executive instead;

- (ii) where the head of organization has not adequately acted upon his recommendations within the time specified in the report or within such reasonable time, the Ombudsman may submit to the Chief Executive the report and the recommendations, together with such further observations as he thinks fit to make;
- (iii) where the Ombudsman thinks that a serious irregularity or injustice has taken place.

Within a month, or such longer period as the Chief Executive may determine, after receipt of the report from the Ombudsman under (iii) above, a copy of the report shall be laid before the Legislative Council.

## **II. Publication of anonymized investigation reports for public information**

Section 16A empowers the Ombudsman to publish an investigation report “in the public interest”, in such manner as he thinks fit. Such publication must preserve the anonymity of the identity of any person aggrieved, any complainant or any officer of the organization whose action is the subject of the investigation or who is otherwise involved in the investigation.

At present, all investigated cases are set out in the Ombudsman’s Annual Report laid before the Legislative Council and distributed to the public for general information. The Annual Report also contains summary of cases where the investigation findings or recommendations are of relevance or interest to the community, albeit selected groups of the society.

In addition, the Ombudsman has also undertaken to publicise the investigation reports through press conference, Ombuds News and website when :

- (a) a case reveals serious irregularity or injustice;
- (b) the circumstances of a case and the consequential recommendations could apply to a wider section of the public, so as to draw public attention to what they should expect from good administrative practices.