

立法會
Legislative Council

LC Paper No. CP 532/00-01
(These minutes have been
seen by The Ombudsman)

Ref.: CP/G06/4 (V)

**Legislative Council Members' Meeting
with Ms Alice TAI, JP, The Ombudsman,
held on Tuesday, 5 December 2000, at 11:00 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon NG Leung-sing
Hon LAU Kong-wah
Dr Hon LO Wing-lok
Hon WONG Sing-chi

**Attendance by
Invitation** : Office of The Ombudsman

Ms Alice TAI, JP
The Ombudsman

Mrs Isabella WONG FUNG Pui-han
Principal Executive Officer

Staff in Attendance: Secretary General
Mr Ricky FUNG, JP

Mrs Vivian KAM
Chief Assistant Secretary (Complaints)

Mrs Pandora CHAN
Senior Assistant Secretary (Complaints)2

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I. Chairman's opening remarks

The Chairman welcomed Ms Alice TAI, The Ombudsman, and Mrs Isabella WONG FUNG Pui-han, Principal Executive Officer, to the meeting. She advised that the purpose of the meeting was for The Ombudsman to brief Members on the work of her Office, and for Members and The Ombudsman to exchange views on issues of common concern.

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2. The Chairman asked Members to note that at the last meeting held on 13 June 2000, Members and The Ombudsman had agreed to change the frequency of the meetings to an annual basis to be held towards the end of each year. She reminded Members that the meeting was not covered by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and that individual cases would not be discussed during the meeting.

II. Briefing by The Ombudsman on the work of The Ombudsman's Office

(LC Paper No. CP 238/00-01(03))

3. At the Chairman's invitation, The Ombudsman briefed Members on the work of The Ombudsman's Office ("the Office") as set out in the paper provided earlier on (LC Paper No. CP 238/00-01(03)). The Ombudsman advised that the workload of the Office had increased significantly in the past six months, and the number of enquiries and complaints was on an upward trend. If this trend persisted, the workload of the Office during the year was estimated to increase by about 20%. During the first six months of the 2000-01 reporting year, the Office received a total of 6 399 enquiries and 1 864 complaints. In the last reporting year, formal investigations were conducted on 194 complaints of which 122 cases were found substantiated or partially substantiated. The Office completed three direct investigations during the year, and four were still underway. Of the 138 recommendations made by The Ombudsman in respect of the complaints, 99% had been accepted by the Administration and some had already been implemented.

4. The Ombudsman added that during the past six months, the Office had embarked actively upon a new series of publicity and community relations initiatives, including a new API to be broadcast in May, new publicity posters and leaflets and a revamped home page on the Internet. The Office had also published a booklet entitled "Tips for Making a Proper Complaint". Since November, a series of roving exhibitions on the work of the Office had been staged in six Government office buildings which were frequented by the public. Furthermore, the Office would organize seminars for public organizations every year, and the next target group would likely be personal assistants of Members of the Legislative and District Councils. These seminars would be aimed at providing the participants with a clear understanding of the powers and limitations of the Office, as well as the process and methods adopted by the Office in handling complaints, so as to facilitate the referral of cases of maladministration to the Office.

5. In reply to Mr Martin LEE, The Ombudsman explained that only 1% of the recommendations made by The Ombudsman to the Government during the last reporting year were not accepted and implemented by departments. This was because the departments needed time to seek additional resources and co-ordinate with other related departments, or to make appropriate modifications to

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the relevant policies in order to implement the recommendations. As to whether there was any case in which the recommendations of The Ombudsman were totally rejected by the department concerned, The Ombudsman advised that there was one case some years ago concerning unauthorized building structures on which The Ombudsman submitted a report to the then Governor in accordance with section 16(3) of The Ombudsman Ordinance. The Ombudsman was of the view that this not only showed that a high percentage of her recommendations were accepted by departments, but also indicated that the recommendations of The Ombudsman were just and objective, and that the Office acted with reasons rather than coercion. The fact that most organizations had started implementing the recommendations of The Ombudsman before investigations reports were completed was firm proof of the merits of The Ombudsman mechanism.

6. Mr Martin LEE said that it was difficult to have absolutely objective standards for deciding whether the recommendations of The Ombudsman were reasonable. He therefore considered that in making recommendations, The Ombudsman should not adopt relatively loose criteria to facilitate acceptance by departments. Mr LEE also enquired whether The Ombudsman should take the complainants' degree of satisfaction as an indicator of the Office's recognition by the public. In response, The Ombudsman assured Members that as the Office was a statutory body, The Ombudsman would work in accordance with the powers vested by the law. Hence, it was absolutely unnecessary for her to take into account political issues or make compromise when making a judgment. All she had to do was to uphold the spirits of independence, objectiveness and justice when dealing with each case. The Ombudsman also stressed that she would definitely not concede to any external factors. In reply to Mr LEE's question, The Ombudsman advised that her judgments were made on the basis of justice and conscience. If complainants felt dissatisfied or made reproaches, The Ombudsman would review the cases concerned. If, however, the findings proved that the decisions of the Office were right, it would insist on the original judgments.

7. Mr NG Leung-sing noted from the paper that the Office had begun to accept complaints made through telephone and e-mail. He was worried that some complainants might make use of complaints lodged over the telephone and conceal their identity when making malicious accusations. Mr NG enquired how the Office could distinguish between truthful and false complaints. He also wished to know whether the Office would record the telephone conversations on complaints, and the impact of these services on manpower and resources.

8. In response, The Ombudsman advised that with the promulgation of The Electronic Transactions Ordinance, the Office had begun to accept complaints made through e-mail and several e-mail messages were received every week. Nevertheless, on account of the secrecy provisions of The Ombudsman Ordinance, the Office could not communicate directly with the complainant through e-mail to discuss issues relating to the complaint because there was no way to ascertain that the mail receiver was the complainant. The Office would

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contact the complainant and request him to provide personal particulars and address for confirmation of his identity and follow-up liaison.

9. The Ombudsman also advised Members that the Office had only accepted written complaints in the past as follow-up investigations could not commence before the accuracy of the contents of complaints had been confirmed. Nevertheless, the Office had conducted a pilot scheme in April and May this year for accepting telephone complaints. The staff of the Office received and recorded telephone complaints; they then sent a written copy of the main points in the complaints to the complainants by mail for the latter to verify the content of the records. Afterwards, the complainants were required to return the written records to the Office for follow-up. To ensure that the records of complaints were accurate, the staff of the Office would obtain consent from the complainants before recording the telephone conversations. If a complainant refused the recording, the staff would request that he follow the normal procedures and lodge his complaint in writing or by approaching the Office in person.

10. The Ombudsman had made a preliminary assessment on the pilot scheme, and the findings showed that telephone complaints was a feasible practice which might help complainants who had difficulties in writing. However, telephone complaints were only suitable for relatively straight-forward cases, and were not suitable for cases which required searching through a large amount of documents. The Office had identified this scheme as a long-term service target. As the scheme was still at the testing stage, the Office had only deployed internal supporting staff on telephone complaints duties, but had embarked on the recruitment of four Complaint Assistants to receive telephone complaints. The Office would launch the new service formally next year and then decide whether telephone complaints should be formalized as a standing channel for lodging complaints.

11. Mr NG Leung-sing opined that apparently, this could not be regarded as a new service because the Office still relied on the usual practice of following up in writing complaints made through e-mail and telephone. Mr Ng was of the view that the service might be effective in attracting more new cases. The Ombudsman disagreed and advised that in the past, complainants had to go to the Office in person to lodge complaints. Now they could do the same without leaving home, and the contents of the complaints would be recorded in writing by the staff of the Office. As such, the service was already a new initiative. The Ombudsman, however, agreed with the Member that the two new services were user friendly and might increase the number of new cases. Yet she stressed that this was not the orientation of the Office's values. The fundamental objective of her Office was to alleviate the dissatisfaction of the public over measures taken by public institutions, and thereby resolve problems thoroughly and prevent the reoccurrence of similar incidents.

12. The Ombudsman also drew Members' attention to a concern regarding telephone complaints. Some complainants might have vented their anger after making telephone complaints, and would therefore not respond or verify the

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main points in their complaints when the staff of the Office contacted them to follow up on cases. As a result, such cases had to be closed at that stage, but this had a great impact on the resources of the Office. Mr NG Leung-sing suggested that such cases could be handled by different levels so as to prevent committing too much resources. The Ombudsman stressed that notwithstanding the fact that such complaints might be wasteful of resources, The Ombudsman would still follow up on each complaint case rigorously in accordance with the requirements of the law. Nonetheless, when assessing complaints, the Office could consider whether the seriousness of a case called for an investigation or other alternative dispute resolution means. The Ombudsman would conduct a formal, in-depth and comprehensive investigation on serious and complicated complaint cases. As for minor complaint cases, the Office could refer, with the complainants' consent, the complaints directly to relevant departments or organizations under the Internal Complaint Handling Programme for investigation and reply to the complainants according to their internal mechanisms for handling complaints. The Office would monitor closely the responses from the departments and organizations. If the Office considered that the relevant departments and organizations had not handled the cases in an appropriate manner or resolved them fully, the Office would intervene or follow up. The Ombudsman also informed Members that she had forwarded to the Administration proposed amendments to The Ombudsman Ordinance, with a view to incorporating formally a flexible mode of handling complaints into the legislation in the following year. By doing so, the Office could provide mediation service as an alternative dispute resolution means in addition to formal investigation.

13. The Chairman was of the view that the Office's acceptance of telephone complaints could bring about convenience to the public, and should therefore be established as a standing service. Given that the Office had tested the service and considered it feasible initially, she enquired about the reason for having to wait for another year to launch the telephone complaint service formally. The Chairman also enquired about the criteria adopted by the Office for deciding whether a complaint case was an enquiry or a complaint. In response, The Ombudsman advised that the Office received over 9 000 preliminary telephone enquiries during the last reporting year. The Office would not classify a case as a complaint until the complainant was able to state clearly the event and the department involved in his complaint, and the Office concurred that the content of the complaint showed a prima facie case of maladministration. Concerning the reason for not making telephone complaints a standing service immediately, The Ombudsman explained that the Office had to put in place related arrangements such as supporting staff, telephone line facilities and follow up action plans.

14. The Chairman was concerned about the workload generated by the telephone complaint service. She understood that among the 3 000 complaints received by the Office during the last reporting year, only 194 had been subject to formal investigations. She enquired whether this meant that the remaining cases were less serious and some were dealt with over the telephone.

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Furthermore, she asked whether The Ombudsman had estimated the workload in this respect and made available necessary resources. The Ombudsman clarified that this did not mean that the Office had only dealt with 194 serious cases. In fact, upon receiving any complaint, the Office would conduct an assessment and then decide whether a comprehensive investigation was warranted or whether alternative dispute resolution means for minor complaints, including the Internal Complaint Handling Programme, Rendering Assistance or Mediation Service, should be adopted. Last year, over 400 cases were dealt with by departments through the Internal Complaint Handling Programme. The work of the Office in this respect was to assess the contents of complaints. If there was a prima facie case, the Office would ask for the complainant's consent and then refer the case to the relevant department for direct actions. On the second level, if the complaine department was in the wrong and needed to make follow up improvements, and it had indicated its willingness to do so, The Ombudsman was of the view that instead of a high profile formal investigation by the Office, the department should be given a chance to improve itself. The number of such cases amounted to over 900 last year. For cases at the third level, i.e. cases where the department refused to admit its faults but the Office did not agree and considered the case to be serious, and when the complainant and the department had no reasonable opportunity to resolve the matter through mediation, the Office would definitely conduct a formal investigation. In fact, the work involved in handling cases of the second and third levels were the same as that of formal investigation, which included preliminary investigation in various aspects such as file search and interview with witness, etc. Their only differences from formal investigation were that the procedure as required by the law for making an announcement of investigation was not necessary, and that the organization being complained against would not be asked to comment on the contents of the report as in the case of formal proceedings.

15. Mr WONG Sing-chi enquired whether the Office had investigated into the background of complainants. He pointed out that it seemed that the Office had not aimed at any target group for public education and publicity activities. With his experience in serving the local communities, he opined that the publicity tactics of the Office were not as penetrating as those of some other organizations, such as the Independent Commission Against Corruption. Hence, Mr WONG considered that if resources permitted, the Office should cater specially to the needs of the grassroots who knew nothing about the services of the Office. The Ombudsman advised that the Office had not investigated into the background of complainants. Yet according to the Office's general observations, complainants seeking assistance from the Office came from all walks of life and as such it was difficult to decide on a particular sector of the community as the target of their publicity. However, as the Office had to ensure that their services were widely known, publicity would be conducted through popular and widespread promotional means such as television and posters. The roving exhibitions at Government office buildings were directed towards complainants who might be dissatisfied with Government departments. The Office had also organized a series of publicity activities and plans on community relations to extend their publicity efforts to the regional level. Such activities included inviting the

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elderly and students to visit the resource centre of the Office through arrangements made by service operators. In fact, the Office had commenced contact with some grassroots organizations at local community level to enhance the grassroots' understanding of the Office's work. For example, contact had been made with the Yin Ngai Club, a women's organization. On Mr WONG's suggestion, The Ombudsman emphasized that although the Office hoped to extend its contacts as far as possible, it was impossible for the Office to contact people from all walks of life within a community due to resource constraints. To make up for such inadequacy, The Ombudsman considered that she could rely on District Council members who were familiar with local issues and who could act as a bridge to publicize the work of The Ombudsman's Office or to refer cases to relevant organizations where warranted. The Ombudsman reiterated that it was of paramount importance for the Office and different sectors to complement one another's work through close cooperation. Mr WONG Sing-chi suggested that The Ombudsman could consider co-organizing publicity activities with organizations at district level. The Ombudsman confirmed that staff from her Office would visit District Councils every year for exchange of views.

16. Mr NG Leung-sing enquired about the time for completion of the Office's direct investigation into the construction projects of the Hong Kong Housing Authority and the Housing Department. In response, The Ombudsman advised that the Office had finished interviewing all the relevant personnel, and she anticipated that the first draft of the report could be forwarded to departments for comments by the end of the first quarter of the ensuing year.

17. In reply to the Chairman, The Ombudsman advised that the Office had conducted a simple survey about two to three years ago on the public's opinion and their understanding of the Office's work. A more detailed survey would be carried out next year, and the results would be included in the next annual report and reported to Members at the next meeting.

III. Discussion items raised by Members

(a) Progress of the employment of non-civil service staff by the Ombudsman's Office
(LC Paper CP 238/00-01(04))

18. Mr WONG Sing-chi raised this issue on behalf of Mr Fred LI. Mr WONG pointed out that according to the said paper, the Office could only complete necessary procedures for the appointment of non-civil service staff in 2002. He considered such progress too slow. Mr Martin LEE recalled that at the meeting on 13 June 2000 between The Ombudsman and LegCo Members, Members had re-iterated the importance for the Office to appoint non-civil service staff to take up all posts as soon as practicable. This was crucial to gaining the trust of the public and building up the image of the Office as being just and independent. The Office was established in 1989, and Members had

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raised this issue continuously with The Ombudsman over the years but progress had been extremely slowly. Expressing disappointment at the situation, Mr LEE asked for the reasons for the slow progress and the crux of the problem.

19. In response, The Ombudsman advised that since she assumed office in April 1999, she had commenced discussion with the Administration on the feasibility of delinking the Office, prepared proposals and conducted internal deliberations and consultations. An agreement in principle was reached with the Administration in September of the same year. In less than two years, she had obtained the Administration's consent and commenced recruitment even before funding was granted. She was devoted to uplifting the independence of the Office, and had achieved very good results. The Ombudsman recalled that at the previous meeting on 13 June 2000, Members insisted on The Ombudsman setting down a concrete schedule for appointing non-civil service staff to fill all the posts in the Office. However, The Ombudsman had not been able then to reach an agreement with the Administration on all the details, but she was now able to propose a schedule of two years. There had therefore been marked improvement over a matter of months.

20. Mr Martin LEE considered two years still too long. If the Office was a private organization, recruitment could have been completed within a short time. As progress had been too slow at the initial stage, it should now be expedited to make up for the time lost. In response, The Ombudsman reiterated that since she assumed office, she had been acting fast and prudently on the independence of the Office. She added that the Administration had to conform with established procedures, and comparison with private companies was hence inappropriate. She urged Members to understand the objective reality.

21. The Chairman shared The Ombudsman's views on restrictions imposed by Government procedures. She also concurred that a transitional period was required for the delinking. She recalled that in the case of the LegCo Secretariat, a number of years was spent on conception and discussion before the Secretariat eventually became independent. Therefore, the progress of the Office's delinking was not particularly slow. The most important issue lay not in the recruitment of staff but in whether the entire Office would be delinked from the Government establishment, which was essential to ensure that the Office enjoyed greater freedom. In response, The Ombudsman advised that the Administration had given the Office a one line vote in this fiscal year. This financial arrangement was the first step towards the Office's delinking from the Government establishment. The independence process would include drawing up conditions of appointment for all ranks of staff, as well as setting up the administration and financial management systems. A complete set of code of practice would have to be prepared before the serving civil servants were reverted to the Government to ensure that newly appointed non-civil service staff would have proper guidance. The Ombudsman reiterated that the long-term target for the Office to become independent would not be changed.

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22. Mr Martin LEE enquired about the reason for the serving civil servants not choosing to stay and continue to serve the Office. In reply, The Ombudsman advised financial considerations only allowed the Office to employ staff and offer salaries at market level, and this was less attractive than the favourable employment conditions enjoyed by civil servants in general.

23. Mr WONG Sing-chi commented that the former Ombudsman did not seem to have fulfilled his promise to achieve independence expeditiously. Mr WONG was worried that if Ms TAI were to leave office, no one could ensure that the Office would continue to head towards its goal of independence. Mr Martin LEE added that the independence of the Office had been dragged on for years, and this might be attributed to the Government's lack of determination. In response, The Ombudsman affirmed she would endeavour to complete the important task of recruitment and delinking from the Government establishment within her term of office of five years.

24. In conclusion, the Chairman said that the call for the independence of the Office did not emerge during the initial stage of its establishment. In the mid nineties, the former Ombudsman had gradually opened up certain positions and started to recruit contract staff. At the current meeting, Members were informed of a clear schedule, the future direction and The Ombudsman's plan. This was obviously a huge step forward as compared with the past.

(b) Cases in which recommendations of The Ombudsman were not fully implemented
(LC Paper CP 238/00-01(04))

25. The Chairman reminded Members once again that the meeting would only discuss the principles involved rather than individual cases at the meeting.

26. Mr LAU Kong-wah raised this issue and emphasized the need to recapitulate the case concerned in order to illustrate the problem. The Ombudsman had investigated into the case and made recommendations, and considered that the relevant department should apologize to the affected households and take out insurance for their household property. While the deputation was elated and thought that the matter could finally be resolved, the department refused to implement The Ombudsman's recommendations and it even opined that the residents had to bear the cost for taking out the insurance. The deputation once again sought assistance from the Office, but The Ombudsman considered that the matter had been resolved and advised that the case would be closed. The deputation was exasperated as they had not been accorded fair treatment.

27. The Ombudsman explained that one of the Office's ultimate objectives in making recommendations was the prevention of recurrence of mistakes by departments. Generally speaking, 95% the Office's recommendations were on average adopted by departments or organizations, and only 5% were not adopted due to resource constraints or policy restrictions. Although The Ombudsman

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agreed that this was not the most desirable scenario, yet if the departments or organization proposed other reasonable remedial or improvement measures which could achieve the expected result of the original recommendations, i.e. avoiding the same mistakes, The Ombudsman might accept the suggestions after consideration.

28. Mr LAU Kong-wah did not agree with this view. He was of the view that The Ombudsman should handle cases with an open mind. Taking the said case as an example, the crux of the matter was that the relevant department had failed to assume the responsibilities which The Ombudsman considered it should have undertaken, and the deputation felt they had not been treated fairly as their problem still persisted. The Ombudsman's decision to close the case while the development of the matter was still unsatisfactory would affect the Office's image significantly.

29. The Chairman advised that she could understand the dissatisfaction of the deputation even though she did not know the details of the case. The deputation only hoped that The Ombudsman could deal with their dissatisfaction properly and that they be treated fairly. They had no expectation for the prevention of reoccurrence of similar incidents, as this was the department's duty and not theirs. As regards the internal difficulties confronting the department, the deputation's concern was rectification of mistakes committed by Government departments.

30. The Ombudsman pointed out that the said case involved the design of facilities in buildings which did not have an absolute right or wrong answer. Generally speaking, the recommendations made after investigations would not lead to legal remedies, and Government departments and organizations were not legally bound by the decisions of The Ombudsman. For instance, if a department had made mistakes and the Office considered improvements necessary, there were many ways for making improvements. The Ombudsman had to be satisfied the department had adopted long-term measures to avoid reoccurrence of similar incidents, and the department could make alternative suggestions which could achieve the same results. The Ombudsman, however, could not accept no remedial actions by the department. The Ombudsman considered that in certain circumstances, recommendations made by the Office after investigation could be followed up and implemented through political channels.

31. The Chairman suggested that the case be taken over by the LegCo Complaints Division. In response, Mr LAU advised that the case had been handled by the Division but to no avail. The crux of the problem was that The Ombudsman had not submit a report to the Chief Executive as provided for under section 16 of The Ombudsman Ordinance, and secrecy provisions prohibited The Ombudsman from discussing with Members the reasons behind her decisions. On the other hand, Members could only hold meetings with Government departments but could not change the positions maintained by the departments. As a result and as far as the case was concerned, the deputation had nowhere else to lodge their complaint.

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32. The Ombudsman explained that under the restriction of The Ombudsman Ordinance, The Ombudsman could only inform the complainant of the details of the case. Otherwise, the complainant's confidence in his identity not being disclosed by The Ombudsman's Office would be shattered. Moreover, the strict requirements of The Ombudsman Ordinance also dictated the need for The Ombudsman to be careful with words in quoting the circumstances of cases in order not to arouse speculations on the identity of persons involved. Hence, The Ombudsman considered that after her investigation of cases, outstanding issues could be deal with through the political arena to oversee the implementation of The Ombudsman's recommendations by the relevant departments and organizations.

33. In conclusion, the Chairman advised that The Ombudsman could execute the powers vested in her vide The Ombudsman Ordinance in accepting measures which departments implemented and which she also considered to be reasonable. As discussion on this item had gone beyond the scope of this meeting, she took the view that Member's concern should be referred to the House Committee for discussion in order to devise a mechanism for Members to follow up on such cases.

34. The Chairman thanked The Ombudsman and her colleague as well as Members for attending the meeting.

35. The meeting ended at 12:50 pm.

Legislative Council Secretariat

27 February 2001