

立法會
Legislative Council

LC Paper No. CP 370/03-04
(These minutes have been seen
by The Ombudsman)

Ref.: CP/G06/4 VIII

**Legislative Council Members' meeting
with Ms Alice TAI, JP, The Ombudsman,
held on Tuesday, 2 December 2003, at 11:00 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Miriam LAU Kin-ye, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing, JP
Hon HUI Cheung-ching, JP
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon Emily LAU Wai-hing, JP
Hon WONG Sing-chi
Hon LAU Ping-cheung

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

Ms Alice TAI, JP
The Ombudsman

Mr MOK Yun-chuen
Chief Executive Officer

Staff in Attendance: Mrs Vivian KAM
Principal Assistant Secretary (Complaints)

Mrs Queenie YU
Senior Assistant Secretary (Complaints)5

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I. Chairman's opening remarks

The Chairman welcomed Ms Alice TAI, The Ombudsman, and Mr MOK Yun-chuen, Chief Executive Officer of The Ombudsman's Office, to the meeting. She said that the purpose of the meeting was for The Ombudsman to brief Members on the work of The Ombudsman's Office (the Office) and for both parties to exchange views on issues of mutual concern. The Chairman 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.

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

(LC Paper No. CP 188/03-04(03))

2. The Ombudsman briefed Members on the work of the Office for the year 2002/03 and for the first seven months of 2003/04 as set out in LC Paper No. CP188/03-04 (03).

Performance pledges

3. Ms Emily LAU referred to the statistics provided by The Ombudsman in the above paper which showed that the Office received a total of 14 298 enquiries and 4 382 complaints in the 2002/03 reporting year. 74.3% of the complaints were concluded within three months, and 24% between three to six months. She asked why some cases took the Office longer to conclude and whether the complainants concerned had expressed dissatisfaction with the time taken to handle their cases. The Ombudsman replied that on average, less than 2% of cases handled by the Office each year required more than six months to conclude. The Office had to spend extra time in handling some cases mainly on account of factors beyond the Office's control. These included complex cases with new developments arising in the course of investigation or which involved the perusal of policy issues formulated over 20 years ago; cases pending the outcome of internal investigations conducted in parallel by Government departments; and cases involving court proceedings or law enforcement actions, etc. The said factors were not related to the problem of manpower shortage, and the Office would keep the complainants informed of the progress of their cases as appropriate and account for such in the investigation reports.

4. Given that over 80 cases took more than six months to conclude in the reporting year, Ms Emily LAU was concerned that the performance pledges of the Office would be affected as the handling time of such cases had exceeded the set indicators. The Ombudsman advised that the Office would not make hasty conclusions simply for fulfilling its performance pledges. It had always been the Office's mission to fulfill its performance pledges made to the public by assessing complaints in a thorough manner and completing investigations as early as possible.

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Direct investigation and direct investigation assessment

5. Mr Fred LI Wah-ming enquired about the difference between direct investigation and direct investigation assessment, and the mechanism adopted by the Office to determine issues which warranted the conduct of direct investigation. The Ombudsman explained that since 1994, The Ombudsman had been empowered to initiate direct investigation notwithstanding the absence of a complaint. She informed Members that a standing panel chaired by the Deputy Ombudsman would study incidents taking place in the society and issues of community concern or involving public interest every week. In the course of assessment, the Office would request the relevant organizations to provide information and response. A report would also be submitted to The Ombudsman setting out the views and recommendations on particular issues. In case the Office considered direct investigation unnecessary upon initial assessment, the Office would still compile an assessment report which would be made available at the Resource Centre of the Office for public inspection. For issues which were selected for direct investigation, the Office would conduct investigations and release the results in accordance with the powers conferred by and the procedures stipulated in The Ombudsman Ordinance (Cap. 397). The requisite procedures included compilation of a draft report upon completion of investigation and forwarding of the draft report to the organizations concerned for comments.

6. In response to Mr Fred LI Wah-ming, The Ombudsman explained that the Office had not conducted a direct investigation into the Harbour Fest event primarily because The Ombudsman's investigative powers were limited to Government departments and Government-subsidized public organizations. As the contracts, transactions and actions of non-Governmental organizations were involved in the case of Harbour Fest, and such actions belonged to "actions not subject to investigation" in Schedule 2 of The Ombudsman Ordinance, any investigation conducted by the Office would be confined to possible maladministration on the part of Invest Hong Kong only and a comprehensive investigation would not be possible. The Ombudsman advised that notwithstanding the above, the Office had been very concerned about the development of the matter. When the Audit Commission undertook to carry out an investigation into the Harbour Fest event, she considered that the Audit Commission was in a more appropriate position to investigate into the matter as the Commission's remit allowed it to conduct a more comprehensive investigation. As a result, she decided that the Office would not duplicate efforts in investigation. Mr Fred LI Wah-ming, however, was of the view that the Office should conduct relevant investigations within its jurisdiction even though a full investigation was not possible.

7. Mr James TIEN Pei-chun considered that the Government had spent a substantial amount of \$100 million to subsidize Harbour Fest. Apart from financial issues, the subject matter was also of grave public concern as it might involve maladministration of Government departments. He enquired whether

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confidentiality provisions in the contracts between Government departments and the American Chamber of Commerce accounted for the Office's non-investigation. The Ombudsman explained that under The Ombudsman Ordinance, The Ombudsman had the authority to operate with complete independence and had wide investigative powers including access to all information and summoning of witnesses for cases under investigation. The law required all members of the Office to abide by a secrecy code, and they had to keep the strictest confidentiality on all matters that came to their knowledge in the exercise and execution of their functions. She reiterated that the Office had not conducted investigations into the Harbour Fest event mainly because "any action taken in relation to contractual or other commercial transactions" belonged to "actions not subject to investigation" under Schedule 2 of The Ombudsman Ordinance. Although certain arrangements for Harbour Fest involved Government departments, she had weighed the commercial and administrative components in the matter as well as the remit of the Office, and considered that the investigation should be comprehensive and carried out by organizations whose investigative powers were subject to minimum restrictions. The Ombudsman also pointed out that although it was not appropriate for the Office to investigate the matter at that stage, this would not preclude the Office from doing so in future.

8. Mr James TIEN Pei-chun further asked whether it was a concern of duplication of resources that held the Office back from investigating into the Harbour Fest event at that stage, given that the Audit Commission would conduct a value-for-money study on the event and the Financial Secretary had also indicated the appointment of an independent panel of inquiry on Harbour Fest. Ms Emily LAU did not concur with the wait-and-see approach adopted by The Ombudsman towards the investigations on Harbour Fest conducted by other organizations. Besides, information on the setting up of an independent panel of inquiry on Harbour Fest had not been announced yet. She was of the view that it might be difficult for The Ombudsman to comment on the results of these investigations. Hence, she maintained her request for The Ombudsman to conduct an investigation into the matter even though the Office could only investigate maladministration on the part of Invest Hong Kong. Mr TIEN supported Ms LAU's request. In reply, The Ombudsman pointed out that the Office had in the past conducted investigations in parallel with other organizations on major issues of community interest such as the operation of the new airport and the substandard piling incidents. In making the decision on the Harbour Fest event, she had taken into account various factors such as community interest and the organizations which were most appropriate to conduct a comprehensive investigation.

9. The Chairman requested The Ombudsman to consider further if the Office would carry out an investigation into the Harbour Fest event, taking into consideration the views expressed by Members at the meeting.

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Remit of the Office

10. Referring to the restrictions on investigation of complaints under section 10 and the “actions not subject to investigation” in Schedule 2 of The Ombudsman Ordinance, Mr Fred LI Wah-ming was concerned that some cases which were outside the investigative remit of the Office might still warrant The Ombudsman’s investigation as they were of community interest or involved wastage of public money. He considered that the Office should conduct a review to see if there was room for intervention and investigation for such category of cases. The Ombudsman replied that she had in fact adopted a more proactive approach. Upon receipt of cases into which investigation was not permitted by the law, she would request the Government departments or organizations concerned to allow the Office to intervene to a certain extent by investigating the “grey area” cases. There had been cases where the Office was in dispute with complainee Government departments or organizations over its investigative remit. She had all along executed the duties of The Ombudsman with a cautious and open attitude. She added that the Office was conducting an internal study to examine if it was possible for the Office to carry out investigation into potential cases of maladministration with the premise that the relevant provisions in The Ombudsman Ordinance would not be violated and the remit of the Office would not be jeopardized. She welcomed the raising of the matter by Members at the meeting as Member’s concerns reflected their support for the said study.

11. Mr Albert HO Chun-yan pointed out that the Legislative Council (LegCo) had handled cases involving contractual disputes between Government departments and non-Governmental organizations. The Government departments concerned had refused to provide the relevant contractual information to Members on the ground of confidentiality requirements even after the disputes had been resolved. He also cited a case in which the complainant alleged that the Hong Kong Housing Authority (HA) was unfair to him in rejecting his application for leasing part of HA’s commercial premises while approving a similar application from another person in respect of another commercial premises. However, HA refused to submit information on that case to Members for confidentiality reasons. In this connection, he asked whether the Office had received similar complaint cases.

12. In response, The Ombudsman said that she would seek legal advice so as to confirm whether the Office should investigate into certain complaint cases and whether the grounds of defence of the complainee departments were justified. In general, however, when she had endorsed investigation into a particular case, the person(s)/organization(s) concerned would not refuse to provide information to the Office. She reiterated that she and all her staff had to abide by the secrecy code, the breach of which constituted a criminal offence. The aim of the code was to ensure that any person or organization providing information to the Office could do so unreservedly without fear of possible consequences that might arise from the disclosure of their identities or information. The secrecy

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code still applied even when the Office explained its investigation results to the aggrieved parties.

Work of the Office and investigation results

13. Mr HUI Cheung-ching enquired whether the difference between the cases handled by the Office and the LegCo Redress System lay in the maladministration-oriented nature of the former and the livelihood-oriented nature of the latter. In response, The Ombudsman advised that by virtue of the powers conferred upon the Office by The Ombudsman Ordinance, the Office investigated into cases relating to maladministration on the part of public organizations. On the other hand, the LegCo Redress System handled cases concerning legislative and policy issues. Many cases processed by the Office and the LegCo Redress System likewise related to livelihood issues such as housing and transport. The Office and the LegCo Redress System would refer cases to each other if necessary according to their respective jurisdictions.

14. In response to Mr Albert HO Chun-yan's enquiry about cases handled personally by The Ombudsman, The Ombudsman explained that section 9 of The Ombudsman Ordinance provided for the power to determine whether to undertake, continue or discontinue an investigation to be vested in The Ombudsman only. On this basis, all complaints received by the Office, including those outside its jurisdiction, would in principle be submitted to The Ombudsman for assessment. Furthermore, all investigation reports would be subject to preliminary perusal by The Ombudsman herself. She would then pass the investigation reports to the Deputy Ombudsman for detailed study if necessary.

15. Noting that 95% of the improvement recommendations made by the Office on complaint cases were accepted by the complainee organizations in the 2002/03 reporting year, Mr Albert HO Chun-yan asked why the remaining recommendations were rejected and how the Office would follow up such cases. The Ombudsman replied that since she assumed office, an average of about 5% of the Office's recommendations were not accepted immediately by the complainee organizations each year. Some of these recommendations involved legislative procedures or financial arrangements which took longer to implement. In other cases, unexpected situations arose after the Office's recommendations were implemented and the organizations concerned had to propose revised recommendations to the Office. The Office would consider if these organizations could offer reasonable explanations when deciding whether the revised recommendations were acceptable. The Office would also require the organizations concerned to submit quarterly reports to the Office on the progress of implementation of the relevant recommendations until the conclusion of the cases in order to monitor progress. Moreover, if The Ombudsman considered that the heads of the organizations concerned had not taken appropriate actions in response to the Office's investigation reports, she might submit reports to the Chief Executive in accordance with The Ombudsman Ordinance.

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Complaint cases withdrawn

16. Mr NG Leung-sing referred to section 11 of The Ombudsman Ordinance which provided that “Where the Ombudsman is of the opinion that it is in the public interest so to do, he may undertake or continue an investigation into a complaint notwithstanding that the complainant has withdrawn the complaint...”. On the other hand, four reasons for withdrawal of complaints or discontinuation of investigations were listed in Annex 2 of the Office’s Annual Report for the current year, one of which being “withdrawal by the complainant voluntarily”. In this regard, he expressed concern with the reasons for which the complainants withdrew their complaints voluntarily, and the overall number of cases withdrawn.

17. The Ombudsman explained that in the past, members of the public had to lodge complaints either in writing or in person. After the Office introduced telephone complaint services in 2001, staff of the Office could receive and record complaints made over the telephone. They would then send a written copy of the main points of the complaints to the complainants by mail for verification by the latter, and the complainants would be required to return the written records to the Office for follow-up. This practice enabled the Office to ascertain whether the complainant was indeed the aggrieved party and to notify the complainant in writing about the progress of the case in future as required under the Ordinance. To her knowledge, among those complaint cases withdrawn by the complainants voluntarily, some had been resolved after a period of time, while in other cases, the complainants had failed to confirm the facts of their complaints or provide their names and detailed contact addresses. As a whole, not many cases were withdrawn by complainants. Notwithstanding this, The Ombudsman could continue her investigation into cases which had been withdrawn by complainants if The Ombudsman considered the cases involved public interest. The Office would also hold press conferences to announce the continuation of the investigations concerned.

III. Discussion items raised by Members

(a) Recruitment of staff and assurance of service quality of The Ombudsman’s Office
(LC Paper No. CP 188/03-04(04) to (06))

18. Mr Fred LI Wah-ming referred to the Annual Report of The Ombudsman for the year in which The Ombudsman indicated that she had aborted the recruitment exercise for Chief Investigation Officers and redistributed the duties in order to cope with an anticipated reduction of funding for the next few years. In view of a reduction of resources by the Administration, he was concerned with how the Office could ensure the quality of its services with the redistribution of duties and the appointment of temporary case officers for investigation work, bearing in mind that investigation was the lifeblood of the Office’s work.

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19. The Ombudsman advised that the Office would comply with the uniformed requirements on the reduction of resources issued by the Director of Administration to all departments and organizations. The Office had been constantly reviewing its organization and staffing structures as well as practising flexible and responsive management approaches to ensure the quality of service. Since delinking, the Office had deleted three permanent posts from the overall establishment and arranged for the re-ranking of some posts to a lower rank. The Office had maximized its output mainly through re-engineering work procedures and redistributing workload among investigation teams rather than implementing cost-saving measures. Regarding the termination of the recruitment exercise for Chief Investigation Officers, The Ombudsman advised that she had decided to abort the exercise in view of the uncertain future and the inability to guarantee the career prospect of the appointees in the face of the reduction of resources in the next few years. Notwithstanding this, the overall number of investigation staff of the Office would remain unchanged. In order to provide better support and ensure the quality of investigation service, the Office would delete the posts and re-organize the duties of supporting and administrative staff and create additional permanent posts for investigation duties. The number of supporting, administrative and investigation staff of the Office were as follows :

	<u>Supporting and administrative staff</u>	<u>Investigation staff</u>
Before delinking	53	33
After delinking	43	40

20. Mr LAU Ping-cheung noted that the Office had devised completely new salary scales which would better reflect the prevailing wage levels. In view of the uniqueness of the Office's investigative work, he enquired about the criteria adopted by the Office in setting the wage levels of its staff. The Ombudsman replied that when determining the salaries of her staff, she would make reference to those of similar organizations such as the Equal Opportunities Commission, Office of the Privacy Commissioner for Personal Data, Independent Commission Against Corruption, etc., to ensure that the wage levels were reasonable and comparable to the market levels. Mr LAU Ping-cheung cited several examples to illustrate that the salaries of some experienced non-civil servant contract staff had to be pitched at the entry points of the relevant ranks upon the renewal of their contracts because the period between the expiry of their previous contracts and commencement of their new contracts exceeded four months, resulting in non-recognition of their increments. In response, The Ombudsman hoped that the salaries of the Office's staff would not be reduced under the new funding arrangements, in order that they could work in the Office without worries and there would be room for continued development for the competent staff. In this respect, she had adopted a more proactive approach by abolishing increments within the contract period and introducing flexible performance-based salary-point review upon renewal of contract.

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21. In reply to Ms Emily LAU, The Ombudsman said that her contract was due to expire by the end of March 2004. On the administrative arrangements of the Office, the management would normally discuss with staff members the renewal of their contracts about six months before the expiry dates.

(b) Survey on public awareness of The Ombudsman's Office and the effectiveness of its services

(LC Paper No. CP 188/03-04(07) to (09))

22. Mr HUI Cheung-ching noted that the Office had initiated a survey on public awareness of the work of the Office in March this year to collect the views of the public for the purpose of formulating strategies on public education and publicity as well as enhancing the Office's complaint handling. He asked about the details of the strategies on education and publicity that were formulated based on the findings of the surveys conducted in 1996 and 1999/2000. The Ombudsman replied that the most effective means of publicity was to make "Announcements of Public Interest" on the work of the Office on televisions and radios. Apart from students, target groups of publicity also included senior citizens and the grassroots who were unfamiliar with the services of the Office. In addition, the Office would organize seminars on the work of the Office for Members' assistants and social workers. In response to Mr HUI Cheung-ching's further enquiry, The Ombudsman pointed out that this year's survey had been conducted with the assistance of the Census and Statistics Department (C&SD) at a cost of about \$500,000.

23. Ms Emily LAU hoped that The Ombudsman could brief Members on the findings of the survey after the publication of survey results. The Ombudsman advised that the Office was reviewing the preliminary data submitted by C&SD, and planned to discuss with C&SD and the market research agency on the data collected. The formal survey report was expected to be completed early next year and the findings would be included in the next Annual Report of the Office for public information. The Chairman said that The Ombudsman might brief Members on the findings of the survey at the next meeting.

24. The Ombudsman made reference to a survey on social cohesion conducted by the Centre for Civil Society and Governance under the Department of Politics and Public Administration of the University of Hong Kong. The survey revealed that the scores of confidence in The Ombudsman's Office ranked second to the Independent Commission Against Corruption. At the request of Members, The Ombudsman tabled at the meeting the relevant newspaper clippings for Members' reference and undertook to provide Members with the executive summary of the survey through the Secretariat.

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IV. Any other business

25. Mr LAU Ping-cheung asked whether Members could request the Office to investigate if maladministration was involved in the Administration's recent decision to put on hold the construction of the new LegCo Complex at the Tamar site. In response, The Ombudsman pointed out that in principle, the Office could investigate any act of suspected maladministration on the part of Government departments provided that a complaint had been lodged by the aggrieved party. At the present stage, she would not rule out the possibility of conducting an investigation into the matter and would continue to keep an eye on developments.

26. The Chairman advised that the next meeting would be held in December 2004. The Secretariat would consult Members and The Ombudsman on the exact date of meeting. The Chairman thanked The Ombudsman and her colleague as well as Members for attending the meeting and declared the meeting closed.

27. The meeting ended at 12:30 pm.

(Post-meeting note: The Office subsequently provided to the Secretariat the executive summary of the survey report and newspaper clippings referred to in paragraph 24. The summary and the newspaper clippings were forwarded to Members for reference vide LC Paper No. CP 212/03-04 on 3 December 2003.)

Legislative Council Secretariat
20 January 2004