

立法會
Legislative Council

LC Paper No. CB(2)1764/05-06
(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 27 February 2006 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Lik, GBS, JP P

Public Officers attending : Item IV

Constitutional Affairs Bureau

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Ms Doris HO Pui-ling
Principal Assistant Secretary for Constitutional Affairs

Department of Justice

Mr Peter WONG Hing-hong
Senior Assistant Solicitor General

Mr Llewellyn MUI Kei-fat
Senior Government Counsel

Environmental Protection Department

Ms Betty CHEUNG Miu-han
Principal Environmental Protection Officer

Item V

Mr Stephen WONG
Deputy Solicitor General (General)

Ms Michelle TSANG
Senior Assistant Solicitor General

Mrs Alice CHEUNG
Assistant Director of Administration

Item VI

Legal Aid Department

Mr Benjamin CHEUNG
Director of Legal Aid

Ms Jennie HUI
Deputy Director of Legal Aid

Mr T E KWONG
Acting Deputy Director of Legal Aid

Attendance by : Item IV
invitation

The Hong Kong Bar Association

Mr Philip DYKES, SC

Item V

The Hong Kong Bar Association

Mr Rimsky YUEN, SC

Mr P Y LO

Item VI

The Hong Kong Bar Association

Mr Philip DYKES, SC

The Law Society of Hong Kong

Mr Junius K Y HO
Chairman of the Legal Aid Committee

Mr Amirali NASIR
Member of the Legal Aid Committee

Mr HO Chi-kuen, Dennis
Member of the Legal Aid Committee

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Lolita SHEK
Senior Council Secretary (2)7

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(2)1198/05-06 – Minutes of the meeting on 15 December 2005)

The minutes of the meeting held on 15 December 2005 were confirmed.

- II. Information papers issued since last meeting**
(LC Paper No. CB(2)959/05-06(01) – A letter dated 21 January 2006 from the Chairman on "Monitoring of assigned-out cases by Legal Aid Department")

LC Paper No. CB(2)1201/05-06(01) – A paper provided by the Administration on "Recovery Agents"

LC Paper Nos. CB(2)1204/05-06 (01) to (03) – Correspondence between the Law Society of Hong Kong and the Department of Justice on the proposed Qualified Insurance Scheme)

Action

2. Members noted that the above papers had been issued to the Panel.
3. The Chairman noted from the paper provided by the Administration on “Recovery Agents” (LC Paper No. CB(2)1201/05-06(01)) that a meeting was held between the Administration and the two legal professional bodies on 16 January 2006 to discuss steps to be taken to prevent illegal activities of recovery agents (RAs). She pointed out that the Administration had not explained its policy on RAs. The Chairman asked whether the Hong Kong Bar Association was satisfied with the actions taken/to be taken by the Administration in tackling the problem as detailed in paragraphs 3 to 6 of the paper.
4. Mr Philip DYKES of the Bar Association responded that he would keep in view the effectiveness of the Administration’s actions and the problems created by RAs. The Chairman said that the Bar Association was welcome to suggest how the Panel could further assist in tackling the problem. She added that the Administration would be requested to explain its policy on the matter in writing.

(Post-meeting note : The supplementary paper provided by the Administration on its position regarding RAs and recent progress of the matter was issued to members vide LC Paper No. CB(2)1560/05-06(01) on 28 March 2006.)

5. Members noted that in its letter dated 16 February 2006 to the Law Society of Hong Kong on the proposed Qualifying Insurers Scheme (LC Paper No. CB(2)1204/05-06 (03)), the Administration had indicated that it supported in principle the implementation of the Scheme subject to some conditions. Members agreed that the Panel should continue to monitor the implementation of the Scheme as suggested by the Administration in its letter.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1212/05-06(01) – List of outstanding items for discussion

LC Paper No. CB(2)1212/05-06(02) – List of follow-up actions)

6. Members agreed that the following items on the outstanding list should be discussed at the next meeting on 27 March 2006 –
 - (a) Budgetary arrangement for the Judiciary;
 - (b) Review of legislative provisions containing the drafting formula “to the satisfaction” of an enforcement agency; and
 - (c) Limited liability for professional practices.
7. Ms Emily LAU expressed concern whether sufficient resources would be provided to the Judiciary for the additional responsibilities involved in the

Action

Administration's proposed legislative framework regulating the conduct of interception of communications and covert surveillance by law enforcement agencies without compromising the administration of justice of the Judiciary. Ms LAU suggested that the resource implications for the Judiciary arising from the legislative proposal should be discussed under the item in paragraph 6(a) above. Members agreed.

(Post-meeting note : On the instruction of the Chairman, the agenda for the next meeting on 27 March 2006 has been revised to include the discussion of the item "Qualifying Insurers Scheme of the Law Society of Hong Kong". The item in paragraph 6(b) above has been deferred for discussion at the meeting on 24 April 2006.)

IV. Issues relating to the imposition of criminal liabilities on the Government
(LC Paper No. CB(2)467/05-06(01) – Paper provided by the Administration on "Imposition of Criminal Liabilities on the Government or Public Officers")

LC Paper No. CB(2)467/05-06(02) – Background brief prepared by the LegCo Secretariat on "Issues relating to the imposition of criminal liabilities on the Government")

8. The Chairman said that the Panel had discussed the imposition of criminal liability on the Government or public officers on several occasions. The Panel agreed that it was not a legal or constitutional issue but a matter of policy. The Panel had therefore requested the Administration to review its position in the light of the recommendations of the working group set up under the Panel to study the issue.

9. Deputy Secretary for Constitutional Affairs (DSCA) explained the Administration's position on the recommendations of the working group as detailed in the Administration's paper as follows –

- (a) most common law jurisdictions which the Administration studied still retained Crown immunity in respect of criminal liability;
- (b) the Administration noted that in the two jurisdictions where alternative approaches had been adopted, namely the United Kingdom (UK) and New Zealand (NZ), changes had only been introduced on a very restrictive basis and for a limited period of time. It would not be prudent for Hong Kong to adopt the UK or NZ approach now without a clear idea of the full impact of the changes arising from the proposal;
- (c) the existing reporting mechanism had been working satisfactorily in the open setting of our society. In relation to the seven environment-related ordinances, all the required rectification measures had been completed within a reasonable period of time, and no new contravention had been recorded since October 2003. It was

Action

considered that the existing reporting mechanism, backed by the possibility of disciplinary action, had been effective in terms of rectifying the contraventions in a timely manner; and

- (d) the existing legal policy of not imposing criminal liability on the Government or public officers in respect of regulatory offences should be retained.

10. Mr Philip DYKES reiterated his position on this issue which was explained to the Panel at the meeting on 28 June 2004. Mr DYKES said that he shared the view of the working group that the issue of Crown immunity should be reviewed in the context of legal policy. He added that Crown immunity was not entrenched constitutionally, either in UK or in the Basic Law of Hong Kong. Imposing criminal liability on the authorities concerned would enhance the confidence of the public and users of the services provided by the authorities, and was expected by society. Hong Kong should therefore move forward and break from the existing practice, and adopt a new approach as in the case of Germany and Japan where criminal liability was imposed on the government.

11. Mr DYKES urged the Administration to take a policy view on the matter, and decide whether exemptions from liability were justified on a case by case basis. He said that the Government should provide policy justifications if it decided to maintain the status quo.

Issues raised by members

12. Ms Audrey EU expressed concern that in drafting new legislation, the Administration would try to add exemption clauses to the legislation so that the Government or public officers would not be held criminally liable for contravention of statutory provisions. She quoted the Smoking (Public Health) (Amendment) Bill 2005 as an example. The Administration had explained to the Bills Committee on the Bill that it was in line with the usual practice to include the exemption clauses in the Bill. DSCA responded that the Bureau concerned had noted Members' concern and it would follow up the matter with the Bills Committee.

13. Ms EU also noted from paragraph 12 of the background brief prepared by the Legislative Council (LegCo) Secretariat that a total of 156 cases of contravention of environment-related legislation were reported to the Chief Secretary for Administration (CS) between 1999 and March 2003. However, as at August 2003, no disciplinary actions had been taken against public officers for these contraventions. She sought additional information on the updated position on these cases. Ms EU added with regret that the Administration was not committed to protecting and improving the environment, and had not set a good example in environmental protection, as it refused to be held criminally liable for contraventions of the relevant ordinances.

Action

14. Principal Environmental Protection Officer (PEPO) informed members that in relation to the enforcement of the seven environment-related ordinances, 156 cases had been reported to CS between January 1999 and September 2003. The government departments concerned had introduced remedial and improvement measures to rectify the contraventions in a timely manner. As at end of 2004, all the required rectification works had been completed to the satisfaction of the Director of Environmental Protection (DEP).

15. PEPO further said that staff of the Environmental Protection Department (EPD) conducted regular inspections on public and private facilities. The situation in those facilities was satisfactory, and no new contravention had been recorded since October 2003. DSCA supplemented that the fact that no new contravention had been recorded since October 2003 reflected that the existing reporting mechanism had been working effectively.

16. Ms Audrey EU requested the Administration to provide information on the measures taken in respect of the 156 cases in a tabular format in a paper for members' reference.

17. PEPO said that the Administration had provided a paper reporting on the progress of each of the 156 cases in 2003. She explained that most of the contraventions in those cases were related to improper wastewater discharges, sub-standard treatment facilities or lack of sewerage facilities. In some cases, improvement measures to those facilities might take two to three years to complete. The departments concerned had introduced short-term mitigating measures to solve the problem in the interim. PEPO undertook to provide the information as requested by Ms EU.

Admin

18. On the Administration's advice that there was no new contravention recorded since October 2003, Ms Audrey EU asked whether this was due to the fact that new contraventions had not been reported to CS.

19. PEPO explained that if contraventions of statutory provisions were detected during regular inspection by EPD staff, EPD would notify the responsible organisations or departments concerned and require them to introduce improvements. In accordance with the statutory requirements, if the problems could be solved within a reasonable time span, it was not necessary to report the cases to CS. Otherwise, DEP would decide whether to report the cases to CS.

20. Ms Emily LAU opined that since some other overseas jurisdictions had imposed criminal liability on their governments, the Administration should not only make reference to those common law jurisdictions which had retained Crown immunity. Ms LAU further pointed out that it was not fair to the public that clauses had been included in the Smoking (Public Health) (Amendment) Bill 2005 and the bill on interception of communications and covert surveillance to exempt the Government or public officers from criminal liability for contravention of the provisions in the two Bills. She also sought clarification on whether the Government and public officers

Action

were exempted from criminal liability in respect of all legislation in Hong Kong, and not just the seven environment-related ordinances.

21. DSCA clarified that currently, the Government or public officers were not held criminally liable for contravention of regulatory legislative provisions while performing public duties. However, public officers would be liable for contraventions of criminal offences such as corruption. DSCA further clarified that the regulatory provisions in the seven environment-related ordinances applied to the Government and public officers. Contraventions of the provisions in these ordinances by government departments or public officers while discharging their duties were dealt with by the reporting mechanism. Under the mechanism, the Administration would ensure that the contraventions would be rectified and timely measures were implemented to solve the problems.

22. DSCA said that the Administration had conducted a study on the criminal liability of government in other common law jurisdictions. While the concept of Crown immunity might change over time and different practices were adopted in different jurisdictions, the majority of common law jurisdictions including UK, Australia, Canada and NZ still retained Crown immunity in respect of criminal liability. The Administration considered that Hong Kong should adopt a prudent approach and keep in view the overall situation having regard to the latest developments in other common law jurisdictions, as the new practices in UK and NZ had only been put into operation for a limited period of time, and the full impact of these changes had yet to be known.

23. Senior Assistant Solicitor General (SASG) supplemented that similar to other members of the public, public officers were held liable for committing criminal offences (e.g. murder, corruption, etc.). SASG reiterated that it was not an appropriate time for introducing radical changes to the existing legal policy of not imposing criminal liability on the Government or public officers in respect of regulatory offences. The Administration had adopted a prudent approach and would keep in view the latest developments in other common law jurisdictions.

24. The Chairman asked why a different approach was adopted in dealing with contraventions of statutory provisions by the Government or public officers. She added that it would be difficult to convince the public that such a special arrangement would not result in inequality between public officers and members of the public.

25. DSCA reiterated that all people, including public officers, were equal before the law and should abide by the legislation applicable to them. The adoption of a different approach in dealing with contraventions by government departments or public officers in respect of regulatory provisions was in line with the practice in other common law jurisdictions.

26. Ms Emily LAU opined that the different approach adopted in dealing with contraventions by government departments or public officers was not fair to the public, as the public officers concerned would only be subject to disciplinary action

Action

and not criminal charges. She also considered that the reporting mechanism was not transparent, as the names of officers who contravened the law were not disclosed.

27. Ms Audrey EU pointed out that disciplinary action had not been taken against the public officers involved in the 156 cases reported to CS.

28. PEPO clarified that the names of individual officers involved in those cases would not be reported to CS. Only the name and location of the facilities involved, the dates of the contraventions and the improvement measures taken would be included in the report.

29. Ms Emily LAU noted from paragraph 5 of the Administration's paper that in the case of the amended Lands (Miscellaneous Provisions) Ordinance (Cap. 28), one contravention had been recorded so far. She requested for additional information on the case.

30. Principal Assistant Secretary for Constitutional Affairs informed members that under the Ordinance, government departments had to obtain valid permits for excavation of land. However, because the internal guideline of the department concerned was not clear, an excavation had been made by the department concerned without fully meeting the permit requirement. The department concerned had subsequently revised the guideline and reminded its staff of the legal requirement.

31. Ms Miriam LAU said that the public considered it unfair that disciplinary action, not to say criminal charges, had not been taken against public officers who contravened the law. The same criminal liability should be imposed on public officers and the public alike. The public would not accept the excuse that Hong Kong had to follow the practice in other common law jurisdictions where Crown immunity was still retained.

32. Mr LI Kwok-ying asked whether there were disadvantages in imposing criminal liability on government departments and public officers. He said that some members of the Bills Committee on Smoking (Public Health) (Amendment) Bill 2005 considered that there were more advantages than disadvantages in removing Crown immunity, as public officers would be more careful in discharging their duties.

33. DSCA replied that the Department of Justice (DOJ) had explained its consideration when the issue was last discussed on 28 June 2004. At the meeting, DOJ had explained that to enforce statutory requirements in regulatory provisions through the machinery of prosecution in courts would raise complex technical questions of procedure and efficacy such as whether a government department had legal personality, whether one government department could prosecute another government department, and imposing fine on the Government was meaningless as the money to pay for the fine would be from the public coffers.

34. Mr LI Kwok-ying asked if the Administration had explored whether these technical problems could be solved. DSCA explained that before considering the

Action

technical problems in imposing criminal liability, the fundamental issue to address first was whether, as a matter of principle, criminal liability should be imposed on Government. Since Crown immunity was retained in most of the major common law jurisdictions, it would not be advisable for Hong Kong to introduce changes without a clear idea of the full impact of such changes.

35. Mr Philip DYKES said that the Administration should provide policy reasons for not removing Crown immunity. He added that there were arguments for the imposition of criminal liability on government departments and public officers in that the latter would be more careful and alert in discharging public duties.

36. Mr DYKES quoted an article which reported that Crown immunity in health and safety case in Wales had aroused a public outcry in the U.K.. He urged the Administration to be more sensitive to the demand of the public to remove Crown immunity in respect of criminal liability, in particular matters concerning public health and safety, before there was a similar public outcry over the inequality in the treatment of similar statutory provisions.

37. Mr DYKES further pointed out that in other jurisdictions such as England, Wales, Canada and Australia, Crown immunity was enjoyed by only the central government and not the local authorities which handled matters of daily lives such as environment and hygiene. In Hong Kong, many of these “local” functions were dealt with by the Government for historical reasons only.

Way forward

38. The Chairman said that the issue of imposition of criminal liability on the Government was referred to the Panel by the House Committee. The Panel should report its deliberations on the matter to the House Committee. Ms Emily LAU suggested the Clerk to prepare a draft report in consultation with the Chairman for discussion by members at a future Panel meeting. Members agreed.

39. The Chairman concluded that members strongly urged that criminal liability be imposed on the Government and public officers while discharging public duties.

40. Ms Emily LAU suggested that in the report, the Panel should recommend that the names of public officers involved in cases of contraventions of legislative provisions should be included in the report to CS.

41. Ms Audrey EU suggested that the Panel should comment on the lack of commitment of the Government in protecting the environment in the report. Because of the significant impact of its actions and policies, the Government should take the lead in environmental protection. The existing reporting mechanism was not effective in deterring contraventions of environment-related ordinances, as contraventions of statutory provisions would not be reported to CS if timely improvement measures were introduced.

Action

42. Members agreed that the requests and comments mentioned in paragraphs 39 to 41 above should be included in the draft report to the House Committee. The Chairman said that the draft report would be forwarded to the Administration for comments in due course.

V. Reciprocal enforcement of judgments in commercial matters between the HKSAR and the Mainland

(LC Paper No. CB(2)1202/05-06(01) – Background brief prepared by the LegCo Secretariat on "Reciprocal Enforcement of Judgments in Commercial Matters between the Hong Kong Special Administrative Region and the Mainland"

LC Paper No. CB(2)1202/05-06(02) – Paper provided by the Administration on "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland"

LC Paper No. CB(2)1202/05-06(03) – Letter dated 6 February 2006 from the Law Society of Hong Kong

LC Paper No. CB(2)1225/05-06(01) – The Hong Kong Bar Association's position paper on "Reciprocal Enforcement of Judgments in Commercial Matters between the HKSAR and the Mainland")

43. Assistant Director of Administration (AD of Adm) explained that the revised proposed arrangement for reciprocal enforcement of judgments (REJ) in commercial matters between the Hong Kong Special Administrative Region (HKSAR) and the Mainland (the arrangement) was that the proposed arrangement should apply to "money judgments of commercial cases given by specified courts of either the Mainland or the HKSAR made pursuant to a valid exclusive choice of court agreement in writing". The revised proposal was the same as the initial proposal, except in respect of the choice of court agreement for resolving disputes and level of courts of which judgments were to be covered.

44. AD of Adm added that compared with the initial proposal, the revised proposal covered the Basic Level People's Courts in the Mainland. As regards the choice of forum, the revised proposal was more restrictive than the initial proposal in that parties had to make an exclusive choice of court agreement in advance of submitting their dispute for resolution of the court.

Choice of court

45. In response to the Chairman, Deputy Solicitor General (DSG) clarified that under the revised proposal, the arrangement would only apply if the parties concerned expressly agreed in writing to designate a court of the Mainland or the HKSAR to have exclusive jurisdiction for resolving any dispute. DSG explained that pursuant to the exclusive choice of court agreement, disputes arising from the contract

Action

concerned would only be resolved in the designated court and not in the courts in any other jurisdictions, except for certain cases whereby the courts in the HKSAR or the Mainland would have exclusive jurisdiction over the matter according to their respective law. Examples included, in Hong Kong, jurisdiction over case of real property exercised exclusively by the courts in HKSAR; and in the Mainland, jurisdiction over matters concerning development of natural resources exercised exclusively by the People's Courts.

46. Mr Rimsky YUEN of the Hong Kong Bar Association said that on the understanding that the arrangement would only apply if an exclusive choice of forum clause had been included in the contracts concerned, and that the designated courts would have exclusive jurisdiction in resolving conflicts arising from the contracts concerned, the Bar Association in principle supported the revised proposal.

47. Ms Miriam LAU said that members were still concerned about the implementation of the arrangement, in particular the suggestion of "trial points" which was not accepted by the Administration. Nevertheless, Ms LAU supported the implementation of the revised proposal as she considered that the arrangement was fair and would be able to prevent possible abuses.

Scope

48. Ms Audrey EU sought clarification on the enforcement of judgments which contained aspects other than money judgments under the arrangement, such as injunction order.

49. DSG clarified that the arrangement would only apply to money judgments but not other types of the judgments. If the judgment in question covered both money and other awards, the parties concerned could apply for enforcement of the parts of judgments relating to monetary award. The arrangement was similar to that in the enforcement of arbitral awards.

Finality

50. The Chairman expressed concern about the requirements of finality of judgments to which the arrangement applied. She noted that special procedures would be established to address the common law requirements of finality. However, she pointed out that finality was a legal concept, and the arrangement or the legislation to be enacted to give effect to the arrangement should not change the legal definition of finality.

51. Mr Rimsky YUEN agreed that the arrangement should only apply to a judgment that was final and conclusive. However, he pointed out that unless a drastic reform was introduced to the current civil litigation system in the Mainland, which was unlikely to happen in the near future, Mainland judgments would not be final and conclusive under the common law. The Bar Association was of the view that a fair balance should be struck between maintaining the common law requirement

Action

on the one hand and providing a practically workable solution for REJ which was conducive to the development of HKSAR as a centre for dispute resolution in commercial cases. The Bar Association was satisfied that the approach adopted in the arrangement was acceptable. The issue of a certificate of final judgment by the relevant Mainland court was a practical solution. In fact, a similar approach had been adopted in some of the cases where the litigant sought to adduce a certificate issued by the People's Procuratorate (不抗訴決定書).

52. The Chairman stressed that Mainland judgments were not able to satisfy the requirements of finality in common law. However, she agreed that from a practical point of view for the purpose of facilitating REJ, judgments which complied with the proposed special procedures could be regarded as having satisfied the requirements of final judgments under the arrangement, on the understanding that the arrangement would not change the legal definition of finality.

53. DSG responded that there was not yet an authoritative definition of finality of judgments. The Bar Association had quoted cases which illustrated that a Mainland judgment could not be regarded as not being final and conclusive just because a civil law system was adopted in the Mainland. In fact, similar trial supervision systems were adopted in other jurisdictions such as Germany and France with which arrangement for REJ had been established with HKSAR. DSG added that the special procedures described in paragraph 15 of the Administration's paper were proposed to ensure that judgments to which the arrangement applied had satisfied the requirements of finality for the purpose of REJ.

Implementation

54. In response to Ms Audrey EU, DSG explained that the problems described in paragraph 25(d) of the Administration's paper referred to problems relating to implementing the arrangement rather than to individual cases. He added that any problems encountered in implementing the arrangement would be discussed and resolved by the Supreme People's Court in the Mainland and the Administration Wing and DOJ in HKSAR.

Way forward

55. DSG informed members that the Administration intended to reach agreement on the arrangement with the Mainland as soon as possible. The arrangement would only become effective when HKSAR had completed the relevant legislative procedures and the Mainland had promulgated a judicial interpretation to give effect to the arrangement. The Administration would consult LegCo again in the context of the detailed legislative proposals.

VI. Monitoring of assigned-out cases by Legal Aid Department

(LC Paper No. CB(2)1203/05-06(01) – Executive Summary of the Investigation Report on "Monitoring of Assigned-out Cases by Legal Aid Department" published by the Office of the Ombudsman in January 2006

LC Paper No. CB(2)1203/05-06(02) – Paper provided by the Administration on "Monitoring of assigned-out cases by Legal Aid Department")

56. Director of Legal Aid (DLA) referred members to the two responses from the Legal Aid Department (LAD) to the Ombudsman's Investigation Report on "Monitoring of Assigned-out Cases by Legal Aid Department". In its responses, LAD explained that it was generally satisfied with the performance of lawyers in private practice to whom legal aid cases were assigned (assigned lawyers). In some isolated cases where the performance of the assigned lawyers was considered unsatisfactory, they would be sanctioned by LAD.

57. Mr Philip DYKES said that he would be pleased to respond to questions relating to the legal profession's duty to be competent in its professional services and how complaints against the lack of competence of lawyers were dealt with by the Bar Association as mentioned in paragraphs 39 and 42 of the Executive Summary of the Ombudsman's Investigation Report.

58. Mr Junius HO of the Law Society of Hong Kong informed members that the Law Society was concerned about the Investigation Report. As indicated by DLA, the performance of assigned solicitors had been good in general. However, it was inevitable that there might be isolated cases in which the assigned solicitors had not performed satisfactorily. As an autonomous professional body, the Law Society had established a set of internal procedures to follow up complaints from members of the public or LAD against the professional conduct of its members.

Cases studied by the Ombudsman

59. Ms Audrey EU noted from paragraph 3 of LAD's paper that according to the responses returned by aided persons in LAD's customer service surveys in the past three years, about 90% of the aided persons were either satisfied or very satisfied with the performance of assigned lawyers. However, she also noted that problems relating to the performance of assigned lawyers had been identified in three of the seven cases commented by the Ombudsman in her Investigation Report. Ms EU asked how the cases studied by the Ombudsman had been identified.

60. DLA explained that the Ombudsman's investigation covered legal aid cases which took over five years to complete. Initially, about 200 such cases had been identified. Eventually, only 36 cases had been investigated by the Ombudsman as the consent of the aided persons concerned could not be obtained in the remaining cases.

Follow-up action to be taken by LAD

61. Ms Audrey EU noted that in some of the cases listed in the Investigation Report, LAD had not intervened even when the assigned lawyers had failed to respond to requests or reminders for progress from LAD over a long period of time. The Ombudsman considered that the monitoring of assigned-out cases could be improved. Ms EU asked whether improvements had been introduced by LAD in the light of the Ombudsman's comments and recommendations, and what monitoring measures could be taken in respect of similar cases in future in addition to issuing requests or reminders for progress to assigned lawyers.

62. DLA responded that LAD would follow up the comments and recommendations of the Ombudsman seriously. A working group headed by the Deputy Director of Legal Aid had been set up to follow up the matter and to make recommendations on improvements, if necessary. DLA added that guidance had been provided and seminars had been organised on monitoring of assigned-out cases for LAD staff from time to time. LAD would examine carefully whether other improvement measures had to be implemented.

63. As regards the cases in which the assigned lawyers had not responded to LAD's repeated requests for progress, DLA explained that they were isolated cases. LAD staff had been instructed that such undue delay was not acceptable and should not be allowed in similar cases in future.

64. Regarding Case 6 in which the assigned lawyer had absconded, DLA said that this was an unforeseeable and unfortunate event. Such incident was unprecedented in the past 35 years of LAD's history. The aided person involved had not suffered any losses as the Treasury had agreed to grant an ex-gratia payment to her.

65. At the request of Ms Audrey EU, DLA briefed members on LAD's response to the Ombudsman's comments in the seven cases in the Investigation Report, the details of which were given in paragraph 4 of LAD's paper and paragraphs 7 to 39 of Appendix A of the paper. DLA explained that Cases 1, 2 and 7 did not concern monitoring. The monitoring of Case 3 was satisfactory although some of LAD's requests for progress could have been dispensed with. For Cases 4 and 5, the performance of the individual LAD staff involved could be improved.

66. The Chairman asked whether the cases listed in the Investigation Report and LAD's follow-up actions had been reported to the Legal Aid Services Council (LASC), since the operation and work procedures of LAD was involved. DLA replied that LAD liaised closely with LASC on matters relating to the monitoring work of LAD. However, these cases had not been reported to LASC as unsatisfactory performance of assigned lawyers was involved in only two of those cases. The remaining cases mainly involved performance of individual LAD staff.

Handling of complaints from aided persons

67. Mr James TO said that he and other Members had received complaints from aided persons against the performance of assigned lawyers. According to his experience, most of these complaints had been caused by the aided persons' misunderstanding or lack of understanding of legal procedures or the duty of LAD to ensure the effective use of public funds in legal aid cases. To tackle these problems, he suggested that while certain LAD staff could be assigned to explain these matters to aided persons, it might be more effective if an independent organisation, such as LASC, could assume the role of the mediator or adjudicator.

68. Mr TO further said that some aided persons had enquired whether they could lodge complaints against the performance of assigned lawyers to the Law Society. The Law Society could therefore act as the mediator in this respect. Mr TO added that as revealed from the cases he received, the number of unsatisfactorily monitored legal aid cases was far smaller than that reflected in the Ombudsman's Investigation Report.

69. DLA assured members that LAD handled all complaints seriously and would follow up each case thoroughly. He explained that it was not within the purview of LASC to handle complaints, and the staff resources of the Council were not available for that purpose.

70. Mr Junius HO informed members that the Law Society had set up a series of events to promote the legal knowledge of the public and serve the community. Free legal services were provided to members of the public in need separately by the Bar Association, the Law Society, LegCo Members and the Home Affairs Department. The Law Society also organised the Law Week annually to enhance public knowledge in legal matters.

71. Ms Emily LAU noted that the Ombudsman had pointed out in paragraphs 42 and 43 of the Executive Summary of the Investigation Report that the exercise had identified the apparent lack of monitoring over the professional standard of the legal professions. Although the two legal professional bodies might have separate mechanisms to monitor the professional standard of their members, members of the public had little knowledge of such mechanisms. The Ombudsman had therefore suggested that there was a need for the two legal professional bodies to explore how best to promote awareness, and enhance the effectiveness, of such mechanisms in consultation with the Administration. Ms LAU asked whether improvement measures could be introduced in this respect to assist the aided persons.

72. DLA reiterated that LAD would follow up all the complaints received against the performance of assigned lawyers. If the performance of assigned lawyers was considered unsatisfactory, they would be sanctioned and such sanctions would include the issue of warning letters, entry into the record of unsatisfactory performance or removal from the Legal Aid Panel. Nevertheless, DLA pointed out that it was for the two legal professional bodies to monitor the professional standard of their profession.

Action

73. Mr Amirali NASIR explained that there was a mechanism in the Law Society to monitor the conduct of solicitors. Complaints against professional misconduct of solicitors lodged with the Society would be dealt with by its Standing Committee of Compliance. Even if disciplinary action was not warranted, a letter of good practice could be issued to the solicitors concerned.

74. Mr NASIR further informed members that a Law Week was organised by the Law Society annually to promote and improve legal services. Talks on legal procedures were arranged for different groups. In view of the good response from the public, the Law Society was considering organising similar talks in different languages for different ethnic groups such as Nepalese and Pakistani.

Assignment of legal aid cases

75. The Chairman commented that as pointed out by the Ombudsman in paragraph 42 of the Executive Summary of the Investigation Report, while the legal professional bodies might institute disciplinary action against their members for professional misconduct, the aggrieved clients could only claim compensation through litigation. She sought clarification on whether the poor performance of the assigned lawyers in the seven cases in the Investigation Report was associated with the overloading of the lawyers concerned with legal aid cases. She suggested that LAD should refrain from assigning too many cases to a particular law firm or lawyer to ensure that assigned lawyers would not be overloaded with cases and their performance would not be affected.

76. DLA clarified that the lawyers in the seven cases mentioned in the Investigation Report had not been overloaded with legal aid cases. As regards the assignment of cases to lawyers, DLA explained that except for cases in which the aided persons had nominated their lawyers, LAD assigned a lawyer from the Legal Aid Panels who should possess the experience in processing at least 15 similar cases in the past three years. Not more than 50 cases would be assigned to the same lawyer in one year. DLA added that even if the aided person had nominated a lawyer, LAD would ensure that the lawyer concerned possessed the necessary experience in handling the case.

VII. Any other business

77. There being no other business, the meeting ended at 6:35 pm.