

Information Note
for LegCo Members' meeting with The Ombudsman
on 11 December 2007

(A) Work of The Ombudsman's Office**(i) For the year 2006/2007**

In the 2006/2007 Reporting Year, the Office received a total of 15,626 enquiries and 5,606 complaints; and 5,340 complaints were concluded. Of these, 76.3% were concluded within three months, 22.3% were concluded between three to six months and 1.4% took longer than 6 months to conclude.

For easy reference, statistics on complaints and enquiries for the past five years are tabulated below:-

	Reporting years				
	02/03	03/04	04/05	05/06	06/07
(A) Enquiries received	14,298	12,552	11,742	14,633	15,626
(B) Complaints received	4,382	4,661	4,654	4,266	5,606
(C) Complaints brought forward	760	772	1,088	719	676
(D) Complaints for processing = (B) + (C)	5,142	5,433	5,742	4,985	6,282
(E) Complaints handled and concluded	4,370	4,345	5,023	4,309	5,340
By preliminary inquiries	2,172	1,834	1,873	1,758	1,643
By full investigation	124	284	125	55	71
By mediation	6	7	6	12	2
Complaints screened out	1,729	1,892	1,948	1,113	2,385
Complaints not pursued	-	-	-	1,371	1,239
(F) Percentage of complaints concluded = (E) ÷ (D)	85%	80%	88%	86%	85%
(G) Total cases carried forward = (D) – (E)	772	1,088	719	676	942
(H) Number of direct investigations completed	6	5	5	4	4
(I) Direct investigation assessment reports produced	1	5	6	6	5

Four direct investigations were completed on the following subjects:

1. Administration of the Mid-levels Moratorium
2. System for Processing Applications for Disability Allowance by the Social Welfare Department
3. Monitoring of Cases with Statutory Time Limit for Prosecution by the Food and Environmental Hygiene Department
4. Assessment of Children with Specific Learning Difficulties

Apart from direct investigations, the Office also concluded the following five direct investigation assessments:

1. Building Safety Loan Scheme
2. Issue of Food Warning in Sheung Wan, Central and Western District
3. Management of Non-commercial Publicity Materials on Roadside
4. Tenant's Obligations under Senior Citizen Residences Scheme
5. Retrieval of Identity Cards from Foreign Domestic Helpers

For the year, a total of 134 recommendations were made to improve various aspects of public administration. Of these, 76 were related to complaints and 58 resulted from direct investigations. 97% of the recommendations were accepted for implementation.

(ii) For the first seven months (April to October) of 2007/2008

From April 2007 to October 2007, the Office received a total of 7,219 enquiries and 2,679 complaints.

During the period, one direct investigation has been completed and five are still in progress.

Completed

1. Mechanism for Handling Conflict of Interests in Organisations subsidised by Leisure and Cultural Services Department

In progress

1. Overcharge of Water Bill by Water Supplies Department

2. Special Examination Arrangement for Students with Specific Learning Difficulties
3. Effectiveness of the Integrated Call Centre in Handling Complaints
4. Government's Arrangements for Handling Water Seepage Complaints
5. Government Measures for Street Management

Meanwhile, one DI Assessment has also been completed:

1. Management of Mortuaries in Hospitals under the Hospital Authority

(B) Review of The Ombudsman's jurisdiction

(raised by Hon Emily LAU Wai-hing, JP)

The Ombudsman's jurisdictional review covered both operational issues relating to The Ombudsman Ordinance and other more philosophical issues relating to recent developments in ombudsman institutions in other parts of the world. Part 1 of the review was presented to the Administration in November 2006. In Part 1, we examined:

- (a) the criteria for bringing organizations within The Ombudsman's jurisdiction and possible additions to the list of organizations in Schedule 1 to The Ombudsman Ordinance;
- (b) the scope for relaxing some restrictions on The Ombudsman's investigative powers, as set out in Schedule 2 to the Ordinance; and
- (c) the apparent conflict between the secrecy requirements in The Ombudsman Ordinance and other ordinances.

Part 2 of the review has just been completed and was submitted to the Administration on 23 November 2007. In this part, we canvassed recent trends and developments with ombudsman offices in other parts of the world. In particular, we have focused on the areas of:

- (a) protection and promotion of human rights;
- (b) access to official information;
- (c) protection of whistleblowers; and
- (d) specialized ombudsmen.

The Ombudsman is mindful that these are essentially policy matters within the responsibility of Government, and the Legislative Council where legislative and funding support is required. The Ombudsman, therefore, has not advocated any particular course of action. Instead, this review offers a snapshot impression of recent developments in these areas and some pointers to possible implications for the ombudsman system if such developments were to be pursued in Hong Kong.

(C) The Ombudsman's follow-up with the Administration on the implementation of her recommendations.

(raised by Dr Hon Fernando CHEUNG Chiu-hung)

Section 16(1) of The Ombudsman Ordinance empowers The Ombudsman, after investigation, to report his opinion and his reasons. Where The Ombudsman considers appropriate, he may state any remedy he considers should be provided or any recommendation that he thinks fit to make.

The Ombudsman's recommendations are useful tools in providing remedy in specific cases or instigating improvements to administrative systems, procedures and practices of organizations being investigated. After a recommendation is made, our Office will seek periodic progress reports from the organization concerned until the recommendation, or acceptable alternative solutions in appropriate cases, has been implemented.

As cited at (A) above, the acceptance rate is high; so too implementation. However, some, particularly those relating to policies and legislation, will take time.

The following are statistics for the years 2002-03 to 2006-07 on the number of recommendations made by The Ombudsman and Government's acceptance rate:

	2002-03	2003-04	2004-05	2005-06	2006-07
No. of recommendations made	245	209	270	110	134
No. of recommendations accepted	245	208	269	109	130*
Acceptance rate	100%	99.5%	99.6%	99.1%	97%

* excluding 3 recommendations still under consideration

The Ombudsman functions as an independent observer and commentator, scrutinizing administrative actions by Government departments, public bodies, their employees and agents. This arm's length relationship is clearly spelt out by section 19 of the Ordinance which provides that "an investigation (by The Ombudsman) shall not affect any action taken by the head of the organization affected, or his power or duty to take further action with respect to any decision which is subject to the investigation".

The Ombudsman's recommendations are not legally binding, but have persuasive authority only. The Ombudsman has no power to intervene directly in the work of Government or scheduled organizations or, as some complainants mistakenly believe, to force them to take remedial action or implement recommendations against their wishes. Where a head of organization, in the absence of acceptable reasons, refuses to act on The Ombudsman's recommendations within a reasonable period of time, the latter has no power of direct intervention. In such circumstances, The Ombudsman may ultimately submit a report to the Chief Executive, together with such further observations as he thinks fit to make. Under section 16(6), such report shall be laid before the Legislative Council within a month of receipt. Through alerting LegCo and the media, the matter will be exposed to public scrutiny and judgment.