

立法會
Legislative Council

LC Paper No. CP 435/09-10
(These minutes have been seen by The Ombudsman)

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**Legislative Council Members' meeting
with Mr Alan LAI Nin, GBS, JP, The Ombudsman,
held on Tuesday, 8 December 2009, at 9:00 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon Fred LI Wah-ming, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Attendance by Invitation : Office of The Ombudsman

Mr Alan LAI Nin, GBS, JP
The Ombudsman

Mr Tony MA Kai-loong
Assistant Ombudsman

Staff in Attendance : Mrs Sharon TONG
Principal Council Secretary (Complaints)

Mrs Queenie YU
Senior Council Secretary (Complaints)5

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The Chairman welcomed Mr Alan LAI, The Ombudsman, and Mr Tony MA, Assistant Ombudsman to the meeting. She said that the purposes of the meeting were for The Ombudsman to brief Members on the work of The

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Ombudsman's Office, and 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.

I. The work of The Ombudsman's Office in the previous year

(LC Paper No. CP 199/09-10)

Briefing by The Ombudsman

2. The Ombudsman said that the Annual Report of The Ombudsman 2009 was tabled at the Legislative Council (LegCo) meeting in July 2009. He highlighted that in the 2008-2009 Reporting Year, The Ombudsman's Office received 14 005 enquiries and 5 386 complaints. The majority of these complaint cases (72.5%) were concluded within three months; 26% were concluded between three to six months; and 1.5% took longer than six months to conclude. Also, for the first eight months in the 2009-2010 Reporting Year, The Ombudsman's Office received a total of 9 737 enquiries and 3 171 complaints. Apart from the above, The Ombudsman's Office completed six direct investigations and four direct investigation assessments in the 2008-2009 Reporting Year, and five direct investigations from April to November 2009 including investigations on system for development of question papers in public examinations and regulatory system of lifts. Summaries of the investigation reports had been publicized through media releases and press conferences. Practically all of the recommendations made by The Ombudsman's Office were accepted for implementation.

3. The Ombudsman also informed Members that since he took up the post, his Office had launched public education activities through broadcasting on TV and buses and publication of articles on a free newspaper (Headline Daily) on the functions of The Ombudsman. By letting the public know that anonymous complaints and complaints against departments/organizations which fell outside his jurisdiction would not be handled by The Ombudsman's Office, he hoped that it would help to avoid wasting the time of complainants.

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4. As regards the former Ombudsman's recommendations pursuant to the jurisdictional review to bring eight organizations to fall within the jurisdiction of The Ombudsman, The Ombudsman said that the Administration decided to include four public bodies namely, Auxiliary Medical Service, Civil Aid Service, Consumer Council and Estate Agents Authority in Schedule 1 to The Ombudsman Ordinance (Cap. 397). Upon LegCo's passage of the legislative amendment, the effective day for the individual public bodies to come under The Ombudsman's jurisdiction would be appointed by the Director of Administration by notice published in the Gazette.

Discussion

Caseload and direct investigations

5. Mr WONG Kwok-hing commended the work done by The Ombudsman's Office. He appreciated that The Ombudsman's Office had recently made strong criticisms openly against the Social Welfare Department (SWD) after conducting a direct investigation into SWD's granting of disability allowance (DA) and processing of appeals. He considered that the recommendations made by The Ombudsman's Office were able to address the problems directly. As a result of the investigation, SWD had undertaken to review the DA scheme and revert to LegCo on its findings in about nine months' time. In this connection, he asked whether The Ombudsman would attend LegCo meeting to give response to SWD's review findings, and what action could possibly be taken by The Ombudsman if SWD failed to review the issues recommended by his Office. Apart from these, Mr WONG also expressed grave concern about the numerous medical incidents reported in the past year by the Hospital Authority (HA), the media and the aggrieved persons. He asked whether The Ombudsman would conduct direct investigation on the subject, and if not, the reason for it.

6. The Ombudsman explained that pursuant to The Ombudsman Ordinance (Cap. 397), The Ombudsman's role was primarily that of a commentator. As such, his recommendations were not binding. Nevertheless, The Ombudsman, in the light of investigation findings, would ask the departments concerned to make various aspects of improvement and to report at regular intervals their progress of implementation. Where a department failed to take effective improvement measures, The Ombudsman could offer

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comments but the final decision on implementation still rested with the Administration and its internal policy as well as support from LegCo. If the concerned department did not take heed of his recommendations, he could only report it to the Chief Executive (CE). On the question of whether The Ombudsman would attend LegCo meeting, he said that he would consider it should Members decide to invite his attendance. As regards investigation into medical incidents, The Ombudsman said that his Office had also received many complaints in this area. While complaints arising from maladministration of HA were handled by his Office, matters related to medical judgement were outside his jurisdiction.

7. Ms Audrey EU cited a complaint case lodged in April 2007 against the Lands Department (Lands D) for failure to take prompt action to control illegal land filling activity which resulted in the conversion of a footpath in San Tin Park into an access for vehicular use. Investigation report published by The Ombudsman's Office in August 2008 revealed that the complaint was found substantiated. Lands D and the Police had subsequently attempted to take enforcement action but the action was suspended due to strong local resistance. Ms EU said that she had already written to The Ombudsman expressing her concern. As the situation had not been rectified yet, she asked whether The Ombudsman would issue warning to the department concerned or reactivate investigation on the case. She considered that it was necessary for The Ombudsman to put in place a mechanism to keep track of the progress on implementation of recommendations by departments/organizations. The Convenor remarked that although The Ombudsman was bound by law not to disclose the identity or related data of individual cases, Members were concerned about the situation illustrated by Ms EU.

8. The Ombudsman explained that he was not empowered by The Ombudsman Ordinance to order departments to carry out rectification action. Given the resource constraint, he could offer recommendations for improvement and it was the Administration's responsibility to come up with an action plan to rectify deficiencies. If the department concerned failed to act adequately on any recommendation, he would remind the department concerned to do so. If no progress was made, he would escalate the matter to CE's attention. Notwithstanding the above, he undertook to follow up Ms EU's suggestion.

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9. Quoting from the Summary of Annual Report of The Ombudsman that the lack of inter-departmental coordination had remained the most noticeable underlying cause for systemic problems, Mr Fred LI asked what action had been taken by The Ombudsman to rectify the problem.

10. The Ombudsman replied that he had reported two special issues to CE. Firstly, the Joint Office with staff from the Buildings Department (BD) and the Food and Environmental Hygiene Department for a one-stop service to deal with seepage complaints had not been performing its mission effectively due to organizational defects. To improve the situation, he had drawn CE's attention on how Singapore had dealt with seepage complaints successfully. Secondly, inadequate inter-departmental coordination had posed common problem in street management such as illegal parking of bicycles. In this regard, he had advised CE that the matter could best be tackled within the District Administration Scheme. In reply, CE had undertaken that the Administration would follow up both issues.

11. Referring to the direct investigation into support services for students with specific learning difficulties, Ms Cyd HO asked whether The Ombudsman had consulted parents and students of this special group during the investigation. As far as she knew, students who had been rejected by their schools encountered great difficulties in finding another school place in traditional schools. Having regard to the Administration's policy on the provision of 12 years compulsory education, she asked whether The Ombudsman would take the initiative to identify this deprived group and offer them assistance. She also sought clarification on the difference between conducting a direct investigation and a small-scale direct investigation assessment by The Ombudsman.

12. The Ombudsman explained that before launching a direct investigation, his Office might conduct an initial assessment. For this purpose, his Office would research public information as well as information from the organization direct. If such assessment found no significant maladministration of the organization or the organization concerned had made proactive improvement, his Office would simply conclude the study and offered its findings and recommendations to the organization concerned. A recent example of direct investigation assessment was about Privacy Commissioner for Personal Data's arrangements for notifying

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complainants of refusal to investigate. As for direct investigation, press release would be issued and interested parties would be invited to give views to his Office. For example, patients' group would be approached for views by his Office when conducting the investigation into management of non-emergency ambulance transfer service by HA. On the question whether The Ombudsman would identify the students mentioned by Ms Cyd HO, The Ombudsman replied that there was practical difficulty to do so. The Convenor suggested that Ms Cyd HO provide more information to The Ombudsman for appropriate action after the meeting.

13. Referring to the direct investigation assessment on the procedures for reporting breach of the Unsolicited Electronic Messages Ordinance in which The Ombudsman commended the Office of the Telecommunications Authority for taking prompt improvement and saw no need for a further investigation, Mr WONG Ting-kwong questioned how The Ombudsman's Office had arrived at such conclusion. He expressed grave concern about the use of cold calls by commercial entities to market their products.

14. The Ombudsman clarified that the direct investigation assessment had been conducted in response to complaints about junk messages received by fax. The Convenor and Mr WONG Ting-kwong invited The Ombudsman to consider the need for conducting a direct investigation into complaints about cold calls.

15. Noting that The Ombudsman's Office had received quite a number of complaints against BD, the Housing Department (HD), and the Housing Society over the past year, Prof Patrick LAU asked whether the complaints were found substantiated or not as it might have significant impact on the construction industry.

16. The Ombudsman advised that the majority of the complaint cases against HD were about housing management matters such as inability of management offices in handling water seepage or noise nuisance problems. Some of the complaints had already been resolved but the complainants still wanted to convey their grievances to his Office. As for complaints against BD, they were mostly about unauthorized structures and water seepage problems.

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17. Prof Patrick LAU said that as far as he knew, many complaints against unauthorized structures were due to the existing policy of BD as it accorded a higher priority for the removal of illegal structures which posed immediate or structural danger. Often, complainants were dissatisfied that their illegal structures were required for removal while others were tolerated by BD. As for complaints on housing issues, he had come across many complaints lodged by tenants who had purchased a housing unit through the Tenants Purchase Scheme and ended up with disputes with the Authority/developer concerned on the responsibility for carrying out repairs and maintenance works. In his opinion, the Administration should address these problems.

18. Referring to the Annual Report of The Ombudsman which mentioned about complainants who abused the complaint system to pressurize organizations into compliance, Mr WONG Kwok-kin was concerned about the extent to which complainants had abused the complaint system and whether The Ombudsman had put in place any mechanism to avoid wasting of public money.

19. The Ombudsman replied that there were quite a few "professional" complainants who lodged their complaints through various redress channels. These complainants were persistent in pursuing their complaints. Very often they repeated their complaints on the same ground again and again and ignored explanation by his Office. Notwithstanding the above, The Ombudsman's Office would examine each case with care even for matter which appeared to be trivial. Complainants would be given the reasons for not pursuing complaint cases in accordance with the provision in The Ombudsman Ordinance. He assured Members that his Office would examine each case objectively.

20. Mr IP Kwok-him said that civil servants were generally mindful of The Ombudsman's investigation into their work. Having regard to the bureaucratic constraints of Government officials, he asked whether The Ombudsman was still able to encourage them to provide quality service by adopting a more people-oriented approach in performing their duties.

21. The Ombudsman responded that if management adopted a positive attitude towards The Ombudsman's investigation findings, the department concerned would take proactive measures to improve its service. On the other hand,

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if management adopted a negative attitude, the department concerned would be more reluctant to review its service. To enhance the quality of public service, his Office had conducted briefing sessions for the Efficiency Unit of the Administration on how to handle complaints by frontline staff.

22. Ms Emily LAU said that The Ombudsman should keep a high profile when performing his duties to increase public awareness of his work and promote public education. Having regard to the relatively low profile of The Ombudsman and his former job in the Government as an Administrative Officer, she hoped that The Ombudsman would be impartial when carrying out his duties.

23. The Ombudsman responded that since he had taken up the post in March 2009, he had conducted three press conferences to disseminate information on the investigation work regarding system for development of question papers in public examinations, HD's handling of complaints involving claims, and regulatory system of lifts. On each occasion, the event had been widely covered by television, radio and newspapers. Wording such as "ineffective monitoring", "loose system", and "lack of enforcement action" used by him to criticize the Electrical and Mechanical Services Department had been frequently quoted by the media up till now. He believed that it would be more fruitful to do solid work than putting up a "show" to enhance public awareness of the performance of his Office. To this end, publicity work had been focused on how to enhance public understanding on the functions of The Ombudsman rather than to attract more cases which fell outside his jurisdiction. He also assured Members that he had no direct or indirect family tie with Government officials. As such, he had no burden or vested interests which would restrain him from performing his duties properly.

Jurisdictional review

24. Referring to paragraph 20 of the minutes of meeting held between The Ombudsman and Members last year, Ms Emily LAU asked The Ombudsman to brief Members on the Administration's reasons for not putting four organizations namely, Board of Management of Chinese Permanent Cemeteries (BMCP), Chinese Temples Committee (CTC), Electoral Affairs Commission (EAC) and District Councils (DCs) under the jurisdiction of The Ombudsman.

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25. The Ombudsman highlighted the following reasons put up by the Administration:

- (a) as there were other ethnic or religious groups which operated private cemeteries or places of worship for a segment of the community in Hong Kong, putting BMCPC and CTC under The Ombudsman's jurisdiction would have read-across implication on such organizations;
- (b) EAC was established to ensure that elections were conducted openly and fairly. It was thus established as an independent statutory body under the Electoral Affairs Commission Ordinance with a judge of the High Court appointed as its chairman. As the administrative work for implementing the EAC's functions were carried out by the Registration and Electoral Office and the Home Affairs Department (HAD), which were under the purview of The Ombudsman, the Administration held the view that EAC should not be subject to The Ombudsman's jurisdiction; and
- (c) as HAD and the Leisure and Cultural Services Department would continue to be the delivery agents in implementing the projects initiated on the advice of DCs and exercise their statutory and administrative powers under their respective purview, and both departments were subject to the jurisdiction of The Ombudsman, the Administration saw no reason to include DCs under the purview of The Ombudsman.

26. Ms Emily LAU requested the Secretariat to provide the Administration's papers which set out in detail the reasons for excluding BMCPC, CTC, EAC and DCs from Part 1 of Schedule 1 of The Ombudsman Ordinance to Members after the meeting. She was also concerned about the scrutiny progress of the proposed legislative amendment to extend the jurisdiction of The Ombudsman to include the four public bodies mentioned in paragraph 4 above.

27. The Ombudsman said that as far as he knew, the LegCo Panel on Administration of Justice and Legal Services had been consulted and members accepted the Administration's decision. The legislative amendment was submitted in form of subsidiary legislation which had been

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tabled in LegCo and no subcommittee had been formed to study the legislative amendment. In reply to Ms Emily LAU's further question on whether The Ombudsman would look into complaints against "favouritism" in the allocation of resources by HAD, The Ombudsman said that disparity of treatment was a form of maladministration under the purview of his Office.

(Post-meeting note: The Secretariat provided relevant extracts from the Administration's papers on Review of the Jurisdiction of the Office of The Ombudsman to Members vide LC Paper No. CP 239/09-10 issued on 9 December 2009.)

28. In response to Mr Fred LI's remarks that his office had received many complaints about problems in the cemeteries under the purview of BMCCPC, The Ombudsman said that his Office had not received many complaints on the subject. As far as he knew, there were existing channels for complainants to lodge their complaints with the Administration.

29. Mrs Regina IP said that she appreciated The Ombudsman's work which monitored the performance of the Administration independently and enhanced the transparency of departments. She enquired whether statutory bodies such as the Trade Development Council (TDC) fell within the jurisdiction of The Ombudsman.

30. The Ombudsman explained that he was empowered to investigate any action taken by or on behalf of an organization specified in Schedule 1 to The Ombudsman Ordinance. A statutory body might not be subject to his jurisdiction if the majority of its funding was not from the Government. As such, TDC was not one of the organizations in Schedule 1.

31. Mrs Regina IP enquired whether The Ombudsman would conduct an investigation into an organization upon the Administration's request as in the case of the investigation conducted on the English Schools Foundation by the Director of Audit a few years ago. Also, referring to the proposal for establishing a Financial Ombudsman which was being considered by the LegCo Panel on Financial Affairs, she sought The Ombudsman's view on whether it was desirable for his Office to assume the additional duties in view of the expertise required in investigations into financial institutions and instruments.

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32. The Ombudsman replied that the functions of his Office were different from that of the Audit Department. Unless amendment to the list of departments/organizations in Schedule 1 of The Ombudsman Ordinance was made, he was not empowered to investigate any departments/organizations not on the list. As regards the establishment of a Financial Ombudsman, he said that subject to availability of funding, The Ombudsman's Office could recruit appropriate staff to take on the additional work. However, it was up to the Administration to decide.

33. Mr CHEUNG Kwok-che commented that SWD had not been able to monitor non-government organizations (NGOs) at all since 2000. Considering over half of the funding of NGOs came from the Government which involved a substantial amount of public money, he asked whether The Ombudsman would extend his jurisdiction to include NGOs, starting off with those operated under existing legislation.

34. The Ombudsman responded that only those NGOs which are statutory bodies could be considered for inclusion in his purview. Besides, the mission of his Office was to redress grievances and address issues arising from maladministration in the public sector.

35. Mr Jeffrey LAM asked whether The Ombudsman had made available manpower resources with relevant experience to cope with the workload arising from the original proposal for additions of eight organizations to fall within his jurisdiction. He was concerned whether the reasons for The Ombudsman's Office to take three months or more to conclude over 25% of complaint cases had to do with inadequate resources.

36. The Ombudsman explained that the time required for concluding cases depended on a number of factors such as the complexity and nature of cases. For example, it might take a longer time to obtain detailed information from complainants in certain cases. On the issue of manpower resources of his Office, The Ombudsman replied that as four additional public bodies would gradually fall under his purview commencing from 2010, he would monitor the caseload to ascertain the need for additional staff in the long-run. Meanwhile, the lump-sum grant provided by the Administration allowed flexibility for his Office to recruit part-time staff to cope with sudden increase in workload.

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II. Any other business

37. There being no other businesses, the meeting ended at 10:35 am.

Legislative Council Secretariat
27 January 2010