

立法會
Legislative Council

LC Paper No. CP 853/10-11
(These minutes have been seen by The Ombudsman)

Ref.: CP/G06/4 XV

**Legislative Council Members' meeting
with Mr Alan LAI Nin, GBS, JP, The Ombudsman,
held on Tuesday, 14 December 2010, at 11:00 am
in Chamber of the Legislative Council Building**

Members Present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Dr Hon David LI Kwok-po, GBM, GBS, JP
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 LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Hon WONG Sing-chi
Hon IP Kwok-him, GBS, JP
Hon Tanya CHAN

**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)

Miss Erica WONG
Senior Council Secretary (Complaints)1

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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 Ombudsman's Office (the 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 248/10-11)

Briefing by The Ombudsman

2. The Ombudsman said that in the past several years, The Office received about 1 000 enquiries and 400 complaints per month. In the 2009-2010 reporting year, the Office completed seven direct investigations and concluded eight direct investigation assessments. A total of 203 recommendations were made to improve various aspects of public administration, and about 97% of the recommendations had been accepted for implementation. From April to October 2010, the Office received a total of 7 270 enquiries and 3 369 complaints. When compared with the same period in the 2009-2010 reporting year, the number of complaints had increased by 10% in the first seven months of the 2010-2011 reporting year. From April to October 2010, three direct investigations had been completed and five were still in progress. As regards direct investigation assessments, six had been completed and 15 were in progress. The Office would announce the results of two direct investigations during the fourth week of December 2010.

3. Regarding Ms Cyd HO's question on whether the Office would actively initiate any investigation into the ways adopted by the Education Bureau (EDB) to monitor textbook publishers to see if they had launched excessive promotion which might have pushed up the prices of

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textbooks, The Ombudsman advised that the Administration had set up a working group to make recommendations for improving the school textbook system to help lower the price of textbooks and submitted a report in 2009. Implementation of a key recommendation, namely, the "debundling of pricing of textbooks, teaching and learning materials" had been postponed to year 2011-2012. The Office also noticed that the report did not mention the Administration's role in monitoring schools' compliance with the principles and guidelines devised by EDB on selection of textbooks by schools. The Office was seeking EDB's clarification on the above issues and would decide on what follow-up action to take after receiving its reply.

4. In response to Ms Cyd HO's question on whether The Ombudsman would actively investigate into the support services required by students with specific learning difficulties in finding other school places after they had missed education, The Ombudsman advised that the Office had initiated in September 2010 a direct investigation to examine the system for admission of students to Schools for Social Development (SSD) and subsequent reintegration of SSD students with mainstream students. The Office planned to complete the direct investigation and announce the results in mid-2011.

5. Ms Cyd HO hoped that the investigation would help integrating SSD leavers back into mainstream schools.

Discussion

Re-opened cases handled by the Office

6. Referring to the 96 re-opened cases handled by the Office in the 2009-2010 reporting year, Mr WONG Kwok-hing enquired about the reason behind and the nature of such cases. The Ombudsman explained that for those cases which had been closed for being unpursuable, the complainants concerned subsequently supplemented new information and requested the Office to assess their cases again. If the

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evidence was adequate, the Office would re-open the cases and start inquiry.

7. Mr WONG Kwok-hing further enquired why there were no statistics for re-opened cases for the 2007-2008 and 2008-2009 reporting years. The Ombudsman responded that statistics for such cases as a special category were only compiled starting from the 2009-2010 reporting year.

Operation of private columbaria

8. Mr Wong Kwok-hing expressed concern about the nuisance caused by the operation of private columbaria to residents living in the vicinity. Mr WONG said that while residents of various districts had for many years lodged complaints with the Administration for such operations, the government departments concerned tried to shirk their responsibilities and the problems still could not be properly resolved. In this connection, he asked whether The Ombudsman would consider initiating a direct investigation into the issue.

9. The Ombudsman replied that in view of the complexity of the issue of private columbaria, the Office had started to collect relevant information for analysis. The Office did not rule out the possibility of conducting a direct investigation. In response to Mr WONG Kwok-hing's further enquiry about the investigation schedule, if any, The Ombudsman responded that it was difficult for him to set out a schedule at this moment given the complexity of the matter which touched on issues involving the purview of different government departments, the terms of land leases, provisions in the law, etc. The Office would look into the information collected and see if it was related to the aspect of policy formulation or maladministration.

The post-service work of Mr LEUNG Chin-man

10. Mr LEE Wing-tat said that the "Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man" (the Select

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Committee) had completed work and had made recommendations to the Administration for consideration and improvement. The Select Committee was not vested with power to conduct criminal investigations or take punitive action. He envisaged that if the Administration did not take punitive action against the relevant government officials as recommended in the final report published by the Select Committee, some members of the public might request The Ombudsman to look into the matter. In this connection, Mr LEE asked whether The Ombudsman would conduct a direct investigation into this case.

11. The Ombudsman explained that as stipulated clearly in Schedule 2 to The Ombudsman Ordinance (Cap. 397) (the Ordinance), he did not have the power to investigate complaints related to personnel matters and disciplinary actions.

12. In response to Mr LEE Wing-tat's further enquiry on whether The Ombudsman would consider amending the Ordinance to expand his power to cover complaints relating to personnel matters, The Ombudsman stated that his predecessor had proposed that the Office be empowered to investigate complaints about administrative aspects surrounding personnel matters, but even that was rejected by the Administration.

13. Mr LEE Wing-tat opined that if The Ombudsman was empowered to investigate cases related to personnel matters and punitive actions, The Ombudsman could make recommendations to the Administration for taking punitive actions against government officials in case of maladministration or substandard performance, such as reduction of pay, when necessary.

Co-ordination between government departments on provision of public services

14. Mr Fred LI said that at the meeting held in 2009, The Ombudsman reported two issues of particular concern to the Chief Executive (CE) relating to the lack of inter-departmental co-ordination. These included the

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Joint Office staffed by the Buildings Department (BD) and the Food and Environmental Hygiene Department for providing a one-stop service to deal with seepage complaints, which had not been performing its duty effectively due to organizational defects, and the inadequate inter-departmental co-ordination which had posed common problems in street management. He asked what action had been taken by CE so far to rectify the above problems. Mr LI also noted from The Ombudsman's Annual Report 2010 that individual government departments were found to do things in their own way and neglect other departments in cases of complaints that involved more than one department, and such a lack of effective inter-departmental co-ordination had become a major form of maladministration.

15. The Ombudsman responded that the Chief Secretary for Administration had recently submitted the Government Minute in response to the Annual Report 2010 of The Ombudsman which was tabled at the Legislative Council meeting on 7 July 2010. On the issue of water seepage, the Administration had been making progress in improving the modus operandi of the Joint Office in handling such complaints. BD had recently been awarding longer term contracts for its consultants to reduce the turnover of short-term contract staff. As regards street management, support from District Councils had been sought for inter-departmental clearance operations in tackling the problems at the district level where necessary.

16. Quoting from figure 3.5(b) of The Ombudsman's Annual Report 2010 that "negligence, omissions" accounted for 12.7% among all acts of maladministration substantiated in 2009-2010 and this percentage was the highest in the past five years, Mr Fred LI enquired which acts of maladministration were found to be more serious and what The Ombudsman would do to work towards the resolution of the problem.

17. The Ombudsman explained that with regard to full investigations, the top three types of acts of maladministration substantiated in 2009-2010 were (i) failure to follow procedures, delay; (ii) error, wrong

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decision/advice; and (iii) negligence, omissions. As different complaint cases were caused by different problems and different departments were involved, there was no panacea for all problems. The Office gave due advice to individual departments to improve their respective operations.

Implementation of recommendations made by The Ombudsman

18. Noting that for the 2009-2010 reporting year, seven direct investigations were completed and eight direct investigation assessments were concluded, Ms Cyd HO expressed concern that as the investigation period might span over one to two years, The Ombudsman might not be able to provide timely solutions to the problems investigated, due to lengthy investigation period and the manpower constraint of the Office. She enquired how topics for investigation were prioritized for handling and the mechanism under which government departments were monitored to ensure that the recommendations made by The Ombudsman were implemented.

19. The Ombudsman replied that for the 2007-2008 reporting year, four direct investigations were completed and two direct investigation assessments were concluded. For the 2008-2009 reporting year, six direct investigations were completed and four direct investigation assessments were concluded. As the number of direct investigation teams was increased to two in the 2009-2010 reporting year, seven direct investigations were completed and eight direct investigation assessments were concluded. The number of direct investigations and direct investigation assessments had in fact been increased with additional manpower resource. Given the nature and complexity of direct investigations, it might take half a year up to one year to complete an investigation, depending on the time required to gather sufficient information for the exercise.

20. The Ombudsman further advised that heads of bureaux/departments concerned in fact had a responsibility to report at regular intervals their progress of implementation of The Ombudsman's

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recommendations, and the Office kept track by asking them to provide periodic reports.

21. Ms Cyd HO suggested that The Ombudsman should take the initiative to conduct checks as there existed a possibility that departments might half-heartedly implement the recommendations made by The Ombudsman. She held the view that departments should be encouraged to discuss with The Ombudsman should they find the recommendations difficult to implement or unsuitable.

22. The Ombudsman explained that the chance for departments to implement The Ombudsman's recommendations half-heartedly was low as the Office would conduct checks with the departments concerned on their progress of implementation on a regular basis. The primary role of The Ombudsman was to give opinions to the departments on how to operate effectively, but not to manage them. The Ombudsman may accept counter-proposals from the departments if such proposals were justified as alternative means to improve services.

Favouritism in the provision of services

23. Referring to figures 3.5(a) and 3.5(b) of The Ombudsman's Annual Report 2010 that "disparity in treatment, unfairness, selective enforcement" was 25.4% among all concluded cases in 2007-2008, while the same category accounted for 12.9% and 69.7% among all acts of maladministration substantiated in 2007-2008 and 2008-2009 respectively, Ms Emily LAU said that she had received complaints from the public that civil servants of different departments had practised favouritism and even treated members of the public differently based on affinity. She stressed that civil servants should exercise fairness and impartiality in dealing with enquiries and requests. Since "disparity in treatment, unfairness, selective enforcement" accounted for only 6.4% among all acts of maladministration substantiated in 2009-2010, she asked whether The Ombudsman had conducted educational programmes for the civil servants not to practise favouritism nor be unfair to the public, thus resulting a decreasing trend in 2009-2010.

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24. The Ombudsman replied that the rise in the statistics in 2008-2009 might be due to topical complaints, i.e. an influx of complaints about a particular social issue or a current topic relating to the same action or decision by the same department(s).

The Ombudsman

25. The Chairman and Ms Emily LAU requested The Ombudsman to provide information on this category in relation to the following: (i) the departments involved; (ii) the details of the cases; and (iii) the reason for the rise to 25.4% in 2007-2008 (figure 3.5(a)) and 69.7% in 2008-2009 (figure 3.5(b)).

*(Post-meeting note: Information provided by The Ombudsman is in **Appendix I**)*

26. Quoting an example involving two political parties in which one was allowed and one was rejected to display banners at a location, Ms Emily LAU asked if The Ombudsman felt that civil servants practised favouritism and even treated people differently based on affinity.

27. The Ombudsman replied that the nature of complaints was different for cases of "disparity in treatment, unfairness, selective enforcement", and each case had to be considered individually.

28. At the suggestion of Ms Emily LAU on enhancing the clarity of the presentation of the statistics, The Ombudsman undertook to consider separating the presentation of "disparity in treatment, unfairness" and "selective enforcement" at future reports to be published by the Office.

Definition of aggrieved person

29. Miss Tanya CHAN said that she had approached the Office as an aggrieved person arising from the case of the felled "ghost tree" at Maryknoll Convent School, but she was declined for being accepted as the aggrieved person in the case. She enquired about the definition of "aggrieved person", and the person(s) to be regarded the

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aggrieved person as in the case of 1881 Heritage related to floor area.

30. The Chairman reminded Members to focus the discussion on general issues and enquired about the meaning of "aggrieved person" as defined in the Ordinance.

31. The Ombudsman explained that a person who had sustained injustice in consequence of maladministration would be considered as an "aggrieved person" under the Ordinance. The Ombudsman was, in the light of the implementation experience of the Ordinance, seeking legal advice with a view to drawing up guidelines for a clearer definition of "aggrieved person". This would enable a clearer explanation to be made in the event that a complainant could not be accepted as an aggrieved person in a case and thus the case could not be pursued further by the Office.

The Ombudsman

32. Miss Tanya CHAN opined that it would help the public to better understand the definition of "aggrieved person" if an updated definition could be made available on pamphlets to be published by the Office. The Ombudsman replied that the Office would take follow-up action on this matter as soon as practicable. At the request of the Chairman, The Ombudsman also undertook to inform Members of his conclusion on the definition of "aggrieved person" in the light of the legal advice obtained.

Manpower of the Office

33. Noting that the jurisdiction of The Ombudsman had been further expanded to cover more organizations, Mr Jeffrey LAM asked whether: (i) the Office needed more manpower to meet the increasing workload; (ii) there were sufficient channels to get the right people for the job; and (iii) staff of the Office felt more pressure at work in the light of such expansion.

34. The Ombudsman replied that his purview had been extended to include four more organizations since 1 July 2010. The number of complaints involving the

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Consumer Council, the Estate Agents Authority, the Auxiliary Medical Service and the Civil Aid Service so far was 21, 7, 1 and 7 respectively. The Office had been able to cope with the change as there was only a slight increase in the caseload.

35. Mr Jeffrey LAM said that preparing the Office for future challenge was important since it was envisaged that the number of formal/informal complaints to be made to the Office would increase. Referring to the issues of relocation of villagers and landfill disposal last year in which some fierce members of the public tried to stop government officials from taking enforcement action, and that the disorder resulted had met the disapproval of some members of the public, Mr LAM asked how The Ombudsman would strike a balance on the divided views of the society in the course of execution of his duties.

36. The Ombudsman replied that the Office had all along been fair and impartial, and would continue to work in this direction in dealing with complaints. Priority would not be given to political parties or any party with ulterior motives.

Discretion exercised by The Ombudsman

37. Noting that The Ombudsman might in his discretion not to undertake or continue an investigation into a complaint as stipulated in section 10 (2)(d) of the Ordinance, Miss Tanya CHAN asked whether the preceding and incumbent Ombudsmen had done so and what the special circumstances were.

38. The Ombudsman replied that he himself had not exercised such discretionary power and complainants were usually informed of the reasons for the rejection of investigation clearly. If a complaint case had already been duly handled by a government department, the Office would not investigate the complaint.

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Effectiveness of administration of Code on Access to Information

39. Noting that the investigation of "effectiveness of administration of Code on Access to Information" was completed, Ms Cyd HO opined that the Code was inadequate to assist the public in accessing information from the Administration. She was also given to understand that the records concerning a case on compensation for disturbance to "fung shui" of villages affected by a railway project were lost. Ms HO was of the view that introducing legislation on keeping of public records would help the Administration maintain clear and systematic records and avoid losing information. She suggested that The Ombudsman should initiate a direct investigation into records of the Administration to see whether it had complied with the administrative guidelines in relation to keeping and deleting records (especially electronic records) to facilitate public's access to information.

40. The Ombudsman explained that he was empowered to investigate complaints related to citizens' right of access to information under the existing "Code on Access to Information". However, legislation on keeping of public records as mentioned had not been enacted in Hong Kong.

41. Noting that some departments had drawn up their own administrative guidelines on keeping records, Ms Cyd HO suggested that The Ombudsman should investigate whether these departments had conformed to the administrative guidelines.

42. The Ombudsman explained that the Office could investigate such cases if the department concerned had drawn up relevant guidelines.

Performance of the Office

43. Noting that the percentage of cases concluded within three to six months was 43.2% and in more than six months was 2.1% in 2009-2010, Ms Emily LAU enquired whether: (i) the cases were complicated; (ii) the

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manpower of the Office was inadequate; and (iii) a survey on the public's satisfaction on the service of The Ombudsman was conducted.

44. The Ombudsman explained that the processing time of complaints was affected by a number of factors, e.g. the complexity of the case, the number of departments involved, the need for collecting more data, the continued submission of new data by the complainant, etc. The Office had refined its operational procedures in order to speed up the assessment process and reminded departments to reply to The Ombudsman on time. The Office had all along been working its best to limit the processing time of cases to less than six months.

45. The Ombudsman further advised that surveys on the performance of the Office had been conducted on a regular basis. The Office was planning to conduct a perception survey in mid-2011 to gauge the public's views on The Ombudsman.

46. In response to the findings of The Ombudsman that respondents' satisfaction level largely depended on whether their complaints were substantiated, Ms Emily LAU said that many complainants had still thanked her effort even the results of their complaints turned out to be dissatisfied.

The Ombudsman 47. After discussion, the Chairman and Ms Emily LAU requested The Ombudsman to provide clearer and more systematic statistics on complaints and enquiries in 2009-2010. The Ombudsman undertook to provide the requisite information accordingly.

*(Post-meeting note: Information provided by The Ombudsman is in **Appendix II**)*

II. Any other business

48. There being no other business, the meeting adjourned at 12:10 p.m.

Appendix I

Information requested in paragraph 25 of the minutes of the meeting

- (i) Figure 3.5 (a) covers all cases concluded, whether by preliminary inquiries or by full investigations, in the reporting years.
- (ii) Figure 3.5(b) refers only to cases concluded by full investigation.
- (iii) In 2007-2008, the Office concluded 393 and 258 topical complaint cases against the Housing Department and the Lands Departments respectively, all on the issue of the responsibility for maintaining a footbridge linking a Home Ownership Scheme estate and a public housing estate.
- (iv) In the same reporting year, the Office also concluded 344 topical complaint cases against the Television and Entertainment Licensing Authority concerning disparity in its handling of complaints about the Bible and a student newspaper.
- (v) The figure of 69.7% in 2008-2009 mainly relates to 162 topical complaint cases on the “footbridge” issue mentioned in (iii) above.

Appendix II

Information requested in paragraph 47 of the minutes of the meeting

Statistics on Enquiries and Complaints 2009-2010

(a)	<u>Enquiries</u>	
	Enquiries received during the year:	13,789
(b)	<u>Complaint Cases</u>	
(i)	Cases received during the year:	4,803
(ii)	Cases brought forward from previous year:	970
(iii)	Cases previously screened out and subsequently re-opened:	96
(iv)	Total no. of cases for processing ((i) + (ii) + (iii)):	<u>5,869</u>
(v)	Cases screened out (because they were outside the jurisdiction of the Office or under legal restrictions):	1,114
(vi)	Cases not pursued (because they had been <u>withdrawn</u> by the complainants, <u>discontinued</u> by the Office for complainants' failure to provide the necessary data or consent, or <u>not undertaken</u> e.g. cases currently being handled by the department under complaint and court cases):	1,446
(vii)	Cases concluded after preliminary inquiries (general cases):	2,086
(viii)	Cases concluded by full investigation (more complex cases):	126
(ix)	Cases concluded by mediation:	3
(x)	Total no. of cases completed ((v) + (vi) + (vii) + (viii) + (ix)):	<u>4,775</u>
(xi)	Percentages of cases completed ((x) ÷ (iv)):	81.4%
(xii)	Cases carried forward to 2010-2011:	1,094