

For information
26 March 2013

Legislative Council
Panel on Administration of Justice and Legal Services

**Establishing an independent mechanism
to review the decisions of The Ombudsman**

PURPOSE

This paper informs Members of the existing review mechanism within The Ombudsman and the Administration's position towards the establishment of an independent mechanism to review the decisions of The Ombudsman.

REVIEW MECHANISM

2. A complainant not satisfied with The Ombudsman's decision in respect of his complaint may request The Ombudsman to review his case (Request for Review). Section 12(3)(b) of The Ombudsman Ordinance (Cap. 397) provides that, subject to the provisions of the Ordinance, The Ombudsman may regulate his procedure in such manner as he thinks fit. The Ombudsman has laid down procedures for handling Requests for Review from complainants, as detailed below.

Time limit

3. There is no time limit on when a Request for Review may be raised. However, for reasons of effective processing of such requests, The Ombudsman encourages the raising of requests with supporting evidence or arguments at an early stage, so as to reduce the difficulty in collecting further evidence or information resulting from the passage of time.

Processing Requests for Review

4. On receipt of a Request for Review, the Assistant Ombudsman (AOMB) concerned will consider the case. Normally, he will ask the Chief Investigation Officer (CIO) in charge of the Investigation Team handling the case to discuss with the original case officer whether there

are grounds for review of the case. Such grounds may include new evidence, arguments or perspectives. Where it is considered that there are new evidence/arguments/perspectives, a review (Review) will be conducted, often involving seeking further information or comments from the organisation under complaint.

5. Where the CIO in consultation with the case officer finds no ground for conducting a Review, he or the case officer will submit the Request for Review on file to The Ombudsman, via the relevant AOMB and the Deputy Ombudsman (DOMB), seeking approval to decline the Request. In the submission, the case officer/CIO will set out the reasons why the Request should be declined. Subject to the approval of The Ombudsman, the decision will be conveyed to the complainant in writing, with the reasons clearly explained. There is no restriction on the number of Requests for Review a complainant may make in respect of his complaint.

6. Before 2009, all Requests for Review were regarded as Review cases. Having regard that many such requests were not supported with new evidence/arguments/perspectives, from 2009/10 onwards, The Ombudsman distinguished Requests for Review from Reviews, with the latter referring to substantive reviews conducted for those Requests that have new evidence/arguments/perspectives. However, irrespective of whether a Request is supported with new evidence/arguments/perspectives, all Requests for Review will be carefully examined by The Ombudsman and any decision to decline such a request has to be made by The Ombudsman personally. The only reason for this new way of classification is to enable a more accurate description of the review process and threshold, which entails no change in the way expressions of dissatisfaction to The Ombudsman's decisions are handled.

Conduct of Reviews

7. Where the CIO considers there to be grounds for Review, he will require a case officer, normally the original case officer, to conduct further inquiry into the complaint, focusing on the new evidence/arguments/perspectives advanced by the complainant. Often

this will involve seeking further information or comments from the organisation under complaint. The process is similar to that of normal complaint case handling.

8. When the CIO/case officer is satisfied that sufficient information has been collected on the Request for Review, the case officer will submit his analysis and recommendation on file, with CIO's support to The Ombudsman via the relevant AOMB and DOMB for a decision whether to uphold or vary the original decision. The Ombudsman's decision will be conveyed to the complainant in writing, with the reasons clearly explained.

Original or fresh case officer

9. Requests for Review and Reviews are normally processed initially by the original case officer for reason of effectiveness, as he is more familiar with the details of the case. Possibility of bias is minimised by the requirement that the case officer should focus his analysis on the new grounds raised by the complainant in support of his Request for Review.

10. A fresh case officer will be assigned to handle the Request for Review or the Review itself if the original case officer is under a staff complaint lodged by the complainant, no longer in the original Investigation Team or unsuitable to handle the case for any reasons.

Statistics

11. Statistics on Requests for Review and Reviews in the past three financial years and the current financial year (up to end February 2013) are at **Annex**.

ESTABLISHING AN INDEPENDENT MECHANISM TO REVIEW THE DECISIONS OF THE OMBUDSMAN

12. The establishment of The Ombudsman in Hong Kong aims to provide an independent mechanism for the public to redress grievances and address issues of maladministration in the public sector in

supplement to the other available channels within the Administration.

13. As revealed from the figures at *Annex*, of around 5,000 complaints received annually in the past three years, the numbers of Requests for Review were 147, 93 and 61 in 2009-2010, 2010-2011 and 2011-2012 respectively. There does not seem to be a prevailing trend of disagreement with the decisions made by The Ombudsman. In fact, the impartiality of The Ombudsman has been upheld and well respected.

14. Under The Ombudsman Ordinance, The Ombudsman has a wide range of powers to investigate complaints from aggrieved persons about maladministration in the public sector, including conducting inquiries, obtaining information and documents, summoning witnesses and inspecting premises of organisations under complaint. The Ombudsman may, after investigation, report his findings and make recommendations for redress or improvement to the organisation.

15. A complainant not satisfied with the decision of The Ombudsman may, apart from requesting a review with The Ombudsman, seek a judicial review by the court. This judicial safeguard serves and an effective check and balance system. Since the establishment of The Ombudsman in 1989, 11 complainants have applied for judicial review of The Ombudsman's decision. We do not see the need to duplicate another independent and impartial set up and have another layer of authority to review the decisions of The Ombudsman.

16. We are not aware of any overseas jurisdiction where the ombudsman's decisions may be subject to review by an external body, save for the judiciary by way of judicial review. A review of information provided in the websites of various overseas ombudsman offices (including those in the United Kingdom, Australia, New Zealand and Sweden) shows that requests for review of the ombudsmen's decisions are generally handled internally by the ombudsman offices.

17. A number of ombudsmen in Australia specify conditions for requests for review, such as the number of requests that may be acceded to (e.g. only once for Australia Commonwealth Ombudsman and Western Australia Ombudsman) and the time frame within which a request may be made (e.g. within three months for Australia Commonwealth Ombudsman and Australia Capital Territory Ombudsman). Many emphasise the need for the complainant to specify why he considers the ombudsman has erred in reaching the decision in question. The website of Western Australia Ombudsman even states that "The decision to

undertake a review is not automatic, and the complainant must supply sufficient evidence to persuade the Ombudsman that a review is justified”.

18. Apart from the well-established mechanism by The Ombudsman in the handling of Request for Reviews as mentioned above, The Ombudsman is also subject to the following checks and balances –

- (a) section 3(4) of Schedule 1A to The Ombudsman Ordinance requires The Ombudsman to submit an annual report in respect of matters falling within the scope of his functions, a copy of the statement of accounts and the auditor's report on the statement, to the Chief Executive, who shall cause them to be tabled in the Legislative Council;
- (b) The Ombudsman is designated as the controlling officer in respect of the estimates of expenditure of the Office of The Ombudsman under section 6B(3) of The Ombudsman Ordinance. The estimates of expenditure, as part of the annual estimates of the Government, is subject to the approval of the Legislative Council;
- (c) section 3(4)(b) of The Ombudsman Ordinance provides that the Chief Executive may remove The Ombudsman from office with the approval by resolution of the Legislative Council on the ground of inability to discharge the functions of his office, or misbehavior; and
- (d) as an established practice, The Ombudsman will meet with the Legislative Council to discuss his work and development plan regularly.

19. These arrangements, together with the review mechanism in place, can secure and manifest the accountability and transparency of The Ombudsman in the performance of duties.

Administration Wing, Chief Secretary for Administration's Office
The Office of The Ombudsman
March 2013

Annex

Statistics on Requests for Review Received and Reviews Conducted since 2009-2010

| | Complaints received | Requests for Review | Requests for Review Declined | Reviews Conducted | | |
|--------------------------|---------------------|---------------------|------------------------------|-------------------|-----------------|-------|
| | | | | Decision varied | Decision upheld | Total |
| 2009-2010 | 4803 | 147 | 80 | 8 | 59 | 67 |
| 2010-2011 | 5339 | 93 | 26 | 8 | 59 | 67 |
| 2011-2012 | 5029 | 61 | 22 | 4 | 35 | 39 |
| 1 Apr 2012 - 28 Feb 2013 | 5125 | 81 | 35 | 3 | 43 | 46 |