

Information Paper
for LegCo Members' Meeting with The Ombudsman
on 7 December 2018

I. Work of The Ombudsman's Office

(i) For the year 2017-2018

Enquiries and Complaints Processing

In the 2017-2018 reporting year, the Office received a total of 11 424 enquiries and 4 829 complaints, while 4 770 complaints were concluded.

2. Statistics on enquiries and complaints received for the past three years and the first seven months (that is, from April to October) of 2018-2019 are tabulated below:

		Reporting year ¹			
		2015-16	2016-17	2017-18	2018-19 (Apr – Oct)
(1)	Enquiries	12 159	11 564	11 424	6 081
(2)	Complaints				
	(a) For processing	6 112	5 732	5 587	3 787
	- Received	5 244[213]	4 862[74]	4 829[68]	2 970[332]
	- Brought forward	868	870	758	817
	(b) Completed	5 242[224]	4 974[74]	4 770[61]	2 822[189]
	Pursued and concluded	3 100[205]	2 907[40]	2 724[52]	1 623[189]
	- By inquiry ²	2 740[175]	2 556[16]	2 292[37]	1 397[176]
	- By full investigation ³	226[30]	218[24]	195[15]	117[13]
	- By mediation ⁴	134	133	237	109
	Assessed and closed⁵	2 142[19]	2 067[34]	2 046[9]	1 199
	(c) Percentage completed = (b) / (a)	85.8%	86.8%	85.4%	N.A.
	(d) Carried forward = (a) – (b)	870	758	817	N.A.
(3)	Direct investigations completed and announced	8	11	12	5

- Note 1. From 1 April to 31 March of the following year.
- Note 2. Pursued under section 11A of The Ombudsman Ordinance, for general cases.
- Note 3. Pursued under section 12 of The Ombudsman Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.
- Note 4. Pursued under section 11B of The Ombudsman Ordinance, for cases involving no, or only minor, maladministration.
- Note 5. Restricted by The Ombudsman Ordinance, or not pursued and closed due to lack of grounds.
- [] Number of topical cases.
- N.A. Not applicable

3. Based on the allegations made by the complainants, the top three causes for complaint in 2017-2018 were:

- error, wrong advice/decision (34.6%);
- delay/inaction (12.9%); and
- ineffective control (12.8%).

These top three causes were the same as in 2016-2017, but their rankings have slightly changed.

4. Of the 2 724 cases pursued and concluded, inquiry remained our chief mode of complaint handling, with 84.1% concluded by this mode, while 7.2% and 8.7% by full investigation and mediation respectively.

5. Of the 195 complaints concluded by full investigation, the complaints in 59 cases (30.3%) were substantiated, partially substantiated, or unsubstantiated but other inadequacies found. Among the 2 292 inquiry cases concluded, inadequacies or deficiencies were found on the part of the organisations concerned in 336 cases (14.7%).

6. 2017-2018 saw a fruitful year of our mediation work. A record 237 cases (8.7%) were concluded by mediation, approximately 1.8 times of last year's 133 cases (4.6%) which was also the record high since the inception of the Office. Meanwhile, the number of Government departments and public organisations participating in mediation also rose from just 11 in 2013/14 (5 years ago) to 28, showing that more organisations were willing to accept mediation as a complaint resolution method.

7. During the year, the average processing time in handling a mediation case was about 15.7 days, with 86.5% of the cases concluded within a month. More than 50 cases (21.1%) were resolved quickly within a week. One department actually took prompt action within the same day in response to our intervention, and reached a settlement with the complainant. Based on the responses to our survey questionnaires, 87.5% of the complainants considered mediation to have achieved what they wanted, and 96.2% were satisfied with the work of our mediators. All the organisations which responded to our survey were positive with the outcome and the work of our mediators. They appreciated the effective platform we provided for both parties to facilitate direct communication and resolve disputes in a speedy manner.

Direct Investigation

8. The Ombudsman's power to conduct direct investigations in the absence of complaints enables her to probe systemic flaws or general deficiencies at a macro level as opposed to individual cases. In 2017-2018, a record 12 direct investigations were completed and announced. They covered the following subjects:

- (1) Hong Kong Airport Authority's Mechanism for Issuing Airport Restricted Area Permits
- (2) Government's Regulation of Factory Canteens
- (3) Food and Environmental Hygiene Department's Criteria for Publicising List of Traders Involved after Issuing Food Safety Order
- (4) The Arrangement between Housing Department and Water Supplies Department Regarding Payment of Water Charges for Common Areas and Vacant Units in Public Housing Estates
- (5) Leisure and Cultural Services Department's Criteria and Procedures for Procuring and Withdrawing Library Materials
- (6) Lands Department's Enforcement against a Village House with Irregularities

- (7) Transport Department's Handling of a Road Section Enclosed and Left Idle for Prolonged Period
- (8) Food and Environmental Hygiene Department's System of Safety Control for Imported Fruits and Vegetables
- (9) Social Welfare Department's Support Services for Persons with or Suspected to Have Mental Health Problems and Their Families/ Carers and Neighbours
- (10) Government's Control over Fly-tipping of Construction Waste and Landfilling Activities on Private Land
- (11) The Mechanism of Food and Health Bureau and Department of Health for Handling Smoking Offences
- (12) Water Supplies Department's Maintenance of Government Water Mains and Risk Management

Complaints Relating to Access to Information

9. In 2017-2018, we received a total of 91 complaints about access to information, which further exceeded the record figure of complaints in this category (85 cases in 2016-2017). Of the 75 complaints pursued and concluded, we found inadequacies on the part of Government departments or public organisations in 33 cases (44%). The most common forms of maladministration included unreasonable refusal to provide information, failure to meet target response time, or failure to inform the requester of the channel of review or complaint. This reflected that there was still reluctance among certain departments and organisations to release information, or a lack of thorough understanding of the spirit and principles of the Code on Access to Information. Given the steady increase of such cases in recent years, we will keep a close watch on the progress of the Government's study for introducing legislation on freedom of information.

Recommendations

10. During the year, this Office made a total of 209 recommendations for improvement on various aspects of public administration. Of these, 146 were related to individual complaint cases and 63 resulted from direct investigations. As at October 2018, 93.8% of the recommendations had been accepted by the departments and organisations concerned for implementation.

Performance Pledge

11. As regards our performance pledges, 97.3% of the complaint cases falling outside our jurisdiction or under restriction were concluded within ten working days, as compared to the performance pledge of not less than 70%, while no case exceeded the target timeframe of 15 working days. For other cases, we concluded 88.3% within three months, as compared to the performance pledge of not less than 60%. We had 0.4% of cases not concluded within our pledge timeframe of six months, for reasons such as case complexity, new developments of the case in the mid-stream of the process, or more time required by the departments/organisations concerned in tendering their replies to us.

(ii) For the first seven months (April to October) of 2018-2019

Enquiries and Complaints Processing

12. During the period from April to October 2018, the Office received a total of 6 081 enquiries and 2 970 complaints.

Direct Investigation

13. During this period, five direct investigations have been completed and announced, while 15 are in progress.

Direct Investigations Completed and Announced

- (1) Government Departments' Handling of the Problem of Air-conditioner Dripping

- (2) Immigration Department's Mechanism for Following up Cases of Unregistered Birth
- (3) Food and Environmental Hygiene Department's Rental Management of Market Stalls
- (4) Food and Environmental Hygiene Department's Regulation of Market Stalls
- (5) Housing Department's Arrangement for Using Idle Spaces in Public Housing Estates

14. The number of direct investigations to be completed in 2018-2019 is expected to be comparable to those of last year. As before, we will publish all our direct investigation reports on the Office's website, and select those reports of wide public interest or community concern for announcement at press conferences.

Public Education and Promotion

15. We attach great importance to publicising the Office's mission and functions. Our aim is to enhance public understanding of our work through diversified publicity strategies and channels. To encourage more Government departments and public organisations to use our mediation service, we introduced in 2018 a new Award on Mediation for a public organisation under the Ombudsman's Awards Scheme to acknowledge the organisation for its excellence in mediation. We strive for more direct communication between the organisations concerned and the complainants, thereby leading to satisfactory outcomes for both sides and speedy resolution of disputes.

16. The Office is now in preparation for launching a new publicity campaign with the theme "Positive Complaint Culture for Better Administration". We have all along been fostering a positive complaint culture to allow members of the public, Government departments and public organisations to realise that the process of lodging and handling complaints can be an effective way of communication and provides an opportunity for building mutual trust. In the process, complainants can give their views on public services, while departments/organisations can understand better the public's expectations so

that they can make adjustments and improve their services.

Concluding Remarks

17. In improving the quality of public administration, the Office of The Ombudsman is just “one voice, a change agent”. To raise the standard of public administration, we need contributions from all stakeholders, including input from Legislative Council Members, the public and the media, this Office doing our job, and the departments/organisations concerned actively responding to our inquiries and recommendations. The Office considers this a multipartite effort and a joint venture. When conditions are ripe, success will come.

II. Replies to Questions Raised by Members

1. **Fallen trees and public transportation services**

(to be raised by Dr Hon Helena WONG Pik-wan)

[After the onslaught of Super Typhoon Mangkhut on Hong Kong, the Government's follow-up work fell short of public expectation. For instance, after the passage of the typhoon, there were a lot of fallen trees. Yet, the Development Bureau and the Environmental Protection Department did not make use of the trees and branches as compost in accordance with the "Food Waste and Yard Waste Plan for Hong Kong" and indicated that most of the fallen trees could not be separated and recycled for use. They even dumped a lot of fallen trees in the landfills which resulted in the release of methane. Moreover, upon the passage of the typhoon, although bus companies had forewarned bus services would not be provided on normal schedule and the MTR Corporation Limited also announced that the services of a number of MTR lines would be disrupted, the Government failed not only to notify the public of the aforesaid situation earlier but also to make suitable coordination. As a result, in spite of spending four hours, some members of the public still could not reach their workplaces. In view of the above, will The Ombudsman consider initiating a direct investigation into the aforesaid situation?]

- (1) We note Dr Hon Helena Wong's concern about the various environmental protection problems brought about by fallen trees in the aftermath of the typhoon. As far as we understand, the Chief Executive has already appointed the Secretary for Security to conduct a comprehensive review on the Government's approach in handling super typhoons.
- (2) The ambit of the review covers: relief and restoration work upon passage of a typhoon, which include resumption of public transport services, clearance of blockages on roads caused by fallen trees and debris, as well as dissemination of information within the Government and to the public (such as information on missing trips of public transportation), with a view to identifying areas for improvement and considering how best to handle similar situations in the future. The review is underway.
- (3) We will keep watch on related developments before deciding whether a direct investigation is warranted.

2. **Handling of broken tree branches after the typhoon**

(to be raised by Hon Holden CHOW Ho-ding)

[After the onslaught of Super Typhoon Mangkhut on Hong Kong, many broken tree branches are still piling along roadside and have not been cleared, causing great inconvenience to residents. Since trees are currently managed under the respective purview of various Government departments, inter-departmental coordination in respect of tree clearance is required when trees in areas under the purview of one Government department collapse into areas under the purview of another. In this connection, will The Ombudsman consider initiating a direct investigation into the Government's follow-up work on the handling of broken tree branches after the passage of typhoons, particularly in respect of human resources, equipment and inter-departmental coordination so involved, with a view to enhancing the Government's efficiency?]

- (1) As far as we understand, the Chief Executive has already appointed the Secretary for Security to conduct a comprehensive review on the Government's approach in handling super typhoons.
- (2) The ambit of the review covers: relief and restoration work upon passage of a typhoon, which include resumption of public transport services, clearance of blockages on roads caused by fallen trees and debris, as well as dissemination of information within the Government and to the public, with a view to identifying areas for improvement and considering how best to handle similar situations in the future. The review is underway.
- (3) We will keep watch on related developments before deciding whether a direct investigation is warranted.

3. **Co-ordination mechanism for handling traffic incidents**

(to be raised by Hon Holden CHOW Ho-ding)

[Upon the onslaught of Super Typhoon Mangkhut on Hong Kong, road traffic was chaotic due to road closures caused by fallen trees and railroad incidents. On 16 October 2018, there was even an incident involving service disruption of four MTR lines which had seriously affected road traffic condition. Although the Government had activated the Emergency Transport Co-ordination Centre, the latter failed to function as desired as members of the public could not get hold of real time traffic information. As such, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) The extensive damage caused by Super Typhoon Mangkhut was the worst Hong Kong had ever experienced in the past 30 years. Likewise, the simultaneous break-down of four MTR lines on 16 October 2018 was one of the most serious service disruptions in the railway company's nearly 40 years of service. Since the MTR Corporation Limited is not a public organisation within our jurisdiction, we are not empowered to conduct any direct investigation against it. We understand that the Government has required the company to submit its investigation report on the incident as soon as possible. The investigation should include a review on the arrangements for deploying free shuttle bus services during railway incidents.
- (2) Notwithstanding the above, we will seek further information on the matter, particularly the role and work arrangements of the Emergency Transport Co-ordination Centre on the days of the incidents, before deciding whether a direct investigation against the departments concerned (the Transport and Housing Bureau and the Transport Department) is warranted.

4. **Follow-up work in respect of misconnection of sewers**
(to be raised by Dr Hon Helena WONG Pik-wan)

[The Environmental Protection Department is very slow in handling cases relating to misconnection of sewers, with only several cases handled each year on average. As a result, effluent has been discharged continuously into the sea via storm water drains, resulting in the pollution of local marine waters and seawater odour. As such, will The Ombudsman consider initiating a direct investigation into the above matter?]

- (1) This Office notes that for many years the water quality of inshore waters has been a subject of much public concern. Recently (in October), there were media reports about the misconnection of sewer pipes to storm water pipes in many buildings in Tsuen Wan, causing discharge of untreated sewage directly into the sea. That has resulted in water pollution at Rambler Channel but the Government has failed to act promptly and address the problem.
- (2) This Office is now conducting a preliminary inquiry into the Government's handling of the problem relating to misconnection of sewers, with a view to deciding whether further investigation is warranted.

5. **Issues relating to the handling of mosquito and rodent problems**
(to be raised by Dr Hon Helena WONG Pik-wan)

[Since 2004, the Administration has fully implemented the monitoring work on Aedes albopictus. So far, there are 57 surveillance locations in the territory in which data on the breeding of mosquitoes and insects are collected by using scientific methods for the implementation of corresponding anti-mosquito measures. Yet, although earlier there were a lot of cases of dengue fever in Wong Tai Sin and Cheung Chau, Ovitrap Index ("OI") of only 21.8% and 11.8% were recorded respectively in these two districts, indicating a phenomenon of "serious mosquito problems in low index areas". Some media later found out that the mosquito blackspots in these two districts were outside the coverage of the oviposition traps. It was therefore likely for the Government to misjudge the situation of the epidemic by relying solely on OI. Moreover, the delay in announcing OI by one month also could not reflect the prevailing situation. This apart, the Food and Environmental Hygiene Department ("FEHD") has formulated measures on rodent disinfection based on the Rodent Infestation Rate ("RIR") since 2000 (i.e. FEHD will set baits in selected areas and compile statistics biannually on the ratios of the baits bitten by rodents; if RIR of a certain area is less than 10% (Level 1), it indicates that rodent infestation is not extensive; if RIR is between 10% and 19% (Level 2), it indicates that rodent infestation is slightly extensive and FEHD will strengthen rodent disinfection operations there; and if RIR reaches 20% or above (Level 3), FEHD will form a task force to coordinate the rodent disinfection operations of the relevant Government departments and local organizations). According to RIR of the first half of this year announced by FEHD, the overall RIR of Hong Kong was just 2.8%. However, the accuracy of RIR has always been in doubt. For instance, although RIR of Sai Kung was 0% in 2012 and 2013, the rodent complaint cases received in that district were over 300 and 400 respectively in these two years. In view of the above, will The Ombudsman consider initiating a direct investigation into the methods used and the effectiveness of the work carried out by FEHD to handle mosquito and rodent problems?]

- (1) Regarding the handling of mosquito problems, information shows that the Food and Environmental Hygiene Department ("FEHD") has placed ovitraps at crowded places where breeding of mosquitoes is more likely found. Nevertheless, some people opine that the coverage of the ovitraps does not include places with serious mosquito problems and they query whether the low levels of Ovitrap Index can truly reflect the problems at the localities.

- (2) Regarding the handling of rodent problems, some people opine that the Rodent Infestation Rate ("RIR") set by FEHD has been low while the number of rodent complaints by members of the public is considerable. They query the accuracy of RIR.
- (3) Meanwhile, it was reported that the Department of Microbiology at the University of Hong Kong discovered the world's first and second cases of human infection by rat hepatitis E virus in September and November 2018. Both patients live in the same district. The Secretary for Food and Health noted that FEHD has launched territory-wide rodent disinfection operations after the first case was identified. FEHD has also collaborated with the Housing Department, Link REIT and other related organisations to step up the disinfection and cleaning work in various districts. They have held seminars to enhance public awareness of hygiene, and strengthened their enforcement actions on illegal dumping. Furthermore, FEHD will try new technologies and methods of disinfection in different places.
- (4) This Office is now conducting a preliminary inquiry into FEHD's handling of the mosquito and rodent problems, with a view to deciding whether further investigation is warranted.

6. **Issues relating to the procedures for the introduction of new drugs by hospitals**

(to be raised by Dr Hon Helena WONG Pik-wan)

[At present, the procedures for handling applications for inclusion of new drugs in the "Drug Formulary" of the Hospital Authority ("HA") are complicated. Applications must be initiated by clinicians of one of the hospitals under a HA cluster to the Drug and Therapeutics Committee ("DTC") of the hospital to which such clinicians belong. Upon approval by DTC, such applications will be vetted by the Drug Advisory Committee ("DAC") under HA. If the applications are approved by DAC, clinicians of various hospitals will then be required to submit applications to DTCs of the hospitals to which they belong, and the relevant DTCs will decide on their own as to whether such new drugs should be approved for use in the hospitals concerned. As a result, the introduction of new drugs into various hospitals is delayed. There were even situations where certain new drugs were approved for use in one hospital but not another, and this affected the conditions of patients who were not able to use the new drugs. Moreover, the application forms of DTCs of various hospitals are not standardized. In this connection, will The Ombudsman consider initiating a direct investigation into the aforesaid situation?]

- (1) As far as we understand, there are around 1 300 drugs listed in the Drug Formulary (“the Formulary”) of the Hospital Authority (“HA”). In 2016, the Audit Commission (“Aud”) published a report on HA’s drug management, in which it was mentioned that only a few HA hospitals and clinics had regularly applied for new drug listing. No applications for listing had been made even for some drugs that were in regular demand. In response to Aud’s recommendations, HA has requested all clusters/Drug and Therapeutics Committees to include Formulary-related issues (including applications for new drug listing) as a standing agenda item in their meetings. HA has also shared on the Formulary webpage of its own intranet the link to the Department of Health’s website to keep its staff abreast of information on newly registered drugs in Hong Kong.
- (2) Moreover, HA has established and implemented a mechanism to monitor and analyse the use of drugs not listed in the Formulary, and has reviewed the arrangements adopted by different clusters in approving, recording and monitoring the use of such drugs. HA has formulated an overall management framework and a monitoring mechanism for the use of drugs that are not listed in the Formulary, and has aligned the operating procedure across clusters and the charging principles for use of non-Formulary drugs. HA issued an operation circular on management of non-Formulary drugs in March 2018, which has been incorporated into the revised version of the Drug Formulary Management Manual in April 2018.
- (3) As for the drugs used by individual hospitals, HA explained that the scope of services provided by public hospitals and clinics may vary in the light of regional needs and the division of labour among cluster hospitals. Some hospitals or clinics only provide certain particular medical services. Therefore, different hospitals and clinics will keep stock of drugs in the Formulary according to their service needs.
- (4) This Office will keep a close watch on the developments. If Members have any specific information or cases about delay in listing of new drugs in the Formulary caused by improper application procedures, or cases of patients whose clinical conditions were affected due to inaccessibility to new drugs, they are welcome to provide us with details. If necessary, we will consider initiating an investigation against the departments/organisations concerned.