

Jurisdiction of the LegCo Redress System

Purpose of paper

This paper gives some examples of complaints which were not handled according to the existing jurisdiction of the LegCo Redress System (the System) and of the assistance rendered to the complainants concerned.

General principle of the jurisdiction

2. It was generally agreed at the Subcommittee's meeting on 11 September 1998 that the System should not go beyond the scope of work of the Legislative Council as stipulated in Article 73 of the Basic Law. The scope of Panels might be adopted as the jurisdiction of the System, as there is no reason why matters which might ultimately be referred to the Panels for review of the relevant policies should be excluded from the System. The terms of reference of the 17 Panels are at **Appendix**.

Items to be excluded

3. The Subcommittee also agreed that the following items should fall outside the jurisdiction of the System:

- (a) *Court decisions, matters which are subjudice or could involve criminal charges, and matters relating to judicial and quasi-judicial proceedings.*
- (b) *Matters outside the jurisdiction of the Hong Kong Special Administrative Region.*
- (c) *Request for legal advice or legal services.*

Items to be further discussed

- (d) *Complaints against individual members of the three-tier system of representative government (i.e. Legislative Council, Municipal Councils and District Boards), or other government boards and committees*

Example 1 : Complaint against a LegCo Member

4. Two complainants alleged that a LegCo Member who was a solicitor had mishandled the execution of their deceased father's will some twenty years ago. They opined that the person did not have the calibre to be a LegCo Member. The LegCo Secretariat advised the complainants that we did not handle complaints against individual LegCo Members unless the complaints were related to the discharge of their duties as LegCo Members. We further pointed out to them that if they intended to

complain against the LegCo Member in question in his capacity as a lawyer, they might consider lodging their complaint with the Law Society of Hong Kong.

Example 2 : Complaint against a Provisional District Board Member

5. A group of anonymous residents of a public housing estate lodged a complaint against a Member of the Provisional District Board for improper use of Government property. They alleged that the member had hired out his office for Cantonese Operatic Songs rehearsals at the estate causing noise nuisance and disturbance to residents in the neighbourhood. As the case was outside the jurisdiction of the Redress System, it was referred to the District Officer (DO) concerned for his necessary action. DO subsequently clarified that the site in question belonged to a Residents Committee and that it was reserved for the activity every Wednesday afternoon without charge. DO also advised that the site was a self-enclosed meeting room and no complaint about noise nuisance had been received.

(e) Matters relating to a non-government body

Example 1 : Complaint on age limit regarding the use of Student Octopus

6. A group of undergraduates were dissatisfied that full-time students over the age of 25 were not allowed to use Student Octopus on trains operated by the Kowloon-Canton Railway Corporation and the Mass Transit Railway Corporation. In view of the fact that the issue was of wide public concern, their views were referred to the Transport Bureau for consideration. The Bureau took up the views with the two companies, which subsequently replied to the complainants that the age limits would be reviewed.

Example 2 : Complaint on the failure of a private hydrofoil company to provide freight service

7. A newspaper distributor complained that the company provided freight service from Hong Kong to Macau to another newspaper distributor, but not to him.

8. Marine Department and Transport Department revealed that the said company was not subject to any franchise or government regulation in providing the freight service to the public mentioned by the complainant. The principal business of the company was to provide passenger services to and from Macau. The company was allowed to carry small quantity of cargo on its vessels on condition that the safety of passengers and vessels were not compromised and that such carriage was in compliance with the relevant Ordinances and Regulations e.g. Import & Export Ordinance and Shipping and Port Control Ordinance. Marine Department further advised that there were other ferry operators providing similar freight services to Macau.

9. The LegCo Secretariat advised the complainant that his complaint against the company, being a private enterprise, was outside the jurisdiction of the Redress System, but provided him with the information obtained from the Administration.

Example 3 : Complaint on the maladministration of a local university

10. A complainant, who was dismissed by a local university, complained about the alleged maladministration of the senior management of the university and proposed that the Government should step up its monitoring role on the tertiary institutions.

11. This was a labour dispute between the complainant and his employer. Also, local tertiary institutions were not Government bodies, and it was Government's policy to respect their institutional autonomy with their own structure of governance as set out in their respective ordinances. The Complaints Division explained to the client that it was inappropriate for the Complaints Division to interfere with the decisions made by the tertiary institutions as far as their internal academic and staffing matters were concerned. He was advised to pursue his complaint via the normal channel, i.e. the institution's established complaint and appeal procedures, or through court action. Nevertheless, the client insisted to have an interview with Members in order to express his grievances and views in person. The Complaints Division therefore advised Members that, strictly speaking, the complainant's case fell outside the jurisdiction of the Redress System, but, Members might wish to consider meeting the complainant to help redress his grievances and render any assistance deemed appropriate. Members accepted the advice. At the interview with the complainant, he was told that Members would merely pass on the complainant's general views/enquiries (i.e. the investigation progress of the Chief Executive's Office on the complainant's case, the local tertiary institutions' structure of governance and the Government's role in monitoring the tertiary institutions) to the Administration for comments.

Example 4 : Complaints against the Land Development Corporation in relation to the Tsuen Wan "Seven Streets", Kennedy Town "Five Streets" and Hanoi Road Redevelopment Projects

12. Affected property owners and tenants complained respectively about the low valuations on their properties, the unsatisfactory rehousing arrangement for tenants and the delay in making offers for purchase of their properties by the Land Development Corporation in the three redevelopment projects.

13. Although the Land Development Corporation was a non-government body, Members took up the complaints because the matter was of wide public concern.

14. As regards valuations, the property owners were advised that independent surveyors had been employed by Lands Department to vet the purchase prices offered by the Corporation, before the Planning, Environment and Lands Bureau recommended to the Executive Council resumption of these properties under the Lands Resumption Ordinance. A case conference was held with the Corporation in which Members sought its agreement to offer rehousing to those affected tenants who had not resided in Hong Kong for seven years. Through Members' efforts, the Corporation subsequently made offers to the property owners affected by the Hanoi Road Project for purchase of their properties with an extended period of two months to consider the offers.

Example 5 : Complaint against the New World First Bus Services Ltd

15. Before the change-over of franchised bus services for Hong Kong Island from the China Motor Bus Company (CMB) to the New World First Bus Services Limited (First Bus), a group of CMB workers (the deputation) petitioned LegCo Members to lodge a complaint against the new company for not honouring its commitments to offer to each employee basic wages and benefits no less favourable than his prevailing entitlement under his employment by CMB.

16. After hearing the views of the deputation at a Duty Roster Member interview, Members held a case conference with the representatives of the Transport Department (TD) and First Bus. TD considered that First Bus had fulfilled its obligation on staff recruitment as stipulated in the franchise. It was noted that to address the concerns raised by CMB staff over the remuneration package, First Bus had acceded to their requests for more overtime work. It had also agreed to issue them free travel passes for its bus services. Moreover, First Bus agreed to continue to find the best possible job opportunities for the surplus staff.

(f) Private disputes

Example 1 : Request for assistance in recovering money from a solicitor

17. The complainant alleged that his solicitor, in handling the sale of his flat, had received from the buyer the full proceeds of the sale but had unjustifiably kept part of the money. He wished to seek Members' assistance in the matter. The LegCo Secretariat advised him that such disputes fell outside the jurisdiction of the Redress System and that he might consider taking legal action to recover the money from his solicitor. In response to his request for legal advice on the matter, he was told that the LegCo Secretariat did not provide legal advice, but free legal advice was available to members of the public through the Duty Lawyer Scheme jointly organized by the Law

Society of Hong Kong and the Home Affairs Department.

Example 2 : Request for assistance in a private tenancy dispute

18. The complainant had rented a flat in a private residential block for more than 30 years. Several months ago, the landlady informed him through her solicitor that she would terminate the tenancy so that her mother could live there. He queried whether the landlady had sufficient grounds to terminate the tenancy because her mother was not a Hong Kong permanent resident. The Legal Aid Department refused to grant him legal aid on the matter and his appeal to the High Court against the Department's decision was dismissed. The LegCo Secretariat explained to the complainant that his case was a private tenancy dispute, which fell outside the jurisdiction of the Redress System. We advised the complainant to put the matter to the Lands Tribunal and seek legal advice through the Duty Lawyer Scheme jointly organized by the Law Society of Hong Kong and the Home Affairs Department.

Example 3 : Complaint against a commercial bank

19. A complainant claimed that a bank had mishandled his case regarding the loss of his safe deposit box key and requested the Complaints Division to look into the case. Since the case was merely a private dispute between the concerned parties, the complainant was advised that it did not fall within the jurisdiction of the Redress System and he might consider approaching the Hong Kong Association of Banks for assistance.

(g) Labour disputes between employers and employees, including disputes between individual civil servants and Government as an employer

Example 1 : Complaint about a new remuneration plan introduced by Hong Kong Telecom

20. Towards the end of 1994 Hong Kong Telecom introduced a new career plan which was considered by staff as a reduction of their retirement and other benefits. The Hong Kong Telephone Company Staff Association and the Cable and Wireless Staff Association approached the LegCo Secretariat for assistance.

21. The LegCo Secretariat advised the complainants that their complaint against Hong Kong Telecom was outside the jurisdiction of the Redress System, because this was a labour dispute between a private company and its employees. They then alleged that Labour Department had not provided an effective conciliation service.

22. Two Duty Roster Member interviews were arranged. Members advised the complainants that they could not intervene in the negotiations between the company and its staff, but they would urge Labour Department to provide appropriate conciliation service to the company and its staff.

Example 2 : Complaint from a labour federation in connection with relocation of Kai Tak Airport to Chek Lap Kok

23. A labour federation representing about 23,000 employees working for the various commercial enterprises based at Kai Tak Airport petitioned LegCo Members in 1995.

24. The federation was concerned about the job security of serving staff when their employers relocated their business to Chek Lap Kok, because mechanization of facilities in the new airport might lead to redundancy of staff.

25. In view of the wide public concern on the issue, Members requested the Labour Department and the Airport Authority to intervene and urge the service providers to accord high priority to retaining the services of serving staff. In response, the Labour Department offered assistance to the federation and agreed to work closely with the private sector employers, asking them to discuss with their staff and set up joint consultative committees. The Airport Authority also agreed to work with the potential franchisees and service providers to ensure that the concerns of staff were addressed.

(h) Complaints against Police or ICAC officers

Example

26. The client lodged a complaint to the Complaints Against Police Office (CAPO) alleging that his son had been beaten up by the police during an interrogation. He doubted if CAPO would handle the complaint properly as the Office initially discouraged him to lodge the complaint. We advised the client that complaints against CAPO was outside the jurisdiction of the LegCo Redress System, but we explained to the client the functions of the Independent Police Complaints Council which was to oversee CAPO's investigation of such complaints. Also, he might consider writing to the Chief Superintendent of the Complaints and Internal Investigation Branch of the Police Force, who supervised the operation of CAPO.

For Members' consideration

27. Members are invited to further consider whether items (d) - (h) (para 4 - 26) should be excluded from the jurisdiction of the Redress System.

Legislative Council Secretariat

16 October 1998

Legislative Council

Panel on Environmental Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to environmental and conservation affairs.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Health Services

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to medical and health services matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or raised by the Panel itself.

Legislative Council

Panel on Economic Services

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to economic matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy area prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy area as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Information Technology and Broadcasting

Terms of Reference

1. To monitor and examine Government policies and issues relating to information technology, telecommunications, broadcasting, film censorship and services.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Welfare Services

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to welfare and rehabilitation services matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or raised by the Panel itself.

Legislative Council

Panel on Planning, Lands and Works

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to lands, buildings and planning matters, works and water supply and Public Works Programme.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy area prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy area as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Trade and Industry

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to trade and industry matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Education

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to education matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy area prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy area as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Financial Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to financial and finance matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the HKSAR Government and the Central People's Government and other Mainland authorities, electoral matters and district organisations.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Security

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to security, public order, public safety, corruption-related matters and nationality and immigration matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Housing

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to private and public housing matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Transport

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to transport matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy area prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy area as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Home Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to district, community and rural matters, human rights, civic education, data protection, press freedom, building management, youth and women matters, development of arts and culture, public entertainment, sport and recreation.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Administration of Justice and Legal Services

Terms of Reference

1. To monitor and examine, consistent with maintaining the independence of the Judiciary and the rule of law, policy matters relating to the administration of justice and legal services, including the effectiveness of their implementation by relevant officials and departments.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or raised by the Panel itself.

Legislative Council

Panel on Public Service

Terms of Reference

1. To monitor and examine Government policies and issues of public concern on matters relating to the civil service and Government-funded public bodies, and other public service matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy areas prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy areas as referred by the Council or House Committee or as raised by the Panel itself.

Legislative Council

Panel on Manpower

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to labour and manpower planning matters.
2. To provide a forum for the exchange and dissemination of views on related policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the relevant policy area prior to their formal introduction to the Council or Finance Committee.
4. To examine and to report on any major issues of wide public concern in the relevant policy area as referred by the Council or House Committee or as raised by the Panel itself.