

### **Office of the Ombudsman**

19.1 Referring to plans to de-link the Office of the Ombudsman (the Office) from the civil service, Miss Emily LAU enquired whether the Office was planning to adopt a staffing structure and remuneration package different from those of the civil service upon de-linking. In response, the Ombudsman advised that reference would be made to the pay and fringe benefit packages of other publicly funded organizations, including the Legislative Council (LegCo) Secretariat and the Independent Commission Against Corruption (ICAC), in formulating the Office's own proposals in this regard. As internal consultation was still under way, details had yet to be finalised. However, while the civil service pay scale presently adopted by the Office would inevitably form the basis of the proposals, it was hoped that as a result of de-linking, the Office would enjoy greater flexibility in the deployment of resources to achieve savings and greater cost-effectiveness. The Ombudsman undertook to brief members on the proposals in due course.

19.2 Referring to the proposal to provide subvention to non-government organizations (NGOs) in the welfare sector in the form of a one-line vote, Miss Emily LAU enquired whether the terms and conditions of employment of staff of the Office and other organizations alike would also face the possibility of salary cuts as a result of the proposed change of the mode of subvention, and whether there were any yardsticks to require these organizations to follow the staff remuneration package of the civil service.

19.3 In reply, the Deputy Secretary for the Treasury(1) (DS(Tsy)1) clarified that the mode of subvention and the terms and conditions of staff in the subvented sector were two separate matters. She said that the proposed lump-sum grant for the welfare sector was aimed at providing NGOs with greater flexibility in the deployment of resources rather than changing their personnel policies. Moreover, the proposal would not entail cutting benefits. The subvention given to the organizations affected would not be less than what they would receive in the coming year under the present arrangement. In fact, the total sum of subvention payable by the Administration to NGOs in the welfare sector, as a result of the proposed change in subvention mode, would increase by \$150 million. She also advised that a Tide-Over Grant would also be set up during the first three years of implementation of the lump-sum grant. NGOs which had difficulties in meeting their contractual obligations to serving staff for salary increments and provident fund scheme contributions might apply for a one-

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off grant under the scheme.

19.4 Miss Emily LAU considered it unfair that different employment terms should be allowed among different organizations funded by the general revenue in the form of a one-line vote or fixed lump sum grant. In reply, DS(Tsy)1 pointed out that the terms and conditions of staff in the subvented sector were a matter between the NGO and its employees. However, she acknowledged that in terms of the level of subvention, not all NGOs were receiving funding for remunerating their staff on par with comparable civil servants. The fringe benefits of staff in aided schools and subvented welfare agencies compared less favourably than those of the civil service. In the past, where funding permitted, the Government had no objection to improving the fringe benefits of subvented staff. One example was the Mortgage Interest Subsidy Scheme introduced in 1994-95 for staff of these organizations. However, even this benefit was hardly comparable to the housing assistance provided to their counterparts in the civil service or eligible staff of the University Grants Committee - funded institutions.

### **Legal Aid Department**

19.5 Miss Margaret NG highlighted the significant increase in legal aid cost due to a sharp increase in legal aid applications resulting from some 8000 applications by right of abode claimants arising from the challenge of interpretation of the Basic Law by the National People's Congress. While declaring her interest for involvement in these cases, Miss NG pointed out that such increase was due to the reluctance of the Legal Aid Department (LAD) to adopt the use of test cases. She stressed that it would save taxpayers' money if instead of requiring all claimants to apply for legal aid as in the right of abode case, LAD could liaise with the department concerned about the use of a test case to test a specific legal principle. Once the test case stood, every person who came under the test case would benefit from the application of the tested principle without having to be a named person to take proceedings to court individually.

19.6 In reply, the Director of Legal Aid (DLA) advised that as such legal aid cases were assigned to private practitioners, it might be more appropriate for these lawyers to negotiate with the department concerned on whether a test case should be set up. So far, LAD had not taken the lead in this matter. Moreover, pursuant to LAD's statutory duty under the Legal Aid Ordinance to process legal

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aid applications received by it, there was practical difficulty in discouraging right of abode claimants from making legal aid applications.

19.7 Miss Margaret NG reiterated the importance of the setting up of test cases in consideration of the significant resource implications arising from the need to take similar cases to court individually in the absence of a test case. Mr James TO shared her views. In response, DLA explained that since the circumstances of individual legal aid cases and the nature of legal proceedings involved might be different, it would be inappropriate to determine whether a test case could be set up at the application stage and advise applicants against filing applications for seemingly similar cases. In this connection, the Chairman commented that test cases should be agreed on mutually by both parties concerned rather than imposed by the Administration. Members agreed that the policy issue relating to test cases should be further followed up at the relevant Panel.

19.8 Mr Albert Ho asked whether resources would be allocated for setting up a formal mechanism for reviewing refusals to grant legal aid in criminal cases. In response, DLA advised that at present, there were no statutory provisions for appeal against the refusal to grant legal aid in criminal cases, except in respect of cases to be heard by the Court of Final Appeal. Nevertheless, he pointed out that where a legal aid application for a criminal case had been rejected, fresh application could be made for LAD's re-consideration.

19.9 In this regard, Mr Albert HO opined that there was little use in re-filing a rejected application unless the relevant procedures would be revised to allow an applicant to appeal to the Registrar of the High Court in Chambers as in the case of civil legal aid applications, or that the application would be re-considered through an internal review mechanism overseen by a more senior in-house legal aid counsel. Referring to criminal cases in which the defendant was acquitted but whose legal aid application had hitherto been rejected, Mr HO emphasised the need to set up an internal system to review legal aid applications for criminal cases to ensure that deserving cases were properly considered.

19.10 In reply, DLA pointed out that according to the existing procedure, the refusal of a legal aid application for a criminal case should be subject to the endorsement of a counsel at the directorate level. This was already a form of internal review. As regards the need for a formal appeal mechanism, it would be examined in the context of the Legal Aid Policy Review. Mr Albert HO indicated that he might follow up the matter at the relevant Panel.

### **Independent Commission Against Corruption**

19.11 Mr James TO was concerned about corrupt activities and embezzlement of the Mainland's public funds involving Mainland companies in Hong Kong. He sought confirmation from the Commissioner, Independent Commission Against Corruption (C, ICAC) on whether or not ICAC would conduct proactive investigation into serious corruption cases involving Hong Kong-based Mainland companies. In response, C, ICAC emphasised that ICAC would vigilantly investigate all pursuable reports of corruption, irrespective of their background and the parties involved. In addition, a progress report on every case under investigation would be submitted to the Operations Review Committee regularly. There was also close liaison between ICAC and the Department of Justice on cases in which prosecution was contemplated.

19.12 Mr James TO referred to allegations that ICAC's enforcement action against serious corruption cases involving Mainland companies had not been as effective as its efforts targeted at minor corruption offences. In response, C, ICAC said that the ICAC had a statutory duty to investigate all corruption complaints. While the ICAC would diligently investigate every corruption complaint, its success depended in some instances on the extent of information made available by the complainants. He quoted the record high number of corruption reports received and successful investigations and prosecutions conducted in 1999 to prove that ICAC was indeed striving to deliver the highest standard of service. As to whether ICAC encountered greater difficulty in collecting intelligence about Mainland companies, C, ICAC remarked that every corruption case was unique and it was inappropriate to conclude that a certain category of cases would pose greater difficulty to investigation.

### **Legislative Council Commission**

19.13 Miss Emily LAU referred to the proposed provision of \$10 million for the LegCo Secretariat Research & Library Services Division (R&LSD) in 2000-01 which she considered inadequate when compared to the research arms in overseas legislatures such as the 800-strong research department of the US Congress which LegCo Members had visited. Miss LAU was of the view that resources for research services should be boosted and enquired whether the Secretariat had made efforts to seek additional funding.

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19.14 In reply, the Secretary General of the LegCo Secretariat (SG) agreed that resources for R&LSD could hardly compare with those of its overseas counterparts due to differences in functions and in the size of legislatures. At Miss LAU's request, he agreed to provide further information on how LegCo's research capacity compared with that of legislatures in overseas countries. SG further advised that at present, R&LSD mainly conducted research on different subjects upon requests from the Council and its committees. Nevertheless, it would also initiate research on topics of interest or concern to LegCo Members as far as practicable. If the Secretariat were to provide research or background papers on current issues as proposed by Miss Emily LAU, a review of the direction of the research support of the Secretariat would be required and consideration would have to be given to whether the scope of its service should be expanded with increased resources.

19.15 Referring to the number of research papers published by R&LSD, at 17 in 1998-99 and 20 in 1999-2000, Miss Emily LAU was of the view that the research support provided to LegCo Members was barely sufficient for them to monitor the work of the executive authorities. In reply to Miss LAU on the estimated number of research papers to be published by R&LSD for 2000-01, SG said that based on its existing establishment of five Research Officers, R&LSD would be able to produce about 20 papers in 2000-01, which was broadly the same as the estimated number for 1999-2000. However, where there was a great demand for research work in excess of R&LSD's capacity, there existed a mechanism for prioritising research projects. So far, the said mechanism had not been activated.

19.16 Miss Margaret NG pointed out that the provision for the LegCo Secretariat Legal Service Division (LSD) in 2000-01, which was in the order of \$22 million, was no comparison to the \$120 million for law drafting work in the Department of Justice. As it was LegCo's major duty to scrutinise legislative proposals, Miss NG was gravely concerned that the small establishment of LSD could hardly provide adequate professional support to Members. In response, SG explained that the LegCo Secretariat had undertaken various measures to enhance productivity and had been able to produce the planned output of work despite resource constraints. Nevertheless, he admitted that at times of very heavy workload, LSD had occasionally taken a longer time to prepare reports on individual legislative proposals.

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19.17 Miss Margaret NG reiterated the importance of proper scrutiny of legislative proposals in view of their far-reaching implications upon enactment. She thus urged the Secretariat to critically examine whether additional resources could be sought to strengthen the professional support provided by LSD in the scrutiny of proposed legislation given the rising number and increasing complexity of legislative proposals.

19.18 In this regard, the Chairman pointed out that the LegCo Commission might be in a better position to review the overall resource provision for the LegCo Secretariat. Miss Emily LAU confirmed that the matter had been raised at meetings of the Commission and proposed that a paper be prepared for further consideration by the Commission. Acknowledging members' concerns, SG said that subject to the Commission's view, he would examine the possibility of bidding for additional resources in the context of this year's Resource Allocation Exercise in May 2000.

### **Chief Executive's Office**

19.19 Members noted that the Administration would maintain Fanling Lodge as the Chief Executive (CE)'s country residence. As far as its actual utilization rate was concerned, the Private Secretary (PS) to CE reported that CE and his family often spent their weekends in Fanling Lodge. However, since such use was for personal purposes, no utilization record had been kept. As to whether any public funds had been incurred for providing support to CE's family country residence on Island Road, PS to CE confirmed in the negative.

19.20 As to whether there were any other recreational facilities such as Lady Maureen, the launch of former Hong Kong Governors, designated for CE's use, PS to CE reported that Lady Maureen had been disposed of a few years ago because of wear and tear. The new launch was managed and operated by Marine Department for general Government use and the CE had no exclusive use of it.

19.21 Regarding the provision of office support to Mrs TUNG by CE's Office, PS to CE advised that a small area of office space, measured about 6 square metres, was provided to Mrs TUNG to enable staff of CE's Office to discuss with her public engagements arising from her official capacity as wife of CE. No separate staffing support was provided to her. PS to CE said that this arrangement was required to meet operational needs and was most practical and

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cost effective. Miss LAU was unconvinced and pointed out that it might not be necessary to designate an office for the purpose as other individuals engaged in public service were not provided with office support.

19.22 Miss Margaret NG acknowledged the need to provide support to CE's wife in performing her public official duties but found the present arrangement unsatisfactory. In her view, instead of using the existing resources of CE's Office, CE's wife should be provided with her own office and staffing support, details of which should be properly accounted for. This would remove doubt and enhance accountability. In response, PS to CE stressed that all support services provided to CE's wife by CE's Office were related to her official duties. Resources were pooled together to avoid duplication and save costs. In this connection, the Chairman requested PS to CE to note members' views for further consideration.