

立法會
Legislative Council

LC Paper No. CP 426/99-00

(These minutes have been
seen by The Ombudsman)

Ref.: CP/G06/4(III)

**Legislative Council Members' Meeting
with Ms Alice TAI, The Ombudsman,
at 11:00 am on Tuesday, 14 December 1999,
in Conference Room A of Legislative Council Building**

Members Present : Dr Hon LEONG Che-hung, JP (Chairman)
Hon David CHU Yu-lin
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing
Hon CHAN Wing-chan
Hon YEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk

**Attendance by
Invitation** : Office of The Ombudsman

Ms Alice TAI, JP
The Ombudsman

Mr CHAN Ying-lun, JP
Deputy Ombudsman

Mr Alec KWONG
Principal Executive Officer

Mrs Isabella WONG FUNG Pui-han
Principal Executive Officer (Designate)

Clerk in Attendance : Mrs Vivian KAM
Chief Assistant Secretary (Complaints)

Staff in Attendance : Mrs Claren MOK
Senior Assistant Secretary (Complaints)5

Action

I. Chairman's Opening Remarks

The Chairman welcomed The Ombudsman and her colleagues to her first meeting with LegCo Members after assuming the post of The Ombudsman. He recapitulated that regular meetings had been held between Members and The Ombudsman since 1994 for the latter to brief Members on the work of his/her Office and for both parties to exchange views on issues of mutual concern.

II. Briefing by The Ombudsman
(LC Paper No. CP 272/99-00(01))

2. At the invitation of the Chairman, The Ombudsman briefed the meeting on the salient points of the information note which set out the work of her Office in the areas of workload, investigations, finance and major development. Members then raised a number of concerns, and the gist of their discussion is summarized in the following paragraphs.

Written Complaints

3. Mr Fred LI referred to the requirement of The Ombudsman's Office for complaints to be made in writing, and expressed concern that this would create an image of The Ombudsman's Office being bureaucratic. He enquired if it was possible to do away with such a requirement since some complainants might have difficulties in lodging complaints in writing. The Ombudsman assured Members that no person in Hong Kong would be deprived of his/her right to lodge a complaint with her Office on grounds of the complainant's illiteracy or inability to write. She explained that as a rule, her Office would not accept complaints over the telephone because The Ombudsman Ordinance (Cap. 397) required complainants to be identified. Generally speaking, her Office preferred complaints to be lodged in writing. In times past, Duty Officers had assisted complainants in person by writing down their complaints. Regrettably there had been cases where the complainants subsequently disputed what the Duty Officers had written down. This undermined completely what was intended to be a goodwill gesture and led to a great deal of misunderstanding and embarrassment all around. Since then, Duty Officers would only provide a writing service to

Action

complainants who had genuine difficulties. The Ombudsman said that this issue had been raised with her and distorted from time to time. She invited Mr LI to bring to her personal attention any genuine cases in which this requirement had allegedly prevented any complainant from using the services of her Office.

Staffing and Independence of the Office of The Ombudsman

4. Noting that 79 of the 90 posts in The Ombudsman's Office were filled by civil servants, Mr Fred LI was worried that the overwhelmingly large percentage of civil servants might be undesirable. In response, The Ombudsman advised that 11 of the 34 investigators were contract staff recruited by her Office while the remaining support staff was civil service secondees. The Ombudsman considered the practice of having a mixture of investigators on contract terms and on secondment from the Government a good one. Civil service secondees were highly experienced in public administration and very familiar with Government policies, practices and organizational relationships. They required minimal time to settle in. On the other hand, while contract staff had no civil service baggage and could sometimes provide a fresh perspective in handling public sector complaints, they had a steeper and longer learning curve.

5. Ms Emily LAU was of the view that the secondment of civil servants, who were subject to posting, to The Ombudsman's Office might give rise to apprehension on the independence of investigations. She emphasized the need for independence to be seen to be achieved. While appreciating Ms LAU's concern, The Ombudsman stressed that the independence of the work of her Office was demonstrated by its performance; it was the integrity and culture of an organization that mattered rather than the status of its staff. After each investigation, the findings would be subject to internal checking and The Ombudsman provided the final check and balance within the Office. Furthermore, complainants would receive a reply or investigation report on what had been done, the conclusions reached and the reasons therefor. So far, she had detected no difference in the working of secondees and contract staff within her Office. Secondees came from nearly 70 Government departments, to any of which they could be posted on completion of their secondment. There were internal guidelines requiring staff to report on matters involving conflict of interests or in which they might have previously been involved in a private capacity. The transparency of the

Action

investigation process to both the complainant and the organization being complained against was also of paramount importance, and provided the best safeguard against bias or abuses. The Ombudsman believed that there were sufficient institutional safeguards to provide a proper check and balance system.

6. Nevertheless, partly to enhance the image of independence but mainly to achieve greater flexibility in resource management, The Ombudsman informed and Members were pleased to learn that she was actively planning for an eventual delinking of her Office from the civil service. She stressed that proposals on financial arrangements, mode of operation, terms and conditions of appointment of staff, etc. were being formulated. She planned to commence consultations within the Office and then with the Administration in the coming year. The Ombudsman said she had set a working target of achieving genuine one-line-vote arrangements in the 2001/02 financial year, and stressed the importance of flexible implementation in the light of actual circumstances. In response to Mr CHAN Wing-chan, The Ombudsman advised that her preliminary proposals on the conditions of service for civil servant secondees would be similar to the contract terms currently offered to directly recruited staff of her Office. The Office had as its working model arrangements for the Independent Commission Against Corruption and the LegCo Secretariat.

Processing Time of Cases

7. Mr CHAN Wing-chan expressed interest in the processing time of cases. The Ombudsman advised that while the time taken to complete a case was dependent on the nature of the case and the complexity involved, her target was for 60% of cases to be completed within three months. Although her Office would strive to achieve the target, The Ombudsman emphasized that this would not compromise the thoroughness of investigations. In response to Mr CHAN Wing-chan and Mr YEUNG Yiu-chung, The Ombudsman confirmed that her Office would inform the complainant of the results upon conclusion of an investigation and this would include the views of relevant organizations and The Ombudsman's recommendations. Unsubstantiated cases would be concluded when The Ombudsman was of the view that no further action was required.

Action

Direct investigation into the provision and management of private medical and dental clinic services in public housing estates

8. The Chairman and Mr NG Leung-sing declared interest as a representative of the medical field and a member of the Hong Kong Housing Authority respectively. They were concerned about The Ombudsman's direct investigation into the provision and management of private medical and dental clinic services in public housing estates, and enquired if The Ombudsman's Office had contacted relevant organizations and practitioners in the field to ascertain the acceptability of The Ombudsman's recommendations. The Ombudsman explained that the confidentiality requirement in The Ombudsman's Ordinance precluded her from disclosing details of a direct investigation that was still on-going. However, as a general practice, The Ombudsman would consult relevant public organizations and also solicit views from the public through media announcement. She clarified that organizations representing private doctors and dentists were not subject to The Ombudsman's investigation as they were not covered by Schedule I of The Ombudsman Ordinance (Cap. 397). The Ombudsman envisaged that the direct investigation concerned would be completed in about March 2000 whereupon a press briefing would be organized to announce the findings. She assured Members that the background and reasons leading to the recommendations would be set out clearly in the report.

9. Referring to a proposal under consideration by the Commercial Properties Committee of the Hong Kong Housing Authority to replace the existing practice of drawing lots by a formal tendering exercise when offering shops for private medical and dental clinics in public housing estates, Mr NG Leung-sing enquired if there was a need for the Committee to await the outcome of The Ombudsman's investigation before deciding on the proposal. In reply, The Ombudsman advised that investigations by her Office should not impede the operation of the Administration and organizations concerned. She clarified that The Ombudsman was not part of the Administration and was only a third party acting as a referee in these circumstances.

Action

III. Discussion Items Raised by Members

(LC Paper No. CP272/99-00(02))

10. At the invitation of the Chairman, Members and The Ombudsman then exchanged views on the following issues.

Duplication of resources between The Ombudsman's Office and other channels in redressing grievances

11. In relation to some Members' concern on the duplication of resources in redressing grievances, the meeting agreed that the investigations into the opening of the new airport would not be discussed at the current meeting in view of the thorough discussion at the last meeting. Members focused on other related aspects.

12. Given that some clients would lodge the same complaint to various redress channels, such as Members' Offices, the Legislative Council Redress System, The Ombudsman's Office and the Audit Commission, Mr YEUNG Yiu-chung expressed concern and took the view that better coordination among the various channels in redressing grievances was called for to avoid the duplication of resources. The Convenor considered it necessary for The Ombudsman's Office and the Complaints Division of the Legislative Council to get together to examine whether grievances could be addressed without a duplication of efforts by the two organizations as well as Members' offices. He pointed out, however, that the provision in Article 73(8) of the Basic Law for the Legislative Council to receive and handle complaints from Hong Kong residents would have to be observed, and remarked that consultation could be made with the Subcommittee on Review of the Operation of the Redress System if necessary. As a solution to the problem, Mr NG Leung-sing suggested the setting up of a notification mechanism between The Ombudsman's Office and the Complaints Division whereby the latter would serve as a one-stop contact for Members to check whether a particular case was being handled by the various redress systems.

13. The Ombudsman shared Members' concerns. Her Office was also mindful of possible duplication of resources by the various channels in redressing complaints. Her Office would ascertain from complainants as to whether they were also seeking redress through other means and in principle, would only take up those complaints directly lodged with the Office.

Action

The Ombudsman
CAS(C)

14. As regards the suggestion for a notification mechanism, The Ombudsman agreed that there was room to consider some form of collaboration. One possibility was for the Complaints Division to refer to her Office cases of maladministration leaving Members and the Complaints Division to concentrate on other policy issues, over which The Ombudsman had no jurisdiction. Nevertheless, she drew attention to the secrecy provisions in The Ombudsman's Ordinance which inhibited the disclosure of details and the outcome of cases to a third party. This in effect precluded The Ombudsman from keeping Members informed of progress and outcome of her investigation of complaints referred by Members. The secrecy provision also had some unintended ill effects, as had happened in some cases in which the complainants chose to make some public but misleading disclosure of the investigation findings and The Ombudsman was prevented by the Ordinance to correct such distortions. Her Office was reviewing the Ordinance to assess the need for amendments in this respect.

Investigation of the Transport Department

15. Ms Emily LAU expressed concern on The Ombudsman's role in handling complaints against the Transport Department, having regard to the fact that the Commissioner for Transport, Mr R Footman, was The Ombudsman's husband. The Ombudsman reiterated that the Office had established guidelines requiring staff to report on matters involving conflict of interests. As a general rule, when an investigator identified a conflict of interest, real or potential, he was required to report to his immediate supervisor who would make a decision on whether or not he should be relieved of the handling of the case. As with other cases, investigators had a free hand in investigating Transport Department cases. The Ombudsman had made it clear that she would not personally handle any complaint directed personally at her husband, such cases would be delegated to the Deputy Ombudsman. In all other cases, depending on the nature of the complaint, each level within the Office and finally The Ombudsman herself would take a view on whether The Ombudsman should distance herself from the handling of that particular case. The Ombudsman said each complaint would have to be scrutinized on its own, depending on the subject matter of the complaint. In so far as she was concerned, The Ombudsman said she had no difficulty in treating the Transport Department the same as other organizations within her jurisdiction. She understood very

Action

well the possible perception of bias, but believed that she would be judged ultimately by her action and not by some theoretic possibility of conflict. She confirmed that she had distanced herself from the investigation of one of the complaints directed at the department. The Deputy Ombudsman reported that the case was expected to be concluded in January 2000, and the report would be made public if The Ombudsman so decided in the public interest. In response to Members, The Ombudsman confirmed that none of the complaints against the Transport Department was directed at the Commissioner personally.

Monitoring of cases by The Ombudsman

16. Upon Mr NG Leung-sing's enquiry, The Ombudsman advised that she was satisfied with the figures of 95% and 100% compliance with her recommendations on complaints cases and direct investigations respectively in 1998-99. She remarked that the Administration had been very co-operative in taking follow-up actions. An arrangement had been in place since 1995 for the Administration to submit a Government Minute to the Legislative Council detailing the follow-up actions taken up in implementing The Ombudsman's recommendations. This was a means for the Administration to demonstrate its commitment to an open, fair and accountable Government. Her Office had also established a mechanism to monitor pro-actively the Administration's implementation progress on a quarterly basis. The Ombudsman added that the small percentage of recommendations which were not fully implemented were mostly recommendations which could not be implemented easily, such as matters with wide resource implication, and policies on which the Administration had to deliberate. She emphasized that every effort would be made to fulfil her task in ensuring that grievances were duly addressed and recommendations for improvement would be implemented.

IV. Concluding Remarks

17. The Chairman concluded by thanking The Ombudsman and her colleagues for attending the meeting. He found the discussion forum very useful and recommended its continuation at six-month intervals. The next meeting would be held in June 2000 and Members would be notified in due course.

Action

18. The meeting ended at 12:40 pm.

Legislative Council Secretariat
26 January 2000