

立法會
Legislative Council

LC Paper No. CP 351/05-06
(These minutes have been seen
by The Ombudsman)

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**Legislative Council Members' meeting
with Ms Alice TAI, JP, The Ombudsman,
held on Wednesday, 14 December 2005, at 9:00 am
in Conference Room B of the Legislative Council Building**

Members Present : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC

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

Ms Alice TAI, JP
The Ombudsman

Mr MOK Yun-chuen
Chief Executive Officer

Staff in Attendance : Mrs Vivian KAM
Principal Council Secretary (Complaints)

Mrs Pandora CHAN
Senior Council Secretary (Complaints)2

I. Chairman's opening remarks

The Chairman welcomed Ms Alice TAI, The Ombudsman, and Mr MOK Yun-chuen, Chief Executive Officer of The Ombudsman's Office, to the meeting. She said that the purposes of the meeting were for The Ombudsman to brief Members on the work of The Ombudsman's Office (the Office), and for both parties to exchange views on issues of mutual concern. The Chairman reminded Members that the meeting was not covered by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and that individual cases would not be discussed.

II. Briefing by The Ombudsman on the work of The Ombudsman's Office

(LC Paper No. CP 200/05-06(03))

Briefing

2. The Ombudsman briefed Members on the work of the Office for the year 2004/2005 and for the first seven months of 2005/2006 as set out in LC Paper No. CP 200/05-06(03).

3. The Ombudsman advised that:

- (a) In the 2004/2005 reporting year, the Office received a total of 4 654 complaints. The numbers of cases handled in these two years remained high, ranging between 4 500 and 4 600. As a whole, the workload saw an upward trend as compared with those in the past few years, and the number of complaint cases concluded in the year was also on the rise. During the past 12 months, the Office announced the results of five direct investigations and completed six direct investigation assessment reports. Over the year, the Office made 270 recommendations to Government departments and organizations under investigation of which 263 (97.4%) were accepted.
- (b) During that year, a small percentage of cases (3.0%) could not be completed within the six months' target stipulated in the performance pledge. A longer time was needed because of the complexity of cases, new developments or queries raised by the complainants or organizations concerned. The details were provided in paragraph 5.4 of the Annual Report of The Ombudsman.
- (c) The Office had embarked on a review of The Ombudsman Ordinance ("the Ordinance"). Through the Office's own operational experience, studies on the practices of similar organizations overseas and on the legislative intent of the

Ordinance when it was enacted 16 years ago, the Office would consider whether it would be appropriate to include more organizations, whose operations were comparable to those of the Government and public organizations, under Schedule 1 to The Ombudsman Ordinance, and whether it was feasible to relax the restrictions on its powers of investigation stipulated in Schedule 2. The Office would forward its recommendations to the Government in time.

- (d) With regard to publicity, the Office had produced a new Announcement of Public Interest in that year for broadcast on TV during prime time to increase the public's understanding of the work of The Ombudsman. The Office also undertook extensive promotional efforts in the year to enhance the awareness of various sectors, including Government departments, community groups, Members' Assistants and social workers, about the Office's functions. The focus of the Office in the coming year would be direct dialogue for exchange of views and experience with the staff of Government departments responsible for handling complaints.
- (e) As for liaison with overseas organizations, The Ombudsman of Hong Kong was the Secretary General to both the Asian Ombudsman Association and the International Ombudsman Institute. The Office had just hosted the 9th meeting of the Asian Ombudsman Association in Hong Kong in November 2005.

Overlapping of investigation powers

4. Mr Jeffrey LAM said that at last year's meeting, The Ombudsman said that she would study the work of Ombudsmen of other countries so as to better understand their purview. Mr LAM enquired about the present situation.

5. In response, The Ombudsman advised that the Ombudsman system had its origin in Sweden and would have a history of 200 years by 2009. The Office of the Ombudsman of Hong Kong had been established for only 16 years. Its jurisdiction was modelled on the more traditional framework under which administrative supervision and investigation into acts of maladministration on the part of Government departments/organizations were carried out in accordance with the administrative law. However, over the past decade or so, the Ombudsman systems of different regions had undergone changes. For example, the Ombudsmen of countries in Latin America and Europe assumed the role of safeguarding human rights or freedom of information. In Macau, the Ombudsman also took up the duties of monitoring the Police and organizations for anti-corruption. These developments had become valuable references for The Ombudsman of Hong Kong in considering the need to re-align her current jurisdiction.

6. Mr Jeffrey LAM expressed concern as to whether there might be any overlapping of powers among local organizations for handling complaints; whether these organizations would communicate with one another to avoid duplication of resources; and how the complainants would be apprised of the complaints which were outside the remit of the Office.

7. The Ombudsman advised that the Ordinance specified clearly the The Ombudsman's power to conduct investigations into the irregularities on the part of Government departments/organizations in executing their administrative functions. On the face of it, the work of the Office might overlap with that of the Complaints Division of the Legislative Council (LegCo) Secretariat or the Audit Commission. But in reality, the organizations concerned had already reached a consensus that if one of them had already initiated an investigation into a complaint, the other organizations would refrain from conducting similar investigations. Moreover, referrals would be made among the organizations for more effective handling of complaints. For instance, Members would refer to the Office complaints involving maladministration. Similarly, if the Office reckoned that the crux of the problem was related to Government policies, its staff would advise the complainants to raise the matters with LegCo. As to the public's awareness of The Ombudsman's purview, the Office had already put in significant promotion efforts in this regard.

8. Mr Howard YOUNG asked whether the work of the Office would overlap with that of the Efficiency Unit (EU) of the Government. The Ombudsman explained that the responsibility of EU was to improve Government services by contemplating practicable solutions and holding discussions with Government departments before problems emerged. The Office, however, sought to enhance the quality of public administration through investigations into problems caused by maladministration and making recommendations for improvement. If The Ombudsman was of the view that procedural improvements were necessary for the department/organization concerned, the Office would propose the matter be followed up by EU provided that the secrecy principle of the Office would not be violated.

9. Mr Fred LI pointed out that although Government policies did not fall within the jurisdiction of The Ombudsman, it was often difficult to distinguish between Government policies and maladministration. He asked The Ombudsman if she would take the initiative to refer complaints involving policies to the relevant LegCo Panels for discussion. The Ombudsman advised that the complaints received by the Office rarely involved policy issues only. In general, the complaints involved actions taken by departments in executing their functions. On account of secrecy requirements, individual complaints could not be passed directly from the Office to LegCo Panels for follow-up as otherwise, the staff of the Office would have criminal liabilities. They could only advise the complainants to lodge their complaints regarding policies directly to LegCo. Given that the annual reports of the Office was the only source for Members to learn about the dissatisfaction of people who had complained to the Office against Government policies, Mr LI was worried that LegCo might not be able to

know and address expeditiously the dissatisfaction of the general public towards Government policies. The Ombudsman said that she would inform the public of major cases pertaining to policy matters through press conferences. Apart from Government departments which had the responsibility to follow-up, Members might also decide to pursue such cases in LegCo.

Meetings between the Office and complainants

10. Dr Fernando CHEUNG remarked that certain complainants had told him about their wish to air their grievances fully through interviews with the Office. Dr CHEUNG pointed out that due to their limited proficiency in writing, some grass-root citizens might not be able to express their views in writing as required by the Office.

11. The Ombudsman advised that since the Office began to accept telephone complaints in March 2001, the staff on duty would make written records of telephone complaints which would then be sent to the complainants for verification. In general, if a complainant could present his case lucidly, the Office would process the case on the basis of the written submissions. Yet under certain circumstances, such as when the information provided by the complainant was incomplete or there were discrepancies between the Administration's response and the complainant's description, the staff of the Office would arrange for an interview with the complainant. The Ombudsman understood that to a certain extent, interviews with complainants could help relieve their emotions, but these might not be conducive to resolving problems. Besides, interviews with each and every complainant would add weight to the already heavy workload of the Office. Nonetheless, The Ombudsman assured Members that all reply letters issued by the Office contained contact telephone numbers of the staff responsible for handling the relevant complaints. If the complainants found it necessary to express their views further, they could call the staff concerned directly.

12. Ms Emily LAU considered that as the two issues to be raised by Members under agenda item III were actually follow-up questions to the briefing on the work of The Ombudsman, it was inappropriate to discuss them separately under subsequent agenda items. She requested the Chairman to review this arrangement which might impede the flow of posing questions. The Chairman instructed the LegCo Secretariat to examine the need to revise the agenda for the next meeting in this regard.

LegCo
Secretariat

III. Discussion items raised by Members
(LC Papers No. CP 200/05-06(04)-(07))

Review of The Ombudsman Ordinance

13. While recognizing the complexity of the review of the Ordinance, Ms Emily LAU was very concerned about its progress and was rather disappointed

that The Ombudsman was yet unable to come up with substantive proposals on this occasion. Since The Ombudsman had also pointed out in the paper that the general public had queried the restrictions on The Ombudsman's authority set out in Schedule 2 to the Ordinance, and also owing to the fact that many members of the public reckoned that the scope of the Ordinance should be expanded to include organizations such as the Independent Commission Against Corruption ("ICAC"), the Independent Police Complaints Council ("IPCC") and the Electoral Affairs Commission ("EAC"), she hoped The Ombudsman could advise on the organizations being considered to be placed under the remit of the Office. Furthermore, to render maximum assistance to The Ombudsman in taking forward the review, Ms LAU suggested that LegCo set up a subcommittee with a view to maintaining communication with The Ombudsman on the review and soliciting public views on amendments to the Ordinance for reference of Members and The Ombudsman.

14. The Ombudsman thanked Members for their support to the review and stressed that the Office would not procrastinate the exercise. The Office was collating the complaints received over the past few years involving organizations outside its purview and considering whether it could place such organizations within its remit based on the same principle for formulating the list of organizations in Schedule 1. To avoid unnecessary speculations and repercussions, she could not accede to Members' request for an advance release of the organizations being considered but she welcomed Members' proposals. The Ombudsman would inform Members of the reasons if she held the view after consideration that the organizations concerned could not be included into the remit. On the suggestion of setting up a subcommittee by LegCo, The Ombudsman remarked that staff of the Office were most familiar with the content and the operation of the Ordinance and the Office had close liaison with the Ombudsmen of foreign countries. Hence, there might be resource duplication if LegCo were to conduct a review at the same time. The Ombudsman pointed out that as the Office would need to proceed with the legislative process and report to LegCo upon completion of the review, there would be significant synergies if LegCo set up a subcommittee then.

15. In response to Mr WONG Ting-kwong's enquiry about the timeframe of the review, The Ombudsman said that the exercise comprised two levels. On the review of the Ordinance *per se*, she expected that options would be in place at next year's meeting. As for the way forward regarding the functions of The Ombudsman, she could not draw a line on the completion date given that it was more complex and reference would have to be made to overseas experiences. Nonetheless, The Ombudsman emphasized that she would do her best to expedite the review.

16. As matters pertaining to amendments to the Ordinance and the operation of the Office had been followed up by the LegCo Panel on Administration of Justice and Legal Services, the Chairman advised that Ms LAU might put forward her proposal at the Panel meeting to be held on the following day for consideration by the Panel.

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17. Ms Emily LAU further requested the Research and Library Services Division (“RLSD”) of LegCo to conduct an independent study and prepare a report on the jurisdiction of Ombudsmen of foreign countries, and the views of the public on the jurisdiction of The Ombudsman, such as whether the Ordinance should cover also ICAC, IPCC and EAC. The Chairman advised that Ms LAU might also refer this request to the Panel for follow-up. The Ombudsman extended her willingness to provide RLSD of LegCo with the relevant information on overseas Ombudsmen.

Performance pledges of The Ombudsman’s Office

18. Dr Fernando CHEUNG enquired about the reasons for the Office’s failure to comply with the target timeframe of the performance pledge as shown in the Annual Report of The Ombudsman. He also asked whether this was related to the resources of the Office.

19. The Ombudsman explained that resource constraint was not the cause for slippage of the performance pledge in respect of some cases in 2004/05. Rather, the complexity of cases or challenges by complainants or organizations concerned had prolonged the processing time. The Ombudsman said that the current caseload was far more than that in 1997 when the existing performance targets were set. In 2004/05, 4 564 complaint cases were processed vis-à-vis 3 073 cases in 1996/97, representing an increase of nearly 50%. Over the same period, the staff complement for handling complaints had been scaled down from the highest number of 91 to slightly over 80 at present. Nevertheless, with staff’s utmost efforts, the Office managed to maintain the performance pledges consistently. Another reason was that the Office had not taken into account the time required for complainants to return the consent letters when performance targets were first determined. As such timing was beyond the control of the Office, The Ombudsman reckoned that the commencement date for counting the performance pledges could be revised to start from the day of receipt of all necessary materials from complainants so as to reflect the actual situation. The Ombudsman commented that the existing performance targets should be maintained as far as possible but she would welcome Members’ proposals.

20. Dr Fernando CHEUNG considered the views of The Ombudsman reasonable. The Ombudsman said that appropriate follow-up actions would be taken.

IV. Any other business

(LC Paper No. CP 220/05-06(01))

Government departments making compensation to complainants

21. The Chairman said that Mr Albert CHAN had informed the Secretariat before the meeting that, under this item, he would like to raise the question of

whether The Ombudsman would follow the practice of the court and recommend the departments concerned to make compensation to complainants when releasing investigation reports on substantiated complaint cases. As Mr CHAN could not attend the meeting in time, Ms Emily LAU asked the question on his behalf.

22. In response, The Ombudsman explained that legally, The Ombudsman could not assume the role of a law court for determining compensation for an appellant and also the Ordinance did not contain any provisions in this respect. In reality, however, when processing the cases, the Office would consider whether a complainant had directly and unequivocally suffered a pecuniary loss arising from acts of maladministration. If such a loss was established, the Office would recommend to the department to restore the complainant to a situation as if the act of maladministration had not occurred. In other words, the Office might recommend the department to make compensation to the complainant for the pecuniary loss caused by the maladministration. As for the Chairman's enquiry on whether The Ombudsman would make similar recommendations for loss of time suffered by complainants, The Ombudsman replied in the negative, adding that even Ombudsmen of foreign countries had no similar practice.

23. Given that the original intent of setting up the Office was not to replace the status of the law court and penalize a department/organization for maladministration, The Ombudsman stressed that the suggestion of requesting The Ombudsman to follow the practice of the court would in fact involve major principles and institutional reforms of the law. She added that if The Ombudsman recommended that a department should make compensation, the Office had to obtain the complainant's consent and undertaking that he would not resort further to a law court. However, The Ombudsman would suggest to the complainants to pursue their cases through legal means if they might receive more compensation through such means. At Members' request, The Ombudsman agreed to provide after the meeting the number of cases processed in recent years in which the Government departments/organizations had been recommended to make compensation to complainants and the amounts involved. The Ombudsman explained that the Office had also in some cases recommended that both parties concerned should discuss the compensation between themselves, but the Office was not aware of the amounts involved in these cases.

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(Post meeting note: The Ombudsman replied in writing after the meeting that the Office could not provide exact figures because statistics were not collated formally on cases in which "compensation" had been recommended. There might be omissions as the figures were provided according to the memory of individual officers.

Based on recollection, The Ombudsman had recommended that the Government departments or organizations concerned might make "compensation" or "ex gratia

compensation” to complainants for 13 cases over the past five years. The amounts of compensation involved in these cases ranged from a few hundred dollars to \$65,000.

The Office made the recommendations with the main objective of helping the complainants to be restored to the situation as if maladministration had not occurred. For cases in which the exact amounts of losses could not be worked out, The Ombudsman would only make recommendations for compensation in principle, leaving the complainants and the departments or organizations concerned to discuss the specific amounts and arrangements.)

24. For some cases in which the Government had made overpayment of disability allowance, the overpaid amount was deducted from the monthly allowance of the recipients by way of administrative measures. Mr Ronny TONG asked how The Ombudsman would deal with such cases. The Ombudsman said that she could not comment on individual cases. However, she would offer her comments and recommendations if irregularities were found on the part of the Government when processing similar cases.

25. Dr Fernando CHEUNG also enquired whether The Ombudsman had the power to penalize and rectify the irregularities on the part of the departments. The Ombudsman replied that the law only allowed The Ombudsman to make recommendations to the departments concerned and did not stipulate the power of imposing penalty. The Ombudsman’s duties were to improve the administrative mechanism and work procedures of public organizations through recommendations, and not taking over their staff management functions.

26. The Chairman advised that the next meeting would be held in December 2006. The Secretariat would consult Members and The Ombudsman on the exact date of the meeting. The Chairman thanked The Ombudsman, the Chief Executive Officer of the Office as well as Members for attending the meeting, and declared closure of the meeting.

27. The meeting ended at 10:35 am.