

立法會
Legislative Council

LC Paper No. CP 295/06-07

(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 Monday, 11 December 2006, at 11:00 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP

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

Ms Alice TAI, JP
The Ombudsman

Mr MOK Yun-chuen
Chief Executive Officer

Staff in Attendance : Mrs Constance LI
Principal Council Secretary (Complaints)

Mrs Pandora CHAN
Senior Council Secretary (Complaints)2

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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 161/06-07(03))

Briefing

2. The Ombudsman briefed Members on the work of the Office for the year 2005-2006 and for the first seven months of 2006-2007 as set out in LC Paper No. CP 161/06-07(03).

3. In addition to the items described in the paper, The Ombudsman said that she would like to highlight to Members the difficulties currently faced by the Office in the following four aspects:

(a) Caseload

The number of complaints received by the Office had increased steadily over the past five years, from 3 736 cases in 2001-2002 to 4 266 cases recorded for the first seven months of 2006-2007. If the trend persisted, the total number of complaints received by the Office this year would exceed 5 000.

(b) Human resources

The number of full-time permanent posts in the Office was maintained within the range of 80 to 90 in the past few years, and Temporary Case Officers were employed to assist the full-time staff when necessary. The Office was faced with the problem of staff turnover in the past year given the general

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economic improvement in Hong Kong. In the past one and a half years, 24 employees had resigned. Although most of them were not investigation officers, it would take the Office some time to employ and train new staff, and to enable them to settle in the working environment. Hence the issue of manpower resources had created considerable pressure on the Office.

(c) Performance pledges

Concerning the performance pledges to conclude cases within a specified timeframe, the Office had no control over two situations. In the first situation, the organization under complaint required a longer time to collect and provide information to the Office. The Office would consider extending the time limit for reply if the organization had sufficient justifications. In the second situation, some complainants delayed in providing information regarding their complaints, resulting in the Office's failure to start its inquiry expeditiously and conclude the cases within the time limit. In view of Members' advice to The Ombudsman last year that the performance pledges of the Office should be more meaningful and realistic in reflecting its work performance, a new way of calculation had been put in place. Processing time would now count from the time when the complainant's consent and information for a *prima facie* case had been furnished to the Office.

(d) Giving reasons to the complainants

The Office had previously adopted a "template" approach when dealing with Outside Jurisdiction (OJ) cases. To enhance transparency, the Office would now reply to complainants, articulating the reasons why the Office did not pursue their complaints. Consequently, it took longer time to process such cases.

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III. Discussion items raised by Members
(LC Papers No. CP 161/06-07(04)-(07))

Review of The Ombudsman Ordinance (Cap. 397)

4. The Ombudsman reported that the Office had completed its review of The Ombudsman Ordinance (the Ordinance). The review findings relating to the operation of the Ordinance and The Ombudsman's jurisdiction were written in two parts.

5. In relation to Part I on the possibility of including more organizations under The Ombudsman's jurisdiction, The Ombudsman advised that the Ordinance was last amended in 2001, and there was now room for some adjustments. The Ombudsman said that the Office had made recommendations to the Government after studying the background to the establishment of the Office, as well as making reference to past experience and overseas situations. As the response of the Government was still awaited, no further information could be disclosed at this stage. In view of the wide public concern on the inclusion of some public organizations currently outside The Ombudsman's jurisdiction in Schedule 1 to the Ordinance for monitoring, The Ombudsman had proposed the following criteria for determining suitable organizations for inclusion:

- (a) the organization was required to perform public administration duties, and therefore advisory bodies should not be included;
- (b) the organization was fully or substantially funded by public coffers; and
- (c) the organization had substantial contacts with the public.

6. Regarding the part on relaxing the restrictions on The Ombudsman's investigation powers, The Ombudsman said that the review was completed and it was reckoned that one or two restrictions on The Ombudsman's investigation powers as stipulated in Schedule 2 could be relaxed. The recommendation was still under consideration by the Government. As regards the apparent conflicts between the secrecy provision in the Ordinance and those in other ordinances, The Ombudsman had analysed the cause for possible solutions. Since the conflicts would also have impact on

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the Equal Opportunities Commission and the Office of the Privacy Commissioner for Personal Data, the matter should require careful consideration.

7. On Part II of the review, The Ombudsman said that she was still researching the developments in the functions of overseas ombudsmen and examining the impact of such developments on the ombudsman system in Hong Kong. The Office would complete the review on this part as soon as practicable.

8. Ms Emily LAU was of the view that it was inappropriate for the review to be carried out by the Office. She considered that while The Ombudsman could give her views, the review should be undertaken by another organization (such as the Legislative Council (LegCo)) to ensure its independence and impartiality. Ms LAU reckoned that LegCo should not play a passive role. Considering that the LegCo Panel on Administration of Justice and Legal Services (the Panel) had been pursuing the review of the Ordinance, Ms LAU requested that the Panel should continue to follow up the discussion on the subject and invite the public to express views on the review. She opined that the Government should make available necessary documents for public consultation before reporting to the Panel. Ms LAU said that she would make the suggestion at the Panel meeting to be held on the following day.

(Post meeting note: The Complaints Division had relayed Ms LAU's request to the Clerk to the Panel.)

9. Mr WONG Kwok-hing said that as more and more public organizations were removed from The Ombudsman's jurisdiction as a result of privatization or outsourcing of public services, the public would be deprived of their right to lodge complaints against these organizations. It would also have considerable impact on the work of the Office. For example, upon divestment of the shopping centres in public housing estates to The Link REIT for management on a commercial basis, the shop tenants had no where to turn to for lodging their complaints. Moreover, certain business practices (such as the hard-sell tactics of telecommunications salespersons on the street) were not subject to monitoring control. Mr WONG was particularly worried that the Kowloon-Canton Railway (KCRC) would, upon merging with the Mass Transit Railway, no longer be monitored by The Ombudsman. Since the general public had much confidence in The Ombudsman in sustaining justice, Mr WONG enquired whether The Ombudsman would consider changing the policy so

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that the Office would continue to monitor those public services which were originally delivered by public organizations but were privatized subsequently.

10. The Ombudsman replied that Schedule 1 to the Ordinance had listed out those government organizations and public organizations within the jurisdiction of The Ombudsman. In principle, it would not be appropriate for commercial organizations to be monitored in the same way as a subvented public organization. This was the same for ombudsmen in other countries. While The Ombudsman acknowledged that exclusion of some public organizations upon privatization from the monitoring of the Office had an impact on the work of the Office, Mr WONG's proposal would require careful consideration since it required major changes in policy and amendments to the relevant legislation. As for the outsourced services of these organizations, The Ombudsman assured Members that such services were still subject to the monitoring by the Office because the departments concerned were ultimately responsible for such services.

11. The Ombudsman said that complaints on sales practice of telecommunications companies were currently classified as customer service complaints and were outside the jurisdiction of the Office. Nevertheless, The Ombudsman could still examine whether the Office of the Telecommunications Authority had adequately monitored such sales practices. Regarding the mode of management upon the rail merger, as no concrete decision had yet been made, The Ombudsman would convey Members' concern to the Administration.

12. Ms Emily LAU said that Members could pursue the issues relating to the monitoring of rail services upon merger at meetings of the Bills Committee on the Rail Merger Bill.

13. Mr Martin LEE opined that the existing channels for complaints should not be undermined after the rail merger. Mr LEE remarked that the Office should also deal with complaints about unsatisfactory services of the KCRC and keep complainants posted of the results. The Ombudsman explained that complainants could lodge such complaints with the Office but the Office had to assess its staffing resources. If the complaint was about KCRC's services deteriorating to such extent that they were far from the stipulated standard, the Office would certainly take up the case. For other individual cases such as complaints about delay, the Office would follow up but could only investigate whether the delay had any particular feature that would warrant its special consideration given the manpower constraints of the Office.

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14. The Ombudsman explained that the Office must deploy its limited manpower resources to the investigation of maladministration as far as possible. The Office would certainly pursue those complaints about KCRC's failure to honour the established performance pledges. However, the Office considered that minor problems in operation should be dealt with by the complaints mechanism of the organizations concerned.

15. The Chairman commented that there were numerous complaints lodged by the public about various means of transport. On the issue of the effectiveness of existing complaints mechanism, she believed that this should more appropriately be followed up at a special forum. The Chairman pointed out that the main focus of the Ombudsman was on the overall quality of services of these organizations. If Members had different opinions, it could be further discussed by the relevant Panels. As a decision had yet to be taken on the rail merger, concerns on the question of whether KCRC should still be subject to the monitoring of The Ombudsman could be further discussed.

Performance pledges of The Ombudsman's Office

16. Mr Fred LI said that while he appreciated that there had been an increase in the caseload of the Office, he questioned why 70% of the OJ cases could not be concluded within 10 days as pledged, but required 15 days to conclude in most of these cases. Mr LI considered that taking 15 days to inform the complainants that their complaints could not be dealt with by the Office was unsatisfactory. He enquired whether the failure to achieve the target was due to insufficient manpower or other reasons.

17. The Ombudsman explained that the issue involved caseload and the standard of work set by the Office. As she had mentioned before, the Office previously adopted a "template" approach to inform the complainants that their complaints were outside its jurisdiction. However, complainants nowadays would no longer accept a simple reply from the Office refusing to pursue their complaints. The Office had adopted a more open and honest approach in recent years, and would reply individually to complainants providing an analysis of their cases and the reasons for not pursuing. Consequently, it took much longer time to process a case. The Ombudsman emphasized that, for straightforward cases, her staff could inform the complainants of the decision expeditiously. However, most of the complaints lodged with the Office were not straightforward. The

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complainants often provided detailed accounts of their cases, making the contents of their letters very lengthy and complex. It often took the investigation officers much time to read and understand, and probably only a small part of the contents involving maladministration could be pursued eventually.

18. As regards revising the performance pledges, The Ombudsman said that the Office had discussed the issue and there were divergent views. In gist, the Office held the view that the pledges should not be changed casually. The Ombudsman welcomed suggestions from Members. The Ombudsman stressed that it was the established practice of her staff to handle cases on hand expeditiously in a prudent and efficient manner, and would not sit on cases until the target date.

IV. Any other business

Dealing with cases by mediation

19. Mr Martin LEE enquired whether The Ombudsman would consider adopting mediation for certain OJ cases to facilitate a settlement between the complainant and the organization concerned. The Ombudsman advised that mediation was one of the prescribed methods for dealing with complaints under section 11B of the Ordinance. All staff members of the Office had received training on mediation, but the Office had to identify suitable cases. Under the Ordinance, the Office could only mediate in cases which did not involve serious maladministration. Moreover, the Office had to consider whether both parties were willing to settle their case in this way and whether the case could be satisfactorily concluded through mediation.

20. Mr Martin LEE asked whether mediation could be an option for dealing with cases of more serious maladministration. The Ombudsman replied that the Office preferred direct investigation into serious maladministration cases so that the Office could recommend improvement measures or even publish the investigation report to apprise the public of the relevant acts.

21. Mr LEE opined that for some OJ cases, The Ombudsman should also employ mediation to assist both parties to solve their problem. The Ombudsman responded that although she would not deal with cases outside her jurisdiction as prescribed in law, the Office was willing to assist the complainants including referring them to the appropriate complaints institutions or advising

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them to seek the help of professional mediators or the Hong Kong Mediation Council.

Overlapping of investigation powers

22. Mr Jeffrey LAM asked how the Office could avoid duplicating investigation of the same cases which were being investigated by other complaints-handling institutions in Hong Kong, given that the Office had to abide strictly by the secrecy requirements. The Ombudsman said that the Office had to maintain secrecy of all complaint cases. However, when the scope of investigation had gone beyond that of ordinary cases, the Office would consider liaising directly with the relevant departments and organizations. Given its limited resource, if the Office was aware that another institution was conducting investigation into the same case, the Office would decide whether and how follow-up actions should be taken, depending on the progress of the relevant investigation. On the other hand, the Office appreciated that different complaints-handling institution might follow up on incidents which had aroused public concern. For such cases, the Office would merely request the departments concerned to provide a copy of the information that had been supplied to other investigating bodies in order to save the departments from additional resources for replying the Office separately.

Resources of the Office

23. Mr Jeffrey LAM asked whether the reduction of resources of the Office had impact on its manpower and its work. The Ombudsman said that the Government and related organizations also faced the problem of reduction of public expenditure in the past few years. Nevertheless, as the Office started independent operation from 2001, its pay structure and operations were close to the market situation, and the Office had less burden financially. Moreover, the Office followed the principle of prudent financial management, which had enabled it to achieve fiscal surplus so far. The Ombudsman added that the provision of a one-line vote by the Government had given the Office some independence and flexibility in managing its own finances. This funding mode was uncommon among the complaints institutions in other regions.

24. Several Members expressed concern about the manpower resources of The Ombudsman's Office. Mr Jeffrey

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LAM commented that to avoid any adverse impact on the progress of investigations conducted by the Office and its performance pledges, The Ombudsman should not rely too much on temporary staff. Instead, it should consider employing more regular full-time staff. Mr LAM enquired if the Office had adjusted its work procedures to cope with the situation. The Ombudsman thanked Members for their concern and informed Members that only 1.2 Temporary Case Officers were engaged by the Office last year. While increasing the number of full-time staff was the best solution to the manpower problem, it was difficult for the Office to predict its caseload. Therefore, the Office had to be cautious in planning its full-time staff establishment to avoid the undesirable consequence of laying off surplus staff. The Ombudsman stressed that despite the pressure caused by the increase in caseload and staff turnover, she would insist that her staff maintain the quality of work and no compromise be made in observing the due process.

25. The Chairman thanked The Ombudsman, the Chief Executive Officer of the Office and Members for attending the meeting, and declared the meeting closed. The Chairman advised that the next meeting would be held in December 2007, and the Secretariat would consult Members and The Ombudsman on the date of the meeting.

26. The meeting ended at 12:15 pm.

Legislative Council Secretariat
9 February 2007