

(Information note provided by The Ombudsman's Office)

## Information Paper

### for LegCo Members' Meeting with The Ombudsman on 18 December 2012

#### (A) Work of The Ombudsman's Office

##### (i) For the year 2011-2012

In the 2011-2012 reporting year, the Office received a total of 12 545 enquiries and 5 029 complaints; and 5 237 complaints were concluded. Of these, 83.9% were concluded within three months, 15.4% were concluded between three to six months and 0.7% took more than six months to conclude.

2. For easy reference, statistics on complaints and enquiries for the past three years and the first eight months of 2012-2013 (that is, April to November) are tabulated below:

		Reporting year <sup>1</sup>			
		2009-10	2010-11	2011-12	2012-13 (April –November)
(1)	<b>Enquiries</b>	13 789	12 227	12 545	8 510
(2)	<b>Complaints</b>				
	<b>(a) For processing</b>	5 869	6 467	6 085	4 835
	- Received	4 803[393]	5 339[627]	5 029[180]	3 987[118]
	- Brought forward <sup>2</sup>	1 066	1 128	1 056	848
	<b>(b) Processed</b>	4 775[402]	5 437[611]	5 237[210]	3 685[140]
	<b>Non-pursuable<sup>3</sup></b>	2 560[100]	2 381[11]	2 560[127]	2 275[116]
	<b>Pursued and concluded</b>	2 215[302]	3 056[600]	2 677[83]	1 410[24]
	- By inquiry <sup>4</sup>	2 086[302]	2 894[524]	2 492[6]	1 313[19]
	- By full investigation <sup>5</sup>	126	155[76]	163[61]	82[5]
	- By mediation <sup>6</sup>	3	7	22[16]	15
	<b>(c) Percentage processed = (b) / (a)</b>	81.4%	84.1%	86.1%	76.2%
	<b>(d) Carried forward = (a) – (b)</b>	1 094	1 030	848	1 150
(3)	<b>Direct investigations completed</b>	7	6	5	3

Note 1. From 1 April to 31 March of the next year.

Note 2. Including 34 and 26 re-opened cases in 2010-11 and 2011-12 respectively.

Note 3. Outside our jurisdiction or restricted by The Ombudsman Ordinance; withdrawn by complainant, discontinued or not undertaken by the Office, e.g. *subjudice* or lack of *prima facie* evidence.

Note 4. Pursued under section 11A of the Ordinance, for general cases.

Note 5. Pursued under section 12 of the Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 6. Pursued under section 11B of the Ordinance, for cases involving no, or only minor, maladministration.

[ ] Number of topical cases.

3. Similar to previous year, 77.7% of the complaints received in 2011-2012 were in writing and email remained the most common channel used, accounting for 35.5%, as shown in the table below:

Mode of lodging complaints	2009-10		2010-11		2011-12		2012-13 (April to November)	
	No.	%	No.	%	No.	%	No.	%
<b>In person</b>	<b>413</b>	8.6%	<b>634</b>	11.9%	<b>573</b>	11.4%	<b>613</b>	15.4%
<b>In writing:</b>	<b>3 859</b>	80.3%	<b>4 146</b>	77.6%	<b>3 905</b>	77.7%	<b>2 914</b>	73.1%
- by complaint form	863	18.0%	544	10.2%	518	10.3%	484	12.1%
- by letter through post	870	18.1%	882	16.5%	947	18.8%	529	13.3%
- by fax	764	15.9%	766	14.3%	657	13.1%	432	10.8%
- by online complaint form	154	3.2%	170	3.2%	175	3.5%	127	3.2%
- by email	1 208	25.2%	1 784	33.4%	1 608	32.0%	1 342	33.7%
<b>By telephone</b>	<b>531</b>	11.1%	<b>559</b>	10.5%	<b>551</b>	10.9%	<b>460</b>	11.5%
<b>Total</b>	<b>4 803</b>		<b>5 339</b>		<b>5 029</b>		<b>3 987</b>	

4. Five direct investigations were completed on the following subjects:

- (1) Government Measures to Protect Country Park Enclaves
- (2) Water Meter Reading and Billing System
- (3) Special Education Services for Students with Moderate to Severe Emotional and Behavioural Difficulties
- (4) Mechanism for Monitoring Private Residential Care Homes for the Elderly
- (5) Granting of Short Term Tenancies at Nominal Rent

5. Apart from direct investigations, the Office also concluded 23 direct investigation assessments to ascertain the need for direct investigation. Topics included:

- (1) Maintenance of Water Mains
- (2) Consultation Process Involving Traffic Signs and Facilities
- (3) Enforcement Actions on Unauthorised Change of Land Use
- (4) Processing of Public Rental Housing Applications
- (5) Handling of Stray and Abandoned Dogs and Cats by the Agriculture, Fisheries and Conservation Department

- (6) Monitoring of Textbook Pricing
- (7) Monitoring of Student Service Vehicles Operations
- (8) Mechanism for Coordinating Emergency Repairs for Traffic Lights Failure
- (9) Succession and Transfer of Fixed Pitch Hawker Licences
- (10) Regulation of Private Columbaria

6. In the year, a total of 169 recommendations were made to improve various aspects of public administration. Of these, 134 were related to complaints and 35 resulted from direct investigations. As at November 2012, 95% of the recommendations had been accepted for implementation.

**(ii) For the first eight months (April to November) of 2012-2013**

7. During the period from April 2012 to November 2012, the Office received a total of 8 510 enquiries and 3 987 complaints.

8. Three direct investigations have been completed and four are still in progress.

**Completed**

- (1) Booking and Use of Sports Facilities of Leisure and Cultural Services Department
- (2) Effectiveness of Administration of Temporary Closure of Metered Parking Spaces during Road Works carried out by Public Utilities
- (3) Administration of Government Policy on Private Recreational Leases

**In progress**

- (1) Regulatory Measures and Enforcement Actions against Unauthorised Extension of Business Area of Restaurants
- (2) Conveyance of Patients by Ambulance to Hospitals

- (3) Mechanism of Transport Department for Monitoring the Frequencies of Franchised Bus Services
- (4) Procedures on Recovery of Debts from Ex-owners of Home Ownership Scheme/Tenants Purchase Scheme Flats

9. As regards direct investigation assessments, 31 have been completed. Some topics are highlighted below:

- (1) Unauthorised Burials at Diamond Hill Urn Cemetery
- (2) Lands Department's Action on a Case of Illegal Structures on Leased Government Land under Short Term Tenancy
- (3) Lands Department's Action on a Complaint about the Unauthorised Change of Land Use of an Industrial Building
- (4) Local Weather Forecast
- (5) Buildings Department's Handling of the Structural Safety and Fire Hazards posed by a Restaurant

**(B) Question raised by Hon Cyd HO Sau-lan**

- (i) Has The Ombudsman formulated any measures to ensure that Government officials know of the powers and functions of The Ombudsman in monitoring the Administration, and that they are obliged to be subject to such monitoring?**

1. The powers and functions of The Ombudsman are set out in The Ombudsman Ordinance (Cap. 397) (the Ordinance). When commencing an inquiry or investigation, The Ombudsman will normally draw the attention of the Government departments and public organisations concerned to the relevant sections of the Ordinance.

2. The Administration has a duty to ensure that all Government officials fully understand the roles, powers and functions of the Office of The Ombudsman as well as other statutory bodies that monitor the work of the Administration, with a view to facilitating the work of these bodies. The Office of The Ombudsman understands that the Administration has issued circular memorandum and memo setting out the roles, powers and functions of The Ombudsman. Moreover, some Government departments and grades offer training on the work of The Ombudsman, such as a session within the induction training course for

newly recruited Executive Officers organised by the Civil Service Bureau, in order to enhance the awareness of the roles, powers and functions of The Ombudsman for newly recruited government officials.

3. Upon completion of an investigation of a case, The Ombudsman will present his findings to the heads of the departments/organisations concerned and make comments or recommendations where necessary. The corresponding departments/organisations are obliged to report to The Ombudsman the progress of their implementation of the recommendations on a regular basis.

4. Each year, The Ombudsman publishes an annual report to account for the work under his purview. The Administration will table a Government Minute to the Legislative Council to provide co-ordinated and comprehensive response to all recommendations made by The Ombudsman to individual departments or organisations within the year.

5. To develop and promote the ombudsman system and inculcate a positive complaint culture, we publicise the results of our work and explain our values and functions through different channels such as press conferences and advertising. Moreover, we hold outreach talks for Government departments and public organisations from time to time to explain our role and jurisdiction as well as to share our experience in complaint handling.

6. Meanwhile, The Ombudsman's Awards are presented annually to recognise the outstanding achievements of Government departments and public organisations and their officers in complaint handling and serving the public. These awards have proved to be effective in giving Government departments and public organisations a better understanding of our work.

**(C) Questions raised by Hon CHAN Han-pan**

**(i) Subsequent to the release of the Direct Investigation Report on Government Measures for Street Management and the recommendations made in December 2008, has The Ombudsman taken any follow-up actions to ensure effective implementation of the recommendations?**

Ambit of Investigation

1. In December 2008, The Ombudsman released the Direct

Investigation Report on Government Measures for Street Management, which covered the following three areas pertaining to street management:

- indiscriminate placing of skips at roadside;
- illegal parking of bicycles; and
- obstruction and nuisance from on-street promotional activities.

### Updates on Follow-up Actions

2. The Office of The Ombudsman has since maintained contacts with the departments concerned with a view to monitoring their implementation of the recommendations by The Ombudsman. The details are as follows.

#### *Placing of Skips at Roadside*

3. Main recommendations by The Ombudsman include:

- (1) The Lands Department (“Lands D”) report to the Steering Committee on District Administration (“SCDA”) chaired by the Permanent Secretary for Home Affairs the results of its study on the proposed permit system for skips;
- (2) Lands D streamline its procedures to tighten its timeframe for inspection and re-inspection, removal and confiscation of skips;
- (3) Lands D enlist the assistance of District Councils (“DCs”) and District Offices (“DOs”), district bodies and the local community in monitoring black spots and reporting offences.

4. Implementation of the above recommendations is summarised as follows:

- (1) SCDA has discussed the issue and concluded that amending the laws to introduce a permit system for skips is unnecessary, as Lands D can invoke the power vested with it by current legislation in handling the problems caused by skips.
- (2) Lands D has streamlined the relevant procedures. For instance, it no longer needs to consult the Police before

taking enforcement actions. It has also promulgated guidelines to District Lands Offices (“DLOs”) demanding that they expedite enforcement actions. Information thus far indicated that after promulgation of the guidelines, DLOs have taken enforcement actions more promptly.

- (3) Lands D already issued a list of black spots where skips are often randomly placed to various DCs and DOs, enlisting their assistance in monitoring these black spots and reporting offences.

### *Illegal Parking of Bicycles*

5. Main recommendations by The Ombudsman include:

- (1) DOs, in consultation with DCs and other Government departments under the District Administration Scheme, formulate a comprehensive strategy to tackle the problem of illegally parked bicycles;
- (2) the Administration identify sites to meet the shortfall in the provision of bicycle parking facilities;
- (3) DOs develop guidelines on clearance of illegally parked bicycles with reference to the experience of the Yuen Long DO; and
- (4) the relevant departments try quicker enforcement action on a smaller scale on their own to save the pains of organising inter-departmental operations each and every time.

6. Implementation of the above recommendations is summarised as follows:

- (1) the Administration has formulated a comprehensive strategy to resolve the problem. In short, the strategy focuses on:
  - (a) stepping up clearance operations at black spots of illegal parking of bicycles;
  - (b) increasing the number of bicycle parking spaces; and

- (c) enhancing publicity and public education.
- (2) the Transport Department has been vigorously identifying more sites suitable for bicycle parking and 902 new parking spaces for bicycles were provided in 2009. As of September 2011, a total of 41 440 parking spaces for bicycles were provided by the Department.
- (3) the Home Affairs Department (“HAD”) has formulated a set of guidelines on removing illegally parked bicycles which covers the disposal of bicycles illegally parked at public transport interchanges.
- (4) Lands D indicated that upon receipt of complaints which involved a relatively small number of illegally parked bicycles, DLOs would mount small-scale clearance actions on their own. However, if the number of bicycles involved was relatively large, DLOs would still ask the local DOs concerned to organise inter-departmental joint operations to remove the bicycles.

#### *On-street Promotional Activities*

#### 7. Main recommendations by The Ombudsman include:

- (1) the Administration to reconsider its stance and come up with a clear statement on enforcement action;
- (2) extend the pilot scheme to take prosecution action on easy-mount stands on a territory-wide basis;
- (3) HAD and the Food and Environmental Hygiene Department (“FEHD”) to work out with other departments through the District Administration Scheme a clearer demarcation of departmental responsibilities; and
- (4) FEHD to review the Public Health and Municipal Services Ordinance (“PHMSO”) for powers to take enforcement action on hawking of “services” (such as promotional activities on broadband internet services).



8. Implementation of the above recommendations is summarised as follows:

#### Recommendations (1), (2) and (3)

FEHD launched a pilot scheme in October 2008 aiming at taking enforcement actions at black spots of on-street promotional activities in Wan Chai and the Yau Tsim Mong area. Publicity posters and stands were confiscated and prosecutions instituted. The scheme proved to be effective and FEHD has implemented the scheme in ten districts where the DCs concerned have given their support. In 2010, FEHD instituted 169 prosecutions and confiscated 13 916 easy-mount stands and publicity items in accordance with PHMSO, while making 2 455 prosecutions under the Summary Offences Ordinance against on-street promotional activities causing obstruction.

At a 2008 meeting of the Panel on Food Safety and Environmental Hygiene of the Legislative Council (“LegCo”), some Members raised the concern that stepping up prosecutions against on-street promotional activities would affect the employment opportunities for low-skilled workers. A motion was adopted at the meeting, asking that a detailed assessment of the issue be conducted by the Administration and LegCo’s consent be sought before taking any stronger enforcement actions.

In the light of the above, the Administration commissioned a consultancy study in December 2011 to examine current on-street promotional activities and analyse the relevant data and opinions of stakeholders before contemplating what to do next. The study report should be ready in December 2012.

On the other hand, HAD has, through the Hong Kong Monetary Authority, the Estate Agents Authority and the Office of the Communications Authority, called on the cooperation of estate agents, financial institutions, telecommunications operators and television broadcasters to avoid launching on-street promotional activities that would cause obstruction and /or nuisance.

#### Recommendation (4)

In view of the above developments, FEHD held that the current legislation has given it sufficient powers to take enforcement

actions against on-street promotional activities (including confiscating the items concerned and instituting prosecutions, and taking actions against street obstruction). FEHD considered an amendment to current legislation for greater power unnecessary.

**(ii) Will The Ombudsman initiate a direct investigation on street management regarding obstruction caused by illegal extension of shops?**

9. In February 2012, The Ombudsman announced the initiation of a direct investigation to probe the regulatory measures and enforcement actions against unauthorised extension of business area of restaurants. This direct investigation is still in progress. As for the problem of street obstruction caused by shops other than restaurants, we have already commenced our inquiries with the Buildings Department, Lands D, FEHD and HAD, with a view to assessing whether we should conduct a direct investigation into the subject. We are now studying the information provided by these departments. When the investigation regarding restaurants is completed, a decision whether to initiate another direct investigation will be made.