

立法會
Legislative Council

LC Paper No. CRM 608/13-14
(These minutes have been seen by
The Ombudsman)

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**Minutes of meeting between Legislative Council Members
and The Ombudsman, Mr Alan LAI Nin, GBS, JP,
on Tuesday 3 December 2013 at 11:00 am
in Conference Room 1, 2/F, Legislative Council Complex**

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon Claudia MO
Hon YIU Si-wing
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon CHAN Han-pan
Dr Hon Kenneth CHAN Ka-lok
Hon Christopher CHEUNG Wah-fung, JP
Hon Martin LIAO Cheung-kong, JP
Hon TANG Ka-piu
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Attendance by Invitation : Mr Alan LAI Nin, GBS, JP
The Ombudsman

Mr Tony MA Kai-loong
Assistant Ombudsman

Staff in attendance : Ms Dora WAI
Principal Council Secretary 1

Miss Erin TSANG
Chief Council Secretary (Complaints)

Mrs Queenie YU
Senior Council Secretary (Complaints and Resources
Management) 4

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The Chairman welcomed Mr Alan LAI, The Ombudsman, and Mr Tony MA, Assistant Ombudsman, to the meeting. He 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 individual cases would not be discussed.

I. Briefing by The Ombudsman on the work of the Office in the previous year (LC Paper No. CRM 279/13-14)

Briefing by The Ombudsman

2. The Ombudsman briefed Members on the work of the Office in the previous year. He highlighted that the number of enquiries and complaint cases received by the Office had remained steady in the past few years. On average, the Office received about 1 000 enquiries and about 450 complaint cases each month. While most of the cases could be concluded within three months, about 10% of the cases were concluded within six months, and the rest (less than 1%) took more than six months to conclude.

3. The Ombudsman advised that about 74% of the complaints received in 2012-2013 were in writing, and e-mail

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remained the most popular form of communication, accounting for about 40% of the complaints received. He also informed the meeting that the Office had completed six direct investigations and 47 direct investigation assessments in 2012-2013. Most of the recommendations (about 90%) made by the Office to improve various aspects of public administration had been accepted by the complainee departments/public bodies for implementation.

Discussion

Handling of complaints by and the caseload of the Office

4. Mr TANG Ka-piu commended the work of the Office. However, he was concerned about the impact of the heavy caseload on the manpower resources of the Office. Moreover, since some complainants could not provide written submissions to the Office due to their illiteracy or might find it inconvenient to visit the Office in person, Mr TANG enquired whether The Ombudsman would review the Office's prevailing requirement whereby aggrieved persons had to lodge their complaints personally with the Office.

5. The Ombudsman said that he had streamlined the complaint handling procedures since he took up the post and resources had been allocated to cope with the caseload according to priority and through fruitful discussion with his staff. He further advised that pursuant to The Ombudsman Ordinance (Cap. 397) ("the Ordinance"), the Office could only handle complaints lodged by the aggrieved persons themselves, unless they were unable to act for themselves, in which case they could authorize a representative. Nevertheless, The Ombudsman remarked that other than visiting the Office in person, complainants could lodge their complaints by telephone, and records of their complaints would be sent to the complainants afterwards for confirmation.

6. Mr YIU Si-wing sought clarification on whether the Office would process anonymous complaints, and the reason for taking more than six months to conclude 0.7% of the complaint cases (i.e. about 40 cases) received in the 2012-2013. In view of the heavy caseload of the Office in 2012-2013 (i.e. 12 255 enquiries and 5 501 complaints received), Mr YIU suggested that The Ombudsman might consider delegating the handling of

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some complaint cases to his staff so as to expedite the work process.

7. The Ombudsman advised that pursuant to the Ordinance, anonymous complaints would not be processed by the Office. On the issue of caseload, The Ombudsman said that the Office was able to cope with it so far, and he had already delegated the handling of some cases to Assistant Ombudsmen. Nevertheless, he would review the need for further delegation as and when necessary. Concerning those cases which had taken more than six months to conclude, The Ombudsman explained that those cases were generally more complicated and involved a number of Government departments. On some occasions, the lengthy processing time was due to late responses to the Office's request for information from the complainants and the Government departments/public bodies concerned.

8. Mr Albert HO noted that the Office might sometimes try to resolve cases by mediation. He enquired whether this alternative means for dispute resolution was in conflict with The Ombudsman's principal role of investigator of maladministration.

9. The Ombudsman advised that mediation was adopted for cases which involved only minor or no maladministration. Staff assigned for the handling of such cases were trained in mediation and would act as impartial mediators. He assured Members that investigation would be conducted for complaints which involved major maladministration.

10. Mr Albert HO opined that the Securities and Futures Commission ("SFC") often used the need for maintaining secrecy as an excuse for refusing to disclose to complainants the progress of handling their cases. In this respect, he sought clarification from The Ombudsman as to whether the Office had received complaints against SFC for maladministration. Mr Christopher CHEUNG added that as far as he knew, SFC often suggested complainants to seek their own legal advice on cases of dispute.

11. The Ombudsman replied that he was not in a position to comment on individual cases. Nevertheless, he remarked that generally speaking, delay in handling complaints or non-reply to complainants by Government departments/public bodies would

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constitute maladministration. On the other hand, it might not constitute maladministration if a complainee department/public body had replied to the complainant and it was just that the latter was not satisfied with the reply. As regards the approach of SFC in handling complaints, The Ombudsman suggested that Members might consider following it up at the relevant Panel of the Legislative Council.

12. Referring to the recent inquiry concerning the former Commissioner of the Independent Commission Against Corruption, Ms Cyd HO expressed concern on whether the Office had put in place any internal mechanism to ensure that the senior management would abide by proper procedures and regulations in office administration and handling of staff complaints.

13. The Ombudsman advised that the Office had drawn up manuals which were available to all staff. This apart, it was also stipulated in the legislation that the Chief Executive might remove The Ombudsman from office, upon the passage of a resolution by the Legislative Council, on the ground of The Ombudsman's inability to discharge the functions of his office or misbehaviour.

Direct investigations

14. Referring to the Office's direct investigation into the grant of disability allowance by the Social Welfare Department ("SWD") and the processing of appeals, the subject of which had been discussed at the last meeting with The Ombudsman on 18 December 2012, Mr WONG Kwok-hing thanked The Ombudsman for issuing a letter to inform him after the meeting that the Labour and Welfare Bureau ("LWB") would take the lead in following up the recommendations put forth in the investigation report. In this regard, he asked if The Ombudsman would set a deadline for the Administration to implement all the recommendations; if not, what action The Ombudsman would take if the Administration failed to implement all the recommendations.

15. The Ombudsman replied that an inter-departmental working group had been formed by LWB to follow up the recommendations. As the recommendations involved policy issues and it would take time for the Administration to work out

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its implementation plan, he did not consider it appropriate to set a deadline. Nevertheless, the Office would keep in close view the progress and might conduct further investigation if further complaints on similar issues were received. The Ombudsman added that Members could also consider taking up the concerned policy issues at the relevant Panel of the Legislative Council.

16. Mr TANG Ka-piu asked when the direct investigation into the mechanism of the Transport Department ("TD") for monitoring the frequencies of franchised bus services would be completed. He also enquired how the Office would take forth its recommendations concerning bus companies, noting that the bus companies had recently proposed fare increase despite the huge room for improvement on their irregular service frequencies.

17. The Ombudsman advised that the direct investigation would likely be completed in a few months' time. As bus companies were outside The Ombudsman's purview, the Office would collect information from and make suggestions to the franchised bus companies through TD.

18. Referring to the Direct Investigation Report on Control of Healthcare Professions Not Subject to Statutory Regulation published by the Office in October 2013 which revealed that over 7 300 practitioners engaging in 15 health sectors were not subject to statutory regulation, Mr Martin LIAO expressed concern on whether there would be any concrete timetable for the Department of Health ("DH") to implement the recommendations made by the Office in order to safeguard the public against malpractices by incompetent practitioners.

19. The Ombudsman advised that DH had indicated its acceptance of the recommendations and undertook to take appropriate follow-up actions. The Office would monitor the progress every three to six months.

20. Dr LO Wai-kwok referred to the strong criticisms made by The Ombudsman in the Direct Investigation Report on Regulatory Measures and Enforcement Actions against Illegal Extension of Business Area by Restaurants, including the lack of determination and inadequate effort by the Food and Environmental Hygiene Department ("FEHD") and the Lands Department ("LandsD") to curb the problem. While he fully supported The Ombudsman's observation that the Administration

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should encourage more alfresco dining areas to be set up in a legitimate and regularized manner, Dr LO expressed concern on the role of The Ombudsman in ensuring the effective implementation of the recommendations made by the Office, in particular the recommendation on designating spots for alfresco dining in suitable areas.

21. The Ombudsman indicated that while he was not in a position to identify areas suitable for setting up alfresco dining areas, District Councils could come up with feasible suggestions for consideration by the Administration. He also remarked that when taking enforcement actions against unauthorized extension of restaurants, the departments concerned should give due regard to the principle of "legality, reasonableness and compassion".

22. In reply to Mr Albert HO's enquiry concerning the effectiveness of the implementation of the Office's recommendations as set out in the Direct Investigation Report on Administration of Government Policy on Private Recreational Leases, The Ombudsman advised that the public had become more aware of the arrangement on opening for use by eligible bodies of facilities of sports clubs whose land grants were made under Private Recreational Leases where land was granted by the Government for operation of those clubs at nil or nominal rent. As far as he knew, some schools had applied for use of the facilities of those sports clubs.

23. Mr WONG Kwok-hing shared with the meeting that he had received complaints from various groups of residents concerning the negative impact of installing mobile radio base stations on the rooftops of residential buildings which brought about health hazards to the residents. He stated that there was a case in which a resident living in a building with mobile radio base stations installed on the rooftop had suffered from brain tumor. Since Government departments such as the Office of the Communications Authority refused to follow up the residents' complaints, he enquired whether The Ombudsman would initiate a direct investigation in this respect.

24. The Ombudsman responded that direct investigation was a proactive approach to problems of wide public interest and concern. There should be sufficient justifications before the Office would initiate direct investigation on an issue. In respect of Mr WONG's concern, he suggested that aggrieved residents

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could consider lodging their complaints with the Office for follow-up.

25. While appreciating The Ombudsman's good work, Ms Claudia MO said that the Government's refusal to grant domestic free television programme service licence to the Hong Kong Television was of wide public concern. She enquired whether it was within the jurisdiction of The Ombudsman to conduct an investigation on the matter.

26. The Ombudsman replied that the Executive Council, which made the decision, was not subject to investigation by the Office under the Ordinance. The Office could only investigate maladministration of Government departments and public bodies listed in Schedule 1 to the Ordinance.

Direct investigation assessments

27. Referring to the Office's direct investigation assessment on the processing of applications for Building Maintenance Subsidy, Mr IP Kwok-him asked whether the Office had received complaints on the financial assistance rendered to elderly owners of private buildings in complying with the statutory requirements under the Mandatory Window Inspection Scheme and the Mandatory Building Inspection Scheme which had been implemented recently. He also sought clarification on whether a direct investigation would be conducted by the Office upon completion of the above assessment.

28. Assistant Ombudsman explained that before deciding whether or not a direct investigation should be launched, the Office might first conduct a direct investigation assessment, i.e. a preliminary inquiry, to ascertain the need for direct investigation. If no significant maladministration was found, the direct investigation assessment would be concluded with the findings provided to the concerned departments/public bodies, together with suggestions for improvement where necessary. Assistant Ombudsman added that the Office welcomed complaints of the nature mentioned by Mr IP.

II. Discussion items raised by Members

(a) Issues relating to direct investigation into the records

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management system in Hong Kong

29. Citing the importance of maintaining comprehensive Government records as revealed in the inquiries into the collision of vessels near Lamma Island, the travel expenses of and related arrangements for the former Chief Executive, Mr Donald TSANG, and matters relating to Mr Timothy TONG's duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner of Independent Commission Against Corruption, Ms Cyd HO expressed concern on the scope of the direct investigation into the records management system in Hong Kong being conducted by the Office, in particular whether the reasons for missing records would be examined and the deficiencies in the current system would be identified in a comprehensive manner. She also urged for the Office's probe into the guidelines for compliance by Government officials for maintaining Government records. Moreover, noting that communication made in the form of, say, "WhatsApp", had been increasingly common within the Government, she was of the view that the direct investigation should also cover areas on proper management of electronic records for fear that they would be lost and future reference could not be made. She also requested The Ombudsman to inform the meeting of the progress of the investigation and the initial findings of the Office.

30. The Ombudsman noted Ms Cyd HO's concern and affirmed that the direct investigation would cover electronic records. He added that so far the Office had received 39 written submissions from members of the public since the commencement of the direct investigation. Inquiries had been made to seek information from the relevant policy bureaux and Government departments. The Office had also made reference to the records management systems in overseas jurisdictions. Since the investigation would be completed in a few months' time, he considered it premature to disclose at the present stage the initial findings of the Office.

31. Ms Cyd HO asked whether the Office had made reference to the records management system in the United Kingdom ("UK"). She also enquired whether the direct investigation would cover archival records of Hong Kong which were kept by the National Archives of the United Kingdom.

32. The Ombudsman pointed out that through the network

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of the International Ombudsman Institute of which he was Treasurer, the Office had studied the records management systems of a few countries. On the direct investigation being conducted, he advised that it would seek to identify inadequacies in Hong Kong's system and recommend improvements. He did not consider it desirable for Hong Kong to follow the system of a particular jurisdiction without taking into account the local circumstances.

33. Ms Claudia MO held the view that apart from setting out the factual information obtained from the Administration during the investigation, The Ombudsman should make criticisms if the investigation revealed inadequacies in the current records management system. The Ombudsman should also put forth improvement proposals for consideration by the Administration.

(b) Issues relating to cases not pursued by the Office and cases involving Social Welfare Department

34. Referring to item 8 on "Monitoring of fund-raising activities" in Appendix II of LC Paper No. CRM 279/13-14 regarding the breakdown on the nature of complaints received against SWD which were not pursued by the Office in 2012-2013, Mr CHEUNG Kwok-che expressed concern about the lack of co-ordination and insufficient transparency and accountability over the issue of licences to on-street charitable fund-raising activities by Government departments such as SWD, LandsD and the Home Affairs Department. He opined that The Ombudsman should look into the matter and put forth improvement proposals to relevant departments. In addition, Mr CHEUNG raised concern on the complaints lodged with the Office against SWD on its monitoring of non-governmental organizations ("NGOs") (i.e. item 9 in Appendix II of LC Paper No. CRM 279/13-14). He was of the view that those complaints arose primarily from the implementation of the Lump Sum Grant Subvention System, under which NGOs were given too much flexibility in their operation and hence it posed difficulty for SWD to monitor them effectively. A common dispute was over the salary increase of NGOs. In this regard, he urged The Ombudsman to come up with proposals to address the issues.

35. The Ombudsman responded that the Office had looked into issues relating to the monitoring of charitable fund-raising

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activities. It was recommended in the direct investigation report published in February 2003 that the Administration should consider the pros and cons of greater Government control of charitable activities by means of registration and should also consider putting in place a mechanism for deterring abuse of donations and imposing penalties for such acts. With regard to the monitoring of NGOs, The Ombudsman said that the Office would study the views expressed by Mr CHEUNG Kwok-che.

36. Referring to the 2013 Annual Report of The Ombudsman which stated that 3 116 cases were not pursued by the Office, Mr IP Kwok-him asked about the reasons for not pursuing those cases and, in particular, the reasons for not pursuing the 181 cases received against the Official Receiver's Office.

The Ombudsman

37. The Ombudsman replied that he did not have information in hand regarding those complaint cases against the Official Receiver's Office. He undertook to provide in writing after the meeting the reasons for not pursuing those complaints. He further advised that generally speaking, complaints not pursued by the Office included cases which fell outside the jurisdiction of The Ombudsman, such as complaints against the Police and disputes between civil servants and their supervisors on performance appraisals; repeated complaints lodged with the Office where investigation had already been completed and the complainants failed to produce new information which warranted further investigation; as well as allegations which were baffling and beyond comprehension. Nevertheless, he assured Members that complaints lodged with the Office by the public would be examined impartially so that grievances arising from maladministration in the public sector could be redressed.

38. In response to Mr YIU Si-wing's enquiry on the person responsible for classifying cases as non-pursuable, The Ombudsman advised that apart from himself, the Deputy Ombudsman also had the authority to do so, and very often they would discuss with the case officers before coming up with such a decision.

(c) Issues relating to the support provided by the Education Bureau to ethnic minorities

39. Ms Claudia MO said that in the Report on the

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Working Group on Education for Ethnic Minorities issued by the Equal Opportunities Commission in 2011, the Education Bureau was criticized of its inadequate support to ethnic minorities. She stated that the Chief Executive had undertaken in his election campaign to enhance Chinese language learning for ethnic minorities. However, very little had been done by the Administration. She asked whether The Ombudsman would consider initiating a direct investigation on issues relating to Chinese language training for ethnic minority students at pre-primary, primary and secondary levels.

40. The Ombudsman replied that while he had no immediate plan to conduct a direct investigation on the subject, he would look into the matter and would not exclude such a possibility if the situation so warranted in future.

III. Any other business

41. There being no other business, the meeting ended at 12:25 pm.