

立法會
Legislative Council

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(These minutes have been seen
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**Minutes of meeting between Legislative Council Members
and The Ombudsman, Ms Connie LAU Yin-hing, JP,
on Tuesday 8 December 2015 at 11:00 am
in Conference Room 1, 2/F, Legislative Council Complex**

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Dr Hon LAM Tai-fai, SBS, JP
Hon IP Kwok-him, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon NG Leung-sing, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, JP
Dr Hon Kenneth CHAN Ka-lok
Dr Hon Helena WONG Pik-wan
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS

Attendance by invitation : Ms Connie LAU Yin-hing, JP
The Ombudsman

Mr SO Kam-shing
Deputy Ombudsman

Mr Tony MA Kai-loong
Assistant Ombudsman 1

Mr Frederick TONG Kin-sang
Assistant Ombudsman 2

Staff in attendance : Ms Amy YU
Principal Council Secretary 1

Miss Erin TSANG
Chief Council Secretary (Complaints)

Mrs Pandora CHAN
Senior Council Secretary (Complaints and
Resources Management) 2

Action

The Chairman welcomed Ms Connie LAU, The Ombudsman, Mr SO Kam-shing, Deputy Ombudsman, Mr Tony MA, Assistant Ombudsman 1, and Mr Frederick TONG, Assistant Ombudsman 2, 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 would not be 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 218/15-16)

Briefing by The Ombudsman

2. The Ombudsman briefed Members on the work of the Office. She said that the number of enquiries and complaints received by the Office had remained steady in the past few years. In 2014-2015, a total of 12 940 enquiries and 5 339 complaints were received, and 5 373 complaints were concluded. On average, about 1 000 enquiries and 450 complaint cases were received each month. Of the cases completed, 89.6% were concluded within three months, 9.9% were concluded in three to six months, and 0.5% took more than six months to conclude.

For the first seven months of 2015-2016, the Office received 7 501 enquiries and 3 185 complaints. As to the mode of lodging complaints, email remained the most popular mode. In 2014-2015, 2 617 email complaints (including by online complaint form) were received, accounting for 49% of the total complaints received.

3. The Ombudsman drew Members' attention that the Office had reviewed and revised the classification of complaint handling to better reflect the situation. For cases classified as "non-pursuable" in the past (such as those falling outside the Office's jurisdiction, restricted by The Ombudsman Ordinance (Cap. 397) ("the Ordinance") from handling, withdrawn by complainants, discontinued or not undertaken by the Office for reasons of being *sub judice* or availability of other statutory means of appeal), since they were concluded upon careful assessment by the Office, they were now classified as "assessed and closed". As for cases not undertaken by the Office for the reason of lacking in *prima facie* evidence, some of them were concluded after the Office had fully examined and pursued them by way of inquiry and with the conclusions explained to the complainants. These cases were now classified as "pursued and concluded by inquiry".

Mediation

4. The Ombudsman advised that upon receipt of pursuable complaints, the Office would, depending on the nature and complexity, handle them by way of mediation, inquiry or full investigation. In recent years, the Office was, with the consent of the parties concerned, inclined to deal with cases involving no or only minor maladministration by way of mediation, which was an alternative method for resolving disputes expeditiously as it was conducive to enhanced communication between the parties concerned for reaching consensus. In 2014-2015, 4.6 % of the cases (i.e. 138 cases) were concluded by mediation, representing an almost fourfold increase as compared with last year. According to the Office's opinion survey, 95% of the complainants and 100% of the organizations under complaint considered that mediation was an efficient way for dispute resolution. It was noteworthy that more organizations had requested the Office to settle complaint cases by way of mediation.

5. The Ombudsman further advised that in 2014-2015, 85% of the cases were concluded by way of inquiry, and 10.4% were by full investigation as serious maladministration was possibly involved in these cases and the Office had to conduct full investigation to identify inadequacies and make recommendations for improvement.

Direct investigations

6. The Ombudsman informed Members that the Office would initiate direct investigations into issues of wide public concern or significant public interests with a view to examining from a macro level the deficiencies in administrative systems. In 2014-2015, the Office completed seven direct investigations, and 89.9% of the recommendations made by the Office were accepted for implementation. In the first seven months of 2015-2016, three direct investigations were completed and seven were in progress. To enhance the transparency of the Office's direct investigation work, preliminary inquiries with the organizations under complaint would be developed into direct investigations as far as practicable. The Office would continue to publish all direct investigation reports on its website, and identify those which were of wide public concern for announcement at press conferences. The Ombudsman stressed that the Office would continue to keep in view issues of public concern to decide whether direct investigations should be initiated.

Code on Access to Information

7. The Ombudsman said that pursuant to the Ordinance, she had the power to investigate complaints against Government departments/public bodies for non-compliance with the Code on Access to Information ("the Code"). The Office had published representative Code-related complaints cases on its website to provide useful reference for public officers and to enhance the public's knowledge of their rights under the Code. At present, the Code was only applicable to Government departments and two listed public bodies. Should the Office receive complaints against other public bodies for unreasonable refusal of access to information, it would examine the complaints in accordance with the spirit of the Code to

ascertain whether maladministration was involved.

8. Mr WONG Yuk-man opined that the Code was far from effective in ensuring the openness and transparency of the Government as Government departments could still, under the existing framework, withhold information requested on various excuses such as they were records of internal discussion. He enquired whether The Ombudsman would urge the Government to introduce legislation on freedom of information.

9. In response, Deputy Ombudsman said that in the direct investigation conducted by the Office in 2013-2014 on the access to information regime in Hong Kong, reference had been made to overseas jurisdictions where freedom of information legislation was implemented. In view of the inadequacies on access to information identified in the direct investigation, the Office had recommended the Government to introduce legislation to underpin the public's right of access to information. The recommendation was being considered by the Government.

Discussion

Disability allowance for persons with loss of one limb

10. Mr WONG Kwok-hing referred to paragraphs 5 and 6 of the minutes of the last meeting and enquired whether The Ombudsman had written to the Chief Executive to follow up on the matter relating to the provision of disability allowance for persons with loss of one limb.

11. The Ombudsman replied that the question of provision of disability allowance for persons with loss of one limb was outside the scope of the direct investigation conducted. She had also noted that consensus had yet to be reached on the removal of an assessment criterion (i.e. the criterion on the applicant's ability to work in the original occupation and to perform any other kind of work for which he/she is suited) from the Medical Assessment Form for assessing applicants' disability condition. The Office would continue to keep in view the progress of the issue and the relevant discussion of the Legislative Council Panel on Welfare Services.

Mobile phone base stations

12. Mr WONG Kwok-hing referred to paragraph 8 of the minutes of the last meeting, and enquired whether a direct investigation assessment on the negative impacts of mobile phone base stations on residents had been conducted.

13. The Ombudsman advised that as the subject matter fell within the purview of the Communications Authority ("CA") which was not subject to investigation by The Ombudsman, the Office was not empowered to conduct a direct investigation assessment. Nevertheless, the Office had referred complaints received on this matter to CA for consideration and action, if necessary.

Scope of investigation

14. Mr WONG Kwok-hing enquired whether The Ombudsman would consider expanding her scope of investigation to include newly established policy bureaux, Government departments and public bodies; and if so, when Part 1 of Schedule 1 to the Ordinance which set out the departments/public bodies subject to investigation would be updated.

15. The Ombudsman advised that any amendment to be made to the Ordinance including the scope of investigation had to be initiated by the Director of Administration.

Complaints against the Housing Department and the Food and Environmental Hygiene Department

16. Mr IP Kwok him noted that in 2014-2015, the Housing Department ("HD") and the Food and Environmental Hygiene Department ("FEHD") ranked the first and second in the number of complaints and enquiries received by the Office. He enquired about the major issues under complaint and whether any means could be identified to improve the services of these two departments with a view to reducing their number of complaints.

17. Deputy Ombudsman pointed out that as HD and FEHD had more frequent and extensive contact with

members of the public, there was a higher chance for public complaints. Generally speaking, complaints received against HD were mainly related to the day-to-day management of public housing estates and its effectiveness in resolving neighbourhood disputes. As for complaints against FEHD, they were mainly related to environmental hygiene and street obstruction.

18. The Ombudsman added that for Government departments with a large number of complaints, the Office would identify with their managements areas for improvement with a view to enhancing their services and minimizing their number of complaints.

19. Dr Kenneth CHAN expressed concern that the Office would invariably request complainants to approach the concerned departments first for follow-up on their complaints. He considered such arrangement undesirable as there might be embarrassment if the complainants were staff of the departments under complaint. Some complainants, for fear of retaliation, might even choose not to voice their grievances.

20. The Ombudsman assured Members that the Office would not turn complainants away, but would carefully consider how each complaint should best be handled with a view to achieving early resolution of the case. Assistant Ombudsman 1 supplemented that the Office would only suggest complainants to approach the concerned departments for follow-up on simple and straightforward cases, such as clearing of rubbish on streets, if they had not done so. Pursuant to the Ordinance, the Office would not investigate anonymous complaints. Nevertheless, if the complainants so wished and the Office considered it appropriate, the complainants' identities would not be disclosed to the departments under complaint.

21. Dr Kenneth CHAN noted the responses of The Ombudsman and Assistant Ombudsman 1, and called on the Office to exercise flexibility especially when dealing with complaints from whistle-blowers to ensure that their grievances could be redressed.

Complaint about maintenance responsibilities of utility facilities

22. Mr Christopher CHUNG quoted for illustration that HD had unfairly shifted the maintenance responsibilities of utility facilities to a Tenants Purchase Scheme estate, which resulted in disputes between residents of that estate and its neighbouring Home Ownership Scheme estate as the latter were dissatisfied with the poorly maintained facilities. He requested The Ombudsman to investigate the matter to protect residents' interests.

23. The Ombudsman undertook to look into the matter to ascertain whether the problem was due to wrong policy or poor management. Mr Christopher CHUNG took note of The Ombudsman's response and indicated that he would provide further information to the Office to facilitate its follow-up.

II. Discussion items raised by Members

(a) Issues relating to the waiting time for accident and emergency services at public hospitals

24. Mr CHAN Han-pan said that as there was no evening outpatient clinic or private clinic in some districts, residents had no choice but to approach the Accident and Emergency (A&E) Departments of public hospitals for consultation. However, patients had to wait for a long time. He cited for illustration that patients who had sustained head injuries but with their conditions classified as semi-urgent had to wait for at least four to five hours before they could meet with doctors for consultation. He considered the existing A&E services provided by public hospitals far from satisfactory and adequate in meeting public demand. He enquired whether The Ombudsman would consider investigating the matter with a view to improving the A&E waiting procedures, as well as the triage system so that patients classified as, say, semi-urgent could consult doctors at a separate counter to ensure timely treatment.

25. The Ombudsman advised that most of the complaints received by the Office on unduly long waiting time for A&E services were lodged by complainants who

had been classified as semi-urgent or non-urgent. She shared with Mr CHAN that the existing A&E waiting procedures, in particular the triage system, could be improved. She welcomed Members' views on the issue to facilitate the Office's consideration of whether a direct investigation should be initiated.

(b) Issues relating to the "bid-rigging" problem arising from the implementation of the Mandatory Building Inspection Scheme

26. Mr CHAN Han-pan expressed concern that unlike the Operation Building Bright Scheme implemented by the Urban Renewal Authority in which there were measures to guard against the "bid-rigging" problem, the Mandatory Building Inspection Scheme ("MBIS") implemented by the Buildings Department ("BD") did not put in place similar measures to protect flat owners from the malpractices of "bid-rigging" syndicates. Moreover, despite that most of the flat owners did not have professional knowledge in building maintenance works, the Government did not provide adequate support to them. Whenever flat owners approached BD for assistance, they would be advised that BD could not intervene in contractual disputes between flat owners and contractors. He called on The Ombudsman to look into the matter with a view to plugging the loopholes of MBIS and urging the Government to set up a dedicated department for effective tackling of the "bid-rigging" problem.

27. The Ombudsman advised that BD had, in December 2012, issued to building practitioners a Practice Note for Mandatory Building and Window Inspection Schemes regarding the best practices on the tendering procedures for engagement of consultants and contractors. Advice was also provided in the Note on how to prevent "bid-rigging" and corruption in the tendering process. In view of Mr CHAN's concern, she undertook to further study the Government's support to flat owners with particular respect to the contracts signed with building professionals, and the measures for preventing "bid-rigging".

(c) Issues relating to the setting of the cut-off line for free blood testing for residents of public housing estates having excess lead in drinking water

28. Dr Helena WONG remarked that according to Professor David C. Bellinger of the Harvard Medical School, an expert witness invited by the Commission of Inquiry into Excess Lead Found in Drinking Water ("the Commission"), young females aged 8 to 18 whose blood lead levels exceeded three micrograms per deciliter would, as revealed in a United States study, experience delay of two to eight months in breast development. For youngsters aged 6 to 16 who had excessive blood lead levels, they would have higher risks for suffering from Attention Deficit Hyperactivity Disorder. Youngsters whose blood lead levels exceeded 10 micrograms per deciliter would even have a propensity for violence and aggression. She expressed dissatisfaction that the Government only undertook to provide free blood testing for lead for children below eight living in public housing estates where excessive lead was found in the drinking water. She considered the setting of such a cut-off line unreasonable. She requested The Ombudsman to look into the matter with a view to urging the Government to extend the free blood testing service to children aged eight or above, and to provide developmental assessment for affected children whose blood lead levels were lower than five micrograms per deciliter. She further requested The Ombudsman to conduct a direct investigation into the incident of lead in drinking water ("the incident"), as HD's apparent failure in ensuring the use of lead-free soldering materials in the construction of water supply systems in public housing had already constituted maladministration.

29. The Ombudsman concurred that the Government should adopt a people-oriented approach and provide necessary blood testing and assessment services to residents in need. Since the inquiry conducted by the Commission into the incident was still underway, the Office would keep in close view the development and examine the findings of the Commission to consider if there would be a need for direct investigation by the Office.

(d) Issues relating to the monitoring of the product safety and installation method of wall-mounted dispensers

30. Dr Helena WONG was concerned that lead content exceeding the provisional guideline value of the World Health Organization was found in the drinking water samples taken from the wall-mounted dispensers ("dispensers") in several kindergartens. Yet, there was no dedicated provision under the existing legislation for regulation of dispensers. Moreover, pursuant to an investigation conducted by the Hong Kong Productivity Council on six dispensers in which five dispensers had failed the tests as excessive lead content was found in their drinking water samples, the Government only advised the public to purchase dispensers with international certification but refused to disclose the brand names of the six dispensers and the ones which had failed the tests. In view of the Government's failure to protect public safety by publishing the brand names of the failed dispensers for public reference and to protect students' safety by mandating schools to replace dispensers without international certification, she considered that The Ombudsman should conduct an investigation into the matter.

31. The Ombudsman agreed that dispensers should be regulated for protection of public health as they were widely used in schools, food premises, offices, etc. The Government should also enhance public education on the proper use and cleaning of dispensers. She welcomed Dr WONG to provide further information to the Office to facilitate its follow-up with the Administration. On Dr LO Wai-kwok's concern that the scope of regulation should not be too wide to include kettles used at home, The Ombudsman remarked that, should regulation be considered necessary, it would be for the Government to decide on the scope of regulation and to draw up suitable regulatory measures.

(e) Issues relating to the regulation of online sale of imported food products

32. Dr Helena WONG pointed out that most of the vendors operating online food business did not have physical premises. The regulatory authorities therefore

could not conduct inspections and monitor their operations. In the absence of effective regulation of online sale of imported food products such as sashimi, oysters to be eaten in raw state and sandwiches, public health was at stake. She enquired whether The Ombudsman would consider initiating a direct investigation into the matter to ensure food safety.

33. The Ombudsman advised that the existing legislation regulating food safety and food trade operations was also applicable to online food sale. To address the issue of online sale of restricted foods such as sashimi and oysters to be eaten in raw state, FEHD had drawn up a set of licensing conditions which required, inter alia, that restricted foods had to be obtained from lawful sources, and the operators had to display on their websites their permit numbers, registered addresses and the restricted foods permitted for sale for consumers' reference and verification via FEHD's website. She considered that enhanced inspection would be conducive to more effective regulation of online food sale. The Office would continue to keep in close view the matter and conduct a direct investigation if considered necessary.

(f) Issues relating to the provision of subsidized child care services for primary, kindergarten and pre-school children

34. Dr Helena WONG expressed concern about the inadequate provision of subsidized child care services for primary, kindergarten and pre-school children. In spite of repeated requests over the years, the Government refused to increase the resource allocation for enhancing the services to meet parents' needs. She enquired whether The Ombudsman would follow up on the Government's misallocation of resources and maladministration in the provision of subsidized child care services.

35. The Ombudsman stressed that the adequacy of subsidized child care services was a matter of Government policies and allocation of public resources. Nevertheless, in view of Dr WONG's concern, the Office would study the relevant information to ascertain whether a direct investigation should be conducted into the work procedures and administrative measures relating to the provision of the

services.

(g) Issues relating to the referral services of the 1823 Call Centre

36. Mr WONG Yuk-man shared with the meeting that he had received a number of complaints in which some organizations had recently been subject to repeated inspections by various Government departments due to the referrals made by the 1823 Call Centre. Although the complaints were later found to be unsubstantiated and some of them seemed to have been made with political intention, severe disturbance had already been caused to those organizations. As such, he enquired whether The Ombudsman would consider initiating a direct investigation on possible abuse of the referral services provided by the 1823 Call Centre.

37. The Ombudsman advised that in cases relating to abuse of services, the Office would study all relevant information to ascertain whether the operating mechanisms should be examined. Mr WONG Yuk-man undertook to forward details of those complaint cases to the Office for information and follow-up as appropriate.

38. In this connection, Dr Helena WONG enquired as to how the Office would collect information to facilitate The Ombudsman's consideration of whether direct investigations should be conducted.

39. The Ombudsman advised that the Office would obtain information from various sources including media reports, Members and complaint cases lodged by members of the public to ascertain whether there were systemic and widespread deficiencies which warranted the initiation of direct investigations.

III. Any other business

Territory-wide System Assessment

40. Dr Helena WONG said that notwithstanding the Administration's assurance that it was a low-stake assessment, the Territory-wide System Assessment ("TSA")

imposed immense pressure on students due to excessive drilling practices which commenced as early as Primary 1. In spite of the widespread public concern from parents and other stakeholders on its drawbacks, the Government refused to abolish TSA. As such, she enquired whether The Ombudsman would consider following up on the matter.

41. The Ombudsman responded that up to the present, the Office had not received any complaints relating to TSA. The Office would need to collect information for study before a decision could be made on whether a direct investigation should be conducted.

42. The meeting ended at 12:15 pm.