

Information Paper

**for LegCo Members' Meeting with The Ombudsman
on 8 December 2015**

I. Work of The Ombudsman's Office

(i) For the year 2014-2015

In the 2014-2015 reporting year, the Office received a total of 12 940 enquiries and 5 339 complaints, while 5 373 complaints were concluded.

2. During the year, we reviewed and revised our classification of complaint handling. In the past, we named as “non-pursuable” all cases falling outside our jurisdiction, restricted by The Ombudsman Ordinance (“the Ordinance”) from handling, withdrawn by the complainant, discontinued or not undertaken by the Office for reasons such as *sub judice* or other statutory means of appeal. Since all such cases were concluded only after our careful assessment, we consider “assessed and closed” a more accurate description. Besides, some cases which are not undertaken by us for the reason of lacking in *prima facie* evidence are in fact complaints in which we have fully examined the complainant's case with our conclusions explained to the complainant. We have indeed pursued and concluded these cases by way of inquiry and therefore they should be so classified.

3. Based on the new classification, statistics on complaints and enquiries for the past three years and the first seven months of 2015-2016 (that is, April to October) are tabulated below:

		Reporting year ¹			
		2012-13	2013-14	2014-15	2015-16 (Apr – Oct)
(1)	Enquiries	12 255	12 767	12 940	7 501
(2)	Complaints				
	(a) For processing	6 349	6 572	6 241	4 053
	- Received	5 501[238]	5 624[398]	5 339[428]	3 185[139]
	- Brought forward	848	948	902	868
	(b) Completed	5 401[235]	5 670[367]	5 373[472]	3 012[131]
	Pursued and concluded	2 574[196]	2 964[48]	3 025[203]	1 716[116]
	- By inquiry ²	2 383[196]	2 605[36]	2 573[78]	1 526[112]
	- By full investigation ³	169	321[12]	314[125]	109[4]
	- By mediation ⁴	22	38	138	81
	Assessed and closed⁵	2 827[39]	2 706[319]	2 348[269]	1 296[15]
	(c) Percentage completed = (b) / (a)	85.1%	86.3%	86.1%	74.3%
	(d) Carried forward = (a) – (b)	948	902	868	N/A
(3)	Direct investigations completed and announced	6	6	7	3

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

Note 2. Pursued under section 11A of the Ordinance, for general cases.

Note 3. Pursued under section 12 of the Ordinance, for complex cases possibly involving serious maladministration, systemic flaws, etc.

Note 4. Pursued under section 11B of the Ordinance, for cases involving no, or only minor, maladministration.

Note 5. Outside the Office's jurisdiction, restricted by the Ordinance or mere expression of opinion, etc.

[] Number of topical cases.

4. In 2014-2015, of those 3 025 cases pursued and concluded, 85.0% were concluded by inquiry (87.9% in 2013-2014), 10.4% by full investigation (10.8% in 2013-2014) and 4.6% by mediation (1.3% in 2013-2014). During the year, the significant increase in the number of complaints handled by mediation was the result of our increased efforts in this.

5. Of the cases completed in the year, nearly 90% (89.6%) were concluded within three months, 9.9% were concluded in three to six months, while 0.5% took more than six months.

6. As in the past years, lodging complaints by email was the most

popular mode. In 2014-2015, 2 617 email complaints (including by online complaint form) were received, accounting for 49.0% of the total complaints received. This was followed by letters through post, with 918 (17.2%) complaints.

7. In 2014-2015, seven direct investigations were completed on the following subjects:

- (1) Regulatory Measures and Enforcement Actions against Street Obstruction by Shops
- (2) Management and Release of Patient Records by Hospital Authority
- (3) Government's Regulation of Guesthouses
- (4) Mechanisms Used to Review and Monitor Eligibility of Existing Tenants in Subsidised Public Housing
- (5) Procedures for Approval of Loan Applications and Recovery of Debts under the Non-means-tested Loan Scheme
- (6) Education Bureau's Non-disclosure of Teachers' Registration Status
- (7) Safety Regulation of Eco-friendly Refrigerants

8. During the year, a total of 218 recommendations were made to improve various aspects of public administration. Of these, 178 were related to individual complaint cases and 40 resulted from direct investigations. As at October 2015, 89.9% of the recommendations had been accepted for implementation.

(ii) For the first seven months (April to October) of 2015-2016

9. During the period from April 2015 to October 2015, the Office received a total of 7 501 enquiries and 3 185 complaints.

10. Three direct investigations have been completed and announced, while seven have been announced publicly and are in progress.

Completed

- (1) Rating and Valuation Department's Regulation of Display of Building Numbers
- (2) Regulation of Fire Safety Measures for New Territories Exempted Houses
- (3) Water Supplies Department's Mechanism for Handling Leaks of Private Water Pipes

Announced publicly and in progress

- (1) Management of Permitted Burial Grounds
- (2) Government's Tree Management Regime and Practices
- (3) Government's Regulation of Rehabilitation Transport Services to Persons with Mobility Difficulties
- (4) Lands Department's System of Regulation of Illegal Occupation of Government Land and Breach of Lease Conditions
- (5) Government's Implementation of Strengthened Control of Exhaust Emissions from Petrol and LPG Vehicles
- (6) Immigration Department's Mechanism for Following up on Unregistered Birth Cases
- (7) Government's Handling of Stonewall Trees on Bonham Road

11. Before deciding whether or not to launch a direct investigation against an organisation, we may conduct a preliminary inquiry. Where our inquiry finds no significant maladministration or the organisation

concerned has taken proactive action to make improvement, we will simply conclude our study and offer our observations to the organisation. Where appropriate, we will also make recommendations for improvement.

12. To enhance the transparency of our direct investigation work, we will in future develop the inquiries into direct investigations as far as practicable. As before, we will publish all our direct investigation reports on the Office's website, and select those reports of wide community concerns for announcement at press conferences.

13. We are mandated by the Ordinance to investigate matters concerning the Code on Access to Information ("the Code"). We have already selected some representative Code-related complaint cases and have compiled and uploaded them to our website. They should provide a useful repository of reference materials for public officers and the general public.

14. The Code is only applicable to Government departments and some listed public organisations. For other public organisations, if we receive any complaints against them for refusing requests for access to information, we will refer to the Code and examine as a matter of principle whether maladministration is involved in their refusal to provide information.

II. Replies to Questions Raised by Members

1. Issues relating to the waiting time for accident and emergency services at public hospitals *(raised by Hon CHAN Han-pan, JP)*

[Will The Ombudsman consider initiating a direct investigation into the issues relating to the unduly long waiting time for accident and emergency services at public hospitals?]

- (1) The Accident and Emergency ("A&E") services aim at providing clinical diagnosis and medical treatment to patients who need urgent medical attention. As far as we understand, the A&E waiting procedures require the triage nurse to follow established clinical guidelines and classify patients into five categories, namely critical, emergency, urgent, semi-urgent and

non-urgent, in order to determine their relative priority in medical treatment. In other words, A&E Departments prioritise patients for treatment according to the severity of their medical conditions. Waiting time of different patients would therefore vary. Patients whose condition has been classified as critical, emergency or urgent face higher risk of sudden death. They will receive immediate treatment or need to wait only a short time. Patients considered to be in semi-urgent or non-urgent condition will have to wait longer.

- (2) A majority of complaints against unduly long waiting time for A&E services that this Office received in the past were lodged by complainants who had been classified as semi-urgent or non-urgent on the day of admission. Their waiting time was further prolonged because of a larger number of urgent patients. We consider it reasonable for A&E Departments to prioritise patients for treatment according to the severity of their medical conditions.
- (3) On the other hand, the overall waiting time of patients at A&E Departments is also determined by other factors such as allocation of resources (e.g. the number of A&E doctors), fee levels and the availability of alternative services.
- (4) We welcome any views from Members on how to improve the A&E waiting procedures. We will consider whether the issue can be examined from an administrative point of view.

2. **Issues relating to the "bid-rigging" problem arising from the implementation of the Mandatory Building Inspection Scheme**
(raised by Hon CHAN Han-pan, JP)

[As the Buildings Department has turned a blind eye towards the "bid-rigging" problem arising from its implementation of the Mandatory Building Inspection Scheme, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) We understand that in December 2012, the Buildings Department ("BD") issued to building practitioners a Practice Note for Mandatory Building and Window Inspection Schemes (PNBI-2) to draw their attention to the best practices on the tendering procedures for engagement of consultants and

contractors. The Practice Note highlights some of the salient points of the Maintenance Guidelines issued by the Hong Kong Housing Society and the Urban Renewal Authority in consultation with the Independent Commission Against Corruption, and gives advice on how to prevent “bid-rigging” and corruption in the tendering process. The Practice Note also states that registered inspectors/qualified persons/registered contractors may be subject to disciplinary action by BD on conviction of any offence concerning corruption or fraud relating to building works.

- (2) While the tendering process for carrying out mandatory building inspections and matters relating to the bidding process are private commercial activities between building owners and building practitioners, it is obvious from the above that BD is well aware of the potential risk of corruption involved in such activities and has alerted the parties involved.
- (3) If Members have any views on matters relating to the tendering process, they are welcome to provide details to this Office. We will consider whether the issue can be examined from an administrative point of view.

3. **Issues relating to the setting of the cut-off line for free blood testing for residents of public housing estates which have excess lead in the drinking water**
(raised by Dr Hon Helena WONG Pik-wan)

[For children below eight living in public housing estates where excessive lead is found in the drinking water, the Government will provide them with free blood testing for lead. However, free blood testing will not be provided to residents at eight or above who have lived in the affected estates and hence taken lead-contaminated drinking water for a long time. Since the setting of the cut-off line at eight is far from convincing and may constitute maladministration, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) We note that the Government considers children under eight, pregnant women and lactating women to be groups at a higher risk in the Incident of Lead in Drinking Water. Hence, they are given priority in the distribution of limited resources for blood

taking and blood testing. In our view, it is the professional judgement and policy decision of the Government's professional team that after assessing the high-risk groups in the Incident, it has given them the priority to receive the relevant services. At present we do not have any substantive evidence of maladministration in its decision. Nor have we received any related complaints so far.

- (2) Nevertheless, this Office will pay close attention to the development and decide whether or not to initiate a direct investigation. In case we decide that investigation is necessary, we will publish a report when the investigation is completed.

4. **Issues relating to the monitoring of the product safety and installation method of wall-mounted kettles**
(raised by Dr Hon Helena WONG Pik-wan)

[Since the Government does not monitor the product safety and installation method of wall-mounted kettles, will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) We notice that there are media reports about excessive lead content found in the welding materials of wall-mounted kettles and the lack of Government regulations. On 16 October and 18 November 2015, in its response to the motion initiated and the questions raised by Legislative Council Members, the Development Bureau ("DB") explained that under the Waterworks Ordinance and Waterworks Regulations, wall-mounted kettle is a kind of water using apparatus, not an installation of the inside service. The safety of water using apparatus is not regulated under the Waterworks Regulations. After a preliminary inquiry, DB admitted that there is no provision in the existing legislation for regulation of wall-mounted kettles. In view of the excessive lead content found in the water samples taken from wall-mounted kettles, DB is conducting an investigation jointly with the Water Supplies Department and other departments concerned and they will follow up on the relevant regulation problem.
- (2) This Office will pay close attention to the development and decide whether or not to initiate a direct investigation. In case

we decide that investigation is necessary, we will publish a report when the investigation is completed.

5. Issues relating to the regulation of online sale of imported food products
(raised by Dr Hon Helena WONG Pik-wan)

[Due to the lack of effective regulation of online sale of imported food products, the public health cannot be safeguarded. Will The Ombudsman consider initiating a direct investigation into the matter?]

- (1) This Office has paid great attention to whether the Government's regulatory measures on food safety are adequate and effective.
- (2) We note that there are recent incidents relating to public health problems caused by some imported food products purchased online, and the community is concerned about whether the Government's relevant regulatory regime is effective.
- (3) As far as we understand, existing legislation regulating food safety and food business operators is also applicable to online food trade.
- (4) Currently, operators engaged in the sale of "restricted food" (such as sashimi and sushi) in Hong Kong are required to obtain relevant permits. To address the issue of online sale of such food products, the Food and Environmental Hygiene Department ("FEHD") has drawn up a new set of licensing conditions for the permits, requiring the operators to ensure that all food products are imported from approved sources, and are protected from interference during transport to reduce the risks of cross-contamination. The operators are also required to display on their websites the permit numbers, registered addresses and food products they are permitted to sell for consumers' reference, so that consumers can verify such information on FEHD's webpage. For "non-restricted food" (such as pastry and desserts), FEHD is also considering to add similar conditions to the relevant licences (such as the Food Factory Licence), requiring websites selling those food products online to display the above information for consumers to verify.

(5) We will continue to pay close attention to the issue. Where necessary, we will launch a direct investigation.

6. **Issues relating to the provision of subsidized child care services for primary, kindergarten and pre-school children**
(*raised by Dr Hon Helena WONG Pik-wan*)

[As the provision of subsidized child care services for primary, kindergarten and pre-school children is seriously insufficient, will The Ombudsman consider initiating a direct investigation into the matter to address the needs of parents?]

(1) The question of whether the supply of subsidised child care services is insufficient to meet the demand essentially falls within the scope of Government policies and allocation of public resources. Should information reveal that there are significant problems in the work procedures or administrative measures, we will consider initiating a direct investigation.

7. **Issues relating to the referral services of the 1823 Call Centre**
(*raised by Hon WONG Yuk-man*)

[As the 1823 Call Centre has allowed members of the public to abuse its referral services, will The Ombudsman consider initiating a direct investigation into the matter?]

(1) The main role of 1823 is to facilitate Government departments in handling public enquiries and complaints. Its basic function is to “refer” public enquiries and complaints to the appropriate departments.

(2) Nevertheless, as far as we know, 1823 will not accept blatantly unreasonable requests, such as requesting 1823 to refer a complaint to the three Principal Officials and 12 policy bureaux for handling in parallel. Instead, 1823 will only refer a complaint to the departments that it considers to be most appropriate. Moreover, if any member of the public repeatedly makes the same complaint and the department concerned has already given a number of replies and decided

not to take any further action, 1823 will stop referring that same complaint to the department again.

- (3) If Members have any views regarding 1823's referral services, they are welcome to provide details to this Office. We will consider whether the issue can be examined from an administrative point of view.