

The Ombudsman's Review



This report, my first, ushers in the twenty-first anniversary of ombudsmanship in Hong Kong. Over the decades, our Office has endeavoured to raise the quality of service and the standard of administration in the public sector. Thanks to community support and Government compliance, we have had quite significant successes.

Breakthrough on Long-standing Problems

The Hong Kong Post Circular Service delivering on a massive scale unaddressed circular mail, largely commercial advertising, has annoyed many recipients as “nuisance”. On our recommendation, Post Office is about to make it possible for prospective recipients to opt out.

Unauthorised building works (“UBWs”) in New Territories “small houses” have long been a problem. We completed a direct investigation in 2004 and recommended *inter alia* that the Administration develop a realistic plan for effective enforcement and explore the feasibility of rationalising existing UBWs that are safe, not serious and therefore tolerable, subject to a penalty payment. At long last, the Administration has mapped out a broad framework on this basis.

The Hong Kong Examinations and Assessment Authority had been refusing applications from candidates for copies of marked examination scripts. They argue that such documents were not useful to the applicants and handling such applications would place an excessive burden on the Authority. After prolonged exchanges, we convinced the Authority that its refusal was in breach of the Personal Data (Privacy) Ordinance, under which candidates should have access to marked examination scripts containing their personal data. As from 2009, candidates may obtain their marked examination scripts.

The Small Claims Tribunal Registry used to issue an order or award to the litigating parties about eight days after the order or award was made by the Adjudicator. As the time limit for appeal or setting aside of the order or award is seven days, this posed a problem for litigating parties. In 2004, we handled a related complaint and recommended that the Judiciary Administrator speed up the process. The Judiciary Administrator has since set up a working group to tackle the problem and eventually reduced the average time for issuing an order or award from about eight days to less than five.

These examples illustrate the wisdom of the time-honoured adage: where there is the will, there is a way. It just needs the willingness to “think out of the box”.

Catalyst for Change

It is encouraging to see some departments initiating improvement in the course of our investigation. In this context, we are a catalyst for reform.

One example is our direct investigation on the Regulatory System of Lifts. In response to our inquiries, the Electrical and Mechanical Services Department promptly tightened monitoring of registered contractors’ examination of lifts and set a time limit for staff to urge the contractors to rectify any irregularities identified during inspections.

Similarly, immediately after we initiated inquiries into the Effectiveness of Administration of the Code on Access to Information, the Constitutional and Mainland Affairs Bureau enhanced efforts in training for civil servants in implementation of the Code and publicity for educating citizens on their right of access to information.

I commend the positive and proactive attitude of such departments and bureaux.

Hard Nuts for Cracking

However, there are issues requiring inter-departmental action which tax individual enforcement agents and which, we believe, could be effectively tackled by joint action under District Administration. This points to the need for greater empowerment of District Councils and District Offices, to reinforce their mandate for resolving local problems. Examples are roadside skips, illegal parking of bicycles and on-street promotional activities, all of which cause considerable aggravation to the community.

I have urged the Administration to give this early and serious consideration.

Departments at times come under fire due to the shortage and frequent turnover of short-term contract staff. The Joint Offices, manned by the Buildings Department and the Food and Environmental Hygiene Department, are a particular case in point. Their investigation of seepage complaints chronically suffers delays and disruption for this very reason.

By insisting on engaging staff on such terms and not addressing their wastage, Government is practically creating a rod on its own back. Thus, a scheme intended to offer a convenient “one-stop service”, the Joint Offices have sadly become a “whipping boy”. Meanwhile, the two departments concerned continue to be targets for complaints.

Public Misconception

Complaints inevitably have to be assigned to different investigators for inquiry and analysis. Some complainants dissatisfied with the outcome of their case blame it on the individual case officers. In fact, findings from investigation and reports are invariably put to me personally for scrutiny and final decision before issue. Conclusion and recommendations are, therefore, not the views of the case officer but mine and thus the institutional stance.

There is no case for criticising or complaining against the case officers. Complainants with fresh arguments or new evidence are welcome to seek a review of my decision.

Ultimately, complainants have recourse to the Courts for judicial review.

Outcome of Jurisdictional Review

The Administration has come to a conclusion on our jurisdictional review, mentioned in our Annual Reports since 2006. It has clarified its stance *inter alia* on the restrictions on The Ombudsman’s powers *vis-à-vis* personnel matters and Government decisions on land transactions. Four of the eight public bodies we recommended for inclusion in The Ombudsman’s schedule will be added to my purview.

This is likely to raise our caseload. We will watch the effect on our manpower resources. Whatever the outcome, I pledge my best endeavours to our mission for improvement to public administration and promotion of fairness.

Alan N Lai
The Ombudsman
31 March 2010

