

LCQ11: Complaints handled by Ombudsman

Following is a question by the Hon Doreen Kong and a written reply by the Chief Secretary for Administration, Mr Chan Kwok-ki, in the Legislative Council today (June 26):

Question:

Section 10(2)(d) of The Ombudsman Ordinance (Cap. 397) stipulates that the Ombudsman may in his discretion decide not to undertake or continue an investigation into a complaint, if he is of the opinion, having regard to all the circumstances of the case, that any investigation or further investigation is for any other reason unnecessary. There are views pointing out that, notwithstanding this provision which requires the Ombudsman to consider all the circumstances of each case before exercising his discretionary power, the Office of the Ombudsman (OTO) states on its website that OTO usually does not investigate complaints about actions taken fully in line with a policy which is made with proper authority following a due process. In this connection, will the Government inform this Council:

(1) whether it knows how the Ombudsman defines government "policy" and government "policy decision" when handling complaints;

(2) whether it knows if it is the case that (i) actions taken fully in line with policies made with proper authority following a due process and (ii) all administrative decisions made thereunder will not be considered by the Ombudsman as having constituted "maladministration" as defined in section 2(1) of Cap. 397 anyway, irrespective of whether the Ombudsman has given due regard to all the circumstances of the cases concerned, and the Ombudsman's justifications for that; and

(3) as I have received a complaint from a member of the public pointing out that the internal procedures of OTO for reviewing its original decision do not conform to the principle of natural justice because (i) only the government department under complaint (and not the complainant) is entitled to comment on the draft review and (ii) the review is handled by the same officers who made the original decision (and not by other officers) before submitting to the Ombudsman for final decision, whether the Government knows how such procedures can be improved?

Reply:

President,

In response to the Hon Doreen Kong's question, the Government's reply in consultation with The Ombudsman is as follows:

(1) and (2) Under The Ombudsman Ordinance (Cap. 397) (the Ordinance), The Ombudsman may investigate into any action taken by the Government or major

public organisations which constitutes maladministration. Maladministration may take many forms, e.g. abuse of power or authority; delay/inaction; disparity in treatment; failure to follow procedures, etc. The Ombudsman is vested with extensive investigative powers with respect to maladministration under the Ordinance. He may obtain any information, document or thing from such persons, and make such inquiries, as he thinks fit. He may summon before him any person who in his opinion is able to give any information relating to any action that is being investigated by him, and examine the person under oath and require the person to furnish to him any information and to produce any document or thing relates to that action. The Ordinance also stipulates that The Ombudsman shall act in accordance with his own discretion in determining whether to undertake, continue or discontinue an investigation.

On the other hand, The Ombudsman usually does not investigate complaints about actions taken fully in line with a policy which is made with proper authority following a due process. When performing his duties under the Ordinance, The Ombudsman will generally define policy as a principle or statement of intent of a department or organisation to guide its decisions and actions. The process of policy-making typically involves problem identification, options generation, analysis, consultation, decision-making, implementation and evaluation, etc. The authorities concerned will cautiously consider what is in the public interest, weigh the options, analyse stakeholder opinion, set priorities and allocate resources. In this light, it would generally be inappropriate for The Ombudsman to make retrospective judgement on the appropriateness of a policy after it has been made.

The Ombudsman has been vigilant in assessing complaints about policies. Research will be conducted in accordance with the Ordinance and The Ombudsman's powers to find out whether the due process was followed or whether maladministration was involved in the policy-making process.

(3) When seeking a review, a complainant is required to furnish The Ombudsman in writing with justifications and supporting information. The Ombudsman will re-examine the case in detail and where necessary seek further information or comments from the departments or organisations under complaint. The Ombudsman himself will make a final decision on whether the original conclusion should be upheld or varied.

According to the Ordinance, where The Ombudsman considers that there may be sufficient grounds to make a report that may criticise or adversely affect any officer, department, organisation or person, he shall give them an opportunity to be heard.

Investigations are conducted by investigation officers hired and assigned by The Ombudsman. However, they do not have the authority to make a decision on whether a complaint is substantiated or not. The decision rests with The Ombudsman. For efficiency, a review of the evidence will usually be carried out by the original investigation officers because they are familiar with the facts of the case and the practices and procedures of the departments or organisations involved. That said, The Ombudsman may consider assigning a review to other investigation officers at the complainant's

request, but the review process may take longer to complete. In any case, review decisions rest with The Ombudsman himself.