

A SURVEY OF THE COMPLAINT-HANDLING
INSTITUTIONS IN HONG KONG

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Unlike many liberal democratic countries which have introduced complaint-handling institutions, Hong Kong does not have a well-developed, parallel political system which can take up citizens' grievances against maladministration. Legislation councillors do, on occasion, voice complaints about administrative malpractice but they are appointed, not elected, and their voices remain muted. There are no political parties and pressure groups, while numerous, operate for the most part outside the administrative system and are not, in any event, primarily concerned with individual citizens' grievances. The handling of citizens' complaints, therefore, devolves largely on the administration itself and the perceived need of government to provide channels to deal with such complaints.

¹This is an extract from Rebecca Wong Kit Lin's, *An Appraisal of the Channels for the Redress of Grievances and the Processing of Public Complaint Information: The Case of Hong Kong*, a dissertation submitted in partial fulfillment of the requirements of the M.Soc.Sc. (Public Administration) degree, Department of Political Science, University of Hong Kong.

I. GOVERNMENT'S ATTITUDE TOWARDS PUBLIC COMPLAINTS AND THE DEVELOPMENT OF INSTITUTIONALIZED ARRANGEMENTS FOR THE REDRESS OF GRIEVANCES: A HISTORICAL REVIEW

A. Evolution of Policy for Handling Complaints

The development of government policy and procedures for handling complaints over the last twenty years can be described as a gradual shift of emphasis from internal handling of complaints by the departments to whom they are addressed, to the external processing and analysis of complaints by institutions outside the departments concerned or outside Government service and ultimately back to improving the complaint-handling procedures within government departments.

Few departments were operating formal complaint procedures until the late 1960s when the development of outside institutions for redress of citizen grievances received significant impetus and the reception of complaint referrals channeled from them correspondingly required development and formalization of streamlined complaint systems within departments. Although internal complaint procedure is beyond the scope of this paper, it should be noted that in those few departments which had a complaint system, it operated on a haphazard and uncoordinated fashion – areas of responsibility were not clearly defined, often the officer who made the decision himself investigated the complaint. Few departments considered the monitoring of complaints as a source of management information and no government-wide instructions existed for the guidance of departments until 1979 when the Administration Branch of the Government Secretariat formally promulgated a "Guide on Departmental Complaints Procedure" which was subsequently codified in the Manual of Office Procedures.

The Kowloon Disturbances in 1966 and perhaps to a lesser extent the riot in 1967 (which was basically a spill over of the Cultural Revolution in China) were generally interpreted as indications that Government not only was out of touch with popular sentiment but that the younger generation was increasingly prone to protest at a situation which their parents might tacitly accept. In view of this change in public attitudes, recognition of the need for improved communication with the public developed in Government. In 1968, the City District Officers scheme was introduced and in 1970 the

UMELCO office was expanded to assume its newly publicized role as a redress system.

At the same time, in 1969, the Hong Kong branch of Justice produced a report recommending the establishment of an independent office of an ombudsman empowered to investigate complaints of maladministration. This suggestion was well received by the press, the Hong Kong Bar Association, the academic community and some elected urban councillors, but did not find favour with the government bureaucracy which considered there was no shortage of effective channels for getting complaints investigated or airing grievances.²

Apart from the internal complaint procedures in departments, the channels then existed include the ward system of the Urban Council, the City District Offices and the UMELCO, all of which, in one way or the other, could be viewed as part of or an extension of Government. The Urban Council is a public body and the only Council which has an elected element, but half of the membership are appointed by the Governor and it discharges its responsibilities through a government department, i.e., the Urban Services Department. Its powers and functions are also limited to public health, environmental hygiene, recreation and amenities. The CDOs are the operational units of the Home Affairs Department, while the Unofficials of the Legislative and Executive Councils all owe their appointments to Government, and hence tend to be seen by the people as part of the machinery against which complaints are launched.

But Government spokesmen and officials of UMELCO argue that it is precisely because they are part of Government that they (with particularly the UMELCO in view) are able to act effectively.³ It is however important to recognize that lack of confidence in the administration might be extended to these channels of redress: people might be unwilling to complain because they view the Government as the instrument and preserve of a privileged ruling class with these institutions as its extension. If the riots in 1966 and 1967 are genuine demonstrations of discontent at a foreign colonial government (this sentiment was particularly heightened in the 1967 riot), there is every reason to doubt the efficacy of and the public confidence in those complaint-handling agencies under the

²John Walden, "Does Hong Kong need an Ombudsman?" (Address to the H.K. Observers) *South China Morning Post* April 12, 1979, see also *South China Morning Post* October 13, 1974.

³Ian Scott, "Hong Kong" in Gerald E. Caiden (ed) *International Handbook of the Ombudsman: Country Surveys* (Westport:Greenwood Press, 1983).

auspices of the Government. This may provide a partial explanation for the decline in the number of complaints handled by UMELCO in recent years;⁴ other equally valid explanations could be found in the inadequate publicity for the complaint-rectifying work of the UMELCO⁵ and the general improvement in the internal complaint-handling by government departments, following the Government-wide guideline in April 1979. It is therefore necessary to examine more closely the strength and limitations of each of the redress systems.

B. Definition of Public Complaints

In the present context, complaints are defined as objections by a member of the public to the standards of service offered by government departments, thus excluding complaints against public bodies and complaints to the Consumer Council since they invariably are launched against the private sector. For purposes of the study, statutory appeals and petitions are excluded since adequate facilities for administrative appeal are laid down in the relevant legislation or, in Government's General Regulations.

This working definition is in line with Government's definition of complaint as "an expression of dissatisfaction with a service with which a government department is concerned" as contained in the "Guide on Departmental Complaints Procedure" promulgated to departments via General Circular No. 12/79 issued by the Director of Administration and Management Services in April 1979. The Government's definition excludes statutory petitions and classifies complaints into three broad categories: objections to the standard of service offered; complaints arising from the implementation of policy; and dissatisfaction with government policy itself.

Objections to the standard of service include those concerning staff conduct such as incivility, complaints of poor service such as delay, inaction or inefficiency. Complaints arising from the implementation of policy include "non-performance by a department of its acknowledged public duty", departmental actions "for which it does not have authority", "the apparent injustice of a decision either because some vital factor has not been taken into account ... or insufficient weight has been given to it in reaching the

⁴ibid.

⁵Until the end of 1978, UMELCO used to publish case summaries which gained routine coverage in newspapers and were featured in a weekly programme on the Chinese channel of Radio Hong Kong. This practice has ceased to avoid being too critical.

decision", "the apparent injustice of a policy or action, regardless of any authority for carrying it out or of how politely and efficiently it may have been executed", and "complaints arising from the failure of the complainant to receive privileged treatment". Dissatisfaction with policy refers to incidents where "departmental policy or practices do not provide for the service which the complainant expects; and the application of policy results in a departmental decision unfavourable to the complainant".

This arbitrary categorization of complaints apparently ignores those against acts of maladministration, i.e., complaints that an administrative authority has failed to discharge the duties of its office in accordance with proper standards of administrative conduct. Neither does it provide sufficient focus on complaints against discretionary decisions where the bureaucrat exercises a measure of personal judgement, and the individual wishes to contest it not on basis of alleged bias, negligence or incompetence, but that the decision is, in all special circumstances required by his case, misguided, inappropriate or just plain wrong. In essence, this type of complaint is one where the individual disagrees with the way in which discretion has been exercised but has no formal avenue to challenge it. Indeed, appeals against individual decisions may or may not involve questions of policy, and the administrative actions criticized are not necessarily evidence of bad faith or deliberate error – as much as the fact that individual hardship is not the only (or even valid) test of a 'bad rule'; such hardship may be a necessary consequence of a desirable rule. For example, a policy to cut down public expenses very strictly must necessarily cause considerable hardship to individual citizens.

C. Government's Attitude Toward Complaints

Nevertheless, the "Guide on Departmental Complaints Procedures" must be considered as a great leap forward on the part of the Central Administration of the Hong Kong Government which, for the first time, formally recognized the value of complaints as management information. It called for an open attitude towards complaints and considers that even unjustified and misguided complaints should not be treated lightly, and that complaints could be anticipated by publicizing policy, eligibility criteria, procedures and changes made; by adequate explanation of reasons for decisions; and by supervision of staff in direct contact with the public. Although it considered standard procedure for the

handling of complaints may not be appropriate for all departments, it advocated, among other things, that all incoming complaints should be documented, classified and analyzed by subject matter, frequency, source and response, so that they could throw light on possible shortcomings in policy, procedures or staff management. And statistical records of complaint should be maintained and analyzed to reveal trends and patterns.

Whether functional departments review their complaint procedures should form the subject of a separate study. But it is apparent that the Government favours the handling of public complaint by internal procedure within departments rather than by having an autonomous office (independent from the Civil Service, like that of an ombudsman) to investigate impartially complaints against actions of the bureaucratic machinery. It does not perceive the complaint office's independence from Government and bureaucracy as either essential or meaningful – in that if it is publicly known that the office is independent enough to be able to fight cases to the finish, to initiate inquiries into allegations of maladministration quickly and fairly, and eventually to build a tradition of strong and impartial criticism of Government on the one hand and of helpfulness to citizens in their dealings with the bureaucracy on the other, justice will be better served, and efficient and humane administration will be promoted. This defensive attitude on the part of a self protective bureaucracy is very understandable and can be traced back in the development of institutions for the redress of grievances in the 60's.

II. THE COMPLAINT-HANDLING OPERATION OF THE URBAN COUNCIL WARDS, THE CITY DISTRICT OFFICES, THE UMELCO AND THE CAPO: AN ASSESSMENT

The following paragraphs attempt to analyze and appraise rather than merely describe the four existing channels for redress.

D. Urban Council Ward System

The Ward System was instituted in November 1965 to create a presence of Urban Councillors, both elected and appointed, among the people. It was specifically meant to provide informal contacts between councillors and the public. The urban area was divided first into fourteen (and currently eleven) wards, with two or three councillors responsible for each. Each ward office is manned by a clerk whose duty is to arrange interviews with an Urban Councillor for members of the public who want assistance or advice in either personal matters or their dealings with government departments, or simply to lodge a complaint. Members of the public may freely seek an interview with any councillor and need not be a resident of the district of the ward; they can further bring to the attention of the councillor any problems or complaints whether they fall within the jurisdiction of the Urban Council or its executive arm, the Urban Services Department, since the councillor may also hold membership on other councils or committees.

The Urban Councillor's wide discretion in regard to his own jurisdiction contrasts sharply with his lack of real powers: his powers are restricted to advice to the citizen and/or officials, expressions of opinion, and in the event that the case is not satisfactorily resolved, escalating it to a higher level of government. He however has no access to official documents, and generally lacks the time or resources to make his own investigation on a routine basis. His usual method of dealing with a complaint is to send an inquiry to the department concerned. But referrals alone could not in all circumstances ensure an impartial investigation as naturally the Department being complained of is likely to carry out a process of self-justification, put the best light on its own case, and the councillor has no impartial source of information. Neither has he the expertise, files or technical assistance materials to enable him to wend his way into the specialized areas of government law, policy and procedures.

Nevertheless, the mere existence of the councillors (especially the elected ones), independent of and distant from Government, to whom anybody may carry his complaints, serves to sharpen the attention of the authorities and to counteract tendencies toward abuse of powers and arbitrary decisions. Of necessity this tonic effect on the administration supposes energetic and persistent activity on the part of the councillor who can always resort to the useful weapon of the threat of publicity – case summaries as a discreet form of the carrot and stick of publicity serve a disciplinary purpose. It therefore appears that the impact of the Ward System is very uninstitutionalized, the extent of its success and effectiveness in rectifying complaints depends largely on the diligence and initiative of individual councillors. This fosters the belief that cases championed or forwarded by certain councillors are likely to yield a favourable result, encourages escalation of complaints unnecessarily and causes undue priority to be given to those complaints because they are so sponsored. This is reflected in the Ward Office statistics (see Appendix 1): the number of cases by Districts reflects the popularity of certain councillors rather than the problems of various geographic areas. Mrs. Elsie Elliot who has been on the Council since 1963, and has gained leading votes in successive Urban Council elections and a reputation for reckless pugnacity, is generally seen by the underprivileged as champion of the people. She has over the years consistently received a greater number of cases.⁶

E. City District Offices

The City District Officer scheme was set up in 1968 "when problems of communication and of the humanization of bureaucratic Government were thrusting themselves before the reluctant public eye".⁷ The scheme provides a central government presence at the local level; it started with one office in each of the ten police divisions then in existence and currently has a total of thirty-one offices and sub-offices in the ten urban districts. The City District Officers are political officers with the aim, inter alia, of acting as "the voice, eyes and ears of Government", i.e., explaining government policies to the people of their districts and relaying public opinion to those parts of Government

⁶N.J. Miners, *The Government and Politics of Hong Kong* (Hong Kong: Oxford University Press, 1975) p. 165.

⁷Secretary for Chinese Affairs, *Report on the CDO Scheme* (Hong Kong: Hong Kong Government Printer, 1969) p. 38.

where it can be used to best advantage.⁸ Besides serving the Government, they are also charged with providing services for the community – to arouse the interest of residents in and focus their attention on community problems, to identify indigenous leaders and liaise closely with local groups; and services for the individuals – to help them with any personal problems, whether or not such problems are related to their own dealings with Government.⁹ "They do not have extensive executive functions but it is part of their duties to advise on the coordination of services. They are free to consider whether there should be any variation in emphasis in government policies in the districts and they may initiate proposals for new policies or new procedures. ... They are there to receive complaints, representations and personal problems arising from any government activity. The fact that they have no statutory powers and no authority over technical departments means that they can be given a latitude of influence and interest much wider than any ombudsman. It is thought the City District Officers can assist those suffering from a sense of grievance to present their cases coherently and, when necessary, to act as their advocate."¹⁰

The value of complaints channelled through CDOs as management information was recognized at the time the scheme was introduced. CDOs were directed that: "if you find that any policy or procedure generates a great many mystified callers (enquiries) this should be drawn to the attention of the department which should then take steps to improve its publicity or procedures."¹¹ This theme is reiterated in the Secretary for Administration's Management Circular of September 13, 1977, which spells out in specific terms the monitoring and coordinating role of the CDOs. As a monitor the "CDOs should identify apparent deficiencies in government performance ... by studying the demand for the supply of services, field inspections, study of complaints and by discussion with responsible local organizations and individuals. Where a CDO considers that the deficiencies appear to be real or the complaint justified he will write personally to the department requesting action or explanation. It is expected that the majority of problems will be solved in this way. However, in exceptionally difficult cases, he may refer the matter to the City District Commissioner who, at his discretion in important cases, will

⁸Directives to CDOs issued by Home Affairs Department, p. 2-5.

⁹Ibid.

¹⁰Secretary for Chinese Affairs op. cit., p. 3.

¹¹Directives to CDOs issued by Home Affairs Department, p. 14.

write to the Head of Department concerned, copying to the relevant Secretariat Branch.”

Despite the formal procedure outlined by the Management Circular, in actual practice, the CDO is rather low-keyed in dealing with public complaints. It operates merely as a referral system and acts as no more than a passive recipient of citizens' complaints, bringing the complaint to the attention of the agency, with the exception that it will be made right. This is evidenced by the Directives to CDOs: in dealing with complaints CDO "may assist the individual to formulate and to forward his complaint/suggestion to the departments concerned ... the background and personal details should be given and be followed by a statement of the case as seen by the complainant/suggestion maker with your own statement explaining quite clearly that these are not the views of the City District Office. ... The aim here is not to embarrass the other departments but to explain the point of view of the complainant in language which these departments will understand. Provided you only support cases with reasonable grounds for complaint, or special treatment, and develop close contact with responsible officers in the department mainly concerned and above all to remove any sense of injustice, there is much that can be achieved within these limitations. You will not be entitled to call for files from other departments and you will have to rely on your knowledge of departmental policy and practice and on your powers of persuasion in taking up these cases."¹²

The overriding concern is, therefore, to channel public complaints without embarrassing or offending the department against which they are launched. The 1969 Report on the CDO scheme by the Secretary for Chinese Affairs openly admits: "There is one field in which we (CDO) should not and do not court publicity, and this concerns our relations and consultations with other departments when their policies or decisions are called in question (by personal complaints)."¹³ Reiterating this, CDOs are further reminded by Directives that "offend(ing) officers in another department do ourselves and the CDO scheme no good ... when people complain in however convincing a manner, sit still and critically examine the complainant ... make a serious effort to see why the department has come to take the action it has. Somebody must have been convinced that the action was sensible and in the public interest. Why did they come to this conclusion? What points

¹²Directives to CDOs issued by Home Affairs Department, p 15– 16.

¹³Secretary for Chinese Affairs op. cit., p. 33.

has your complainant missed?"¹⁴ As far as complaint-handling is concerned, the objectives of the CDO Scheme are self-explanatory: it is hoped that with a knowing and responsible attitude towards the limitations and difficulties of the officials and the consummate skill needed in playing the role of 'friend of both but partisan to none', CDOs could better succeed in rectifying citizen grievances than other complaint offices.

From the onset CDOs were, perhaps, given idealized and somewhat conflicting objectives; service for the individual of necessity requires systematic and determined monitoring of deficiencies in Government performance with a view to effecting changes, and this brings them into serious problems in their relationships with departments. For one thing, they are not (and never set out to be) investigators with power to set things right, or a statutory authority to make independent reports; for another they rely too much on the good will and cooperation of functional departments in the fulfillment of their role as coordinator of district departmental programmes and district liaison committee work which requires inter-departmental support.

This is further complicated by the fact that a majority of CDOs were relatively junior generalist administrators, and thus ill-equipped to command compliance, not to mention respect, of those whose performance they were supposed to monitor, especially when they lacked the expertise in their dealings with professional departments. Their lack of authority leaves City District Offices unable to follow through the investigation of complaints without the cooperation of the departments concerned, and the progress of complaints handled by CDOs is not always monitored. The Management Circular of September 13, 1977 formalizes CDOs' relationships with departments and provides for channels of communication via the policy secretaries in difficult cases, but these channels are probably intended for major problems requiring cooperation or review rather than individual complaints, and may well involve extended timescales not suited to complaint-handling.

A former Director of the Home Affairs Department, in a retrospective evaluation of the CDOs, makes the following appraisal which fairly and squarely sums up the case:

"The CDO Scheme for all its other good points (and they were many) from the very outset failed to grasp the nettle of bureaucratic obduracy. As a matter

¹⁴"Relations with Executive Departments", Appendix II to Directives to CDOs issued by Home Affairs Department.

of policy CDOs were given neither rank to influence, nor power to direct, nor executive authority to co-ordinate. They were expected to secure the cooperation of their colleagues in other departments in the solution of local problems by the exercise of superior intelligence and by fostering inter-departmental goodwill. Yet being effective as monitors of Government performance meant reporting back shortcomings for which those same colleagues would be held responsible. It was assumed that their role was to use their influence to persuade dissenting elements in the community to accept unpopular decisions, not to speak out for them in opposing them.

...in the Hong Kong situation no organization that concerns itself with maladministration or redress of grievances can be really effective unless it is independent of the Government or, if it is an integral part of it, is vested with statutory powers to shield it from the influence of the establishment.”¹⁵

F. UMELCO

The Office of the Unofficial Members of the Executive and Legislative Councils was first established in 1963 but did not emerge as a major channel for complaints until 1970 when its first Administrative Secretary, an Administrative Officer Staff Grade C seconded from the civil service, was appointed. The UMELCO was, and still is, manned by staff, half of whom are direct recruits. Past and present incumbents of the Administrative Secretary post invariably have been seconded civil servants.

The UMELCO redress system is neither defined nor confined by law, but under the system the Unofficial Members have three rights: the right to information, including Government files and correspondence, policies, procedures and instructions; the right to access to senior government officers; and the right to challenge a department's action.¹⁶ It handles both appeals from people objecting to Government decisions and complaints of maladministration, as well as representations by interests groups against specific policy, social problems, or proposed Government actions. Complaints are processed by the Office's Complaints Division, while representations are handled by the Members Division; a

¹⁵John Walden, "Why CDO mission was doomed to fail", *South Morning Post*, July 17, 1981.

¹⁶ *UMELCO ANNUAL REPORT 1980* (Hong Kong: Government Printer), p.3.

fine line of distinction cannot however be easily drawn between the two, and the Complaints Division also receives appeals from groups who though not registering complaints against specific arbitrary administrative decisions have grievances about government policies and seek to change them.¹⁷

A complaint is initially investigated by an intake officer by way of interviewing the complainant and, if necessary, phoning the responsible officer in the department and paying site visits to learn all the facts about a complaint. Normally a memo would be sent to the department concerned for its comments; mostly cases are voluntarily reviewed at this stage, clear mistakes are willingly rectified and positive steps are taken to speed up the case if undue delay is the cause of the complaint. For complicated cases or disputed facts, joint investigation (mostly physical inspections) are carried out with the department so that both the UMELCO and the department see the case through the same lenses. The basic approach is to avoid coercion and work with the administration rather than against it in resolving complaints, so it is the preference of government departments to avoid confrontation with UMELCO. Hence the right to examine files is exercised sparingly; it is estimated that in less than 4% of the cases handled (these are reported to be about 200 per month) there was a need to call departmental files.¹⁸

A substantial number of complaints are handled without reference to the Unofficial Members although the two duty roster Members screen all intake complaint reports of the week and could take note of the content of the complaints and, if they so wish, monitor subsequent outcome of the case. Anyone can request to see a Member, but only 5 – 10% of the complainants do so either from the onset or at the final stage when they become dissatisfied with the outcome of the case.¹⁹ "In important cases involving a matter of principle or policy, or containing special features, and in all cases where a head of department's explanation appears to be inadequate or unsatisfactory, the Administrative Secretary of UMELCO Office may refer the case to an Unofficial Member to consider what further action should be taken."²⁰

Deadlock cases can be taken up with the department head, or within the Government

¹⁷Interview with the Chief Assistant Secretary, Head of the Complaint Division of UMELCO, on 20.7.81.

¹⁸ibid.

¹⁹ibid.

²⁰UMELCO Annual Report 1980, p.4.

Secretariat, either by the Administrative Secretary or one of the Members personally. If necessary, questions may be put in the Executive and/or Legislative Councils. This process is believed to result in not only the reversal of particular decisions but also in changes in departmental policy.

The UMELCO as a complaint-handling agency is however not without blemish. It is a quasi government-organ and must be viewed as such by the public since the Unofficials owe their appointment to Government and serve on a multiple network of boards and committees whose decisions the complainants seek to reverse – the UMELCO as a “court of last resort” and an appeal board of the internal grievance procedure is therefore in a somewhat embarrassing position. This semi-government image and the very lack of independence may mean that people with real grievances simply would not become clients of the UMELCO. This is partly reflected in the substantial decline in the number of cases handled over the years. The lack of publicity for UMELCO work could also be a contributory factor, and independent agencies such as the Independent Commission Against Corruption continues to receive non-corruption complaint cases.²¹ The outcome statistics at Appendix 1 show that 63.8% of the cases handled are assisted/advised, and this could be taken to mean that the UMELCO tends to attract a clientele which lacks the know-how in bureaucratic ways and hence can simply be helped by providing the relevant information or assistance of some sort or by referrals to the correct address to pursue his problem – a job which the CDO could well fulfill. The 2% unsuccessful cases, albeit a small percentage, also speak for themselves and the fact that UMELCO lacks the power to rectify wrong decisions – these cases are believed to be justified and have been pursued but have not been satisfactorily resolved.

Another problem with UMELCO is that, with half of the staff seconded from the civil service, a proper sense of distance and impartiality can hardly be developed and maintained in their monitoring of government shortcomings. Everyone is to some extent the prisoner of his past, a former bureaucrat will inevitably be too steeped in the ways of the civil service and too understanding of its problem when it comes to deciding whether or not a complainant has suffered injustice – his standards of propriety and fairness may be unique to those who have a long career in the civil service. Roy Gregory and Peter

²¹Ian Scott, “Hong Kong” op. cit.

Hutcheson for instance have noted that "there is in the world of officialdom a deep-seated tendency to overweight 'public interest' arguments and at the same time to pay insufficient attention to the legitimate rights and interests of the individual. ... Attitudes of this kind may serve to reinforce a persistent tendency for administrative decisions, once taken, to acquire protective 'halos' and special values."²² There is also the danger that "officials only temporarily seconded from agencies subject to their investigation ... may be motivated to ignore or minimize the importance of errors and failures in the hope of being treated with similar leniency after returning to their parent departments."²³

With the background of UMELCO staff in view, it is perhaps no wonder that UMELCO is more successful in its helping and facilitating role (outcome statistics at Appendix 1 indicate that 63.8% of all cases handled are advised or assisted) than in its handling of complaints against maladministration (only 12.1% of complaints and 14.8% of appeals are successfully dealt with). It appears therefore that the UMELCO tends to do best in cases that involve departure from accepted procedure, a disregarded claim of established rights, but not so well in weighing the merits of challenged administrative action or when there is a clash of values. UMELCO also performs a useful socializing function: in the process of handling complaints, its clients are educated about government policies, what they could have possibly done for themselves, what functions of government are being performed by various agencies, and what their limitations of powers are.

However, like the CDOs and Urban Councillors, UMELCO merely acts on complaints rather than actively pursuing them, and complaint handling is but one of the functions it discharges. It also provides an essential service to the unofficial Members by carrying out research, studying draft legislation, preparing information papers and taking follow-up action arising from meetings and so on. UMELCO is nevertheless more effective than the CDOs and the Urban Council Wards in at least two aspects: it has full-time staff to investigate complaints and is far more powerful because of both its formal and informal influences as the Unofficials are concerned with policy formulation and implementation.

²²Roy Gregory and Peter Hutcheson, *The Parliamentary Ombudsman: A Study in the Control of Administrative Action* (London: Allen and Unwin, 1975) p. 25.

²³*Ibid.*, p. 27.

It seems therefore to be in a uniquely favorable position to go beyond the immediate complaint and pursue the general implications of specific problems that come to its notice.

G. COMPLAINTS AGAINST THE POLICE OFFICE (CAPO)

Prior to the establishment of the Complaints Against the Police Office (CAPO), complaints against police officers were handled at the operational (District or Branch) level. To inspire greater public confidence in the impartiality of investigations the centralized Complaints Office was set up in September 1973, but it was not fully established as part of the Force Structure until the end of 1976 when plans were finalized to restructure the Complaints Office under the overall direction of the Commander of Personnel at Police Headquarters. The restructuring was meant to ensure "there is a system for following up any factors arising from complaints which highlight possible deficiencies in police procedures. Thus, lessons learned from investigations are subjected to further study to facilitate remedial action where appropriate."²⁴

Today, the Complaints and Internal Investigation Wing, headed by a Chief Superintendent of Police, is responsible for monitoring all complaints against police officers, investigating allegations of misconduct other than corruption, examination of discipline and internal procedures and the conduct of supervisory accountability studies to remedy faults in the system. Operationally, the wing is divided into the CAPO, which deals with investigations into complaints and criminal activities, and the Internal Investigation Office handling discipline, internal procedures and accountability studies.

Investigations into complaints against the Police are monitored by the UMELCO Police Group which was created in September 1977 to introduce an independent non-police element into the machinery for complaint-handling. The Group, composed of six unofficial members of UMELCO and the Attorney General as a co-opted member, meets monthly and has the following terms of reference: to monitor and review the handling of public complaints by the Police, to keep under review statistics of the type of conduct by police officers which lead to complaints, to identify any fault in Police procedure which might lead to complaints and to make recommendations to the Commissioner of Police or when necessary to the Governor.²⁵

²⁴*A Royal Hong Kong Police Review 1976* (Hong Kong: Government Printer), p. 10.

²⁵*Report on the UMELCO Police Group 1980* (Hong Kong: Government Printer), p. 4.

All complaints, irrespective of origin, are in the first instance vetted by CAPO for classification and reported to the UMELCO Police Group which may request priority for certain cases as it sees fit. While investigations of the majority of complaints are undertaken by CAPO itself, complaints alleging serious crimes and certain technical offences such as commercial crime and traffic charges, are allocated to the appropriate specialist divisions, and minor and trivial complaints such as the use of offensive language and overbearing conduct, are usually referred back to the Police formation concerned. At the conclusion of each investigation a full report is submitted to the UMELCO Police Group; the Group may at its discretion examine investigation files, direct a new line of enquiry to be pursued or order a special team in the UMELCO Office to review particular cases. Special attention is paid to withdrawn cases to ensure that they are not a result of pressure on the complainant. Appendix 2 lists the origin and nature of complaints received by CAPO in 1979 and 1980, and their outcome. It can be seen that most complaints were about abuse of authority arising from interface between a member of the public and a police officer, rather than the merits of a Government decision as in the cases processed by UMELCO.

However comprehensive the present monitoring checks may appear to be, there has been over the years widespread and continuing public concern about the operation of the existing arrangements:²⁶ because CAPO is staffed by police officers who eventually may be posted back to the operational lines, they are necessarily seen as being judge and jury in their own cause. The public unease over the thoroughness and impartiality of their investigations is further aggravated by the dissatisfaction over the high percentage of unsubstantiated cases, that is, of cases where the police officer is found to be innocent of the charges made. Of the total number of complaints investigated by CAPO in 1979, 74.4% were unsubstantiated, and in 1980 76% of the cases investigated were classified as unsubstantiated. These complaints are unsubstantiated because there is a lack of evidence, or a direct conflict between the evidence of the complainant and that of the officer allegedly at fault. Appendix 3 compares the occupations of CAPO's clients and

²⁶CAPO was repeatedly criticized by frequent letters to the press by complainants, and advocates for an independent CAPO such as Mrs. Elsie Elliot and Mr. Henry Litton, a prominent barrister-at-law, and pressure groups like the Hong Kong Observers, Association for the Promotion of Public Justice etc. See *South China Morning Post*, 28 April 1980; Nov. 7, 10, 24, 25, Dec 12, 15, 1981; and 4 Jan 1982.

outcome of their complaints, it is perhaps significant that the largest proportion of substantiated complaints come from what may be loosely termed the middle class.

It must be accepted that, however, there is no clear empirical measure of the actual extent of public satisfaction or dissatisfaction with the present procedure. Statistics on the origin of CAPO complaints, for instance, suggest that in both 1979 and 1980, reports made directly in person or by telephone to CAPO or a Police Station constitute the single greatest source of complaints (74.9% in 1979 and 72.6% in 1980). This may be interpreted as a sign of public trust in that people seem to prefer to deal immediately with the police. On the other hand, continued pressure for the establishment of an independent investigative body for complaints against Police equally indicates that the CAPO does not enjoy the full confidence of all sections of the community.

Notwithstanding the UMELCO Police Group's monitoring role, it is certainly the lack of any independent check on the present complaint-handling machinery which is the focal point for criticism of the procedure. A great degree of public unease is probably inseparable from the Police system which, in the eyes of the ordinary members of the public, operates largely behind closed doors, and it is a matter of grave concern that there is not truly independent scrutiny of the processing of complaints to ensure its thoroughness and impartiality. The UMELCO Group, for all its merits as the reviewing authority, suffers from two inherent limitations: firstly, ex post facto review, especially when it is largely confined to the paper vetting of reports, cannot exercise control over the handling of complaints; indeed, lacking the need investigatory expertise and skills, the Group is unlikely to arrive at conclusions greatly at variance with those submitted by CAPO. Secondly, the very lack of independent status of UMELCO and its image of a semi-governmental agency reluctant to confront the bureaucracy with controversy is no help in the winning of public confidence and giving the public an impartial view of the operation of the CAPO procedure. The remaining value of the UMELCO Police Group seems to lie in establishing the defects in the Police procedures, in the chains of command and in the operational techniques which give rise to complaints and recommending the necessary revision. This function of the Group is however somewhat obscure as its monitoring role does not cover the work of the Internal Investigation Office, and the number of substantiated cases is so small and insignificant that it is doubtful if the information generated could be of

much use.

H. A COMPARATIVE OVERVIEW

To recapitulate, neither the Urban Council Ward System, the CDO, nor the UMELCO provides a well-defined focus for complaints against maladministration as each has many other functions or services to discharge. CAPO does provide a well-defined focus for complaints but questions have been raised about its impartiality. Recent measures may do something to dispel the lack of public confidence although many of the difficulties seem inherent in the 'judge and jury of its own cause' procedures of the office.

The Urban Council wards represent an interface between the public and the Urban Councillors, and being more approachable, have so far attracted more personal assistance cases, covering a multitude of matters ranging from immigration problems to domestic squabbles. The CDO, though being a government department, has turned out to be viewed as a departmental adversary and cannot get needed cooperation. Despite their initial objective of acting as advocates for complaints, CDOs are overburdened with other functions some of which are incompatible with their complaint-handling role, and in the 70's have gradually shifted their emphasis to community building (mainly via the Mutual Aid Committees), environmental improvements and district liaison.²⁷ They now tend to be little more than referral centres for individual complaints. There is a grain of truth in Caiden's suggestion that while it is in the interest of the Government for an Ombudsman to conceive his function as public relations or an efficiency audit, he would then degenerate into a Government apologist or spy and cease to act as an independent investigator for the citizen against the administration – not so much because of governmental control but because of his reliance on the Government to endorse and implement his recommendations.²⁸

The defined roles of CDOs and UMELCO in complaint-handling overlap, although liaison on general matters routinely takes place at senior levels. Where individual complaints, however, are concerned, the relationship is blurred. Complainants are not usually referred to UMELCO by CDOs even when the CDOs' enquiries have proved

²⁷Barry Chio, "Vital Link with the Grass-roots", *South China Morning Post* May 28, 1981.

²⁸N.J. Caiden, "Ombudsmen for Under-developed Countries?" *Public Administration in Israel and Abroad*, Vol. 8 (Jan. 1968), p. 107-109.

ineffective.

Although the UMELCO perhaps fares better in terms of outcome because of its influence and the availability of investigatory staff, it suffers from severe limitations in view of the lack of independence and statutory powers. It nevertheless appears that it has been more successful in helping aggrieved individuals and facilitating their dealings with the government machinery, than with effecting widespread recommendations for the administrative system. Although its supporters may allege that it can utilize its broad perspective to stimulate general reforms by making general suggestions to policy branches in the Government Secretariat or by the Members' Council work, the administrative implications of UMELCO as a complaint-handling institution remains obscure.

Nature of UMELCO (completed during 1.9.79 to 31.8.80) by Outcome

	<u>Nature of Cases</u>		<u>Outcome of Cases</u>				<u>Total</u>
			<u>Successful</u>	<u>Advised/ Assisted</u>	<u>Unjustified</u>	<u>Unsuccessful</u>	
Complaints	545 (23.2%)	66 (12.1%)	315 (57.8%)	48 (8.8%)	4 (0.7%)	112 (20.6%)	545 (100%)
Appeal	1,066 (45.4%)	158 (14.8%)	690 (64.7%)	104 (9.8%)	38 (3.6%)	76 (7.1%)	1,066 (100%)
Request	306 (13.0%)	38 (12.4%)	211 (69.0%)	12 (3.9%)	5 (1.6%)	40 (13.1%)	306 (100%)
Proposal/ Suggestion	51 (2.2%)	1 (2.0%)	33 (64.7%)	1 (2.0%)	-	16 (31.3%)	51 (100%)
Enquiries	172 (7.3%)	2 (1.2%)	147 (85.5%)	5 (2.9%)	-	18 (10.4%)	172 (100%)
Private Civil Matter	58 (2.5%)	-	40 (68.9%)	3 (5.2%)	-	15 (25.9%)	58 (100%)
Outside UMELCO Jurisdiction	150 (6.4%)	-	61 (40.7%)	6 (4.0%)	1 (0.6%)	82 (54.7%)	150 (100%)
Total	2,348 (100%)	265 (11.3%)	1,497 (63.8%)	179 (7.6%)	48 (2%)	359 (15.3%)	

Source: Based on Tenth Annual Report of UMELCO, 1980

Comparative Analysis of Complaint Against the Police
for 1979 and 1980

A. Origin of Complaints Received

	<u>1979</u>	<u>1980</u>
Reported to CAPO or a Police Station in Person or by Telephone	1,713 (74.9%)	1,888 (72.6%)
Reported by Letter (to Box 999, CAPO or Police Formation)	197 (8.6%)	199 (7.7%)
Received from Police Public Relations Wing	21 (0.9%)	26 (0.9%)
Received from UMELCO, Urban Councillors, Solicitors	64 (2.8%)	45 (1.7%)
Received from Government Departments	164 (7.1%)	225 (8.7%)
Made in Court or to the Court	38 (1.7%)	58 (2.2%)
Received from Prisoner Reception Centres/Prisons	93 (4.0%)	160 (6.2%)
	<hr/> 2,290(100.0%) <hr/>	<hr/> 2,601(100.0%) <hr/>

B. Nature of Complaints Received

	<u>1979</u>	<u>1980</u>
Assault	695 (30.4%)	814 (31.4%)
Neglect of Duty/Failing to Take Action	396 (17.3%)	360 (13.8%)
Overbearing/Impolite Conduct	372 (16.2%)	472 (18.2%)
Abuse of Authority	327 (14.3%)	489 (18.8%)
Fabrication of Evidence	122 (5.3%)	127 (4.9%)
Other Offences	105 (4.6%)	94 (3.6%)
Use of Offensive Language	133 (5.8%)	123 (4.7%)
Threat of Assault/ Fabrication of Evidence	111 (4.8%)	113 (4.3%)
Police Procedure	29 (1.3%)	9 (0.3%)
	<hr/> 2,290(100.0%) <hr/>	<hr/> 2,601(100.0%) <hr/>

C. Outcome of Complaints Investigated During the Year

	<u>1979</u>	<u>1980</u>
Substantiated	370 (15.5%)	368 (13.3%)
Not Proven	212 (9.0%)	243 (8.8%)
Unsubstantiated	1,779 (74.6%)	2,109 (76.0%)
Malicious	22 (0.9%)	53 (1.9%)
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	2,383(100.0%)	2,773(100.0%)
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Complaints Withdrawn/Not Pursued	498	678

Source: Based on Reports of the UMELCO Police Group 1979 and 1980

Occupation of CAPO Complainants by Complaint Outcome
for 1979 and 1980

<u>Complainant's Occupation</u>	<u>All Cases</u>		<u>Substantiated Cases</u>	
	1979	1980	1979	1980
Professional Driver	12.5%	13.0%	13.8%	13.8%
Non-skilled Worker	25.5%	18.6%	16.9%	16.0%
Semi-skilled Worker	13.1%	13.9%	8.4%	11.7%
Skilled Worker	8.5%	8.5%	8.4%	2.1%
Professional	5.4%	6.7%	10.2%	14.9%
Clerical	--	1.8%	-	2.1%
Manager	3.4%	4.8%	6.2%	9.6%
Businessman	11.9%	11.2%	16.4%	10.6%
Government Servant	5.4%	6.9%	8.9%	10.6%
Tourist	0.1%	0.2%	-	-
Student	2.1%	3.7%	2.7%	4.3%
Housewife	3.9%	3.7%	3.6%	1.1%
Retired/Unemployed	8.2%	7.0%	4.5%	3.2%

Source: CAPO Annual Reports for the years 1979 and 1980