



廉政公署事宜投訴委員會 ICAC COMPLAINTS COMMITTEE

二零一六年年報

ANNUAL REPORT 2016



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FOREWORD BY THE CHAIRMAN

I am pleased to present the twenty-second annual report of the Independent Commission Against Corruption (ICAC) Complaints Committee, which provides an account of our work for the year 2016. Our Committee monitors and reviews, as appropriate, ICAC's handling of non-criminal complaints lodged against ICAC itself and its officers. To enhance public understanding of the complaint handling mechanism, this report explains in detail the investigation process and the mode of operation of our Committee.



In 2016, our Committee held three meetings to consider investigation and assessment reports on the complaints received. We formed our independent view on the investigation findings. Through careful examination of issues brought up in the complaints, both the ICAC and our Committee scrutinised relevant internal procedures, guidelines and practices of ICAC to identify room for improvement through their updating, refinement and rationalisation.

The publication of annual reports allows us to share the work of our Committee with the general public on a regular basis. We much appreciate your support and welcome any views that you may wish to share with us.

Hon Jeffrey LAM Kin-fung, GBS, JP
Chairman, ICAC Complaints Committee

ICAC COMPLAINTS COMMITTEE

Established on 1 December 1977, the ICAC Complaints Committee (“the Committee”) is responsible for monitoring and reviewing the handling by the ICAC of non-criminal complaints against the ICAC and its officers. The Committee comprises Executive Council and Legislative Council members as well as eminent members of the community appointed by the Chief Executive. Since 1996, the Committee submits an annual report to the Chief Executive to provide an account of its work in the preceding year. Moreover, the annual reports are tabled at the Legislative Council and made available to the general public as a measure to enhance the transparency and accountability of the Committee.

TERMS OF REFERENCE

- To monitor, and where the Committee considers appropriate to review, the handling by the ICAC of non-criminal complaints by anyone against the ICAC and officers of the ICAC.
- To identify any faults in ICAC procedures which lead or might lead to complaints.
- When the Committee considers appropriate, to make recommendations to the Commissioner of the ICAC, or when considered necessary, to the Chief Executive.

MEMBERSHIP



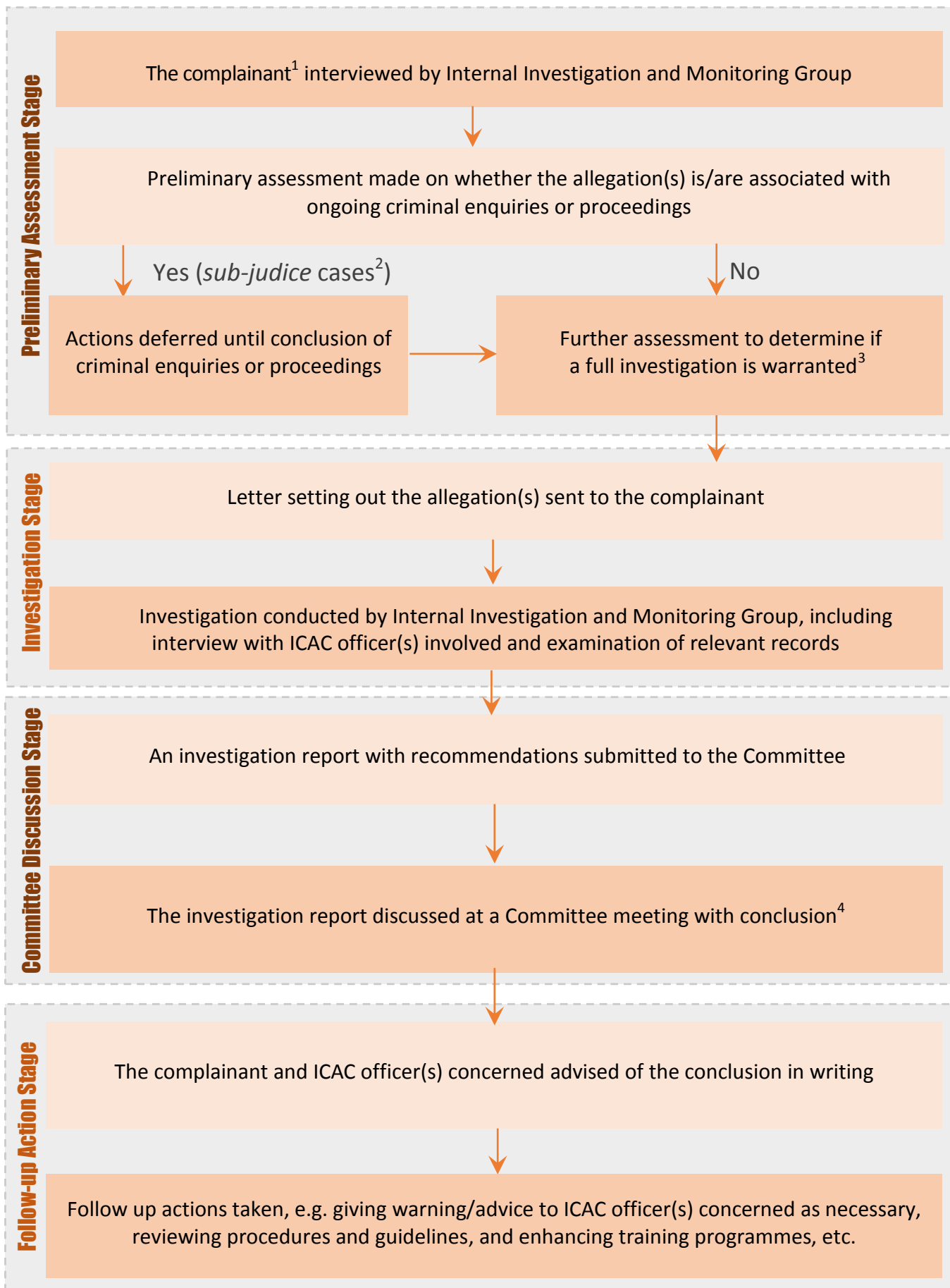
(From left to right) Mr Benjamin CHA Yiu-chung; Dr Anissa CHAN WONG Lai-kuen; Mr Paul LAM Ting-kwok; Hon Alice MAK Mei-kuen; Dr Hon Priscilla LEUNG Mei-fun; Hon CHEUNG Chi-kong; Ms Jennifer CHAN Sau-fong (Committee Secretary until 11 September 2016); Hon Jeffrey LAM Kin-fung; Mr Simon PEH Yun-lu, Mr Ricky YAU Shu-chun and Ms Joey TO On-ki (representatives of the ICAC); Mr Tony MA; and Mr Steven CHAN Hung-fan (Assistant Committee Secretary).

Membership List (from 1 January 2016 to 31 December 2016)

Chairman : The Hon Jeffrey LAM Kin-fung, GBS, JP

Members : Mr Benjamin CHA Yiu-chung
 Dr Anissa CHAN WONG Lai-kuen, BBS, MH, JP
 The Hon CHEUNG Chi-kong, BBS, JP
 Mr Paul LAM Ting-kwok, SC
 Dr the Hon Priscilla LEUNG Mei-fun, SBS, JP
 The Hon Alice MAK Mei-kuen, BBS, JP
 Mr Tony MA (*Representative of The Ombudsman*)

HANDLING OF COMPLAINTS



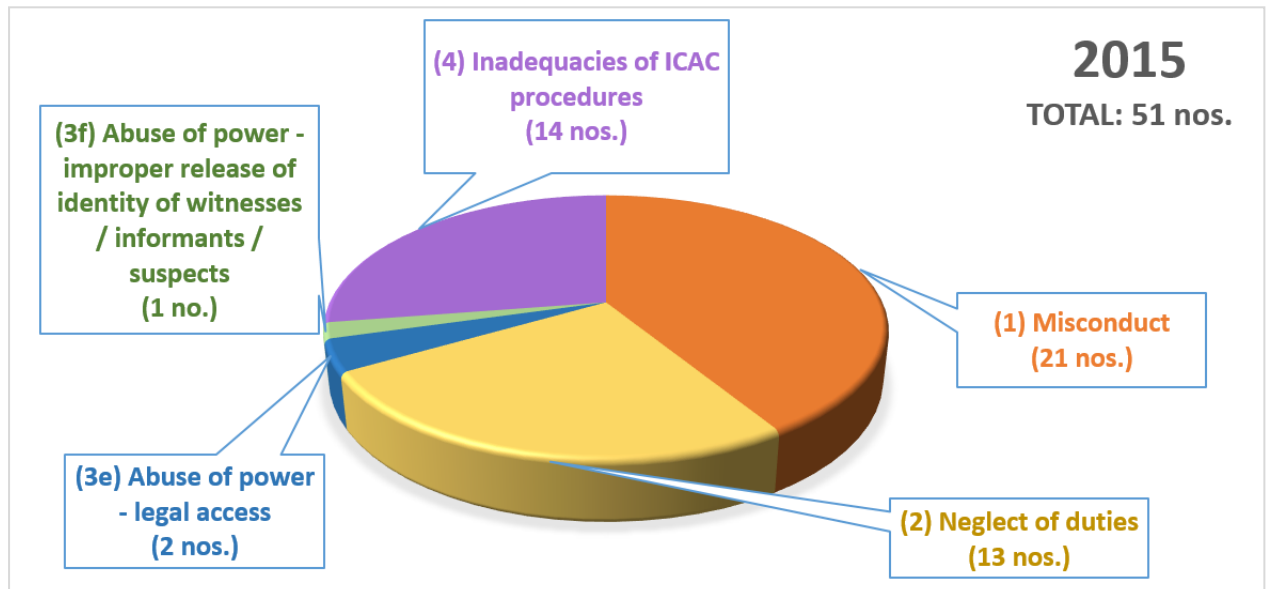
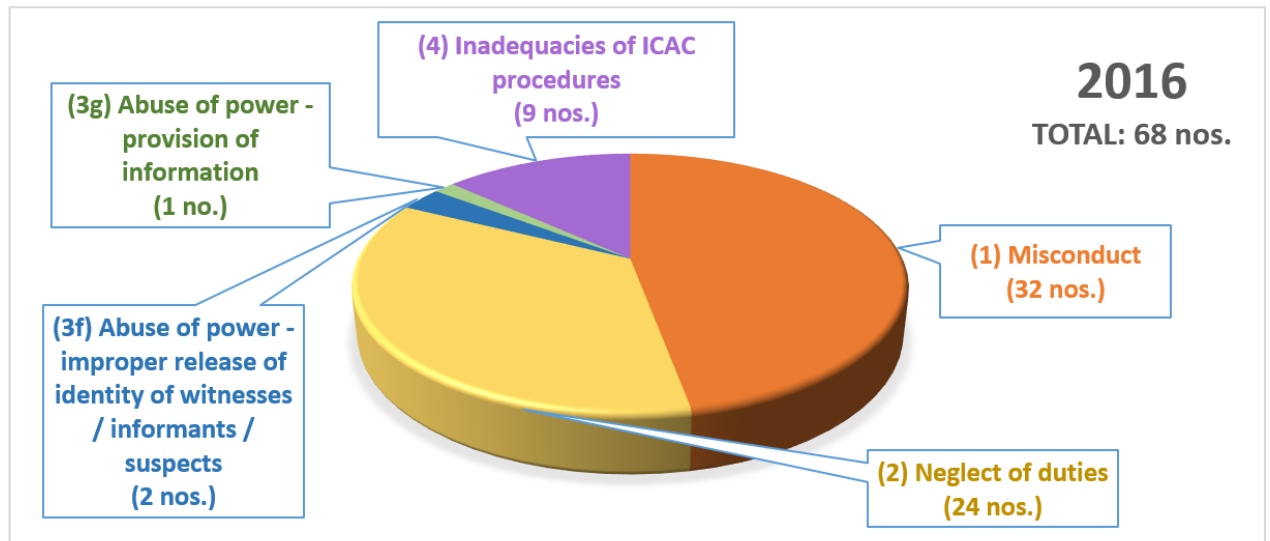
Remarks

1. The Administration Wing of the Chief Secretary for Administration's Office provides secretariat support for the Committee. If a person wishes to lodge a complaint against the ICAC or its officers, he/she may write to the Committee Secretary ("the Secretary"), or complain to the ICAC at any of its offices in person, by phone or in writing. The addresses of the Secretary and the ICAC offices are at Annex. When the complaint is received by the Secretary, the Committee Secretariat will acknowledge receipt and forward the complaint to the ICAC for follow-up actions. The Internal Investigation and Monitoring Group, which reports directly to Director of Investigation/Private Sector, in the Operations Department of the ICAC is responsible for assessing and investigating the complaint. Where warranted by circumstances, the Commissioner of the ICAC may make ad hoc arrangement to assign a particular complaint to designated officers outside the Internal Investigation and Monitoring Group for assessment and investigation.
2. Where the allegations in a complaint are directly or closely associated with ongoing criminal enquiries or proceedings ("*sub-judice* cases"), the investigation will usually be deferred until the conclusion of such criminal enquiries or proceedings. Pursuant to legal advice, the complainant will be informed in writing that the investigation into his/her complaint will be deferred, pending the conclusion of relevant criminal enquiries or proceedings. If the complainant still wishes to seek immediate investigation of his/her complaint but the subject matter of the complaint appears to be closely related to issues on which the court has yet to decide, the Commissioner of the ICAC will seek further legal advice and decide whether or not to maintain the decision to defer the investigation of the complaint. The ICAC provides a summary on *sub-judice* cases to the Committee for discussion at each Committee meeting.
3. Complaints which after preliminary assessment are considered by the ICAC as not warranting a full investigation will be processed by way of assessment reports. Such cases include complaints which are incoherent or irrational, repeated complaints previously disposed of through the Committee and complaints of which the subject matters are already decided by the courts. In respect of each case, the ICAC will state the reason(s) for not conducting a full investigation and submit an assessment report for the Committee's consideration. In 2016, the Committee considered and endorsed 11 assessment reports. The complainants were advised in writing that no further investigative actions would be taken on their complaints.
4. Members of the Committee may seek additional information and/or clarifications from the ICAC concerning the handling of the complaints and will consider the recommendations made in the investigation report before reaching the conclusions.

COMPLAINTS RECEIVED

In 2016, 27 complaints containing a total of 68 allegations against the ICAC or its officers were received, as compared with 19 complaints containing 51 allegations in 2015. The allegations registered in 2016 were made against misconduct of ICAC officers (47%); neglect of duties (35%); inadequacies of ICAC procedures (13%) and abuse of power (5%).

Number and category of allegations registered in 2015 and 2016



Category of allegation

1. Misconduct (e.g. behaving in a poor / impolite manner)
2. Neglect of duties (e.g. failure to conduct a thorough investigation)
3. Abuse of power -
 - (a) search
 - (b) arrest / detention / bail
 - (c) interview
 - (d) handling property
 - (e) legal access
 - (f) improper release of identity of witnesses / informants / suspects
 - (g) provision of information / documents
4. Inadequacies of ICAC procedures

COMPLAINTS CONSIDERED

The Committee held three meetings in April, July and November 2016 respectively. Of the 27 complaints received in 2016, investigation into 20 complaints covering 48 allegations was concluded with the relevant investigation reports considered by the Committee during the year. [Note: The other seven complaints covering 20 allegations were still under investigation as at the end of 2016]. The Committee also considered seven complaints received in previous years with the related investigation completed in 2016, which covered another 14 allegations. A summary of the allegations considered by the Committee in 2016 is shown in the table below.

Category of allegation	Number of allegations considered	Number of allegations found substantiated / partially substantiated
1. Misconduct	28	2
2. Neglect of duties	19	0
3. Abuse of power		
(a) Search	0	0
(b) arrest / detention / bail	0	0
(c) interview	0	0
(d) handling property	0	0
(e) legal access	0	0
(f) improper release of identity of witnesses / informants / suspects	2	0
(g) provision of information / documents	0	0
4. Inadequacies of ICAC procedures	13	1
Total:	62	3 (5%)

COMPLAINTS HIGHLIGHT

Of a total of 27 complaints covering 62 allegations considered by the Committee in 2016, three allegations (5%) in two complaints (7%) were found to be substantiated or partially substantiated. The substantiated or partially substantiated complaints concerned two ICAC officers, both of them were given advice by their senior officers.

In addition, during the investigation into a complaint where the allegation was found not substantiated, two ICAC officers, who though were not the subjects of the complaint, were found to have failed to ensure full compliance with the prescribed requirements of procurement activities. As a result, they were given advice by their senior officers to be more vigilant in handling procurement related matters.

The investigation reports of several complaints are summarised below to illustrate how the complaints were handled, particularly the investigative work conducted by the ICAC and overseen by the Committee.

Case 1

Case background

The complainant, a resident of an estate under the Home Ownership Scheme (“the Estate”), lodged a corruption report with the ICAC, alleging that unidentified officers of a government department might have accepted advantages from the Chairlady of the Incorporated Owners and the property management company of the Estate. ICAC’s investigation revealed no evidence of corruption or any other

offence. The Operations Review Committee (Sub-Committee) endorsed the ICAC's recommendation for no further action on the corruption report.

Subsequently, the complainant lodged a complaint with the ICAC against the case officer ("Officer A") for acting in an unprofessional and perfunctory manner in handling his corruption report and failing to conduct a thorough investigation into the same.

Investigation

Having examined the relevant records and interviewed Officer A as well as other ICAC officers involved, the Internal Investigation and Monitoring Group ("L Group") came to the view that there had been a thorough investigation into the corruption report. However, it was revealed that the complainant, after providing a witness statement to the ICAC in relation to the corruption report, had also sent a letter to Officer A to provide further information. Yet the complainant had not heard back from Officer A regarding his subsequent letter. During the interview with L Group, Officer A explained that after receiving the letter in question, he put it in the case file but took no other action, as he considered the contents therein containing no useful information for the corruption investigation.

Assessment

The allegation against Officer A was found partially substantiated as he should contact the complainant to acknowledge receipt of the letter in question and seek clarification on its contents as appropriate so as to avoid any unnecessary misunderstanding. Officer A was given advice by a senior officer that he should act in a more professional manner in handling correspondence from complainants. The Committee endorsed the relevant assessment.

Case 2

Case background

The complainant visited the ICAC Headquarters to make an enquiry and was received by a guarding officer (“Officer B”) on duty at the reception counter. The complainant later lodged a complaint with the ICAC against Officer B for being impolite to her during their encounter. She alleged that Officer B was sitting improperly and chewing gum while talking to her. When she asked Officer B for his surname and staff number, he had shouted the same to her.

On a separate occasion in the morning of a specified date in May 2016, the complainant tried several times to contact the Report Centre through the ICAC 24-hour hotline (“the Hotline”) but to no avail. She therefore further complained that the Hotline was not operating properly, causing her inconvenience.

Investigation

When interviewed by L Group, Officer B denied sitting improperly or shouting his surname and staff number to the complainant on the said occasion. He, however, admitted that he was chewing gum to freshen his breath when he received the complainant. Relevant CCTV footages covering the reception counter were examined, which supported the account given by Officer B. Investigation also revealed that one of the telephone lines of the Hotline system suffered from a technical problem in the morning when the complainant phoned in. Urgent repair work was carried out and the Hotline system had resumed normal later on the same day.

Assessment

The allegation against Officer B chewing gum while talking to the complainant was substantiated. Officer B was given advice by a senior officer that he should always behave and act professionally whilst on duty. The allegation that the Hotline was not operating properly was also substantiated but no further action was required as the technical problem had been duly fixed. The Committee endorsed the relevant assessment.

Case 3

Case background

Subsequent to the arrest by the ICAC for suspected corruption and other offences, the complainant was released on cash bail of \$100,000 to report to the ICAC on a specified date. However, the complainant failed to report to the ICAC as scheduled. At the same time, he claimed to have been mistreated and lodged a complaint against the case officer and her supervising Chief Investigator ("Officer C"). After investigation, the Committee endorsed the findings that the allegations made by the complainant were not substantiated.

Following the conclusion of the complaint, Officer C, pursuant to the ICAC Ordinance (Cap. 204), made an ex-parte application to the court for the forfeiture of the complainant's bail money. The complainant then lodged another complaint against Officer C, alleging that Officer C had deliberately omitted to inform him of the forfeiture application of the bail money, thereby depriving him of his right to submit representation to the court.

Investigation

When interviewed by L Group, Officer C explained that he had duly observed the established procedures in making an application to the court for forfeiting the bail money deposited by the complainant. Besides, the bail form signed by the complainant showed that he had acknowledged he owed the bail sum to the government if he failed to turn up at the specified date and time. Examination of the legal provisions and the related ICAC internal regulations supported the explanation of Officer C that ICAC officers were not required to give notification to an absconded bailee prior to a forfeiture application of bail money.

Assessment

The allegation against Officer C was not substantiated as Officer C had followed the law and the established procedures of the ICAC in the handling of the forfeiture application. The Committee endorsed the relevant assessment. Nevertheless, the ICAC had initiated a consultation with the Department of Justice on future handling of forfeiture applications in respect of notification given to absconded bailees.

Case 4

Case background

The ICAC used to procure alcoholic beverages in bulk for consumption in official entertainment in order to save cost as it was usually more expensive to have alcoholic beverages ordered in restaurants on each occasion. In the ICAC internal regulations, there were prescribed expenditure ceilings per person for the

provision of official meals. A standard ICAC form was introduced in mid-2008 to be used for claims of entertainment expenses. In July 2009, the ICAC internal regulations were revised to set out explicitly that expenditure per person for official entertainment expenses should include the cost of “food, beverages and tips”.

At a public hearing session, a senior ICAC officer (“Officer D”) allegedly admitted that she allowed her staff not to use the standard claim form for entertainment expenses and not to include the cost of alcoholic beverages procured separately in the total expenditure of official entertainments. The complainant lodged a complaint that Officer D had deliberately contravened the ICAC internal regulations by separating the cost of alcoholic beverages from entertainment expenses in order to keep the expenditure of official entertainments below the prescribed ceilings.

Investigation

Investigation revealed that it was then not a mandatory requirement for the claims of entertainment expenses to be made with the standard form and there was no express provision in the ICAC internal regulations or in the standard form concerned stipulating clearly that the expenses of alcoholic beverages procured separately were to be included for the purpose of calculating the total expenditure of official entertainments. According to her explanation given when interviewed, Officer D allowed her officers to cease using the standard form for claiming entertainment expenses because she understood from them that confusion might arise as the form did not provide sufficient space for stating all the required information and supplementary sheets had to be used. Officer D believed that the ICAC internal regulations as amended in July 2009 were intended to cover only the beverages ordered in restaurants where the official

entertainments were held. The explanation of Officer D was supported by other ICAC officers involved in arranging official entertainments.

Assessment

Having regard to the explanation given by Officer D and the evidence available, the allegation against Officer D was found not substantiated. The Committee endorsed the relevant assessment. Nevertheless, the ICAC internal regulations have been revised to make it clear that the cost of beverages procured separately should also be included in the calculation of entertainment expenses against the prescribed ceilings.

IMPROVEMENTS TO PROCEDURES

An important and positive outcome of investigation into complaints by the ICAC and the Committee is the improvements made as a result to ICAC internal procedures, guidelines and practices.

Through careful examination of issues as identified in the investigation reports considered during 2016, the ICAC has enhanced the contents of its training programmes to better equip its frontline officers for dealing with complainants. The ICAC has also revised internal regulations to tighten up the control of claiming entertainment expenses for official purposes. Moreover, the ICAC is consulting the Department of Justice on how to implement due notification arrangements to inform a person who has failed to report bail before filing an application to the court for the forfeiture of bail money.

ANNEX – USEFUL ADDRESSES

The address of the Secretary of the ICAC Complaints Committee -

Administration Wing of the Chief Secretary for Administration's Office,
25/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong
(Tel: 3655 5503; Fax: 2524 7103; E-mail: icc@cso.gov.hk)

The address of the ICAC Offices -

Office	Address and Telephone Number
ICAC Report Centre (24-hour service)	G/F, 303 Java Road North Point Tel: 2526 6366 Fax: 2868 4344 E-mail: ops@icac.org.hk
ICAC Regional Office – Hong Kong West/Islands	G/F, Harbour Commercial Building 124 Connaught Road Central Central Tel: 2543 0000
ICAC Regional Office – Hong Kong East	G/F, Tung Wah Mansion 201 Hennessy Road Wanchai Tel: 2519 6555
ICAC Regional Office – Kowloon East/Sai Kung	Shop No. 4, G/F, Kai Tin Building 67 Kai Tin Road Lam Tin Tel: 2756 3300
ICAC Regional Office – Kowloon West	G/F, Nathan Commercial Building 434-436 Nathan Road Yaumatei Tel: 2780 8080
ICAC Regional Office – New Territories South West	Shop B1, G/F, Tsuen Kam Centre 300-350 Castle Peak Road Tsuen Wan Tel: 2493 7733
ICAC Regional Office – New Territories North West	G/F, Fu Hing Building 230 Castle Peak Road Yuen Long Tel: 2459 0459
ICAC Regional Office – New Territories East	G06 - G13, G/F, Shatin Government Offices 1 Sheung Wo Che Road Shatin Tel: 2606 1144