

# 廉政公署事宜投訴委員會

## ICAC COMPLAINTS COMMITTEE

二零一五年年報

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Annual Report 2015

1 June 2016

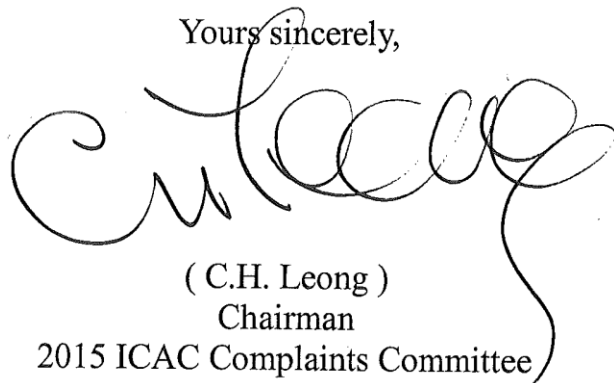
The Honourable C Y Leung, GBM, GBS, JP  
The Chief Executive  
Hong Kong Special Administrative Region  
People's Republic of China  
Chief Executive's Office  
Tamar  
Hong Kong

Dear Sir,

**ICAC Complaints Committee  
2015 Annual Report**

I have the honour to forward to you the annual report of the ICAC Complaints Committee for the year 2015. This is the twenty-first annual report of the Committee, which gives a summary of the work carried out by the Committee in the past year.

Yours sincerely,



( C.H. Leong )  
Chairman  
2015 ICAC Complaints Committee

# INDEPENDENT COMMISSION AGAINST CORRUPTION COMPLAINTS COMMITTEE

## 2015 Annual Report

### INTRODUCTION

Established on 1 December 1977, the Independent Commission Against Corruption Complaints Committee (“the Committee”) is responsible for monitoring and reviewing the handling by the Independent Commission Against Corruption (“ICAC”) of non-criminal complaints against the ICAC and its officers. Since 1996, each year the Committee submits an annual report to the Chief Executive to provide an account of its work in the preceding year. With a view to enhancing the transparency and accountability of the Committee, the report is also tabled at the Legislative Council and made available to the public.

### MEMBERSHIP

2. The Chairman and Members of the Committee are appointed by the Chief Executive. In 2015, the Committee was chaired by Dr LEONG Che-hung. A membership list of the Committee from 1 January 2015 to 31 December 2015 is at *Annex A*.

Annex A

### TERMS OF REFERENCE

3. The terms of reference of the Committee are –
- (a) to monitor, and where it considers appropriate to review, the handling by the ICAC of non-criminal complaints by anyone against the ICAC and officers of the ICAC;
  - (b) to identify any faults in ICAC procedures which lead or might lead to complaints; and
  - (c) when it considers appropriate, to make recommendations to the Commissioner of the ICAC (“the Commissioner”), or when considered necessary, to the Chief Executive.

## HANDLING OF COMPLAINTS

4. If a person wishes to lodge a complaint against the ICAC or its officers, he/she may write to the Secretary<sup>1</sup> of the Committee (“the Secretary”), or complain to the ICAC at any of its offices at **Annex B** in person, by phone or in writing. When the complaint is received by the Secretary, he/she will acknowledge receipt and forward the complaint to the ICAC for follow-up action. Upon receipt of the Secretary’s referral or a complaint made to the ICAC direct, the ICAC will write to the complainant setting out the allegations with a copy sent to the Secretary. A special group, the Internal Investigation and Monitoring Group in the Operations Department of the ICAC, is responsible for assessing and investigating the complaints<sup>2</sup>, and the Commissioner will forward his conclusions and recommendations in respect of each complaint to the Committee via the Secretary.

5. The Secretary will arrange for all investigation reports received from the Commissioner to be discussed at Committee meetings. Members may seek additional information and/or clarifications from the ICAC concerning the reports and will consider the recommendations made in the reports. The complainants and ICAC officers involved will subsequently be advised of the Committee’s conclusions in writing.

## HANDLING OF SUB-JUDICE CASES

6. The ICAC investigates each complaint as soon as practicable. 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. Investigation of complaints generally involves in-depth interviews with the complainants, and these may touch upon the circumstances surrounding the criminal proceedings and could possibly prejudice the complainants’ position in *sub-judice* cases. Pursuant to the legal advice obtained, the complainants will be informed in writing that the investigation into their complaints will be deferred, pending the conclusion of relevant criminal enquiries or proceedings. If a complainant still wishes to seek immediate

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1 The address of the Secretary of the ICAC Complaints Committee is as follows -  
Administration Wing of the Chief Secretary for Administration’s Office,  
25/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong  
(Telephone number: 3655 5503; Fax number: 2524 7103)

2 Should circumstances require, the Commissioner may make ad hoc arrangement to assign a particular complaint to designated officers outside the Internal Investigation and Monitoring Group for assessment and investigation.

investigation of his/her complaint but the subject matter of the complaint appears to be closely related to issues on which the court may have to decide, the Commissioner will seek further legal advice and then decide whether or not 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.

## **COMPLAINTS RECEIVED**

7. In 2015, 19 complaints against the ICAC or its officers were received, as compared with 16 complaints in 2014. The 19 complaints contained a total of 45 allegations registered during the year. Apart from these, six additional allegations<sup>3</sup> were registered in 2015 in respect of two complaints received in 2014. Hence, a total of 51 allegations were registered in 2015 as compared with 66 allegations in 2014. These allegations were related to misconduct of ICAC officers (41%); neglect of duties (26%); abuse of power (6%); and inadequacies of ICAC procedures (27%). A summary of the statistics is at Table 1 below.

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<sup>3</sup> The two relevant complaints received in 2014 covered a total of 33 allegations, 27 of which were registered in 2014 and the remaining six were registered in 2015 arising from new issues subsequently raised by the respective complainants.

Table 1 – Number and category of allegations registered in 2014 and 2015

| Category of allegation   | Number of allegations (%) in 2015 | Number of allegations (%) in 2014 |
|--|-----------------------------------|-----------------------------------|
| 1. Misconduct (e.g. behaving in a poor/impolite manner)                                  | 21 (41%)                          | 31 (47%)                          |
| 2. Neglect of duties (e.g. failure to conduct a thorough investigation)                  | 13 (26%)                          | 30 (45%)                          |
| 3. Abuse of power  |                                   |                                   |
| (a) search   | 0                                 | 0                                 |
| (b) arrest/detention/bail  | 0                                 | 2                                 |
| (c) interview  | 0                                 | 1                                 |
| (d) handling property  | 0                                 | 0                                 |
| (e) legal access   | 2                                 | 0                                 |
| (f) improper release of identity of witnesses/informants/suspects                        | 1                                 | 0                                 |
| (g) provision of information/documents   | 0                                 | 0                                 |
| <i>Sub-total :</i>   | 3 (6%)                            | 3 (5%)                            |
| 4. Inadequacies of ICAC procedures (e.g. refusing to disclose the requested information) | 14 (27%)                          | 2 (3%)                            |
| <b>Total :</b>   | <b>51<sup>4</sup></b>             | <b>66</b>                         |

## COMPLAINTS CONSIDERED

8. The Committee held three meetings in 2015. Of the 19 complaints received in 2015, investigation into 14 complaints<sup>5</sup> covering 34 allegations was concluded with the relevant investigation reports considered by the Committee during the year. The Committee also considered five complaints received in 2014 covering 47 allegations<sup>6</sup>. A sample of an investigation report on a complaint considered by the Committee is at *Annex C*.

Annex C

<sup>4</sup> Including six allegations of two complaints received in 2014 but subsequently raised in 2015 by the respective complainants.

<sup>5</sup> The remaining five complaints covering 11 allegations were still under investigation as at the end of the year.

<sup>6</sup> Among the five complaints considered, one of them contained 30 allegations.

9. Of a total of 19 complaints covering 81 allegations considered by the Committee in 2015, six allegations (7%) in four complaints (21%) were found to be substantiated or partially substantiated. A summary of the statistics is at Table 2 below.

*Table 2 – Number and category of allegations found substantiated or partially substantiated by the Committee in 2014 and 2015*

| Category of allegation   | 2015                             |  | 2014                             |  |
|--|----------------------------------|--|----------------------------------|--|
|  | Number of allegations considered | Number of allegations (%) found substantiated/ partially substantiated | Number of allegations considered | Number of allegations (%) found substantiated/ partially substantiated |
| 1. Misconduct (e.g. behaving in a poor/impolite manner)                                  | 35                               | 2  | 27                               | 1  |
| 2. Neglect of duties (e.g. failure to conduct a thorough investigation)                  | 32                               | 3  | 23                               | 6  |
| 3. Abuse of power  |                                  |  |                                  |  |
| (a) search   | 0                                | 0  | 3                                | 0  |
| (b) arrest/detention/bail  | 1                                | 0  | 7                                | 0  |
| (c) interview  | 1                                | 0  | 0                                | 0  |
| (d) handling property  | 0                                | 0  | 3                                | 1  |
| (e) legal access   | 2                                | 1  | 1                                | 0  |
| (f) improper release of identity of witnesses/ informants/suspects                       | 1                                | 0  | 0                                | 0  |
| (g) provision of information/ documents  | 0                                | 0  | 0                                | 0  |
| <i>Sub-total:</i>  | 5                                | 1  | 14                               | 1  |
| 4. Inadequacies of ICAC procedures (e.g. refusing to disclose the requested information) | 9                                | 0  | 4                                | 0  |
| <b>Total :</b>   | 81                               | 6(7%)  | 68                               | 8(12%)   |

10. Of the four complaints with allegations found substantiated or partially substantiated, an officer in one of the complaints had failed to inform the complainant at the earliest opportunity that she had to stand as a witness in three separate trials arising from the same corruption investigation.

11. In the second case, an officer of the ICAC Report Centre (“the Report Centre”) had not handled a corruption report referred to the ICAC by a government department in a proper manner.

12. In the third case, an officer had failed to issue an acknowledgement receipt to the complainant upon receiving documents from her in connection with her corruption reports. Another officer had failed to contact the complainant within 48 hours upon receipt of her further corruption report according to ICAC’s Performance Pledge and one other officer was impolite to the complainant by not disclosing his full name upon request during a telephone conversation.

13. In the fourth case, an officer had failed to promptly handle a legal visit for a detainee due to oversight.

14. The above substantiated or partially substantiated complaints concerned six officers, four of whom were given advice by their senior officers. As for the remaining two officers, one had retired and the other had left the ICAC before the investigation into the relevant complaint was concluded. The Committee noted that no further action would be taken against these two former officers by the ICAC.

15. In addition, an officer in one of the complaints was given advice by his senior officer, although the allegations made against him were found not substantiated. The advice was given as part of ICAC’s continuing efforts to keep up the professionalism of officers. The officer, who worked in the Report Centre at the time of the incident, was advised to pay more attention to the information provided and improve his communication skills when handling telephone enquiries from members of the public.

## **ASSESSMENT REPORTS**

16. For complaints which the ICAC considers that a full investigation is not warranted after preliminary assessment, the ICAC would process them by way of assessment reports. Such cases include complaints which are incoherent or irrational, repeated complaints previously disposed of through the Committee, the subject matters of complaints already decided by the courts, etc. In respect of each case, the ICAC



would state the reason(s) and submit an assessment report for the Committee's consideration. During 2015, the Committee considered and endorsed eight assessment reports. Preliminary enquiries showed that there were no grounds or justifications in these complaints that would warrant formal investigations, and the Committee agreed that no further investigative actions be taken. The complainants were so advised in writing.

## **IMPROVEMENTS TO PROCEDURES**

17. An important and positive outcome of investigating into complaints is that through examination of relevant issues, both the ICAC and the Committee may scrutinise existing ICAC internal procedures, guidelines and practices to see whether they need to be revised, with a view to making improvements.

18. Arising from the investigation reports considered during 2015, the ICAC had reviewed certain operational procedures and made improvement. For example, the ICAC had reviewed the work of the Report Centre and implemented new measures, including the provision of tailor-made training to officers of the Report Centre with a view to further enhancing their professional skills in handling reports and enquiries from members of the public. The ICAC had also refined its procedure to require officers, as part of their handing-over arrangement, to notify the complainant should there be a change of the case officer of an ongoing corruption investigation.

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**Independent Commission Against Corruption  
Complaints Committee  
Membership List  
(from 1 January 2015 to 31 December 2015)**

Chairman : Dr LEONG Che-hung, GBM, GBS, JP

Members : The Hon CHEUNG Chi-kong, BBS, JP

The Hon Jeffrey LAM Kin-fung, GBS, JP

Mr Paul LAM Ting-kwok, SC

Ms Angela LEE Wai-yin, BBS, JP

Dr the Hon Priscilla LEUNG Mei-fun, SBS, JP

The Hon Alice MAK Mei-kuen, BBS, JP

Mr Tony MA

*(Representative of The Ombudsman)*

## List of ICAC Offices

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

## **A sample of an Investigation Report**

### **COMPLAINT**

Madam X complained that -

- (a) Senior Investigator A, the former Case Officer of a corruption investigation, had failed to communicate with the new Case Officer, Senior Investigator B, concerning the work nature of Madam X and her colleague Mr Y<sup>1</sup> and their difficulties in leaving office at the same time to render assistance to the ICAC;
- (b) in July or August 2014, during a telephone conversation, Assistant Investigator C had failed to explain to Madam X the rights of a witness and talked to her in a rude manner; and
- (c) Senior Investigator B had acted unprofessionally by (i) failing to arrange Madam X and her colleague Mr Y to attend the court at different times upon her request; (ii) failing to inform her at the earliest opportunity that she had to stand as a witness in three separate trials; and (iii) exerting pressure on her through her employer.

### **BACKGROUND**

2. In July 2012, a complainant lodged a corruption report with the ICAC against a public officer (“Suspect I”) who might have accepted advantages from an illegal money lender. The corruption report was assigned to an officer of an investigating section for investigation. In August 2012, the corruption report was re-assigned to Senior Investigator A of the same investigating section.

3. Following investigation, Suspect I and two other public officers (“Suspects II and III”) were arrested in May 2013. In July 2013, Madam X, a staff member of one of the money lending companies involved in the investigation (“the Company”), was approached by Senior Investigator A and Assistant Investigator D for assistance. Later, Madam X made three witness statements to the ICAC concerning the respective loan applications of Suspects I to III, who were found to have failed to make full and true declaration on their liabilities when making loan applications with the Company.

4. In March 2014, Senior Investigator A and Assistant Investigator D interviewed Mr Y, another staff member of the Company, who was the handling officer of the loan applications at issue. Mr Y made three witness statements to the ICAC concerning the respective loan applications of Suspects I to III.

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<sup>1</sup> Mr Y is also a witness in the same corruption investigation.

5. In June 2014, Suspects I to III were charged with certain counts of Fraud and another offence respectively. They pleaded not guilty to all the charges. The pre-trial reviews (“PTRs”) of the cases of Suspects I and II were both fixed for the same date in late July 2014 while that of Suspect III was fixed for a date in early August 2014. On the date of the PTRs of Suspects I and II, their respective counsel asked for an adjournment as they required more time to peruse the trial documents. As such, the second PTRs of the cases of Suspects I and II were both fixed for a date in September 2014. Subsequently, the trial of Suspect III was scheduled for a date in November and those of Suspects I and II for two separate dates in December 2014.

6. Shortly before the first PTRs of Suspects I and II in late July 2014, Assistant Investigator C called Madam X to ascertain her availability in the next few months as she would be required to attend court as a prosecution witness in the three trials. On the next day, Madam X tried to call Senior Investigator A asking for further details but the call was answered by Senior Investigator B who introduced herself as the new Case Officer in place of Senior Investigator A. In early September 2014, Senior Investigator B served a witness summons in respect of the trial of Suspect III on Madam X. On the trial date of Suspect III in November 2014, Senior Investigator B served two further witness summonses in respect of the trials of Suspects I and II on Madam X outside court.

7. A few days before the trial of Suspect III, Madam X telephoned the Report Centre of the ICAC (“Report Centre”) and lodged the present complaint, which was then referred to the Internal Investigation and Monitoring Group (“L Group”) of the ICAC for handling. In December 2014, Madam X gave two statements to L Group. She stated that in late 2013 and early 2014, Senior Investigator A and Assistant Investigator D had interviewed her a few times and were well aware that she and Mr Y were core members in the Company. They should also be aware that she and Mr Y could not leave their work behind for rendering assistance to the ICAC at the same time during office hours. However, Madam X found that Senior Investigator B was totally ignorant of the roles played by Madam X and Mr Y in the Company, as well as their requirement of not leaving behind their work together during office hours to assist the ICAC. Madam X considered that Senior Investigator A, as the former Case Officer, had the duty to inform Senior Investigator B about their circumstances [allegation (a)].

8. Madam X also stated that in late July or early August 2014, Assistant Investigator C had called her informing her that the trial in relation to the corruption investigation would likely be heard in October or November 2014. When Madam X told Assistant Investigator C that she might have a family trip in October 2014, the latter rudely asked her not to tell him something would happen in the far future. Madam X went on to ask Assistant Investigator C about her rights of being a witness. Assistant Investigator C, however, did not answer her and only told her that he had already informed her of the approximate date of the trial and the court would issue a witness summons to her at a later time. Assistant Investigator C further told her that it was the responsibility of Madam X to attend the court and if she failed to do so, she would commit an offence of contempt of court [allegation (b)].

9. A day after the telephone conversation with Assistant Investigator C, Madam X tried to contact Senior Investigator A by telephone and the call was answered by Senior Investigator B who introduced herself as the new Case Officer. Madam X asked Senior Investigator B how to handle the situation if she had already purchased air tickets for an overseas trip in October 2014 which however clashed with the trial date.

Senior Investigator B, however, offered no explanation but only told her that she would commit an offence if she did not attend the court as required. Besides, Madam X requested Senior Investigator B to arrange different court appearance times for her and Mr Y, because either one of them had to stay in the office to handle the day-to-day work of the Company. Madam X stated that Senior Investigator B had made no response to her request.

10. In early September 2014, upon prior appointment, Senior Investigator B and Assistant Investigator E served a witness summons in respect of the trial of Suspect III (“the first witness summons”) on Madam X at her office. Madam X stated that while she was checking the contents, she found that there was only one defendant (Suspect III). Madam X questioned Senior Investigator B if she would be required to stand as a witness in three separate trials. Senior Investigator B replied in the positive and made an immediate apology to Madam X, stating that she first intended to inform Madam X of the same in their last telephone conversation in late July 2014 (see paragraph 9). However, as their telephone conversation turned out to be less than harmonious, she chose to inform Madam X of the matter when they met. Madam X felt aggrieved because during that last telephone conversation, she and Senior Investigator B were discussing the schedule for her overseas trip. The fact that there would be three separate trials was a piece of important information and Senior Investigator B had no reason not to inform her of the same at the earliest opportunity [allegation (c)(ii)].

11. Madam X stated that at the time she received the first witness summons, Senior Investigator B requested her to attend the court at 0900 hours on the first day of the trial of Suspect III in November 2014. A few days later, Madam X came to know that Mr Y had taken a half-day off on the morning of the same day. She then enquired with Mr Y if he had to stand as a witness in the same trial that morning and was given a positive reply. Madam X was disappointed about Senior Investigator B’s failure in arranging different court appearance times for her and Mr Y, despite the request she made in her telephone conversation with Senior Investigator B in late July 2014 [allegation (c)(i)].

12. Madam X further stated that in early November 2014, Senior Investigator B and Assistant Investigator F, without prior appointment, went to the Company intending to serve the witness summonses in respect of the trials of Suspects I and II on her. Since Madam X was on leave that day, the receptionist arranged a manager (“the Manager”) of the Company to receive them. Later on the same day, the Manager telephoned Madam X telling her that in the presence of the receptionist, Senior Investigator B had stated, in a threatening manner, that she had to locate Madam X in that office or else she would locate Madam X in her own way. Senior Investigator B also provided her name card to the Manager and urged the latter to contact Madam X. Madam X was extremely dissatisfied with Senior Investigator B’s conduct because first of all, she had already received the first witness summons requiring her attendance at the court a few days later regarding the trial of Suspect III. She considered that there was no urgency for Senior Investigator B to locate her at her office for serving her the additional witness summonses, which she could receive a few days later at the court. Secondly, Senior Investigator B had unreasonably talked to the Manager in a threatening manner and, in her opinion, was meant to exert pressure on her [allegation (c)(iii)].

## **INVESTIGATION OF THE COMPLAINT**

13. Senior Investigator A was interviewed by L Group and denied allegation (a). She explained that in July 2013, she and Assistant Investigator D had executed a search warrant at the Company for recovering documents relevant to the loan applications of Suspects I to III. On that occasion, Senior Investigator A and Assistant Investigator D were received by Madam X, Mr Y and the Manager. After assessing the situation, Senior Investigator A considered that it was most appropriate to obtain witness statements from Madam X. In early August 2013, she together with Assistant Investigator D went to the Company again for Madam X to sign the three statements regarding the respective loan applications of Suspects I to III.

14. Senior Investigator A further explained that, pursuant to the legal advice obtained, she together with Assistant Investigator D interviewed Mr Y at the Company in March 2014. On this occasion she saw Madam X at the Company and told her that she (Madam X) would be notified if there was any significant progress.

15. Subsequently, the Department of Justice advised that charges should be laid against Suspects I to III. In June and July 2014, Suspects I to III pleaded not guilty to the charges and the PTRs of their cases were fixed for two different dates in July and August 2014.

16. Senior Investigator A explained that at that time, she had not yet contacted the prosecution witnesses, including Madam X, because it remained unknown whether the evidence of some of the witnesses would be agreed by the defence and hence their court attendance could be dispensed with. Senior Investigator A stated that she intended to contact all the witnesses a few days before the PTRs of Suspects I and II in late July 2014 so as to ascertain their availability for court attendance in the coming months. Nonetheless, before she had done so, she was transferred out of the investigating section in early July 2014. Senior Investigator A stated that she had handed over the corruption investigation to Senior Investigator B by briefing her on the background and progress of the investigation and the three court cases, particularly alerting her that interviews with Madam X and Mr Y should be arranged after 1700 hours in accordance with their requests.

17. Assistant Investigator C was interviewed by L Group and denied allegation (b). He explained that one or two days before the first PTRs of Suspects I and II in late July 2014, upon instruction, he had called a number of witnesses, including Madam X, for ascertaining their availability for court attendance in the next two to three months. Over the telephone, Madam X had indicated that she was planning an overseas family trip in October 2014. He asked her for the exact travel dates but she said the dates were not yet fixed. He counter-suggested to Madam X that as the trial date would be set down soon, he would inform her of the trial date once it was fixed. Madam X agreed to his suggestion and did not express any dissatisfaction. To Assistant Investigator C's recollection, Madam X had not asked him about the rights of a witness and he denied to have spoken to her in a rude manner.

18. Senior Investigator B was interviewed by L Group and denied allegation (c). Senior Investigator B stated that she was transferred to the investigating section in early July 2014. At that time, plea had been taken from Suspects I to III respectively and three PTRs had been fixed for two separate dates in late July and early August 2014 respectively. A number of Assistant Investigators of her investigating section were

assigned to contact all the witnesses of the three court cases to check their availability for court attendance in the coming months.

19. Senior Investigator B recalled that in a morning in late July 2014, she received a telephone call from Madam X. Senior Investigator B introduced herself as the new Case Officer of the corruption investigation. Madam X then asked Senior Investigator B how to handle the situation if she had already purchased air tickets but later found that the travel dates clashed with the trial date. Senior Investigator B explained to Madam X that since she had not yet purchased air tickets, it would be better if she could wait until the confirmation of the trial date. At that juncture, Madam X made no complaint but only requested that arrangement be made so that she and Mr Y could attend court at different times. In response, Senior Investigator B told Madam X that she would relay Madam X's request to the prosecution counsel. During the telephone conversation, Senior Investigator B had not mentioned to Madam X that there would be three separate trials because she believed that in taking three separate witness statements from Madam X, the former Case Officer Senior Investigator A should have explained to Madam X about the segregation of trials in the future.

20. Later on, the PTRs of the cases of Suspects I and II respectively were adjourned to September 2014 upon application by the defence. On the other hand, the trial of Suspect III was fixed for a date in November 2014. In respect of the trial of Suspect III, the witness summonses had been issued by the court in late August 2014. In early September 2014, Assistant Investigator E made appointments with Madam X and Mr Y by telephone for the service of witness summonses in respect of the trial of Suspect III. One or two days later, Senior Investigator B and Assistant Investigator E attended the office of Madam X and Mr Y and witness summonses were served on them separately. In the course of serving the witness summons on Madam X, Senior Investigator B told Madam X that there would be three separate trials in respect of Suspects I to III respectively and that the trials of Suspects I and II had been fixed for two separate dates in December 2014. At that juncture, Madam X expressed some dissatisfaction on the arrangement as she was not aware that there would altogether be three trials. Besides, Madam X also reiterated her request for different court appearance times with Mr Y. Senior Investigator B told Madam X that her request had been noted and would be relayed to the prosecution counsel.

21. Senior Investigator B stated that in late September 2014, the witness summonses in respect of the trials of Suspects I and II were issued by the court. After a few attempts, Senior Investigator B managed to reach Madam X on a specified date in October 2014 over the telephone who however stated that she was busy at work and agreed to call Senior Investigator B three days later for fixing a date for receiving these witness summonses. However, in the subsequent week, numerous attempts were made by officers of the investigating section in contacting Madam X and Mr Y by telephone but in vain. Messages were also left at their voicemail boxes but they never returned a call. As a result, in late October 2014, without prior appointment Senior Investigator B and Assistant Investigator D visited the office of Mr Y and Madam X. Mr Y was located and two witness summonses were served on him. Senior Investigator B and Assistant Investigator D also met with the Manager who agreed to ask Madam X to contact the ICAC. However, in the next few days, the ICAC did not receive any call from Madam X. In early November 2014, Senior Investigator B telephoned the Manager telling her that she would visit their office again on the next day for meeting Madam X. The Manager replied that she did not know if Madam X would be there by then.



22. On the following day, Senior Investigator B and Assistant Investigator F visited the office of Madam X again but Madam X was not there. The receptionist then arranged the Manager to receive them. At the reception area, Senior Investigator B asked the Manager when Madam X would return to the office but the Manager stated that she did not know. Senior Investigator B denied to have exerted pressure on Madam X through the Manager or the Company, or to have said any threatening words as alleged. Senior Investigator B explained that as Madam X only provided ICAC with her mobile phone number, office number and office address, she had no choice but to locate Madam X by visiting her office because Madam X did not answer phone calls made by ICAC officers since late October 2014. Senior Investigator B was mindful that she was duty bound to serve the witness summonses on Madam X as soon as possible and to ascertain Madam X's attitude and willingness to appear in court as a prosecution witness. As regards speaking with the Manager at the reception area in front of the receptionist, Senior Investigator B explained that she and Assistant Investigator F had talked to the Manager in a corner of the reception area which was reasonably far away from the receptionist.

23. Senior Investigator B further explained that Madam X's request for different court appearance times with Mr Y was well noted. Nevertheless, as Suspects I to III subsequently indicated their intention to plead guilty to the charges a few days before their respective trials, the prosecution counsel advised that there was no need to call any prosecution witness to standby at the court. In the circumstances, Madam X's request was not relevant and hence was not communicated to the respective prosecution counsel. Senior Investigator B stated that in early September 2014 upon service of the witness summonses in respect of the trial of Suspect III on Madam X and Mr Y, she had not requested either of them to attend court on the first day of the trial in November 2014. She only told them to standby in their office awaiting telephone calls from ICAC officers. It was only until five days before the trial when Madam X called the Report Centre requesting to receive the other two witness summonses at court that Madam X was asked to go to the court on the first day of the trial for the purpose of receiving witness summonses.

24. Assistant Investigator D was interviewed by L Group. He stated that he and Senior Investigator A had interviewed Madam X and Mr Y on three separate dates in July 2013, August 2013 and March 2014 at their office. He confirmed that Madam X and Mr Y had not made any special request or raised any concern, save the interviews with ICAC officers had to be scheduled after the securities market had closed.

25. Assistant Investigator E was interviewed by L Group. He confirmed that in early September 2014, he and Senior Investigator B visited the office of Mr Y and Madam X to serve them witness summonses in respect of the trial of Suspect III. He corroborated the version of Senior Investigator B that it was Senior Investigator B who initiated to inform Madam X there would be three separate trials under the corruption investigation, and that the remaining two witness summonses would be served on Madam X when they were available. There and then, Madam X expressed some dissatisfaction and after Senior Investigator B had explained to her the situation, Madam X replied understood and made no complaint.

26. Assistant Investigator F was interviewed and confirmed that in early November 2014, he and Senior Investigator B visited the office of Madam X intending to serve the other two witness summonses on Madam X. However, Madam X was not in the office and the receptionist arranged the Manager to receive them. Senior Investigator B, Assistant Investigator F and the Manager talked in a corner of the

reception area, which was about 10 feet away from the receptionist. Assistant Investigator F confirmed that Senior Investigator B had talked to the Manager in a calm and courteous manner.

### **Examination of ICAC Records**

27. Examination of the relevant investigation file corroborated the accounts of events and explanations given by the officers.

### **ASSESSMENT OF THE COMPLAINT**

28. Senior Investigator A denied allegation (a) and gave her account of the events. She explained that when she handed over the corruption investigation to Senior Investigator B, she had not told the latter the background of Madam X, Mr Y and the Company in detail, because Madam X and Mr Y had made no specific request or raised any concern, save a specified interview time. Senior Investigator A's version was supported by Assistant Investigator D. When handing over the corruption investigation, Senior Investigator A had already notified Senior Investigator B of their request. In the circumstances, Senior Investigator A's explanation is considered reasonable. As such, allegation (a) is not substantiated.

29. Assistant Investigator C denied allegation (b) and explained that on the telephone, Madam X told him that she was planning for a vacation trip with her family in October 2014 but the dates were not yet fixed. In response, Assistant Investigator C suggested that once the trial date was fixed, she would be informed of the same at the earliest opportunity. Madam X agreed to his suggestion and did not express any dissatisfaction. Besides, to Assistant Investigator C's recollection, Madam X had never asked about the rights of a witness in the same telephone conversation. There is no other evidence to support Madam X's allegation except her own assertion. In the circumstances, allegation (b) is not substantiated.

30. Senior Investigator B denied allegation (c). In relation to allegation (c)(i), she explained that in early September 2014, she had not asked Madam X and Mr Y to attend the court on the first day of the trial of Suspect III in November 2014. Instead, she only asked them to wait for telephone calls from ICAC officers. Senior Investigator B added that she was aware of Madam X's request for different court appearance times with Mr Y and she planned to discuss the matter with the prosecution counsel of the trial of Suspect III. Nevertheless, a few days before commencement of the trial, Suspect III through his counsel indicated to the ICAC that he would plead guilty to the charges. The prosecution counsel thus instructed that no witness was required to standby at the court. Five days before the trial in November 2014, Madam X through the Report Centre informed Senior Investigator B that she intended to receive the other two witness summonses at the court in the morning of the first day of the trial. The two witness summonses were then served on Madam X accordingly. Similarly, a few days before the respective trials of Suspects I and II, the defendants had through their counsel indicated that they would plead guilty to the charges. The prosecution counsel of the two trials had therefore instructed that no witness was required to standby at the court. As such, Madam X's request for different court appearance times with Mr Y was no longer relevant for court arrangement. In the circumstances, allegation (c)(i) is not substantiated.

31. In relation to allegation (c)(ii), Senior Investigator B explained that in her telephone conversation with Madam X in late July 2014, she had not mentioned to her there would be three separate trials under the corruption investigation because she noticed that three witness statements, respectively covering the cases of Suspects I to III, had been taken from Madam X by Senior Investigator A. She genuinely believed that Madam X had already been aware of the need to stand as a witness in three separate trials. Nevertheless, as the Case Officer, Senior Investigator B should have acted more prudently and reminded Madam X at the earliest opportunity that the trials of Suspects I to III would be heard separately in order to cater for Madam X's personal circumstances, especially when Madam X had mentioned to Senior Investigator B in the telephone conversation in late July 2014 that she had a travelling plan in contemplation. Hence, allegation (c)(ii) is substantiated. Senior Investigator B should be given advice by a senior officer to remind her that she should be more sensitive to the needs of witnesses.

32. As for allegation (c)(iii), Senior Investigator B explained that after she had talked to Madam X in October 2014 for the service of the other two witness summonses, she had lost contact with the latter in the subsequent week. It was therefore considered necessary to locate Madam X as soon as practicable in fulfilment of her duty to deliver the witness summonses. In early November 2014, Senior Investigator B and Assistant Investigator F paid a visit to the office of Madam X but failed to locate her. Senior Investigator B thus talked to the Manager in the hope of enlisting her assistance to reach Madam X. Senior Investigator B denied to have talked to the Manager in a threatening manner and exerted pressure on Madam X through her employer. Assistant Investigator F, when interviewed by L Group, confirmed the version of Senior Investigator B. In the circumstances, allegation (c)(iii) is not substantiated.

## **CONCLUSION**

33. The Commissioner of the ICAC agreed that allegations (a) and (b) are not substantiated and allegation (c) is partially substantiated. The ICAC Complaints Committee endorsed the conclusion of the investigation by the ICAC. Madam X was informed of the result of the investigation in writing. Concerning allegation (c), Senior Investigator B was given advice by a senior officer that she should be more sensitive to the needs of witnesses.