

**Mediation Week**  
**Seminar on “The Beauty of Sector-specific Mediation”**  
**Department of Justice , Justice Place**

**從香港個人資料私隱專員公署  
看調解之道  
PCPD Mediation Scheme**

**個人資料私隱專員黃繼兒先生  
Stephen Kai-yi Wong**

**Privacy Commissioner for Personal Data, Hong Kong**

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# 使命 Mission Statement

- 致力推廣、監察及監管，促使各界人士遵從《個人資料（私隱）條例》，
- 確保市民的個人資料私隱得到保障。
- To secure the protection of privacy of the individual with respect to personal data through promotion, monitoring and supervision of compliance with the Personal Data (Privacy) Ordinance.

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# 策略 Strategies : 執法 Enforcement

- 確保公正、公平和具效率的運作
- 獨立、不偏不倚、無畏無懼地行事
- 夥拍其他規管者，憑藉他們的法定權力、制度和執法權力，履行公署的責任
- 與海外的保障資料機構合作處理跨境的私隱問題
- Ensure equity, fairness and operational efficiency
- Act independently, impartially and without fear or favour
- Partner with other regulators, leveraging their legislative mandates, institutional tools and enforcement powers
- Partner with overseas data protection authorities for handling cross-border privacy issues

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# 策略Strategies : 監察及監管符規

## Monitoring and Supervising Compliance

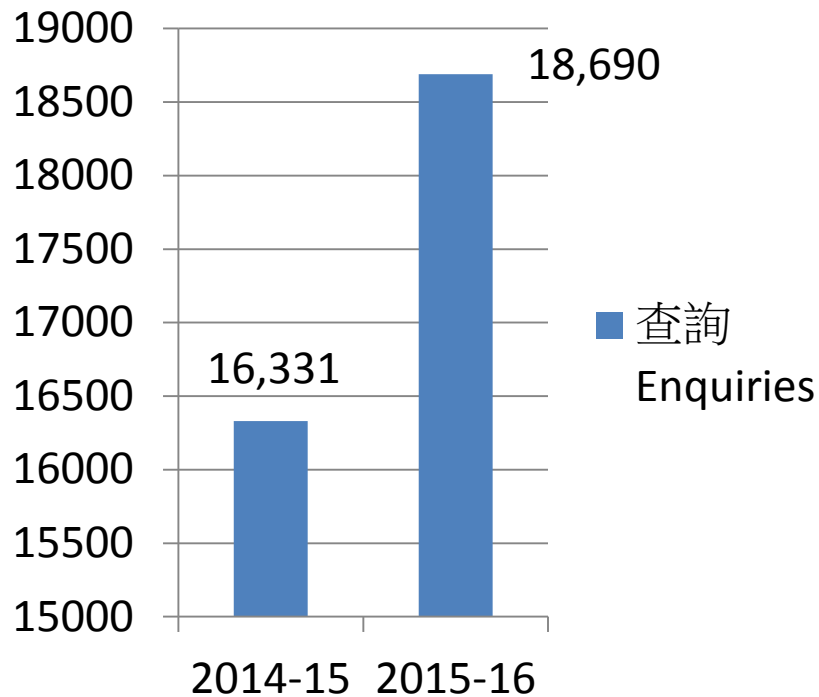
- 主動調查私隱風險顯著的範疇
- 夥拍其他規管者，憑藉他們的法定權力、制度和執法權力，履行公署的責任
- 與海外的保障資料機構合作處理跨境的私隱問題
- Proactively investigate into areas where the privacy risks are significant
- Partner with other regulators, leveraging their legislative mandates, institutional tools and enforcement powers
- Partner with overseas data protection authorities for handling cross-border privacy issues



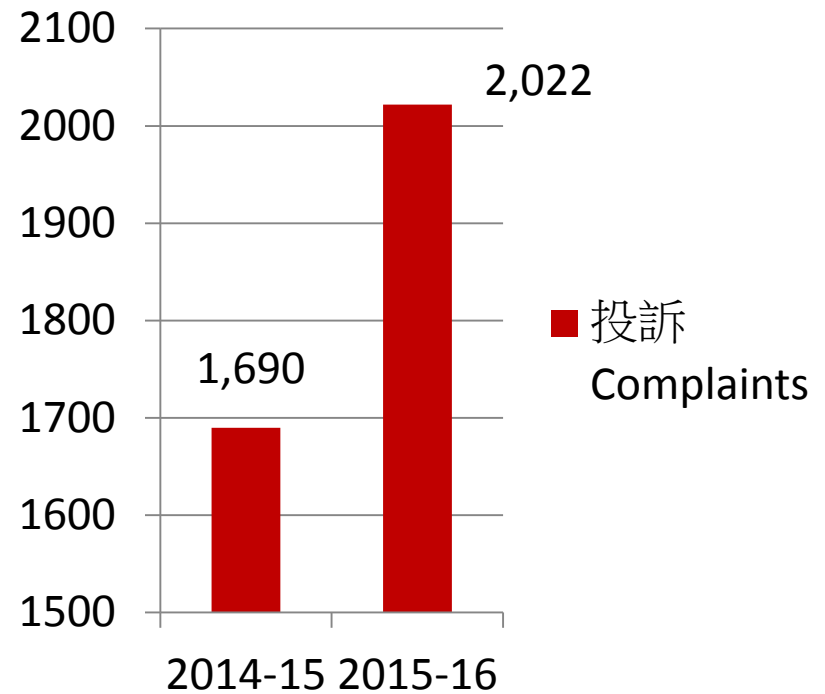
# 查詢及投訴統計數字

## Statistics on Enquiries and Complaints

### 查詢 Enquiries



### 投訴 Complaints



# Section 37 of the Ordinance

## 條例第37條

根據條例第37條提出的「投訴」必須符合下述準則：

- a) 投訴中所提述的資料使用者的作為或行為與個人資料有關；
- b) 投訴是由身為資料當事人的個人提出；及
- c) 有關作為或行為可能違反條例的規定。

a complaint under section 37 must satisfy the following criteria:

- a) it is in respect of an act or practice of a data user specified in the complaint, which relates to personal data;
- b) the complaint is brought by the individual who is the subject of the data, as defined in the Ordinance; and
- c) the act or practice may be a contravention of a requirement under the Ordinance.

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# Section 38 (a) of the Ordinance

## 條例第38(a)條

- 凡專員收到一項投訴；除第39條另有規定外，專員須就有關的資料使用者進行調查，以確定在有關的投訴中指明的作為或行為是否屬違反本條例下的規定的。
- Where the Commissioner receives a complaint, the Commissioner shall, subject to section 39, carry out an investigation in relation to the relevant data user to ascertain whether the act or practice specified in the complaint is a contravention of a requirement under this Ordinance

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## 條例第39(2)條

- 如專員在顧及有關個案的所有情況後，信納有以下情況，他可拒絕進行或決定終止由投訴引發的調查
  - (a) 該項投訴或一項在性質上大體與其相似的投訴已在先前引發一項調查，而專員在進行該項先前的調查後信納沒有違反本條例下的規定的情況；
  - (b) 在該項投訴中指明的作為或行為微不足道；
  - (c) 該項投訴屬瑣屑無聊或無理取鬧，或不是真誠作出的；
  - (ca) 該項投訴所指明的作為或行為顯示，該項投訴的主要標的事宜，與關乎個人資料的個人私隱無關；或（由2012年第18號第22條增補）
  - (d) 因為任何其他理由，調查或進一步調查是不必要的。





## Section 39(2) of the Ordinance

- The Commissioner may refuse to carry out or decide to terminate an investigation initiated by a complaint if he is of the opinion that, having regard to all the circumstances of the case-
  - (a) the complaint, or a complaint of a substantially similar nature, has previously initiated an investigation as a result of which the Commissioner was of the opinion that there had been no contravention of a requirement under this Ordinance;
  - (b) the act or practice specified in the complaint is trivial;
  - (c) the complaint is frivolous or vexatious or is not made in good faith;
  - (ca) the primary subject matter of the complaint, as shown by the act or practice specified in it, is not related to privacy of individuals in relation to personal data; or (Added 18 of 2012 s. 22)
  - (d) any investigation or further investigation is for any other reason unnecessary.



# Mediation / Conciliation

## 調解 / 調停

- “mediation” (調解/調停)及 “conciliation” (調解/和解) 經常被交換使用，兩者一般都是指由一名中立的第三方協助爭議各方溝通和談判，並就衝突或爭議達致和解。
- 不過，這通常是令人混淆的起因，而且這兩個詞語在本港的調解文獻及法定條文中的用法亦十分多變。
- the terms “mediation” and “conciliation” are commonly used interchangeably and generally refer to a process in which a neutral third party assists disputing parties to communicate and negotiate a settlement of their conflict or dispute.
- However, this is often a source of confusion and the terms are also used in the variable ways in both mediation literature and statutory provisions in Hong Kong.

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# Mediation / Conciliation

## 調解 / 調停

- 在《調解條例》生效之前，英文詞彙“mediation”和“conciliation”沒有統一的中文對應詞彙。在法例當中，調解不受單一守則或法律架構規管，而是在多條法例條文中提述；就“mediation”和“conciliation”所採用的對應中文詞彙亦各有不同。對應詞彙不統一，尤其是“調解”一詞互換使用，難免會令公眾以及在香港進行調解程序的重要利益有關者產生混淆和誤解。
- Before the commencement of “Mediation Ordinance”, there are no uniform Chinese terms for the English terms “mediation” and “conciliation”. In Hong Kong legislation, where mediation is not governed by one uniform code or legislative framework but referred to in various legislative provisions, the Chinese terms for “mediation” and “conciliation” vary from provision to provision.

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# 調解條例 Mediation Ordinance

- 《調解條例》香港法例第620章第4條
- (1) 就本條例而言，調解是由一個或多於一個分節構成的有組織程序，在該等分節中，一名或多於一名不偏不倚的個人在不對某項爭議或其任何部分作出判決的情況下，協助爭議各方作出下述任何或所有事宜—
  - (a) 找出爭議點；
  - (b) 探求和擬訂解決方案；
  - (c) 互相溝通；
  - (d) 就解決爭議的全部或部分，達成協議。
- (2) 就第(1)款而言，分節指調解員與爭議一方或多於一方的會議，並包括就下述事宜進行的任何活動
  - (a) 為會議作出安排或預備，不論會議是否有舉行；及
  - (b) 跟進會議中提出的事宜或問題。
- (3) 就第(2)款而言，會議包括透過電話、視像會議或其他電子方式進行的會議。



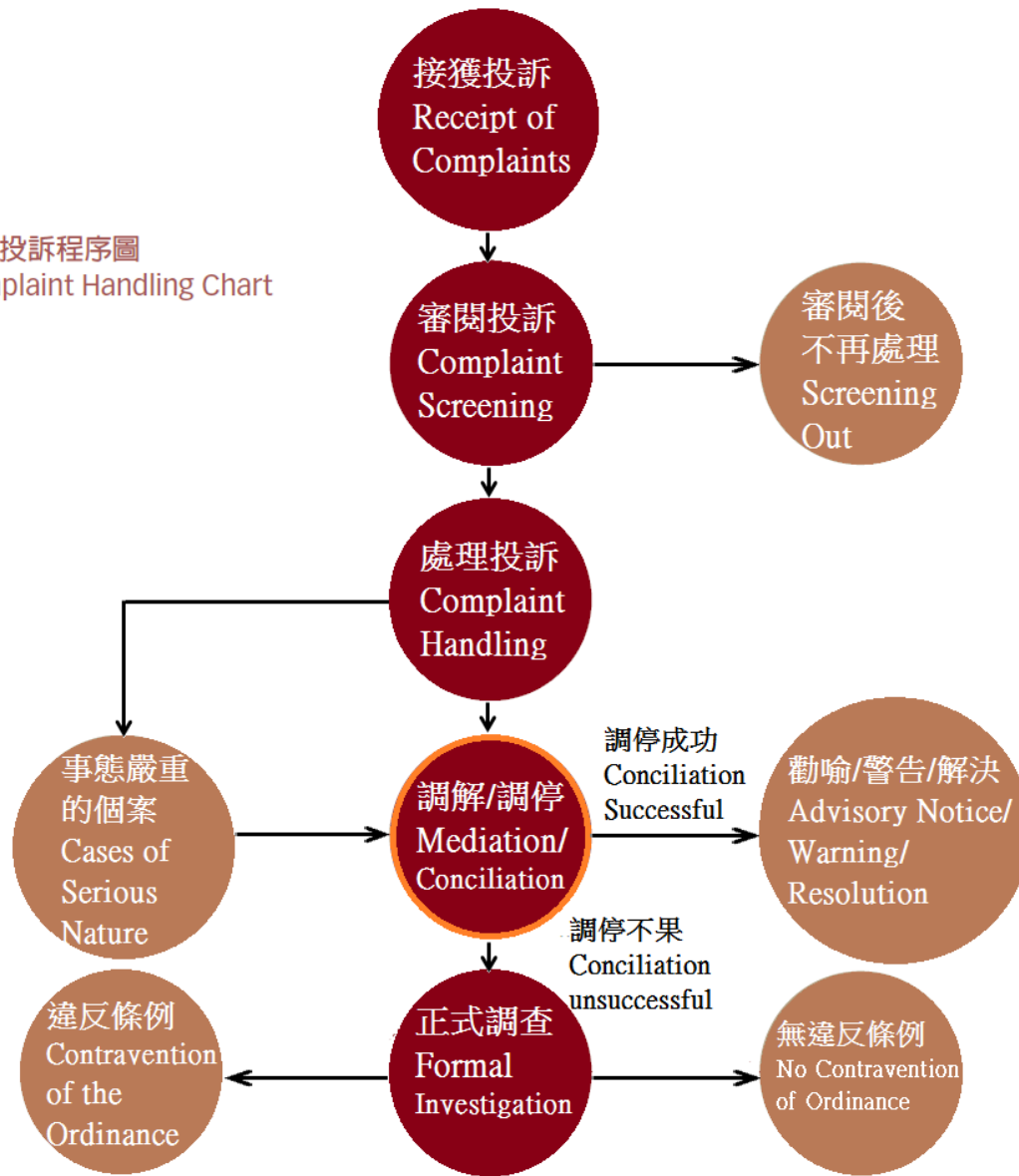
# 調解條例 Mediation Ordinance

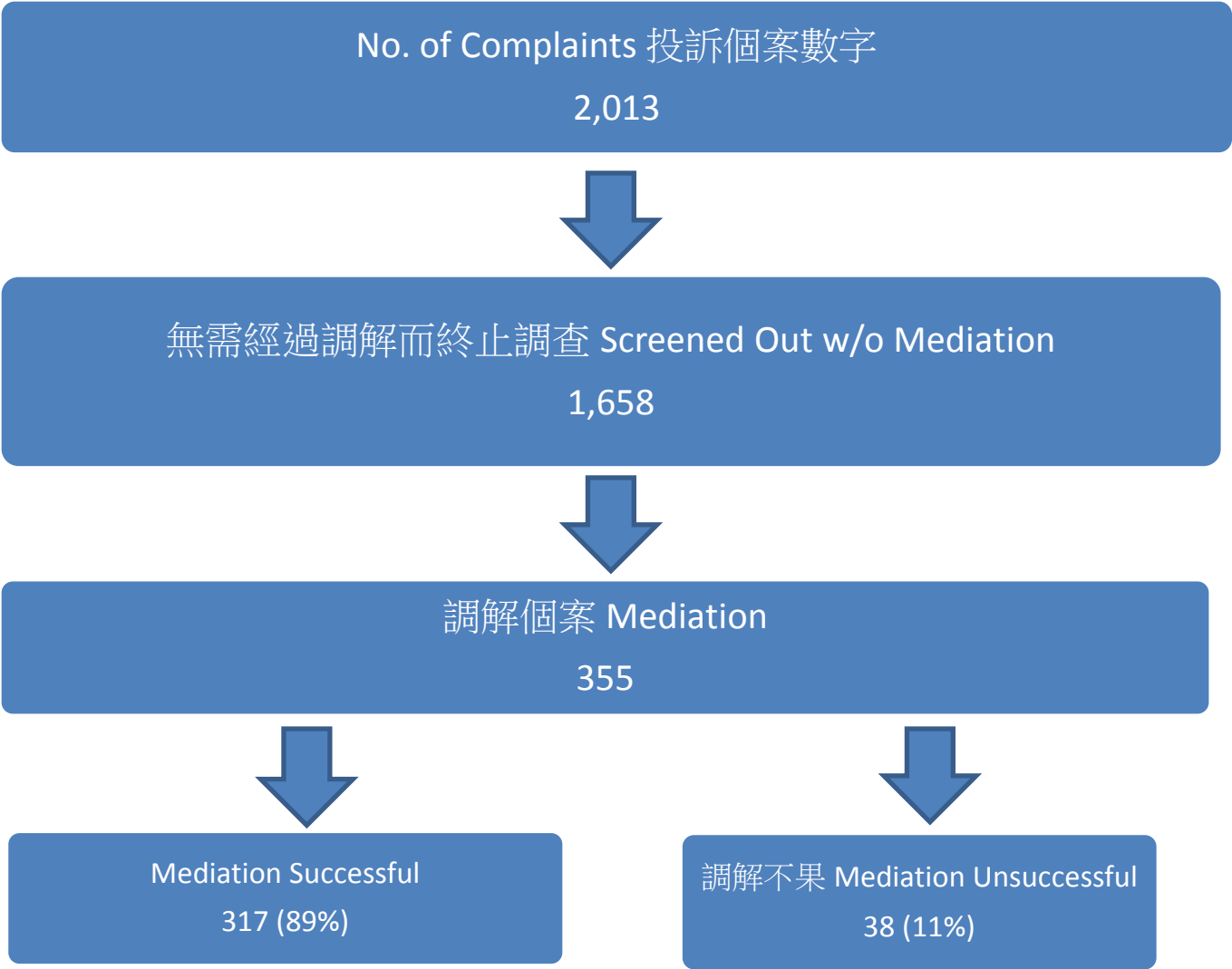
- Laws of Hong Kong, Cap. 620, section 4 of the “Mediation Ordinance”
- (1) For the purposes of this Ordinance, mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following—
  - (a) identify the issues in dispute;
  - (b) explore and generate options;
  - (c) communicate with one another;
  - (d) reach an agreement regarding the resolution of the whole, or part, of the dispute.
- (2) For the purposes of subsection (1), a session is a meeting between a mediator and one or more of the parties to a dispute, and includes any activity undertaken in respect of— (a) arranging or preparing for such a meeting, whether the meeting takes place or not; and (b) following up any matter or issue raised in such a meeting.
- (3) For the purposes of subsection (2), a meeting includes a meeting conducted by telephone, video conferencing or other electronic means.

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處理投訴程序圖  
Complaint Handling Chart





法

LAW

# 6 保障資料原則 Data Protection Principles

PCPD.org.hk

收集目的及方式  
Collection  
Purpose & Means

1



準確性、儲存及保留  
Accuracy & Retention

2



使用  
Use

3



保安措施  
Security

4



透明度  
Openness

5



查閱及更正  
Data Access &  
Correction

6





# Six Data Protection Principles

《個人資料(私隱)條例》下的

## 六項保障資料原則



香港個人資料私隱專員公署  
Privacy Commissioner  
for Personal Data, Hong Kong

保障、尊重個人資料  
Protect, Respect Personal Data

PCPD.org.hk

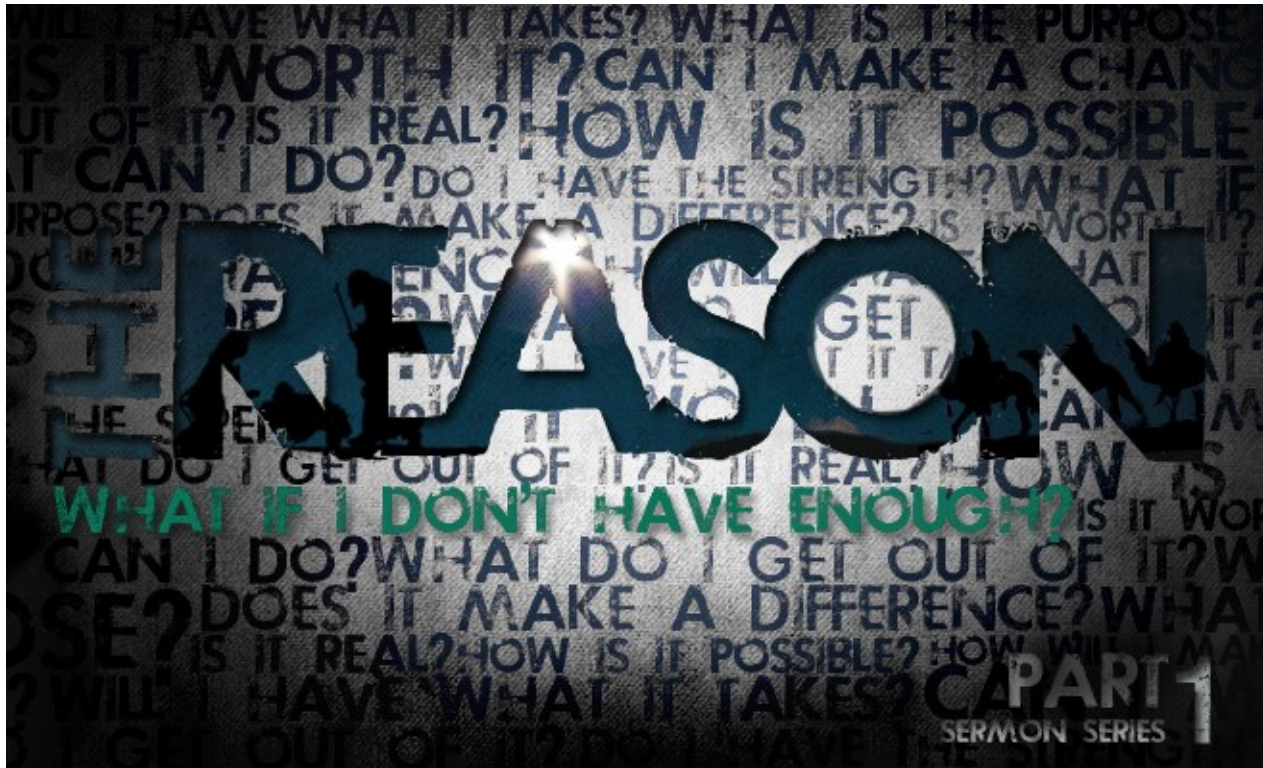


# Remedial Actions

## 糾正行動

- change of practices
- guidance to staff
- deletion / removal of data / waiver
- compliance
- undertakings
- apologies
- opt-out request followed
- 改正規則及行事方式
- 向職員發出適當指引
- 刪除個人資料
- 循規
- 作出承諾
- 致歉
- 依從拒絕服務要求

# 理 Reasoning



# 個案一 Case 1



- the complainant - member of a religious group
- 投訴人是某基督教會堂會友
- the complainant had a ceremony overseas but did not register her marriage in HK
- she told other members that she was still single
- 曾與前男友於海外進行結婚儀式但最終未在香港註冊，並向會友宣稱仍是單身

# 個案一 Case 1

- the religious group disclosed her wedding photos in a gathering
- 牧師向該堂的會友展示有關的結婚相片
- the religious group insisted that the denial of the marriage by the complainant was unacceptable
- 牧師堅持投訴人向他人宣稱她仍是單身的行為不當
- upon mediation, the religious group provided an undertaking to PCPD not to disclose her personal data to unrelated parties 經調解後，會堂以書面向本署承諾，日後不會向會友或無關的第三者披露投訴人提供的個人資料。

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# 回響 Feedback

- “感謝你和貴署盡心協助我，並給我一個肯定。你我素不相識，我在貴署只是一個檔案編號，你也願意作出關懷體恤”
- “We do not know each other, and I am just one of the complaint file reference numbers of your Office. I sincerely appreciate your excellent service, caring concern and positive affirmation.”



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# 情 Agreement



## 個案二 Case 2

- the complainant applied for a job in company A
- 投訴人向 A 公司求職
- company B, an integrity company, conducted an integrity check which wrongly matched the bankruptcy record of another individual with the complainant
- A 公司透過 B 公司向投訴人作背景審查。 B 公司錯誤將投訴人配對為另一名破產人士
- company A obtained the result of the integrity check from company B and withdrew the job offer
- A 公司取消聘用投訴人





## 個案二 Case 2

- upon mediation, company A admitted that the data was inaccurate
- 經調解後，A 公司確認有關資料錯誤
- job offer was reinstated to the complainant with an apology
- A 公司聘用投訴人並向她致歉
- the complainant was satisfied and expressed gratitude for the service she had received
- 投訴人感謝本公署的服務
- no loser
- 個案中沒有輸家



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## 個案三 Case 3

- the complainant's son was a student of a music academy
- 投訴人是一間音樂學校的學生家長
- the music teacher commented the attendance records of the complainant's son were not satisfactory
- the complainant requested, inter alia, the timesheets that summarised the daily teaching activities of the music teacher and her son's attendance records through a data access request
- 由於校方在成績表上註明其子的出席率不足，投訴人向學校作出查閱資料要求，要求查閱老師申報上課時數的紀錄，內含學生出席紀錄
- the school refused to provide a copy of the requested data to the complainant as the teacher disagreed to release the same
- 校方以相關老師不同意發放為由，拒絕投訴人的要求

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# 個案三 Case 3

- upon mediation, the music academy understood that the complainant simply wanted to verify the attendance rates of her son
- 經調解後，校方明白投訴人只是想取得客觀證明，以證實其子的出席率是否不足
- the music academy explained to the teacher and eventually provided a redacted copy of the same to the complainant
- 校方向老師解釋事件原委並最終向投訴人提供一份經刪除其他學生資料的複本



# 個案四 Case 4



- the complainant was a tutor for coffee courses of a coffee shop
- 投訴人是一間咖啡店的咖啡課程導師
- the complainant was dismissed from the coffee shop on the grounds that he misappropriated suppliers' information from the coffee shop
- 投訴人被咖啡店以「盜取供應商資料」為由辭退
- the coffee shop subsequently posted a notice on its Facebook account informing customers / business partners of the reason of complainant's dismissal
- 咖啡店隨即在Facebook張貼帖子，以通知其他人有關投訴人被辭職退原因

# 個案四 Case 4

- upon mediation, the coffee shop understood that it was not necessary to disclose the reason of complainant's dismissal on its Facebook account
- 經調解後，咖啡店明白在Facebook上公開投訴人的被辭職退原因是不必要的
- the coffee shop removed the notice on Facebook and provided PCPD with an undertaking for not disclosing staff's personal data again for similar circumstances happened in future
- 咖啡店遂移除了Facebook上的告示，並書面向公署承諾，日後遇到類同情況不會再如此張貼員工的個人資料



# 處理一宗投訴的平均時間

## Average Time Taken to Settle a Complaint Case

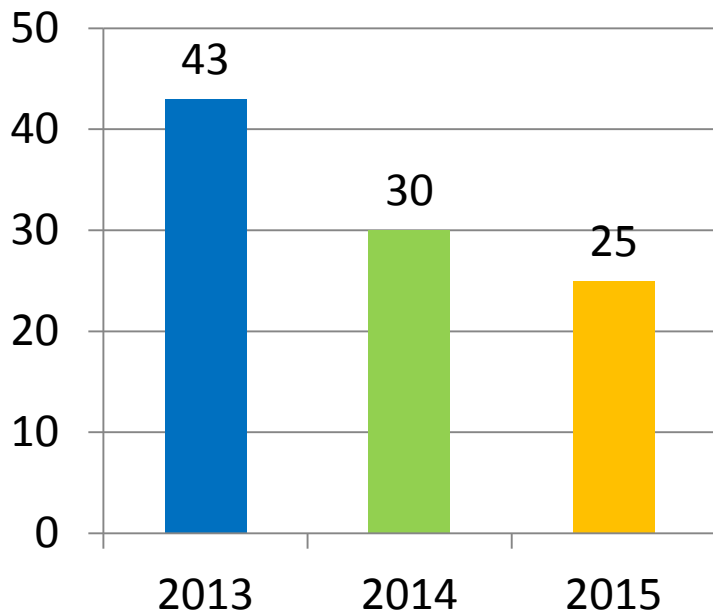
### 簡單個案

(沒有向被投訴機構查詢的個案)

#### Simple Cases

(the data users were not enquired)

天/Day



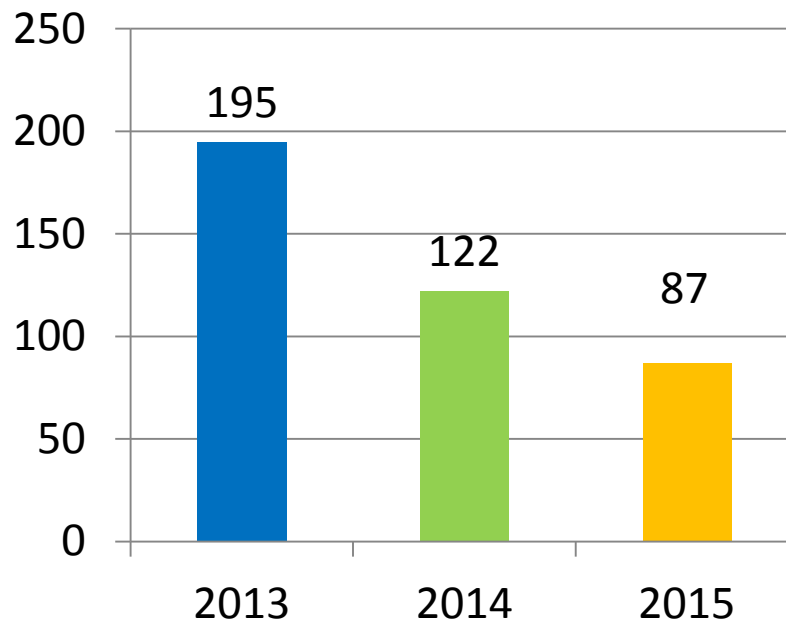
### 複雜個案

(有向被投訴機構查詢的個案)

#### Complicated Cases

(the data users were enquired)

天/Day



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# Merits of Mediation 調解的成效

讓爭議各方有機會取得  
以下成果：

- 節省時間
- 節省金錢
- 減少風險
- 維護尊嚴
- 減輕壓力
- 維繫關係
- 和解協議可能超出法庭准予的法律補救形式，而且遵守協議的比率甚高。

allowing parties to a dispute  
with an opportunity to save:

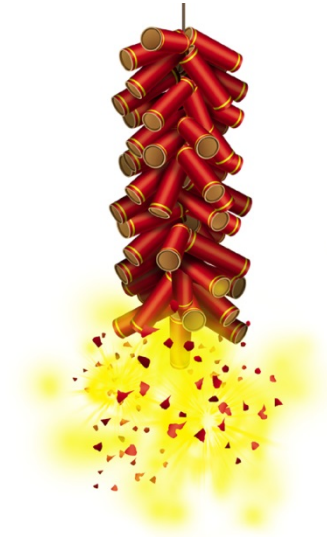
- time
- money
- risk
- dignity
- stress
- relationships
- settlements go beyond the legal remedies that a court may allow and there is a high rate of compliance.

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# PD Mediation

- Confidential and sensitive personal data involved
- 涉及機密及敏感的個人資料
- Dispute resolution by agreement
- 以協議解決糾紛
- No loser
- 沒有一方是輸家
- **Win Win**
- **調解協議、締造雙贏**







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Youtube: PCPD HKSAR

Facebook:

<https://www.facebook.com/besmartonlinepcpd>



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