

# 與紀律委員會主席廖玉玲女士訪談

本期《專業天地》專訪了監管局紀律委員會主席廖玉玲女士，以了解「紀律處分新計劃」的目的和背景；廖女士又會分享她參與監管局工作的經驗。

問：編者 答：廖玉玲女士

## 問：紀律處分新計劃的目的為何？

答：新計劃將簡化和加速處理較為簡單直接的違規個案，而不影響監管局作為規管者的有效性。一個公平而有效地處理違規個案的制度，對於監管局的工作十分重要。簡化和加速處理違規個案的程序，既可令監管局資源有效運用，也可以縮短處理個案和有關持牌人忐忑等候結果的時間。我們希望有關持牌人可以從速從錯誤中學習，注意良好的執業和工作制度，確保守法循規。

我們辨別了八項「指明違規事項」並將之列入新計劃的範疇中。該八項「指明違規事項」都屬簡單直接的，而不牽涉操守及誠信的問題。因此，我們認為該計劃給予有關持牌人改正的機會是合理的，同時不會影響監管局規管的有效性。該計劃只容許首次違規的持牌人參加，鼓勵他們從速糾正錯誤，這也是合理的安排。

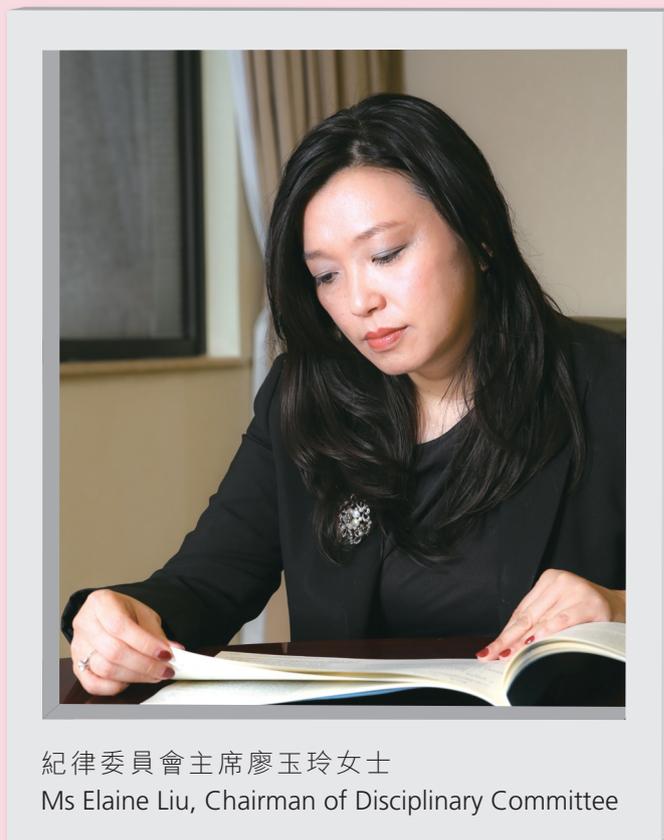
於2012-13年度經紀律委員會處理的違規個案之中，有高達四成違規事項是屬於該八項「指明違規事項」的。該數目包括了首次違規者及重複違規者，因此實際上新計劃將處理的個案會較少。即使如此，新計劃也會減省監管局不少資源。

## 問：長遠來說，你期望該項計劃對於改善業界違規情況有何影響？

答：部分持牌人觸犯指明違規事項，可能屬無心之失。該計劃給予他們改正的機會，並促使他們更注重守法循規。監管局亦同時推行教育工作，協助業界維持專業水平。這各項工作長遠來說可以提升業界的專業水平。維持業界良好的執業水平對持牌人及消費者均有利。

## 問：你預期持牌人會選擇該計劃嗎？為甚麼？

答：理想而言，我希望沒有持牌人需要選擇該計劃，因這表示業界並沒有違反相關事項。然而，我完



紀律委員會主席廖玉玲女士  
Ms Elaine Liu, Chairman of Disciplinary Committee

全理解現實與理想有分別。在該計劃下，選擇計劃的持牌人可獲得一個改正的機會並且不會因該次違規而即時受處分。如該持牌人其後兩年沒有違規，該首次違規可以完全無須被紀律處分。對於相關持牌人而言，這不是參與計劃很好的理由嗎？

有人可能會誤會，已選擇新計劃的持牌人如再次違規，將會被嚴懲；有人甚至認為，假如相關持牌人再次違規，罰則自然會倍增。這些想法都是誤解。在該計劃下，假如持牌人在兩年內再度違規，紀律委員會在決定他們該再次違規的處分時，同時考慮其參加了新計劃及在首次違規後沒有被處分的事實，相應地，有關處分難免較高。至於處分有多高，則要經全盤考慮相關因素才能決定，包括違規的嚴重性及違規紀錄等。這其實是與紀律委員會的一貫原則和做法是一致的。

**問：你已擔任監管局成員數年，可否分享一下你對監管局工作的意見？**

答：我於2008年開始擔任監管局成員。監管局其他成員均能幹和友善。在過去數年間，我參與不同委員會的工作。我曾擔任牌照委員會的主席，該委員會其中一項重要工作，是為決定持牌人是否持牌「適當人選」而制訂公平和透明的政策，並且公平公正地實施此政策。作為第28條調查小組主席時，小組審視《地產代理條例》第28條賦予監管局的廣泛權力運用於適當的個案中，免被濫用。

我自2012年出任紀律委員會主席，現時主要處理該委員會的工作。主持紀律委員會研訊、審理及裁定違規個案已成為我日常工作的一部份。此外，紀律委員會也要考慮紀律研訊的程序規則，以及其他的政策事宜。雖然委員會的工作量比我預期為重，但我樂在其中。同時，我與委員會其他委員及監管局人員合作愉快，他們當中不少人和我同樣擁有相同的熱忱。

**問：根據你進行紀律研訊的經驗，你對於地產代理業界的操守有甚麼看法？**

答：過去多年業界的操守水平及對於守法循規的警覺性有所進步，整體來說，重複違規的持牌人比例並不多，但仍然有涉及違反誠信並導致消費者損失的嚴重違規個案。監管局對這些違規事項保持警覺，繼續對這些違規持牌人採取紀律行動，相信能收阻嚇之用。此外，監管局也通過舉辦持續進修活動及發出執業通告，協助持牌人維持及提升執業水平。

**問：你擔任監管局成員數年間，有甚麼難忘的經驗？可否從大律師的角度，分享一下監管局紀律研訊和法庭審案有何分別？**

答：我對監管局成員及委員會委員的投入和付出印象深刻。這亦使我在監管局工作的經驗愉快和充實。

紀律研訊和法庭審訊在多方面都有所不同，例如在規則和程序，及證據的要求等；但兩者在秉持公義、堅守公平公正公開的原則和保障答辯人有申述的權利等方面，並無異致。

**問：身為一位積極參與公務的大律師，你如何分配時間及平衡工作和生活？**

答：這對我來說有時是一項挑戰。良好的時間管理十分重要，而現時我的安排還可以，並沒有出現問題。我珍惜和重視大律師的工作、我摯愛的家庭及我所參與的公職。這三方面無論在知識和情感上，都給予我充實的體驗。某程度上來說，它們在我生命中互相平衡和補足。我享受和珍惜我生命中這三方面的體驗和當中相遇的每一個人。

## An Interview with Ms Elaine Liu, Chairman of Disciplinary Committee

In this Issue of *Horizons*, we interviewed Ms Elaine Liu, Chairman of EAA Disciplinary Committee, with a view to understanding more about the background and objective of the New Scheme for Disciplinary Cases. She also shared with us her experiences of participating in the EAA's work.

Q: Editor      A: Ms Elaine Liu

**Q: What is the purpose of the New Scheme for Disciplinary Cases?**

A: The Scheme is to streamline and expedite the process of handling straight forward breaches without compromising the effectiveness of the EAA's regulatory role. A fair and effective system to deal with non-compliance cases is important in the works of the EAA. A streamline and expedited process for straight forward

cases will more efficiently utilise the resources of the EAA. It will also shorten the period of time during which uncertainties of the result of the disciplinary proceedings may be lingered on the minds of the licensees who are involved in the disciplinary proceedings. We hope that these licensees will quickly learn from their breach and direct their mind and attention to a better practice and system of work to ensure compliance.

We identified 8 specified breaches and included them in the scope of the Scheme. These 8 specified breaches are straight forward matters and do not involve issues of ethics and integrity. We therefore consider that it is justified to give the licensees concerned a chance under the Scheme and at the same time, does not compromise the effectiveness of the EAA's regulatory role. The Scheme only covers the first time offender to whom we also consider it justifiable to be included in the Scheme with a view to encouraging them to rectify the breaches in a timely manner.

In the year of 2012–13, the total number of cases fell within these 8 specified breaches amounted to about 40% of the total breaches handled by the Disciplinary Committee of the EAA. This figure covers both the first time offenders and repeated offenders, therefore the cases that will fall within the purview of the Scheme will be lesser. Nonetheless, with the Scheme, considerable amount of resources could be saved.

**Q: What effects would you expect the Scheme will have on improving the trade's compliance in the long run?**

**A:** Some of the licensees probably have committed these specified breaches inadvertently. The Scheme, which gives them a chance, will draw their attention to the importance of compliance. The EAA is also undertaking educational efforts to assist licensees in maintaining their professional standard. All these efforts will promote and enhance the trade's professionalism in the long run. The upholding of good professional standards of the licensees benefits both the trade and the consumers.

**Q: Do you expect licensees would opt for the Scheme and why?**

**A:** Ideally, I hope that no licensee will need to opt for the Scheme as it would mean that there is no such breach at all. That asides, I am fully aware that the reality runs differently. Under the Scheme, the licensees concerned are given a chance and sanction will not be imposed on them on that occasion if they opt for the Scheme. If the licensee does not commit any breach in the next 2 years, he will not be subject to any sanction at all for this first time breach. This is a very good reason to opt for the Scheme, isn't it?

Some may be under a misleading notion that those who opted for the Scheme would be very severely punished if they re-offend. Some may even think that, as a rule, the subsequent sanction on re-offending will be multiplied by several times. This is a misconception. Under the Scheme, if the licensees concerned subsequently re-offend within 2 years, the fact that they have opted for the Scheme and have not been punished in the first time will be taken into consideration in deciding the sanction for the subsequent breach. Accordingly, the sanction for the subsequent breach would inevitably be higher. How much higher would be a matter to be decided by considering the entire circumstances, including the gravity of the breach, number of previous records etc. This is in line with the current principle and practice adopted by the Disciplinary Committee.

**Q: You have been an EAA board member for a few years. Could you share your views about the EAA's works?**

**A:** I have served on the EAA board since 2008. The other EAA board members are capable and friendly. During these years, I was also involved in the works of different committees of the EAA. I have served as the Chairman of the Licensing Committee. An important task when working in this Committee was to formulate a fair and transparent policy for determining the fitness and properness of a licence holder, and also to implement the policy in a fair and just manner. In my role as the Chairman of the section 28 Investigation Panel, considerations have been given to ensure that the wide power given to the EAA under section 28 of the Estate Agents Ordinance was used in appropriate cases and abuse of power was prevented.

I took up the Chairmanship of the Disciplinary Committee in 2012 and am now spending much of my time in the works of this Committee. Sitting as a member of the inquiry panel to hear and decide disciplinary cases is now a routine of my works. Besides, the Committee also considered the procedural rule for inquiry hearings and many other policy issues. The workloads in fact are heavier than I originally expect. Nonetheless, I enjoy the Committee works. It is also good to work with the committee members and the EAA administration staff, many of whom share similar enthusiasm as mine.



**Q: From your experiences of conducting inquiry hearings, what are your views about the conduct and ethical standard of the estate agency trade?**

**A:** The trade's ethical standard and awareness in compliance have improved over the years. Overall, the number of repeated offenders is not very high. However, there are still cases of serious breaches involving issue of honesty and causing considerable loss to consumers. The EAA would stay vigilant and continue to take disciplinary actions against those who have committed breaches, and trust this would have deterrent effect. In addition, by organising professional training activities and issuing practice circulars, the EAA assists licensees in maintaining and improving their professional standards.

**Q: What are your unforgettable experiences of working with the EAA? From the perspective of a barrister, could you share with our readers the differences between an EAA inquiry hearing and a court case?**

**A:** The commitment and dedication of the Board and committee members are impressive to me. This also made my works with the EAA a happy and fulfilling experience.

An inquiry hearing and a court hearing differ in various aspects. Take for instances, the rules and procedures, and the rules of evidence are different. However, the adherence to the principles of natural justice, fair representation and right to be heard are common to both.

**Q: As a barrister intensively involving in the public services, how do you allocate your time and achieve a work-life balance?**

**A:** This sometimes does become a challenge to me. Good time management is essential and it presently works well with me. I cherish and value my work as a barrister, my beloved family and the public services I participate in. Each of these gives me fulfilling experiences intellectually and emotionally. Somehow, they balance and complement with each other in my life. I enjoy and treasure each of these three aspects of my life and the people I meet in each of them.

